### Provisions for tank cars other than single unit tank car tanks:

<table>
<thead>
<tr>
<th>49 CFR section</th>
<th>Description</th>
<th>Guideline amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>180.519(a)</td>
<td>Failure to retest at required interval</td>
<td>Cite 180.519(b)(5).</td>
</tr>
<tr>
<td>180.519(b)(1)</td>
<td>Failure to perform hydrostatic pressure/expansion test as required</td>
<td>7,500.</td>
</tr>
<tr>
<td>180.519(b)(2)</td>
<td>Failure to perform interior air pressure test as required</td>
<td>7,500.</td>
</tr>
<tr>
<td>180.519(b)(3)</td>
<td>Failure to test pressure relief valves as required</td>
<td>7,500.</td>
</tr>
<tr>
<td>180.519(b)(4)</td>
<td>Failure to remove and inspect frangible discs and fusible plugs</td>
<td>5,000.</td>
</tr>
<tr>
<td>180.519(b)(5)</td>
<td>Failure to retest at required interval</td>
<td>3,000.</td>
</tr>
<tr>
<td>180.519(b)(6)</td>
<td>Failure to stamp tank as required</td>
<td>5,000.</td>
</tr>
<tr>
<td>180.519(c)</td>
<td>Failure to visually inspect as required</td>
<td>5,000.</td>
</tr>
<tr>
<td>180.519(d)</td>
<td>Failure to use competent persons to perform visual inspection</td>
<td>5,000.</td>
</tr>
<tr>
<td>180.519(e)</td>
<td>Failure to record and retain documentation. Mitigate/aggravate depending on the extent of the violation</td>
<td>7,500.</td>
</tr>
</tbody>
</table>

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2 A person who knowingly violates the hazardous materials transportation law, or regulation, special permit, approval, or order issued thereunder, is subject to a civil penalty of at least $250 but not more than $55,000 for each violation, except that the maximum civil penalty for a violation is $110,000 if the violation results in death, serious illness or severe injury to any person, or substantial destruction of property; and a minimum $450 civil penalty applies to a violation related to training. Each day that the violation continues is a separate offense. 49 U.S.C. 5123; 28 U.S.C. 2461, note.


### APPENDIX C TO PART 209—FRA’S POLICY STATEMENT CONCERNING SMALL ENTITIES

This policy statement required by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) (SBREFA) explains FRA’s communication and enforcement policies concerning small entities subject to the federal railroad safety laws. These policies have been developed to take into account the unique concerns and operations of small businesses in the administration of the national railroad safety program, and will continue to evolve to meet the needs of the railroad industry. For purposes of this policy statement, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.),
and the “excessive demand” provisions of the
Equal Justice Act (5 U.S.C. 501 (a)(4), and
28 U.S.C. 2412 (d)(1)(D)), Class III railroads,
contractors and hazardous materials shippers,
meeting the economic criteria established
for Class III railroads in 49 CFR 1201.1–1,
and commuter railroads or small govern-
mental jurisdictions that serve populations
of 50,000 or less constitute the class of orga-
nizations considered “small entities” or
“small businesses.”

FRA understands that small entities in the
railroad industry have significantly different
characteristics than larger carriers and shippers. FRA believes that these differences ne-
cessitate careful consideration in order to
ensure that those entities receive appropri-
ate treatment on compliance and enforce-
ment matters, and enhance the safety of
railroad operations. Therefore, FRA has de-
veloped programs to respond to compliance-
related inquiries of small entities, and to en-
sure proper handling of civil penalty and
other enforcement actions against small
businesses.

SMALL ENTITY COMMUNICATION POLICY

It is FRA’s policy that all agency per-
sontel respond in a timely and comprehen-
sive fashion to the inquiries of small entities
concerning railroad safety statutes, safety reg-
lations, and interpretations of these statutes
and regulations. Also, FRA personnel pro-
vide guidance to small entities, as needed,
in applying the law to specific facts and situa-
tions that arise in the course of railroad op-
erations. These agency communications take
many forms, and are tailored to meet the
needs of the requesting party.

FRA inspectors provide training on the re-
quirements of all railroad safety statutes
and regulations for new and existing small
businesses upon request. Also, FRA inspec-
tors often provide impromptu training ses-
sions in the normal course of their inspec-
tion duties. FRA believes that this sort of
preventive, rather than punitive, commu-
nication greatly enhances railroad safety.

FRA’s Office of Safety and Office of Chief
Counsel regularly provide oral and written
responses to questions raised by small enti-
ties concerning the plain meaning of the
railroad safety standards, statutory require-
ments, and interpretations of the law. As re-
quired by the SBREFA, when FRA issues a
final rule that has a significant impact on a
substantial number of small entities, FRA
will also issue a compliance guide for small
entities concerning that rule.

It is FRA’s policy to maintain frequent
and open communications with the national
representatives of the primary small entity
associations and to consult with these orga-
nizations before embarking on new policies
that may impact the interests of small busi-
nesses. In some regions of the country where
the concentration of small entities is par-
ticularly high, FRA Regional Administrators
have established programs in which all small
entities in the region meet with FRA re-
gional specialists on a regular basis to dis-
cuss new regulations, persistent safety con-
cerns, emerging technology, and compliance
issues. Also, FRA regional offices hold peri-
odic conferences, in which specific blocks of
time are set aside to meet with small busi-
nesses and hear their concerns.

In addition to these communication prac-
tices, FRA has instituted an innovative part-
nership program that expands the extent to
which small entities participate in the devel-
opment of policy and process. The Railroad
Safety Advisory Committee (RSAC) has been
established to advise the agency on the de-
velopment and revision of railroad safety
standards. The committee consists of a wide
range of industry representatives, including
organizations that represent the interests of
small business. The small entity representa-
tive groups that sit on the RSAC may ap-
point members of their choice to participate
in the development of new safety standards.
This reflects FRA’s policy that small busi-
ness interests must be heard and considered
in the development of new standards to en-
sure that FRA does not impose unnecessary
economic burdens on small businesses, and
to create more effective standards. Finally,
FRA’s Web site (http://www.fra.dot.gov)
makes pertinent agency information avail-
able instantly to the public.

FRA’s longstanding policy of open commu-
nication with small entities is apparent in
these practices. FRA will make every effort
to develop new and equally responsive com-
nunication procedures as is warranted by
new developments in the railroad industry.

SMALL ENTITY ENFORCEMENT POLICY

FRA has adopted an enforcement policy
that addresses the unique nature of small en-
tities in the imposition of civil penalties and
resolution of those assessments. Pursuant to
FRA’s statutory authority, and as described
in Appendix A to 49 CFR part 209, it is FRA’s
policy to consider a variety of factors in de-
termining whether to take enforcement ac-
tion against persons, including small enti-
ties, who have violated the safety laws and
regulations. In addition to the seriousness
of the violation and the person’s history of
compliance, FRA inspectors consider “such
other factors as the immediate cir-
cumstances make relevant.” In the context
of violations by small entities, those factors
include whether the violations were made in
good faith e.g., based on an honest misunder-
standing of the law), and whether the small
entity has moved quickly and thoroughly
to remedy the violation(s). In general, the pres-
ence of both good faith and prompt remedial
action militates against taking a civil pen-
alty action, especially if the violations are
isolated events. On the other hand, violations involving willful actions and/or posing serious health, safety, or environmental threats should ordinarily result in enforcement actions, regardless of the entity’s size.

Once FRA has assessed a civil penalty, it is authorized to adjust or compromise the initial penalty claims based on a wide variety of mitigating factors, unless FRA must terminate the claim for some reason. FRA has the discretion to reduce the penalty as it deems fit, but not below the statutory minimums. The mitigating criteria FRA evaluates are found in the railroad safety statutes and SBREFA: The severity of the safety or health risk presented; the existence of alternative methods of eliminating the safety hazard; the entity’s culpability; the entity’s compliance history; the entity’s ability to pay the assessment; the impacts an assessment might exact on the entity’s continued business; and evidence that the entity acted in good faith. FRA staff attorneys regularly invite small entities to present any information related to these factors, and explain FRA’s view on the merits of any defenses or mitigating factors presented that may have resulted or failed to result in penalty reductions. Among the “other factors” FRA considers at this stage is the promptness and thoroughness of the entity’s remedial action to correct the violations and prevent a recurrence. Small entities should be sure to address these factors in communications with FRA concerning civil penalty cases. Long-term solutions to compliance problems will be given great weight in FRA’s determinations of a final settlement offer.

Finally, under FRA’s Safety Assurance and Compliance Program (SACP), FRA identifies systemic safety hazards that continue to occur in a carrier or shipper operation, and in cooperation with the subject business, develops an improvement plan to eliminate those safety concerns. Often, the plan provides small entities with a reasonable time frame in which to make improvements without the threat of civil penalty. If FRA determines that the entity has failed to comply with the improvement plan, however, enforcement action is initiated.

FRA’s small entity enforcement policy is flexible and comprehensive. FRA’s first priority in compliance and enforcement activities is public and employee safety. However, FRA is committed to obtaining compliance and enhancing safety with reasoned, fair methods that do not inflict undue hardship on small entities.

[68 FR 24894, May 9, 2003]