

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive office of community	Effective date of modification	Community No.
Arapahoe .....	City of Littleton (03-08-0691P).	March 11, 2004, March 18, 2004, <i>Littleton Independent</i> .	The Honorable John Ostermiller, Mayor, City of Littleton, 2255 West Berry Avenue, Littleton, Colorado 80165.	March 1, 2004 .....	080017
Douglas .....	Town of Parker (04-08-0033P).	February 19, 2004, February 26, 2004, <i>Douglas County News Press</i> .	The Honorable Gary Lasater, Mayor, Town of Parker, 20120 East Mainstreet, Parker, Colorado 80138.	May 27, 2004 .....	080310
El Paso .....	Unincorporated Areas (03-08-0406P).	March 10, 2004, March 17, 2004, <i>El Paso County News</i> .	The Honorable Chuck Brown, Chair, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903-2208.	June 16, 2004 .....	080059
El Paso .....	Unincorporated Areas (03-08-0449P).	March 17, 2004, March 24, 2004, <i>El Paso County News</i> .	The Honorable Chuck Brown, Chair, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903-2208.	June 23, 2004 .....	080059
El Paso .....	Unincorporated Areas (03-08-0617P).	March 17, 2004, March 24, 2004, <i>El Paso County News</i> .	The Honorable Chuck Brown, Chair, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903-2208.	June 23, 2004 .....	080059
Jefferson .....	City of Lakewood (03-08-0305P).	March 25, 2004, April 1, 2004, <i>Lakewood Sentinel</i> .	The Honorable Steve Burkholder, Mayor, City of Lakewood, Lakewood Civic Center South, 480 South Allison Parkway, Lakewood, Colorado 80226.	July 1, 2004 .....	085075
Jefferson .....	Unincorporated Areas (03-080479P).	February 25, 2004, March 3, 2004, <i>Evergreen Canyon Courier</i> .	The Honorable Michelle Lawrence, Chairperson, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, Colorado 80419-5550.	June 2, 2004 .....	080087
Jefferson .....	City of Westminster (03-08-0520P).	January 29, 2004, February 5, 2004, <i>Westminster Window</i> .	The Honorable Ed Moss, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80031.	May 6, 2004 .....	080008
Hawaii:					
Hawaii .....	Hawaii County (03-09-1531P).	February 12, 2004, February 19, 2004, <i>Hawaii Tribune Herald</i> .	The Honorable Harry Kim, Mayor, Hawaii County, 25 Aupuni Street, Hilo, Hawaii 96720.	January 20, 2004 ....	155166
Maui .....	Maui County (03-09-0438P).	March 25, 2004, April 1, 2004, <i>Maui News</i> .	The Honorable Alan M. Arawaka, Mayor, Maui County, 200 South High Street, Wailuku, Hawaii 96793-2155.	July 1, 2004 .....	150003
Utah: Sevier .....	City of Salina (04-08-0072P).	February 25, 2004, March 3, 2004, <i>Richfield Reaper</i> .	The Honorable Marilyn S. Anderson, Mayor, City of Salina, P.O. Box 69, Salina, Utah 84654.	June 2, 2004 .....	490132
Washington: King	City of Bellevue (03-10-0399P).	February 26, 2004, March 4, 2004, <i>King County Journal</i> .	The Honorable Connie Marshall, Mayor, City of Bellevue, P.O. Box 90012, Bellevue, Washington 98009-9012.	June 3, 2004 .....	530074

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: May 18, 2004.

**Anthony S. Lowe,**

*Mitigation Division Director, Emergency Preparedness and Response Directorate.*

[FR Doc. 04-11760 Filed 5-24-04; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 232

[FRA Docket No. PB-9; Notice No. 22]

RIN 2130-AB52

#### Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices

AGENCY: Federal Railroad Administration (FRA), DOT.

**ACTION:** Final rule; adjustment of schedule of civil penalties.

**SUMMARY:** This document amends the schedule of civil penalties for violations of part 232 to make it consistent with the primary final rule in this proceeding or with subsequent changes made in the text of the regulation in response to petitions for reconsideration. These changes are technical amendments made solely to the schedule of civil penalties contained in appendix A to part 232, are a statement of agency policy, and are consistent with FRA's

intent when issuing the final rule and its response to petitions for reconsideration in this proceeding. The adjustments will enhance FRA's safety enforcement program by ensuring that the regulated community is fully aware of its potential civil penalty liability and by ensuring that appropriate civil penalties are assessed when taking enforcement actions.

**DATES:** *Effective Date:* The revision of Appendix A to part 232 is effective May 25, 2004.

**ADDRESSES:** Any petition for reconsideration should reference FRA Docket No. PB-9, Notice No. 22, and be submitted in triplicate to the FRA Docket Clerk, Office of Chief Counsel, RCC-10, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** James Wilson, FRA Office of Safety, RRS-14, 1120 Vermont Avenue, NW., Stop 25, Washington, DC 20590 (telephone 202-493-6259), or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, RCC-10, 1120 Vermont Avenue, NW., Stop 10, Washington, DC 20590 (telephone 202-493-6053).

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 17, 2001, FRA published a final rule revising the Federal safety standards governing braking systems and equipment used in freight and other non-passenger railroad train operations. See 66 FR 4104-217. The effective date of the final rule was May 31, 2001. See 66 FR 9906 (February 12, 2001) and 66 FR 29501 (May 31, 2001). The final rule contained staggered implementation dates with the majority of the rule becoming applicable on April 1, 2004. See 49 CFR 232.1(b) and 66 FR 4193. In response to the final rule, FRA received six petitions for reconsideration from seven parties raising various issues related to a number of the provisions contained in the final rule.

On August 1, 2001, FRA published an initial response to the petitions for reconsideration of the final rule addressing those issues raised in the petitions related to the periodic maintenance and testing requirements prescribed in subpart D of the final rule. See 66 FR 39683. FRA believed that it was necessary to address these issues as quickly as possible because the periodic maintenance and testing requirements prescribed in subpart D of the final rule had a compliance date of August 1, 2001. Due to the complexity of some of the issues raised in the petitions for reconsideration on other provisions of the final rule, FRA decided to address the issues related to subpart D in its

initial response to the petitions and then issue a follow-up response addressing the issues pertaining to other portions of the final rule. See *id.* On April 10, 2002, FRA published its second response to petitions for reconsideration addressing all other outstanding issues raised in the petitions for reconsideration. See 67 FR 17556-85.

This document amends the schedule of civil penalties contained in appendix A to part 232 to make it consistent with the January 2001 final rule or with the changes made in the text in response to petitions for reconsideration. These changes are technical adjustments or corrections made solely to the schedule of civil penalties contained in Appendix A to part 232, are a statement of agency policy, and are consistent with FRA's intent when issuing the final rule and its response to petitions for reconsideration in this proceeding. The adjustments will enhance FRA's safety enforcement program by ensuring that the regulated community is fully aware of its potential civil penalty liability and by ensuring appropriate civil penalties are assessed when taking enforcement actions.

**Discussion of Corrections and Modifications**

This document is making six corrections or adjustments to the schedule of civil penalties contained in Appendix A to part 232. First, the listed civil penalties associated with § 232.205 are being corrected to reflect the changes made to this section by FRA second response to petitions for reconsideration. In that response, a new paragraph (b) was added to this section to clarify the inspection requirements related to the addition of solid blocks of cars, and paragraph (f) of the section was removed to avoid duplication. See 69 FR 17573-75, 17582. Thus, what were paragraphs (b) through (e) of this section in the January 2001 final rule are now paragraphs (c) through (f). However, the penalty schedule was never modified to reflect these changes. Consequently, FRA is correcting the penalty schedule items for this section to reflect the above-noted amendments.

Secondly, a typographical error in the penalty schedule amount associated with § 232.207(a) is also being corrected. The January 2001 final rule showed the civil penalty for a complete failure to perform a Class IA brake test as \$15,000. See 66 FR 4212. This should have read \$5,000 and is being so corrected.

Third, the penalty schedule items associated with the Class II brake test provisions of § 232.209 are being adjusted by adding a clarifying citation for paragraph (d) of this section.

Paragraph (d) of this section requires the performance of a Class I brake test on any car added to a train via a Class II brake test at the next forward location where facilities are available for performing such a test. The clarifying adjustment directs the reader to the footnote following the schedule of civil penalties, which makes clear that the penalties associated with the failure to perform a proper Class I brake test would be applicable in these instances.

Fourth, FRA is also amending the penalty schedule items associated with Class III brake tests requirements contained in § 232.211. When issuing its second response to petitions for reconsideration of the final rule, FRA added a paragraph (d) containing a modified Class III brake test in those instances where the continuity of a train's brake pipe is broken or interrupted with the train otherwise remaining unchanged. See 67 FR 17583. However, at the time the provision was added, no specific civil penalty was associated to a violation of the new provision. This document amends the schedule of civil penalties by adding a specific reference to paragraph (d) of this section and assigns a certain civil penalty consistent with a partial failure to perform a Class III brake test.

Fifth, the items in the schedule related to the extended haul train provisions of § 232.213 are being clarified to include a potential civil penalty amount for the general operation provision of paragraph (b) of this section. This penalty is currently applied to situations where an extended haul train is operated outside the restrictions contained in paragraph (a) that are not otherwise specifically covered by the penalties associated with that paragraph. For example, this would include such acts as exceeding the allowable number of pick-ups or set-outs with an extended haul train.

Finally, FRA is making corrections to the penalty items associated with §§ 232.213(a)(2)-(3), (5)(i), and (8), and 232.217(c). The items associated with these sections direct the reader to footnote (2) at the end of the schedule of civil penalties. Because there is only one footnote at the end of the penalty schedule, the reference for the above-noted provisions is being corrected to cite to footnote (1).

**General Information**

As the amendments contained in this document are minor corrections or adjustments to the existing schedule of civil penalties associated with part 232, which constitutes a general statement of agency policy relating potential civil penalty assessment amounts, FRA is

issuing this document as a final rule. FRA views the amendments as technical corrections to a general statement of agency policy and not a substantive rule. Consequently, FRA believes that, pursuant to 5 U.S.C. 553(b)(3)(A) and (B), this action is both exempted from the requirement for prior public notice and that good cause exists for finding that prior public notice of this action is unnecessary.

### Regulatory Impact

#### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule has been evaluated in accordance with Executive Order 12866 and DOT policies and procedures. The modifications contained in this final rule are not considered significant because they are intended merely to correct and adjust the schedule of civil penalties associated with part 232 consistent with FRA's intent when publishing the primary final rule in this proceeding on January 17, 2001. No changes or modifications are being made to any regulatory provision contained in part 232. There is no economic impact caused by the corrections and clarifications contained in this final rule.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this final rule does not have a significant impact on a substantial number of small entities. Because the modifications contained in this final rule merely correct and adjust the schedule of civil penalties associated with part 232 and because no changes or modifications are being made to any regulatory provision contained in part 232, FRA has concluded that there are no substantial economic impacts on small units of government, businesses, or other organizations.

#### *Paperwork Reduction Act*

Because the modifications contained in this final rule merely correct and adjust the schedule of civil penalties associated with part 232 and because no changes or modifications are being made to any regulatory provision contained in part 232, this final rule does not change any of the information collection requirements contained in part 232.

#### *Environmental Impact*

FRA has evaluated this final rule in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May

26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c) of FRA's Procedures.

#### *Federalism Implications*

FRA believes it is in compliance with Executive Order 13132. Because the modifications contained in this final rule merely correct and adjust the schedule of civil penalties associated with part 232 and because no changes or modifications are being made to any regulatory provision contained in part 232, this document will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule will not have federalism implications that impose any direct compliance costs on State and local governments.

#### *Unfunded Mandates Reform Act of 1995*

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. The statutory figure of \$100,000,000 has been adjusted upward for inflation to \$120,700,000. Because the modifications contained in this final rule merely correct and adjust the schedule of civil penalties associated with part 232 and because no changes or modifications are being made to any

regulatory provision contained in part 232, this document will not result in the expenditure, in the aggregate, of \$120,700,000 or more in any one year, and thus preparation of such a statement is not required.

#### *Energy Impact*

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. Because the modifications contained in this final rule merely correct and adjust the schedule of civil penalties associated with part 232 and because no changes or modifications are being made to any regulatory provision contained in part 232, FRA has determined that this document will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

#### **List of Subjects in 49 CFR Part 232**

Penalties, Railroad power brakes, Railroad safety.

#### **Adoption of the Amendments**

■ For the reasons set forth in the preamble, part 232 of chapter II, subtitle B of title 49 of the Code of Federal Regulations is amended to read as follows:

#### **PART 232—[AMENDED]**

■ 1. The authority citation for part 232 is revised to read as follows:

**Authority:** 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20301–20303, 20306, 21301–21302, 21304; 28 U.S.C. 2461, note; 49 CFR 1.49 (c), (m).

■ 2. Appendix A to part 232 is revised to read as follows:

APPENDIX A TO PART 232.—SCHEDULE OF CIVIL PENALTIES <sup>1</sup>

Section	Violation	Willful violation
<b>Subpart A—General</b>		
232.15 Movement of power brake defects:		
(a) Improper movement, general .....	( <sup>1</sup> )	( <sup>1</sup> )
(11) Failure to make determinations and provide notification of en route defect .....	\$2,500	\$5,000
(b) Complete failure to tag .....	2,500	5,000
(1) Insufficient tag or record .....	1,000	2,000
(2), (4) Improper removal of tag .....	2,000	4,000
(3) Failure to retain record of tag .....	2,000	4,000
(c) Improper loading or purging .....	2,500	5,000
(e) Improper placement of defective equipment .....	2,500	5,000
232.19 Availability of records	( <sup>1</sup> )	( <sup>1</sup> )
<b>Subpart B—General Requirements</b>		
232.103 All train brake systems:		
(a)–(c), (h)–(i) Failure to meet general design requirements .....	2,500	5,000
(d) Failure to have proper percentage of operative brakes from Class I brake test .....	5,000	7,500
(e) Operating with less than 85 percent operative brakes .....	5,000	7,500
(f) Improper use of car with inoperative or ineffective brakes .....	2,500	5,000
(g) Improper display of piston travel .....	2,500	5,000
(m) Failure to stop train with excess air flow or gradient .....	2,500	5,000
(n) Securement of unattended equipment:		
(1) Failure to apply sufficient number of hand brakes; failure to develop or implement procedure to verify number applied .....	5,000	7,500
(2) Failure to initiate emergency .....	2,500	5,000
(3) Failure to apply hand brakes on locomotives .....	2,500	5,000
(4) Failure to adopt or comply with procedures for securing unattended locomotive .....	5,000	7,500
(o) Improper adjustment of air regulating devices .....	2,500	5,000
(p) Failure to hold supervisors jointly responsible .....	2,500	5,000
232.105 Locomotives:		
(a) Air brakes not in safe and suitable condition .....	1,000–5,000	2,000–7,500
(b) Not equipped with proper hand or parking brake .....	5,000	7,500
(c)(1) Failure to inspect/repair hand or parking brake .....	2,500	5,000
(2) Failure to properly stencil, tag, or record .....	2,000	4,000
(d) Excess leakage from equalizing reservoir .....	2,500	5,000
(e) Improper use of feed or regulating valve braking .....	2,500	5,000
(f) Improper use of passenger position .....	2,500	5,000
(g) Brakes in operative condition .....	2,500	5,000
232.107 Air sources/cold weather operations:		
(a)(1), (2) Failure to adopt or comply with monitoring program for yard air sources .....	5,000	7,500
(3) Failure to maintain records .....	2,500	5,000
(b) Failure to blow condensation .....	2,500	5,000
(c) Use of improper chemicals .....	5,000	7,500
(d) Failure to equip or drain yard air reservoirs .....	2,500	5,000
(e) Failure to adopt or comply cold weather operating procedures .....	5,000	7,500
232.109 Dynamic brakes:		
(a) Failure to provide information .....	5,000	7,500
(b) Failure to make repairs .....	5,000	7,500
(c) Failure to properly tag .....	2,500	5,000
(d) Failure to maintain record of repair .....	2,000	4,000
(e) Improper deactivation .....	2,500	5,000
(f) Improper use of locomotive as controlling unit .....	2,500	5,000
(g) Locomotive not properly equipped with indicator .....	2,500	5,000
(h) Rebuilt locomotive not properly equipped .....	2,500	5,000
(j) Failure to adopt or comply with dynamic brake operating rules .....	5,000	7,500
(k) Failure to adopt or comply with training on operating procedures .....	5,000	7,500
232.111 Train handling information:		
(a) Failure to adopt and comply with procedures .....	5,000	7,500
(b) Failure to provide specific information .....	2,500	5,000
<b>Subpart C—Inspection and Testing Requirements</b>		
232.203 Training requirements:		
(a) Failure to develop or adopt program .....	7,500	11,000
(b)(1)–(9) Failure to address or comply with specific required item or provision of program .....	5,000	7,500
(c) Failure to adopt or comply with two-way EOT program .....	5,000	7,500
(d) Failure to adopt or comply with retaining valve program .....	5,000	7,500
(e) Failure to maintain adequate records .....	5,000	7,500
(f) Failure to adopt and comply with periodic assessment plan .....	7,500	11,000
232.205 Class I brake test—initial terminal inspection:		
(a) Complete failure to perform inspection .....	( <sup>1</sup> )10,000	15,000
(c)(1)–(4), (6)–(8) Partial failure to perform inspection .....	5,000	7,500
(c)(5) Failure to properly adjust piston travel (per car) .....	2,500	5,000
(d) Failure to use carman when required .....	5,000	7,500

APPENDIX A TO PART 232.—SCHEDULE OF CIVIL PENALTIES <sup>1</sup>—Continued

Section	Violation	Willful violation
(e) Failure to provide proper notification .....	2,500	5,000
(f) Failure to void compressed air .....	2,500	5,000
232.207 Class IA brake tests—1,000-mile inspection:		
(a) Complete failure to perform inspection .....	( <sup>1</sup> )5,000	7,500
(b)(1)–(6) Partial failure to perform inspection .....	2,500	5,000
(c) Failure to properly designate location .....	5,000	7,500
(c)(1) Failure to perform at designated location .....	5,000	7,500
(c)(2) Failure to provide notification .....	2,500	5,000
232.209 Class II brake tests—intermediate inspection:		
(a) Complete failure to perform inspection .....	( <sup>1</sup> )5,000	7,500
(b)(1)–(5), (c) Partial failure to perform inspection .....	2,500	5,000
(d) Failure to conduct Class I after Class II pick-up .....	( <sup>1</sup> )	( <sup>1</sup> )
232.211 Class III brake tests—trainline continuity inspection:		
(a) Complete failure to perform inspection .....	5,000	7,500
(b)(1)–(4), (c) Partial failure to perform inspection .....	2,500	5,000
(d) Failure to restore air pressure at rear .....	2,500	2,500
232.213 Extended haul trains:		
(a)(1) Failure to properly designate an extended haul train .....	5,000	7,500
(a)(2)–(3), (5)(i), (8) Failure to perform inspections .....	( <sup>1</sup> )	( <sup>1</sup> )
(a)(4) Failure to remove defective car (per car) .....	2,000	4,000
(a)(5)(ii), (6) Failure to conduct inbound inspection .....	5,000	7,500
(a)(7) Failure to maintain record of defects (per car) .....	2,000	4,000
(b) Improper movement or use of extended haul train .....	5,000	7,500
232.215 Transfer train brake tests:		
(a) Failure to perform inspection .....	5,000	7,500
(b) Failure to perform on cars added .....	2,500	5,000
232.217 Train brake system tests conducted using yard air:		
(a) Failure to use suitable device .....	2,500	5,000
(b) Improper connection of air test device .....	5,000	7,500
(c) Failure to properly perform inspection .....	( <sup>1</sup> )	( <sup>1</sup> )
(d) Failure to calibrate test device .....	2,500	5,000
(e) Failure to use accurate device .....	2,500	5,000
232.219 Double heading and helper service:		
(a) Failure to perform inspection or inability to control brakes .....	2,500	5,000
(b) Failure to make visual inspection .....	2,500	5,000
(c) Use of improper helper link device .....	2,500	5,000
<b>Subpart D—Periodic Maintenance and Testing Requirements</b>		
232.303 General requirements:		
(b)–(d) Failure to conduct inspection or test when car on repair track .....	2,500	5,000
(e) Improper movement of equipment for testing .....	2,500	5,000
(e)(1) Failure to properly tag equipment for movement .....	2,000	5,000
(e)(2)–(4) Failure to retain record or improper removal of tag or card .....	2,000	4,000
(f) Failure to stencil or track test information .....	2,500	5,000
232.305 Repair track air brake tests:		
(a) Failure to test in accord with required procedure .....	2,500	5,000
(b)–(d) Failure to perform test .....	2,500	5,000
232.307 Single car tests:		
(a) Failure to test in accord with required procedure .....	2,500	5,000
(b)–(c) Failure to perform test .....	2,500	5,000
232.309 Repair track air brake test and single car test equipment and devices:		
(a)–(f) Failure to properly test or calibrate .....	2,500	5,000
<b>Subpart E—End-of-Train Devices</b>		
232.403 Design standards for one-way devices:		
(a)–(g) Failure to meet standards .....	2,500	5,000
232.405 Design standards for two-way devices:		
(a)–(i) Failure to meet standards .....	2,500	5,000
232.407 Operating requirements for two-way devices:		
(b) Failure to equip a train .....	5,000	7,500
(c) Improper purchase .....	2,500	5,000
(f)(1) Failure of device to be armed and operable .....	5,000	7,500
(f)(2) Insufficient battery charge .....	2,500	5,000
(f)(3) Failure to activate the device .....	2,500	5,000
(g) Improper handling of en route failure, freight or other non-passenger .....	5,000	7,500
(h) Improper handling of en route failure, passenger .....	5,000	7,500
232.409 Inspection and testing of devices:		
(a) Failure to have unique code .....	2,500	5,000
(b) Failure to compare quantitative values .....	2,500	5,000
(c) Failure to test emergency capability .....	5,000	7,500
(d) Failure to properly calibrate .....	2,500	5,000

APPENDIX A TO PART 232.—SCHEDULE OF CIVIL PENALTIES <sup>1</sup>—Continued

Section	Violation	Willful violation
<b>Subpart F—Introduction of New Brake System Technology</b>		
232.503 Process to introduce new technology:		
(b) Failure to obtain FRA approval .....	10,000	15,000
232.505 Pre-revenue service acceptance testing plan:		
(a) Failure to obtain FRA approval .....	5,000	7,500
(b) Failure to comply with plan .....	2,500	5,000
(f) Failure to test previously used technology .....	5,000	7,500

<sup>1</sup> A penalty may be assessed against an individual only for a willful violation. Generally, when two or more violations of these regulations are discovered with respect to a single unit of equipment that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of \$11,000 per day. An exception to this rule is the \$15,000 penalty for willful violation of § 232.503 (failure to get FRA approval before introducing new technology) with respect to a single unit of equipment; if the unit has additional violative conditions, the penalty may routinely be aggregated to \$15,000. Although the penalties listed for failure to perform the brake inspections and tests under § 232.205 through § 232.209 may be assessed for each train that is not properly inspected, failure to perform any of the inspections and tests required under those sections will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on the equipment contained in the train consist. Moreover, the Administrator reserves the right to assess a penalty of up to \$22,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

Failure to observe any condition for movement of defective equipment set forth in § 232.15(a) will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the equipment at the time of movement.

Failure to provide any of the records or plans required by this part pursuant to § 232.19 will be considered a failure to maintain or develop the record or plan and will make the railroad liable for penalty under the particular regulatory section(s) concerning the retention or creation of the document involved.

Failure to properly perform any of the inspections specifically referenced in § 232.209, § 232.213, and § 232.217 may be assessed under each section of this part or this chapter, or both, that contains the requirements for performing the referenced inspection.

Issued in Washington, DC, on May 18, 2004.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 04–11696 Filed 5–24–04; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018–AT64

### Withdrawal of Regulations Governing Incidental Take Permit Revocation

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), withdraw the regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) regarding the revocation of incidental take permits issued under the authority of the Endangered Species Act (ESA). On December 11, 2003, the U.S. District Court for the District of Columbia in *Spirit of the Sage Council v. Norton*, Civil Action No. 98–1873 (D.D.C.), invalidated 50 CFR 17.22(b)(8) and 17.32(b)(8), the regulations addressing Service authority to revoke incidental take permits under certain circumstances. The court ruled that we did not follow the public notice and comment procedures required by the Administrative Procedure Act (APA).

This rule affects only 50 CFR 17.22(b)(8) and 17.32(b)(8). In the Proposed Rules section of today's **Federal Register** is a rulemaking proposal to reestablish the provisions of 50 CFR 17.22(b)(8) and 17.32(b)(8).

**DATES:** This rule is effective May 25, 2004.

**ADDRESSES:** The complete file for this rule is available, by appointment, during normal business hours, at 4401 North Fairfax Drive, Room 420, Arlington, VA 22203. You may call 703/358–2171 to make an appointment to view the files.

**FOR FURTHER INFORMATION CONTACT:** Rick Sayers, Chief, Branch of Consultation and Habitat Conservation Planning, at 4401 North Fairfax Drive, Room 420, Arlington, VA 22203 (Telephone 703/358–2106, Facsimile 703/358–1735).

**SUPPLEMENTARY INFORMATION:** This rule applies to the U.S. Fish and Wildlife Service only. Therefore, the use of the terms “Service” and “we” in this notice refers exclusively to the U.S. Fish and Wildlife Service.

This rule applies only to 50 CFR 17.22(b)(8) and 17.32(b)(8), which pertain to revocation of incidental take permits. Regulations in 50 CFR 17.22(c) and 17.32(c) that pertain to Safe Harbor Agreements (SHAs) and in 50 CFR 17.22(d) and 17.32(d) that pertain to Candidate Conservation Agreements with Assurances (CCAAs) are not affected by this final rule.

### Background

On June 12, 1997 (62 FR 32189), we published proposed revisions to our general permitting regulations in 50 CFR part 13 to identify the situations in which permit provisions in part 13 would not apply to individual incidental take permits. On June 17, 1999 (64 FR 32706), we published final regulations that included a provision, hereafter referred to as the Permit Revocation Rule, that described circumstances under which incidental take permits could be revoked. The Permit Revocation Rule, which was codified at 50 CFR 17.22(b)(8) (endangered species) and 17.32(b)(8) (threatened species), provided that an incidental take permit “may not be revoked \* \* \* unless continuation of the permitted activity would be inconsistent with the criterion set forth in 16 U.S.C. 1539(a)(2)(B)(iv) and the inconsistency has not been remedied in a timely fashion.” The criterion in 16 U.S.C. 1539(a)(2)(B)(iv)—that “the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild”—is substantially identical to the definition of “jeopardize the continued existence of” in the joint Department of the Interior/Department of Commerce regulations implementing section 7 of the Endangered Species Act (50 CFR 402.02). In essence, the Permit Revocation Rule authorized the Service to revoke an incidental take permit if continuation of the permitted activity would jeopardize the continued existence of the listed species and the