

available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, December 29, 1988. In addition, Treasury Tax and Loan Note Option Depositories may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, January 3, 1989. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

#### 6. General provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary

of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may, at any time, supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Marcus W. Page,

*Acting Fiscal Assistant Secretary.*

[FR Doc. 88-30028 Filed 12-28-88; 10:56 am]

BILLING CODE 4810-40-M

# Sunshine Act Meetings

Federal Register

Vol. 53, No. 250

Thursday, December 29, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**DATE AND TIME:** 2:00 p.m. (eastern time) Monday, January 9, 1989.

**PLACE:** Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

**STATUS:** Part of the meeting will be open to the public and part will be closed to the public.

### MATTERS TO BE CONSIDERED:

#### Open Session

1. Announcement of Notation Vote(s)
2. Notice of Proposed Rulemaking Concerning ADEA Statute of Limitations Tolling for Private Litigants

#### Closed Session

Litigation Authorization: General Counsel Recommendations

**Note.**—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at any time for information on these meetings.)

### CONTACT PERSON FOR MORE INFORMATION:

Frances M. Hart,  
Executive Officer on (202) 634-6748.

Date: December 27, 1988.

Frances M. Hart,

*Executive Officer, Executive Secretariat.*

This Notice Issued December 27, 1988.

[FR Doc. 88-30103 Filed 12-27-88; 3:56 pm]

BILLING CODE 6750-06-M

## INTERNATIONAL TRADE COMMISSION

### USITC SE-89-01

**TIME AND DATE:** Wednesday, January 4, 1989 at 2:00 p.m.

**PLACE:** Room 101, 500 E Street, SW., Washington, DC 20436.

**STATUS:** Open to the public.

### MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints:  
Certain grain oriented silicon steel (Docket No. 1479).
5. Inv. No. 731-TA-390 (F) (Digital Readout Systems and Subassemblies thereof from Japan)—briefing and vote.
6. Any items left over from previous agenda.

### CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason,  
Secretary (202) 252-1000.

Kenneth R. Mason,

*Secretary.*

December 22, 1988.

[FR Doc. 88-30042 Filed 12-27-88; 11:03 am]

BILLING CODE 7020-02-M

## NATIONAL LABOR RELATIONS BOARD

**TIME AND DATE:** 9:30 a.m., Wednesday, December 21, 1988.

**PLACE:** Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

**STATUS:** Part of this meeting will be open to the public. The remainder of the meeting will be closed to the public.

### MATTERS TO BE CONSIDERED:

Portion open to the public  
Proposed changes in casehandling procedures  
Portion closed to the public  
Personnel matters  
Board cases

### CONTACT PERSON FOR MORE INFORMATION:

John C. Truesdale,  
Executive Secretary, National Labor Relations Board, Washington, DC.

Dated, Washington, DC, December 23, 1988.

By direction of the Board.

John C. Truesdale,

*Executive Secretary.*

[FR Doc. 88-30037 Filed 12-27-88; 11:03 am]

BILLING CODE 7445-01-M

## OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

**TIME AND DATE:** 1:30 p.m. (closed portion), 3:00 p.m. (open portion), Thursday, January 12, 1989.

**PLACE:** Offices of the Corporation, fourth floor Board Room, 1615 M Street, NW., Washington, DC.

**STATUS:** The first part of the meeting from 1:30 p.m. to 3:00 p.m. will be closed to the public. The open portion of the meeting will commence at 3:00 p.m. (approximately).

### MATTERS TO BE CONSIDERED:

Closed to the Public 1:30 P.M. to 3:00 P.M.

1. Proposed Guidelines Under Pilot Equity Program
2. Delegations of Authority
3. Claims Report
4. FY 1989 and FY 1990 Budget Negotiations
5. Operating Results and New Directions
6. Finance and Insurance Reports
7. President's Report

### FURTHER MATTERS TO BE CONSIDERED:

Open to the Public 3:00 P.M.

1. Approval of the Minutes of the Previous Board Meeting
2. Scheduling of Future Meetings of the Board
3. Treasurer's Report
4. Information Reports

### CONTACT PERSON FOR INFORMATION:

Information with regard to the meeting may be obtained from the Secretary of the Corporation, on (202) 457-7079.

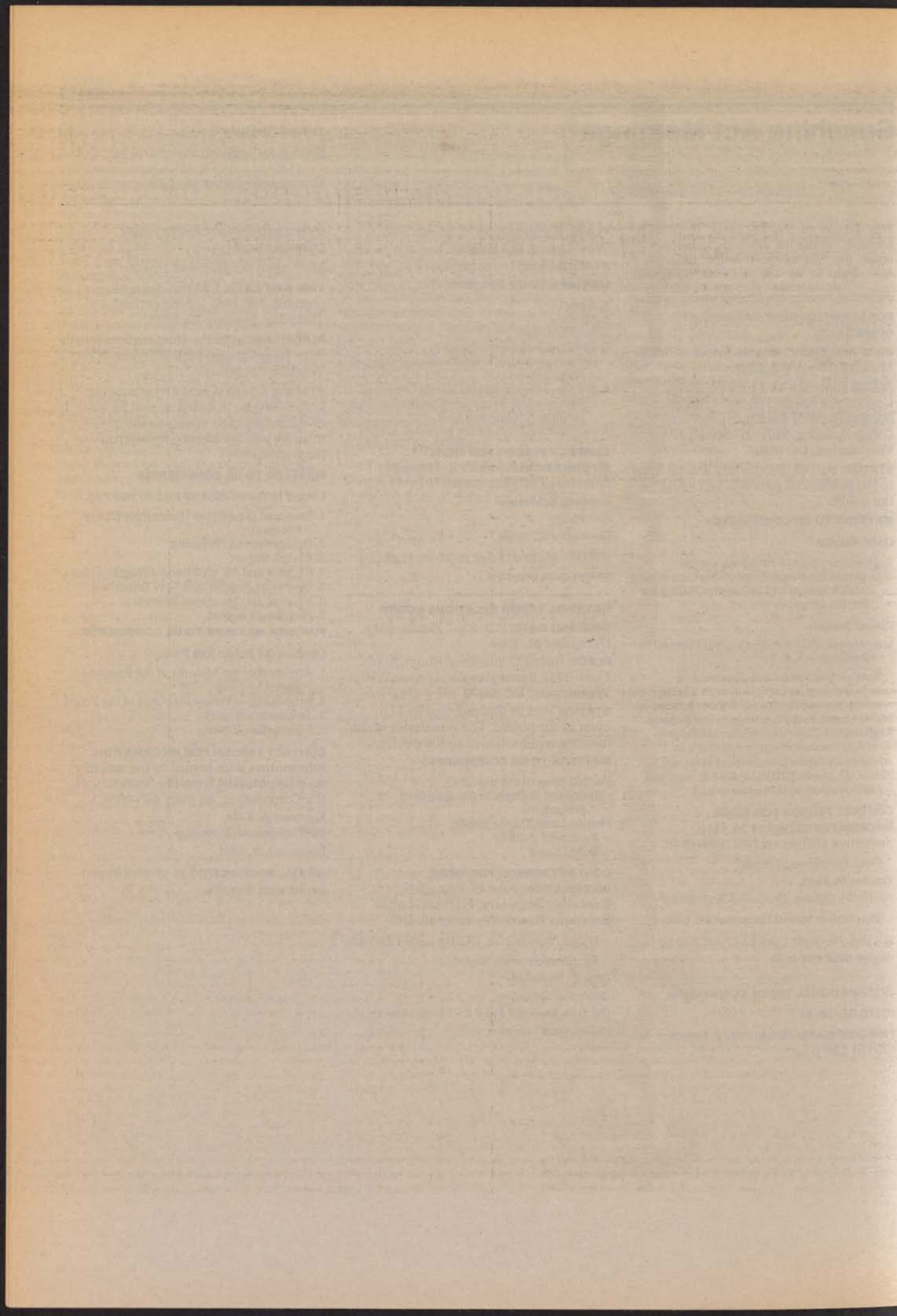
Margaret A. Kole,

*OPIC Corporate Secretary.*

December 27, 1988.

[FR Doc. 88-30124 Filed 12-27-88; 4:03 pm]

BILLING CODE 3210-01-M



# **federal register**

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**Thursday  
December 29, 1988**

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## **Part II**

### **Department of Transportation**

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#### **Federal Railroad Administration**

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**49 CFR Parts 209, 213 through 229, and  
231 through 236**

**Amendments to Railroad Safety  
Regulations to Increase Standard Civil  
Penalty Assessment Amounts; Final Rule  
and Statements of Policy**

## DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

49 CFR Parts 209, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 231, 232, 233, 234, 235, and 236

[FRA Docket No. RSEP-3, Notice No. 2]

RIN 2130-AA47

### Amendments To Railroad Safety Regulations To Increase Standard Civil Penalty Assessment Amounts

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Final rule and statements of policy.

**SUMMARY:** FRA issues a final rule and statements of policy to conform its railroad safety regulations to certain provisions of the Rail Safety Improvement Act of 1988. Specifically, the rule amends the regulations to revise the schedules of civil penalties (which are statements of agency policy) to reflect the higher penalty amounts available under the amended rail safety statutes by increasing the initial assessment amounts for violation of specific regulations. FRA also issues a general statement of policy explaining the civil penalty process and the agency's policy on exercising its expanded enforcement authority over individuals.

**DATE:** The final rule and policy statements will become effective January 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Daniel C. Smith, Deputy Assistant Chief Counsel for Safety, FRA, Washington, DC 20590 (Telephone: 202-366-0628); or Edward English, Chief, Maintenance Programs Division, Office of Safety, FRA, Washington, DC 20590 (Telephone: 202-366-9186).

#### SUPPLEMENTARY INFORMATION:

##### Changes Effected by the Rail Safety Improvement Act of 1988

The Rail Safety Improvement Act of 1988 ("RSIA") (Pub. L. No. 100-342), enacted on June 22, 1988, made many basic changes, two of which are pertinent here, to the federal railroad safety statutes. (Those statutes include the Federal Railroad Safety Act of 1970, 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. 28.)

The first relevant change brought about by the RSIA was the amendment of the safety statutes to authorize the assessment of civil penalties against individuals who willfully violate the rail safety statutes or regulations, and to permit the Federal Railroad Administration to suspend or disqualify an individual whose violation of the safety laws is shown to make that individual unfit for performance of safety-sensitive functions in the rail industry. (Only the civil penalty aspects of this change are addressed here.)

Second, the RSIA raised the maximum civil penalty that FRA may assess under the safety laws. Under the Hours of Service Act, the penalty was changed from a flat \$500 to a penalty of "up to \$1,000, as the Secretary of Transportation deems reasonable." Under all the other statutes, the maximum penalty was raised from \$2,500 to \$10,000 per violation, except that, "where a grossly negligent violation or pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury," a penalty of up to \$20,000 per violation may now be assessed.

#### The Effect of the Interim Rule and Policy Statements

##### Section 3(b) of the RSIA provides:

Within 30 days after enactment of this Act the Secretary of Transportation \* \* \* shall issue interim rules, regulations, orders, or standards containing penalty schedules applicable to railroads and individuals reflecting the changes made by the amendments in subsection (a). The Secretary shall issue final rules, regulations, orders, or standards with respect to such penalty schedules within six months after such date of enactment.

On July 22, 1988, FRA issued the first notice in this docket (53 FR 28594, July 28, 1988), effective August 1, 1988, which: (i) Amended the rail safety regulations to make them applicable to individuals as well as railroads; (ii) amended the schedules of civil penalties to increase the maximum penalties to \$20,000; and (iii) issued an Interim Statement of Agency Policy explaining how the civil penalty process works and how FRA intended to administer its new enforcement authority over individuals. FRA stated in that notice that, within the six months allotted by the RSIA, it would issue another notice providing line-by-line revisions of the penalty schedules to reflect the higher penalty ceiling now in place and would, at the same time, make any necessary changes to its interim rule and statements of policy.

#### Public Participation

In this notice, FRA issues those detailed penalty schedules and revisions to the interim rule and policy statements as promised in the first notice. Because these amendments, like the earlier ones, do no more than mirror statutory changes, notice and comment procedures are "impracticable, unnecessary, or contrary to the public interest" within the meaning of section 4(a)(3)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). Given the obvious Congressional intent to require prompt implementation of the RSIA provisions authorizing higher penalties and sanctions against individuals, any delay necessitated by notice and comment procedures would be contrary to the public interest. For similar reasons, there is good cause for not publishing this rule at least 30 days before its effective date, as is ordinarily required by 5 U.S.C. 553(d). All interested parties have had notice of the relevant provisions of the RSIA since its enactment on June 22, 1988, more than 30 days prior to the effective date of this rule (January 1, 1989).

In addition to the reasons just stated, notice and comment procedures are unnecessary with regard to the revisions to the penalty schedules and statement of policy issued by this notice because the schedules themselves are statements of agency policy that, like the general statement of policy, are excepted from notice and comment procedure by virtue of 5 U.S.C. 553(b)(3)(A). Statements of policy are also an exception to the general requirement of publication at least 30 days prior to the effective date. See 5 U.S.C. 553(d)(2). Moreover, in reporting out the bill that was enacted as the RSIA, the conference committee stated: "The conferees view these penalty schedules as a matter committed to agency discretion by law." H.Rep. No. 100-637, 100th Cong., 2d Sess. at 21 (1988). Although not required by law to do so, FRA invited public comment on its interim rule and policy statements. Only one comment (discussed below) was received.

Of course, in the future FRA could provide notice of and opportunity to comment on any or all of its schedules. The Federal Railroad Safety Act of 1970 makes this option available; it provides that FRA "shall include in, or make applicable to," each regulation a civil penalty within the statutory range. 45 U.S.C. 438(b). Where the notice and comment option is followed, the schedules ultimately adopted would be regulatory law rather than statements of policy.

### Effect of This Notice

This notice amends the penalty schedules and, where necessary, the text of the railroad safety regulations (seventeen separate parts are amended here) to give effect to the full range of civil penalties now permitted to be assessed for violation of specific regulations.

The penalty schedules are statements of agency policy that specify the civil penalty that FRA will ordinarily assess for the violation of a particular regulation and reserve FRA's right to assess a penalty up to the statutory maximum where circumstances warrant. The rail safety statutes, of course, authorize FRA to adjust the penalty initially assessed after considering any defenses and a wide variety of mitigating factors. Accordingly, the penalty actually collected may range from the \$250 minimum set by the safety statutes to the amount initially assessed (and, where a valid defense is shown to exist during negotiations, the claim would be terminated and no amount would be collected). Nevertheless, the schedules provide members of the regulated community with some idea of the amount they are likely to be assessed for a given violation.

Given the complexity of amending the hundreds of individual entries in FRA's penalty schedules, combined with the desire to promptly give effect to the expanded authority granted by the RSIA, Congress required that the penalty schedules be amended in a two-stage process. Section 3(b) of the RSIA required FRA to issue interim penalty schedules within 30 days of enactment and final penalty schedules within six months of enactment. Notice No. 1 of this docket accomplished the first task. The changes effected by this notice constitute the detailed penalty schedules discussed in section 3(b). Like the interim schedules, these schedules reserve FRA's right to assess a penalty up to \$20,000 per violation in appropriate circumstances. These schedules contain different penalties for two categories of violations: Normal and willful. The normal penalties apply only to railroads, while the willful column applies to willful violations by railroads or individuals.

Most of the penalty schedules list the CFR section or subsection with the corresponding penalties listed in columns next to it. However, in Part 231, the section listed in the left-hand column of the schedule is taken not directly from the CFR but from the FRA "defect code" for that CFR Part. Defect codes were developed by FRA to facilitate computerization of inspection data by

providing a digital format for every CFR citation. The CFR uses the normal method for distinguishing subparagraphs and further breakdowns of text, i.e., sequential letters and numbers. Also, in a regulatory text, a number of specific requirements may be contained in a single paragraph without internal subdivision. In a defect code, each possible type of noncompliance is assigned a two- or three-digit identifier in place of its CFR text identifier. Thus, a defect code citation may provide greater precision and differentiation than a CFR citation. Of course, the defect codes are coextensive with the CFR, so the actual offense charged would be a violation of the relevant CFR provision; there is no attempt to make conduct illegal unless the CFR specifically so provides.

Part 231 is a special case. There, the penalty schedule uses a defect code that, although no more expansive than Part 231 itself, does not track the CFR in terms of section numbers. The reason is simple: FRA is not content with the organization of Part 231, which remains largely as drafted decades ago. It states safety appliance requirements by type of car, with repetitious incorporation by reference of the requirements for other car types. The defect code (like the amended safety appliance regulations FRA hopes to issue in the future) is organized by the type of safety appliance, making it far easier to use. In this part only, then, the penalty citation will track the defect code and not the CFR. However, as always, every defect code citation is based on and, if necessary, can be traced to a specific regulatory and/or statutory provision. For the sake of convenience and clarity, however, the charging documents will contain the defect code citation.

This notice also issues as an appendix to Part 209 a final Statement of Policy that addresses FRA's exercise of its authority to collect penalties from individuals and its policy on assessment of maximum penalties. This statement covers FRA's definition of "willful" and explains the informal procedures FRA uses to assess penalties and negotiate final penalty amounts with individuals. This statement also contains a useful summary of FRA's overall civil penalty enforcement process. All those interested in that process are urged to become familiar with the statement. The policy statement also addresses the extent of FRA's jurisdiction over railroads and the enforcement authority available to FRA in addition to civil penalties, subjects not discussed in the interim statement.

Finally, this notice makes technical amendments necessary to re-issue, under the authority of the Federal Railroad Safety Act of 1970, the recordkeeping requirements of Subpart B of Part 228 of 490 CFR (which pertain to records of employees' hours of service and reporting instances of excess service under the Hours of Service Act). Section 208(d)(1) of the Safety Act (added by the 1980 amendments to the safety laws, Pub. L. No. 96-423) authorizes FRA to issue, *inter alia*, recordkeeping and reporting requirements in furtherance of the substantive requirements of the older safety statutes. The 1980 amendments also added to the Safety Act section 209(e), which provides for criminal penalties for falsification of records or other knowing and willful violation of recordkeeping requirements. Previously, FRA had been forced to rely on similar authority provided under the Interstate Commerce Act as the basis for civil and criminal penalties for recordkeeping violations related to compliance with the older safety statutes. As revised, the authority citation for Part 228 no longer refers to the Interstate Commerce Act, and the relevant penalty provisions (§§ 228.21 and 228.23) rely on the authority added to the Safety Act in 1980.

Readers should note that this notice does not issue procedural regulations for exercise of the authority, provided by section 3(a) of the RSIA, to suspend or disqualify an individual from safety-sensitive functions. In another proceeding (docket RSEP-6, notice No. 1, 53 FR 49695; December 9, 1988), FRA has proposed to amend Part 209 of 49 CFR to include such procedures.

To the extent that this notice does not amend the interim rule and statements, they will become final with publication of this notice.

### Discussion of Comments Received

FRA has received only one set of comments on its interim rule and statements of policy. The commenter, a commuter railroad authority, merely posed questions rather than advance a particular position on an issue raised by the interim rule. Those questions, which concerned individual liability for safety violations, were: What role will the National Transportation Safety Board play in determining a "willful" violation? Will the Board's findings as to the causes of accidents be used to justify the placement of fines? Where an individual protests a direct order to violate a safety law, who will determine what the direct order was—the NTSB

investigator, the FRA inspector, or the operating railroad?

FRA believes that these questions are based on certain fundamental misconceptions. First, the NTSB plays no role in the enforcement of the federal railroad safety laws. In the rail area, NTSB's role is limited to investigating serious railroad accidents, reporting on the Board's view as to causal factors, and making appropriate recommendations to private or public bodies. While it may happen that an NTSB investigator may come upon evidence of a safety violation and be called on by FRA to provide relevant testimony in an enforcement proceeding, such an occurrence is very unlikely. Very few of FRA's penalty actions arise from accident investigations. Most result from FRA's routine inspections and complaint investigations. Moreover, FRA exercises concurrent jurisdiction with the NTSB in investigating railroad accidents, and FRA's inspectors often investigate the most serious accidents along with, and sometimes on behalf of, the Board. In the rare circumstance where the NTSB had access to facts indicating safety violations and FRA did not, the Board would undoubtedly share that information with FRA, and would not wait until issuance of its report to do so. Only if FRA could not independently corroborate that information through its own observations or relevant documents would it consider calling on the Board investigator to provide testimony.

The commenter also apparently misunderstood the nature of the protest that the RSIA permits an individual to lodge and document in the face of a direct order to violate the law. Where the evidence demonstrates that such an order has been given, one who files such a protest will be presumed to have lacked the mental state (willfulness) necessary to have made his or her actions subject to a civil penalty. However, the mere lodging and documentation of such a protest will not conclusively establish that a direct order to violate the safety laws had been given. That will be a factual question to be resolved in light of all the evidence, of which the documented protest will be one part. FRA will look to anyone with pertinent knowledge on the nature of the order to provide that information. FRA has included discussion of this point in its final statement of agency policy.

#### Regulatory Impact

##### *E.O. 12291 and DOT Regulatory Policies and Procedures*

This final rule and policy statement have been evaluated in accordance with existing policies and procedures. They

are considered to be non-major under Executive Order 12291. Because of the substantial public interest associated with issuance of this rule, it is considered significant under the DOT policies and procedures. (44 FR 11034; February 26, 1979.)

This rule will not have any direct or indirect economic impact because it does not alter any existing substantive or procedural regulation in such a way as to impose additional burdens. The cost of complying with existing substantive regulations is not being increased. The rule merely contains a regulatory formulation of FRA's amended statutory authority and a statement of its enforcement policy in the event of noncompliance. Accordingly, preparation of a regulatory evaluation is not warranted.

#### *Regulatory Flexibility Act*

FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, businesses, or other organizations. State rail agencies remain free to participate in the enforcement of FRA's rules but are not required to do so.

#### *Paperwork Reduction Act*

There are no information collection requirements contained in this rule and policy statement.

#### *Environmental Impact*

FRA has evaluated this rule and policy statement in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

#### *Federalism Implications*

This rule and statement of policy 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. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

#### **List of Subjects in 49 CFR Parts 209, 213 through 229, and 231 through 236**

Railroad safety, Penalties.

Therefore, in consideration of the foregoing, Parts 209, 213 through 229, and 231 through 236, Title 49, Code of

Federal Regulations are amended as follows:

#### **PART 209—[AMENDED]**

1. Part 209 is amended as follows:

A. The authority citation for Part 209 is revised to read as follows:

**Authority:** 45 U.S.C. 6, 10, and 13, as amended; 45 U.S.C. 34, as amended, 45 U.S.C. 43, as amended; 45 U.S.C. 64a, as amended; 45 U.S.C. 431, 437, 438 and 439, as amended; 49 U.S.C. 103(c); 49 App. U.S.C. 26(h), as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100-342; and 49 CFR 1.49 (c), (d), (f), (g), and (m).

Subparts B and C also issued under 49 App. U.S.C. 1802, 1804, 1808, 1809, and 1810; and 49 CFR 1.49(s).

#### **§ 209.1 [Amended]**

B. Section 209.1 is amended by (1) inserting the first sentence of the introductory text the following: "Appendix A to this part contains a statement of agency policy concerning enforcement of those laws."; (2) removing from paragraph (a) the parenthetical "(49 CFR 1.49(t))" and inserting in its place "(49 CFR 1.49(s))"; (3) removing from paragraph (b) the language "45 U.S.C. 421, 431-441 (49 CFR 1.49(n))" and inserting in its place "45 U.S.C. 421 *et seq.* (49 CFR 1.49(m))"; and (4) in paragraph (c), removing all language after the word "Act" and inserting in its place: "49 App. U.S.C. 1655(e) (49 CFR 1.49 (c), (d), (f), and (g))."

C. Appendix A to Part 209 is revised to read as follows:

#### **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.

In determining which instances of noncompliance merit penalty recommendations, the inspector considers:

- (1) The inherent seriousness of the condition or action;
- (2) The kind and degree of potential safety hazard the condition or action poses in light of the immediate factual situation;
- (3) Any actual harm to persons or property already caused by the condition or action;
- (4) The offending person's (*i.e.*, railroad's or individual's) general level of current compliance as revealed by the inspection as a whole;
- (5) The person's recent history of compliance with the relevant set of regulations, especially at the specific location or division of the railroad involved;
- (6) Whether a remedy other than a civil penalty (ranging from a warning on up to an emergency order) is more appropriate under all of the facts; and
- (7) Such other factors as the immediate circumstances make relevant.

The civil penalty recommendation is reviewed at the regional level by a specialist in the subject matter involved, who requires correction of any technical flaws and determines whether the recommendation is consistent with national enforcement policy in similar circumstances. Guidance on that policy in close cases is sometimes sought from Office of Safety headquarters. Violation reports that are technically and legally sufficient and in accord with FRA policy are sent from the regional office to the Office of Chief Counsel.

The exercise of this discretion at the field and regional levels is a vital part of the enforcement process, ensuring that the exacting and time-consuming civil penalty process is used to address those situations most in need of the deterrent effect of penalties. FRA exercises that discretion with regard to individual violators in the same manner it does with respect to railroads.

The Office of Chief Counsel's Safety Division reviews each violation report it receives from the regional offices for legal sufficiency and assesses penalties based on those allegations that survive that review. Historically, the Division has returned to the

regional offices less than five percent of the reports submitted in a given year, often with a request for further work and resubmission.

Where the violation was committed by a railroad, penalties are assessed by issuance of a penalty demand letter that summarizes the claims, encloses the violation report with a copy of all evidence on which FRA is relying in making its initial charge, and explains that the railroad may pay in full or submit, orally or in writing, information concerning any defenses or mitigating factors. The railroad safety statutes, in conjunction with the Federal Claims Collection Act, authorize FRA to adjust or compromise the initial penalty claims based on a wide variety of mitigating factors. This system permits the efficient collection of civil penalties in amounts that fit the actual offense without resort to time-consuming and expensive litigation. Over its history, FRA has had to request that the Attorney General bring suit to collect a penalty on only a very few occasions.

Once penalties have been assessed, the railroad is given a reasonable amount of time to investigate the charges. Larger railroads usually make their case before FRA in an informal conference covering a number of case files that have been issued and investigated since the previous conference. Thus, in terms of the negotiating time of both sides, economies of scale are achieved that would be impossible if each case were negotiated separately. The settlement conferences, held either in Washington or another mutually agreed on location, include technical experts from both FRA and the railroad as well as lawyers for both parties. In addition to allowing the two sides to make their cases for the relative merits of the various claims, these conferences also provide a forum for addressing current compliance problems. Smaller railroads usually prefer to handle negotiations through the mail or over the telephone, often on a single case at a time. Once the two sides have agreed to an amount on each case, that agreement is put in writing and a check is submitted to FRA's accounting division covering the full amount agreed on.

Cases brought under the Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 *et seq.*, are, due to certain statutory requirements, handled under more formal administrative procedures. See 49 CFR Part 209, Subpart B.

### Civil Penalties Against Individuals

The RSIA amended the penalty provisions of the railroad safety statutes to make them applicable to any "person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad)" who fails to comply with the regulations or statutes. *E.g.*, section 3 of the RSIA, amending section 209 of the Safety Act. However, the RSIA also provided that civil penalties may be assessed against individuals "only for willful violations."

Thus, any individual meeting the statutory description of "person" is liable for a civil penalty for a willful violation of, or for willfully causing the violation of, the safety statutes or regulations. Of course, as has traditionally been the case with respect to

acts of noncompliance by railroads, the FRA field inspector exercises discretion in deciding which situations call for a civil penalty assessment as the best method of ensuring compliance. The inspector has a range of options, including an informal warning, a more formal warning letter issued by the Safety Division of the Office of Chief Counsel, recommendation of a civil penalty assessment, recommendation of disqualification or suspension from safety-sensitive service, or, under the most extreme circumstances, recommendation of emergency action.

The threshold question in any alleged violation by an individual will be whether that violation was "willful." (Note that section 3(a) of the RSIA, which authorizes suspension or disqualification of a person whose violation of the safety laws has shown him or her to be unfit for safety-sensitive service, does not require a showing of willfulness. Regulations implementing that provision are found at 49 CFR Part 209, Subpart D.) FRA proposed this standard of liability when, in 1987, it originally proposed a statutory revision authorizing civil penalties against individuals. FRA believed then that it would be too harsh a system to collect fines from individuals on a strict liability basis, as the safety statutes permit FRA to do with respect to railroads. FRA also believed that even a reasonable care standard (*e.g.*, the Hazardous Materials Transportation Act's standard for civil penalty liability, 49 U.S.C. 1809(a)) would subject individuals to civil penalties in more situations than the record warranted. Instead, FRA wanted the authority to penalize those who violate the safety laws through a purposeful act of free will.

Thus, FRA considers a "willful" violation to be one that is an intentional, voluntary act committed either with knowledge of the relevant law or reckless disregard for whether the act violated the requirements of the law. Accordingly, neither a showing of evil purpose (as is sometimes required in certain criminal cases) nor actual knowledge of the law is necessary to prove a willful violation, but a level of culpability higher than negligence must be demonstrated. See *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111 (1985); *Brock v. Morello Bros. Constr., Inc.* 809 F.2d 161 (1st Cir. 1987); and *Donovan v. Williams Enterprises, Inc.*, 744 F.2d 170 (D.C. Cir. 1984).

Reckless disregard for the requirements of the law can be demonstrated in many ways. Evidence that a person was trained on or made aware of the specific rule involved—or, as is more likely, its corresponding industry equivalent—would suffice. Moreover, certain requirements are so obviously fundamental to safe railroading (*e.g.*, the prohibition against disabling an automatic train control device) that any violation of them, regardless of whether the person was actually aware of the prohibition, should be seen as reckless disregard of the law. See *Brock, supra*, 809 F.2d 164. Thus, a lack of subjective knowledge of the law is no impediment to a finding of willfulness. If it were, a mere denial of the content of the particular regulation would provide a defense. Having

proposed use of the word "willful," FRA believes it was not intended to insulate from liability those who simply claim—contrary to the established facts of the case—they had no reason to believe their conduct was wrongful.

A willful violation entails knowledge of the facts constituting the violation, but actual, subjective knowledge need not be demonstrated. It will suffice to show objectively what the alleged violator must have known of the facts based on reasonable inferences drawn from the circumstances. For example, a person shown to have been responsible for performing an initial terminal air brake test that was not in fact performed would not be able to defend against a charge of a willful violation simply by claiming subjective ignorance of the fact that the test was not performed. If the facts, taken as a whole, demonstrated that the person was responsible for doing the test and had no reason to believe it was performed by others, and if that person was shown to have acted with actual knowledge of or reckless disregard for the law requiring such a test, he or she would be subject to a civil penalty.

This definition of "willful" fits squarely within the parameters for willful acts laid out by Congress in the RSIA and its legislative history. Section 3(a) of the RSIA amends the Safety Act to provide:

For purposes of this section, an individual shall be deemed not to have committed a willful violation where such individual has acted pursuant to the direct order of a railroad official or supervisor, under protest communicated to the supervisor. Such individual shall have the right to document such protest.

As FRA made clear when it recommended legislation granting individual penalty authority, a railroad employee should not have to choose between liability for a civil penalty or insubordination charges by the railroad. Where an employee (or even a supervisor) violates the law under a direct order from a supervisor, he or she does not do so of his or her free will. Thus, the act is not a voluntary one and, therefore, not willful under FRA's definition of the word. Instead, the action of the person who has directly ordered the commission of the violation is itself a willful violation subjecting that person to a civil penalty. As one of the primary sponsors of the RSIA said on the Senate floor:

This amendment also seeks to clarify that the purpose of imposing civil penalties against individuals is to deter those who, of their free will, decide to violate the safety laws. The purpose is not to penalize those who are ordered to commit violations by those above them in the railroad chain of command. Rather, in such cases, the railroad official or supervisor who orders the others to violate the law would be liable for any violations his order caused to occur. One example is the movement of railroad cars or locomotives that are actually known to contain certain defective conditions. A train crew member who was ordered to move such equipment would not be liable for a civil penalty, and his participation in such movements could not be used against him in any disqualification proceeding brought by FRA.

133 Cong. Rec. S.15899 (daily ed. Nov. 5, 1987) (remarks of Senator Exon).

It should be noted that FRA will apply the same definition of "willful" to corporate acts as is set out here with regard to individual violations. Although railroads are strictly liable for violations of the railroad safety laws and deemed to have knowledge of those laws, FRA's penalty schedules contain, for each regulation, a separate amount earmarked as the initial assessment for willful violations. Where FRA seeks such an extraordinary penalty from a railroad, it will apply the definition of "willful" set forth above. In such cases—as in all civil penalty cases brought by FRA—the aggregate knowledge and actions of the railroad's managers, supervisors, employees, and other agents will be imputed to the railroad. Thus, in situations that FRA decides warrant a civil penalty based on a willful violation, FRA will have the option of citing the railroad and/or one or more of the individuals involved. In cases against railroads other than those in which FRA alleges willfulness or in which a particular regulation imposes a special standard, the principles of strict liability and presumed knowledge of the law will continue to apply.

The RSIA gives individuals the right to protest a direct order to violate the law and to document the protest. FRA will consider such protests and supporting documentation in deciding whether and against whom to cite civil penalties in a particular situation. Where such a direct order has been shown to have been given as alleged, and where such a protest is shown to have been communicated to the supervisor, the person or persons communicating it will have demonstrated their lack of willfulness. Any documentation of the protest will be considered along with all other evidence in determining whether the alleged order to violate was in fact given.

However, the absence of such a protest will not be viewed as warranting a presumption of willfulness on the part of the employee who might have communicated it. The statute says that a person who communicates such a protest shall be deemed not to have acted willfully; it does not say that a person who does not communicate such a protest will be deemed to have acted willfully. FRA would have to prove from all the pertinent facts that the employee willfully violated the law. Moreover, the absence of a protest would not be dispositive with regard to the willfulness of a supervisor who issued a direct order to violate the law. That is, the supervisor who allegedly issued an order to violate will not be able to rely on the employee's failure to protest the order as a complete defense. Rather, the issue will be whether, in view of all pertinent facts, the supervisor intentionally and voluntarily ordered the employee to commit an act that the supervisor knew would violate the law or acted with reckless disregard for whether it violated the law.

FRA exercises the civil penalty authority over individuals through informal procedures very similar to those used with respect to railroad violations. However, FRA varies those procedures somewhat to account for differences that may exist between the railroad's ability to defend itself against a

civil penalty charge and an individual's ability to do so. First, when the field inspector decides that an individual's actions warrant a civil penalty recommendation and drafts a violation report, the inspector or the regional director informs the individual in writing of his or her intention to seek assessment of a civil penalty and the fact that a violation report has been transmitted to the Office of Chief Counsel. This ensures that the individual has the opportunity to seek counsel, preserve documents, or take any other necessary steps to aid his or her defense at the earliest possible time.

Second, if the Office of Chief Counsel concludes that the case is meritorious and issues a penalty demand letter, that letter makes clear that FRA encourages discussion, through the mail, over the telephone or in person, of any defenses or mitigating factors the individual may wish to raise. That letter also advises the individual that he or she may wish to obtain representation by an attorney and/or labor representative. During the negotiation stage, FRA considers each case individually on its merits and gives due weight to whatever information the alleged violator provides.

Finally, in the unlikely event that a settlement cannot be reached, FRA sends the individual a letter warning of its intention to request that the Attorney General sue for the initially proposed amount and giving the person a sufficient interval (e.g., 30 days) to decide if that is the only alternative.

FRA believes that the intent of Congress would be violated if individuals who agree to pay a civil penalty or are ordered to do so by a court are indemnified for that penalty by the railroad or another institution (such as a labor organization). Congress intended that the penalties have a deterrent effect on individual behavior that would be lessened, if not eliminated, by such indemnification.

Although informal, face-to-face meetings are encouraged during the negotiation of a civil penalty charge, the RSIA does not require that FRA give individuals or railroads the opportunity for a formal, trial-type administrative hearing as part of the civil penalty process. FRA does not provide that opportunity because such administrative hearings would be likely to add significantly to the costs an individual would have to bear in defense of a safety claim (and also to FRA's enforcement expenses) without shedding any more light on what resolution of the matter is fair than would the informal procedures set forth here. Of course, should an individual or railroad decide not to settle, that person would be entitled to a trial *de novo* when FRA, through the Attorney General, sued to collect the penalty in the appropriate United States district court.

#### Penalty Schedules; Assessment of Maximum Penalties

As recommended by the Department of Transportation in its initial proposal for rail safety legislative revisions in 1987, the RSIA raised the maximum civil penalties for violations of the safety regulations. Under the Hours of Service Act, the penalty was changed from a flat \$500 to a penalty of "up to \$1,000, as the Secretary of Transportation

deems reasonable." Under all the other statutes, the maximum penalty was raised from \$2,500 to \$10,000 per violation, except that, "where a grossly negligent violation or pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury," a penalty of up to \$20,000 per violation may be assessed.

FRA's traditional practice has been to issue penalty schedules assigning to each particular regulation specific dollar amounts for initial penalty assessments. The schedule (except where issued after notice and an opportunity for comment) constitutes a statement of agency policy, and is ordinarily issued as an appendix to the relevant part of the Code of Federal Regulations. For each regulation, the schedule shows two amounts within the \$250 to \$10,000 range in separate columns, the first for ordinary violations, the second for willful violations (whether committed by railroads or individuals). In one instance—Part 231—the schedule refers to sections of the relevant FRA defect code rather than to sections of the CFR text. Of course, the defect code, which is simply a reorganized version of the CFR text used by FRA to facilitate computerization of inspection data, is substantively identical to the CFR text.

The schedule amounts are meant to provide guidance as to FRA's policy in predictable situations, not to bind FRA from using the full range of penalty authority where extraordinary circumstances warrant. The Senate report on the bill that became the RSIA stated:

It is expected that the Secretary would act expeditiously to set penalty levels commensurate with the severity of the violations, with imposition of the maximum penalty reserved for violation of any regulation where warranted by exceptional circumstances.

S. Rep. No. 100-153, 100th Cong., 2d Sess. 8 (1987).

Accordingly, under each of the schedules (ordinarily in a footnote), and regardless of the fact that a lesser amount might be shown in both columns of the schedule, FRA reserves the right to assess the statutory maximum penalty of up to \$20,000 per violation where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury. This authority to assess a penalty for a single violation above \$10,000 and up to \$20,000 is used only in very exceptional cases to penalize egregious behavior. Where FRA avails itself of this right to use the higher penalties in place of the schedule amount it so indicates in its penalty demand letter.

#### The Extent And Exercise Of FRA's Safety Jurisdiction

The Safety Act and, as amended by the RSIA, the older safety statutes apply to "railroads." Section 202(e) of the Safety Act defines railroad as follows:

The term "railroad" as used in this title means all forms of non-highway ground transportation that run on rails or electromagnetic guideways, including (1) commuter or other short-haul rail passenger

service in a metropolitan or suburban area, as well as any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Prior to 1988, the older safety statutes had applied only to common carriers engaged in interstate or foreign commerce by rail. The Safety Act, by contrast, was intended to reach as far as the Commerce Clause of the Constitution (i.e., to all railroads that affect interstate commerce) rather than be limited to common carriers actually engaged in interstate commerce. In reporting out the bill that became the 1970 Safety Act, the House Committee on Interstate and Foreign Commerce stated:

The Secretary's authority to regulate extends to all areas of railroad safety. This legislation is intended to encompass all those means of rail transportation as are commonly included within the term. Thus, "railroad" is not limited to the confines of "common carrier by railroad" as that language is defined in the Interstate Commerce Act. H.R. Rep. No. 91-1194, 91st Cong., 2d Sess. at 16 (1970).

FRA's jurisdiction was bifurcated until, in 1988, the RSIA amended the older safety statutes to make them coextensive with the Safety Act by making them applicable to railroads and incorporating the Safety Act's definition of the term (e.g., 45 U.S.C. 16, as amended). The RSIA also made clear that FRA's safety jurisdiction is not confined to entities using traditional railroad technology. The new definition of "railroad" emphasized that all non-highway high speed ground transportation systems—regardless of technology used—would be considered railroads.

Thus, with the exception of self-contained urban rapid transit systems, FRA's statutory jurisdiction extends to all entities that can be construed as railroads by virtue of their providing non-highway ground transportation over rails or electromagnetic guideways, and will extend to future railroads using other technologies not yet in use. For policy reasons, however, FRA does not exercise jurisdiction under all of its regulations to the full extent permitted by statute. Based on its knowledge of where the safety problems were occurring at the time of its regulatory action and its assessment of the practical limitations on its role, FRA has, in each regulatory context, decided that the best option was to regulate something less than the total universe of railroads.

For example, all of FRA's regulations exclude from their reach railroads whose entire operations are confined to an industrial installation, i.e., "plant railroads" such as those in steel mills that do not go beyond the plant's boundaries. E.g., 49 CFR 225.3 (accident reporting regulations). Other regulations (e.g., 49 CFR 213.3, track safety regulations) exclude not only plant railroads but all other railroads that are not part of, or

operated over, the "general railroad system of transportation," i.e., the network of standard gage railroads over which the interchange of goods and passengers throughout the nation is possible—including even certain railroads not physically connected to the continental system, such as a freight railroad in Alaska with which other American railroads interchange cars by means of intermediate modes of transport. (Note that FRA proposed the "general system" language now found in section 202(e) of the Safety Act, and its construction of that language is not bound by construction of similar phrases used in other statutes, e.g., 45 U.S.C. 151 First; those similar phrases are generally part of provisions in those laws limiting their reach—unlike that of the amended safety laws—to "common carriers engaged in interstate commerce.")

Of course, even where a railroad operates outside the general system, other railroads that are definitely part of that system may have occasion to enter the first railroad's property (e.g., a major railroad goes into a chemical or auto plant to pick up or set out cars). In such cases, the railroad that is part of the general system remains part of that system while inside the installation; thus, all of its activities are covered by FRA's regulations during that period. The plant railroad itself, however, does not get swept into the general system by virtue of the other railroad's activity, except to the extent it is liable, as the track owner, for the condition of its track over which the other railroad operates during its incursion into the plant. Of course, in the opposite situation, where the plant railroad itself operates beyond the plant boundaries on the general system, it becomes a railroad with respect to those particular operations, during which its equipment, crew, and practices would be subject to FRA's regulations.

In some cases, the plant railroad leases track immediately adjacent to its plant from the general system railroad. Assuming such a lease provides for, and actual practice entails, the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant, the lease would remove the plant railroad's operations on that trackage from the general system for purposes of FRA's regulations, as it would make that trackage part and parcel of the industrial installation. (As explained above, however, the track itself would have to meet FRA's standards if a general system railroad operated over it. See 49 CFR 213.5 for the rules on how an owner of track may assign responsibility for it.) A lease or practice that permitted other types of movements by general system railroads on that trackage would, of course, bring it back into the general system, as would operations by the plant railroad indicating it was moving cars on such trackage for other than its own purposes (e.g., moving cars to neighboring industries for hire).

It is important to note that FRA's exercise of its regulatory authority on a given matter does not preclude it from subsequently amending its regulations on that subject to bring in railroads originally excluded. More

important, the self-imposed restrictions on FRA's exercise of regulatory authority in no way constrain its exercise of emergency order authority under section 203 of the Safety Act. That authority was designed to deal with imminent hazards not dealt with by existing regulations and/or so dangerous as to require immediate, *ex parte* action on the government's part. Thus, a railroad excluded from the reach of any of FRA's regulations is fully within the reach of FRA's emergency order authority, which is coextensive with FRA's statutory jurisdiction over all railroads.

**Extraordinary Remedies**

While civil penalties are the primary enforcement tool under the federal railroad safety laws, more extreme measures are available under certain circumstances. FRA has authority to issue orders directing compliance with the Federal Railroad Safety Act, the Hazardous Materials Transportation Act, the older safety statutes, or regulations issued under any of those statutes. See 45 U.S.C. 437(a) and (d), and 49 App. U.S.C. 1808(a). Such an order may issue only after notice and opportunity for a hearing in accordance with the procedures set forth in 49 CFR Part 209, Subpart C. FRA inspectors also have the authority to issue a special notice requiring repairs where a locomotive or freight car is unsafe for further service or where a segment of track does not meet the standards for the class at which the track is being operated. Such a special notice may be appealed to the regional director and the FRA Administrator. See 49 CFR Part 216, Subpart B.

FRA may, through the Attorney General, also seek injunctive relief in federal district court to restrain violations or enforce rules issued under the railroad safety laws. See 45 U.S.C. 439 and 49 App. U.S.C. 1810.

FRA also has the authority to issue, after notice and an opportunity for a hearing, an order prohibiting an individual from performing safety-sensitive functions in the rail industry for a specified period. This disqualification authority is exercised under procedures found at 49 CFR Part 209, Subpart D.

Criminal penalties are available for willful violations of the Hazardous Materials Transportation Act or its regulations. See 49 App. U.S.C. 1809(b), and 49 CFR 209.131, 133. Criminal penalties are also available under 45 U.S.C. 438(e) for knowingly and willfully falsifying, destroying, or failing to complete records or reports required to be kept under the various railroad safety statutes and regulations. The Accident Reports Act, 45 U.S.C. 39, also contains criminal penalties.

Perhaps FRA's most sweeping enforcement tool is its authority to issue emergency safety orders "where an unsafe condition or practice, or a combination of unsafe conditions or practices, or both, create an emergency situation involving a hazard of death or injury to persons \* \* \* 45 U.S.C. 432(a). After its issuance, such an order may be reviewed in a trial-type hearing. See 49 CFR 211.47 and 216.21 through 216.27. The emergency order authority is unique because it can be used to address unsafe conditions and practices whether or not they contravene

an existing regulatory or statutory requirement. Given its extraordinary nature, FRA has used the emergency order authority sparingly.

**PART 213—[AMENDED]**

2. Part 213 is amended as follows:

A. The authority citation for Part 213 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

**§ 213.15 [Amended]**

B. Section 213.15 is amended by (1) removing the paragraph designator "(a)" before the first paragraph; (2) removing all of paragraph (b); and (3) adding at the end of the remaining text the following: "See Appendix B to this part for a statement of agency civil penalty policy."

C. Appendix B to Part 213 is revised to read as follows:

**APPENDIX B TO PART 213—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>**

Section	Violation	Willful violation
Subpart A—General:		
213.4(a) Excepted track <sup>2</sup>	\$2,500	\$5,000
213.4(b) Excepted track <sup>2</sup>	2,500	5,000
213.4(c) Excepted track <sup>2</sup>	2,500	5,000
213.4(d) Excepted track <sup>2</sup>	2,500	5,000
213.4(e):		
1 Excepted track	5,000	7,500
2 Excepted track	7,000	10,000
32 Excepted track	7,000	10,000
213.7		
Designation of qualified persons to supervise certain renewals and inspect track	1,000	2,000
213.9 Classes of track:		
Operating speed limits	2,500	5,000
213.11		
Restoration or renewal of track under traffic conditions	2,500	5,000
213.13		
Measuring track not under load	1,000	2,000
Subpart B—Roadbed:		
213.33 Drainage	2,500	5,000
213.37		
Vegetation	1,000	2,000
Subpart C—Track geometry:		
213.53 Gage	5,000	7,500
213.55 Alinement	5,000	7,500
213.57 Curves; elevation and speed limitations	2,500	5,000

**APPENDIX B TO PART 213—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>—Continued**

Section	Violation	Willful violation
213.59 Elevation of curved track; runoff	2,500	5,000
213.63 Track surface	5,000	7,500
Subpart D—Track surface:		
213.103 Ballast; general	2,500	5,000
213.109		
Crossties		
(a) Material used	1,000	2,000
(b) Distribution of ties	2,500	5,000
(c) Sufficient number of nondefective ties	1,000	2,000
(d) Joint ties	2,500	5,000
213.113 Defective rails	5,000	7,500
213.115 Rail end mismatch	2,500	5,000
213.121 (a) Rail joints	2,500	5,000
213.121 (b) Rail joints	2,500	5,000
213.121 (c) Rail joints	5,000	7,500
213.121 (d) Rail joints	2,500	5,000
213.121 (e) Rail joints	2,500	5,000
213.121 (f) Rail joints	2,500	5,000
213.121 (g) Rail joints	5,000	7,500
213.123 Tie plates	1,000	2,000
213.127 Track spikes	2,500	5,000
213.133 Turnouts and track crossings generally	1,000	2,000
213.135 Switches:		
(a) through (g)	2,500	5,000
(h) chipped or worn points	5,000	7,500
213.137 Frogs	2,500	5,000
213.139 Spring rail frogs	5,000	7,500
213.141 Self-guarded frogs	2,500	5,000
213.143 Frog guard rails and guard faces; gage	2,500	5,000
Subpart E—Track appliances and track-related devices:		
213.205 Derails	2,500	5,000
Subpart F—Inspection:		
213.233 Track inspections	2,000	4,000
213.235 Switch and track crossings inspections	2,000	4,000
213.237 Inspection of rail	2,500	5,000
213.239 Special inspections	2,500	5,000
213.241 Inspection records	1,000	2,000

<sup>1</sup> A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

<sup>2</sup> In addition to assessment of penalties for each instance of noncompliance with the requirements identified by this footnote, track segments designated as excepted track that are or become ineligible for such designation by virtue of noncompliance with any of the requirements to which this footnote applies are subject to all other requirements of Part 213 until such noncompliance is remedied.

**PART 215—[AMENDED]**

3. Part 215 is amended as follows:

A. The authority citation for Part 215 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

**§ 215.7 [Amended]**

B. Section 215.7 is amended by adding at the end thereof the following: "See Appendix B to this part for a statement of agency civil penalty policy."

C. Appendix B to Part 215 is revised to read as follows:

**APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES <sup>1</sup>**

Section	Violation	Willful violation
Subpart A—General:		
215.9 Movement for repair:		
(a), (c).....	( <sup>1</sup> )	( <sup>1</sup> )
(b).....	\$2,500	\$5,000
215.11 Designation of qualified persons.....	2,500	5,000
215.13 Pre-departure inspection.....	2,000	4,000
Subpart B—Freight Car Components:		
215.103 Defective wheel:		
(a) Flange thickness of:		
(1) 7/8" or less but more than 1 3/8".....	2,500	5,000
(2) 1 3/8" or less.....	5,000	7,500
(b) Flange height of:		
(1) 1 1/2" or greater but less than 1 5/8".....	2,500	5,000
(2) 1 5/8" or more.....	5,000	7,500

**APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES <sup>1</sup>—Continued**

Section	Violation	Willful violation
(c) Rim thickness of:		
(1) 1 1/8" or less but more than 3/8".....	2,500	5,000
(2) 3/8" or less.....	5,000	7,500
(d) Wheel rim, flange plate hub width:		
(1) Crack of less than 1".....	2,500	5,000
(2) Crack of 1" or more.....	5,000	7,500
(3) Break.....	5,000	7,500
(e) Chip or gouge in flange of:		
(1) 1 1/2" or more but less than 1 3/4" in length; and 1/2" or more but less than 3/8" in width.....	2,500	5,000
(2) 1 3/4" or more but less than 1 7/8" in length; or 3/8" or more in width.....	5,000	7,500
(f) Slid flat or shelled spot(s):		
(1)(i) One spot more than 2 1/2", but less than 3", in length.....	2,500	5,000
(ii) One spot 3" or more in length.....	5,000	7,500
(2)(i) Two adjoining spots each of which is more than 2" but less than 2 1/2" in length.....	2,500	5,000

**APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES <sup>1</sup>—Continued**

Section	Violation	Willful violation
(ii) Two adjoining spots both of which are at least 2" in length, if either spot is 2 1/2", or more in length.....	5,000	7,500
(g) Loose on axle.....	6,000	8,500
(h) Overheated; discoloration extending:		
(1) more than 4" but less than 4 1/2".....	2,500	5,000
(2) 4 1/2" or more.....	5,000	7,500
(i) Welded.....	5,000	7,500
215.105 Defective axle:		
(a)(1) Crack of 1" or less.....	2,500	5,000
(2) Crack of more than 1".....	5,000	7,500
(3) Break.....	6,000	8,500
(b) Gouge in surface that is between the wheel seats and is more than 1/8" in depth.....	2,500	5,000
(c) End collar with crack or break.....	2,500	5,000
(d) Journal overheated.....	5,000	7,500
(e) Journal surface has: a ridge; a depression; a circumferential score; corrugation; a scratch; a continuous streak; pitting; rust; or etching.....	2,500	5,000
215.107 Defective plain bearing box: general:		
(a)(1) No visible free oil.....	1,500	3,000

APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>—Continued

Section	Violation	Willful violation
(2) Lubricating pad dry (no expression of oil observed when pad is compressed).....	5,000	7,500
(b) Box lid is missing, broken, or open except to receive servicing.....	1,000	2,000
(c) Contains foreign matter that can be expected to damage the bearing or have a detrimental effect on the lubrication of the journal and bearing.....	2,500	5,000
215.109 Defective plain bearing box: journal lubrication system:		
(a) Lubricating pad has a tear.....	1,000	2,000
(b) Lubricating pad scorched, burned, or glazed.....	2,500	5,000
(c) Lubricating pad contains decaying or deteriorating fabric.....	2,500	5,000
(d) Lubricating pad has an exposed center core or metal parts contacting the journal....	2,500	5,000
(e) Lubricating pad is missing or not in contact with the journal....	5,000	7,500
215.111 Defective plain bearing:		
(a) Missing.....	5,000	7,500
(b) Bearing liner is loose or has piece broken out....	2,500	5,000
(c) Overheated....	5,000	7,500

APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>—Continued

Section	Violation	Willful violation
215.113 Defective plain bearing wedge:		
(a) Missing.....	5,000	7,500
(b) Cracked.....	2,500	5,000
(c) Broken.....	5,000	7,500
(d) Not located in its design position.....	5,000	7,500
215.115 Defective roller bearing:		
(a)(1) Overheated....	5,000	7,500
(2) (i) Cap screw(s) loose.....	2,500	5,000
(ii) Cap screw lock broken, missing or improperly applied....	1,000	2,000
(3) Seal is loose or damaged, or permits leakage of lubricant.....	2,500	5,000
(b)(1) Not inspected and tested after derailment....	2,500	5,000
(2) Not disassembled after derailment....	2,500	5,000
(3) Not repaired or replaced after derailment....	5,000	7,500
215.117 Defective roller bearing adapter:		
(a) Cracked or broken.....	2,500	5,000
(b) Not in its design position.....	5,000	7,500
(c) Worn on the crown.....	2,500	5,000
215.119 Defective freight car truck:		
(a)(1) A side frame or bolster that is broken.....	5,000	7,500
(2)(i) Side frame or bolster with crack of: 1/4" or more, but less than 1".....	2,500	5,000
(ii) 1" or more.....	5,000	7,500

APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>—Continued

Section	Violation	Willful violation
(b) A snubbing device that is ineffective or missing.....	2,500	5,000
(c) Side bearing(s):		
(1) Assembly missing or broken....	5,000	7,500
(2) In contact except by design....	5,000	7,500
(3), (4) Total clearance at one end or at diagonally opposite sides of:.....		
(i) more than 3/4" but not more than 1".....	2,500	5,000
(ii) more than 1".....	5,000	7,500
(d) Truck spring(s):		
(1) Do not maintain travel or load....	2,500	5,000
(2) Compressed solid.....	2,500	5,000
(3) Outer truck springs broken or missing:		
(i) Two outer springs....	2,500	5,000
(ii) Three or more outer springs....	5,000	7,500
(e) Truck bolster-center plate interference....	5,000	7,500
(f) Brake beam shelf support worn.....	2,500	5,000

APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES <sup>1</sup>—Continued

Section	Violation	Willful violation
215.121	Defective car body:	
	(a) Has less than 2½" clearance from the top of rail.....	2,500 5,000
	(b) Car center sill is:	
	(1) Broken.....	6,000 8,500
	(2) Cracked more than 6".....	2,500 5,000
	(3) Bent or buckled more than 2½" in any 6' length.....	2,500 5,000
	(c) Coupler carrier that is broken or missing.....	2,500 5,000
	(d) Car door not equipped with operative safety hangers.....	5,000 7,500
	(e)(1) Center plate not properly secured.....	5,000 7,500
	(2) Portion missing.....	2,500 5,000
	(3) Broken.....	5,000 7,500
	(4) Two or more cracks.....	2,500 5,000
	(f) Broken sidesill, cross-bearer, or body bolster.....	2,500 5,000
215.123	Defective couplers:	
	(a) Shank bent out of alignment.....	1,000 2,000
	(b) Crack in highly stressed junction area.....	2,500 5,000
	(c) Coupler knuckle broken or cracked.....	2,500 5,000
	(d) Coupler knuckle pin or thrower that is missing or inoperative.....	2,500 5,000
	(e) Coupler retainer pin lock that is missing or broken.....	1,000 2,000

APPENDIX B TO PART 215—SCHEDULE OF CIVIL PENALTIES <sup>1</sup>—Continued

Section	Violation	Willful violation
	(f) Coupler with following conditions: locklift inoperative; no anticreep protection; or coupler lock is missing, inoperative, bent, cracked, or broken.....	2,500 5,000
215.125	Defective uncoupling device.....	2,500 5,000
215.127	Defective draft arrangement:	
	(a) Draft gear that is inoperative.....	2,500 5,000
	(b) Yoke that is broken.....	2,500 5,000
	(c) End of car cushioning unit is leaking or inoperative.....	2,500 5,000
	(d) Vertical coupler pin retainer plate missing or has missing fastener.....	5,000 7,500
	(e) Draft key or draft key retainer that is inoperative or missing.....	5,000 7,500
	(f) Follower plate that is missing or broken.....	2,500 5,000
215.129	Defective cushioning device.....	2,500 5,000
	Subpart C—Restricted equipment:	
	215.203 Restricted cars.....	2,500 5,000
	Subpart D—Stencilling:	
	215.301 General.....	1,000 2,000
	215.303 Stencilling of restricted cars.....	1,000 2,000
	215.305 Stencilling of maintenance-of-way.....	1,000 2,000

<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 freight car that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of \$10,000 per day. However, a failure to perform, with respect to a particular freight car, the predeparture inspection required by § 215.13 of this part will be treated as a violation separate and distinct from, and in addition to, any substantive

violative conditions found on the car. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

Failure to observe any condition for movement set forth in paragraphs (a) and (c) of § 215.9 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 freight car at the time of movement.

Maintenance-of-way equipment not stenciled in accordance with § 215.305 is subject to all requirements of this part. See § 215.3(c)(3).

PART 216—[AMENDED]

4. Part 216 is amended as follows:

A. The authority citation for Part 216 is revised to read as follows:

Authority: 45 U.S.C. 431, 432, and 438, as amended; 45 U.S.C. 22-34, as amended; Pub. L. 100-342; and 49 CFR 1.49 (c) and (m).

PART 217—[AMENDED]

5. Part 217 is amended as follows:

A. The authority citation for Part 217 continues to read as follows:

Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

§ 217.5 [Amended]

B. Section 217.5 is amended by adding at the end thereof the following: "See Appendix A to this part for a statement of agency civil penalty policy."

C. Appendix A to Part 217 is revised to read as follows:

APPENDIX A TO PART 217—SCHEDULE OF CIVIL PENALTIES <sup>1</sup>

Section	Violation	Willful violation
217.7	Filing of operating rules:	
	(a).....	\$2,500 \$5,000
	(b).....	2,500 5,000
217.9	Program of operational tests and inspections and recordkeeping:	
	(a).....	5,000 7,500
	(b) and (c).....	2,500 5,000
	(d).....	1,000 2,000
217.11	Program of instruction on operating rules:	
	(a).....	5,000 7,500
	(b).....	2,500 5,000
	(c).....	2,500 5,000
217.13	Annual report:	
	(a) and (c).....	1,000 2,000
	(b) and (d).....	2,500 5,000

<sup>1</sup> A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

PART 218—[AMENDED]

6. Part 218 is amended as follows:

A. The authority citation for Part 218 continues to read as follows:

Authority: 49 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

**§ 218.9 [Amended]**

B. Section 218.9 is amended by adding at the end thereof the following: "See Appendix A to this part for a statement of agency civil penalty policy."

C. Section 218.41 is revised to read as follows:

**§ 218.41 Noncompliance with hump operations rule.**

A person (including a railroad and any manager, supervisor, official, or other employee or agent of a railroad) who fails to comply with a railroad's operating rule issued pursuant to § 218.39 of this part is subject to a penalty, as provided in Appendix A of this part.

D. Appendix A to Part 218 is revised to read as follows:

**APPENDIX A TO PART 218—SCHEDULE OF CIVIL PENALTIES <sup>1</sup>**

Section	Violation	Willful violation
Subpart B—Blue signal protection of workmen:		
218.23 Blue signal display .....	\$5,000	\$7,500
218.25 Workmen on a main track .....	5,000	7,500
218.27 Workmen on track other than main track:		
(a) Protection provided except that signal not displayed at switch .....	2,000	4,000
(b) through (e) .....	5,000	7,500
218.29 Alternate methods of protection:		
(a)(1) protection provided except that signal not displayed at switch .....	2,000	4,000
(a)(2) through (a)(8) .....	5,000	7,500
(b)(1) protection provided except that signal not displayed at switch .....	2,000	4,000
(b)(2) through (b)(4) .....	5,000	7,500

**APPENDIX A TO PART 218—SCHEDULE OF CIVIL PENALTIES <sup>1</sup>—Continued**

Section	Violation	Willful violation
(c) use of derails .....	5,000	7,500
(d) emergency repairs .....	5,000	7,500
218.30 Remotely controlled switches:		
(a) and (b) .....	5,000	7,500
(c) .....	1,000	2,000
Subpart C—Protection of trains and locomotives:		
218.35 Yard limits:		
(a) and (b) .....	5,000	7,500
(c) .....	1,000	2,000
218.37 Flag protection:		
(a) .....	5,000	7,500
(b) and (c) .....	5,000	7,500
218.39 Hump operations .....	5,000	7,500
218.41 Noncompliance with hump operations rule .....	5,000	7,500
Subpart D—Prohibition against tampering with safety devices:		
218.55 Tampering [Reserved]:		
218.57 Operating or permitting operation of disabled equipment [Reserved]:		
(a) Knowingly		
(b) Willfully		
218.59 Operation of disabled equipment [Reserved]:		

<sup>1</sup> Except as provided for in section 218.57, a penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

**PART 219—[AMENDED]**

7. Part 219 is amended as follows:

A. The authority citation for Part 219 continues to read as follows:

Authority: 45 U.S.C. 431, 437 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

**§ 219.9 [Amended]**

B. Section 219.9(d) is amended by adding at the end thereof the following: "See Appendix A to this part for a statement of agency civil penalty policy."

C. Appendix A to Part 219 is revised to read as follows:

**APPENDIX A TO PART 219—SCHEDULE OF CIVIL PENALTIES <sup>1</sup>**

Section	Violation	Willful violation
Subpart B—Prohibitions:		
219.101 Alcohol and drug use:		
(i) Employee violates prohibition .....	(—)	\$10,000
(ii) Employee is required or permitted to violate prohibition .....	(—)	10,000
(iii) Failure to exercise due diligence to assure compliance ...	\$2,500	5,000
Subpart C—Post-accident testing:		
219.201 Events for which testing is required:		
(i) Failure to facilitate conduct of required post-accident toxicological test by making reasonable inquiry and good faith judgments with respect to circumstances of accident/incident; by failing to take all practicable steps to require employee participation; or by otherwise failing to comply with Subpart C such that test cannot be conducted .....	5,000	7,500
(ii) required employee to provide samples in reliance on Subpart C where not required (including failure to make reasonable inquiry or exercise good faith judgment) .....	5,000	10,000

APPENDIX A TO PART 219—SCHEDULE OF CIVIL PENALTIES <sup>1</sup>—Continued

Section	Violation	Willful violation
219.203 Responsibilities of Railroads and Employees:		
(b) Delay in obtaining samples account failure to make every reasonable effort.....	2,500	5,000
(c) Place of sample collection; by whom.....	2,500	5,000
(d) Failure to notify FRA of an employee injury requiring FRA intervention....	2,500	5,000
219.205 Sample collection and handling:		
(i) Failure to promptly forward samples.....	2,500	5,000
(ii) Failure to provide information sheet(s) with samples.....	1,000	2,000
(iii) Failure to observe other requirements with respect to sample collection, marking and handling.....	2,500	5,000
219.207 Fatality:		
(a) Failure to contact custodian and request assistance.....	2,500	5,000
(b) Failure to notify FRA where intervention needed.....	2,500	5,000
219.209 Reports of tests and refusals:		
(a) Failure to provide telephonic report.....	1,000	2,000
(b) Failure to provide written report (samples not provided).....	1,000	2,000

APPENDIX A TO PART 219—SCHEDULE OF CIVIL PENALTIES <sup>1</sup>—Continued

Section	Violation	Willful violation
219.213 Unlawful refusals, consequences:		
(a) Failure to take action against employee who refuses to provide samples.....	2,500	5,000
(b), (c) Failure to provide timely notice and proper hearing.....	2,500	5,000
Subpart D— Authorization to test for cause:		
219.301 Testing for reasonable cause: Employee required to submit to testing without reasonable cause.....	5,000	7,500
219.303 Breath testing procedures and safeguards.....	2,500	5,000
219.305 Urine test procedures and safeguards....	2,500	5,000
219.307 Standards for urine assays.....	2,500	5,000
219.309 Presumption of impairment, notice: Failure to provide effective notice of presumption from positive urine test.....	2,500	5,000
Subpart E— Identification of troubled employees:		
219.401 Requirements for policies:		
(i) Failure to adopt or publish or wholesale failure to implement policy required by Subpart E.....	5,000	7,500
(ii) Failure to implement as to individual employee.....	2,500	5,000
219.407 Alternate policies: Failure to file agreement or other document or provide timely notice of revocation.....	1,000	2,000

APPENDIX A TO PART 219—SCHEDULE OF CIVIL PENALTIES <sup>1</sup>—Continued

Section	Violation	Willful violation
Subpart F—Pre-employment drug screen:		
219.501 Pre-employment drug screens:		
(a) Failure to perform pre-employment drug screen prior to employing applicant in covered service.....	2,500	5,000
(b)(i) Failure to provide prior notice of drug screen.....	2,500	5,000
(ii) Maintaining record of declination of test.....	500	1,000
(c) Failure to test for specific substances as required by FRA.....	2,500	5,000
(d) Failure to conduct second test on positive sample.....	2,500	5,000
219.503 Notification; records:		
(a) Failure to provide notice of positive test and opportunity for response.....	2,000	4,000
(b) Failure to maintain and make available to FRA records of tests conducted.....	2,500	5,000
219.505 Refusals: Applicant who refuses test employed in covered service....	2,500	5,000
Subpart G—Random drug testing:		
219.601 (i) Failure to implement and/or submit to FRA for approval a random drug testing program that satisfies requirements of this subpart and subpart H.....	5,000	7,500

**APPENDIX A TO PART 219—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>—Continued**

Section	Violation	Willful violation
(ii) other violation	1,000	2,000
219.603 (i) Failure to facilitate conduct of required random drug testing by failing to take all practical steps to require employee participation or by otherwise failing to comply with Subpart G such that test cannot be conducted	2,500	5,000
(ii) Required employee to provide samples in reliance on subpart G based on other than random selection	5,000	7,500
(iii) Required employee to submit to testing without observance of procedures and safeguards contained in subparts G and H	5,000	7,500
(iv) Failure to take action against employee who refuses to provide sample	2,500	5,000
(v) Failure to provide timely notice and proper hearing	2,500	5,000
(vi) other violation	1,000	2,000
219.605 (1) Failure to provide notice of positive test results	2,000	4,000
(ii) other violation	1,000	2,000
219.607 Failure to retain or provide records	1,000	2,000

<sup>1</sup> A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

**PART 220—[AMENDED]**

8. Part 220 is amended as follows:  
 A. The authority citation for Part 220 continues to read as follows:  
 Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

**§ 220.7 [Amended]**

B. Section 220.7 is amended by adding at the end thereof the following: "See Appendix C to this part for a statement of agency civil penalty policy."  
 C. Appendix C to Part 220 is revised to read as follows:

**APPENDIX C TO PART 220—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>**

Section	Violation	Willful violation
220.21 Railroad Operating rules; radio communications:		
(a)	\$5,000	\$7,500
(b)	2,500	5,000
220.23 Publication of radio information	2,500	5,000
220.25 Instruction of employees	5,000	7,500
220.27 Identification	1,000	2,000
220.29 Statement of letters and numbers	1,000	2,000
220.31 Initiating a transmission	1,000	2,000
220.33 Receiving a transmission	1,000	2,000
220.35 Ending a transmission	1,000	2,000
220.37 Voice test	5,000	7,500
220.39 Continuous monitoring	2,500	5,000
220.41 Notification on failure of train radio	2,500	5,000
220.43 Communication consistent with the rules	2,500	5,000
220.45 Complete communications	2,500	5,000
220.47 Emergencies	2,500	5,000
220.49 Switching, backing or pushing	5,000	7,500
220.51 Signal indications	5,000	7,500
220.61 Transmission of train orders by radio	5,000	7,500

<sup>1</sup> A penalty may be assessed against and only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

**PART 221—[AMENDED]**

9. Part 221 is amended as follows:  
 A. The authority citation for Part 221 continues to read as follows:  
 Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

**§ 221.7 [Amended]**

B. Section 221.7 is amended by adding at the end thereof the following: "See Appendix C to this part for a statement of agency civil penalty policy."  
 C. Appendix C to Part 221 is revised to read as follows:

**APPENDIX C TO PART 221—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>**

Section	Violation	Willful violation
221.13 Marking device display:		
(a) device not present, not displayed, or not properly illuminated	\$5,000	\$7,500
(d) device too close to rail	1,000	2,000
221.14 Marking devices: Use of unapproved or noncomplying device	2,500	5,000
221.15 Marking device inspection:		
(a) Failure to inspect at crew change	2,500	5,000
(b), (c) improper inspection	2,500	5,000
221.16 Inspection procedure:		
(a) Failure to obtain protection	5,000	7,500
(b) Improper protection	2,500	5,000
221.17 Movement of defective equipment		(1)

<sup>1</sup> A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A. Where the conditions for movement of defective equipment set forth in § 221.17 of this part are not met, the movement constitutes a violation of § 221.13 of this part.

**PART 223—[AMENDED]**

10. Part 223 is amended as follows:  
 A. The authority citation for Part 223 continues to read as follows:  
 Authority: 45 U.S.C. 431 and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49(m).

**§ 223.7 [Amended]**

B. Section 223.7 is amended by adding at the end thereof the following: "See Appendix B to this part for a statement of agency civil penalty policy."  
 C. Appendix B to Part 223 is revised to read as follows:

**APPENDIX B TO PART 223—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>**

Section	Violation	Willful violation
223.9 New or rebuilt equipment:		
(a) Locomotives	\$2,500	\$5,000
(b) Cabooses	2,500	5,000
(c) Passenger cars	2,500	5,000
223.11(c) Existing locomotives	2,500	5,000
(d) repair of window	1,000	2,000
223.13(c) Existing cabooses	2,500	5,000

**APPENDIX B TO PART 223—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>—Continued**

Section	Violation	Willful violation
(d) Repair of window.....	1,000	2,000
223.15(c) Existing passenger cars.....	2,500	5,000
(d) repair of window.....	1,000	2,000
223.17 Identification of units.....	500	1,000

<sup>1</sup> A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

**PART 225—[AMENDED]**

11. Part 225 is amended as follows:

A. The authority citation for Part 225 continues to read as follows:

Authority: 45 U.S.C. 38, 42 and 43, as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49 (c) and (m).

**§ 225.29 [Amended]**

B. Section 225.29 is amended by removing the last sentence and adding at the end thereof the following: "See Appendix B to this part for a statement of agency civil penalty policy. A person may also be subject to the criminal penalties provided for in 45 U.S.C. 39 and 438(e)."

C. Appendix B to Part 225 is revised to read as follows:

**APPENDIX B TO PART 225—Schedule of Civil Penalties<sup>1</sup>**

Section	Violation	Willful violation
225.9 Telephonic reports of certain accidents/incidents.....	\$1,000	\$2,000
225.11 Reports of accidents/incidents.....	2,500	5,000
225.13 Late reports.....	2,500	5,000
225.17(d) Alcohol or drug involvement.....	2,500	5,000
225.23 Joint operations.....	( <sup>1</sup> )	( <sup>1</sup> )
225.25 Recordkeeping.....	2,500	5,000
225.27 Retention of records.....	1,000	2,000

<sup>1</sup> A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A. A failure to comply with § 225.23 constitutes a violation of § 225.11. For purposes of §§ 225.25 and 225.27 of this part, each of the following constitutes a single act of noncompliance: (1) A missing or incomplete log entry for a particular employee's injury or illness; (2) a missing or incomplete supplementary record of a particular employee's injury or illness; or (3) a missing or incomplete annual summary for a particular establishment. Each day a violation continues is a separate offense.

**PART 228—[AMENDED]**

12. Part 228 is amended as follows:  
A. The authority citation for Part 228 is revised to read as follows:

Authority: 45 U.S.C. 61-64b, as amended; 45 U.S.C. 437 and 438, as amended; Pub. L. 100-342; 49 App. U.S.C. 1655(e), as amended; and 49 CFR 1.49 (d) and (m).

B. Section 228.21 is revised to read as follows:

**§ 228.21 Civil penalty.**

Any person (including a railroad subject to this part and any manager, supervisor, official, or other employee or agent of such a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$250 and not more than \$10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See Appendix B to this part for a statement of agency civil penalty policy. Violations of the Hours of Service Act itself (e.g., requiring an employee to work excessive hours or beginning construction of a sleeping quarters subject to approval under subpart C of this part without prior approval) are subject to penalty under that Act's penalty provision, 45 U.S.C. 64a.

C. Section 228.23 is revised to read as follows:

**§ 228.23 Criminal penalty.**

Any person who knowingly and willfully falsifies a report or record required to be kept under this part or otherwise knowingly and willfully violates any requirement of this part may be liable for criminal penalties of a fine up to \$5,000, imprisonment for up to two years, or both, in accordance with 45 U.S.C. 438(e).

D. A new Appendix B to Part 228 is added to read as follows:

**APPENDIX B—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>**

Section	Violation	Willful violation
Subpart B—Records and Reporting:		
228.9 Railroad records.....	\$500	\$1,000
228.11 Hours of duty records.....	500	1,000

**APPENDIX B—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>—Continued**

Section	Violation	Willful violation
228.17 Dispatcher's record.....	500	1,000
228.19 Monthly reports of excess service.....	1,000	2,000

<sup>1</sup> A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

**PART 229—[AMENDED]**

13. Part 229 is amended as follows:

A. The authority citation for Part 229 continues to read as follows:

Authority: 45 U.S.C. 22-34, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100-342; and 49 CFR 1.49 (c) and (g).

**§ 229.7 [Amended]**

B. Section 229.7(b) is amended by adding at the end thereof the following: "See Appendix B to this part for a statement of agency civil penalty policy."

C. Appendix B to Part 229 is revised to read as follows:

**APPENDIX B TO PART 229—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>**

Section	Violation	Willful violation
Subpart A—General		
229.7 Prohibited acts: Safety deficiencies not governed by specific regulations: To be assessed on relevant facts.....	\$1,000-5,000	\$2,000-7,500
229.9 Movement of noncomplying locomotives.....	( <sup>1</sup> )	( <sup>1</sup> )
229.11 Locomotive identification.....	1,000	2,000
229.13 Control of locomotives.....	2,500	5,000
229.17 Accident reports.....	2,500	5,000
229.19 Prior Waivers.....	( <sup>1</sup> )	( <sup>1</sup> )
Subpart B—Inspection and tests		
229.21 Daily inspection: (a)(b): (1) Inspection overdue.....	2,000	4,000
(2) Inspection report not made, improperly executed, or not retained.....	1,000	2,000
(c) Inspection not performed by a qualified person.....	1,000	2,000

APPENDIX B TO PART 229—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>—Continued

Section	Violation	Willful violation
229.23 Periodic inspection General (a)(b):		
(1) Inspection overdue.....	2,500	5,000
(2) Inspection performed improperly or at a location where the underneath portion cannot be safely inspected.....	2,500	5,000
(c)(d):		
(1) Form missing.....	1,000	2,000
(2) Form not properly displayed.....	1,000	2,000
(3) Form improperly executed.....	1,000	2,000
(e) Replace Form FRA F 6180-49A by April 2.....	1,000	2,000
(f) Secondary record of the information reported on Form FRA F 6180.49A.....	1,000	2,000
229.25 Tests: Every periodic inspection.....	2,500	5,000
229.27 Annual tests.....	2,500	5,000
229.29 Biennial tests.....	2,500	5,000
229.31:		
(a) Biennial hydrostatic tests of main reservoirs.....	2,500	5,000
(b) Biennial hammer tests of main reservoirs.....	2,500	5,000
(c) Drilled telltale holes in welded main reservoirs.....	2,500	5,000
(d) Biennial tests of aluminum main reservoirs.....	2,500	5,000
229.33 Out-of-use credit.....	1,000	2,000

Subpart C—Safety Requirements

229.41 Protection against personal injury.....	2,500	5,000
229.43 Exhaust and battery gases.....	2,500	5,000
229.45 General condition: To be assessed based on relevant facts.....	1,000-5,000	2,000-7,500
229.46 Brakes: General.....	2,500	5,000
229.47 Emergency brake valve.....	2,500	5,000
229.49 Main reservoir system:		
(a)(1) Main reservoir safety valve.....	2,500	5,000

APPENDIX B TO PART 229—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>—Continued

Section	Violation	Willful violation
(2) Pneumatically actuated control reservoir.....	2,500	5,000
(b)(c) Main reservoir governors.....	2,500	5,000
229.51 Aluminum main reservoirs.....	2,500	5,000
229.53 Brake gauges.....	2,500	5,000
229.55 Piston travel.....	2,500	5,000
229.57 Foundation brake gear.....	2,500	5,000
229.59 Leakage.....	2,500	5,000
229.61 Draft system.....	2,500	5,000
229.63 Lateral motion.....	2,500	5,000
229.64 Plain bearing.....	2,500	5,000
229.65 Spring rigging.....	2,500	5,000
229.67 Trucks.....	2,500	5,000
229.69 Side bearings.....	2,500	5,000
229.71 Clearance above top of rail.....	2,500	5,000
229.73 Wheel sets.....	2,500	5,000
229.75 Wheel and tire defects:		
(a),(d) Slid flat or shelled spot(s):		
(1) One spot 2½" or more but less than 3" in length.....	2,500	5,000
(2) One spot 3" or more in length.....	5,000	7,500
(3) Two adjoining spots each of which is 2" or more in length but less than 2½" in length.....	2,500	5,000
(4) Two adjoining spots each of which are at least 2" in length, if either spot is 2½" or more in length.....	5,000	7,500
(b) Gouge or chip in flange of:		
(1) more than 1½" but less than 1¾" in length; and more than ¼" but less than ⅜" in width.....	2,500	5,000
(2) 1¾" or more in length and ¾" or more in width.....	5,000	7,500
(c) Broken rim.....	5,000	7,500
(e) Seam in tread.....	2,500	5,000
(f) Flange thickness of:		
(1) ¾" or less but more than ⅞".....	2,500	5,000

APPENDIX B TO PART 229—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>—Continued

Section	Violation	Willful violation
(2) 1½" or less.....	5,000	7,500
(g) Tread worn hollow.....	2,500	5,000
(h) Flange height of:		
(1) 1½" or greater but less than 1¾".....	2,500	5,000
(2) 1¾" or more.....	5,000	7,000
(i) Tire thickness.....	2,500	5,000
(j) Rim thickness:		
(1) Less than 1" in road service and ¾" in yard service.....	2,500	5,000
(2) 1½" or less in road service and 1½" in yard service.....	5,000	7,500
(k) Crack of less than 1".....	5,000	7,500
(1) Crack of less than 1".....	2,500	5,000
(2) Crack of 1" or more.....	5,000	7,500
(3) Break.....	5,000	7,500
(l) Loose wheel or tire.....	5,000	7,500
(m) Welded wheel or tire.....	5,000	7,500
229.77 Current collectors.....	2,500	5,000
229.79 Third rail shoes and beams.....	2,000	4,000
229.81 Emergency pole; shoe insulation.....	2,500	5,000
229.83 Insulation or grounding.....	5,000	7,500
229.85 Door and cover plates marked "Danger".....	2,500	5,000
229.87 Hand operated switches.....	2,500	5,000
229.89 Jumpers; cable connections:		
(a) Jumpers and cable connections; located and guarded.....	2,500	5,000
(b) Condition of jumpers and cable connections.....	2,500	5,000
229.91 Motors and generators.....	2,500	5,000
229.93 Safety cut-off device.....	2,500	5,000
229.95 Venting.....	2,500	5,000
229.97 Grounding fuel tanks.....	2,500	5,000
229.99 Safety hangers.....	2,500	5,000
229.101 Engines:		
(a) Temperature and pressure alarms, controls, and switches.....	2,500	5,000
(b) Warning notice.....	2,500	5,000
(c) Wheel slip/slide protection.....	2,500	5,000

APPENDIX B TO PART 229—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>—Continued

Section	Violation	Willful violation
229.103 Safe working pressure; factor of safety.....	2,500	5,000
229.105 Steam generator number.....	500	1,000
229.107 Pressure gauge.....	2,500	5,000
229.109 Safety valves.....	2,500	5,000
229.111 Water-flow indicator.....	2,500	5,000
229.113 Warning notice.....	2,500	5,000
229.115 Slip/slide alarms.....	2,500	5,000
229.117 Speed indicators.....	2,500	5,000
229.119 Cabs, floors, and passageways: (a)(1) Cab set not securely mounted or braced.....	2,500	5,000
(2) Insecure or improper latching device.....	2,500	5,000
(b) Cab windows of lead locomotive.....	2,500	5,000
(c) Floors, passageways, and compartments.....	2,500	5,000
(d) Ventilation and heating arrangement.....	2,500	5,000
(e) Continuous barrier.....	2,500	5,000
(f) Containers for fuses and torpedoes.....	2,500	5,000
229.121 Locomotive cab noise.....	2,500	5,000
229.123 Pilots, snowplows, end plates.....	2,500	5,000
229.125 Headlights.....	2,500	5,000
229.127 Cab lights.....	2,500	5,000
229.129 Audible warning device.....	2,500	5,000
229.131 Sanders.....	1,000	2,000

Subpart D—Design Requirements

229.141 Body structure, MU locomotives.....	2,500	5,000
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<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 locomotive that is used by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of \$10,000 per day. However, a failure to perform, with respect to a particular locomotive, any of the inspections and tests required under Subpart B of this part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on that locomotive. Moreover, the Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

Failure to observe any condition for movement set forth in § 229.9 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

locomotive at the time of movement. Failure to comply with § 229.19 will result in the lapse of any affected waiver.

PART 231—[AMENDED]

14. Part 231 is amended as follows:

A. The authority citation for Part 231 continues to read as follows:

Authority: 45 U.S.C. 2, 4, 6, 8, 10, and 11–16, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49(c) and (g).

§ 231.0 [Amended]

B. Section 231.0 is amended by adding at the end thereof the following: "See Appendix A to this part for a statement of agency civil penalty policy."

C. A new Appendix A to Part 231 is added to read as follows:

APPENDIX A TO PART 231—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>

FRA safety appliance defect code section <sup>2</sup>	Violation	Willful violation
110.A1 Hand Brake or Hand Brake Part Missing.....	\$5,000	\$7,500
110.A2 Hand Brake or Hand Brake Part Broken.....	5,000	7,500
110.A3 Hand Brake or Hand Brake Part Loose or Worn.....	2,500	5,000
110.B1 Hand Brake Inoperative.....	5,000	7,500
110.B2 Hand Brake Inefficient.....	2,500	5,000
110.B3 Hand Brake Improperly Applied.....	2,500	5,000
110.B4 Hand Brake Incorrectly located.....	2,500	5,000
110.B5 Hand Brake Shaft Welded or Wrong Dimension.....	2,500	5,000
110.B6 Hand Brake Shaft Not Retained in Operating Position.....	2,500	5,000
110.B8 Hand Brake or Hand Brake Parts Wrong Design.....	2,500	5,000
114.B2 Hand Brake Wheel or Lever Has Insufficient Clearance Around Rim or Handle.....	2,500	5,000
114.B3 Hand Brake Wheel/Lever Clearance Insufficient to Vertical Plane Through Inside Face of Knuckle.....	2,500	5,000
120.A1 Brake Step Missing Except by Design.....	5,000	7,500
120.A2 Brake Step or Brace Broken or Decayed.....	2,500	5,000
120.A3 Brake Step or Brace Loose.....	2,500	5,000
120.B1 Brake Step or Brace Bent.....	2,500	5,000
120.B2 Brake Step or Wrong Dimensions.....	2,500	5,000

APPENDIX A TO PART 231—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>—Continued

FRA safety appliance defect code section <sup>2</sup>	Violation	Willful violation
120.C1 Brake Step Improperly Applied.....	2,500	5,000
120.C2 Brake Step Improperly Located.....	2,500	5,000
120.C3 Brake Step With Less Than 4" Clearance to Vertical Plane Through Inside Face of Knuckle.....	2,500	5,000
120.C4 Brake Step Obstructed or Otherwise Unsafe.....	2,500	5,000
124.A1 Running Board Missing or Part Missing Except By Design.....	5,000	7,500
124.A2 Running Board Broken or Decayed.....	5,000	7,500
124.A3 Running Board Loose Presents a Tripping Hazard or Other Unsafe Condition.....	2,500	5,000
124.A4 Running Board Wrong Material.....	2,500	5,000
124.B1 Running Board Bent to the Extent that It is Unsafe.....	2,500	5,000
124.B2 Running Board Wrong Dimensions.....	2,500	5,000
124.B3 Running Board Wrong Location.....	2,500	5,000
124.C1 Running Board Improperly Applied.....	2,500	5,000
124.C2 Running Board Obstructed.....	2,500	5,000
126.A1 End Platform Missing or Part Except By Design.....	5,000	7,500
126.A2 End Platform Broken or Decayed.....	5,000	7,500
126.A3 End Platform Loose.....	2,500	5,000
126.B1 End Platform or Brace Bent.....	2,500	5,000
126.B2 End Platform Wrong Dimensions.....	2,500	5,000
126.C1 End Platform Improperly Applied.....	2,500	5,000
126.C2 End Platform With Less Than Required Clearance to Vertical Plane Through Inside Knuckle.....	2,500	5,000
126.C3 End Platform Improperly Located.....	2,500	5,000
126.C4 End Platform Obstructed.....	5,000	7,500
128.A1 Platform or Switching Step Missing.....	5,000	7,500
128.A2 Platform or Switching Step Broken or Decayed.....	5,000	7,500
128.A3 Platform or Switching Step Loose.....	2,500	5,000
128.B1 Platform or Switching Step Bent.....	2,500	5,000

APPENDIX A TO PART 231—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>—Continued

FRA safety appliance defect code section <sup>2</sup>	Violation	Willful violation
128.B2 Platform or Switching Step Does Not Meet the Required Location or Dimensions.....	2,500	5,000
128.C1 Platform or Switching Step Improperly Applied or Repaired.....	2,500	5,000
128.C2 Platform or Switching Step Obstructed.....	2,500	5,000
128.D1 Switching Step Back Stop or Kick Plate Missing.....	2,500	5,000
128.D2 Switching Step Not Illuminated When Required.....	2,500	5,000
128.D3 Non-Illuminated Step Not Painted Contrasting Color.....	1,000	2,000
130.A1 Sill Step or Additional Tread, Missing.....	5,000	7,500
130.A2 Sill Step or Additional Tread, Broken.....	5,000	7,500
130.A3 Sill Step or Additional Tread, Loose.....	2,500	5,000
130.B1 Sill Step or Additional Tread, Bent.....	2,500	5,000
130.B2 Sill Step or Additional Tread, Having Wrong Dimensions or Improperly Located.....	2,500	5,000
130.B3 Sill Step Improperly Applied.....	2,500	5,000
132.A1 Side Missing Step.....	5,000	7,500
132.A2 Side Door Step Broken.....	5,000	7,500
132.A3 Side Door Step Loose.....	2,500	5,000
132.B1 Side Door Step Bent.....	2,500	5,000
132.B2 Side Door Step Having Wrong Dimensions.....	2,500	5,000
134.A1 Ladder Missing.....	5,000	7,500
134.A2 Ladder Broken.....	5,000	7,500
134.A3 Ladder Loose.....	2,500	5,000
134.B1 Ladder Bent.....	2,500	5,000
134.B2 Ladder Having Wrong Dimensions.....	2,500	5,000
134.C1 Ladder Improperly Applied.....	2,500	5,000
134.C2 Ladder Having Insufficient Clearance or Improperly Located.....	2,500	5,000
134.C3 Ladder Wrong Design.....	2,500	5,000
134.C4 Ladder Wrong Material.....	2,500	5,000
134.D1 End Clearance Insufficient.....	2,500	5,000
136.A1 Ladder Tread or Handholds Missing.....	5,000	7,500

APPENDIX A TO PART 231—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>—Continued

FRA safety appliance defect code section <sup>2</sup>	Violation	Willful violation
136.A2 Ladder Tread or Handhold Broken.....	5,000	7,500
136.A3 Ladder Tread or Handhold Loose Except By Design.....	2,500	5,000
136.B1 Ladder Tread or Handhold Bent to The Extent That It May Be Unsafe.....	2,500	5,000
136.B2 Ladder Tread or Handhold Wrong Dimensions.....	2,500	5,000
136.C1 Ladder Tread or Handhold Improperly Applied.....	2,500	5,000
136.C2 Ladder Tread or Handhold Having Wrong Clearance.....	2,500	5,000
136.C3 Ladder or Handhold Improperly Located.....	2,500	5,000
136.C4 Ladder Tread or Handhold Obstructed.....	2,500	5,000
136.C5 Ladder Tread Without Footguards.....	2,500	5,000
138.A1 Hand or Safety Railing Missing.....	5,000	7,500
138.A2 Hand or Safety Railing Broken.....	5,000	7,500
138.A3 Hand or Safety Railing Loose Except by Design.....	2,500	5,000
138.B1 Hand or Safety Railing Bent.....	2,500	5,000
138.B2 Hand or Safety Railing Wrong Dimensions.....	2,500	5,000
138.C1 Hand or Safety Railing Improperly Applied.....	2,500	5,000
138.C2 Hand or Safety Railing Having Less Than the Required Clearance.....	2,500	5,000
138.C3 Hand or Safety Railing Improperly Located.....	2,500	5,000
140.A1 Uncoupling Lever Missing.....	2,500	5,000
140.A2 Uncoupling Lever Broken or Disconnected.....	2,500	5,000
140.B1 Uncoupling Lever Bent Will not Safely and Reasonably Function As Intended.....	2,500	5,000
140.C1 Uncoupling Lever Bracket Bent Lever Will Not Function Properly.....	2,500	5,000
140.C2 Uncoupling Lever Bracket Broken or Missing.....	2,500	5,000
140.D1 Uncoupling Lever Wrong Dimension.....	2,500	5,000
140.D2 Uncoupling Lever With Improper Handle Clearance.....	2,500	5,000
144.A1 Coupler Missing.....	5,000	7,500

APPENDIX A TO PART 231—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>—Continued

FRA safety appliance defect code section <sup>2</sup>	Violation	Willful violation
144.B1 Coupler Height Incorrect.....	2,500	5,000
144.C1 Coupler Inoperative.....	2,500	5,000
145.A1 Kick Plates Missing.....	2,500	5,000
145.A2 Kick Plates Broken.....	2,500	5,000
145.B1 Kick Plates Wrong Dimensions.....	2,500	5,000
145.B2 Kick Plates Improper Clearance.....	2,500	5,000
145.B3 Kick Plates Insecure Or Improperly Applied.....	2,500	5,000
146.A Notice or Stencil not Posted on Caboose with Running Boards Removed.....	500	1,000
146.B Safe Means not Provided to Clean or Maintain Windows of Caboose.....	1,000	2,000

<sup>1</sup>A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

<sup>2</sup>This schedule uses section numbers from FRA's Safety Appliance Defect Code, a restatement of the CFR text in a reorganized format. For convenience, and as an exception to FRA's general policy, penalty citations will cite the defect code rather than the CFR. FRA reserves the right, should litigation become necessary, to substitute in its complaint the CFR and/or statutory citation in place of the defect code section cited in the penalty demand letter.

PART 232—[AMENDED]

15. Part 232 is amended as follows:  
A. The authority citation for Part 232 is revised to read as follows:

Authority: 45 U.S.C. 1, 3, 5, 6, 8-12, and 16, as amended; 49 App. U.S.C. 1655(e), as amended; Pub. L. 100-342; and 49 CFR 1.49 (c) and (g).

§ 232.0 [Amended]

B. Section 232.0 is amended by adding at the end thereof the following: "See Appendix A to this part for a statement of agency civil penalty policy."

C. 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
232.1 Power brakes, minimum percentage..	\$5,000	\$7,000
232.2 Drawbars; standard height.....	2,500	5,000
232.3 Power brakes and appliances for operating power brake systems.....	2,500	5,000

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

Section	Violation	Willful violation
Rules for Inspection, Testing and Maintenance of Air Brake Equipment:		
232.10 General rules—locomotives:		
(b) Air brake equipment not inspected or tested to assure it is in a safe and suitable condition.....	2,500	5,000
(c) Compressor not tested for capacity.....	2,500	5,000
(d) Main reservoir not tested.....	2,500	5,000
(e) Air gauges not tested; if inaccurate not repaired or replaced.....	2,500	5,000
(f)(1) Operating portion of air brake equipment, dirt collectors, and filters not cleaned, repaired, and tested.....	2,500	5,000
(2) Hand brakes, parts and connections not inspected or suitably stenciled.....	1,000	2,000
(g) Date of testing or cleaning of air brake equipment not displayed in the cab.....	1,000	2,000
(h)(1) Minimum brake cylinder piston travel insufficient.....	2,500	5,000
(2) Maximum brake cylinder piston travel excessive.....	2,500	5,000
(i)(1) Foundation brake rigging, safety supports and brake shoes.....	2,500	5,000
(2) Foundation brake rigging or safety supports have improper clearance to the rails.....	2,500	5,000
(j)(1) Main reservoir leakage.....	2,500	5,000
(2) Brake pipe leakage.....	2,500	5,000
(3) Brake cylinder leakage.....	2,500	5,000
(4) Main reservoir safety valve.....	2,500	5,000
(5) Governor.....	2,500	5,000

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

Section	Violation	Willful violation
(6) Compressor governor when used in connection with automatic air brake system.....	2,500	5,000
(k) Communicating signal system on locomotive.....	1,000	2,000
(l) Enginemen taking charge of locomotive.....	2,500	5,000
(m) Drain cocks on air compressors of steam locomotives.....	2,500	5,000
(n) Air pressure regulating devices.....	2,500	5,000
232.11 Train air brake system tests:		
(b) Communicating signal system on passenger train.....	2,500	5,000
(c) Effective and operative air brakes.....	2,500	5,000
(d) Condensation from yard line or motive power.....	2,500	5,000
232.12 Initial terminal road train air brake tests:		
(a) Total failure to perform initial terminal test.....	10,000	(1)
(b) 1,000 mile inspection not performed.....	5,000	10,000
(c)-(f) partial failure to perform initial terminal test.....	2,500	5,000
232.13 Road train and intermediate terminal train air brake tests:		
(a) Passenger trains: locomotive is detached.....	5,000	7,500
(b) Freight trains: locomotive is detached.....	5,000	7,500
(c)(1) Locomotive or caboose is changed, or one or more cars are cut off from the rear end or head end.....	5,000	7,500
(2) Brake pipe pressure restored.....	5,000	7,500
(3) Electropneumatic application and release test.....	5,000	7,500
(d)(1) Cars are added at a point other than a terminal.....	5,000	7,500

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

Section	Violation	Willful violation
(2)(i) Cars added at a terminal and have not been charged and tested.....	5,000	7,500
(ii) Cars added at a terminal and have not been charged and tested.....	5,000	7,500
(3) Brake pipe pressure restored at the rear of freight train.....	5,000	7,500
(e)(1) Transfer train and yard train movements.....	2,500	5,000
(2) Transfer train and yard train movements exceeding 20 miles.....	5,000	7,500
(f) Locomotives, cars or train standing on a yard.....	5,000	7,500
(h) Device is used to comply with test requirement.....	2,500	5,000
232.14 Inbound brake equipment inspection:		
(a) Inspection of trains upon arrival at terminals.....	1,000	2,000
(b) Special instructions provide for immediate brake inspection and repairs.....	1,000	2,000
232.15 Double heading and helper service:		
(a) Engineman of the leading locomotive shall operate the brakes.....	5,000	7,500
(b) Electro-pneumatic brake valve.....	5,000	7,500
232.16 Running tests.....	2,500	5,000
232.17 Freight and passenger train car brakes:		
(a) Testing and repairing brakes on cars while in shop or on repair track:		
(1) Periodic attention on freight car air brake equipment while car is on repair track.....	5,000	7,500
(2)(i) Single car testing of freight cars.....	2,500	5,000

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

Section	Violation	Willful violation
(ii) Repair track tests of freight cars .....	2,500	5,000
(iii) Single car testing of freight cars .....	2,500	5,000
(iv) Car is released from a shop or repair track .....	2,500	5,000
(b)(1) Brake equipment on cars other than passenger cars .....	2,500	5,000
(2) Brake equipment on passenger cars .....	4,000	6,000
232.19 End of train device:		
(a) Location of front unit and rear unit .....	2,500	5,000
(b) Rear unit .....	2,500	5,000
(c) Reporting rate .....	2,500	5,000
(d) Operating environment .....	2,500	5,000
(e) Unique code .....	2,500	5,000
(f) Front unit .....	2,500	5,000
(g) Radio equipment .....	2,500	5,000
(h) Inspection .....	2,000	4,000

<sup>1</sup> A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

**PART 233—[AMENDED]**

16. Part 233 is amended as follows:

A. The authority citation for Part 233 continues to read as follows:

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49 (f), (g), and (m).

**§ 233.11 [Amended]**

B. Section 233.11 is amended by removing the last sentence (which begins "See") and adding at the end thereof the following: "See Appendix A to this part for a statement of agency civil penalty policy."

C. A new Appendix A is added to Part 233 to read as follows:

**APPENDIX A TO PART 233—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>**

Section	Violation	Willful violation
233.5 Accidents resulting from signal failure .....	\$2,500	\$5,000
233.7 Signal failure reports .....	5,000	7,500
233.9 Annual reports .....	1,000	2,000

<sup>1</sup> A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

**PART 235—[AMENDED]**

17. Part 235 is amended as follows:

A. The authority citation for Part 235 continues to read as follows:

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49 (f), (g), and (m).

**§235.9 [Amended]**

B. Section 235.9 is amended by removing the last sentence (which begins "See") and adding at the end thereof the following: "See Appendix A to this part for a statement of agency civil penalty policy."

C. A new Appendix A is added to Part 235 to read as follows:

**APPENDIX A TO PART 235—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>**

Section	Violation	Willful violation
235.5 Changes requiring filing of application .....	\$5,000	\$7,500

<sup>1</sup> A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

**PART 236—[AMENDED]**

18. Part 236 is amended as follows:

A. The authority citation for Part 236 continues to read as follows:

Authority: 49 App. U.S.C. 26, as amended; 49 App. U.S.C. 1655(e), as amended; 45 U.S.C. 431, 437, and 438, as amended; Pub. L. 100-342; and 49 CFR 1.49 (f), (g), and (m).

B. Section 236.0 is amended by revising the section title and adding paragraph (f) to read as follows:

**§236.0 Applicability, minimum requirements, and civil penalties.**

\* \* \* \* \*

(f) Any person (including a railroad subject to this part and any manager, supervisor, official, or other employee or

agent of such a railroad) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$250 and not more than \$10,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$20,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See Appendix A to this part for a statement of agency civil penalty policy.

C. Appendix A to Part 236 is revised to read as follows:

**APPENDIX A TO PART 236—CIVIL PENALTIES<sup>1</sup>**

Section	Violation	Willful violation
<b>Subpart A—Rules and Instructions—All Systems</b>		
<i>General:</i>		
236.0 Applicability, minimum requirements .....	\$2,500	\$5,000
236.1 Plans, where kept .....	1,000	2,000
236.2 Grounds .....	1,000	2,000
236.3 Locking of signal apparatus housings:		
(a) Power interlocking machine cabinet not secured against unauthorized entry .....	2,500	5,000
(b) other violations .....	1,000	2,000
236.4 Interference with normal functioning of device .....	5,000	7,500
236.5 Design of control circuits on closed circuit principle .....	1,000	2,000
236.6 Hand-operated switch equipped with switch circuit controller .....	1,000	2,000
236.7 Circuit controller operated by switch-and-lock movement .....	1,000	2,000
236.8 Operating characteristics of electro-magnetic, electronic, or electrical apparatus .....	1,000	2,000
236.9 Selection of circuits through indicating or annunciating instruments .....	1,000	2,000
236.10 Electric locks, force drop type; where required .....	1,000	2,000
236.11 Adjustment, repair, or replacement of component .....	2,500	5,000

APPENDIX A TO PART 236—CIVIL PENALTIES <sup>1</sup> —Continued			APPENDIX A TO PART 236—CIVIL PENALTIES <sup>1</sup> —Continued			APPENDIX A TO PART 236—CIVIL PENALTIES <sup>1</sup> —Continued		
Section	Violation	Willful violation	Section	Violation	Willful violation	Section	Violation	Willful violation
236.12 Spring switch signal protection; where required.....	1,000	2,000	(b) Track relay not in de-energized position or device that functions as track relay not in its most restrictive state when train, locomotive, or car occupies any part of track circuit, except fouling section of turnout of hand-operated main-track crossover.....	2,500	5,000	236.102 Semaphore or search-light signal mechanism .....	1,000	2,000
236.13 Spring switch; selection of signal control circuits through circuit controller.....	1,000	2,000	(c) other violations..	1,000	2,000	236.103 Switch circuit controller or point detector.....	1,000	2,000
236.14 Spring switch signal protection; requirements.....	1,000	2,000	236.52 Relayed cut-section.....	1,000	2,000	236.104 Shunt fouling circuit.....	1,000	2,000
236.15 Timetable instructions.....	1,000	2,000	236.53 Track circuit feed at grade crossing.....	1,000	2,000	236.105 Electric lock...	1,000	2,000
236.16 Electric lock, main track releasing circuit:			236.54 Minimum length of track circuit..	1,000	2,000	236.106 Relays.....	1,000	2,000
(a) Electric lock releasing circuit on main track extends into fouling circuit where turnout not equipped with derail at clearance point either pipe-connected to switch or independently locked, electrically.....	2,500	5,000	236.55 Dead section; maximum length.....	1,000	2,000	236.107 Ground tests..	1,000	2,000
(b) other violations..	1,000	2,000	236.56 Shunting sensitivity.....	2,500	5,000	236.108 Insulation resistance tests, wires in trunking and cables:		
236.17 Pipe for operating connections, requirements	1,000	2,000	236.57 Shunt and fouling wires:			(a) Circuit permitted to function on a conductor having insulation resistance value less than 200,000 ohms.....	2,500	5,000
<i>Roadway Signals and Cab Signals—</i>			(a) Shunt or fouling wires do not consist of at least two discrete conductors .....	2,500	5,000	(b) other violations..	1,000	2,000
236.21 Location of roadway signals.....	1,000	2,000	(b) other violations..	1,000	2,000	236.109 Time releases, timing relays and timing devices.....	1,000	2,000
236.22 Semaphore signal arm; clearance to other objects.....	1,000	2,000	236.58 Turnout, fouling section:			236.110 Results of tests.....	1,000	2,000
236.23 Aspects and indications.....	1,000	2,000	(a) Rail joint in shunt fouling section not bonded.....	2,500	5,000	<b>Subpart B—Automatic Block Signal Systems</b>		
236.24 Spacing of roadway signals.....	2,500	5,000	(b) other violations..	1,000	2,000	236.201 Track circuit control of signals .....	1,000	2,000
236.26 Buffing device, maintenance ..	1,000	2,000	236.59 Insulated rail joints.....	1,000	2,000	236.202 Signal governing movements over hand-operated switch .....	1,000	2,000
<i>Track Circuits—</i>			236.60 Switch shunting circuit; use restricted.....	2,500	5,000	236.203 Hand-operated crossover between main tracks; protection .....	1,000	2,000
236.51 Track circuit requirements:			<i>Wires and Cables—</i>			236.204 Track signaled for movements in both directions, requirements.....	1,000	2,000
(a) Shunt fouling circuit used where permissible speed through turnout greater than 45 m.p.h.....	2,500	5,000	236.71 Signal wires on pole line and aerial cable.....	1,000	2,000	236.205 Signal control circuits; requirements.....	1,000	2,000
			236.73 Open-wire transmission line; clearance to other circuits.....	1,000	2,000	236.206 Battery or power supply with respect to relay; location.....	1,000	2,000
			236.74 Protection of insulated wire; splice in underground wire....	1,000	2,000	<b>Subpart C—Interlocking</b>		
			236.76 Tagging of wires and interference of wires or tags with signal apparatus.....	1,000	2,000	236.207 Electric lock on hand-operated switch; control:		
			<i>Inspections and Tests; All Systems—</i>			(a) Approach or time locking of electric lock on hand-operated switch can be defeated by unauthorized use of emergency device which is not kept sealed in the non-release position...	2,500	5,000
			236.101 Purpose of inspection and tests; removal from service or relay or device failing to meet test requirements.....	2,500	5,000	(b) other violations..	1,000	2,000

APPENDIX A TO PART 236—CIVIL PENALTIES <sup>1</sup> —Continued			APPENDIX A TO PART 236—CIVIL PENALTIES <sup>1</sup> —Continued			APPENDIX A TO PART 236—CIVIL PENALTIES <sup>1</sup> —Continued		
Section	Violation	Willful violation	Section	Violation	Willful violation	Section	Violation	Willful violation
236.301 Where signals shall be provided.....	1,000	2,000	236.314 Electric lock for hand-operated switch or derail:			236.382 Switch obstruction test.....	1,000	2,000
236.302 Track circuits and route locking.....	1,000	2,000	(a) Approach or time locking of electric lock at hand-operated switch or derail can be defeated by unauthorized use of emergency device which is not kept sealed in non-release position.....	2,500	5,000	236.383 Valve locks, valves, and valve magnets.....	1,000	2,000
236.303 Control circuits for signals, selection through circuit controller operated by switch points or by switch locking mechanism.....	1,000	2,000	(b) other violations..	1,000	2,000	236.384 Cross protection		
236.304 Mechanical locking or same protection effected by circuits.....	1,000	2,000	<i>Rules and Instructions—</i>			236.386 Restoring feature on power switches		
236.305 Approach or time locking.....	1,000	2,000	236.326 Mechanical locking removed or disarranged; requirement for permitting train movements through interlocking.....	1,000	2,000	236.387 Movable bridge locking.....	1,000	2,000
236.306 Facing point lock or switch-and-lock movement.....	1,000	2,000	236.327 Switch, movable-point frog or split-point derail.....	1,000	2,000	<b>Subpart D—Traffic Control Systems Standards</b>		
236.307 Indication locking:			236.328 Plunger of facing-point.....	1,000	2,000	236.401 Automatic block signal system and interlocking standards applicable to traffic control systems:		
236.308 Mechanical or electric locking or electric circuits; requisites.....	1,000	2,000	236.329 Bolt lock.....	1,000	2,000	236.402 Signals controlled by track circuits and control operator.....	1,000	2,000
236.309 Loss of shunt protection; where required:			236.330 Locking dog of switch and lock movement.....	1,000	2,000	236.403 Signals at controlled point.....	1,000	2,000
(a) Loss of shunt of five seconds or less permits release of route locking of power-operated switch, movable point frog, or derail.....	2,500	5,000	236.334 Point detector.....	1,000	2,000	236.404 Signals at adjacent control points.....	1,000	2,000
(b) Other violations.....	1,000	2,000	236.335 Dogs, stops and trunnions of mechanical locking.....	1,000	2,000	236.405 Track signaled for movements in both directions, change of direction of traffic.....	1,000	2,000
236.310 Signal governing approach to home signal.....	1,000	2,000	236.336 Locking bed.....	1,000	2,000	236.407 Approach or time locking; where required.....	1,000	2,000
236.311 Signal control circuits, selection through track relays or devices functioning as track relays and through signal mechanism contacts and time releases at automatic interlocking.....	1,000	2,000	236.337 Locking faces of mechanical locking; fit.....	1,000	2,000	236.408 Route locking.....	1,000	2,000
236.312 Movable bridge, interlocking of signal appliances with bridge devices:			236.338 Mechanical locking required in accordance with locking sheet and dog chart.....	1,000	2,000	236.410 Locking, hand-operated switch; requirements:		
(a) Emergency bypass switch or device not locked or sealed..	2,500	5,000	236.339 Mechanical locking; maintenance requirements.....	1,000	2,000	(a) Hand-operated switch on main track not electrically or mechanically locked in normal position where signal not provided to govern movement to main track, movements made at speeds in excess of 20 m.p.h., and train or engine movements may clear main track...	2,500	5,000
(b) other violations..	1,000	2,000	236.340 Electromechanical interlocking machine; locking between electrical and mechanical levers.....	1,000	2,000			
			236.341 Latch shoes, rocker links, and quadrants.....	1,000	2,000			
			236.342 Switch circuit controller.....	1,000	2,000			
			<i>Inspection and Tests—</i>					
			236.376 Mechanical locking.....	1,000	2,000			
			236.377 Approach locking.....	1,000	2,000			
			236.378 Time locking..	1,000	2,000			
			236.379 Route locking.....	1,000	2,000			
			236.380 Indication locking.....	1,000	2,000			
			236.381 Traffic locking.....	1,000	2,000			

APPENDIX A TO PART 236—CIVIL PENALTIES <sup>1</sup>—Continued

APPENDIX A TO PART 236—CIVIL PENALTIES <sup>1</sup>—Continued

APPENDIX A TO PART 236—CIVIL PENALTIES <sup>1</sup>—Continued

Section	Violation	Willful violation
(b) Hand-operated switch on signaled siding not electrically or mechanically locked in normal position where signal not provided to govern movements to signaled siding, train movements made at speeds in excess of 30 m.p.h., and train or engine movements may clear signaled siding.....	2,500	5,000
(c) Approach or time locking of electric lock at hand-operated switch can be defeated by use of emergency release device of electric lock which is not kept sealed in non-release position.....	2,500	5,000
(d) other violations..	1,000	2,000
<i>Rules and Instructions—</i>		
236.426 Interlocking rules and instructions applicable to traffic control systems.....	1,000	2,000
236.476 Interlocking inspections and tests applicable to traffic control systems.....	1,000	2,000
<b>Subpart E—Automatic Train Stop, Train Control and Cab Signal Systems Standards</b>		
236.501 Forestalling device and speed control.....	1,000	2,000
236.502 Automatic brake application, initiation by restrictive block conditions stopping distance in advance...	1,000	2,000
236.503 Automatic brake application; initiation when predetermined rate of speed exceeded.....	1,000	2,000
236.504 Operations interconnected with automatic block-signal system.....	1,000	2,000
236.505 Proper operative relation between parts along roadway and parts on locomotive.....	1,000	2,000
236.506 Release of brakes after automatic application..	1,000	2,000

Section	Violation	Willful violation
236.507 Brake application; full service.....	1,000	2,000
236.508 Interference with application of brakes by means of brake valve.....	1,000	2,000
236.509 Two or more locomotives coupled.....	1,000	2,000
236.511 Cab signals controlled in accordance with block conditions stopping distance in advance.....	1,000	2,000
236.512 Cab signal indication when locomotive enters blocks.....	1,000	2,000
236.513 Audible indicator.....	1,000	2,000
236.514 Interconnection of cab signal system with roadway signal system.....	1,000	2,000
236.515 Visibility of cab signals.....	1,000	2,000
236.516 Power supply.....	1,000	2,000
<i>Rules and Instructions; Roadway—</i>		
236.526 Roadway element not functioning properly....	2,500	5,000
236.527 Roadway element insulation resistance.....	1,000	2,000
236.528 Restrictive condition resulting from open hand-operated switch; requirement.....	1,000	2,000
236.529 Roadway element inductor; height and distance from rail.....	1,000	2,000
236.531 Trip arm; height and distance from rail.....	1,000	2,000
236.532 Strap iron inductor; use restricted.....	1,000	2,000
236.534 Rate of pressure reduction; equalizing reservoir or brake pipe.....	1,000	2,000
236.551 Power supply voltage.....	1,000	2,000
236.552 Insulation resistance.....	1,000	2,000
236.553 Seal, where required.....	2,500	5,000
236.554 Rate of pressure reduction; equalizing reservoir or brake pipe.....	1,000	2,000
236.555 Repaired or rewound receiver coil.....	1,000	2,000
236.556 Adjustment of relay.....	1,000	2,000
236.557 Receiver; location with respect to rail.....	1,000	2,000

Section	Violation	Willful violation
236.560 Contact element, mechanical trip type; location with respect to rail.....	1,000	2,000
236.562 Minimum rail current required.....	1,000	2,000
236.563 Delay time.....	1,000	2,000
236.564 Acknowledging time ...	1,000	2,000
236.565 Provision made for preventing operation of pneumatic brake-applying apparatus by double-heading clock; requirement.....	1,000	2,000
236.566 Locomotive of each train operating in train stop, train control or cab signal territory; equipped.....	5,000	7,500
236.567 Restrictions imposed when device fails and/or is cut out en route:		
(a) Report not made to designated officer at next available point of communication after automatic train stop, train control, or cab signal device fails and/or is cut out en route.....	5,000	7,500
(b) Train permitted to proceed at speed exceeding 79 m.p.h. where automatic train stop, train control, or cab signal device fails and/or is cut out en route when absolute block established in advance of train on which device is inoperative.....	5,000	7,500
(c) other violations..	1,000	2,000
236.568 Difference between speeds authorized by roadway signal and cab signal; action.....	1,000	2,000
<i>Inspection and Tests; Roadway—</i>		
236.576 Roadway element.....	1,000	2,000
236.577 Test, acknowledgement, and cut-in circuits.....	1,000	2,000
<i>Inspection and Tests; Locomotive—</i>		
236.586 Daily or after trip test.....	2,500	5,000

APPENDIX A TO PART 236—CIVIL PENALTIES <sup>1</sup>—Continued

Section	Violation	Willful violation
236.587 Departure test:		
(a) Test of automatic train stop, train control, or cab signal apparatus on locomotive not made on departure of locomotive from initial terminal if equipment on locomotive not cut out between initial terminal and equipped territory .....	5,000	7,500
(b) Test of automatic train stop, train control, or cab signal apparatus on locomotive not made immediately on entering equipped territory, if equipment on locomotive cut out between initial terminal and equipped territory .....	5,000	7,500

APPENDIX A TO PART 236—CIVIL PENALTIES <sup>1</sup>—Continued

Section	Violation	Willful violation
(c) Automatic train stop, train control, or cab signal apparatus on locomotive making more than one trip within 24-hour period not given departure test within corresponding 24-hour period .....	5,000	7,500
(d) other violations..	2,500	5,000
236.588 Periodic test...	2,500	5,000
236.589 Relays.....	2,500	5,000
236.590 Pneumatic apparatus:		
(a) Automatic train stop, train control, or cab signal apparatus not inspected and cleaned at least once every 736 days.....	2,500	5,000
(b) other violations..	1,000	2,000

APPENDIX A TO PART 236—CIVIL PENALTIES <sup>1</sup>—Continued

Section	Violation	Willful violation
<b>Subpart F—Dragging Equipment and Slide Detectors and Other Similar Protective Devices; Standards</b>		
236.601 Signals controlled by devices; location .....	1,000	2,000

<sup>1</sup> A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to \$20,000 for any violation where circumstances warrant. See 49 CFR Part 209, Appendix A.

Issued in Washington, DC, on December 21, 1988.

John H. Riley,

Federal Railroad Administrator.

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