

(8) Hold conferences for settlement, simplification of the issues or any other proper purpose; and

(9) Take any other action authorized by or consistent with the provisions of this subpart pertaining to compliance orders and permitted by law which may expedite the hearing or aid in the disposition of an issue raised therein.

(c) The Chief Counsel has the burden of providing the facts alleged in the notice of investigation and may offer such relevant information as may be necessary fully to inform the presiding officer as to the matter concerned.

(d) The respondent may appear and be heard on his or her own behalf or through counsel of his or her choice. The respondent or his or her counsel may offer relevant information, including testimony which he or she believes should be considered in defense of the allegations or which may bear on the remedial action being sought, and conduct such cross-examination as may be required for a full disclosure of the material facts.

(e) At the conclusion of the hearing or as soon thereafter as the hearing officer shall provide, the parties may file proposed findings and conclusions, together with supporting reasons therefor.

§ 209.211 Presiding officer's decision.

(a) After consideration of evidence, the presiding officer may dismiss the notice of investigation or issue a compliance order. The decision of the presiding officer will include a statement of findings and conclusions as well as the reasons therefor on all material issues of fact, law, and discretion.

(b) A compliance order issued under this section is effective twenty (20) days from service on the respondent unless otherwise provided therein.

§ 209.213 Appeal.

(a) Any party aggrieved by a presiding officer's decision may file an appeal with the Administrator. The appeal must be filed within twenty (20) days after service of the presiding officer's decision.

(b) Prior to rendering a final determination on an appeal, the Administrator may remand the case for further proceedings before the hearing officer.

(c) The filing of an appeal does not stay the effectiveness of a compliance order unless the Administrator expressly so provides.

§ 209.215 Time limitation.

A proceeding for the issuance of a compliance order under the Federal Railroad Safety Act of 1970, as amended, shall be completed within twelve (12) months after issuance of the notice of investigation.

Subpart D—Disqualification Procedures

SOURCE: 54 FR 42907, Oct. 18, 1989, unless otherwise noted.

§ 209.301 Purpose and scope.

(a) This subpart prescribes the rules of practice for administrative proceedings relating to the determination of an individual's fitness for performing safety-sensitive functions under the Federal railroad safety laws at 49 U.S.C. 20111(c).

(b) The purpose of this subpart is to prevent accidents and casualties in railroad operations that result from the presence in the work force of railroad employees, including managers and supervisors, and agents of railroads who have demonstrated their unfitness to perform the safety-sensitive functions described in § 209.303 by violating any rule, regulation, order or standard prescribed by FRA. Employees and agents who evidence such unfitness may be disqualified, under specified terms and conditions, temporarily or permanently, from performing such safety-sensitive functions.

(c) This subpart does not preempt a railroad from initiating disciplinary proceedings and imposing disciplinary sanctions against its employees, including managers and supervisors, under its collective bargaining agreements or in the normal and customary manner. Disqualification determinations made under this subpart shall have no effect on prior or subsequent disciplinary actions taken against such employees by railroads.

[54 FR 42907, Oct. 18, 1989, as amended at 74 FR 23334, May 19, 2009]

§ 209.303

49 CFR Ch. II (10–1–11 Edition)

§ 209.303 Coverage.

This subpart applies to the following individuals:

(a) Railroad employees who are assigned to perform service subject to the Hours of Service Act (49 U.S.C. Chapt. 211) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service.

(b) Railroad employees or agents who:

(1) Inspect, install, repair, or maintain track and roadbed;

(2) Inspect, repair or maintain, locomotives, passenger cars, and freight cars;

(3) Conduct training and testing of employees when the training or testing is required by the FRA's safety regulations; or

(4) Perform service subject to the Transportation of Hazardous Materials laws (49 U.S.C. Ch. 51), or any regulation or order prescribed thereunder;

(c) Railroad managers, supervisors, or agents when they:

(1) Perform the safety-sensitive functions listed in paragraphs (a) and (b) of this section;

(2) Supervise and otherwise direct the performance of the safety-sensitive functions listed in paragraphs (a) and (b) of this section; or

(3) Are in a position to direct the commission of violations of any of the requirements of parts 213 through 241 of this title, or any of the requirements of 49 U.S.C. Ch. 51, or any regulation or order prescribed thereunder.

[74 FR 23334, May 19, 2009]

§ 209.305 Notice of proposed disqualification.

(a) FRA, through the Chief Counsel, begins a disqualification proceeding by serving a notice of proposed disqualification on the respondent charging him or her with having violated one or more rules, regulations, orders, or standards promulgated by FRA, which render the respondent unfit to perform safety-sensitive functions described in § 209.303.

(b) The notice of proposed disqualification issued under this section shall contain:

(1) A statement of the rule(s), regulation(s), order(s), or standard(s) that the respondent is alleged to have violated;

(2) A statement of the factual allegations that form the basis of the initial determination that the respondent is not fit to perform safety-sensitive functions;

(3) A statement of the effective date, duration, and other conditions, if any, of the disqualification order;

(4) A statement of the respondent's right to answer the charges in writing and furnish affidavits and any other documentary evidence in support of the answer;

(5) A statement of the respondent's right to make an informal response to the Chief Counsel;

(6) A statement of the respondent's right to request a hearing and the procedures for requesting a hearing;

(7) A statement of the respondent's right to counsel or other designated representative; and

(8) Notice of the consequences of the respondent's failure to take any of the actions described in § 209.307(a).

(c) The Chief Counsel shall enclose with the notice of proposed disqualification a copy of the material that is relied on in support of the charges. Nothing in this section precludes the Chief Counsel from presenting at a subsequent hearing under § 209.321 any evidence of the charges set forth in the notice that the Chief Counsel acquires after service thereof on the respondent. The Chief Counsel, however, shall serve a copy of any such evidence on the respondent at or before the prehearing conference required under § 209.319. Failure to furnish such evidence to respondent at or before the prehearing conference bars its introduction at the hearing.

(d) The Chief Counsel shall provide a copy of the notice of proposed disqualification to the railroad that employs the respondent.

§ 209.307 Reply.

(a) Within 30 days after receipt of the notice of proposed disqualification issued under § 209.305, the respondent shall reply in writing to the charges. The respondent may furnish affidavits and any other documentary evidence in

support of the reply. Further, the respondent may elect to—

(1) Stipulate to the charges and consent to the imposition of the disqualification order under the conditions set forth in the notice;

(2) Make an informal response as provided in § 209.309; or

(3) Request a hearing as provided in § 209.311.

(b) The Chief Counsel may extend the reply period for good cause shown, provided the request for extension is served before the expiration of the period provided in paragraph (a) of this section.

(c) Failure of the respondent to reply to the notice of proposed disqualification within the period provided in paragraph (a) of this section or an extension thereto provided under paragraph (b) of this section constitutes a waiver of the respondent's right to appear and contest the charges or the proposed disqualification. Respondent's failure to reply authorizes the Chief Counsel, without further notice to the respondent, to find the respondent unfit for the performance of the safety-sensitive functions described in § 209.303 and to order the respondent disqualified from performing them for the period and under the other conditions described in the notice of proposed disqualification. The Chief Counsel shall serve respondent with the disqualification order and provide a copy of the order to the railroad by which the respondent is employed.

§ 209.309 Informal response.

(a) If the respondent elects to make an informal response to a notice of proposed disqualification, he or she shall submit to the Chief Counsel such written explanations, information, or other materials as respondent may desire in answer to the charges or in mitigation of the proposed disqualification.

(b) The respondent may include in an informal written response a request for a conference. Upon receipt of such a request, the Chief Counsel shall arrange for a conference at a time and place designated by the Chief Counsel.

(c) Written explanations, information, or materials submitted by the respondent and relevant information presented during any conference held

under this section shall be considered by the Chief Counsel in reviewing the notice of proposed disqualification, including the question of the respondent's fitness and the conditions of any disqualification that may be imposed.

(d) After consideration of an informal response, including any relevant information presented at a conference, the Chief Counsel shall take one of the following actions:

(1) Dismiss all the charges and terminate the notice of proposed disqualification;

(2) Dismiss some of the charges and mitigate the proposed disqualification;

(3) Mitigate the proposed disqualification; or

(4) Sustain the charges and proposed disqualification.

(e) Should the Chief Counsel sustain, in whole or in part, the charges and proposed disqualification and reach settlement with the respondent, the Chief Counsel shall issue an appropriate disqualification order reflecting the settlement and shall provide a copy of that order to the railroad by which the respondent is employed. The duration of the disqualification period may be less than, but shall be no greater than, the period set forth in the notice. Any settlement reached shall be evidenced by a written agreement, which shall include declarations from the respondent stipulating to the charges contained in the disqualification order, consenting to the imposition of the disqualification under the conditions set forth in the disqualification order, and waiving his or her right to a hearing.

(f) If settlement of the charges against the respondent is not achieved, the Chief Counsel shall terminate settlement discussions no later than 30 days from service of the informal response upon the Chief Counsel by serving respondent written notice of termination of settlement negotiations.

(g) By electing to make an informal response to a notice of proposed disqualification, the respondent does not waive the right to a hearing. However, the respondent must submit the hearing request required by § 209.311(a)

§ 209.311

within 10 days after receipt of the notice of termination of settlement negotiations from the Chief Counsel. Failure to submit such a request constitutes a waiver of the respondent's right to appear and contest the charges or the proposed disqualification.

(h) The Chief Counsel may extend the period for requesting a hearing for good cause shown, provided the request for extension is served before the expiration of the period provided in paragraph (g) of this section.

§ 209.311 Request for hearing.

(a) If the respondent elects to request a hearing, he or she must submit a written request within the time periods specified in § 209.307(a) or § 209.309(g) to the Chief Counsel referring to the case number that appears on the notice of proposed disqualification. The request must contain the following:

(1) The name, address, and telephone number of the respondent and of the respondent's designated representative, if any;

(2) A specific response admitting, denying, or explaining each allegation of the notice of disqualification order.

(3) A description of the claims and defenses to be raised by the respondent at the hearing; and

(4) The signature of the respondent or the representative, if any.

(b) Upon receipt of a request for a hearing complying with the requirements of paragraph (a) of this section, the Chief Counsel shall arrange for the appointment of a presiding officer and transmit the disqualification file to the presiding officer, who shall schedule the hearing for the earliest practicable date within the time period set by § 209.321(a) of this subpart.

(c) Upon assignment of a presiding officer, further matters in the proceeding generally are conducted by and through the presiding officer, except that the Chief Counsel and respondent may settle or voluntarily dismiss the case without order of the presiding officer. The Chief Counsel shall promptly notify the presiding officer of any settlement or dismissal of the case.

§ 209.313 Discovery.

(a) Disqualification proceedings shall be conducted as expeditiously as pos-

49 CFR Ch. II (10–1–11 Edition)

sible with due regard to the rights of the parties. Discovery is designed to enable a party to obtain relevant information needed for preparation of the party's case. These regulations are intended to provide a simple, timely, and relatively economical system for discovery. They shall be interpreted and applied so as to avoid delay and facilitate adjudication of the case.

(b) Discovery may be obtained by requests for admission under § 209.6, requests for production of documentary or other tangible evidence under § 209.7, and depositions under § 209.8.

(c) A party may initiate the methods of discovery permitted under paragraph (b) of this section at any time after respondent requests a hearing under § 209.311.

(d) Discovery shall be completed within 90 days after receipt of respondent's request for a hearing under § 209.311. Upon motion for good cause shown, the presiding officer may extend this time period for an additional 30 days. The presiding officer may grant an additional 30 day extension only when the party requesting the extension shows by clear and convincing evidence that the party was unable to complete discovery within the prescribed time period through no fault or lack of due diligence of such party, and that denial of the request would result in irreparable prejudice.

(e) If a party fails to comply with a discovery order or an order to compel, the presiding officer may:

(1) Strike any appropriate part of the pleadings or other submissions of the party failing to comply with such order;

(2) Prohibit the party failing to comply with such order from introducing evidence relating to the information sought;

(3) Draw an inference in favor of the requesting party with regard to the information sought; and

(4) Permit the requesting party to introduce secondary evidence concerning the information sought.

§ 209.315 Subpoenas.

Once a notice of proposed disqualification has been issued in a particular matter, only the presiding officer may

issue, deny, quash, or modify subpoenas under this subpart in accordance with § 209.7.

§ 209.317 Official record.

The notice of proposed disqualification, respondent's reply, exhibits, and verbatim record of testimony, if a hearing is held, and all pleadings, stipulations, and admissions filed and rulings and orders entered in the course of the proceeding shall constitute the exclusive and official record.

§ 209.319 Prehearing conference.

(a) The parties shall confer with the presiding officer, either in person or by telephone, for a conference at least 10 days before the hearing to consider:

- (1) Formulation and simplification of the issues;
- (2) Stipulations, admissions of fact, and admissions of the contents and authenticity of documents;
- (3) Advance rulings from the presiding officer on the admissibility of evidence;
- (4) Identification of witnesses, including the scope of their testimony, and of hearing exhibits;
- (5) Possibility of settlement; and
- (6) Such other matters as the presiding officer deems necessary to expedite the disposition of the proceeding.

(b) The record shall show the matters disposed of by order and by agreement in such a prehearing conference. The subsequent course of the hearing shall be controlled by such action.

(c) The prehearing conference shall be held within 150 days after receipt of respondent's request for a hearing under § 209.311.

§ 209.321 Hearing.

(a) Upon receipt of a hearing request complying with § 209.311, an administrative hearing for review of a notice of proposed disqualification shall be conducted by a presiding officer, who can be any person authorized by the FRA Administrator, including an administrative law judge. The hearing shall begin within 180 days from receipt of respondent's hearing request. Notice of the time and place of the hearing shall be given to the parties at least 20 days before the hearing. Testimony by witnesses shall be given under oath and

the hearing shall be recorded verbatim. The hearing shall be open to the public, unless the presiding official determines that it would be in the best interests of the respondent, a witness, or other affected persons, to close all or any part of it. If the presiding official makes such a determination, an appropriate order, which sets forth the reasons therefor, shall be entered.

(b) The presiding officer may:

- (1) Administer oaths and affirmations;
- (2) Issue subpoenas as provided by § 209.7;
- (3) Adopt procedures for the submission of evidence in written form;
- (4) Take or cause depositions to be taken as provided in § 209.8;
- (5) Rule on offers of proof and receive relevant evidence;
- (6) Examine witnesses at the hearing;
- (7) Convene, recess, reconvene, adjourn, and otherwise regulate the course of the hearing;
- (8) Hold conferences for settlement, simplification of the issues, or any other proper purpose; and
- (9) Take any other action authorized by or consistent with the provisions of this subpart and permitted by law that may expedite the hearing or aid in the disposition of an issue raised therein.

(c) FRA has the burden of proof, by a preponderance of the evidence, as to the facts alleged in the notice of proposed disqualification, the reasonableness of the conditions of the qualification proposed, and, except as provided in § 209.329(a), the respondent's lack of fitness to perform safety-sensitive functions. The Chief Counsel may offer relevant evidence, including testimony, in support of the allegations contained in the notice of proposed disqualification and conduct such cross-examination as may be required for a full disclosure of the material facts.

(d) The respondent may appear and be heard on respondent's own behalf or through respondent's designated representative. The respondent may offer relevant evidence, including testimony, in defense of the allegations or in mitigation of the proposed disqualification and conduct such cross-examination as may be required for a full disclosure of the material facts. Respondent has the burden of proof, by a

§ 209.323

preponderance of the evidence, as to any affirmative defense, including that respondent's actions were in obedience to the direct order of a railroad supervisor or higher level official.

(e) The record shall be closed at the conclusion of the hearing, unless the parties request the opportunity to submit proposed findings and conclusions. When the presiding officer allows the parties to submit proposed findings and conclusions, documents previously identified for introduction into evidence, briefs, or other posthearing submissions the record shall be left open for such time as the presiding officer grants for that purpose.

[54 FR 42907, Oct. 18, 1989, as amended at 60 FR 53136, Oct. 12, 1995]

§ 209.323 Initial decision.

(a) The presiding officer shall prepare an initial decision after the closing of the record. The initial decision may dismiss the notice of proposed disqualification, in whole or in part, sustain the charges and proposed disqualification, or sustain the charges and mitigate the proposed disqualification.

(b) If the presiding officer sustains the charges and the proposed disqualification, dismisses some of the charges, or mitigates the proposed disqualification, the presiding officer shall issue and serve an appropriate order disqualifying respondent from engaging in the safety-sensitive functions described in § 209.303. If the presiding officer dismisses all of the charges set forth in notice of proposed disqualification, a dismissal order shall be issued and served.

(c) Each initial decision shall contain:

(1) Findings of fact and conclusions of law, as well as the reasons or bases therefor, upon all the material issues of fact and law presented on the record;

(2) An order, as described in paragraph (b) of this section;

(3) The dates any disqualification is to begin and end and other conditions, if any, that the respondent must satisfy before the disqualification order is discharged;

(4) The date upon which the decision will become final, as prescribed in § 209.325; and

49 CFR Ch. II (10-1-11 Edition)

(5) Notice of the parties' appeal rights, as prescribed in § 209.327.

(d) The decision shall be served upon the FRA Chief Counsel and the respondent. The Chief Counsel shall provide a copy of the disqualification order to the railroad by which the respondent is employed.

§ 209.325 Finality of decision.

(a) The initial decision of the presiding officer shall become final 35 days after issuance. Such decisions are not precedent.

(b) *Exception.* The initial decision shall not become final if, within 35 days after issuance of the decision, any party files an appeal under § 209.327. The timely filing of such an appeal shall stay the order in the initial decision.

§ 209.327 Appeal.

(a) Any party aggrieved by an initial decision issued under § 209.323 may file an appeal. The appeal must be filed within 35 days of issuance of the initial decision with the Federal Railroad Administrator, 1200 New Jersey Avenue, SE., Washington, DC 20590. A copy of the appeal shall be served on each party. The appeal shall set forth objections to the initial decision, supported by reference to applicable laws and regulations, and with specific reference to the record. If the Administrator has played any role in investigating, prosecuting, or deciding to prosecute the particular case, the Administrator shall recuse him or herself and delegate his or her authority under this section to a person not so involved.

(b) A party may file a reply to an appeal within 25 days of service of the appeal. If the party relies on evidence contained in the record for the reply, the party shall specifically refer to the pertinent evidence in the record.

(c) The Administrator may extend the period for filing an appeal or a response for good cause shown, provided the written request for extension is served before the expiration of the applicable period provided in paragraph (a) or (b) of this section.

(d) The Administrator has sole discretion to permit oral argument on the appeal. On the Administrator's own initiative or upon written motion by

any party, the Administrator may determine that oral argument will contribute substantially to the development of the issues on appeal and may grant the parties an opportunity for oral argument.

(e) The Administrator may affirm, reverse, alter, or modify the decision of the presiding officer, or may remand the case for further proceedings before the presiding officer. The Administrator shall inform the parties and the presiding officer of his or her decision.

(f) The decision of the Administrator is final, constitutes final agency action, and is not subject to further administrative review.

[54 FR 42907, Oct. 18, 1989, as amended at 74 FR 25171, May 27, 2009; 74 FR 23334, May 19, 2009]

§ 209.329 Assessment considerations.

(a) Proof of a respondent's willful violation of one of the requirements of parts 213 through 241 (excluding parts 225, 228, and 233) of this title, or of one of the requirements of 49 U.S.C. Chapt. 51, or any regulation or order prescribed thereunder, establishes a rebuttable presumption that the respondent is unfit to perform the safety-sensitive functions described in §209.303. Where such presumption arises, the respondent has the burden of establishing that, taking account of the factors in paragraph (b) of this section, he or she is fit to perform the foregoing safety-sensitive functions for the period and under the other conditions, if any, proposed in the notice of proposed disqualification.

(b) In determining respondent's lack of fitness to perform safety-sensitive functions and the duration and other conditions, if any, of appropriate disqualification orders under §§209.309, 209.323, and 209.327, the factors to be considered, to the extent each is pertinent to the respondent's case, include but are not limited to the following:

(1) The nature and circumstances of the violation, including whether the violation was intentional, technical, or inadvertent, was committed willfully, or was frequently repeated;

(2) The adverse impact or the potentially adverse impact of the violation on the health and safety of persons and the safety of property;

(3) The employing railroad's operating rules, safety rules, and repair and maintenance standards;

(4) Repair and maintenance standards adopted by the railroad industry;

(5) The consistency of the conditions of the proposed disqualification with disqualification orders issued against other employees of the employing railroad for the same or similar violations;

(6) Whether the respondent was on notice of any safety regulations that were violated or whether the respondent had been warned about the conduct in question;

(7) The respondent's past record of committing violations of safety regulations, including previous FRA warnings issued, disqualifications imposed, civil penalties assessed, railroad disciplinary actions, and criminal convictions therefor;

(8) The civil penalty scheduled for the violation of the safety regulation in question;

(9) Mitigating circumstances surrounding the violation, such as the existence of an emergency situation endangering persons or property and the need for the respondent to take immediate action; and

(10) Such other factors as may be warranted in the public interest.

[74 FR 23334, May 19, 2009]

§ 209.331 Enforcement of disqualification order.

(a) A railroad that employs or formerly employed an individual serving under a disqualification order shall inform prospective or actual employers of the terms and conditions of the order upon receiving notice that the disqualified employee is being considered for employment with or is employed by another railroad to perform any of the safety-sensitive functions described in §209.303.

(b) A railroad that is considering hiring an individual to perform the safety-sensitive functions described in §209.303 shall ascertain from the individual's previous employer, if such employer was a railroad, whether the individual is subject to a disqualification order.

(c) An individual subject to a disqualification order shall inform his or her employer of the order and provide a copy thereof within 5 days after receipt

§ 209.333

of the order. Such an individual shall likewise inform any prospective employer who is considering hiring the individual to perform any of the safety-sensitive functions described in § 209.303 of the order and provide a copy thereof within 5 days after receipt of the order or upon application for the position, whichever first occurs.

§ 209.333 Prohibitions.

(a) An individual subject to a disqualification order shall not work for any railroad in any manner inconsistent with the order.

(b) A railroad shall not employ any individual subject to a disqualification order in any manner inconsistent with the order.

§ 209.335 Penalties.

(a) Any individual who violates § 209.331(c) or § 209.333(a) may be permanently disqualified from performing the safety-sensitive functions described in § 209.303. Any individual who willfully violates § 209.331(c) or § 209.333(a) may also be assessed a civil penalty of at least \$1,000 and not more than \$5,000 per violation.

(b) Any railroad that violates § 209.331 (a) or (b) or § 209.333(b) may be assessed a civil penalty of at least \$5,000 and not more than \$11,000 per violation.

(c) Each day a violation continues shall constitute a separate offense.

[54 FR 42907, Oct. 18, 1989, as amended at 63 FR 11619, Mar. 10, 1998]

§ 209.337 Information collection.

The information collection requirements in § 209.331 of this part have been reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, (44 U.S.C. 3501 et seq.) and have been assigned OMB control number 2130-0529.

[56 FR 66791, Dec. 26, 1991]

Subpart E—Reporting of Remedial Actions

SOURCE: 59 FR 43676, Aug. 24, 1994, unless otherwise noted.

§ 209.401 Purpose and scope.

(a) The purpose of this subpart is to prevent accidents and casualties arising

49 CFR Ch. II (10-1-11 Edition)

from the operation of a railroad that result from a railroad's failure to remedy certain violations of the Federal railroad safety laws for which assessment of a civil penalty has been recommended.

(b) To achieve this purpose, this subpart requires that if an FRA Safety Inspector notifies a railroad both that assessment of a civil penalty will be recommended for its failure to comply with a provision of the Federal railroad safety laws and that a remedial actions report must be submitted, the railroad shall report to the FRA Safety Inspector, within 30 days after the end of the calendar month in which such notification is received, actions taken to remedy that failure.

(c) This subpart does not relieve the railroad of the underlying responsibility to comply with a provision of the Federal railroad safety laws. The 30-day period after the end of the calendar month in which notification is received is intended merely to provide the railroad with an opportunity to prepare its report to FRA, and does not excuse continued noncompliance.

(d) This subpart requires the submission of remedial actions reports for the general categories of physical defects, recordkeeping and reporting violations, and filing violations, where the railroad can literally and specifically correct a failure to comply with a provision of the Federal railroad safety laws, as reasonably determined by the FRA Safety Inspector. No railroad is required to submit a report for a failure involving either a completed or past transaction or a transaction that it can no longer remedy.

§ 209.403 Applicability.

This subpart applies to any railroad that receives written notification from an FRA Safety Inspector both (i) that assessment of a civil penalty will be recommended for its failure to comply with a provision of the Federal railroad safety laws and (ii) that it must submit a remedial actions report.

§ 209.405 Reporting of remedial actions.

(a) Except as provided in § 209.407, each railroad that has received written notification on Form FRA F 6180.96