

presiding officer’s decision, supported by reference to applicable laws and regulations and with specific reference to the record. If no appeal is timely filed, the presiding officer’s decision constitutes final agency action.

(b) A party may file a reply to the appeal within 25 days of service of the appeal. The reply shall be supported by reference to applicable laws and regulations and with specific reference to the record, if the party relies on evidence contained in the record.

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

(d) The Administrator has sole discretion to permit oral argument on the appeal. On the Administrator’s own initiative or written motion by any party, the Administrator may grant the parties an opportunity for oral argument.

(e) The Administrator may remand, vacate, affirm, reverse, alter or modify the decision of the presiding officer and the Administrator’s decision constitutes final agency action except where the terms of the Administrator’s

decision (for example, remanding a case to the presiding officer) show that the parties’ administrative remedies have not been exhausted.

(f) An appeal from an Operating Crew Review Board decision pursuant to §242.503(d) must be filed within 35 days of issuance of the decision with the Federal Railroad Administrator, 1200 New Jersey Avenue SE., Washington, DC 20590 and with the Docket Clerk, U.S. Department of Transportation, Docket Operations (M–30), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. A copy of the appeal shall be served on each party. The Administrator may affirm or vacate the Board’s decision, and may remand the petition to the Board for further proceedings. An Administrator’s decision to affirm the Board’s decision constitutes final agency action.

APPENDIX A TO PART 242—SCHEDULE OF CIVIL PENALTIES

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 \$100,000 for any violation where circumstances warrant. See 49 CFR part 209, Appendix A.

APPENDIX A TO PART 242—SCHEDULE OF CIVIL PENALTIES ¹

Section	Violation	Willful violation
Subpart B—Program and Eligibility Requirements:		
242.101—Program failures:		
(a) Failure to have program	\$10,000	\$20,000
(a)(1)–(6) Program that fails to address a subject	2,500	5,000
242.103—Program approval:		
(a)–(b) Failure to follow Appendix B	1,000	2,000
(c) Failure to comply with filing requirements	1,000	2,000
(h) to resubmit, when directed by FRA	1,000	2,000
242.105—Schedule for implementation:		
(a)–(b) Failure to designate conductors	2,000	4,000
(c) Allowing uncertified person to serve as conductor	7,500	15,000
(d)–(e) Certifying without complying with subpart B or failure to issue a certificate	2,500	5,000
(f) Serving as a conductor without complying with subpart B or being issued a certificate	7,500	15,000
242.107—Types of service:		
(a) Failure to designate types of service	2,000	4,000
(c) Reclassifying a certificate	2,500	5,000
242.109—Certification and recertification determinations:		
(a) Failure to determine in writing the requirements of (a)(1), (a)(2), (a)(3), and/or (a)(4)	2,500	5,000
(b) Considering excluded data	2,000	4,000
(c) Failure to have required documents on file	1,000	2,000
(d), (e) Failure to provide timely review opportunity	2,000	4,000
242.111—Motor vehicle operator records:		
(a) Failure to implement program meeting requirements	6,000
(b) Failure to determine eligibility requirements met	5,000	7,500
(c) Failure to initially certify	2,000	4,000
(d) Failure to recertify	2,000	4,000
(e) Allowing person to serve as conductor before information is evaluated	7,500	15,000
(f) Failure to certify or certify during pendency of waiver request	2,000	4,000

APPENDIX A TO PART 242—SCHEDULE OF CIVIL PENALTIES¹—Continued

Section	Violation	Willful violation
(g) Failure to take action to make information available	1,000	2,000
(h), (i), (j) Failure to request record	1,000	2,000
(k) Failure to notify of absence of license	1,000	2,000
(l) Failure to report in timely manner or railroad taking certification action for not reporting earlier than 48 hours	1,000	2,000
(m), (n) Considering excluded data	2,000	4,000
(o) Failure to:		
(1) Consider data	6,000	10,000
(3), (4) Properly act in response to data	2,500	5,000
242.113—Prior safety conduct:		
(a) Failure to implement program meeting requirements	6,000
(b) Failure to determine eligibility requirements met	5,000	7,500
(c) Failure to request record or take required action	2,000	2,000
242.115—Substance abuse/rules:		
(a) Failure to implement program meeting requirements	6,000
(b) Failure to determine eligibility requirements met	5,000	7,500
(c) Failure to have basis for taking action	2,500	5,000
(d)–(g) Failure to comply with requirements	2,500	5,000
242.117—Vision and hearing acuity:		
(a) Failure to implement program meeting requirements	6,000
(b) Failure to determine eligibility requirements met	5,000	7,500
(c) Failure to have basis for finding proper acuity	1,000	2,000
(d) Acuity examination performed by unauthorized person	1,000	2,000
(e) Failure to note need for device to achieve acuity	1,000	2,000
(f) Failure to use device needed for proper acuity	1,000	2,000
(h)–(j) Failure to comply with requirements	2,500	5,000
(k) Failure of conductor to notify	2,500	5,000
242.119—Training:		
(a) Failure to implement program meeting requirements	6,000
(b) Failure to determine eligibility requirements met	5,000	7,500
(c) Failure to determine in writing the requirements of (c)(1), (c)(2), and/or (c)(3)	2,500	5,000
(d) Failure to:		
(1) Make determination, include proper curriculum, and/or document knowledge and ability	2,500	5,000
(2) Failure to include component	1,000	2,000
(3) Failure to make information available	1,000	2,000
(4) Failure to maintain steps or tasks in one manual or make available	1,000	2,000
(5) Failure to review and modify training plan	1,000	2,000
(e) Failure to require person to meet requirements	2,500	5,000
(f) Failure to provide opportunity to consult	1,000	2,000
(g)–(k) Failure to have adequate procedures or include procedures in program	2,500	5,000
(l) Failure to have adequate procedures for or provide continuing education	2,500	5,000
242.121—Knowledge testing:		
(a) Failure to implement program meeting requirements	6,000
(b) Failure to determine eligibility requirements met	5,000	7,500
(c) Failure to have adequate procedures for testing knowledge	2,500	5,000
(d) Failure to properly document testing	2,500	5,000
(e) Failure to provide opportunity to consult	2,500	5,000
(f) Failure to document whether test was passed or failed	2,500	5,000
(g) Allowing person to serve as a conductor despite test failure	2,500	5,000
242.123—Monitoring operational performance:		
(a)–(b) Failure to implement program meeting requirements	6,000
(c) Failure to test each conductor annually	2,500	5,000
(d) Failure to test properly	2,500	5,000
(e) Failure to indicate the action to be take	2,500	5,000
(f) Failure to test within time limits	2,500	5,000
242.125—Reliance on determination of another:		
(a) Failure to address in program or require newly hired conductor to take entire training program	5,000	7,500
(b) Failure to make any required determinations	2,500	5,000
242.127—Relying on requirements of a country:		
(a)–(b) Failure to determine person employed and meets Canadian standards	2,500	5,000
Subpart C—Administration of the Certification Program:		
242.201—Time limitations:		
(a), (c), and (d) Exceeding time limit	2,000	4,000
242.203—Supporting information:		
(a), (c)–(e) Failure to have a record	2,500	5,000
(b) Failure to have a complete record	2,000	4,000
(f) Falsification of a record	(–)	10,000
(g) Failure to comply with requirements if records maintained electronically	2,000	4,000
242.205—Identification of persons:		
(a)–(b) Failure to have a record	2,500	5,000

APPENDIX A TO PART 242—SCHEDULE OF CIVIL PENALTIES¹—Continued

Section	Violation	Willful violation
(c) Failure to update or make a record available	2,000	4,000
(d) Falsification of a record	(—)	10,000
(e) Failure to comply with requirements if records maintained electronically	2,000	4,000
242.207—Certificate components:		
(a) Improper certificate	1,000	2,000
(b) Failure to designate those with signing authority	1,000	2,000
(d) Falsification of a certificate	(—)	10,000
242.209—Maintenance of the certificate:		
(a) Failure of conductor to carry certificate or display certificate when requested	1,000	2,000
(b) Failure of conductor to notify railroad of limitations or railroad requiring conductor to exceed limitations	4,000	8,000
242.211—Replacement of certificates:		
(a) Failure to have a reasonably accessible system for certificate replacement	2,000	4,000
(b) Failure to comply with requirements for temporary replacement certificates	1,000	2,000
242.213—Multiple certifications:		
(d) Allowing an engineer to operate without a conductor where the engineer is not certified as a conductor or not accompanied by a certified conductor	7,500	15,000
(e) Failure to comply with emergency restrictions	2,500	5,000
(f) Failure of conductor to notify railroad of denial or revocation	4,000	8,000
(g) Performing conductor service with a revoked conductor certificate	7,500	15,000
(h), (k) Performing work as an engineer or obtaining an engineer certificate with a conductor certification revoked for a violation of 242.403(e)(1)–(e)(5) or (e)(12)	7,500	15,000
(i), (j) Performing work as a conductor or obtaining a conductor certificate with an engineer certification revoked under 240.307	7,500	15,000
(l) Denying or revoking engineer certification or recertification based solely on the denial of conductor certification	4,000	8,000
(m) Denying or revoking conductor certification or recertification based solely on the denial of engineer certification	4,000	8,000
242.215—Oversight responsibility:		
(a) Failure to perform annual review and analysis or perform on time	2,000	4,000
(b)–(j) Incomplete or inaccurate report	2,500	5,000
Subpart D—Territorial Qualification and Joint Operations		
242.301—Territorial qualification:		
(a) Allowing uncertified person or person not territorially qualified to serve as a conductor	7,500	15,000
(b) Failure to notify railroad of lack of qualifications	4,000	8,000
(c) Failure to provide required assistance	4,000	8,000
(d) Failure to provide assistance or up-to-date job aid	4,000	8,000
Subpart E—Denial and Revocation of Certification		
242.401—Denial of certification:		
(a) Failure to notify or provide opportunity for comment	2,000	4,000
(c) Failure to notify, provide data, or untimely notification	2,000	4,000
242.403—Revocation criteria:		
(a) Failure to implement program meeting requirements	6,000
(b) Unlawful failure to comply with rules and practices	2,500	5,000
(c) Failure to revoke certification	2,500	5,000
(d) Considering excluded data	2,500	5,000
(e) Considering unlisted violations of operating rules and practices	2,500	5,000
(f) Improperly counting or considering violations	2,500	5,000
242.405—Periods of ineligibility:		
(a)–(c) Imposition of incorrect period of ineligibility	2,500	5,000
242.407—Revocation of certification:		
(a) Failure to revoke certification	7,500	15,000
(b) Failure to suspend, notify, provide hearing opportunity, or improper procedures	2,500	5,000
(c)–(h) Failure of railroad to comply with hearing or waiver procedures	2,500	5,000
(i) Failure of railroad to make record	1,000	2,000
(k) Failure of railroad to conduct reasonable inquiry or make good faith determination	5,000	10,000

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where circumstances warrant. See 49 CFR part 209, appendix A.

[76 FR 69841, Nov. 9, 2011, as amended at 77 FR 24423, Apr. 24, 2012]

APPENDIX B TO PART 242—PROCEDURES FOR SUBMISSION AND APPROVAL OF CONDUCTOR CERTIFICATION PROGRAMS

This appendix establishes procedures for the submission and approval of a railroad's program concerning the training, testing, and evaluating of persons seeking certification or recertification as a conductor in accordance with the requirements of this part. It also contains guidance on how FRA will exercise its review and approval responsibilities.

SUBMISSION BY A RAILROAD

As provided for in §242.101, each railroad must have a program for determining the certification of each person it permits or requires to perform as a conductor or as a passenger conductor. Each railroad must submit its individual program to FRA for approval as provided for in §242.103. Each program must be accompanied by a request for approval organized in accordance with this appendix. Requests for approval must contain appropriate references to the relevant portion of the program being discussed. Requests should be submitted in writing on standard sized paper (8½ x 11) and can be in letter or narrative format. The railroad's submission shall be sent to the Associate Administrator for Railroad Safety/Chief Safety Officer, FRA. The mailing address for FRA is 1200 New Jersey Avenue SE., Washington, DC 20590. Simultaneous with its filing with the FRA, each railroad must serve a copy of its submission on the president of each labor organization that represents the railroad's employees subject to this part.

Each railroad is authorized to file by electronic means any program submissions required under this part. Prior to any person submitting a railroad's first program submission electronically, the person shall provide the Associate Administrator with the following information in writing:

- (1) The name of the railroad;
- (2) The names of two individuals, including job titles, who will be the railroad's points of contact and will be the only individuals allowed access to FRA's secure document submission site;
- (3) The mailing addresses for the railroad's points of contact;

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(4) The railroad's system or main headquarters address located in the United States;

(5) The email addresses for the railroad's points of contact; and

(6) The daytime telephone numbers for the railroad's points of contact.

A request for electronic submission or FRA review of written materials shall be addressed to the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Upon receipt of a request for electronic submission that contains the information listed above, FRA will then contact the requester with instructions for electronically submitting its program.

A railroad that electronically submits an initial program or new portions or revisions to an approved program required by this part shall be considered to have provided its consent to receive approval or disapproval notices from FRA by email. FRA may electronically store any materials required by this part regardless of whether the railroad that submits the materials does so by delivering the written materials to the Associate Administrator and opts not to submit the materials electronically. A railroad that opts not to submit the materials required by this part electronically, but provides one or more email addresses in its submission, shall be considered to have provided its consent to receive approval or disapproval notices from FRA by email or mail.

ORGANIZATION OF THE SUBMISSION

Each request should be organized to present the required information in the following standardized manner. Each section must begin by giving the name, title, telephone number, and mailing address of the person to be contacted concerning the matters addressed by that section. If a person is identified in a prior section, it is sufficient to merely repeat the person's name in a subsequent section.

SECTION 1 OF THE SUBMISSION: GENERAL INFORMATION AND ELECTIONS

The first section of the request must contain the name of the railroad, the person to be contacted concerning the request (including the person's name, title, telephone number, and mailing address) and a statement electing either to accept responsibility for educating previously untrained persons to be certified conductors or recertify only conductors previously certified by other railroads. See §242.103(b).

If a railroad elects not to provide initial conductor training, the railroad is obligated to state so in its submission. A railroad that makes this election will be limited to recertifying persons initially certified by another