

interpretation of a standard. Some of the FRA Regional Administrators have established programs in which small entities in the region meet with FRA regional specialists on a regular basis to discuss new regulations, persistent safety concerns, developing technology, and on going compliance issues. FRA regional offices hold yearly conferences in which specific blocks of time are set aside to meet with small businesses and hear their concerns. In addition, FRA has instituted innovative programs that expand our existing communication policy for small entities. The Railroad Safety Advisory Committee (RSAC) plays an integral role in the development of railroad safety regulations, and includes representatives of small businesses.

Similarly, FRA's enforcement program devotes special attention to ensuring that the limited financial resources of small entities are considered during the enforcement process. FRA inspectors have and utilize discretion when determining whether a civil penalty citation or other enforcement action should be taken against a small entity. Staff attorneys in FRA's Office of Chief Counsel regularly assess information provided by a company concerning the degree to which fines will impact the viability of a small business, and the extent to which a fine may prevent the business from improving the safety of its operation. In fact, the federal railroad safety laws include the requirement that agency personnel consider a respondent's ability to pay in any civil penalty action taken. 49 U.S.C. 21301–21303. Staff attorneys regularly invite small entities to present information concerning financial status and other factors that may result in a reduction or waiver of penalty assessments. This policy statement will be codified in the Code of Federal Regulations as an appendix to 49 CFR part 209, so that all members of the public have access to it as needed. The terms "small business" and "small entity" have identical meaning for purposes of this document, and are used interchangeably throughout.

The Final Policy Statement issued today is substantially the same as the Interim Policy Statement. However, FRA edited language that has become outdated since the initial statement was published, and further clarified FRA's position in some instances, none of which alter the substance of the policy statements themselves. FRA also added language that makes clear that the Final Policy Statement's definition of "small entity" is applicable to RFA, and to the "excessive demand" provisions in the

EAJA, but not other provisions of that law.

List of Subjects in 49 CFR Part 209

Administrative practice and procedure, Penalties, Railroad Safety, Reporting and recordkeeping requirements.

The Policy Statement

■ In consideration of the foregoing, chapter II, subtitle B of title 49, Code of Federal Regulations is amended as follows:

PART 209—[AMENDED]

■ 1. The authority citation for part 209 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20114, and 49 CFR 1.49.

■ 2. A new Appendix C is added to 49 CFR part 209 to read as follows:

Appendix C to Part 209—FRA's Policy Statement Concerning Small Entities

This policy statement required by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA) explains FRA's communication and enforcement policies concerning small entities subject to the federal railroad safety laws. These policies have been developed to take into account the unique concerns and operations of small businesses in the administration of the national railroad safety program, and will continue to evolve to meet the needs of the railroad industry. For purposes of this policy statement, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and the "excessive demand" provisions of the Equal Justice Act (5 U.S.C. 504 (a)(4), and 28 U.S.C. 2412 (d)(1)(D)), Class III railroads, contractors and hazardous materials shippers meeting the economic criteria established for Class III railroads in 49 CFR 1201.1–1, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less constitute the class of organizations considered "small entities" or "small businesses."

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

Small Entity Communication Policy

It is FRA's policy that all agency personnel respond in a timely and comprehensive fashion to the inquiries of small entities concerning rail safety statutes, safety regulations, and interpretations of these statutes and regulations. Also, FRA personnel provide guidance to small entities, as needed,

in applying the law to specific facts and situations that arise in the course of railroad operations. These agency communications take many forms, and are tailored to meet the needs of the requesting party.

FRA inspectors provide training on the requirements of all railroad safety statutes and regulations for new and existing small businesses upon request. Also, FRA inspectors often provide impromptu training sessions in the normal course of their inspection duties. FRA believes that this sort of preventive, rather than punitive, communication greatly enhances railroad safety. FRA's Office of Safety and Office of Chief Counsel regularly provide oral and written responses to questions raised by small entities concerning the plain meaning of the railroad safety standards, statutory requirements, and interpretations of the law. As required by the SBREFA, when FRA issues a final rule that has a significant impact on a substantial number of small entities, FRA will also issue a compliance guide for small entities concerning that rule.

It is FRA's policy to maintain frequent and open communications with the national representatives of the primary small entity associations and to consult with these organizations before embarking on new policies that may impact the interests of small businesses. In some regions of the country where the concentration of small entities is particularly high, FRA Regional Administrators have established programs in which all small entities in the region meet with FRA regional specialists on a regular basis to discuss new regulations, persistent safety concerns, emerging technology, and compliance issues. Also, FRA regional offices hold periodic conferences, in which specific blocks of time are set aside to meet with small businesses and hear their concerns.

In addition to these communication practices, FRA has instituted an innovative partnership program that expands the extent to which small entities participate in the development of policy and process. The Railroad Safety Advisory Committee (RSAC) has been established to advise the agency on the development and revision of railroad safety standards. The committee consists of a wide range of industry representatives, including organizations that represent the interests of small business. The small entity representative groups that sit on the RSAC may appoint members of their choice to participate in the development of new safety standards. This reflects FRA's policy that small business interests must be heard and considered in the development of new standards to ensure that FRA does not impose unnecessary economic burdens on small businesses, and to create more effective standards. Finally, FRA's Web site (<http://www.fra.dot.gov>) makes pertinent agency information available instantly to the public.

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