



# Memorandum

U.S. Department  
of Transportation

Federal Railroad  
Administration

Date: **MAR 11 2009**

Reply to Attn of: OP-09-03

Subject: Recommendations for Civil Penalties: Failure to Report Highway-Rail Grade Crossing  
Accidents/Incidents

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To: Regional Administrators, Deputy Regional Administrators, Operating Practices Supervisory  
Specialists

In mid-2004, the Federal Railroad Administration's (FRA) Acting Associate Administrator for Safety issued a verbal instruction that each clear-cut violation of an accident/incident reporting obligation should, absent special circumstances, be the subject of proposed civil penalties in cases of failure to report highway-rail grade crossing accidents/incidents.

Those verbal instructions noted that the use of civil penalty authority is subject to the general guidance contained in Title 49 Code of Federal Regulations (CFR) Part 209, Appendix A, which specifies criteria to be applied in making these determinations, and Appendix C, which addresses small entities as required by the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act (SBREFA). So, for example, if an FRA inspector encounters a single mistaken failure of a small railroad to report a grade crossing collision (e.g., out of confusion with the monetary threshold required for a rail equipment accident/incident), and if the railroad immediately files a report as required, FRA might refrain from the use of a civil penalty out of deference to the congressional policy related to small entities and in recognition of the fact that these circumstances are unlikely to be repeated.

Accident/incident reporting is so fundamental to the system of railroad safety oversight and program development that strong emphasis on enforcement is warranted when noncompliance is detected. Accordingly, FRA will amend the General Manual and the Operating Practices Compliance Manual to make obligatory the submission of violation reports for each detected violation of 49 CFR Part 225 when the violation in question is a clear-cut failure to report a highway-rail grade crossing accident/incident (i.e., not involving any question with regard to interpretation of the regulation or sufficiency of the facts constituting the alleged failure), subject to the application of SBREFA-mandated consideration where relevant.

FRA has the right to cite a railroad for each day a violation continues. This can represent a potentially high liability for each highway-rail grade crossing accident/incident not timely reported. FRA will utilize this mechanism (citing for multiple days) to assess more substantial penalties where railroad conduct is persistent and without substantial justification.

*This bulletin was drafted in consultation with FRA's Office of Chief Counsel. Anyone desiring a formal legal interpretation on any issues discussed in this bulletin should contact that office.*

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