allows for the use of the American Society for Testing and Materials (ASTM) standard known as Standard E1527–00 and entitled ''Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process'' as the interim standard for conducting all appropriate inquiry for properties purchased on or after May 31, 1997, or in the alternative, the use of Standard E1527–97, and entitled ''Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process.''

Today's action does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective June 9, 2003.

List of Subjects in 40 CFR Part 312

Environmental protection, Administrative practice and procedure, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 2, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the code of Federal Regulations is amended as follows:

■ 1. Subchapter J is amended by adding new part 312 to read as follows:

PART 312—INNOCENT LANDOWNERS, STANDARDS FOR CONDUCTING ALL APPROPRIATE INQUIRY

Subpart A—Introduction

Sec.
312.1 Purpose and applicability.
312.2 Standards and practices for all appropriate inquiry.

Subpart B—[Reserved]

Authority: Section 101(35)(B) of CERCLA, as amended, 42 U.S.C. 9601(35)(B).

Subpart A—Introduction

§ 312.1 Purpose and applicability.

(a) *Purpose.* The purpose of this section is to provide standards and procedures for ''all appropriate inquiry'' for the purposes of CERCLA Section 103(35)(B).

(b) *Applicability.* This section is applicable to: potential innocent landowners conducting all appropriate inquiry under Section 101(35)(B) of CERCLA; *bona fide* prospective purchasers defined under Section 101(40) of CERCLA; contiguous property owners under Section 107(q) of CERCLA; and persons conducting site characterization and assessments with the use of a grant awarded under CERCLA Section 104(k)(2)(B).

§ 312.2 Standards and practices for all appropriate inquiry.

With respect to property purchases on or after May 31, 1997, the procedures of the American Society for Testing and Materials (ASTM) 1527–97 and the procedures of the American Society for Testing and Materials (ASTM) 1527–00, both entitled ''Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process,'' shall satisfy the requirements for conducting ''all appropriate inquiry'' under Section 101(35)(B)(i)(I) of CERCLA, as amended by the Small Business Liability Relief and Brownfields Revitalization Act.

[FR Doc. 03–11473 Filed 5–8–03; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 209

[Docket No. FRA 1999–6086]

RIN 2130–AB15

Final Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule; final statement of agency policy.

SUMMARY: On August 11, 1997, in compliance with the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), FRA issued an Interim Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws. This document discusses comments received in response to the Interim Policy Statement and adopts the Interim Policy Statement as the Final Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws, with minor edits required to update the language. The Final Policy Statement contains FRA's communication and enforcement policy statements concerning small entities subject to the railroad safety laws. FRA has in place programs that devote special attention to the unique concerns and operations of small entities in the administration of the national railroad safety compliance and enforcement program.

DATES: This policy statement is effective May 9, 2003.

FOR FURTHER INFORMATION CONTACT: (1) *Principal Program Person:* Jeffrey Horn, Office of Safety Planning and Evaluation, Federal Railroad Administration, 1120 Vermont Ave. NW., Mail Stop 25, Washington, DC 20590 (tel: (202) 493–6283) (2) *Principal Attorney:* Melissa Porter, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 10, Washington, DC 20590 (tel: (202) 493–6034) (3) *Enforcement Issues:* Douglas Taylor, Operating Practices Division, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590 (tel: (202) 493–6255).

SUPPLEMENTARY INFORMATION:

I. Background

On August 11, 1997, FRA issued an Interim Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws (62 FR 43024, August 11, 1997) (Interim Policy Statement) in compliance with the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (SBREFA). SBREFA establishes requirements for federal agencies to follow with respect to small businesses, creates duties for the Small Business Administration (SBA), and amends portions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) and the Equal Access to Justice Act (EAJA) (5 U.S.C. 501, *et seq.*). The primary purposes of SBREFA are to implement recommendations developed at the 1995 White House Conference on Small Business, to provide small businesses enhanced opportunities for judicial review of final agency action, to encourage small business participation in the regulatory process, to develop accessible sources of information on

regulatory requirements for small business, to create a cooperative regulatory environment for small business, and to make federal regulators accountable for ''excessive'' enforcement actions.

SBREFA, among other things, requires federal enforcement agencies to institute two new policies. The first is a communication policy, described in section 213 of SBREFA, in which each agency must ''answer inquiries by small entities concerning information on, and advice about, compliance with'' statutes and regulations within the agency's jurisdiction, ''interpreting and applying the law to specific sets of facts supplied by the small entity.'' The second is an enforcement policy, required by section 223 of SBREFA, in which each agency must establish a program to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity.

SBREFA incorporates the definition for ''small entity'' that is established by existing law (5 U.S.C. 601, 15 U.S.C. 632, 13 CFR part 121) for those businesses to be covered by the agency policies. Generally, a small entity is a business concern that is independently owned and operated, and is not dominant in its field of operation. SBREFA defines ''small governmental jurisdictions'' that serve populations of 50,000 or less as small entities. An agency may establish one or more other definitions for this term, in consultation with the SBA and after opportunity for public comment, that are appropriate to the agency's activities.

In the Interim Policy Statement, FRA invited comments on the definition of ''small entity,'' potential alternative definitions, and supporting rationale for suggested alternative definitions. FRA also held a public meeting on September 28, 1999 to further explore the issue.

II. Definition of Small Entity in the Railroad Industry

Pursuant to its statutory authority, the SBA promulgated regulations that clarify the term ''small entity'' by industry, using number of employees or annual income as criteria. 13 CFR 121.101–108, and 201. In the SBA regulations, main line railroads with 1500 or fewer employees, and switching or terminal establishments with 500 or fewer employees constitute small entities. The SBA regulations do not address hazardous material shippers in the railroad industry, or commuter railroads. However, commuter railroads are governmental jurisdictions, and some may fit within this statutory delineation for small governmental jurisdictions, or small entities addressed in SBREFA.

Prior to the SBA regulations establishing size categories, the Interstate Commerce Commission (ICC) developed a classification system for freight railroads as Class I, II or III, based on annual operating revenue. (The detailed, qualifying criteria for these classifications are set forth in 49 CFR part 1201.) The Department of Transportation's Surface Transportation Board (STB), which succeeded the ICC, has not changed these classifications. The ICC classification system has been used pervasively by FRA and the railroad industry to identify entities by size. The SBA recognizes this classification system as a sound one, and concurred with FRA's decision to use it in the Interim Policy Statement, provided the public has notice of the classification system in use for any particular proceeding and an opportunity to comment on it.

In the Interim Policy Statement, FRA defined ''small entity,'' for the purpose of communication and enforcement policies, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), and the Equal Access to Justice Act (5 U.S.C. 501, *et seq.*), to include only those railroads which are classified as Class III. FRA further clarified the definition to include, in addition to Class III railroads, hazardous material shippers that meet the income level established for Class III railroads (those with annual operating revenues of $20 million per year or less, as set forth in 49 CFR 1201.1–1); railroad contractors that meet the income level established for Class III railroads; and those commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less.

III. Analysis of Comments

FRA received ten comments regarding the definition of a small entity (which can be accessed on-line at DOT's Docket Management System at *http://dms.dot.gov*). FRA also received additional comments from several organizations during the public meeting held on September 28, 1999. While a number of commenters expressed the view that FRA has been very helpful and flexible in its approach to dealing with small businesses, commenters differed on their proposed definitions of ''small entity.''

Two small railroads agreed that FRA should retain the definition of a small railroad, as it has been used historically, and as it was used in the Interim Policy Statement: Class III railroads. One other commenter also agreed with that definition, and also agreed with FRA's definitions for other entities: contractors and hazardous materials shippers meeting the economic criteria established for Class III railroads in 49 CFR 1201.1–1, and small governmental jurisdictions or commuter railroads that serve populations of 50,000 or less.

The American Short Line Railroad Association (ASLRA) (now The American Short Line and Regional Rail Association) suggested the most expansive definition, proposing that FRA regard all entities classified as Class II and Class III carriers by the Surface Transportation Board (STB) as small entities. ASLRA did not address application of the definition to hazardous materials shippers, contractors, governmental units, or commuter operations. ASLRA believes that its proposed definition is consistent with SBA's ''1500 employees for main line railroads'' and ''500 employees for switching or terminal establishments'' definitions because the SBA's definition would include all except one Class II and Class III carriers. ASLRA also claimed that the definition would not impose any additional burdens on FRA beyond what FRA already undertakes during its communication and enforcement processes. However, as ASLRA commented, ''FRA has consistently recognized the special needs of Class II and Class III railroads, and has specially tailored its regulatory requirements or implementation dates for them in many instances.'' As noted, FRA does have a history of being very responsive to entities' concerns during its rulemaking and enforcement processes, and does not feel that Class II entities have been adversely affected by FRA's treatment of their concerns. FRA will continue to address those concerns in its regulatory and enforcement actions. Nevertheless, including Class II railroads as small entities in this policy would require that FRA provide those railroads, which are of considerable size and sophistication (with annual operating revenues of up to $250 million), the benefits of the agency's communication and enforcement policies, which are clearly designed for much smaller entities that truly merit such special attention. FRA will continue to provide compliance guidance and consideration of financial condition to any particular Class II railroad entity that needs these actions, but will not include all of the Class II entities within these policies because they are intended for a class of railroads much more likely to need such actions. As such, FRA sees no justification in expanding its current definition of a

small entity to meet ASLRA's proposed definition.

Several other entities suggested a narrower definition, limiting the definition of a small entity to those entities having less than a total of 400,000 annual employee hours. Some commenters also included other qualifiers, such as including operating revenue as a qualifying threshold. Commenters generally believed applying these measures would ensure consistent treatment to all entities throughout the railroad industry, regardless of whether they are a carrier, switching or terminal operation, hazardous materials shipper, or contractor. The National Railroad Construction and Maintenance Association (NRC) believed that for contractors specifically, this approach was fairer than applying the STB's Class I, II, and III monetary thresholds. The NRC claimed that operating revenues for contractors are sometimes artificially high because labor and material costs are included in the contract price, thereby potentially putting a small contractor above the $20 million threshold set by the STB.

Other commenters agreed with NRC that 400,000 annual employee hours was an appropriate measure that would ensure consistency, yet felt that further limiting those entities to $20 million in annual operating revenues would eliminate the possibility that larger railroads would sneak into the ''small entity'' category if they increase operating efficiencies, and thereby limit employee hours. The Brotherhood of Maintenance of Way Employes also proposed that all hours of persons engaged in the operation or maintenance of a railroad or its infrastructure (*i.e.*, railroad contract employees or volunteers) be included in the total annual employee hours calculation to avoid underreporting of actual work performed for one railroad. The theory is that if contractor hours are not included in the total employee hour calculation, a railroad who is above the 400,000 annual employee hour threshold could contract out most of its work to reduce its total employee hours, so that it could still receive ''small entity'' treatment.

Although FRA has used the 400,000 annual employee hour designation when conducting regulatory analyses for several rules, FRA has also used the Class I, II, and III categories to differentiate compliance dates when necessary to lessen the burden on small entities. FRA believes that, although the 400,000 annual employee hour criterion is useful in certain rules, the use of STB's Class III definition as its measure of a small entity for carriers, switching and terminal operations, hazardous materials shippers, and contractors is more appropriate for the purposes of this broad policy. Under the Final Policy Statement issued today, FRA retains the ability to use different criteria to tailor the applicability of any regulations it issues to address appropriately the specific safety problem at issue. For example, even though FRA is retaining the Class III standard for ''small entity'' for its communication and enforcement policy purposes, FRA may issue a rule that applies only to railroads with more than a certain number of annual employee hours or to all railroads, regardless of size.

The American Public Transit Association (APTA), which represents several commuter operations, proposed that FRA define rail systems with less than 200 cars as small entities. APTA believes there are very few entities that would fit the definition of operations serving populations of 50,000 or less. FRA did not believe the 200-car limit was a useful distinction, and determined it is appropriate to retain commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less (a standard based on SBREFA's own definition of a small governmental jurisdiction) as its definition of a small commuter railroad.

The September 28, 1999 public meeting gave commenters an opportunity to iterate many of the same ideas expressed in the written comments FRA received. Aside from the merits of each definition, the attendees discussed the logistics of tracking the number of small entities for the proposed definitions. For example, if FRA adopts STB's definition, how will FRA ensure that STB is keeping accurate records of Class III carriers? STB requires regular reporting of the necessary information, and FRA has complete confidence in that process. Attendees also discussed what effect the number of entities considered ''small entities'' would have on FRA's litigation costs under the EAJA. FRA notes that the only provisions of EAJA affected by this definition are 5 U.S.C. 504 (a)(4), and 28 U.S.C. 2412 (d)(1)(D). These provisions permit recovery of costs and fees only if a civil penalty demand is held to be substantially in excess of the judgment finally obtained, and is unreasonable when compared with that judgment. Because FRA pays special attention to the circumstances of small entities in assessing or collecting civil penalties, such a situation is extremely unlikely. The definition of ''small entity'' contained in this policy has no effect on EAJA claims brought in response to other types of agency action; such claims are governed by the EAJA definition of ''party.'' Note that the principles concerning the aggregation of company affiliates set forth in DOT's regulations at 49 CFR 6.7(f) apply to this definition for purposes of claims brought under EAJA.

FRA indicated in the Interim Policy Statement that the Final Policy Statement would establish a definition of ''small entity'' for Regulatory Flexibility Act (RFA) purposes. While FRA will generally use the ''small entity'' definition adopted here in doing RFA analyses, it needs to retain sufficient flexibility to use a different definition if appropriate in the context of a particular RFA analysis. FRA has, and will continue to comply with the RFA's provisions requiring notice and comment, and consultation with the Small Business Administration's Office of Advocacy, when it uses a definition of ''small entity'' that differs from that adopted here to complete RFA analyses.

IV. FRA's Small Business Communication and Enforcement Programs

FRA's purpose in publishing this policy statement is to formally announce and explain its communication and enforcement policies concerning small entities in the railroad industry, which have already existed for some time. FRA is hopeful that this publication will, in addition to achieving compliance with the SBREFA requirements, enhance railroad safety in several ways: (1) Increase the number of small entities that participate cooperatively in the safety compliance and enforcement program; (2) better inform small businesses of railroad safety requirements; (3) encourage small entities to communicate more freely with agency personnel to alleviate potential safety risks before they become hazardous; and (4) improve FRA's understanding of small operations.

FRA's small business communication program has existed for some time, and continues to grow to meet the needs of our customers in the railroad industry. FRA Office of Safety and Office of Chief Counsel personnel, at the headquarters, regional and local level, devote a great deal of attention to the inquiries and concerns of small entities. FRA's program is flexible and responsive to the particular need expressed. The agency's response takes a variety of forms: oral and written answers to questions received, training sessions for new or existing small businesses on the substance of railroad safety regulations, and advice on a particular standard or

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.

Small Entity Enforcement Policy

FRA has adopted an enforcement policy that addresses the unique nature of small entities in the imposition of civil penalties and resolution of those assessments. Pursuant to FRA's statutory authority, and as described in Appendix A to 49 CFR part 209, it is FRA's policy to consider a variety of factors in determining whether to take enforcement action against persons, including small entities, who have violated the safety laws and regulations. In addition to the seriousness of the violation and the person's history of compliance, FRA inspectors consider ''such other factors as the immediate circumstances make relevant.'' In the context of violations by small entities, those factors include whether the violations were made in good faith (*e.g.,* based on an honest misunderstanding of the law), and whether the small entity has moved quickly and thoroughly to remedy the violation(s). In general, the presence of both good faith and prompt remedial action militates against taking a civil penalty action, especially if the violations are isolated events. On the other hand, violations involving willful actions and/or posing serious health, safety, or environmental threats should ordinarily result in enforcement actions, regardless of the entity's size.

Once FRA has assessed a civil penalty, it is authorized to adjust or compromise the initial penalty claims based on a wide variety of mitigating factors, unless FRA must terminate the claim for some reason. FRA has the discretion to reduce the penalty as it deems fit, but not below the statutory minimums. The mitigating criteria FRA evaluates are found in the railroad safety statutes and SBREFA: The severity of the safety or health risk presented; the existence of alternative methods of eliminating the safety hazard; the entity's culpability; the entity's compliance history; the entity's ability to pay the assessment; the impacts an assessment might exact on the entity's continued business; and evidence that the entity acted in good faith. FRA staff attorneys regularly invite small entities to present any information related to these factors, and reduce civil penalty assessments based on the value and integrity of the information presented. Staff attorneys conduct conference calls or meet with small entities to discuss pending violations, and explain FRA's view on the merits of any defenses or mitigating factors presented that may have resulted or failed to result in penalty reductions. Among the ''other factors'' FRA considers at this stage is the promptness and thoroughness of the entity's remedial action to correct the violations and prevent a recurrence. Small entities should be sure to address these factors in communications with FRA concerning civil penalty cases. Long-term solutions to compliance problems will be given great weight in FRA's determinations of a final settlement offer.

Finally, under FRA's Safety Assurance and Compliance Program (SACP), FRA identifies systemic safety hazards that continue to occur in a carrier or shipper operation, and in cooperation with the subject business, develops an improvement plan to eliminate those safety concerns. Often, the plan provides small entities with a reasonable time frame in which to make improvements without the threat of civil penalty. If FRA determines that the entity has failed to comply with the improvement plan, however, enforcement action is initiated.

FRA's small entity enforcement policy is flexible and comprehensive. FRA's first priority in its compliance and enforcement activities is public and employee safety. However, FRA is committed to obtaining compliance and enhancing safety with reasoned, fair methods that do not inflict undue hardship on small entities.

Issued in Washington, DC on May 1, 2003.

Allan Rutter,

Administrator.

[FR Doc. 03–11450 Filed 5–8–03; 8:45 am]

BILLING CODE 4910–06–P