

## §212.113

### §212.113 Program termination.

(a) A State agency participating in investigative and surveillance activities by agreement or certification shall provide thirty (30) days notice of its intent to terminate its participation.

(b) The Administrator may, on his own initiative, terminate the participation of a State agency if, after at least thirty (30) days notice an opportunity for oral hearing under section 553 of title 5 U.S.C., the State agency does not establish that it has complied and is complying with:

(1) The requirements of this part;

(2) Relevant directives, enforcement manuals, and written interpretations of law and regulations provided by the FRA for guidance of the program; and

(3) The rule of national uniformity of laws, rules, regulations, orders, and standards relating to railroad safety as expressed in section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434).

### §212.115 Enforcement actions.

(a) Except as provided in paragraph (b) of this section, the FRA reserves exclusive authority to assess and compromise penalties, to issue emergency orders and compliance orders, institute or cause to be instituted actions for collection of civil penalties or for injunctive relief, and to commence any and all other enforcement actions under the Federal railroad safety laws.

(b)(1) Section 207(a) of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 436(a)), authorizes a participating State to bring an action for assessment and collection of a civil penalty in a Federal district court of proper venue, if the FRA has not acted on a request for civil penalty assessment originated by the State, within sixty (60) days of receipt, by assessing the penalty or by determining in writing that no violation occurred.

(2) Section 207(b) of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 436(b)), authorizes a participating State to bring an action for injunctive relief in a Federal district court of proper venue, if the FRA has not acted on a request to initiate such an action within fifteen (15) days of receipt, by referring the matter to the Attorney General for litigation, by un-

## 49 CFR Ch. II (10–1–01 Edition)

dertaking other enforcement action, or by determining in writing that no violation has occurred.

(3) For purposes of this paragraph, a request for legal action is deemed to be received when a legally sufficient investigative report specifying the action requested is received by the designated FRA offices.

(c)(1) Requests for civil penalty assessments and other administrative actions shall be submitted to the FRA Regional Director for Railroad Safety for the FRA region in which the State is located.

(2) Requests for the institution of injunctive actions shall be submitted simultaneously to (i) the FRA Regional Director for Railroad Safety for the FRA region in which the State is located and (ii) the Enforcement Division, Office of Chief Counsel, FRA, Washington, DC 20590.

## Subpart C—State Inspection Personnel

### §212.201 General qualifications of State inspection personnel.

(a) This subpart prescribes the minimum qualification requirements for State railroad safety inspectors, compliance inspectors and inspector apprentices. A State agency may establish more stringent or additional requirements for its employees.

(b) An inspector, compliance inspector, or apprentice inspector shall be recognized as qualified under this part by the State agency and the Associate Administrator prior to assuming the responsibilities of the position.

(c) Each inspector, compliance inspectors and apprentice inspector shall be a bona fide employee of the State agency.

(d) Each inspector, compliance inspector, and apprentice inspector shall demonstrate:

(1) The ability to read and comprehend written materials such as training and enforcement manuals, regulations, operating and safety rules of the railroad, and similar materials;

(2) The ability to compose narrative reports of investigative findings that are clear, complete, and grammatically acceptable;