

manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$550 and not more than \$11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$27,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix A to this

part for a statement of agency civil penalty policy.

[63 FR 11623, Mar. 10, 1998, as amended at 69 FR 30595, May 28, 2004]

**§ 233.13 Criminal penalty.**

Whoever knowingly and willfully—

(a) Makes, causes to be made, or participates in the making of a false entry in reports required to be filed by this part; or

(b) Files a false report or other document required to be filed by this part is subject to a \$5,000 fine and 2 years imprisonment as prescribed by 49 U.S.C. 522(a) and section 209(e) of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 438(e)).

APPENDIX A TO PART 233—SCHEDULE OF CIVIL PENALTIES<sup>1</sup>

Section	Violation	Willful violation
233.5 Accidents resulting from signal failure .....	\$2,500	\$5,000
233.7 Signal failure reports .....	5,000	7,500
233.9 Annual reports .....	1,000	2,000

[53 FR 52936, Dec. 29, 1988, as amended at 63 FR 11623, Mar. 10, 1998; 69 FR 30595, May 28, 2004]

**PART 234—GRADE CROSSING SIGNAL SYSTEM SAFETY**

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- 234.223 Gate arm.
- 234.225 Activation of warning system.
- 234.227 Train detection apparatus.
- 234.229 Shunting sensitivity.
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<sup>1</sup>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 \$27,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A.

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- 234.235 Insulated rail joints.
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- 234.247 Purpose of inspections and tests; removal from service of relay or device failing to meet test requirements.
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- 234.271 Insulated rail joints, bond wires, and track connections.
- 234.273 Results of inspections and tests.

### APPENDIX A TO PART 234—SCHEDULE OF CIVIL PENALTIES

### APPENDIX B TO PART 234—ALTERNATE METHODS OF PROTECTION UNDER 49 CFR 234.105(C), 234.106, AND 234.107(C).

AUTHORITY: 49 U.S.C. 20103, 20107, and 49 CFR 1.49.

AUTHORITY: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

SOURCE: 61 FR 31806, June 20, 1996, unless otherwise noted.

## Subpart A—General

### § 234.1 Scope.

This part imposes minimum maintenance, inspection, and testing standards for highway-rail grade crossing warning systems. This part also prescribes standards for the reporting of failures of such systems and prescribes minimum actions railroads must take when such warning systems malfunction. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

### § 234.3 Application.

This part applies to all railroads except:

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(a) A railroad that exclusively operates freight trains only on track which is not part of the general railroad system of transportation;

(b) Rapid transit operations within an urban area that are not connected to the general railroad system of transportation; and

(c) A railroad that operates passenger trains only on track inside an installation that is insular; i.e., its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of the public—except a business guest, a licensee of the railroad or an affiliated entity, or a trespasser—would be affected by the operation. An operation will not be considered insular if one or more of the following exists on its line:

- (1) A public highway-rail crossing that is in use;
- (2) An at-grade rail crossing that is in use;
- (3) A bridge over a public road or waters used for commercial navigation; or
- (4) A common corridor with a railroad, i.e., its operations are within 30 feet of those of any railroad.

### § 234.4 Preemptive effect.

Under 49 U.S.C. 20106 (formerly § 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434)), issuance of these regulations preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision directed at an essentially local safety hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.

### § 234.5 Definitions.

As used in this part:

*Activation failure* means the failure of an active highway-rail grade crossing warning system to indicate the approach of a train at least 20 seconds prior to the train's arrival at the crossing, or to indicate the presence of a train occupying the crossing, unless the crossing is provided with an alternative means of active warning to highway users of approaching trains. (This failure indicates to the motorist that it is safe to proceed across the railroad tracks when, in fact, it is not safe to do so.) A grade crossing signal