

the prevention of highway-rail casualties. Appendix A of this part lists such SSMS.

Waiver means a temporary or permanent modification of some or all of the requirements of this part as they apply to a specific party under a specific set of facts. Waiver does not refer to the process of establishing quiet zones or approval of quiet zones in accordance with the provisions of this part.

Wayside horn means a stationary horn located at a highway rail grade crossing, designed to provide, upon the approach of a locomotive or train, audible warning to oncoming motorists of the approach of a train.

§ 222.11 What are the penalties for failure to comply with this regulation?

Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of 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. Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311. Appendix G of this part contains a schedule of civil penalty amounts used in connection with this part.

EFFECTIVE DATE NOTE: At 72 FR 51197, Sept. 6, 2007, §222.11 was amended by removing the numerical amount "\$11,000" and adding in its place the numerical amount "\$16,000", effective October 9, 2007.

§ 222.13 Who is responsible for compliance?

Any person, including but not limited to a railroad, contractor for a railroad, or a local or State governmental entity that performs any function covered by this part, must perform that function in accordance with this part.

§ 222.15 How does one obtain a waiver of a provision of this regulation?

(a) Except as provided in paragraph (b) of this section, two parties must jointly file a petition (request) for a waiver. They are the railroad owning or controlling operations over the railroad tracks crossing the public highway-rail grade crossing and the public authority which has jurisdiction over the roadway crossing the railroad tracks.

(b) If the railroad and the public authority cannot reach agreement to file a joint petition, either party may file a request for a waiver; however, the filing party must specify in its petition the steps it has taken in an attempt to reach agreement with the other party, and explain why applying the requirement that a joint submission be made in that instance would not be likely to contribute significantly to public safety. If the Associate Administrator determines that applying the requirement for a jointly filed submission to that particular petition would not be likely to significantly contribute to public safety, the Associate Administrator shall waive the requirement for joint submission and accept the petition for consideration. The filing party must also provide the other party with a copy of the petition filed with FRA.

(c) Each petition for waiver must be filed in accordance with 49 CFR part 211.

(d) If the Administrator finds that a waiver of compliance with a provision of this part is in the public interest and consistent with the safety of highway and railroad users, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

§ 222.17 How can a State agency become a recognized State agency?

(a) Any State agency responsible for highway-rail grade crossing safety and/or highway and road safety may become a recognized State agency by submitting an application to the Associate Administrator that contains:

- (1) A detailed description of the proposed scope of involvement in the quiet zone development process;
- (2) The name, address, and telephone number of the person(s) who may be

contacted to discuss the State agency application; and

(3) A statement from State agency counsel which affirms that the State agency is authorized to undertake the responsibilities proposed in its application.

(b) The Associate Administrator will approve the application if, in the Associate Administrator's judgment, the proposed scope of State agency involvement will facilitate safe and effective quiet zone development. The Associate Administrator may include in any decision of approval such conditions as he/she deems necessary and appropriate.

Subpart B—Use of Locomotive Horns

§ 222.21 When must a locomotive horn be used?

(a) Except as provided in this part, the locomotive horn on the lead locomotive of a train, lite locomotive consist, individual locomotive or lead cab car shall be sounded when such locomotive or lead cab car is approaching a public highway-rail grade crossing. Sounding of the locomotive horn with two long blasts, one short blast and one long blast shall be initiated at a location so as to be in accordance with paragraph (b) of this section and shall be repeated or prolonged until the locomotive occupies the crossing. This pattern may be varied as necessary where crossings are spaced closely together.

(b)(1) Railroads to which this part applies shall comply with all the requirements contained in this paragraph (b) beginning on December 15, 2006. On and after June 24, 2005, but prior to December 15, 2006, a railroad shall, at its option, comply with this section or shall sound the locomotive horn in the manner required by State law, or in the absence of State law, in the manner required by railroad operating rules in effect immediately prior to June 24, 2005.

(2) Except as provided in paragraphs (b)(3) and (d) of this section, or when the locomotive horn is defective and the locomotive is being moved for repair consistent with section 229.9 of this chapter, the locomotive horn shall begin to be sounded at least 15 seconds, but no more than 20 seconds, before the

locomotive enters the crossing. It shall not constitute a violation of this section if, acting in good faith, a locomotive engineer begins sounding the locomotive horn not more than 25 seconds before the locomotive enters the crossing, if the locomotive engineer is unable to precisely estimate the time of arrival of the train at the crossing for whatever reason.

(3) Trains, locomotive consists and individual locomotives traveling at speeds in excess of 60 mph shall not begin sounding the horn more than one-quarter mile (1,320 feet) in advance of the nearest public highway-rail grade crossing, even if the advance warning provided by the locomotive horn will be less than 15 seconds in duration.

(c) As stated in § 222.3(c) of this part, this section does not apply to any Chicago Region highway-rail grade crossing at which railroads were excused from sounding the locomotive horn by the Illinois Commerce Commission, and where railroads did not sound the horn, as of December 18, 2003.

(d) Trains, locomotive consists and individual locomotives that have stopped in close proximity to a public highway-rail grade crossing may approach the crossing and sound the locomotive horn for less than 15 seconds before the locomotive enters the highway-rail grade crossing, if the locomotive engineer is able to determine that the public highway-rail grade crossing is not obstructed and either:

(1) The public highway-rail grade crossing is equipped with automatic flashing lights and gates and the gates are fully lowered; or

(2) There are no conflicting highway movements approaching the public highway-rail grade crossing.

(e) Where State law requires the sounding of a locomotive audible warning device other than the locomotive horn at public highway-rail grade crossings, that locomotive audible warning device shall be sounded in accordance with paragraphs (b) and (d) of this section.