

operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

“Relevant collision” means a collision at a highway-rail grade crossing between a train and a motor vehicle, excluding the following: a collision resulting from an activation failure of an active grade crossing warning system; a collision in which there is no driver in the motor vehicle; or a collision where the highway vehicle struck the side of the train beyond the fourth locomotive unit or rail car. The term “relevant collision” has been included in this rule to provide a basis for reviewing the safety history at a crossing while ensuring that collisions not relevant to the direct issue of motorist decision-making are omitted from the analysis.

“Supplementary safety measure” (SSM) means a safety system or procedure established in accordance with this part which is provided by the appropriate traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing, that is determined by the Administrator to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties. Appendix A to this part lists such supplementary safety measures.

“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 (or device designed to produce a sound resembling a 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.

Section 222.11 What Are the Penalties for Failure To Comply With This Regulation?

This section, which has not changed from that proposed in the NPRM, identifies the civil penalties that FRA may impose upon any person, including a railroad that violates any requirement of this part. The penalty provision parallels penalty provisions included in many other safety regulations issued by

FRA. Essentially, any person who violates any requirement of this part or causes the violation of any such requirement will be subject to a civil penalty of at least \$500 and not more than \$11,000 per violation. Civil penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury, a penalty not to exceed \$22,000 per violation may be assessed. In addition, each day a violation continues will constitute a separate offense. (Maximum penalties of \$11,000 and \$22,000 are required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub.L. 101–410) (28 U.S.C. 2461 note), as amended by the Debt Collection Improvement Act of 1996 (Pub.L. 104–134, 110 Stat. 1321–373) which requires each agency to regularly adjust certain civil monetary penalties in an effort to maintain their remedial impact and promote compliance with the law.) Furthermore, a person may be subject to criminal penalties under 49 U.S.C. 21311 for knowingly and willfully falsifying reports required by these regulations. FRA believes that the inclusion of penalty provisions for failure to comply with the regulations is important in ensuring that compliance is achieved. The interim final rule includes a schedule of civil penalties as Appendix G to this part. Because the penalty schedule is a statement of agency policy, notice and comment was not required prior to its issuance. See 5 U.S.C. 553(b)(3)(A).

New Jersey DOT requested that FRA clarify this section “to assure one that the application of a safety measure such as an audible warning device is not subject to civil or criminal penalties.” While the meaning of this comment is not clear, FRA intends that the routine sounding of a locomotive horn in a quiet zone will subject the railroad to civil penalties, as would not sounding the horn at a public crossing outside of a quiet zone.

Section 222.13 Who Is Responsible for Compliance?

This section is intended to make clear that 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.

Section 222.15 How Does One Obtain a Waiver of a Provision of This Regulation?

This section governs the process for obtaining a waiver from a provision of this regulation. There was confusion on the part of some commenters regarding the meaning and purpose of waivers. Some commenters incorrectly considered waivers to be synonymous with exceptions from the requirement to sound the horn. In an effort to further clarify this section, FRA has added “waiver” to the list of defined terms in section 222.9. It is defined as “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.”

FRA has historically entertained waiver petitions from parties subject to an FRA regulation. In many instances, a regulation, or specific section of a regulation, while appropriate for the general regulated community, may be inappropriate when applied to a specific entity. Circumstances may make application of the regulation to the entity counter-productive; an extension of time to comply with a regulatory provision may be needed; or technological advancements may result in a portion of a regulation being inappropriate in a certain situation. In such instances, FRA may grant a waiver from its regulations. The rules governing FRA’s waiver process are found in 49 CFR part 211. In summary, after a petition for a waiver is received by FRA, a notice of the waiver request is published in the **Federal Register**, an opportunity for public comment is provided, and an opportunity for a hearing is afforded the petitioning or other interested party. FRA, after reviewing information from the petitioning party and others, will grant or deny the petition. In certain circumstances, conditions may be imposed on the grant of a waiver if FRA concludes that the conditions are necessary to assure safety or if they are in the public interest. Because this regulation’s affected constituency is broader than most of FRA’s rail safety regulations, the waiver process is proposed to be somewhat different. Paragraphs (a) and (b) address the aspects which are different than FRA’s customary waiver process. However, as paragraph (c) makes clear, once an application is made pursuant to either paragraph (a) or (b), FRA’s normal