

§ 234.7

of the railroad's employees, agents, or contractors.

(b) *Criminal penalty.* Whoever knowingly and willfully makes, causes to be made, or participates in the making of a false entry in reports required to be filed by this part, or files a false report or other document required to be filed by this part, except for any document filed pursuant to § 234.11 of this part, is subject to a \$5,000 fine and 2 years imprisonment as prescribed by 49 U.S.C. 522(a) and 21311(a).

[74 FR 36558, June 28, 2010]

Subpart B—Reports and Plans

§ 234.7 Accidents involving grade crossing signal failure.

(a) Each railroad shall report to FRA every impact between on-track railroad equipment and an automobile, bus, truck, motorcycle, bicycle, farm vehicle, or pedestrian at a highway-rail grade crossing involving an activation failure. Notification shall be provided to the National Response Center within 24 hours of occurrence at (800) 424-0201. Complete reports shall thereafter be filed with FRA pursuant to § 234.9 of this part (activation failure report) and 49 CFR 225.11 (accident/incident report).

(b) Each telephone report must state the:

- (1) Name of the railroad;
- (2) Name, title, and telephone number of the individual making the report;
- (3) Time, date, and location of accident;
- (4) U. S. DOT-AAR Grade Crossing Identification Number;
- (5) Circumstances of the accident, including operating details of the grade crossing warning device;
- (6) Number of persons killed or injured, if any;
- (7) Maximum authorized train speed; and
- (8) Posted highway speed limit, if known.

§ 234.9 Grade crossing signal system failure reports.

Each railroad shall report to FRA within 15 days each activation failure of a highway-rail grade crossing warning system. FRA Form No. 6180-83,

49 CFR Ch. II (10-1-10 Edition)

“Highway-Rail Grade Crossing Warning System Failure Report,” shall be used for this purpose and completed in accordance with instructions printed on the form.

§ 234.11 State highway-rail grade crossing action plans.

(a) *Purpose.* The purpose of this section is to reduce collisions at highway-rail grade crossings in the ten States that have had the most highway-rail grade crossing collisions, on average, during the calendar years 2006, 2007, and 2008. This section does not restrict any other State, or other entity, from adopting a highway-rail grade crossing action plan. This section also does not restrict any of the States required to develop action plans under this section from adopting a highway-rail grade crossing action plan with additional or more stringent requirements not inconsistent with this section.

(b) *Application.* This section applies to the ten States that have had the most highway-rail grade crossing collisions, on average, during the calendar years 2006, 2007, and 2008.

(c) *Action plans.* (1) The ten identified States shall each develop a State highway-rail grade crossing action plan and submit such a plan to FRA for review and approval not later than August 27, 2011.

(2) A State highway-rail grade crossing action plan shall:

- (i) Identify specific solutions for improving safety at crossings, including highway-rail grade crossing closures or grade separations;
- (ii) Focus on crossings that have experienced multiple accidents or are at high risk for such accidents; and
- (iii) Cover a five-year time period.

(d) *Review and approval.* (1) State highway-rail grade crossing action plans required under paragraph (c) of this section shall be submitted for FRA review and approval using at least one of the following methods: Mail to the Associate Administrator for Railroad Safety/Chief Safety Officer, U.S. Department of Transportation, Federal Railroad Administration, 1200 New Jersey Ave., SE., Washington, DC 20590; or e-mail to rrs.correspondence@fra.dot.gov.

(2) FRA will review and approve or disapprove a State highway-rail grade

crossing action plan submitted pursuant to paragraph (d) of this section within 60 days of receipt.

(3) If the proposed State highway-rail grade crossing action plan is disapproved, FRA will notify the affected State as to the specific areas in which the proposed plan is deficient. A State shall correct all deficiencies within 30 days following receipt of written notice from FRA.

(4) FRA may condition the awarding of any grants under 49 U.S.C. 20158, 20167, or 22501 to an identified State on the development of an FRA approved State highway-rail grade crossing action plan.

[75 FR 36559, June 28, 2010]

Subpart C—Response to Reports of Warning System Malfunction

§ 234.101 Employee notification rules.

Each railroad shall issue rules requiring its employees to report to persons designated by that railroad, by the quickest means available, any warning system malfunction.

§ 234.103 Timely response to report of malfunction.

(a) Upon receipt of a credible report of a warning system malfunction, a railroad having maintenance responsibility for the warning system shall promptly investigate the report and determine the nature of the malfunction. The railroad shall take appropriate action as required by § 234.207.

(b) Until repair or correction of the warning system is completed, the railroad shall provide alternative means of warning highway traffic and railroad employees in accordance with §§ 234.105, 234.106 or 234.107 of this part.

(c) Nothing in this subpart requires repair of a warning system, if, acting in accordance with applicable State law, the railroad proceeds to discontinue or dismantle the warning system. However, until repair, correction, discontinuance, or dismantling of the warning system is completed, the railroad shall comply with this subpart to ensure the safety of the traveling public and railroad employees.

§ 234.105 Activation failure.

Upon receipt of a credible report of warning system malfunction involving an activation failure, a railroad having maintenance responsibility for the warning system shall promptly initiate efforts to warn highway users and railroad employees at the subject crossing by taking the following actions:

(a) Prior to any train's arrival at the crossing, notify the train crew of the report of activation failure and notify any other railroads operating over the crossing;

(b) Notify the law enforcement agency having jurisdiction over the crossing, or railroad police capable of responding and controlling vehicular traffic; and

(c) Provide for alternative means of actively warning highway users of approaching trains, consistent with the following requirements (see appendix B for a summary chart of alternative means of warning):

(1)(i) If an appropriately equipped flagger provides warning for each direction of highway traffic, trains may proceed through the crossing at normal speed.

(ii) If at least one uniformed law enforcement officer (including a railroad police officer) provides warning to highway traffic at the crossing, trains may proceed through the crossing at normal speed.

(2) If an appropriately equipped flagger provides warning for highway traffic, but there is not at least one flagger providing warning for each direction of highway traffic, trains may proceed with caution through the crossing at a speed not exceeding 15 miles per hour. Normal speed may be resumed after the locomotive has passed through the crossing.

(3) If there is not an appropriately equipped flagger or uniformed law enforcement officer providing warning to highway traffic at the crossing, each train must stop before entering the crossing and permit a crewmember to dismount to flag highway traffic to a stop. The locomotive may then proceed through the crossing, and the flagging crewmember may reboard the locomotive before the remainder of the train proceeds through the crossing.