(3) The Coast Guard will provide notice of the regulated areas by Broadcast Notice to Mariners and on-scene designated representatives.

e. Effective period. This rule is effective on April 21, 2015 through May 31, 2015. This rule will be enforced when STS operations commence until TUG THOMAS and BARGE OCEANUS depart the Savannah River.

Dated: May 14, 2015.

A.M. Beach,
Commander, U.S. Coast Guard, Captain of the Port Savannah.

[FR Doc. 2015–12637 Filed 5–27–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration


49 CFR Part 234

RIN 2130–AC50

Systems for Telephonic Notification of Unsafe Conditions at Highway-Rail and Pathway Grade Crossings

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The purpose of this document is to update the current schedule of civil penalties for violations of FRA’s grade crossing safety regulations by adding recommended civil penalty amounts for violations of specific requirements contained in a recently added subpart. That subpart prescribes requirements that certain railroads establish emergency notification systems (ENS) for receiving toll-free telephone calls reporting various unsafe conditions at highway-rail grade crossings and pathway grade crossings, and for taking certain actions in response to those calls.

DATES: Effective May 28, 2015.

FOR FURTHER INFORMATION CONTACT: Beth Crawford, Transportation Specialist, Grade Crossing Safety and Trespass Prevention, Office of Safety Analysis, FRA, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6288), beth.crawford@dot.gov; or Sara Mahmoud-Davis, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Mail Stop 10, Washington, DC 20590 (telephone: 202–366–1118), sara.mahmoud-davis@dot.gov.

SUPPLEMENTARY INFORMATION: FRA is revising the penalty schedule at appendix A to 49 CFR part 234 to add recommended civil penalty amounts for violations of specific requirements contained in subpart E, Emergency Notification Systems [ENS] for Telephonic Reporting of Unsafe Conditions at Highway-Rail and Pathway Grade Crossings. (See FRA’s final rule published on June 12, 2012, 77 FR 35164; March 15, 2013, 78 FR 16414.) The recommended civil penalties are for violations related to the various requirements of an ENS, which includes the: (1) Sign(s) placed at the grade crossing that display the information necessary for the public to report an unsafe condition to the appropriate railroad; (2) method the railroad uses to receive and process a telephone call reporting the unsafe condition; (3) remedial action the appropriate railroad or railroads take to address the report of the unsafe conditions; and (4) recordkeeping conducted by the railroad(s).

Under authority delegated from the Secretary of Transportation, FRA adds these recommended penalty amounts to the penalty schedule consistent with the requirements of 49 U.S.C. 21301(a)(2), which provides, in pertinent part, that: ‘‘The Secretary of Transportation shall include in, or make applicable to, each regulation prescribed . . . under chapter 201 of this title a civil penalty for a violation.’’ * * * * The amount of the penalty shall be at least $500 but not more than $25,000. However, when a grossly negligent violation or a pattern of repeated violations has caused an imminent hazard of death or injury to individuals, or has caused death or injury, the amount may be not more than $100,000.

See delegation from the Secretary to the Administrator of FRA at 49 CFR 1.89(a). Under the separate authority of the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended, FRA has periodically adjusted for inflation the amounts of the minimum, ordinary maximum, and aggravated maximum civil penalties for a violation of this part. Public Law 101–410, 104 Stat. 1321–375, April 26, 1996. Currently, the minimum penalty is $650; the ordinary maximum civil penalty is $25,000; and the aggravated maximum civil penalty is $105,000. See, e.g., 73 FR 76704, Dec. 30, 2008; 77 FR 24422, Apr. 24, 2012.

As provided for in footnote 1 to appendix A, the Administrator specifically reserves the authority to assess the maximum penalty of $105,000 for any specific violation if the circumstances of the particular violation warrant.

After FRA issues a civil penalty against an entity, FRA may adjust or compromise the amount of the civil penalty based on a wide variety of mitigating factors, which include: (1) The nature, circumstances, extent, and gravity of the violation; (2) with respect to the entity, the degree of culpability, any history of violations, the ability to pay, and any effect on the ability to continue to do business; and (3) other matters that justice requires. 49 U.S.C. 21301(a)(3).

FRA’s revision of appendix A is a general statement of policy under 5 U.S.C. 553(b)(3)(A). Consequently, notice and an opportunity for comment are not required, and this amendment is made effective upon publication.

List of Subjects in 49 CFR Part 234

Highway safety, Penalties, Railroad safety, Reporting and recordkeeping requirements, State and local governments.

In consideration of the foregoing, FRA amends part 234 of chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 234—GRADE CROSSING SAFETY

I. 1. The authority citation for part 234 continues to read as follows:


II. 2. Amend appendix A to part 234 by:

a. Adding, after the end of the entry for subpart D, an entry for subpart E;

b. Revising footnote 1; and

c. Adding footnotes 2, 3, 4, 5, 6, and 7, to read as follows:

II. 2. Amend appendix A to part 234 by:

a. Adding, after the end of the entry for subpart D, an entry for subpart E;

b. Revising footnote 1; and

c. Adding footnotes 2, 3, 4, 5, 6, and 7, to read as follows:

II. 2. Amend appendix A to part 234 by:

a. Adding, after the end of the entry for subpart D, an entry for subpart E;

b. Revising footnote 1; and

c. Adding footnotes 2, 3, 4, 5, 6, and 7, to read as follows:

II. 2. Amend appendix A to part 234 by:

a. Adding, after the end of the entry for subpart D, an entry for subpart E;

b. Revising footnote 1; and

c. Adding footnotes 2, 3, 4, 5, 6, and 7, to read as follows:

II. 2. Amend appendix A to part 234 by:

a. Adding, after the end of the entry for subpart D, an entry for subpart E;

b. Revising footnote 1; and

c. Adding footnotes 2, 3, 4, 5, 6, and 7, to read as follows:

II. 2. Amend appendix A to part 234 by:

a. Adding, after the end of the entry for subpart D, an entry for subpart E;

b. Revising footnote 1; and

c. Adding footnotes 2, 3, 4, 5, 6, and 7, to read as follows:
Subpart E—Emergency Notification Systems for Telephonic Reporting of Unsafe Conditions at Highway-Rail and Pathway Grade Crossings

234.303 Emergency notification systems (ENS) for telephonic reporting of unsafe conditions at highway-rail and pathway grade crossings:

(a) Dispatching railroad fails to establish and maintain a toll-free telephone service by which the railroad can directly and promptly receive telephone calls (calls) from the public of reports of unsafe conditions at crossings .................................................................................................................................................. 5,000 7,500

(a)(1) Dispatching railroad fails to have either a live person answer calls directly and promptly, or use an automated answering system or third-party telephone service for receiving calls from the public of reports of unsafe conditions at crossings .................................................................................................................................................. 15,000 25,000

(a)(2) Dispatching railroad improperly uses an automated answering system .................................................................................................................................................. 10,000 15,000

(b)(1) Excepted dispatching railroad improperly uses answering machine to receive calls of unsafe conditions at crossings .................................................................................................................................................. 5,000 7,500

(b)(2) Excepted dispatching railroad fails to use proper method to receive calls of unsafe conditions at crossings during either operational or non-operational hours .................................................................................................................................................. 5,000 7,500

(c) Dispatching railroad improperly uses local telephone number to receive calls of unsafe conditions at crossings .................................................................................................................................................. 5,000 7,500

234.305 Remedial actions in response to reports of unsafe conditions at highway-rail and pathway grade crossings:

Response to credible report of warning system malfunction at a highway-rail grade crossing.

(a)(1) Maintaining railroad fails under subpart C to follow subpart C of this part 2 .................................................................................................................................................. 5,000 7,500

(a)(2)(i) Dispatching railroad fails to promptly contact all trains authorized to operate through the crossing and inform them of the reported malfunction .................................................................................................................................................. 5,000 7,500

(ii) Dispatching railroad fails to promptly contact the maintaining railroad and inform it of the reported malfunction .................................................................................................................................................. 5,000 7,500

Response to public report of warning system malfunction at a highway-rail grade crossing.

(b)(1)(i) Railroad with both maintaining and dispatching responsibilities fails to promptly contact all trains authorized to operate through the crossing and inform them of the reported malfunction .................................................................................................................................................. 5,000 7,500

(ii) Railroad with both maintaining and dispatching responsibilities fails to promptly contact the appropriate law enforcement agency and inform it of the reported malfunction .................................................................................................................................................. 5,000 7,500

(iii) Railroad with both maintaining and dispatching responsibilities fails to promptly investigate the report, determine the nature of the malfunction, and take the appropriate remedial action .................................................................................................................................................. 5,000 7,500

(b)(2)(i) Railroad with only dispatching responsibility fails to promptly contact all trains authorized to operate through the crossing and inform them of the reported malfunction .................................................................................................................................................. 5,000 7,500

(ii) Railroad with only dispatching responsibility fails to promptly contact the appropriate law enforcement agency and inform it of the reported malfunction .................................................................................................................................................. 5,000 7,500

(iii) Railroad with only dispatching responsibility fails to promptly investigate the report, determine the nature of the malfunction, and take the appropriate remedial action .................................................................................................................................................. 5,000 7,500

Response to report of warning system failure at a pathway grade crossing.

(c)(1)(i) Railroad with both maintaining and dispatching responsibilities fails to promptly contact all trains authorized to operate through the crossing and inform them of the reported failure .................................................................................................................................................. 5,000 7,500

(ii) Railroad with both maintaining and dispatching responsibilities fails to promptly contact the appropriate law enforcement agency and inform it of the reported failure .................................................................................................................................................. 5,000 7,500

(iii) Railroad with both maintaining and dispatching responsibilities fails to promptly investigate the report, determine the nature of the failure, and without undue delay repair the active warning system if necessary .................................................................................................................................................. 5,000 7,500

(c)(2)(i) Railroad with only dispatching responsibility fails to promptly contact all trains authorized to operate through the crossing and inform them of the reported failure .................................................................................................................................................. 5,000 7,500

(ii) Railroad with only dispatching responsibility fails to promptly contact the appropriate law enforcement agency and inform it of the reported failure .................................................................................................................................................. 5,000 7,500

(iii) Railroad with only dispatching responsibility fails to promptly contact the maintaining railroad and inform it of the reported failure .................................................................................................................................................. 5,000 7,500

(iv) Maintaining railroad fails to promptly investigate the report, determine the nature of the failure, and without undue delay repair the active warning system if necessary .................................................................................................................................................. 5,000 7,500

Response to report of a disabled vehicle or other obstruction blocking a railroad track at a highway-rail or pathway grade crossing.

(d)(1)(i) Railroad with both maintaining and dispatching responsibilities fails to promptly contact all trains authorized to operate through the crossing and inform them of the reported obstruction .................................................................................................................................................. 5,000 7,500

(ii) Railroad with both maintaining and dispatching responsibilities fails to promptly contact the appropriate law enforcement agency and inform it of the reported obstruction .................................................................................................................................................. 5,000 7,500

(iii) Railroad with both maintaining and dispatching responsibilities fails to promptly investigate the report, determine the nature of the obstruction, and without undue delay take the necessary action to have the obstruction removed .................................................................................................................................................. 5,000 7,500

(d)(2)(i) Railroad with only dispatching responsibility fails to promptly contact all trains authorized to operate through the crossing and inform them of the reported obstruction .................................................................................................................................................. 5,000 7,500

(ii) Railroad with only dispatching responsibility fails to promptly contact the appropriate law enforcement agency and inform it of the reported obstruction .................................................................................................................................................. 5,000 7,500
### APPENDIX A TO PART 234—SCHEDULE OF CIVIL PENALTIES ¹—Continued

<table>
<thead>
<tr>
<th>Section</th>
<th>Violation</th>
<th>Willful violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>234.311</td>
<td>ENS sign placement and maintenance: (a)(1)–(2) Responsible railroad fails to properly locate and maintain the sign(s) at the crossing</td>
<td>5,000</td>
</tr>
<tr>
<td>234.313</td>
<td>Recordkeeping:</td>
<td></td>
</tr>
</tbody>
</table>
### APPENDIX A TO PART 234—SCHEDULE OF CIVIL PENALTIES 1—Continued

<table>
<thead>
<tr>
<th>Section</th>
<th>Violation</th>
<th>Willful violation</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)(1)–(9) Railroad fails to maintain in its records the minimum information required for each ENS report received</td>
<td>2,500</td>
<td>5,000</td>
</tr>
<tr>
<td>(c)(1)(2) Responsible railroad(s) fail(s) to record in writing an appointment of a railroad, pursuant to §234.306, or properly retain a copy of the document</td>
<td>2,500</td>
<td>5,000</td>
</tr>
<tr>
<td>(d)(1) Railroad fails to properly retain records</td>
<td>2,500</td>
<td>5,000</td>
</tr>
<tr>
<td>(d)(2) Railroad fails to provide FRA access to records</td>
<td>2,500</td>
<td>5,000</td>
</tr>
<tr>
<td>234.315 Electronic recordkeeping:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(a)–(b) Railroad fails to comply with electronic recordkeeping requirements</td>
<td>2,500</td>
<td>5,000</td>
</tr>
</tbody>
</table>

1 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 $105,000 for any violation where circumstances warrant. See 49 CFR part 209, appendix A. To facilitate the assessment of penalty amounts, the specific types of violations of a given section are sometimes designated by the paragraph of the section (e.g., “(a)”) and a code not corresponding to the legal citation for the violation (e.g., “[(1)]” so that the complete citation in the penalty schedule is e.g., “(a)(1).” FRA reserves the right to revise the citation of the violation in the Summary of Alleged Violations issued by FRA in the event of litigation.

2 Either this section or the parallel section of subpart C of this part may be cited, but not both.

3 FRA does not plan to assess civil penalties against a third-party telephone service, under §234.307(c) or (e). However, FRA plans to assess violations against the dispatching and maintaining railroads for failing to ensure that the third-party telephone service complies with the requirements of §§234.307, 234.313, or 234.315, if applicable. See §234.307(a), (b), (e).

4 For a violation of §234.307(d)(4), a penalty should be assessed for the specific type of violation according to the penalty schedule for a violation of §234.305.

5 For a violation of §234.307(e) pertaining to recordkeeping, a penalty should be assessed for the specific type of violation in the penalty schedule for a violation of §§234.313 or 234.315, as applicable.

6 FRA reserves the right to cite a violation for each item of required information omitted from a sign.

7 FRA reserves the right to cite a violation for each physical characteristic that is nonconforming.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

50 CFR Part 229

[Docket No. 150122067–5453–02]

RIN 0648–BE83

**Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to amend the regulations implementing the Atlantic Large Whale Take Reduction Plan. This action will change the minimum number of traps per trawl to allow fishing with a single trap in certain Massachusetts and Rhode Island state waters; and modifies the requirement to use one endline on trawls within certain areas in Massachusetts state waters. Also, this rule creates a ½ mile buffer in waters surrounding certain islands in Maine to allow fishing with a single trap. In addition, this rule includes additional gear marking requirements for those waters allowing single traps as well as two new high use areas for humpback whales (*Megaptera novaeangliae*) and North Atlantic right whales (*Eubalaena glacialis*).

**DATES:** This rule is effective May 28, 2015, except for the amendment to §229.32(b)(3), which is effective July 1, 2015, and the amendment to §229.32(b)(1)(i) and (ii), which is effective September 1, 2015.

**ADDRESSES:** Copies of the supporting documents for this action, as well as the Atlantic Large Whale Take Reduction Team meeting summaries and supporting documents, may be obtained from the Plan Web site (http://www.greateratlantic.fisheries.noaa.gov/protected/whaletrp/index.html). Written comments regarding the burden hour estimates or other aspects of the collection of information requirements contained in this final rule can be submitted to Kimberly Damon-Randall, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Dr, Gloucester, MA 10930 or Office of Information and Regulatory Affairs by email at OIRA_submissions@omb.eop.gov.

**FOR FURTHER INFORMATION CONTACT:** Kate Swails, NMFS Greater Atlantic Regional Fisheries Office, 978–282–8481. Kate.Swails@noaa.gov; or, Kristy Long, NMFS Office of Protected Resources, 206–526–4792. Kristy.Long@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

NMFS published an amendment to the Atlantic Large Whale Take Reduction Plan (Plan) on June 27, 2014 (79 FR 36586) to address large whale entanglement risks associated with vertical line (or buoy lines) from commercial trap/pot fisheries. This amendment included gear modifications, gear setting requirements, a seasonal closure (Massachusetts Restricted Area) and gear marking for both the trap/pot and the gillnet fisheries.

In consultation with the Atlantic Large Whale Take Reduction Team (Team), NMFS developed protocols for considering modifications or exemptions to the regulations implementing the Plan. Following these protocols, on August 18, 2014, the Massachusetts Division of Marine Fisheries (DMF) submitted a proposal to modify the Massachusetts Bay Restricted Area and to exempt several areas from the gear setting requirements to address safety and economic concerns raised by their industry members.

The DMF proposal adequately addressed the Team’s established protocols and criteria for considering modifications or exemptions to the Plan’s regulations, which enabled NMFS to consult with the Team on the DMF proposal. We decided to address the modifications to the Massachusetts Restricted Area and the exemption of the minimum number of traps per trawl requirements separately, beginning with the Massachusetts Restricted Area. After discussions with the Team, NMFS