

Dated: August 1, 1997.

Ward Penberthy,

*Acting Director, Chemical Control Division,
Office of Pollution Prevention and Toxics.*

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[FRA Docket No. RST-90-1, Notice No. 6]

RIN 2130-AA75

Track Safety Standards

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

ACTION: Notice of proposed rulemaking; date and location of public hearing.

SUMMARY: By notice of proposed rulemaking (NPRM) published on July 3, 1997 (62 FR 36138), FRA proposed a rule to revise the Federal track safety standards. In that notice, FRA announced that it would soon schedule a public hearing to allow interested parties the opportunity to comment on issues addressed in the NPRM.

DATES: *Public Hearings:* The date of the public hearing is Thursday, September 4, 1997 at 9:00 a.m. in Washington, D.C. Any person wishing to participate in the public hearing should notify the Docket Clerk by telephone (202-632-3198) or by mail at the address provided below at least five working days prior to the date of the hearing and submit three copies of the oral statement that he or she intends to make at the hearing. The notification should identify who the person represents and the particular subject(s) the person plans to address. The notification should also provide the Docket Clerk with the participant's mailing address. FRA reserves the right to limit participation in the hearings of persons who fail to provide such notification.

ADDRESSES: (1) *Docket Clerk:* Written notification should identify the docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, RCC-10, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590.

(2) *Public Hearings:* The hearing will be held in Room 2230 of U.S. Department of Transportation headquarters, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Allison H. MacDowell, Office of Safety Assurance and Compliance, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 (telephone number: 202-632-3344), or Nancy Lummen Lewis, Esq., Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Mail Stop 10, Washington, D.C. 20590 (telephone: 202-632-3174).

S. Mark Lindsey,
Chief Counsel.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[FRA Docket No. RSGC-6; Notice No. 4]

RIN 2130-AA92

Selection and Installation of Grade Crossing Warning Systems; Termination of Rulemaking

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

ACTION: Termination of rulemaking.

SUMMARY: This notice terminates rulemaking action in FRA Docket No. FSGC-6. In its Notice of Proposed Rulemaking (NPRM), FRA proposed to prohibit railroads from unilaterally selecting and installing highway-rail grade crossing warning systems at public highway-rail crossings. FRA also proposed to require that railroads furnish state highway authorities with information necessary for state grade crossing project planning and prioritization purposes. Termination of this rulemaking is based on public comments and FRA's determination that railroad safety will not be best served by issuance of such a regulation at this time.

FOR FURTHER INFORMATION CONTACT:

Bruce F. George, Director, Highway-Rail Crossing and Trespasser Programs Division, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202-632-3305), or Mark Tessler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202-632-3171).

SUPPLEMENTARY INFORMATION: On March 2, 1995, FRA published in the **Federal Register** (60 FR 11649) an NPRM which was meant to clarify the respective responsibilities of railroads and state and local governments regarding the

selection and installation of highway-rail grade crossing warning systems. Public hearings were held on the proposal on June 6 and 7, 1995. The public comment period closed on June 14, 1995. However, FRA continued to receive comments and to date has received in excess of 3,000 comments in this rulemaking. All comments have been considered by FRA, including those received after June 14, 1995, in accord with FRA's policy to consider late filed comments to the extent possible. A wide range of views were expressed in the public hearings and in written comments submitted to the public docket. A high proportion of the comments were form letters and preprinted postcards expressing opposition to the proposal.

Subsequent to issuance of the NPRM, a school bus stopped at a highway-rail grade crossing in Fox River Grove, Illinois, was struck by a commuter train. Seven students died. Following the accident the Secretary of Transportation established a Grade Crossing Safety Task Force (Task Force) to build upon the Department's 1994 Rail-Highway Crossing Safety Action Plan. The Task Force reported its findings to the Secretary on March 1, 1996. The Executive Summary of the report stated in part:

[T]he report recommends 24 specific follow-on actions to address both physical and procedural deficiencies. In practice, the responsibility for public grade crossings resides with State and local governments, railroads, and transit agencies. Recognizing the constrained budgets that are available to the private sector and State and local authorities, the report emphasizes rethinking existing practices—not requiring new ones from a regulatory approach. This reliance on existing opportunities is emphasized by recommendations that encourage grade crossing safety through coordinated inspections, law enforcement, and driver education.

As the Task Force Report states, "[t]his * * * report should not be viewed as a surrogate for the Action Plan, but as a supplement which focuses on the planning, construction, maintenance, operation, and inspection activities involving rail crossings. The Task Force directed its attention to those grade crossing issues for which there were no well-defined standards, practices, or information. It was in these five problem areas outside the scope of the Action Plan, that the Task Force felt additional improvements in grade crossing safety could be made."

FRA is continuing its implementation of the Action Plan's recommendations while at the same time it works to ensure that the recommendations of the Safety Task Force are carried out.

The NPRM

The impetus in proposing the NPRM was the goal, as stated in the Action Plan, to "review the allocation of responsibilities for the selection and installation of warning devices and the potential for uniform nationwide standards." The NPRM, together with the subsequent hearings and wide range of comments stimulated extensive discussion and debate on the issue. FRA notes that certain groups generated interest and comments by claiming that the proposed rule "would shield railroad companies from liability when their negligence contributes to such accidents." This and similar claims made in mass mailings to FRA are clearly misleading statements. FRA believes that there are valid policy arguments on both sides of the issue in this debate and that resorting to misleading statements apparently in order to increase the volume of comments does not lead to helpful public airing of legitimate concerns. Spreading such obvious misinformation can only take advantage of well meaning individuals who have not had the opportunity to read the proposed rule themselves, but who rely on the integrity and accuracy of those providing the information. FRA is disappointed that such groups apparently felt that the strength of their legitimate objections to the rule were insufficient.

While some of the debate surrounding the proposal was based on incorrect information, much of the discussion raised valid questions regarding what should be the proper role of railroads, state and local governments, and the federal government in the selection and installation of grade crossing warning systems. The discussion remained on a general and conceptual level however. The overwhelming majority of comments were conclusory in nature and did not add hard data which could be helpful to FRA in its decision making. Opponents claimed that the rule would effectively shift tort liability from railroads to state and local governments. Opponents of the rule also stated that there was no evidence that money saved by railroads would be spent on grade crossing safety and that the rule would remove any incentive a railroad may have to participate in crossing safety programs. Rule proponents, on the other hand, claimed that safety would be enhanced by more rational grade crossing planning.

Absent from virtually all rule comments and testimony, however, were data supporting the conclusions drawn from the rule. In the NPRM, FRA

stated that it "believes that railroads have many powerful incentives to continue their longstanding policy of voluntarily providing matching funds for federally funded grade crossing projects, comment is sought concerning whether this proposal will affect the level of railroad participation in such projects." FRA again received only conclusory comments rather than data on past, present or projected levels of participation.

Termination of rulemaking

FRA continues to believe that the proper relationship between railroads and state and local governments in terms of selection and installation of warning systems is as proposed in the NPRM: railroad should furnish governmental authorities with sufficient information to enable those authorities to make rational selection and installation decisions. However, at this time, in light of the lack of supporting hard data in the record and the magnitude of other regulatory and program safety initiatives being undertaken by FRA, this rulemaking is being terminated.

We note that this rulemaking has been a worthwhile first step in addressing the issue of allocation of responsibility for the selection and installation of warning devices and the potential for uniform nationwide standards in this area. We are confident that further steps in addressing these issues will build upon the information and discussion generated by this proceeding.

In light of the foregoing, FRA is hereby terminating this rulemaking.

Issued in Washington, D.C. on August 5, 1997.

Jolene M. Molitoris,
Administrator.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1155

[STB Ex Parte No. 566]

Rail Service Continuation Subsidy Standards

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) is proposing to remove regulations from the Code of Federal Regulations that concern standards for determining subsidies for the

continuation of rail service to govern rail properties not transferred to Consolidated Rail Corporation (Conrail) under the Final System Plan pursuant to the Regional Rail Reorganization Act of 1973.

DATES: Comments are due on September 8, 1997.

FOR FURTHER INFORMATION CONTACT:

Beryl Gordon, (202) 565-1600. (TDD for the hearing impaired: (202) 565-1695.)

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. 104-88, 109 Stat. 803 (ICCTA), abolished the Interstate Commerce Commission (ICC or Commission) and established the Board. Section 204(a) of the ICCTA provides that "[t]he Board shall promptly rescind all regulations established by the (ICC) that are based on provisions of law repealed and not substantively reenacted by this Act."

The regulations at 49 CFR part 1155 concern subsidy standards for certain rail lines in the region encompassed by the Final System Plan, described *infra*, that otherwise are subject to abandonment or discontinuance. They are the forerunner to our current offer of financial assistance (OFA) procedures that are national in scope. These regulations are based, at least partially, on statutes that are still in effect. 45 U.S.C. 744 (c) and (d). Under the ICCTA, however, the Rail Services Planning Office (RSPO), the statutory body that developed the regulations, has been abolished. See repealed 49 U.S.C. 10361-64. Moreover, the Board has in place analogous OFA regulations providing national subsidy standards. 49 CFR 1152.27 and 1152 subpart D. Finally, the regional subsidy regime at 45 U.S.C. 744, which applies to "rail service on rail properties of a railroad in reorganization," may be outdated and may apply only to a limited number of situations. Accordingly, we are instituting this proceeding to determine whether these regulations may be eliminated, or whether they have a continuing vitality and should be retained.

The 3R Act and Part 1155

The Regional Rail Reorganization Act of 1973, Pub. L. No. 93-236, 87 Stat. 985, 45 U.S.C. 701 *et seq.* (3R Act) created Conrail as a for-profit corporation to reorganize the bankrupt rail services in the Northeast and Midwest region.¹ The 3R Act provided

¹ "Region" is defined as "the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Michigan, and Illinois; the