## **DEPARTMENT OF TRANSPORTATION**

**Federal Railroad Administration** 

49 CFR Part 234

[FRA Docket No. RSGC-6; Notice No. 1]

RIN 2130-AA92

Selection and Installation of Grade Crossing Warning Systems; Notice of Proposed Rulemaking

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

**ACTION:** Notice of Proposed Rulemaking (NPRM).

SUMMARY: FRA proposes to prohibit railroads from unilaterally selecting and installing highway-rail grade crossing warning systems at public highway-rail crossings. FRA further proposes to require that railroads furnish state highway authorities with information necessary for state grade crossing project planning and prioritization purposes.

DATES: (1) Written comments must be received no later than May 16, 1995.

Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) A public hearing will be held at 9:30 a.m. on May 9, 1995. Any person who wishes to speak at the hearing should notify the FRA Docket Clerk at least five working days before to the hearing, by telephone or by mail. ADDRESSES: (1) Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in Room 8201 of the Nassif Building at the above address.

(2) A public hearing will be held in room 2230 of the Nassif Building, 400 Seventh Street, SW., Washington, DC Persons desiring to speak at the hearing should notify the Docket Clerk by telephone (202–366–0628) or by writing to the Docket Clerk at the address above.

FOR FURTHER INFORMATION CONTACT: Bruce F. George, Chief, Highway-Rail Crossing and Trespasser Programs Division, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–0533), or Mark Tessler, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202–366–0628).

**SUPPLEMENTARY INFORMATION: This** NPRM clarifies the respective responsibilities of railroads and state and local governments regarding the selection and installation of highwayrail grade crossing warning systems. This proposal is issued to eliminate confusion and uncertainty as to the role of railroads in the selection and installation process. FRA expects the proposed rules to "substantially subsume" the subject matter of railroads' selection and installation of highway rail grade crossing warning systems and as such will preempt state laws covering the same subject matter.

## **Background**

Highway-rail grade crossings present inherent risks to users, including motorists, pedestrians, railroad passengers and railroad employees. Of the more than 168,000 public highwayrail grade crossings in the nation, only 28,100 are fully equipped with automatic lights, gates and bells; fewer than 1,000 of the 108,000 private crossings are so equipped. The vast majority of public crossings (and private crossings) are equipped with only passive warning devices such as crossbucks. Engineering improvements at individual crossings, education of the public, and enforcement of highway traffic laws have reduced accidents and casualties at highway-rail crossings. Since 1978, accidents and fatalities have decreased dramatically despite increased highway usage, stable rail traffic levels, and increased train speeds. However, the present loss of life, injuries and property damage are still unacceptable. Highway-rail collisions are the number one cause of death in the entire railroad industry, far surpassing employee or passenger fatalities. Additionally, the proportion of severe accidents (i.e., those likely to result in fatalities) is rising. Nearly 4,900 collisions occurred between highway users and on-track railroad equipment in 1993. More than 600 people were killed and over 1,800 were seriously injured in these collisions.

In 1973 Congress first established the Rail-Highway Crossing Program (section 130 program) to improve highway-rail crossing safety. Continuous federal funding since then has made more than \$3 billion available in improvement funds, representing more than 90% of project costs under this program.

Because highway-rail grade crossing safety is primarily achieved through highway traffic control, DOT'S Federal Highway Administration (FHWA) has oversight responsibility for the program. See 49 CFR 1.48.

## **State Safety Prioritization Process**

FHWA regulations provide uniform federal standards for all highway traffic control systems, including those at highway-rail crossings. The federal government, rather than dictating the specific type of warning system to be installed at each of the nation's 168,000 public grade crossings, has established the outline of the required planning and selection process. FHWA has adopted regulations governing the process by which states are to establish priorities for implementing highway safety improvement projects, including projects for elimination of hazards of highway-rail grade crossings

FHWA's regulations detail the uniform planning process involved in selecting the crossings to be improved (23 CFR Part 924.) The planning component of a state's highway safety improvement program is required to incorporate a process for collecting and maintaining a record of accident, traffic, and highway data including characteristics of both highway and rail traffic. The planning component must also contain a process for analyzing data to identify hazardous highway locations based on accident experience or accident potential as well as containing a process for conducting engineering studies of hazardous locations. Of vital importance in ensuring that limited funds are spent in a manner that will achieve the greatest safety return, a state's safety improvement program is required to have a process for establishing priorities for implementing highway safety improvement projects. That process must consider the potential reduction in the number and/ or severity of accidents; the cost of the projects and resources available; the relative hazard of public highway-rail crossings based on a hazard index formula; on-site inspections of crossings; potential danger to large numbers of people at crossings used on a regular basis by passenger trains, buses, pedestrians, bicyclists or by trains and motor vehicles carrying hazardous materials; and other criteria as appropriate in each state. 23 CFR 924.9.

As a review of the planning and prioritization components shows, the process outlined above could only be carried out by an entity capable of gathering and analyzing all the needed data. A railroad has only data available