to it which is railroad specific: rail traffic volume, authorized speed, number of tracks, type of train control system, and projected changes in these areas. Even accident data available to a railroad are of uncertain benefit since they are limited to the experiences of that one railroad rather than compared and collated with similar data from other railroads in the state or even other railroads whose tracks are crossed by the same highway.

The federal government has recognized that individual entities such as railroads do not have the requisite analytical tools and information gathering ability to make the appropriate decisions regarding the most appropriate focusing of limited safety improvement funds. State agencies have the necessary analytical tools and information. It is therefore appropriate that they have the responsibility for the actual selection of specific crossings and the determination of the type of warning devices to be installed.

The Secretary, through FHWA, has also issued standards governing the form and placement of all grade crossing warning systems irrespective of whether federal funds are used in their installation. 23 CFR 646.214. FHWA's Manual on Uniform Traffic Control Devices (MUTCD), incorporated by reference into the Code of Federal Regulations (23 CFR 655.601), establishes "traffic control device standards for all streets and highways open to public travel regardless of type or class or the governmental agency having jurisdiction." MUTCD 1A-2. The MUTCD establishes uniform standards relating to design and placement of traffic control signs, pavement markings and automatic warning devices. These standards apply nationwide—even when the improvements have not been paid for with federal funds.

## **DOT Safety Initiatives**

This proposed rule is but one component of a continuing DOT campaign to improve grade crossing safety. DOT's Grade Crossing Action Plan includes several initiatives that will aid in improving safety at grade crossings. This plan details six major Departmental initiatives encompassing 55 separate actions addressing highwayrail grade crossing safety and trespass prevention. These initiatives include: enhanced enforcement of traffic laws at crossings; enhanced rail corridor crossing reviews and improvements; expanded public education and Operation Lifesaver activities; increased safety at private crossings; improved

data and research efforts; and prevention of rail trespassing.

A cornerstone of this grade crossing safety campaign is the closure and consolidation of little used and redundant crossings. It is generally acknowledged that there are too many highway-rail grade crossings in this country-there are not sufficient resources from any source or sources to provide full warning systems or grade separations at all of the nation's crossings. Too many crossings are equipped only with crossbuck warning signs. Elimination of poorly designed, less travelled, and redundant crossings will clearly enhance the safety of the travelling public. FRA has thus been advocating consolidation and closure for a number of years. FRA's role of advocate reflects the fact that state and local governments have the authority to close and consolidate crossings just as they have the authority to create crossings in connection with public road construction.

This rulemaking is one in a series of rules addressing the responsibilities of the various parties in this critical rail safety area. On September 27, 1994, FRA issued maintenance, inspection, and testing rules (59 FR 50086, September 30, 1994). Those rules for the first time impose specific responsibilities on railroads to maintain, inspect and test active highway-rail grade crossing warning systems. Additionally, FRA imposed on railroads the responsibility to take specified actions when grade crossing warning systems malfunction. The rules impose costs on railroads in addition to the more than \$130 million they spend on crossing maintenance every year. The allocation of responsibility to railroads regarding grade crossing maintenance, inspection, and testing and response to malfunctions reflects reality—railroads are the appropriate party to perform these activities. They have the technical expertise and forces to perform the work. Safety is enhanced by such allocation of responsibility.

Similarly, responsibilities have been allocated between railroads and state and local agencies by the Congress in the Swift Rail Development Act of 1994 (Pub. L. 103-440). Section 302 of that act directs the Secretary of Transportation to issue regulations requiring that a locomotive horn be sounded while each train is approaching and entering each public grade crossing unless certain supplementary safety measures are provided by the "appropriate traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing." Congress

has implicitly recognized that railroads have responsibility in areas over which they have control, such as sounding of horns, while state and local traffic control authorities have responsibility pertaining to those areas within their expertise and under their control, namely, highway traffic control.

## The NPRM

This NPRM would also define responsibilities in the grade crossing area. It defines the responsibility of railroads to provide information and assistance in those areas in which their expertise is paramount—railroad operations. Railroads would be required to provide appropriate state agencies information related to their operations and to participate with state or local diagnostic teams to help the state or local governmental body determine which crossings' warning systems should be upgraded and to what extent.

This allocation of responsibility to railroads is based on the recognition that state and local governmental bodies are the entities with the expertise and information to look at the entire picture (of which railroad traffic and plans are but one component): whether crossings should be consolidated or closed; funding availability; funding constraints; local desires; area residential, commercial and industrial development plans; and highway traffic engineering demands and constraints. Consistent with that expertise and information base, state and local governmental bodies are the appropriate bodies to determine which, how, and when highway rail grade crossing warning systems should be upgraded. Because of the very high cost to install an automatic traffic control warning system at a grade crossing—more than \$100,000 at a double track crossing—it is imperative that the limited safety funds, from whatever sources, available for crossing improvements be spent in a rational, uniform, and coordinated manner. The present system whereby states, pursuant to FHWA regulations, investigate, plan, and prioritize crossing improvements provides the needed uniformity and coordination to ensure that the crossings most in need of safety improvements are those that receive them. Grade crossing safety is best enhanced by such a program that provides for a systematic upgrading of traffic control devices at crossings that are truly needed pursuant to a prioritized schedule established by state authorities under uniform federal criteria. Such a program allows state highway officials the ability to respond to the concerns of the public in making grade crossing improvement decisions,