Federal Register / Vol. 60, No. 41 / Thursday, March 2, 1995 / Proposed Rules

11652

highways and motor vehicle safety are the appropriate decision makers to decide which devices should be installed on public highways and the order in which intersections should be improved.

Railroads should be responsible for providing information to help state highway authorities make those decisions and for helping to implement those decisions after they are made. In fulfilling the requirements of FHWA's Highway Safety Improvement Program (49 CFR Part 924), state agencies have a need for railroad information that might have an impact on the type of improvement appropriate to a particular crossing or that might affect the relative priority to be given in upgrading one crossing versus another. Such data include present and projected rail traffic (both hazardous and non-hazardous materials), track configuration, signalling, and authorized train speed as well as other conditions affecting the crossing. Railroads have historically provided assistance to state agencies planning for grade crossing improvements. The proposal would codify railroads' present practice of providing information and assistance needed by those state agencies.

The proposal will not affect railroads' present obligations to maintain grade crossing warning systems. Indeed, as noted above, FRA's recently issued amendments to Grade Crossing Signal System Safety regulations codify specific maintenance, inspection, and testing requirements for grade crossing warning systems.

While this proposed rule prevents a railroad from unilaterally selecting and installing warning systems, it does not prevent a state agency from ordering a railroad to pay for all or part of grade crossing warning system on a non-Federal aid project. While FRA is philosophically opposed to the concept of a railroad being forced to pay for an upgrade to what is essentially a highway traffic control device for which it receives no net benefit (see 23 CFR 210(b)), FRA is not prepared at this time to issue regulations preempting the many state laws in this area.

Section-by-Section Analysis

§234.301 Railroad cooperation.

Paragraph (a) of this section requires that railroads cooperate with the appropriate state agency in furnishing information to enable the state to develop plans and project priorities for the elimination of hazards of highwayrail grade crossings. Railroad plans to increase traffic on a line or to upgrade track or signalling to enable increases in

train speed, are important factors which states must take into consideration in determining their prioritization and plans. Similarly, state planners need information regarding railroad plans or projections regarding decreasing traffic volume. Railroads have generally provided such information on a voluntary and routine basis. This provision codifies the responsibility of a railroad to provide current and projected information which is uniquely available to the railroad. Without railroad information a state is unable to make the appropriate decisions to determine which crossings should be upgraded and with which type of warning systems. Many railroads already provide information such as current train counts, speeds, type and number of tracks and type of installed warning system to FRA or the state for inclusion in the DOT/Association of American Railroads National Highway-Rail Grade Crossing Inventory (Inventory) on file with FRA. Duplicate submissions to a state are not necessary under this rule inasmuch as Inventory data is routinely available to States.

Presently, information submissions by States and railroads to the Inventory are made on a voluntary basis. Comments are specifically invited regarding the advisability of making Inventory information submission mandatory.

This section also provides that a railroad need not submit proprietary data of a confidential nature to a state unless that information will be protected from disclosure. Such provision will ensure that railroads will not be penalized commercially by such regulatory compliance.

Paragraph (b) of this section requires that railroads provide appropriate engineering and other technical assistance to the state agency in designing and installing the warning system determined by the state to be appropriate to the particular crossing. In many instances a railroad is the only party with the requisite technical expertise to assist the state in developing the engineering design for the crossing. This section recognizes that fact and therefore establishes a duty to assist in this area.

§ 234.303 Selection and installation of warning systems at public crossings.

Paragraph (a) of this section prohibits a railroad from unilaterally selecting or determining the type of grade crossing warning system to be installed at a public highway-rail grade crossing. Such a decision is more appropriately made by the state or local government. In some situations today, a railroad voluntarily contributes to the cost of installing a crossing warning system. In some cases, a railroad has voluntarily contributed all or part of a locality's required local share in order to enable a particular crossing to be improved with federal funds. The proposed rule is not meant to alter this practice of voluntary railroad involvement. Similarly, this rule is not meant to affect those situations in which a railroad improves a crossing at its own expense in order to secure the closure of another crossing. These railroad practices, unlike funding of projects outside of the state planning process, are supportive and consistent with the prioritization and planning process. Therefore, nothing in the proposal prevents a railroad from voluntarily contributing to the installation costs of warning devices installed pursuant to the state planning process.

Paragraph (b) addresses installation of the warning system after the specific grade crossing and type of warning system has been selected. This paragraph provides that a railroad shall only install or upgrade a grade crossing warning system at a public highway-rail grade crossing pursuant to an order by, or agreement with, a state agency or other public body having authority to issue such order or enter into such agreements. The proposal provides that whenever such state agency or other public body determines that a particular grade crossing warning system should be installed at a particular highway-rail grade crossing, the railroad shall comply with any legally sufficient order, or in the case of federally funded grade crossing projects, enter into and perform an agreement for the installation or upgrade of that grade crossing warning system with the state agency or other public body having jurisdiction. The rule does not require a railroad to provide the non-federal share of costs involved in federally-funded grade crossing improvement projects.

This section recognizes that since the warning system is, in many instances, tied into the railroad's track circuits and the railroad will maintain the system, the railroad is generally the most appropriate party to physically install the system. Under the present Federalaid system, railroads are reimbursed for procurement and installation costs of the warning system. This paragraph recognizes the benefits of this process and only prohibits railroads from unilaterally installing grade crossing warning systems without state or local approval.

This section is not meant to prohibit a railroad's voluntarily contribution to the costs of installation of a highwayrail grade crossing warning system.