DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

DOCKET NO. FMCSA-2021-0050
RAILROAD GRADE CROSSINGS; STOPPING REQUIRED:
EXCEPTION FOR RAILROAD GRADE CROSSING EQUIPPED WITH
ACTIVE WARNING DEVICE NOT IN ACTIVATED STATE
NOTICE OF PROPOSED RULEMAKING

COMMENT SUBMITTED BY
THE ASSOCIATION OF AMERICAN RAILROADS AND
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

The Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) (jointly, the Associations), on behalf of themselves and their member railroads, submit the following comments in response to the Federal Motor Carrier Safety Administration's (FMCSA's) May 30, 2025, Notice of Proposed Rulemaking (NPRM) proposing to amend 49 CFR part 392.[1] The proposal would allow drivers of certain commercial motor vehicles (CMVs) (e.g., buses transporting passengers and CMVs transporting certain hazardous materials) to proceed without stopping through a railroad track crossing when equipped with an active warning device (e.g., flashing lights or crossing gates down, indicating the arrival of a train) while not in an activated state .

Statement of Interest

AAR is a non-profit trade association whose membership includes freight railroads that operate 83% of the line-haul mileage, employ 95% of the workers, and account for 97% of the freight revenues of all railroads in the U.S.; and passenger railroads that operate intercity passenger trains and provide commuter rail service. ASLRRA is a national trade association representing the interests of about 600 short line and regional railroad members in legislative and regulatory matters. Short lines operate

[1] 90 Fed. Reg. 22914.

47,500 miles of track in the United States, or approximately 29% of the national freight network. The members of the Associations will be directly affected by the proposed changes because they operate trains over highway-rail grade crossings that are equipped with active warning devices.

Introduction

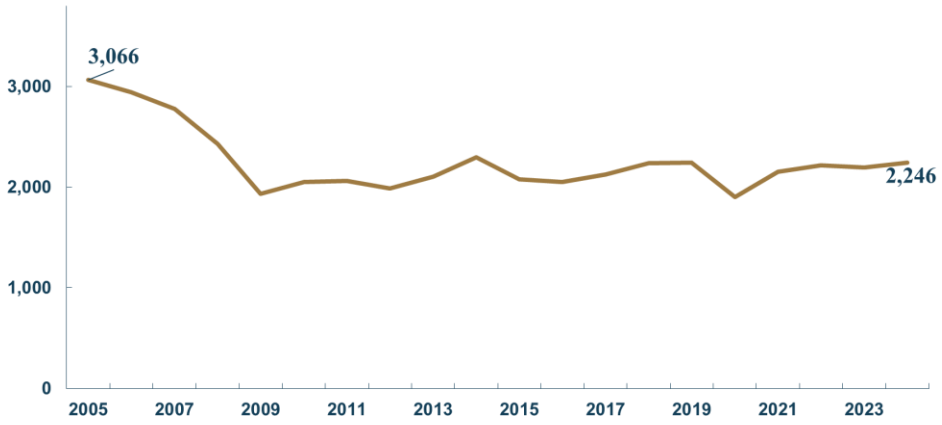
The Associations appreciate the efforts of the Department of Transportation and, specifically, FMCSA in attempting to identify ways that vehicles can operate more efficiently as they interact with railroad operations at highway-rail grade crossings. The Associations and their members support moving towards "a more streamlined and risk-informed regulatory approach that is performance-based" that "focuses on desired, measurable outcomes."[2] However, the railroads cannot support the approach identified by FMCSA, which will have the unintended consequence of reducing the safety of rail operations as well as the motoring public. As such, the Associations oppose the NPRM and offer these comments to help ensure that FMCSA makes risk-based decisions that protect public highway users who traverse public railroad grade crossings and the safety of railroad operations.

Highway-rail grade crossing safety has improved but too many vehicle operators disregard active warning devices resulting in collisions.

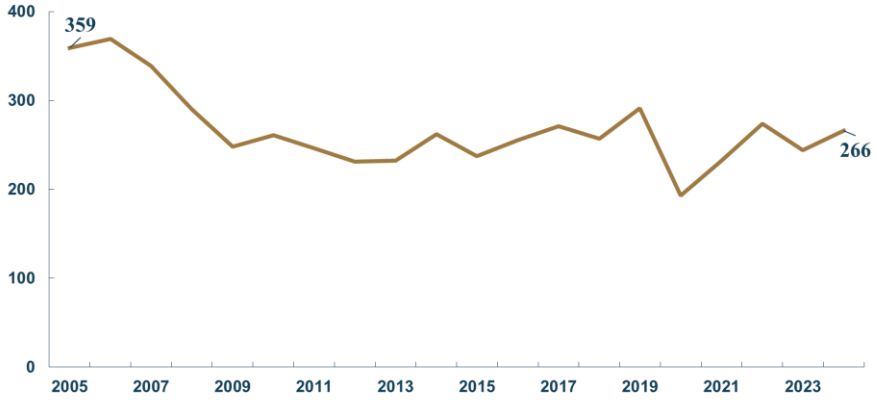
Highway-rail safety is a shared responsibility among railroads, government agencies, and the members of the public that traverse crossings. While states—not railroads—are responsible for assessing and prioritizing crossing risks to determine the appropriate level of signage and types of warning devices used at crossings, railroads invest millions annually in safety, maintenance, technology, and public education. Railroads are working to prevent highway-rail accidents, enhance safety, and save lives. These efforts have contributed to significant safety improvements. Grade crossing collisions have declined 27% since 2005. Similarly, grade crossing fatalities in 2024 are 26% lower than in 2005.

[2] 90 Fed. Reg. at 22917.

Grade Crossing Collisions (2005-2024)



Grade Crossing Fatalities (2005-2024)

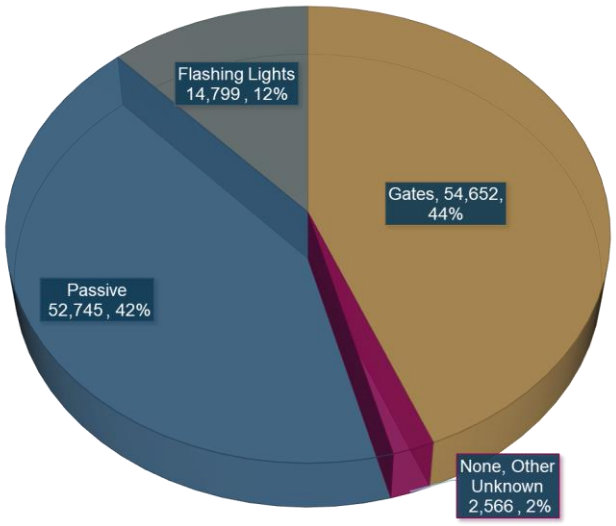


Sources: http://safetydata.fra.dot.gov/officeofsafety/publicsite/summary.aspx Note: Includes pedestrians, employees, passengers, and collisions at private crossings. Excludes documented suicides. In 2020, due to the pandemic many were under "stay at home" orders for a period. Data for 2024 is preliminary, as of March 2025.

However, there continue to be too many collisions at highway-rail grade crossings, including those equipped with active warning devices such as flashing lights or gates.

The Federal Highway Administration administers the Highway-Rail Crossings Program (Section 130), which provides funds to eliminate hazards at public railway-highway crossings. The funding is apportioned to states to assist with grade crossing improvements, such as active warning devices, including lights and gates. This public investment has led to an increase in the percentage of public highway-rail grade crossings that are equipped with active warning devices. As of 2024, more than 50%

of public highway-rail grade crossings have active warning devices. This includes 44% of such crossings being equipped with gates and another 12% of such crossings being equipped with flashing lights.

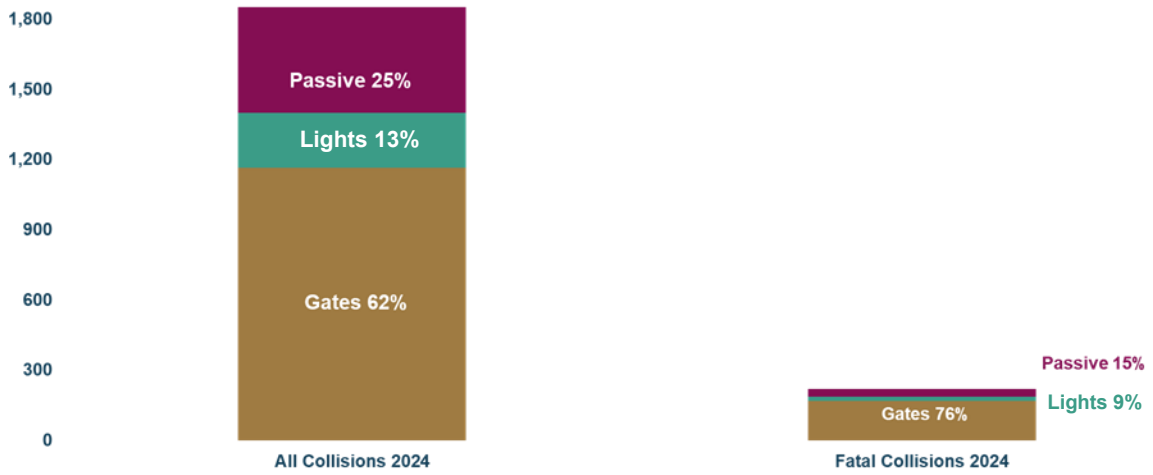


Source: FRA analysis as of April 2025. FRA Grade Crossing Inventory. Based on FRA Warning Device determination. Does not include pedestrian pathways or station crossings.

Based on the placement of these gated crossings, AAR's analysis has determined that 75% of all trains operate through public crossings that are equipped with gates, while 68% of motor vehicle traffic traveling over public grade crossings does so on crossings that are equipped with gates.[3] As a result, approximately 92% of all motor vehicle-train "collision opportunities" occur at public grade crossings that are gated. It is a positive that so many potential "collision opportunities" are at crossings protected by active warning devices, but it is important to understand that, while active warning devices contribute to improved public safety, they are not a panacea. Indeed, in 2024, 75% of all grade crossing collisions and 85% of all fatal grade crossing collisions occurred at crossings with active warning devices, suggesting that in many cases motor vehicle drivers disobey—either intentionally or unintentionally—the activated warning signals, causing a collision with a train, which endangers not only the driver of the

[3] AAR Analysis of April 2025 DOT Highway-Rail Crossing Inventory. Note: Does not include pedestrian pathway or station crossings.

motor vehicle and any potential passengers in the vehicle, but also rail safety (train and engine employees, ground crews, and passengers, etc.).



Sources: AAR Analysis of FRA Highway-Rail Crossing Incident Database as of March 2025. Note: All U.S. Railroads. All Collisions at Public Highway-Rail Crossings, including those with pedestrians. Percentages are rounded.

Moreover, the scale of the problem is not insignificant. A review of FRA data from 2005-2024 shows that there were 25,502 incidents at public highway-rail grade crossings equipped with active warning devices, which resulted in 3,412 fatalities and 9,736 injuries.[4] The FRA data shows that of these incidents, 2,986 involved a truck-trailer (with 78 fatalities and 1,569 injuries), 1,049 involved trucks (with 88 fatalities and 557 injuries), 49 involved buses (with 4 fatalities and 85 injuries), and 12 involved school buses (with zero fatalities and 9 injuries).[5]

The proposed changes are likely to impact driver behavior in a way that increases highway-rail grade crossing incidents.

Considering the above cited statistics, the proposed change will create more confusion for professional drivers that is likely to result in increased collisions between trains and CMVs at highway-

[4] FRA Highway-Rail Grade Crossing Incidents, Fatalities and Injuries (2.08), https://data.transportation.gov/stories/s/Highway-Rail-Grade-Crossing-Incidents-Fatalities-a/bda5-32at/
[5] Ibid.

rail grade crossings. Current training instills a habit of stopping at crossings, making the action instinctive and reducing the likelihood of overlooking a stop when it is needed. There is no guesswork under the current rule. A universal policy ensures consistency even as the state and local traffic laws may change from jurisdiction to jurisdiction and from time to time.

Under the proposed rule, a CMV may proceed across railroad tracks without stopping provided that the local law permits the CMV to proceed without stopping. As such, the driver will be required to take different actions depending on the law that applies at the location of the particular crossing that is being traversed by the CMV. Many commercial drivers are not limited to regular routes and may not have knowledge of the current local laws controlling movements across highway-rail grade crossings, which are of course subject to change. Moreover, commercial drivers also may not be familiar with the physical characteristics of a particular roadway. A driver approaching highway-rail grade crossing will not always know if the crossing ahead has active warning devices. Requiring vehicles to stop provides commercial drivers with extra time to react to unexpected situations, such as a train approaching rapidly around a curve or other vehicles behaving unpredictably around the crossing. Mandatory stopping allows the CMV operator to exercise heightened awareness in observing the surroundings, encouraging them to be more observant and cautious, without the added workload of assessing whether the crossing has active warning devices, whether those devices have been activated, and whether local law requires stopping notwithstanding the presence and activation status of any warning devices.

Additionally, in certain circumstances stopping in advance of the highway-rail grade crossing allows the operator of the CMV to gather information about the ability to safely proceed before traversing the crossing. For example, stopping can allow the CMV operator to determine if the CMV can fully and adequately clear the crossing in locations where there is short storage distance at locations with adjacent intersections.

FMCSA's analysis must consider the full safety impact on railroad operations.

FMCSA's analysis suggests that the proposed change will not result in any new costs but could result in cost savings by improving traffic flow at grade crossings and potentially reducing rear-end collisions.[6] While there may be certain cost savings aspects to the rule, it does not appear that FMCSA considered the full impact of the change to the railroad industry from increased highway-rail collisions with buses and CMVs that would not have occurred if a the vehicle operator had stopped prior to attempting to traverse the crossing. These costs could be substantial because introducing a change in behavior for some crossings increases the potential for human error.

In 2013, the Transportation Research Board published a report highlighting that "the comprehensive quantifiable costs of collisions involving a train and one or more motor vehicles at a grade crossing may include substantial property damage incurred by freight shippers as well as the parties to the crash, delivery delay and lost time for traffic that is diverted by the crash, cost of public-service agencies responding to the crash and its aftermath, and more."[7] The report further noted that:

> While the number of grade crossing collisions is a small fraction of the number of collisions on the roadway system overall, their impacts are disproportionately large. The literature indicates that grade crossing crashes are much more likely to involve a fatality than other highway crashes. In addition, a grade crossing incident will often have other consequences not typically associated with highway crashes, such as damage to rail equipment and infrastructure; injuries to rail employees and passengers; damage to goods; business interruption; and time spent in public hearings following a collision.[8]

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[6] Presumably, these types of rear-end collisions will be reduced over time, even in the absence of this rulemaking, as vehicles increasing include collision avoidance systems that allow vehicles to take action when the operator does not respond appropriately when approaching a stopped vehicle. A recent study conducted in partnership with the National Highway Traffic Safety Administration and the automakers shows that the development of automatic emergency braking (AEB) on vehicles has already resulted in significantly fewer rear-end collisions as more cars incorporate AEB technology and the AEB technology becomes more effective. This study shows that the percentage of AEB-equipped vehicles has risen steadily from 3% in 2015 to 94% in 2023. Meanwhile, the effectiveness of AEB technology has improved over the same time period, from an estimated effectiveness rate of 46% to 52%. "A Study on Real-world Effectiveness of Model Year 2015–2023 Advanced Driver Assistance Systems," The MITRE Corporation (Jan. 6, 2025). https://www.mitre.org/sites/default/files/2025-01/PR-25-0114-Study-Real-world-Effectiveness-Model-year-2015–2023-ADAS.pdf.

[7] "Comprehensive Costs of Highway-Rail Grade Crossing Crashes," pg. Report No. 755, TRB (2013); https://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_rpt_755.pdf.

[8] Ibid.

FMCSA must consider all potential impacts resulting from collisions between buses or CMVs and trains to ensure that it is appropriately assessing the full impact of those potential collisions.

Additional signage would be required to alert CMV operators if the highway-rail grade crossing is equipped with active warning devices.

State and local governments will need to expend resources to supplement existing traffic signs with additional signage or alerts in advance of the crossing to indicate to CMV operators that the crossing has active warning devices or passive warning devices (where a stop is still mandatory). While some electronic navigation systems may indicate the type of warning device, others do not.

Any exception to the existing requirement to stop must require a diagnostic review of each highway-rail grade crossing with active warning devices to ensure that railroad safety is protected.

If FMCSA intends to finalize the proposed rule, then FMCSA should not adopt a blanket rule that applies across the board without a consideration of risk (except at those locations where local law still requires the CMV operators to stop). Instead, every highway-rail public grade crossing with active warning devices should be reviewed on a case-by-case basis, as is done by diagnostic teams today, to ensure that it is safe for a bus or CMV transporting hazmat to proceed without stopping at the crossing. Factors for diagnostic teams to consider include multi-track crossings, crossing profile, extreme angles, operational concerns such as traffic mix, number of freight and passenger trains, and other relevant factors that could impact driver decision-making.[9] Diagnostic teams already assess such factors when installing and maintaining active warning devices, so such work would be consistent with existing practices. Indeed, although it does not appear that FMCSA considered this type of analysis, if FMCSA were to finalize the NPRM as proposed, it would likely necessitate diagnostic reviews of existing grade crossings to ensure that the active warning devices provide sufficient warning based on the new expectation that buses and CMVs transporting certain hazardous materials will not stop before traversing a crossing.

[9] A typical diagnostic review takes approximately 3-6 man-hours per crossing.

The proposed rule would affect driver behavior. Indeed, that is its intent. The approach is similar to downgrading a stop sign to a yield sign for certain motor vehicle operators at nearly 70,000 locations across the United States. The Manual on Uniform Traffic Control Devices (MUTCD) is instructive on the types of considerations FMCSA should consider. These are addressed in the MUTCD guidance governing the determination to remove traffic control signals, and similar considerations are warranted here:

Section 4B.05 Basis of Removal of Traffic Control Signals

Guidance:

01 *Engineering judgment should be applied in the review of operating traffic control signals to determine whether the type of installation and the timing program meet the current requirements of all forms of traffic.*

02 *If changes in traffic patterns eliminate the need for a traffic control signal, consideration should be given to removing it and replacing it with appropriate alternative traffic control devices, if any are needed.*

03 *If the engineering study indicates that the traffic control signal is no longer justified, and a decision is made to remove the signal, the removal should be accomplished using the following steps:*

A. Determine the appropriate traffic control to be used after the removal of the signal.
B. Remove any sight-distance restrictions as necessary.
C. Inform the public of the removal study.
D. Flash or cover the signal heads for a minimum of 90 days, and install the appropriate STOP sign control or other traffic control devices.
E. Remove the signal if the engineering data collected during the removal study period confirms that the signal is no longer needed.

Option:

04 Because Items C, D, and E in Paragraph 3 of this Section are not relevant when a temporary traffic control signal (see Section 4D.11) is removed, a temporary traffic control signal may be removed immediately after Items A and B are completed.

05 Instead of total removal of a traffic control signal, the poles, controller cabinet, and cables may remain in place after removal of the signal heads for continued analysis.

The Associations' arguments apply equally to the inquiry about eliminating the requirement in 49 CFR § 392.11 for CMVs to slow upon approaching a highway-rail grade crossing.

FMCSA does not propose changes to § 392.11, but seeks comment on whether the requirement in § 392.11 could be eliminated. This requirement currently states:

> Every commercial motor vehicle other than those listed in § 392.10 shall, upon approaching a railroad grade crossing, be driven at a rate of speed which will permit said commercial motor vehicle to be stopped before reaching the nearest rail of such crossing and shall not be driven upon or over such crossing until due caution has been taken to ascertain that the course is clear.

The substantive issues raised in the Associations' comments on the proposed change to eliminate stopping also apply to the request for comment on eliminating the requirement for CMVs to slow upon approaching a grade crossing.

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Thank you for your consideration of these comments.

Respectfully submitted,

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