

Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612, entitled *Federalism* (52 FR 41685, October 30, 1987). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying proposed rule, is discussed in the preamble to the proposed rule (64 FR 42222).

#### List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund.

Dated: October 25, 1999.

**Susan H. Wayland,**

*Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

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## DEPARTMENT OF TRANSPORTATION

### Office of Motor Carrier Safety

#### 49 CFR Part 392

[Docket No. OMCS-98-4202]

#### Railroad-Highway Grade Crossing; Safe Clearance; Public Meeting

**AGENCY:** Office of Motor Carrier Safety (OMCS), DOT.

**ACTION:** Proposed rule; public meeting.

**SUMMARY:** This document announces a public meeting to discuss the problem of railroad-highway grade crossing crashes involving commercial motor vehicles (CMVs) in general, and specifically crashes in which the CMV was struck by a train because the driver of the CMV, for whatever reason, stopped the vehicle prior to clearing the railroad track. The meeting is intended to promote the sharing of information

between the Office of Motor Carrier Safety (OMCS), the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA); State agencies with responsibilities related to railroad-highway grade crossing safety; motor carriers, and rail carriers; and interested parties concerning the adequacy of current Federal and State laws and regulations governing the operation of CMVs at grade crossings, and devices and technologies that could be installed at these locations to help reduce the incidence of CMV-train crashes. The meeting will include presentations by the OMCS, the FHWA, and the FRA explaining their respective roles. The agencies would provide all interested parties with an opportunity to voice their concerns about the adequacy of current Federal and State requirements and present suggestions or recommendations for practical ways to reduce the incidence of railroad-highway grade crossing crashes.

**DATES:** The meeting will be held on Tuesday, November 9, 1999. The meeting will begin at 9:30 a.m. and end at 4:30 p.m.

**ADDRESSES:** The meeting will be held in Room 2230, Nassif Building, DOT Headquarters, 400 Seventh Street, SW., Washington, DC. 20590

**FOR FURTHER INFORMATION CONTACT:** Mr. David M. Lehrman, Office of Motor Carrier Safety (202) 366-0994; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC-20, (202) 366-1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>.

##### Creation of New Agency

Section 338 of the FY 2000 Department of Transportation and Related Agencies Appropriations Act prohibits the expenditure of any funds appropriated by that Act "to carry out the functions and operations of the Office of Motor Carriers within the Federal Highway Administration" (Public Law 106-69, October 9, 1999,

113 Stat. 986, at 1022). Section 338 further provides that, if the authority of the Secretary of Transportation on which the functions and operations of the Office of Motor Carriers are based is redelegated outside the FHWA, the funds available to that Office under the Act may be transferred and expended to support its functions and operations.

The Secretary has rescinded the authority previously delegated to the FHWA to perform motor carrier functions and operations. This authority has been redelegated to the Director, Office of Motor Carrier Safety (OMCS), a new office within the Department of Transportation (64 FR 56270, October 19, 1999).

The new OMCS includes the following headquarters offices of the FHWA's former Office of Motor Carrier and Highway Safety (OMCHS): the Office of Motor Carrier Research and Standards, the Office of Data Analysis and Information Systems, the Office of Motor Carrier Enforcement, the Office of Policy and Program Management, the Office of National and International Safety Programs, the Office of Technology Evaluation and Deployment, and the Office of Program Evaluation. However, the Office of Highway Safety Infrastructure remains part of the FHWA. In addition, the motor carrier functions of the FHWA's Resource Centers and Division (i.e., State) Offices have been transferred to OMCS Resource Centers and OMCS Division Offices, respectively. Rulemaking, enforcement and other activities of the OMCHS while part of the FHWA will be continued by the new OMCS. The redelegation will cause no changes in the motor carrier functions and operations of the offices or resource centers listed above. For the time being, all phone numbers and addresses are unchanged.

##### Background

On August 26, 1994, the President signed the Hazardous Materials Transportation Authorization Act of 1994 (Public Law 103-311, 108 Stat. 1673) (the Act). Section 112 of the Act requires the Secretary of Transportation to amend the Federal Motor Carrier Safety Regulations to prohibit the driver of any CMV from driving a motor vehicle onto a railroad-highway grade crossing without having sufficient space to drive completely through the crossing without stopping.

On July 30, 1998 (63 FR 40691), the OMCS published a notice of proposed rulemaking (NPRM) to implement the statutory mandate. The NPRM also sought comments and information about the number of railroad grade crossings

that lacked sufficient clearance for some CMVs to be driven completely across the tracks before stopping.

The OMCS believes a public meeting is necessary to establish dialogue among Federal and State agencies, motor and rail carriers, safety groups, and interested parties concerning practical approaches for reducing the incidence of CMV crashes with trains, especially crashes in which the CMV was struck by the train because the driver of the CMV, for whatever reason, stopped the vehicle prior to clearing the railroad track.

**Magnitude of the Problem of Railroad-Highway Grade Crossing Crashes**

The OMCS believes that it is important to address accidents at railroad-highway grade crossings because they are numerous, as can clearly be seen in the figures set forth below. While the downward trend is encouraging, in that the overall total number of railroad-highway grade crossing fatalities and nonfatalities both dropped between 1997 and 1998, some segments of the population having accidents, for example, pickup trucks, have actually increased. Furthermore, motor vehicle property damage, as a result of railroad-highway grade crossing accidents remains at over \$15 million annually. Yet, another important factor is maintaining the confidence of the public in our ability to promote safety at railroad-highway grade crossings. That confidence will grow by initiating a vigorous program to prevent these accidents. The Office of Motor Carrier Safety is committed to proactively continuing the 1998 decline in railroad-highway grade crossing accidents. This public meeting scheduled for Tuesday, November 9, 1999, is an important step in soliciting engineering and other technological ideas to achieve that goal.

**1997 INCIDENTS**

	Incidents	Motor vehicle damage
Truck .....	681 17.6%	\$3,982,275.00
Truck-trailer	490 12.7%	6,139,783.00
Pickup truck	335 8.7%	1,264,135.00
Truck total ..	1506 39.0%	11,386,193.00
Overall		
Total .....	3865 100%	18,675,374.00
Car .....	2078 53.8%	5,968,309.00

**1997 FATALS/NONFATAL**

	Fatals	Nonfatal
Truck .....	89 19.3%	275 17.9%
Truck-trailer ...	21 4.6%	232 15.1%
Pickup truck ...	28 6.0%	120 7.7%
Truck total .....	138 29.9%	627 40.7%

**1997 FATALS/NONFATAL—Continued**

	Fatals	Nonfatal
Overall Total ..	461 100%	1540 100%
Car .....	247 53.6%	795 51.6%

**1998 INCIDENTS**

	Incidents	Motor Vehicle Damage
Truck .....	460 13.1%	\$2,149,600.00
Truck-trailer	477 13.6%	6,423,570.00
Pickup truck	444 12.6%	1,993,971.00
Truck total ..	1381 39.3%	10,567,141.00
Overall		
Total .....	3508 100%	16,790,748.00
Car .....	1810 51.6%	5,318,227.00

**1998 FATAL/NONFATAL**

	Fatal	Nonfatal
Truck .....	57 13.2%	188 14.4%
Truck-trailer ...	17 3.9%	185 14.2%
Pickup truck	60 13.9%	147 11.3%
Truck total .....	134 31.0%	520 39.9%
Overall Total ..	431 100%	1303 100%
Car .....	206 47.8%	668 51.3%

**Topics of Discussion During the Meeting**

*OMCS NPRM Concerning Storage Space*

1. What are the potential problems facing CMV drivers at railroad-highway grade crossings?
2. What would a rule, if promulgated, require?
3. How would a driver or motor carrier ensure compliance? Note that irrespective of whatever signs are posted concerning the space between the rails and the traffic control device, etc., the driver must make a judgment call on whether the vehicle can clear the tracks completely. Is there current technology available to help make this determination? If not, can industry develop the necessary technology to determine adequate storage space?
4. Would a sign showing how much space exists between the rails and the next traffic control device help? If so, where should such a sign be placed? Would it suffice for a sign to indicate, perhaps through a universal graphic symbol, that vehicle storage at an at-grade highway-rail crossing is shorter than the longest legal CMV?

5. Are there disadvantages to safety arising out of the proposed rule of July 30, 1998? For example, consider the following scenario: A truck makes a right turn onto railroad tracks. After completing the turn, the driver then realizes that there is insufficient storage space available—it is occupied on the other side of the tracks by a truck which

the driver could not see prior to making his turn. The driver now has to back up onto a street at right angles to the front of his truck or tractor. The driver may find it difficult to see oncoming traffic on the street from which the vehicle has just turned. In what ways could a spotter, or flagman help in complying with a rule prohibiting entering storage space without ability to clear the tracks?

6. Would it be helpful for CMVs to be detoured around routes containing at-grade railroad-highway crossings with insufficient space to accommodate the vehicle?

7. Is there anything else that would help drivers comply with the law?

*Final Rule on Commercial Driver Disqualification Provision*

On September 2, 1999 the OMCS published a final rule adopting new disqualification periods for holders of commercial drivers' licenses (CDLs) who are convicted of railroad-highway grade crossing violations (64 FR 48104).

1. Do we know enough about the configurations of all the railroad-highway grade crossings to effectively develop a solution for this problem if a rule were promulgated addressing storage space? For example, at railroad-highway grade crossings where tracks cross each other at right angles, is it possible to determine whether storage space considerations can be accommodated safely? Would there be a potential problem with traffic control devices?

2. What are the penalties? Answer: Disqualification of the driver for certain periods, and up to \$10,000 civil penalty for employers who knowingly allow, require, permit, or authorize a driver to operate a CMV in violation of a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings.

*FRA Initiatives To Reduce Grade Crossing Crashes*

*Infrastructure Changes To Improve Grade Crossing Safety*

*Other Topics (Time Available for Interested Parties To Give Presentations)*

**Meeting Information**

The meeting will be held on Tuesday, November 9, 1999, in Room 2230, Nassif Building, 400 Seventh Street, SW., Washington, DC. Since access to the DOT building is controlled, all visitors must sign in with the security office located at the entrance of the lobby and wear a visitor's badge at all times while in the building.

Individuals who wish to make a formal presentation should contact Mr.

David M. Lehrman at (202) 366-0994 no later than November 4, 1999, to ensure that sufficient time is allotted for the presentation and to identify any audio-visual equipment needed for the presentation.

**Authority:** 49 U.S.C. 31136, 31502; and 49 CFR 1.73.

**Julie Cirillo,**

*Acting Director, Office of Motor Carrier Safety.*

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