(a) *Basic determination.* Payment to Medicare-participating hospitals or CAHs for services authorized by an I/T/U, whether provided as inpatient, outpatient, skilled nursing facility care, or other services of a department, subunit or distinct part of a hospital, shall be paid consistent with the methodology to determine interim rate payments in accordance with 42 CFR part 413, subpart E.

(b) *Basic payment calculation.* The calculation of the payment by I/T/Us will be based on determinations made under paragraph (a) of this section consistent with CMS instructions to its fiscal intermediaries at the time the claim is processed, provided that no retrospective calculations will be performed. Adjustments will be made only to correct billing or claims processing errors. Any payments made by the I/T/U to the Medicare-participating hospital or CAH shall include any beneficiary copayments, deductibles, or coinsurance that the patient would be required to pay under Medicare.

(c) *Exceptions to payment calculation.* Notwithstanding paragraphs (a) and (b) of this section, if an amount has been negotiated with the hospital or its agent by the I/T/U, the I/T/U will pay the lesser amount determined under paragraphs (a) and (b) of this section or the amount negotiated with the hospital or its agent; including but not limited to capitated contracts or contracts per Federal law requirements;

(d) *Coordination of benefits and limitation on recovery.* If an I/T/U has authorized payment for CHS services provided to an individual who is eligible for benefits under Medicare, Medicaid, or another third party payor:

(1) The I/T/U shall be the payor of last resort under § 136.61;

(2) If there are any third party payors, the I/T/U will coordinate benefits to pay the amount for which the patient is being held responsible after all other alternative resources have been considered and paid, including applicable copayments, deductibles, and coinsurance that are owed by the patient; and

(3) The maximum payment by the I/T/U will be only that portion of the payment amount determined under this section not covered by any other payor; and

(4) The I/T/U payment will not exceed the rate calculated in accordance with paragraphs (a) and (b) of this section or the contracted amount (plus applicable cost sharing), whichever is less; and

(5) When payment is made by Medicaid it is considered payment in full and there will be no additional payment made by the I/T/U for the amount paid by Medicaid, (except for applicable cost sharing).

(e) *Claims processing.* For a hospital to be eligible for payment under this section, the hospital or its agent must submit the claim for authorized services—

(1) On a UB92 paper claim form (until abolished, or on an officially adopted successor form) or the HIPAA 837 electronic claims format ANSI X12N, version 4010A1 (until abolished, or on an officially adopted successor form) and include the hospital's Medicare) provider number/National Provider Identifier; and

(2) To the I/T/U, agent, or fiscal intermediary identified by the I/T/U in the agreement between the I/T/U and the hospital or in the authorization for services provided by the I/T/U; and

(3) Within a time period equivalent to the timely filing period for Medicare claims under § 424.44 of this title and provisions of the Medicare Intermediary Manual applicable to the type of service provided.

(f) *Authorized services.* Payment shall be made only for those services authorized by an I/T/U consistent with part 136 of this title or section 503(a) of the IHCIA.

(g) *No additional charges.* A payment made in accordance with this section shall constitute payment in full and the hospital or its agent may not impose any additional charge—

(1) On the individual for I/T/U authorized services; or

(2) For information requested by the I/T/U or its agent or fiscal intermediary for the purposes of payment determinations or quality assurance.

§ 136.31 Authorization by Urban Indian Organization.

Subject to availability of funds, when an urban Indian organization purchases items and services for an eligible urban Indian (as defined in section 4 of the IHCIA) according to section 503 of the IHCIA and applicable regulations, the Medicare-like rates as described in § 136.30 shall apply.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter V, as set forth below:

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

3. The authority citation for part 489 continues to read as follows:

Authority: Sec. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and (1395hh).

Subpart B—Essentials of Provider Agreements

4. A new § 489.29 is added to subpart B to read as follows:

§ 489.29 Special requirements concerning beneficiaries served by the Indian Health Service, Tribal health programs, or Urban Indian health programs.

Hospitals and Critical Access Hospitals that participate in the Medicare program must meet the following requirements:

(a) 42 CFR 136, subpart D of this title concerning payment methodology and amounts.

(b) Must participate in the following programs:

(1) A contract health service (CHS) program under 42 CFR part 136, subpart C, of the Indian Health Service (IHS).

(2) A Tribe or Tribal Organization carrying out a CHS program under 42 CFR part 136, subpart C, pursuant to the Indian Self-Determination and Education Assistance Act, as amended, Public Law 93–638, 25 U.S.C 450 *et seq.*

(3) A program funded through a grant or contract by the IHS and operated by an urban Indian organization (in accordance with the terms defined in 25 U.S.C. 1603(f) and (h)) under which admission or treatment is authorized.

[FR Doc. 06–3976 Filed 4–27–06; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 392

[Docket No. FMCSA–1998–4202]

RIN 2126–AA18

Railroad Grade Crossing Safety; Withdrawal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: FMCSA withdraws a July 30, 1998, Notice of Proposed Rulemaking (NPRM) that would have prohibited the driver of a commercial motor vehicle (CMV) from driving onto a highway-railroad grade crossing without sufficient space to drive completely through the crossing without stopping. The NPRM was issued in response to section 112 of the Hazardous Materials Transportation Authorization Act of 1994.

After careful analysis and review of the comments, FMCSA has concluded

that the NPRM gave a misleading impression of the statutory mandate and the cost and complexity of complying with an implementing regulation. FMCSA is therefore withdrawing the 1998 NPRM in order to eliminate the confusion associated with this rulemaking. The agency, however, will issue a simpler and more clearly written new NPRM addressing the requirements of section 112.

DATES: The notice of proposed rulemaking published on July 30, 1998, at 63 FR 40691, is withdrawn as of April 28, 2006.

FOR FURTHER INFORMATION CONTACT: Larry W. Minor, Director, Office of Bus and Truck Standards and Operations, (202) 366–4009, Federal Motor Carrier Safety Administration (MC–PS), 400—7th Street, SW., Washington, DC 20590; or *larry.minor@fmcsa.dot.gov.*

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(3) FMCSA at *http://www.fmcsa.dot.gov.*

Background

On July 30, 1998, the Federal Highway Administration (FHWA, or the Agency) published an NPRM (63 FR 40691) to prohibit CMV operators from driving onto a railroad grade crossing without having sufficient space to drive completely through without stopping (and thus leaving a portion of the CMV across the tracks), as required by Section 112 of the Hazardous Materials Transportation Authorization Act of 1994 (Pub. L. 103–311, 108 Stat. 1673, at 1676, August 26, 1994). On November 9, 1999, the then Department of Transportation's Office of Motor Carrier Safety (DOT OMCS) (and previously FHWA's Office of Motor Carriers) held a public meeting to discuss highway-rail grade crossing accidents. A transcript of the meeting was placed in the docket.

As stated in the report by the Senate Committee on Commerce, Science, and Transportation (December 9, 1993), the goal of the provision in Senate Bill 1640, which later became Section 112, was to: ''* * * improve safety at highway-railroad crossings in response to fatalities that have occurred from accidents involving commercial motor vehicle operators who failed to use proper caution while crossing* * * [T]he Committee believes that imposing a Federal statutory obligation on drivers of all commercial motor vehicles to consider whether they can cross safely and completely * * * will help to reduce the number of tragedies associated with grade-crossing accidents'' [S. Rep. No. 103–217, at 11 (1994), reprinted in 1994 U.S.C.C.A.N. 1763, 1773].

The NPRM noted that many factors could prevent a CMV operator from driving completely through a grade crossing without stopping, such as a stop sign or other traffic control device beyond the crossing in close proximity to the tracks, or the presence of other vehicles or obstacles in the roadway beyond the crossing. The agency also noted that crossings with 12.2 meters (40 feet), or less, between the tracks and a stop sign could not accommodate a tractor-trailer combination 18.3 meters (60 feet) long. The States were therefore asked to submit data on the number and locations of highway-railroad grade crossings that could not accommodate the longest CMVs legally permitted to operate in each State if the proposed rule were adopted. The NPRM also asked for information on alternative routes that truckers could use if a particular crossing were unavailable because of their compliance with the proposed rule. Motor carriers were asked to assess the impact of the proposed rule on their operations and advise FHWA of their conclusions. FHWA asked the States to respond within two months, and motor carriers and others within four months.

Discussion of Comments

Forty-five comments were received in response to the NPRM. The commenters included thirty-five (35) State agencies, the Association of American Railroads (AAR), the American Trucking Associations (ATA), the National School Transportation Association (NSTA), the Greater Cleveland Transit Authority (Cleveland Transit), New Jersey Transit, Florida East Coast Railway Co. (Florida Railway), Guttman Oil Co., KLD Associates, Thompson Trucking, and Walter A. McDonald, a retired State transportation official.

Most State agencies said it would be difficult to comply with the proposed data request; several requested extensions of time of a year or more to complete their inventory of grade crossings. Other State agencies said that compliance with the NPRM would be a major effort requiring Federal funding. With three exceptions, the respondents believed the proposed rule was impractical and virtually impossible to implement. NSTA, AAR, and Florida Railway supported the proposed rule and believed it would improve safety. AAR said it was a logical extension of many existing State laws that prohibit all vehicles from stopping on railroad tracks.

As discussed below, four areas of contention have been identified.

Objection to FHWA's Information Request

Rather than expending the financial and human resources to inventory all crossings, three State agencies suggested addressing specific crossings on a location-by-location basis and considering factors such as crash history, rail traffic and travel speed, roadway traffic volume, road and railway alignment grade, and available storage distance. Kansas questioned the expenditure of its resources to collect the information request in the NPRM. North Carolina said it did not have the money, time, or personnel to comply with the request. Wyoming and New Jersey believed the request was too general and did not provide sufficient detail to answer the questions contained in the NPRM. Wyoming suggested that specific parameters be identified to ensure uniformity of the measurements and data collected in each State.

Lack of Feasibility of the Proposed Rule

Several States said the proposed rule would require major road and railroad improvements to facilitate compliance, because alternate routes are not always available. They also said implementing the rule would be a barrier to inter- and intrastate commerce because of its significant financial impact. Two State agencies and a motor carrier noted that the designs of some grade crossings do not permit clearance of the railroad tracks and that such crossings are often the only route to a specific location. One of the few motor carriers that responded to the NPRM suggested that all crossings have at least 90 to 100 feet of clear space between the tracks and any traffic control device, and that advanced signals be installed to alert train engineers of track blockage. Iowa reported that it has 2,113 grade crossings within 75 feet of a street of highway intersection, but it noted that most of the crossings are on railroad branch lines with infrequent service, low operating speeds, and good visibility; vehicle traffic at these crossings is also low. Iowa argued that Federal regulations are inappropriate in light of the accident history of many crossings and the fact that these histories change over time because of local developments.

Wisconsin believed the proposed rule was workable for intersections and grade crossings controlled by traffic signals, but not for crossings near intersections that are controlled by stop or yield signs. Wisconsin suggested postponing the effectiveness of the rule until the Manual on Uniform Traffic Control Devices (MUTCD) was changed to address the issue of traffic signals at such intersections/crossings. Nevada said all but one its grade crossings are in rural areas, and all but two are poor candidates for traffic signals. Nevada said signalization for the crossings was probably five to ten years in the future and that relocating the railways or closing the crossings was not feasible. Nevada said relocation of roadways is limited by geography and economic development and that truck advisory signs would be more appropriate for the affected crossings, thus limiting overall improvements to installation of signage.

New Jersey said replacing stop signs with traffic signals would further impede traffic flow already interrupted by many signals, but agreed that it is feasible and desirable to interconnect traffic signals and adjust timing where signals already exist.

Pennsylvania said it might be possible to locate a stop sign or traffic control device in some locations so that vehicles encounter it before entering the crossing. However, Pennsylvania noted that apart from these potential solutions, safety improvements become very expensive or politically difficult to enact.

Economic Impact of the Proposed Rule

Oklahoma and California argued that Federal funding was necessary to implement the rule. Connecticut believed manpower requirements for design and construction of crossing improvements, including the financial impacts, would likely exceed resources available to State and local agencies and private owners. The State estimated the cost of installing signals that would be activated by the approach of a train at approximately $280,000 (per crossing, presumably). Connecticut suggested instituting a Federal program with a funding source dedicated exclusively to the problem of limited storage distance at grade crossings.

Burden and Costs of Compliance Far Exceed the Anticipated Benefits

Kansas said it did not have adequate information to identify accidents related to insufficient storage space. The State said that its accident statistics for the previous eight years revealed 109 CMV-train accidents, or 13.6 per year, and that even if all of these accidents were caused by the problem of inadequate storage space, the proposed rule would be addressing a relatively minor problem. Indiana believed storage space was not a significant factor in its accident record. The State said that, in the past five years, only 6.4 percent of train-vehicle collisions (78 out of 1,213) involved truck-trailer combination vehicles, and, of those, only 38 accidents (3.1 percent of the total) were at a highway-railroad grade crossing near an intersection. Indiana said even if all 38 accidents were due to storage problems, which it called unlikely, they would still represent only a small part of the State's overall accident exposure.

Pennsylvania said there were 692,138 accidents in the State from 1993 through 1997, but only 31 involved CMVs and trains and none of those accidents involved vehicles approaching a highway-railroad intersection where traffic was stopped at a traffic control device. Pennsylvania did not believe that the proposed rule would have a major impact on safety or that it would be appropriate to initiate a labor-intensive, field inventory effort to collect the information requested.

Wisconsin said it averaged one fatal train-truck accident every five years, or about 3 percent of total train-vehicle fatal accidents.

The Public Meeting

The DOT OMCS held a public meeting on November 9, 1999, which generated extensive testimony and discussion regarding the issue of highway-rail grade crossing safety. A transcript of the meeting is in the docket for this rulemaking. The discussion focused on initiatives that could be taken to prevent train-vehicle collisions at grade crossings, but not on the feasibility or advisability of the proposed rule. The potential options discussed involved changes to the grade crossing environment, such as changes to traffic control devices near grade crossings; policy changes, such as developing programs that would allow CMVs to select routes to avoid grade crossings near traffic control devices; and educating CMV operators on actions to take if a CMV becomes incapacitated on a crossing.

FMCSA Decision

After reviewing the comments to the NPRM and the transcript of the public meeting, FMCSA has concluded that this rulemaking has created a great deal of misunderstanding and should be terminated.

FHWA asked the States for information on the number and location of highway-railroad grade crossings with inadequate storage space—and on alternative crossings—as the first step in estimating the costs and benefits of the rule required by Section 112. In view of the expected complexity of that analysis, the Agency needed as much information as possible. Many State agencies, however, seem to have assumed that they were required to provide the information; that the final rule would then require them to reconstruct, rewire, reroute or otherwise correct every inadequate crossing; and that the Agency was indifferent to the costs of such an undertaking. In fact, the time, difficulty and cost involved in collecting reliable data on highway-railroad grade crossings became a primary focus of the comments.

Section 112 requires a rule applicable to motor carriers, not to States. If the regulatory requirement prevented some motor carriers from using a particular crossing because the storage space is too short for their normal vehicles, several options are available (such as switching to shorter trucks or using alternate crossings) before any reconstruction efforts suggested by the State commenters need to be considered. And even then, significant civil engineering projects are likely to have a low priority. Consultations among government entities, truckers, and the shippers they serve might produce quick and simple solutions.

Therefore, FMCSA terminates this rulemaking and will open a new one less burdened by previous misunderstandings. An NPRM to address the requirements of Section 112 will be published when additional analysis of grade crossing problems, which is now under way, has been completed.

In view of the foregoing, this rulemaking proceeding is terminated.

Issued on: April 24, 2006.

Warren E. Hoemann,

Acting Administrator.

[FR Doc. E6–6424 Filed 4–27–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2006–24390]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.