



## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 222

[Docket No. FRA-2025-0120]

RIN 2130-AD14

### Regulatory Relief to Allow Speeds Up to 45 MPH for Non-Traversable Curbs

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

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**SUMMARY:** This proposed rule would revise the definition of a non-traversable curb in FRA's train horn regulation in conformance with five longstanding FRA Safety Board waivers that allow highway speeds up to 45 miles per hour (mph) where these highway curbs are present.

**DATES:** Comments on the proposed rule must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. FRA may consider comments received after that date, but only to the extent practicable.

**ADDRESSES:** *Comments:* Comments related to Docket No. FRA-2025-0120 may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name, docket number (FRA-2025-0120), and Regulatory Identification Number (RIN) for this rulemaking (2130-AD14). All comments received will be posted without change to <https://www.regulations.gov>; this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

*Docket:* For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** James Payne, Staff Director, Grade Crossing and Trespasser Outreach, FRA, telephone: (202) 441-2787, email: [James.Payne@dot.gov](mailto:James.Payne@dot.gov); or Amanda Maizel, Attorney Adviser, FRA, telephone: (202) 308-3753, email: [Amanda.Maizel@dot.gov](mailto:Amanda.Maizel@dot.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Consistent with the deregulatory agenda of President Donald J. Trump and Secretary of Transportation Sean P. Duffy, which seeks to unleash America's economic prosperity without compromising transportation safety, FRA is reviewing its regulatory requirements in parts 200 through 299 of title 49, Code of Federal Regulations (CFR) to provide regulatory relief to regulated entities. One such regulatory relief proposal would revise the definition of a non-traversable curb to allow for speeds up to 45 mph.

The current definition of a non-traversable curb is established in 49 CFR part 222, "Use of Locomotive Horns at Public Highway-Rail Grade Crossings." It describes a highway curb designed to discourage a motor vehicle from leaving the roadway and notes that they are used at locations where highway speeds do not exceed 40 mph. At the time that 49 CFR part 222 was issued, the American Association of State Highway and Transportation Officials (AASHTO) provided guidance that vertical curbs should not be used with speeds greater than 40 mph. Subsequently, AASHTO modified its guidance stating that vertical curbs should not be used with speeds greater than 45 mph.<sup>1</sup> FRA proposes to revise the definition in 49 CFR 222.9 in conformance with AASHTO's updated guidance.

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<sup>1</sup> See Section 6.3.2.5, Policy on Geometric Design of Highways and Streets (7th Ed., 2018).

In addition, the revision of this definition is in conformance with the waivers that FRA has previously granted to applicants who have sought relief from the requirement that medians with non-traversable curbing may not be used where highway speeds exceed 40 mph. *See* Docket Nos. FRA-2009-0066, 2010-0137, 2012-0030, 2012-0031, 2012-0074.

## **II. Section-by-Section Analysis**

### *Section 222.9 Definitions*

This proposed rule would revise the definition of a non-traversable curb, which currently provides for use of such curbs at locations where highway speeds do not exceed 40 mph, to allow use at locations where highway speeds do not exceed 45 mph. This proposed rule would thereby codify five longstanding waivers in FRA's train horn regulation.

## **III. Regulatory Impact and Notices**

### **A. Executive Order (E.O.) 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

FRA has considered the impact of this NPRM under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, and DOT Regulatory Policies and Procedures. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) determined that this NPRM is not a significant regulatory action under section 3(f) of E.O. 12866.

FRA analyzed the potential costs and benefits of this proposed rule. Because this rule would revise the definition of a non-traversable curb and would codify five longstanding waivers in FRA's train horn regulation, this proposed rule would impart no additional burdens on regulated entities. Moreover, this rule would provide some qualitative benefits to regulated entities and the U.S. government, by clarifying, simplifying, and updating the language of part 222. This rule, if finalized as proposed,

would result in cost savings. Impacted parties would no longer be required to submit periodic, repetitive waiver requests related to the regulatory definition of a non-traversable curb. This rule would also conform FRA regulations with guidance provided by industry.

## **B. E.O. 14192 (Unleashing Prosperity Through Deregulation)**

E.O. 14192 (90 FR 9065, Jan. 31, 2025), Unleashing Prosperity Through Deregulation, requires that for “each new [E.O. 14192 regulatory action] issued, at least ten prior regulations be identified for elimination.”<sup>2</sup> Implementation guidance for E.O. 14192 issued by OMB (Memorandum M-25-20, Mar. 26, 2025) defines two different types of E.O. 14192 actions: an E.O. 14192 deregulatory action, and an E.O. 14192 regulatory action.<sup>3</sup>

An E.O. 14192 deregulatory action is defined as “an action that has been finalized and has total costs less than zero.” This proposed rulemaking is expected to have total costs less than zero, and therefore it would be considered an E.O. 14192 deregulatory action upon issuance of a final rule. While FRA affirms that each amendment proposed in this NPRM has a cost that is negligible or “less than zero” consistent with E.O. 14192, FRA still requests comment on the extent of the cost savings for the changes proposed in this NPRM.

## **C. Regulatory Flexibility Act and E.O. 13272**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,<sup>4</sup> requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. Accordingly, DOT policy requires an

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<sup>2</sup> Executive Office of the President. *Executive Order 14192 of January 31, 2025. Unleashing Prosperity Through Deregulation*. 90 FR 9065-9067. Feb. 6, 2025.

<sup>3</sup> Executive Office of the President. Office of Management and Budget. Guidance Implementing Section 3 of Executive Order 14192, Titled “Unleashing Prosperity Through Deregulation.” Memorandum M-25-20. March 26, 2025.

<sup>4</sup> Pub. L. 104–121, 110 Stat. 857 (Mar. 29, 1996).

analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. The term *small entities* comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 (5 U.S.C. 601(6)).

No regulatory flexibility analysis is required, however, if the head of an Agency or an appropriate designee certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would not preclude small entities from continuing existing practices that comply with part 222; it merely offers flexibilities that could result in cost savings, if a small entity or other regulated entity chooses to utilize those flexibilities. By extending this regulatory relief, many regulated entities, including small entities, would experience a cost savings. Consequently, FRA certifies that the proposed action would not have a significant economic impact on a substantial number of small entities.

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FRA wants to assist small entities in understanding this proposed rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### **D. Paperwork Reduction Act**

There is no new collection of information requirements contained in this proposed rule, and in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, an information collection submission to OMB is not required. The recordkeeping and reporting requirements already contained in part 222 were approved by OMB on

Nov. 9, 2022. The information collection requirements thereby became effective when they were approved by OMB. The OMB approval number is OMB No. 2130-0560, and OMB approval expires on Nov. 31, 2025.

**E. Environmental Assessment**

FRA has analyzed this rule for the purposes of the National Environmental Policy Act of 1969 (NEPA). In accordance with 42 U.S.C. 4336 and DOT NEPA Order 5610.1C, FRA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4), “[p]lanning and administrative activities that do not involve or lead directly to construction, such as: [p]romulgation of rules, regulations, and directives.” This rulemaking is not anticipated to result in any environmental impacts, and there are no unusual or extraordinary circumstances present in connection with this rulemaking.

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties. FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by Section 4(f).

**F. Federalism Implications**

This proposed rule will not have a substantial effect on the 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. Thus, in accordance with E.O. 13132, “Federalism” (64 FR 43255, Aug. 10, 1999), preparation of a Federalism Assessment is not warranted.

**G. Unfunded Mandates Reform Act of 1995**

This proposed rule would not result in the expenditure, in the aggregate, of \$100,000,000 or more, adjusted for inflation, in any one year by State, local, or Indian Tribal governments, or the private sector. Thus, consistent with section 202 of the

Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1532), FRA is not required to prepare a written statement detailing the effect of such an expenditure.

#### **H. Energy Impact**

E.O. 13211 requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.”<sup>5</sup> FRA has evaluated this proposed rule in accordance with E.O. 13211 and determined that this proposed rule is not a “significant energy action” within the meaning of E.O. 13211.

#### **I. E.O. 13175 (Tribal Consultation)**

FRA has evaluated this proposed rule in accordance with the principles and criteria contained in E.O. 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. The proposed rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal laws. Therefore, the funding and consultation requirements of E.O. 13175 do not apply, and a tribal summary impact statement is not required.

#### **J. International Trade Impact Assessment**

The Trade Agreement Act of 1979<sup>6</sup> prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

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<sup>5</sup> 66 FR 28355 (May 22, 2001).

<sup>6</sup> 19 U.S.C. ch. 13.

## **K. Privacy Act Statement**

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to <http://www.regulations.gov>, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.transportation.gov/privacy](http://www.transportation.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

## **L. Rulemaking Summary**

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found at [regulations.gov](http://www.regulations.gov), Docket No. FRA-2025-0120, in the SUMMARY section of this proposed rule.

## **List of Subjects in 49 CFR Part 222**

Administrative practice and procedure, Locomotives, Railroad safety, Train horn

### **The Proposed Rule**

For the reasons discussed in the preamble, FRA proposes to amend part 222 of chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

### **PART 222—USE OF LOCOMOTIVE HORNS AT PUBLIC HIGHWAY-RAIL GRADE CROSSINGS**

1. The authority citation for part 222 continues to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 20153, 21301, 21304; 28 U.S.C. 2461 note; and 49 CFR 1.89.

2. Section 222.9 is amended by revising the definition of “non-traversable curb” to read as follows:

**§ 222.9 Definitions**

\* \* \* \* \*

*Non-traversable curb* means a highway curb designed to discourage a motor vehicle from leaving the roadway. Non-traversable curbs are used at locations where highway speeds do not exceed 45 miles per hour and are at least six inches high. Additional design specifications are determined by the standard traffic design specifications used by the governmental entity constructing the curb.

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Issued in Washington, DC.

**Kyle D. Fields,**  
*Chief Counsel.*

[FR Doc. 2025-12186 Filed: 6/27/2025 4:15 pm; Publication Date: 7/1/2025]