910-06-P]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 222

[Docket No. FRA-2025-0120; Notice No. 2]

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: Final rule.

SUMMARY: This rule revises the definition of a non-traversable curb in FRA's train horn regulation in conformance with five longstanding FRA waivers that allow highway speeds up to 45 miles per hour (mph) where these highway curbs are present in quiet zones established and maintained in accordance with the regulation.

DATES: This rule is effective [**INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***].

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SUPPLEMENTARY INFORMATION:

I. Background

Consistent with Executive Order (E.O.) 14192, Unleashing Prosperity Through Deregulation (90 FR 9065, Feb. 6, 2025), and E.O. 14219, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative (90 FR 10583, Feb. 25, 2025), FRA is reviewing its regulatory requirements in

parts 200 through 299 of title 49, Code of Federal Regulations (CFR) and updating requirements to reduce unnecessary burdens without compromising transportation safety.

As part of this effort, on July 1, 2025, FRA published a notice of proposed rulemaking (NPRM) that proposed to revise the definition of a non-traversable curb to allow for speeds up to 45 mph.[1] 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. The definition describes a highway curb designed to discourage a motor vehicle from leaving the roadway and notes that this curb type is used at locations where highway speeds do not exceed 40 mph, in connection with quiet zones established and maintained in accordance with the regulation. 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. FRA proposed to revise the definition in 49 CFR 222.9 to conform with AASHTO's updated guidance. In addition, revising this definition conforms with the waivers that FRA has previously granted to petitioners seeking 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, and 2012-0074.

FRA received three comments in response to the NPRM—comments from the Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Teamsters (BMWED), the Transportation Trades Department, AFL-CIO (TTD), and an anonymous individual. All three commenters were in support of this proposal, but BMWED and TTD recommended that FRA elaborate on appropriate engineering

[1] 90 FR 28646 (July 1, 2025).

controls, consistent with those recommended by AASHTO. Specifically, BMWED and TTD expressed concern that the proposal raised the speed threshold and set a curb height requirement without referencing the additional design elements that AASHTO cites for vertical curb safety at 45 mph, such as adequate sight distance, superelevation and alignment compatibility, and drainage design. Both organizations, therefore, recommended that FRA explicitly reference AASHTO's Policy on Geometric Design of Highways and Streets (7th Edition, 2018) ("Green Book"), and clarify that the use of non-traversable curbs at speeds up to 45 mph should incorporate appropriate engineering controls consistent with AASHTO's guidance. As an alternative to that recommendation, BMWED proposed that FRA issue an accompanying guidance or regulatory commentary reminding State and local agencies that speed alone does not govern safe curb design.

While FRA declines to incorporate by reference AASHTO's Green Book, in response to this feedback, FRA is adding a recommendation in appendix A to part 222 that states the use of non-traversable curbs at speeds up to 45 mph should incorporate appropriate engineering controls such as those recommended by organizations such as AASHTO.

II. Section-by-Section Analysis

Section 222.9 Definitions

This final rule revises the definition of a non-traversable curb as proposed in the NPRM. The definition currently provides for use of such curbs at locations where highway speeds do not exceed 40 mph. The final rule allows use at locations where highway speeds do not exceed 45 mph. This final rule thereby codifies five longstanding waivers in connection with quiet zones established and maintained in accordance with FRA's train horn regulation.

Appendix A to Part 222—Approved Supplementary Safety Measures

This final rule adds a recommendation, in connection with the requirements and effective rates for the supplementary safety measure of gates with medians or channelization devices, that notes the use of non-traversable curbs at speeds up to 45 mph should incorporate appropriate engineering controls such as those recommended by organizations such as AASHTO.

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 final rule 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 final rule is not a significant regulatory action under section 3(f) of E.O. 12866.

FRA analyzed the potential costs and benefits of this rule. This final rule revises the definition of a non-traversable curb and will codify five longstanding waivers in FRA's train horn regulation, and therefore, this final rule will impart no additional burdens on regulated entities. Moreover, this final rule will provide some qualitative benefits to regulated entities and the U.S. Government, by clarifying, simplifying, and updating the language of part 222. This final rule will result in cost savings because impacted parties will no longer be required to submit periodic, repetitive waiver requests related to the regulatory definition of a non-traversable curb. This final rule will also conform FRA regulations with guidance provided by industry.

B. Executive Order 14192 (Unleashing Prosperity Through Deregulation)

E.O. 14192, Unleashing Prosperity Through Deregulation, requires that for "each new [E.O. 14192 regulatory action] issued, at least ten prior regulations be identified for

elimination."[2] 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.[3]

An E.O. 14192 deregulatory action is defined as "an action that has been finalized and has total costs less than zero." This final rule will have total costs less than zero, and therefore it will be considered an E.O. 14192 deregulatory action upon issuance of this final rule. FRA affirms that each amendment proposed in this final rule has a cost that is negligible or "less than zero" consistent with E.O. 14192.

C. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 ((RFA), 5 U.S.C. 601 *et seq.*) and E.O. 13272 (67 FR 53461, Aug. 16, 2002) require an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions).

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 final rule will not preclude small entities from continuing existing practices that comply with part 222; it merely offers clarification that could result in cost savings, if a small entity or other regulated entity chooses to utilize these flexibilities. Consequently, FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

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[2] Executive Office of the President, *Executive Order 14192 of January 31, 2025, Unleashing Prosperity Through Deregulation*, 90 FR 9065-9067 (Feb. 6, 2025).

[3] 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 (Mar. 26, 2025).

This final rule offers regulatory flexibilities, and it contains no new information collection requirements, in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and therefore, an information collection submission to OMB is not required. The recordkeeping and reporting requirements currently in part 222 were approved by OMB on January 19, 2026. The OMB approval number is OMB No. 2130-0560, and OMB approval expires on January 31, 2029.

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 5610.1D, FRA has determined that this rule is categorically excluded pursuant to 23 CFR 771.116(c)(15). 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.

F. Federalism Implications

This final 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 final rule will 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. No. 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."[4] FRA has evaluated this final rule in accordance with E.O. 13211 and determined that this final rule is not a "significant energy action" within the meaning of E.O. 13211.

I. Executive Order 13175 (Tribal Consultation)

FRA has evaluated this final rule in accordance with the principles and criteria contained in E.O. 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, Nov. 6, 2000). The final rule will not have a substantial direct effect on one or more Indian tribes, will not impose substantial direct compliance costs on Indian tribal governments, and will 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 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 final rule 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.

List of Subjects in 49 CFR Part 222

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

The Final Rule

[4] 66 FR 28355 (May 22, 2001).

For the reasons discussed in the preamble, FRA amends 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. Amend § 222.9 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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3. Revise appendix A to part 222 under the heading "A. Requirements and Effectiveness Rates for Supplementary Safety Measures" and subheading "3. Gates With Medians or Channelization Devices" by adding after paragraph g, the text "*Recommended:*" and new paragraph a, to read as follows:

Appendix A to Part 222—Approved Supplementary Safety Measures

A. Requirements and Effectiveness Rates for Supplementary Safety Measures

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3. **Gates With Medians or Channelization Devices***:* * * *

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Recommended:

a. The use of non-traversable curbs at speeds up to 45 mph should incorporate appropriate engineering controls such as those recommended by organizations such as the American Association of State Highway and Transportation Officials.

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Issued in Washington, D.C., under authority delegated in 49 CFR 1.89.

David A. Fink,

Administrator.

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