American Public Transportation Association

July 29, 2025

Sue Lawless
Assistant Administrator
Federal Motor Carrier Safety Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Docket No. FMCSA–2021–0050

Dear Assistant Administrator Lawless:

The American Public Transportation Association (APTA) represents a $79 billion industry that directly employs 430,000 people and supports millions of private-sector jobs. APTA supports the Federal Motor Carrier Safety Administration's (FMCSA) commitment to streamline regulations. APTA, public transit agencies, and state Departments of Transportation have a long history of successful partnership and collaboration with the U.S. Department of Transportation and FMCSA, and we look forward to continuing this important work together.

Safety is the number one core value of the public transportation industry, including both bus and passenger rail operators. The employees responsible for managing and operating public transportation systems are fully committed to improving the safety of their systems, passengers, fellow employees, and the public. On behalf of our bus and passenger railroad members, we greatly appreciate the opportunity to respond to the FMCSA Notice of Proposed Rulemaking, "Railroad Grade Crossings; Stopping Required: Exception for Railroad Grade Crossing Equipped With Active Warning Device Not in Activated State", as published in the *Federal Register* at 90 FR 22914 on May 30, 2025. Thus, APTA is pleased to provide the following information for your consideration regarding the proposed exception.

Importantly, APTA is concerned that the proposal to eliminate the requirement to stop at railroad grade crossings with an inactive Active Warning Device (AWD) would increase the hazards and risks to safety for bus agencies, passenger railroads, and the general public. We have engaged heavily with our membership of bus and passenger rail agencies and respectfully request reconsideration in the granting of an exception to allow buses and certain commercial motor vehicles (CMVs) to proceed through a railroad crossing without stopping when equipped with an AWD.

This proposed exception would change the current requirements for drivers, and increased driver confusion could result in increased accidents and safety risks. The proposed exception would leave the decisions in drivers' hands to remember which crossings require them to stop. The NPRM states that:

> [I]t would be appropriate to permit a CMV to proceed through an active warning device equipped railroad grade crossing without stopping where the warning device is not in activated state, because local law allows vehicles to proceed across the railroad tracks without slowing or stopping. An active warning device exception would therefore be similar to existing exceptions for a police officer or flagman directing traffic to proceed or for a highway traffic signal transmitting a green signal which, under local law, permits vehicles to proceed without slowing or stopping as described in § 392.10(b), paragraphs (2) and (3).[1]

APTA notes that a police officer or flagman directing traffic, and a highway traffic signal are not a similar comparison to an AWD. Traffic signal systems are designed with fail safe mechanisms and a dark or quiescent traffic signal requires motorists to stop. No such requirement exists for AWDs and their failure to activate when a train approaches a railroad grade crossing indicates to motorists that it is safe to proceed across the railroad tracks when, in fact, it is not safe to do so.

Analysis of Grade Crossing Activation Failure Data & Incident Data

In the proposed rulemaking, the FMCSA requested comment on sources of information and data that could be used to quantify the costs and benefits of this rulemaking. APTA suggests that FMCSA conduct an analysis of data from all users of railroad grade crossing to assess the impact of the proposed rule on safety. Here, APTA requests consideration of the following data and detailed information on the impact of this proposed rule.

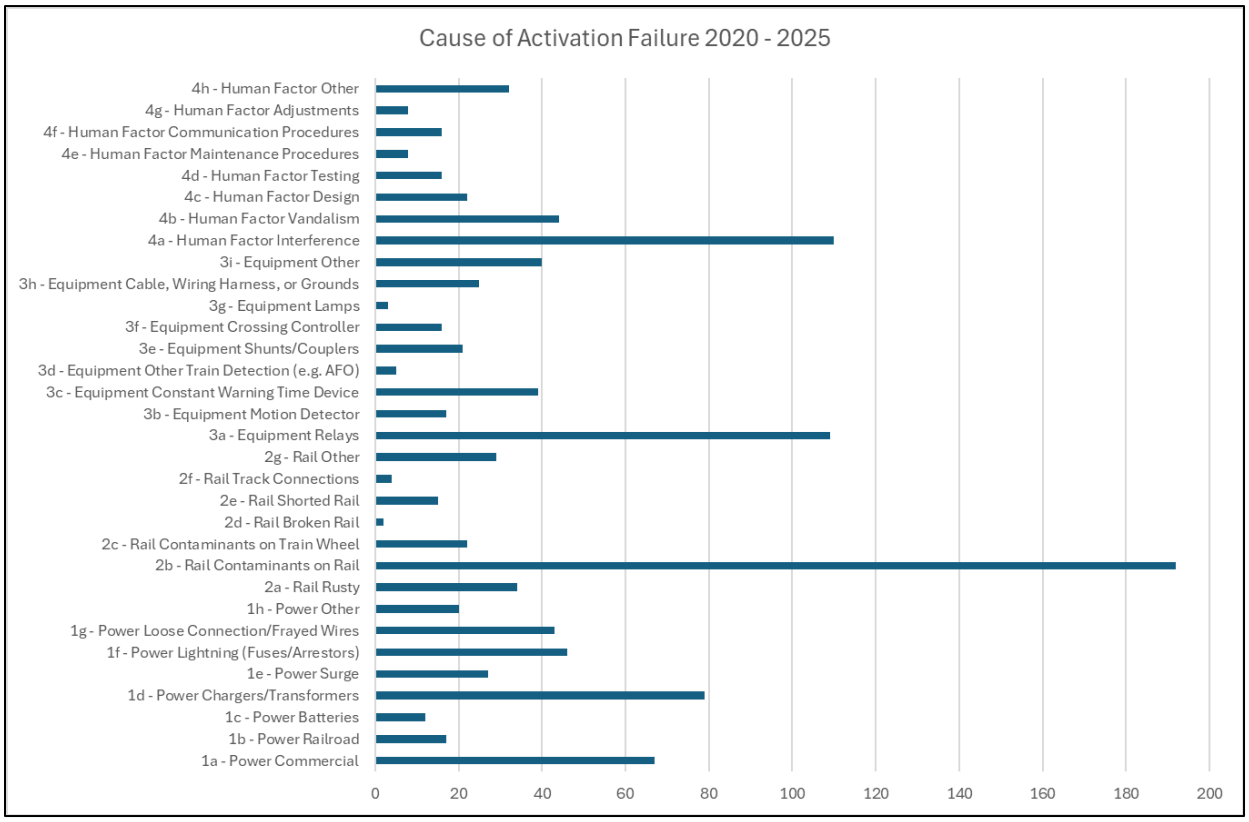
The Federal Railroad Administration (FRA) requires railroads to report activation failures, which is defined as the failure of an active highway-rail grade crossing warning system to indicate the approach of a train at least 20 seconds prior to the train's arrival at the crossing, or to indicate the presence of a train occupying the crossing, unless the crossing is provided with an alternative means of active warning to highway users of approaching trains.[2]

Causes of activation failures are categorized into four main categories: power, rail, equipment, and human factors. Our research into FRA activation failure data indicates that between January 1, 2020, and May 14, 2025, there have been 1,140 reports of an activation failure. The data shows there are many different

[1] FMCSA, "Railroad Grade Crossings; Stopping Required: Exception for Railroad Grade Crossing Equipped With Active Warning Device Not in Activated State" Notice of Proposed Rulemaking, 90 FR 22914 (May 30, 2025) at 22917.
[2] 49 CFR 234.5 Definitions.

potential causes for an activation failure. The single largest cause of activation failure is contaminants on rail such as leaves or other debris that act as an insulator. The table below shows these causes for the five-year period of 2020 - 2025.

Table 1: Cause of Activation Failures 2020-2025



Additionally, the FRA Accident/Incident database is a source of information and data that could be used to quantify the costs and benefits of this rulemaking. A query of the dataset of all records with primary cause code M307 – Malfunction, improper operation of train activated warning devices, resulted in 13 records since 1999 where collisions occurred between highway traffic users and trains at railroad grade crossings. These records indicate that 10 people were killed and 20 people were injured in these collisions with a primary cause code of M307 – Malfunction, improper operation of train activated warning device. Also of significance is that of the 13 records, nine involved passenger trains.

Under the current regulations, the rates for train collisions involving buses and certain CMVs are considerably lower than the rates for other large trucks and vehicles.[3] FMCSA did not take into account

[3] FMCSA, Analysis of the Railroad-Highway Grade Crossing Rules (FMCSA-RRR-18-015), June 2020.

the cost of the significant safety risk this proposed rule would create for passenger railroads, bus agencies, and the general public at railroad grade crossings. APTA suggests that FMCSA conduct a comprehensive analysis that includes data from the FRA on the cost and benefits of the proposed rule.

Additional Costs

Highway motorists are notified in advance of a railroad grade crossing with the grade crossing advance warning sign shown below in Figure 1 and is designated as W10-1 in the Manual on Uniform Traffic Control Devices (MUTCD).

Figure 1: W10-1 Grade Crossing Advance Warning Sign

This traffic sign warns motorists of the upcoming presence of a railroad grade crossing and alerts buses and certain CMVs that they are required to stop. There are currently no traffic control devices in the MUTCD to indicate the presence of AWDs in advance of a railroad grade crossing. If the proposed rulemaking was incorporated into the Code of Federal Regulations, a new traffic control device would have to be developed and incorporated into the MUTCD and then installed in advance of grade crossings to distinguish between grade crossings with passive and active warning devices.

In addition, APTA suggests that FMCSA survey the number of licensed CMV operators in the United States with endorsements that the proposed rulemaking would impact. These operators would require some amount of training on the changes that FMCSA could estimate to include in their analysis of additional costs of the proposed rule.

FMCSA states that the proposed rule will not add any additional costs, but APTA notes that the agency did not conduct a comprehensive analysis of the costs or benefits of the proposed rule. Notably, the proposed exception does not quantify benefits for any users at railroad grade crossings or the general public. The NPRM states the safety benefit as:

> This proposed rule would not result in any new costs but could result in cost savings for those drivers that would no longer be required to stop at railroad

> grade crossings by allowing for a continuous flow of traffic at railroad grade crossings.
>
> Further, the proposed changes could also potentially mitigate rear-end crash risk for buses and CMVs transporting certain types of HM by allowing for a predictable and flow of traffic at railroad grade crossings.[4]

The costs for this proposed rulemaking are more than zero as demonstrated by the increased hazards and risk to safety it would introduce at railroad grade crossings, the required re-training of CMV operators, and the added need to develop and install new traffic control devices at railroad grade crossings with AWDs.

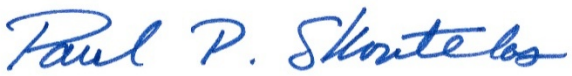
APTA's bus agency members have expressed deep concern with the proposed rule and assert that it would degrade safety given the longstanding practice of bus operators being required to stop at railroad grade crossings. Notably, our engagement indicates that several bus agencies and operators have specified that they would continue with their current policy of stopping at rail grade crossings regardless of whether FMCSA adopts this exception.

Conclusion

APTA appreciates the opportunity to comment on this NPRM. We believe that the proposed rule requires additional consideration, foremost due to the safety impacts and human factors risks. Moreover, we would like to partner with FMCSA on increased efforts to examine relevant data to better inform the decisions on the proposed changes. APTA looks forward to assisting FMCSA in its decisions on any proposed changes to the stopping requirements at railroad grade crossings. If you have questions regarding this letter, please contact Bryan Sooter, Senior Director of Standards and Rail Engineering at (202) 496-4851 or bsooter@apta.com, or contact Taria Barron, General Counsel, at (202) 496-4808, or tbarron@apta.com.

Thank you for your consideration and we look forward to continuing to work with FMCSA to streamline regulations and improve transportation safety.

Sincerely,



Paul P. Skoutelas
President and CEO

[4] FMCSA, "Railroad Grade Crossings; Stopping Required: Exception for Railroad Grade Crossing Equipped With Active Warning Device Not in Activated State" Notice of Proposed Rulemaking, 90 FR 22914 (May 30, 2025) at 22917.