

The Association of State Rail Safety Managers

April 18, 2008

Ms. Jo Strang
Associate Administrator for Safety
Federal Railroad Administration
1200 New Jersey Avenue SE
Washington, DC 20590

RE: Crossings Blocked by Stopped Trains

Dear Ms. Strang:

Trains blocking public highway-rail grade crossings has been a controversial issue for many years, and has a tremendous impact on public safety (emergency response, traffic flow, etc.) A growing trend in many state court decisions has been to invalidate all powers of state & local governments to prevent stopped trains from blocking public grade crossings.

Typical of these decisions is the enclosed case of Eagle Marine Industries v. Union Pacific RR, which recently (January 2008) invalidated the power of Illinois to prohibit stopped trains from blocking public grade crossings. The Illinois Supreme Court decision essentially removes all power from state and local governments in Illinois to prevent trains from blocking public grade crossings, based on the argument that railroads are part of interstate commerce and can only be regulated by the federal government.

Briefly summarized, the court held that:

- the blocked crossing provision of the Vehicle Code was preempted by the Federal Railroad Safety Authorization Act, and
- the blocked crossing provision violated the commerce clause of the United States Constitution.

The Federal Railroad Safety Authorization Act of 1994 (49 U.S.C. § 20101 et seq. (2000)) (FRSA), is the main source of the Railroad Industry's contention that state and local laws are not enforceable. It appears the only legitimate authority to regulate blocked crossings is the federal government. While this particular decision is limited to Illinois, there have been recent similar decisions in many other states and the trend appears to be to strike down blocked crossing laws on similar grounds all across the country.

Therefore, it is the conclusion of the Executive Committee of the Association of State Rail Safety Managers (Association) that the FRA must immediately begin the rulemaking process to determine effective measures to regulate blocked crossings. A review of current FRA regulations reveals a variety of similar crossing-related regulations in 49 CFR 234, such as

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false activations at crossings caused by train movements, shunting of tracks near crossings to detect train movements, highway-traffic signal preemption requirements, and of course, all the railroad crossing signal requirements for maintenance and installation of equipment at crossings. These and other current federal regulations reveal the extent to which FRA is already regulating crossing issues. We believe that it is a natural extension for FRA to also issue regulations to prohibit stopped trains from blocking public grade crossings.

Please consider this as an urgent request, since blocked crossings present numerous safety problems for a variety of reasons. History has shown that grade crossings blocked by stopped trains lead to poor decisions by the general public, including trespassing by pedestrians, drivers ignoring active warning devices including driving around lowering/lowered gates, and the detouring of traffic to crossings equipped only with passive warning signs when crossings equipped with active warning devices are blocked.

We recommend that any new regulations preventing trains from blocking crossings include a specific amount of time that a crossing can be blocked, the acceptable reasons a train could legitimately block a crossing for a longer period (for example, emergency or accident), a set of penalties for blockages with increasing penalties for repeated violations, and a standard for railroad operating rules that requires strict guidelines as to how railroads would operate so as to minimize the amount of crossings blocked in their operations.

Thank you for your prompt attention to this matter. As this is a matter of urgency, we urge you to act on this request as soon as possible. As previously mentioned, states and local communities are losing the ability to prevent stopped trains from blocking public grade crossings all across the country, and there is no reason to believe this trend will not continue.

If you have any questions, or need additional information, please contact any members of the Executive Committee of the Association of State Rail Safety Managers.

Sincerely,

Rodney P. Massman
Administrator of Railroads
Missouri DOT Multimodal Operations
On behalf of the Executive Committee of the Association of State Rail Safety Managers

Enclosure