

New England Rail Safety Efforts and Federal Preemption

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Issue

To what extent does federal law allow Connecticut to address rail safety? What has Connecticut done regarding rail safety as compared to other New England states?

The Office of Legislative Research (OLR) is not authorized to provide legal opinions and this report should not be considered one.

Summary

Rail safety is primarily managed at the federal level, principally through the Federal Railroad Safety Act (FRSA) ([49 U.S.C. § 20101](#), et seq.). FRSA establishes uniform national safety standards for railroads to abide by and grants the Secretary of Transportation broad authority to create regulations and issue orders for every area of railroad safety. The Secretary delegates his authority under FRSA to the Federal Railroad Administration (FRA). [FRA's Office of Railroad Safety](#) has nearly 400 federal safety inspectors and provides railroad safety and stakeholder training (including for state safety inspectors); conducts accident and employee fatality investigations and reporting; partners with labor, management, and the agency to address systemic initiatives; and develops and implements safety rules and standards.

FRSA preempts (i.e., prevents adoption of) state or municipal laws, regulations, orders, or standards related to railroad safety and security subject to two exceptions. First, a state may adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland

Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the state requirement. Second, a state may adopt or continue in force an additional or more stringent law, regulation, or order related to railroad safety or security when the law, regulation, or order (1) is necessary to eliminate or reduce an essentially local safety or security hazard; (2) is not incompatible with a law, regulation, or order of the U.S. government; and (3) does not unreasonably burden interstate commerce ([49 U.S.C. § 20106](#)).

To the extent there are state laws concerning rail safety, they appear to focus on highway-rail grade crossings. According to FRA, most aspects of jurisdiction over these crossings reside with the states, including being responsible for enforcing traffic laws at them. FRA has created a compilation of these state laws and divided them into 13 categories (e.g., trespassing and vandalism). Generally, Connecticut and all the other New England states have at least one law covering most or all of these categories.

Additionally, federal law allows each state to prepare and maintain a state rail plan to, among other things, review programs and projects within the state to improve rail transportation safety and security ([49 U.S.C. § 22701](#), et seq.). These plans are subject to FRA's review and acceptance and to assist states, FRA published a [guidance document](#) that explains the process to be followed in developing state rail plans, including minimum content requirements and a standardized format. Connecticut and all the other New England states have their own rail plans that highlight their rail safety laws and related administrative actions.

New England States' Highway-Rail Grade Crossing Laws

FRA categorizes state laws based on the highway-rail grade crossing subjects they address, including on the following:

- authority to order the consolidation or elimination of crossings;
- procedures for eliminating, relocating, constructing, repairing, or improving crossings;
- blocking of crossings by railroads and related exceptions and penalties;
- use of assorted warning devices at and quiet zones around crossings;
- regulation of slow and low vehicles (e.g., crawler-type tractors) and special vehicles (e.g., school buses) at crossings;
- responsibility of drivers at crossings;
- penalties for trespassing or vandalizing railroad property and equipment;
- closing, treating, or use of crossings that intersect with private roads;
- responsibility for the removal of brush, shrubbery, and trees around crossings; and
- use of photographic monitoring and enforcement equipment at crossings.

Table 1 highlights the New England states that have at least one law that falls into a specific FRA category. For further descriptions of these categories and the text of the state laws in each, please see FRA’s [Compilation of State Laws and Regulations Affecting Highway-Rail Grade Crossings \(Seventh Edition – 2021\)](#).

Table 1: New England State Highway-Rail Grade Crossing Laws by FRA Category

	<i>Connecticut</i>	<i>Maine</i>	<i>Massachusetts</i>	<i>New Hampshire</i>	<i>Rhode Island</i>	<i>Vermont</i>
Crossing Consolidations and Closures	Yes (Y)	Y	Y	Y	Y	Y
Crossing Treatment Procedures	Y	Y	Y	Y	Y	Y
Blocked Crossings	Y	Y	Y	Y	Y	Y
Warning Devices – Passive	Y	Y	Y	Y	Y	Y
Warning Devices – Train Borne and Quiet Zones	Y	Y	Y		Y	Y
Warning Devices – Active	Y	Y	Y	Y	Y	Y
Slow, Low, and Special Vehicles	Y	Y	Y	Y	Y	Y
Driver Action	Y	Y	Y	Y	Y	Y
Trespassing	Y	Y	Y	Y	Y	Y
Vandalism	Y	Y	Y	Y	Y	Y
Private Crossings	Y	Y	Y	Y	Y	Y
Vegetation Clearance	Y	Y	Y	Y		Y
Photographic Monitoring and Enforcement					Y	

New England States' Rail Plans

Table 2 identifies some of the rail safety and security subjects that are discussed in each New England state's most recent rail plan along with links to those plans.

Table 2: Rail Safety and Security Subjects by New England State Rail Plan

	<i>Rail Safety and Security Subjects</i>	<i>Rail Plan</i>
Connecticut	<ul style="list-style-type: none"> • Railway/Highway Grade Crossing Program • Connecticut Operation Lifesaver • Rail Safety, Regulatory, and Compliance Unit • Connecticut Department of Transportation (ConnDOT) System Safety Program Plans • Commuter Rail Security Program • Transit Security Grant Program • Visible Intermodal Prevention and Response Teams • Metropolitan Transportation Authority, Amtrak, State, and Local Police • Mass Transit Security Team 	Link
Maine	<ul style="list-style-type: none"> • Positive Train Control Implementation • Rail Grade Crossing State Action Plan • Consolidated Rail Infrastructure and Safety Improvements Upgrades • Grade Crossing Safety (Railway-Highway Crossings (Section 130) Program) 	Link
Massachusetts	<ul style="list-style-type: none"> • Positive Train Control: Passenger and Shared Freight Operations • Highway-Rail Grade Crossing Safety at Passenger and Freight Corridors • Massachusetts Bay Transportation Authority (MBTA) Safety Performance Monitoring • Publicly Funded Safety and Security Projects • Hazardous Materials • Freight Rail Carrier Emergency Safety and Security Plans • Existing Emergency Response Capabilities in Massachusetts • Rail Openness and Trespassing • Public Rail Police Agencies 	Link
New Hampshire	<ul style="list-style-type: none"> • Hours of Service Reform • Positive Train Control • Locomotive Cab Safety • Grade Crossing Safety • At-Grade Crossing Incidents and Warning Devices • Track Safety • Trespassing • National Defense and Transportation Security 	Link

Table 2 (continued)

	<i>Rail Safety and Security Subjects</i>	<i>Rail Plan</i>
Rhode Island	<ul style="list-style-type: none"> • Rail-Related Accidents/Incidents • Grade Crossing Safety • Hazardous Materials • Positive Train Control • Rail Security Agencies • Strategic Rail Corridor Network 	Link
Vermont	<ul style="list-style-type: none"> • Rail-Related Accidents/Incidents • Operation Lifesaver • At-Grade Crossing Protection • Quiet Zones • Resiliency/Climate Change • Hazardous Material Movement • Construction Activities 	Link

Additional Information

For information on steps the U.S. Department of Transportation (DOT) and other federal agencies have taken this year regarding rail safety, including in response to a train derailment in East Palestine, Ohio, see the following:

- Congressional Research Service Report – East Palestine, OH, Train Derailment and Hazardous Materials Shipment by Rail: Frequently Asked Questions ([R47435](#))
- [DOT 2023 Steps Forward on Freight Rail Industry Safety & Accountability](#)
- [DOT 2023 Press Release on New Rule Proposal to Require Real-time Hazmat Information for Firefighters and First Responders](#)

For other recent rail safety information, see the following:

- [FRA Regulations](#)
- [FRA Model State Legislation](#)
- [FRA State Rail Plan Guidance](#)
- [DOT 2022 Index to Preemption of State and Local Laws and Regulations Under the Federal Hazardous Material Transportation Law](#)
- [ConnDOT Press Release on Implementation and Activation of Positive Train Control](#)
 - [FRA Positive Train Control Page](#)
- OLR Report – Train Crew Size Mandates ([2020-R-0148](#))

- [FRA 2014 Operation Deep Dive Metro-North Commuter Railroad Safety Assessment](#)
 - OLR Report – Summary of FRA Assessment ([2014-R-0104](#))
- [Metro-North 2013 Safety Investments/Enhancements Report](#)

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