

The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 26-55

July 31, 2026

Investigation of the Department of Public Utilities, on its own motion, instituting a rulemaking pursuant to G.L. c. 160, § 136, G.L. c. 30A, § 2, and 220 CMR 2.00, to establish requirements for railroad safety, 220 CMR 157.00.

ORDER INSTITUTING RULEMAKING TO IMPROVE GRADE CROSSING SAFETY

I. INTRODUCTION

Through this Order, and pursuant to G.L. c. 30A, § 2, G.L. c. 160, § 136, and 220 CMR 2.00, the Department of Public Utilities (“Department”) proposes regulations to improve the safety of railroads, with a focus on Grade Crossings,¹ in the Commonwealth. Since 1864, the Department of Public Utilities (“Department”) (and its predecessor agencies) exercised oversight of railroads (“Railroads”) in Massachusetts.² The Department’s specific authorities have evolved over time in response to changes in federal and state law. Currently, the Department, through its Rail Transit Safety Division (“Division”), serves as the state safety regulator for Massachusetts Railroads for aspects not regulated by the Federal Railroad Administration (“FRA”). In 2024, there were 16 incidents at Grade Crossings in Massachusetts (four resulted in injuries and no fatalities). In 2025, there were 25 incidents at Grade Crossings (four resulted in injuries and five resulted in fatalities). Additionally, there were a number of near-miss incidents and reports of safety concerns regarding Grade Crossings made to the

¹ Capitalized terms refer to terms defined in the proposed 220 CMR 157.02.

² Chapter 152 of the 1864 Acts and Resolves created the Railroad Commission, with responsibility for authorizing construction of crossings, ordering those crossings to be protected for the security of the public, and enforcing those orders. In 1914, the Railroad Commission merged with the Highway Commission to form the Public Service Commission. The Public Service Commission and the Board of Gas and Electric Light Commissioners were replaced with the Department of Public Utilities in 1919. Massachusetts Department of Public Utilities: Department History, <https://www.mass.gov/info-details/departments-of-public-utilities-history#:~:text=November%201919%3A%20Public%20Service,of%20the%20Acts%20of%201919>.

Department, which underscores the necessity of improving the safety at Grade Crossings in Massachusetts through these proposed regulations.³

The Department opens this rulemaking to ensure the continued safety of Railroads, as their use for both freight and passenger transportation continues to grow in the Commonwealth.⁴ With this growth, local Modifications of and requests to address safety conditions at Grade Crossings (i.e., intersections between railroad and other public ways, like roads) have proliferated. The Department proposes regulations, 220 CMR 157.00: Railroad Safety Requirements, to establish practical safety standards for Grade Crossings, overpass and underpass height waivers (collectively “height waivers”), application procedures for Grade Crossing creation, Modification, or closure, increased transparency, and improved compliance.

II. AUTHORITY TO REGULATE

The Department regulates Railroads pursuant to G.L. c. 160 (Railroads), a broad statute governing, among other things, railroad corporation formation, establishment of new railroad routes, infrastructure, operations, maintenance, and safety. G.L. c. 160 includes a significant grant of authority to the Department that it must interpret and apply judiciously to effectuate the aims of the Legislature. “[A]n administrative agency has the authority to promulgate regulations giving effect to legislative mandates.” Massachusetts Federation of Teachers v. Board of

³ Data obtained from FRA’s Highway-Rail Grade Crossings Incidents, Fatalities and Injuries database (version 2.8), <https://data.transportation.gov/stories/s/Highway-Rail-Grade-Crossing-Incidents-Fatalities-a/bda5-32at/>.

⁴ In March 2025, the Massachusetts Bay Transportation Authority opened its commuter rail Southcoast Rail line, connecting New Bedford and Fall River to Boston’s South Station. Additionally, the Massachusetts Department of Transportation, through the Compass Rail program, continues development of the East-West Rail, with a goal to connect communities west of Worcester to the eastern part of the Commonwealth by rail.

Education, 436 Mass. 763, 773 (2002). Here, the Department opts to assert its jurisdiction on a focused set of critical problems, promulgating regulations pursuant to G.L. c. 160, § 136, to increase the safety of Grade Crossings and formalize processes to better ensure uniformity and compliance.

G.L. c. 160, § 136, states in relevant part that:

The Department shall make general regulations for all such crossings or special regulations for such particular crossings as it may designate, and in such detail as it may consider expedient . . .

Through this proceeding, the Department exercises its authority to establish appropriate regulations regarding Grade Crossings.

Additionally, Chapter 160 charges the Department with regulating safety for railroad overpasses and underpasses.⁵ Accordingly, the Department proposes regulations regarding the issuance of waivers for the height requirements of bridges over Railroad tracks. These regulations will set a clear process for the request and issuance of such height waivers.

III. PROPOSED REGULATIONS

The Department proposes the following regulations as 220 CMR 157.00: Railroad Safety Requirements. These regulations provide minimum safety standards for topics not covered by Federal Railroad Administration (“FRA”) regulations, and a clear process for regulated parties to

⁵ “If the railroad is constructed to pass over the way, a sufficient space shall be left under the railroad conveniently to accommodate the travel on the way. If the railroad is constructed to pass under the way, the railroad corporation shall build such bridges, with their abutments and suitable approaches thereto, as will accommodate the travel upon the way; but no bridge for any purpose shall be constructed over a railroad at a height less than twenty-two feet six inches above the track of such railroad, except with the written consent of the department.” G.L. c. 160, § 98.

propose and implement safety measures at rail Grade Crossings, for efficient review and approval by the Department, and for issuance of height waivers in Massachusetts. Railroad Entities⁶ seeking approval for Grade Crossing creation, Modification, closure, or height waivers will have clear guidance regarding the method of filing and the necessary time needed for Department review.

1) 220 CMR 157.01: Purpose and Scope

This section establishes which Grade Crossings and Railroad Entities are regulated by the Department pursuant to 220 CMR 157.00. The proposed regulations apply to Railroad Entities operating in Massachusetts, except those operating solely within a closed loop on private property. They also impact Highway Agencies (e.g., the Massachusetts Department of Transportation and municipalities) whose roads cross Railroad tracks. These regulations will govern all Grade Crossings in Massachusetts. Only three sections, 220 CMR 157.02, 157.03, and 157.04(6), apply to private Grade Crossings which do not have a public right of access. Additionally, the proposed regulations do not apply to any components of a Grade Crossing otherwise regulated by 49 C.F.R. Part 234, federal regulations governing Grade Crossing safety, and thus they do not conflict with federal requirements.

2) 220 CMR 157.02: Definitions

220 CMR 157.02 defines key terms used throughout the regulations. These definitions help to clarify the regulations. The definition of Grade Crossing is broad to encompass the variety of Grade Crossings found in Massachusetts:

⁶ Railroad Entities include any entity laying out, constructing, maintaining, owning, or operating a Railroad within the Commonwealth of Massachusetts.

A level intersection of a Railroad and a Highway, which may also include pedestrian and bicycle paths located at the edges or parallel to the Highway. Grade Crossings may be public (maintained by a Highway Agency) or private (owned, controlled, or maintained by a private entity).

To the extent feasible, terminology in 220 CMR 157.00 is consistent with FRA usage.⁷

3) 220 CMR 157.03: Process and Procedure

220 CMR 157.03 sets forth the Department's processes for all applications, notifications, and Orders. This section of the proposed regulations includes instructions regarding the method of filing and Department review timeline for Railroad Entities seeking approval for Grade Crossing Modifications or height waivers.

The proposed regulations (at 220 CMR 157.08, below) allow the Department to issue two types of site-specific requirements to regulated parties to accomplish the goals of 220 CMR 157.00, Directives and Orders. The Department may issue a Directive to a regulated party to comply with 220 CMR 157.00 or any other applicable law concerning Grade Crossing safety. The procedure for Directives, adjudicatory hearings, and Orders is set out in 220 CMR 157.03. A regulated party may request an adjudicatory hearing on the Directive with the Department in a manner prescribed in the proposed regulations. A regulated party denied a Notice to Proceed by the Department may also request an adjudicatory hearing. The Department may issue an Order following an adjudicatory hearing. The Department may also issue an Order accepting the Directive if the regulated party does not request an adjudicatory hearing. An Order

⁷ The Department's definition of Railroad combines the FRA definition with the Massachusetts-specific definition used in G.L. c. 106, § 1.

has the full force and effect of a final decision of the Department within the meaning of G.L. c. 25, § 5 and may be appealed to the Supreme Judicial Court.

The Department's hearing process is also outlined in this section, incorporating 220 CMR 1.00. This section also allows the Department to enter into consent orders with regulated parties to resolve disputes when appropriate.

The proposed regulations give the Department authority to request information from regulated parties which the Department deems necessary to make a determination regarding Grade Crossing safety. Access to this information will allow the Department to better assess hazards and determine potential risk mitigations at Grade Crossings.

Finally, the Department may waive any requirement contained in these regulations at its discretion and for good cause shown.

4) 220 CMR 157.04: Grade Crossings

220 CMR 157.04 establishes safety standards for certain elements of Grade Crossings in Massachusetts, such as width, surface maintenance, and low clearance standards. This section also outlines the processes used by the Department to review and approve applications creating, modifying, and closing Grade Crossings by Railroads and municipalities. Additionally, this section establishes standards and procedures for temporary Modification of Grade Crossings without notifying the Department, provided the Railroad operating over the Grade Crossing is notified and the Grade Crossing is restored to its original condition once temporary Modifications are no longer needed. This section also requires the Department's pre-approval of Grade Crossing Modifications. Work may not begin to modify a Grade Crossing until the Department issues a Notice to Proceed. The proposed regulations also provide a list of

Modifications that may proceed without prior Department approval where the Modification is *de minimus*, addresses an emergency condition, or is required by FRA. Anyone denied a Notice to Proceed may appeal the denial as outlined in 220 CMR 157.03 (5) (a) (2-4).

The Department proposes regulations for private Grade Crossings with no public access. The proposed regulations require minimum safety signage consisting of crossbucks to be posted by Railroads at private crossings. Additionally, Highway Agencies or municipalities must inform the Department of any future conversion of a public Highway or road and its associated public Grade Crossing into a private crossing. The Department also reserves the right to convene a Diagnostic Team to evaluate safety measures at private Grade Crossings.

Finally, the Department proposes that upon any future Modification or creation of a new Grade Crossing, any audible warning device shall be made to sound for the entire duration of the activation of any visual warning devices.

5) 220 CMR 157.05: Grade Crossing Inspections

220 CMR 157.05 establishes a requirement that each active public Grade Crossing in Massachusetts be inspected at least once every 15 years to ensure that a crossing still meets the standards outlined in the Grade Crossing's as-built plans and to assess the efficacy of the safety measures in place. Lastly, the Department reserves the right to establish a schedule and associated procedures to conduct its own inspections of Grade Crossings.

6) 220 CMR 157.06: Diagnostic Teams

220 CMR 157.06 sets forth the Department's process for organizing a Diagnostic Team to conduct a site visit at a Grade Crossing, including at a minimum the Railroad Entity and the Highway Agency involved with the Grade Crossing being evaluated. During a site visit, a

Diagnostic Team will examine the condition of Grade Crossings, and the efficacy of existing safety measures, and areas for improvement. A Diagnostic Team will rely on the expertise of state and local officials and Railroad Entity personnel to determine the most appropriate and effective methods to ensure safety at particular Grade Crossings. Upon completion of the site visit and subsequent analysis, the Department will issue a final diagnostic report that includes its findings and recommendations for improvement at the Grade Crossing.

7) 220 CMR 157.07: Overpass and Underpass Height Requirements and Waivers

G.L. c. 160, § 98, specifies safe clearance requirements for overpasses and underpasses at the intersections of Railroads and ways. The Department has regularly issued waivers of these requirements. Prior to these proposed regulations, the Department did not have established rules or written procedures for entities seeking such waivers. 220 CMR 157.07 would establish an application process for a height waiver. The section specifies waiver requirements and the Department's criteria for reviewing waiver requests. 220 CMR 157.07 also allows the Department to convene Diagnostic Teams, like those under 220 CMR 157.06, to review height waiver applications when appropriate.

8) 220 CMR 157.08: Enforcement

220 CMR 157.08 enables the Department to issue Directives⁸ to Railroad Entities to install protective measures at Grade Crossings (thus implementing the Department's authority under G.L. c. 160, § 147). This section also authorizes the Department to issue a Directive,

⁸ See section III.3 above for the procedures for the issuance of Directives and Orders. The Department issues an Order either after an adjudicatory hearing on the Directive, or, if no adjudicatory hearing is requested, to accept the Directive.

respectively, to landowners to remove obstructions on their property that block a motorist's or pedestrian's clear line of sight of the tracks and an oncoming train from the designated stop line, thus mitigating the risk of a collision with a train at a Grade Crossing. Also, this section authorizes the Department to issue a Directive for compliance with any provision within 220 CMR 157.00 or applicable law as needed.

9) 220 CMR 157.09: Notification to the Department

This section requires Railroad Entities to provide a copy to the Department of the form it files with FRA (Form FRA F 6180.57—Highway-Rail Grade Crossing Accident/Incident Report) when an Accident occurs at a Grade Crossing. Obtaining this data will aid the Department in targeting Grade Crossings that may pose greater safety risks and lead to improvements at all Grade Crossings. Railroad Entities will also be required to notify the Department of certain changes in the class of track they operate on, as well as significant changes to the frequency of rail traffic on their tracks, both of which may indicate a need for Modifications of Grade Crossing protective measures. The section requires Railroad Entities to notify the Department of any updates filed with the U.S. DOT National Highway-Rail Crossing Inventory within 14 calendar days of filing.

Finally, a Railroad Entity will be required to notify the Department in the event of a defect to a Grade Crossing which cannot be corrected within 24 hours and which requires an alternative means to actively warn the public of approaching trains.

IV. SOLICITATION OF COMMENTS

To provide opportunity for comment on the Proposed Regulations, the Department will conduct a hybrid public hearing pursuant to G.L. c. 30A, § 2, and 220 CMR 2.05. The

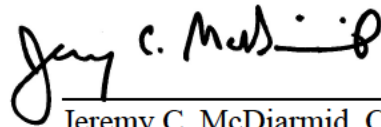
Department will conduct the hearing in person at the Department of Public Utilities and using Zoom videoconferencing on **Tuesday, September 22, 2026, at 2:00 p.m.** Attendees can join by entering the link, <https://us06web.zoom.us/j/82683288456> from a computer, smartphone, or tablet. For audio-only access to the hearings, attendees can dial in at **1-646-558-8656** (not toll free) and then enter **ID# 826 8328 8456**. Interpretation in Spanish, Portuguese, Chinese, Haitian Creole, Vietnamese, or other languages will be provided upon request. To request translation or interpretation in a language other than English, please contact Paralegal Specialist Kaylee Burgess at dpu.ej@mass.gov no later than **Tuesday, September 15, 2026**. Individuals seeking to comment during the public hearing are encouraged to register with the Department beforehand by contacting the Rail Transit Safety Division Counsel, Kate Timberlake, at Kate.E.Timberlake@mass.gov or 857-505-1119.

The Department will conduct an additional public hearing to receive comments on the rulemaking in person on **Wednesday, September 23, 2026**, beginning at 10:00 a.m. in Springfield, Massachusetts. The public hearing will be conducted at the Springfield State Office Building, Third Floor Courtroom, 436 Dwight Street, Springfield, Massachusetts. Individuals attending the in-person hearing will be asked to register at the hearing if they seek to provide public comment but may also register in advance using one of the methods listed above.

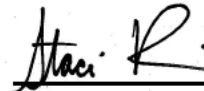
The Department also seeks initial written comments no later than 5:00 p.m., on **Monday, September 21, 2026**. Following the public hearing, written reply comments must be filed no later than 5:00 p.m. on **Wednesday, September 30, 2026**. Written comments shall be limited in length to a maximum of ten one-sided, double-spaced, typewritten pages.

All documents should be submitted to the Department in electronic format by e-mail attachment to dpu.efiling@mass.gov and the Rail Transit Safety Division Counsel, Kate Timberlake, at Kate.E.Timberlake@mass.gov. The text of the e-mail must specify: (1) the docket number of the proceeding (D.P.U. 26-55); (2) the name of the person or company submitting the filing; and (3) a brief descriptive title of the document. All documents submitted in electronic format will be posted on the Department's website: <https://eeaonline.eea.state.ma.us/DPU/Fileroom> (enter "26-55").

By Order of the Department,



Jeremy C. McDiarmid, Chair



Staci Rubin, Commissioner



Elizabeth A. Anderson, Commissioner