

“(h) Impact of Regulations.—The Secretary shall include in regulations prescribed under this section a concise statement of the impact of such regulations with respect to the operation of section 20106 of this title (national uniformity of regulation).

“(I) Regulations.—In issuing regulations under this section, the Secretary—

“(1) shall take into account the interest of communities that—

(A) have in effect restrictions on the sounding of a locomotive horn at highway-rail grade crossings; or

(B) have not been subject to the routine (as defined by the Secretary) sounding of a locomotive horn at highway-rail grade crossings;

“(2) shall work in partnership with affected communities to provide technical assistance and shall provide a reasonable amount of time for local communities to install SSMs, taking into account local safety initiatives (such as public awareness initiatives and highway-rail grade crossing traffic law enforcement programs) subject to such terms and conditions as the Secretary deems necessary, to protect public safety; and

“(3) may waive (in whole or in part) any requirement of this section (other than a requirement of this subsection or subsection (j)) that the Secretary determines is not likely to contribute significantly to public safety.

“(j) Effective Date of Regulations.—Any regulations under this section shall not take effect before the 365th day following the date of publication of the final rule.”

6. Issuance of Interim Final Rule

FRA is issuing today's rule as an interim final rule, rather than as a final rule. An interim final rule has the same force and effect as a final rule, but differs from a final rule in one principal way—when an interim final rule is issued, comments are solicited and the agency reserves the right to make changes to the rule in response to the comments received. Because the rule issued today is a logical outgrowth of the NPRM, FRA could have issued it as a final rule. Both the NPRM and interim final rule issued today permit exceptions to the use of the locomotive horn, address the need to mitigate the risk associated with lack of the locomotive horn, provide for implementation of SSMs and ASMs, and address mitigation of risk on a corridor-wide, rather than individual grade crossing basis. Like one major provision of the NPRM, the interim final rule bases the determination of a corridor's risk mitigation goal on FRA's

Accident Prediction Formula (APF). However, the interim final rule adds a level of further sophistication to the formula by considering collision severity and permitting quiet zones in part based on a corridor's relationship to a national crossing risk index derived from this severity-weighted APF. A large number of commenters complained that FRA did not sufficiently take into consideration safety history at the crossing. While the APF does take into consideration such past record, the interim final rule builds on the NPRM and resulting comments by placing more weight on the safety record at crossings within a corridor and permitting exceptions based on that safety record. The result—that some quiet zones may be established without the need to implement SSMs or ASMs if the corridor does not pose a significant risk based on a national standard—flows logically from the NPRM's use of the APF and the commenters' clear request to make the entire rule more risk based.

Even though this rule could be issued as a final rule, FRA has determined that the public should have an opportunity to comment on the rule as changed. Because the language in some sections has been revised, FRA, and the final rule, will benefit from the input of the public; FRA has found in the past that public comments often contain suggestions that can improve a regulatory document. Therefore, comments are being solicited on all aspects of this rule [see “Public Participation” section]. FRA will review the comments and reserves the right to make revisions when issuing a final rule.

7. Effective Date of This Rule

Because this interim final rule has all the legal attributes of a final rule, the effective date of this rule will be December 18, 2004. Congress specifically provided for this one year delay; subsection (j) of § 20153, which was added to the basic rulemaking mandate in 1996, provides that any regulations issued under that section shall not take effect before the 365th day following the date of publication of the final rule. Issuing this interim final rule rather than a final rule will not penalize those communities which have waited a number of years for issuance of a rule permitting the creation of quiet zones. They will still be able to establish quiet zones on the same schedule as if a final rule were issued today. Alternatively, issuance of this rule in the form of an interim final rule will not have a significant negative effect on those communities with present whistle bans.

FRA has specifically included in the rule sufficient time for those communities to conform to any changes that may be made to the interim final rule in order to enable them to retain their whistle-free crossings.

However, we don't believe Congress intended that FRA delay administrative actions such as working with public authorities and reviewing applications for quiet zones in order to permit communities to institute quiet zones at the earliest possible date after the one year required delay has elapsed. Accordingly, FRA will accept quiet zone applications from public authorities during the one year delay period. While this interval should enable public authorities to begin planning, they should also be aware that the final rule may contain changes based on comments to this interim final rule. Because of this uncertainty, FRA will make every effort to issue a final rule expeditiously after the close of the comment period.

8. Rule Summary

The following very brief summary of this interim final rule is provided for the reader's convenience. Because this is merely a summary, it should not be relied on for definitive information regarding compliance with this rule.

- This rule applies to all railroads that operate on the general railroad system of transportation. The rule does not apply to freight railroads and tourist and scenic railroads which are not on the general railroad system. It does not apply to rapid transit systems in urban areas that are not connected to the general railroad system of transportation. Rapid transit operations sharing tracks with general system railroads at crossings, or sharing crossings with general system railroads are connected to the general system at the crossings and are thus subject to part 222; however, rapid transit operations are not subject to the horn volume requirements of part 229.

- Locomotive horns must be sounded while approaching and entering upon each public highway-rail grade crossing. The horn sound level must be a minimum of 96 dB(A) and no louder than 110 dB(A) measured 100 feet in front of the locomotive and 15 feet above the rail. All locomotives must sound the horn in the standard sequence of two longs, one short, and one long starting at least 15 seconds, but no more than 20 seconds before reaching the grade crossing, however, in no case may the horn be sounded more than ¼ mile before the crossing.

- A railroad may, with certain exceptions, decide to not sound the