

would not require separate analysis. Analysis of the effects of the “no action” alternative shows the effect of sounding train horns at highway-rail grade crossings across the Nation and the effects of permitting the continuation of existing train horn bans. This alternative would differ only in the elimination of the existing train horn bans, resulting in the known effects of sounding the train horn in those locations as well, including the known safety benefits flowing from sounding the train horn.

Make the NPRM Final

The Notice of Proposed Rulemaking required trains horns to be sounded at all public grade crossings; set a maximum sound level for locomotive horns; and provided an opportunity for any community to establish a quiet zone where all public grade crossings are equipped with gates and lights and data and analysis show that implementation will reduce risk in the quiet zone to sufficiently compensate for the absence of the horn sounding; by implementing one or more Supplementary Safety Measures (SSM) at each crossing (does not require FRA approval); or by implementing a combination of SSMs or Alternative Safety Measures (ASM) at some or all crossings within a proposed quiet zone with FRA approval. Communities with present whistle bans would have up to three years in which to implement SSMs and ASMs. Crossings with track speeds of 15 mph or less at which people bearing flags warn motorists of the passage of a train would not need SSMs.

Advantages: Pursuing this option would serve the interest of safety and community quiet. It would be less complex than the option selected.

Disadvantages: FRA found this option to be unacceptable because it insufficiently tailored the rule’s burdens according to risk and would be unresponsive to hundreds of commenters who strongly urged improvements in the rule before its adoption. Many of those commenters live in or represent communities where the train horn is not now sounded, so being unresponsive to them would arguably be unresponsive to the statutory direction to take into account the interest of those communities. FRA agrees with those commenters that the proposed rule offered insufficient time for implementation and would have made the situation particularly difficult for public authorities and railroads in regions where impacts would be most substantial. FRA agrees with the tenor of many comments that the proposed rule would have required compensation for loss of the train horn even where risk is

very low (or would be projected to be low even after the horn was silenced). The result of maintaining that requirement would have been poor cost-benefit tradeoffs for many communities. Staying with the literal text of the NPRM would also have missed opportunities for refinement of SSMs/ ASMs and would not have captured noise reductions associated with the shift from distance- to time-based horn use.

The environmental effects of the NPRM were analyzed thoroughly in the DEIS and taken into account by the FRA in framing the proposed action represented by the interim final rule, which is a logical outgrowth of the NPRM.

Grandfather All Whistle Bans Existing as of 10/9/96

This alternative would allow communities that had whistle bans in effect on October 9, 1996 to retain those bans as long as the level of risk does not increase. Risk would be calculated using the APF for the entire whistle ban corridor. FRA would essentially be accepting the level of risk the community itself has determined to be acceptable—and would hold the community to that same level of risk. If a whistle ban community exceeded its risk threshold, it would have three years to implement changes (e.g. install SSMs) sufficient to reduce risk to below its risk threshold. Changes related to use of train horns, including the maximum sound level, could be accommodated within this option.

Advantages: This approach would have avoided conflict with current whistle ban communities and, in theory, might have capped the negative safety impacts of bans. As under the proposed rule, New Quiet Zones would be instituted without any loss of safety.

Disadvantages: This option was rejected for the following reasons, any one of which is independently sufficient: It is unresponsive to the purpose of the statute to the extent excess risk associated with existing bans would be allowed to continue unabated; it does not directly take into account predicted accident severity, and therefore does not truly consider risk (frequency times severity); the Administrator could not have made the statutorily required determination that these exceptions would not “present a significant risk with respect to loss of life or serious personal injury;” it would not provide a uniform level of safety across the Nation; it did not afford New Quiet Zones the same exceptions allowed for Pre-Rule Quiet Zones, thus undermining uniformity of application

and requiring local authorities to expend funds on improvements for which the safety pay-back could not be reasonably assured at the system level; it would permit communities with bans to transfer costs to the society at large through insurance, public health and welfare programs, and court judgments; and administration of the approach is not technically feasible. FRA noted that factors other than silencing the train horn would typically be responsible for the growth in calculated risk in the subject communities (e.g., increase in motor vehicle traffic as a result of residential or commercial development in an adjoining jurisdiction; growth in rail traffic). It did not seem sensible to permit excess risk to continue, provided nothing changes in a community, while requiring new increments of risk in other communities to be addressed without regard to whether the current level of risk is excessive (i.e., FRA realized that this option did not address the right question).

The environmental effects of this option were not analyzed further because this was not a reasonable option to pursue.

Grandfather All Whistle Bans Existing as of 10/9/96—Combine Collision-Free Exemption With Severity-Weighted Single Threshold

This very complex option was a precursor to the path taken in the interim final rule. It took a much different approach to Pre-Rule and New Quiet Zones. It would allow communities with whistle bans in effect on October 9, 1996 to retain those for the first 5 years following publication of the interim final rule. Thereafter such communities could retain bans as long as: there have been no collisions within the past 5 calendar years *or* risk has not increased above a pre-established threshold calculated using the APF for the past 5 years; and at least flashing lights and gates have been provided at all such crossings. The option included a severity element in the risk computation for the threshold. A corridor risk index and national threshold would be used, as in the interim final rule. The option provided further flexibility for retaining whistle bans during the transition period as follows: A State Department of Transportation (or other authorized state-level body) could request extended implementation beyond the 5-year period on the basis that the State is assisting local jurisdictions in implementing quiet zones and requires additional time due to funding and/or administrative constraints. The following would apply: Each project