

proposed rule has resulted from railroad operations and the railroads are the parties that profit from rail operations, any mitigation measures should be the responsibility of the railroads themselves. In addition, one local Sacramento, California business suggested that implementation of quiet zones would result in lower insurance and litigation costs for railroads, and thus, railroads should share in the costs of implementation.

Although most local governments indicated that due to existing budget constraints, implementation of quiet zones would be very difficult without the allocation of additional Federal funds, some local governments did provide ideas for alternative sources of funding. For example, the City of Moorhead, Minnesota has set up a special downtown taxing district to fund the safety measures necessary to implement a quiet zone. The City of Miami Springs, Florida, proposed imposing a user fee, similar to that of airlines, for both passenger and freight rail traffic. Other local governments proposed imposing local property taxes on railroad right-of-ways to help fund safety improvements in order to implement quiet zones (a measure that would be prohibited by 49 U.S.C. 11501 which bans discriminatory taxation of railroads).

Two Colorado municipalities, the City of Brighton and the City of Fort Collins, requested confirmation that quiet zone crossing safety measures qualify for Federal Highway Administration ("FHWA") funding. Another Colorado municipality, the City of Winter Park, requested that either new Federal funding for implementation of quiet zones be made available or the current Federal crossing safety program be expanded to include crossing improvements necessary to implement quiet zones.

Although every commenting State also expressed concern regarding potential funding sources, citing a general lack of availability of State funds, some States specifically recommended against allocating Federal safety funds to finance the implementation of quiet zones under the proposed rule. Specifically, both the North Carolina Department of Transportation ("DOT") and the Ohio Public Utilities Commission ("OPUC") indicated that the proposed rule is directed at quality of life issues, not highway-rail grade crossing safety. Accordingly, each agency strongly recommended against the use of Federal safety funds to finance safety measures necessary to implement quiet zones. In its comments, OPUC specifically

expressed the belief that funding for projects in connection with the establishment of quiet zones should not come at the expense of the State's ongoing grade crossing safety programs. OPUC stated that "[g]rade crossing safety must not be compromised at some crossings in exchange for relative peace and quiet at a handful" of other crossings. Thus, OPUC argued that funds already committed to traditional grade crossing safety programs should not be used to fund quiet zone projects. Likewise, the Illinois Commerce Commission stated that the proposed rule would distort the State's multi-year grade crossing safety enhancement planning process and force the State to redirect needed funding from important safety projects to what the agency described as "Federally mandated noise suppression projects."

In addition, explaining that the cost of SSMs will be prohibitive to many State DOTs and many communities, the North Dakota DOT suggested that the proposed rule would increase demand for already limited Federal safety funds if such funds are made available to finance the installation of safety measures under the proposed rule. Accordingly, the North Dakota DOT specifically recommended against the use of Federal safety funds to implement quiet zones. The New York DOT, on the other hand, requested that additional Federal safety funds be made available to implement projects under the proposed rule.

Railroad industry participants expressed the view that railroads should not be responsible for the costs of installing, maintaining, or repairing, the additional safety measures required to implement quiet zones under the proposed rule. These commenters suggested that funds be made available through the relevant highway authorities or the FHWA. One commenter, the American Public Transportation Association, specifically requested that FRA address this issue in a joint rulemaking with FHWA.

Despite the wishes of the commenters, Federal funds have neither been authorized nor appropriated specifically for implementing this rule. Indeed, 49 U.S.C. 20153(A)(3) specifically provides that SSMs are "provided by the appropriate traffic control authority responsible for safety at the highway-rail grade crossing * * *." While there are no dedicated funds set aside for the costs incurred in developing and implementing a quiet zone under this rule, there are several categories of transportation funding available that may be used by States and localities for this purpose. FRA wishes to emphasize that at the outset that it is unlikely that

most improvements undertaken under this rule would withstand the priority ranking requirements for safety projects under Federal-aid highway programs, since the improvements may be approximately neutral with respect to safety (as compensation is made for the additional risk associated with silencing the train horn). However, those funds constitute only 10 percent of one of the two major programs. Further transfer between the two programs may be possible. Further detail on Federal-aid programs follows:

The Transportation Equity Act for the 21st Century (TEA-21) was enacted June 9, 1998 as Public Law 105-178. TEA-21 authorizes the Federal surface transportation programs for highways, highway safety, and transit for the 6-year period 1998-2003. TEA-21 is the current legislation that funds both the Surface Transportation Program and the National Highway System Program. The Surface Transportation Program consists of a 10 percent safety set-aside and the balance of the program, which is intended for general transportation improvements off the National Highway System.

The requirements for the Highway-Rail Grade Crossings and Hazard Elimination Programs are defined in sections 130 and 152, respectively, of Title 23, United States Code. Projects funded with "Section 130" funds (23 U.S.C. 130) are intended to reduce the number and severity of train collisions with vehicles and pedestrians at highway-rail grade crossings. Typical projects include active warning devices (e.g. flashing lights and gates), signing and pavement markings, illumination, crossing surface improvements, grade separations, sight distance improvements, geometric improvements to roadway approaches, and the closing and/or consolidation of crossings. All public grade crossing safety improvements are eligible for funding under this program, but obligation of funds is subject to strict requirements for ranking the priority of projects on a State-wide basis. Although use of section 130 funds for projects under this rule will be warranted only where those improvements exceed the minimum targets for risk reduction set by this rule and where the projects are legitimately ranked as top priorities within the State, it is important to remember that the bulk of the approximately \$4.1 billion expended under the section 130 program since 1974 has been used to improve crossing safety on city and county roads across the Nation, including in whistle ban jurisdictions. Indeed, the automatic warning systems required by several States as a predicate