

for whistle bans—and which are required in this rule for New Quiet Zones—were in most cases installed with primarily Federal funds. Thus prior Federal funding has already assisted local governments to some extent in preserving Pre-Rule Quiet Zones and creating New Quiet Zones.

“Section 152 funds” (23 U.S.C. 152 (Hazard Elimination Program)) are intended to implement safety improvement projects to reduce the number and severity of crashes at hazardous highway locations, sections, and elements on any public road. Typical projects include intersection improvements (channelization, traffic signals, and sight distance); pavement and shoulder widening; guardrail and barrier improvements; installation of crash cushions; modification of roadway alignment; signing, pavement marking, and delineation; breakaway utility poles and sign supports; pavement grooving and skid resistant overlays; shoulder rumble strips; and minor structure replacements or modifications. It is important to note that grade crossing improvements can be funded under section 152 if they are identified in a State’s hazardous location survey.

The difference between the sum of the funding levels for sections 130 and 152 and the overall 10 percent safety set-aside in STP is in a category called “Optional Safety Funds” and is eligible for use in either section 130 or section 152. In FY 2000, there was a total of \$368 million available in Optional Safety Funds, but only \$21 million (or 6 percent) was used on section 130 grade crossing safety enhancement. Clearly this is an area where States can be encouraged to change the mix of safety projects advanced using this funding to accommodate more grade crossing safety improvements.

It should be noted that 90 percent of the STP funds are available for general use. Local Metropolitan Planning Organizations, working with the State departments of transportation, help determine how those funds should be allocated. As FRA was advised by commenters in this proceeding, community transportation needs differ. Without question, engineering improvements under this rule would constitute eligible projects deserving of consideration for use of this 90 percent share.

Under section 1103(c) of TEA 21, an amount of \$5,250,000 per year was set aside from STP funds, and this funding is to be used for projects on designated high speed passenger rail corridors. Should a quiet zone be desired on a portion of such a designated high speed corridor, such funds could be used as a

part of the overall high speed corridor improvement project. Given the relatively small amount of funding available under section 1103(c), it is perhaps unlikely that any quiet zone improvements would rise to the top of the list on any such corridor. However, note that there is a strong compatibility between the kind of safety improvements desired for high-speed rail corridors (“sealed corridor” treatments) and the supplementary safety measures identified in this rule.

Transfers of funds from other categories into the STP are permitted, and any such transfers are not subject to STP set-asides or suballocations.

- Up to 50 percent of National Highway System (NHS) apportionments may be transferred to the STP; indeed, up to 100 percent of NHS funds may be transferred to STP if approved by the Secretary of Transportation, and if sufficient notice and opportunity for public comment is given.

- Up to 50 percent of Interstate Maintenance apportionments may be transferred to STP.

- Up to 50 percent of Bridge Replacement funds may be transferred to STP.

- Funds apportioned to the Congestion Mitigation and Air Quality (CMAQ) Program may also be transferred to STP, subject to the following conditions. Up to 50 percent of the amount by which the CMAQ apportionment for the fiscal year exceeds the amount that would have been apportioned to CMAQ for that fiscal year if the program had been funded at \$1.35 billion annually may be transferred to STP. Transferred CMAQ funds may only be used in air quality non-attainment and maintenance areas.

Finally, please note that, with respect to roadways on the National Highway System, improvements would be eligible for funding out of the NHS.

The subject matter of this regulatory proceeding is the use of the train horn at highway-rail crossings, not the development of appropriations requests. Accordingly, FRA neither endorses nor argues against earmarked Federal funding for this purpose. FRA does note that, in general, State and local governments have argued against categorical transportation programs and in favor of broad block grants over which recipients could exercise full control. As reflected above, to a large extent that has become Federal policy. Whether any deviation from that policy is warranted by the fiscal impacts claimed to be associated with this rule is a matter for review in other forums. Accordingly, FRA’s principal response to those arguing for Federal funding has

been to ensure, to the extent practicable, that any expenses attributed to establishing Quiet Zones are no greater than necessary to maintain safety.

As this interim final rule was being drafted, the Congress and the Administration were preparing to address the reauthorization of surface transportation programs (extending or replacing TEA-21). That process was being complicated by reduced revenues, confirming FRA’s conviction that this interim final rule should allow additional time for implementation of the rule. Although it is possible that the program structure outlined above may be reorganized significantly in new legislation, FRA does not expect any resulting reduction in the flexibility afforded to the States (working with local Metropolitan Planning Organizations) to affect the utilization of Federal transportation funds.

## 11. Liability

Several commenters noted that the NPRM was silent as to the issue of liability when an accident occurs at a highway-rail grade crossing within a quiet zone established in accordance with the rule. The New Jersey Department of Transportation (“DOT”) explained that consideration should be given to how liability issues presented by the rulemaking will affect public safety. Several commenters suggested that legislation was necessary to prohibit lawsuits by anyone injured while circumventing highway-rail grade crossing safety devices within quiet zones. The Massachusetts town of Manchester-by-the-Sea commented that the NPRM appeared to be a paternalistic effort directed towards those who willfully violate traffic laws and illegally proceed around grade crossing safety devices. This commenter also expressed concern that railroads may be reluctant to agree to implementation of quiet zones under the rule for fear that it would increase their risk of liability if an accident did occur at a crossing within a quiet zone where the railroads did not routinely sound their locomotive horns. Manchester-by-the-Sea suggested that when there is willful conduct by a motorist or pedestrian that jeopardizes his life or those of others, *e.g.*, proceeding through activated gate crossing devices, railroads and local communities should not be subject to liability if an accident occurs. Accordingly, the Town recommended that FRA work with Congress to codify limits to the liability of railroads and communities when those who willfully violate traffic or trespassing laws are injured at rail crossings within a quiet zone. Similarly, a Wisconsin State