

burdens where the safety rationale is most compelling.

L. Time for Implementation

Chicago respondents also argued that the time frame proposed for implementation of quiet zones was too short. The Illinois Commerce Commission projected that it would take ten years to implement the required safety measures. CATS Council of Mayors Executive Committee's estimate was as long as 15 years. They argued that the time it would take to do the work in more than 200 communities in the Chicago Region alone would overburden the railroad industry, tax Federal resources beyond their capacity to deliver, and be more of a burden than the railroad construction industry could handle within the required time frame. These arguments were generally based on the presumption that all crossings would need to be equipped with four-quadrant gate systems. Nevertheless, FRA gave careful consideration to this concern, and has provided significant additional time to implement quiet zones while also attempting to reduce the number of corridors for which supplementary or alternative safety measures will be required.

15. E.O. 15 Status

Emergency Order 15, issued in 1991, requires the FEC to sound locomotive horns at all public grade crossings. The Emergency Order preempted state and local laws that permitted nighttime bans on the use of locomotive horns. Amendments to the Order did, however, permit establishment of quiet zones if supplementary safety measures were implemented at every crossing within a proposed quiet zone. The supplementary safety measures specified in the Order, although similar, are not the same as those contained in this Interim Final Rule. The SSMs and the conditions on their implementation contained in this rule, provide communities substantially greater flexibility in creating quiet zones than those in the Order. So as not to adversely affect Florida communities along FEC tracks by imposing different standards for establishing quiet zones than along other Florida rail lines or elsewhere in the Nation, FRA will rescind E.O. on December 18, 2004, the effective date of this rule. At that time, the provisions of this rule will apply to all grade crossings within the State of Florida. Some communities along the FEC (communities subject to E.O. 15) may wish to establish New Quiet Zones following the effective date of this rule. FRA is not at this time calculating the effect of silencing the train horn along

that corridor because information gathered in response to the NPRM was not sufficient to make such estimate and because the actual rate of increase experienced during the period studied prior to issuance of E.O. 15 requires re-examination to determine whether it remains valid in light of changed circumstances. FRA will determine whether to apply a regional estimate as to the effect of silencing the train horn at E.O. 15 crossings based on comments submitted in response to this interim final rule or through supplementary fact finding prior to the rescission of E.O. 15. FRA will issue the necessary finding well before the effective date of this interim final rule.

16. Section-by-Section Analysis

Section 222.1 What Is the Purpose of This Regulation?

This section describes the purpose of this regulation—to provide for safety at public highway rail grade crossings by regulating locomotive horn use at those crossings. In addition to regulating locomotive use at the crossings, the regulation provides an opportunity for the cessation of routine use of the locomotive horn at those crossings, while maintaining, at a minimum, the same level of safety as exists when horns are used.

Section 222.3 What Areas Does This Regulation Cover?

This section describes the areas, or scope, of the regulation. The regulation prescribes standards for sounding of locomotive horns when locomotives approach and pass through public highway-rail grade crossings. The regulation also addresses standards under which locomotive horns are not sounded when locomotives approach and cross public crossings. The regulation does not cover the use of horns at private crossings except when those private crossings are within a quiet zone. For a further discussion of private crossings, see § 222.25.

Section 222.5 What Railroads Does This Regulation Apply To?

This section describes the railroads to which this regulation applies. The regulation applies to every railroad with a number of listed exceptions. The regulation does not apply to (1) railroads exclusively operating freight trains only on track which is not part of the general railroad system of transportation; (2) passenger railroads that operate only on track which is not part of the general railroad system of transportation and which operate at a maximum speed of 15 miles per hour;

and (3) rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

In the NPRM, FRA proposed to not apply the rule to plant railroads and freight railroads which are not part of the general railroad system of transportation. FRA noted that these operations are typically low speed with small numbers of rail cars permitting relatively short stopping distances. Additionally, these operations typically involve roadway crossings with relatively low speed vehicular traffic. These reasons, together with FRA's historical basis for not making its regulations applicable to plant and non-general-system freight railroads led FRA to propose not to apply the rule to such operations. Since use of the locomotive horn is a matter within the scope of railroad operating rules (see 49 CFR Part 217), maintaining reasonably consistent policies of inclusion and exclusion appeared sensible. Omitting plant railroads from the scope of the section is intended to leave State authorities with continuing jurisdiction over the subject matter of the appropriate audible warnings to be used by such railroads.

In the NPRM, FRA also discussed its basis for proposing to make the rule applicable to "scenic" or "tourist" railroads which are not part of the general system of railroad transportation. FRA took the position that since the rule deals directly with public grade crossings, it should apply to all tourist and scenic railroads with public grade crossings irrespective of whether they are part of the general system of railroad transportation. FRA took a similar position in its rule on grade crossing signal system safety, which applies to tourist and excursion railroads outside of the general system if they have attributes that make them non-insular, such as public grade crossings. See 49 CFR 234.3(c). The Association of Railway Museums, in opposing the inclusion of tourist and scenic railroads in what it termed as "a general system rulemaking," stated that "[i]f the operating characteristics which FRA has ascribed to plant and private freight railroads are sufficient to justify different treatment under the rule, they are certainly sufficient to justify different treatment of tourist/historic railroads." The commenter pointed out that FRA is required by statute to consider differences between tourist railroads and general system railroads, whereas there is no similar statutory requirement applicable to plant and "private freight railroads."

FRA believes that there are significant differences between industrial railroads