

and tourist railroads that warrant exclusion of the former and inclusion of the latter in this rule. The primary and obvious difference, of course, is the presence of passengers in tourist operations, which increases the number of people at risk of injury in highway-rail accidents. The operating environments are also quite different, with tourist operations more likely to achieve higher speeds and encounter higher speed highway traffic than plant railroads. Moreover, FRA has historically not applied its rules to plant railroads (see the discussion of FRA's policy on the exercise of its jurisdiction in these circumstances, 49 CFR, part 209, appendix A) for reasons not applicable to tourist operations. However, as a result of the comments, FRA has reviewed this section and is persuaded that low speed passenger service (*i.e.*, at 15 miles per hour, or less) not on the general railroad system does not constitute a significant risk. Low speed service, together with relatively short trains, and comparatively light passenger cars permit significantly shorter stopping distances than fast, long, heavy freight trains. These conditions convinced FRA that such operations do not require the sounding of locomotive horns at this time. However, it should be noted that FRA may amend the rule in the future to include plant railroads or tourist railroads in the event that it determines that safety requires such action.

Paragraph (3) of this section addresses the extent to which rapid transit operations are governed by this part. Under the Federal railroad safety laws, FRA has jurisdiction over all railroads except "rapid transit operations in an urban area that are not connected to the general railroad system of transportation." 49 U.S.C. 20102. Like the proposed rule, the interim final rule tracks the statutory provision, excluding from the rule's reach only those rapid transit operations not subject to FRA's jurisdiction, *i.e.*, those not connected to the general system. However, shortly after issuance of the proposed rule, FRA issued an interpretive statement that explains what FRA believes "connected to the general railroad system" means. Statement of Agency Policy, 65 FR 42529 (2000); 49 CFR part 209, appendix A. FRA made clear that a passenger operation, even if rapid transit in nature, that shares the same track as a conventional railroad is subject to FRA jurisdiction on all shared track. FRA also made clear that highway-rail grade crossings traversed by a rapid transit operation and a conventional railroad that share a

corridor but do not share track were sufficient connections to the general system to warrant FRA's exercise of jurisdiction over the rapid transit operation at the point of connection. 65 FR 42541. FRA pointed out that the rapid transit operation would be expected to observe FRA's rules concerning grade crossings that were then in effect, *i.e.*, the rules on grade crossing signals and ditch lights. *Id.* (FRA's proposed policy statement had made this same point; see 64 FR 59058 (1999).) FRA's policy statement explains the logic behind this determination:

Certain types of connections the general railroad system will cause FRA to exercise jurisdiction over the rapid transit line *to the extent it is connected*. FRA will exercise jurisdiction over the portion of a rapid transit operation that is conducted as a part of or over the lines of the general system. * * * [W]here transit operations share highway-rail grade crossings with conventional railroads, FRA expects both systems to observe its signal rules. For example, FRA expects both railroads to observe the provision of its rule on grade crossing signals that requires prompt reports of warning system malfunctions. See 49 CFR part 234. FRA believes these connections present sufficient intermingling of the rapid transit and general system operations to pose significant hazards to one or both operations and, in the case of highway-rail grade crossings, to the motoring public. The safety of highway users of highway-rail grade crossings can best be protected if they get the same signals concerning the presence of any rail vehicles at the crossing and if they can react the same way to all rail vehicles (65 FR 42545; 49 CFR part 209, app. A).

This same logic clearly applies to audible warnings at highway-rail grade crossings: motorists are best protected if they receive the same warnings concerning the presence of rail vehicles at a crossing regardless of whether those vehicles are rapid transit or conventional rail. In light of FRA's July 2000 interpretive guidance that considers these crossings sufficient connections to warrant exercise of its jurisdiction, this interim final rule, which uses the same relevant language as the proposed rule, will apply to rapid transit operations that share grade crossings with conventional railroads in a common corridor, as well as to rapid transit operations that share track with conventional railroads.

However, applying this rule to rapid transit operations may pose certain problems. The horns in use on such rapid transit trains may not be able to meet the standards for audible warning devices in 49 CFR 229.129. Accordingly, new subsection (d) to § 229.129 excludes rapid transit operations from the "audible warning device" requirements of that section, which

governs the sound levels of locomotive horns on general system railroads. FRA seeks comment on what standards may be appropriate for the audible warning devices used by rapid transit systems subject to part 222. Other impacts of applying the rule would include the need to involve yet another entity in the creation and enforcement of quiet zones. However, true quiet could not be achieved without the involvement of all entities that operate trains over those crossings.

Given the questions surrounding application of the rule in the shared corridor context, FRA solicits comments on this issue. Should FRA leave the applicability provisions of parts 222 and 229 as they are, *i.e.*, inclusive of rapid transit operations in shared corridors? Or, should FRA amend the applicability provisions of part 222 and 229 to exclude rapid transit operations that share highway-rail grade crossings with conventional operations but do not share trackage? If so, how can the rule's central purpose of achieving adequate train horn warnings at grade crossings be achieved, if those rapid transit operations would not be subject to the mandate to sound their horns? How would communities that have or wish to establish quiet zones achieve their goals if the rapid transit operations operating over shared corridors are not subject to the rule?

Section 222.7 What Is This Regulation's Effect on State and Local Laws and Ordinances?

This section informs the public as to FRA's intention regarding the preemptive effect of this interim final rule. While the presence or absence of such a section does not conclusively establish the preemptive effect of a final or interim final rule, it informs the public concerning the statutory provisions which govern the preemptive effect of the rule and FRA's intentions concerning preemption. Paragraph (a) points out the preemptive provision contained in 49 U.S.C. 20106, which provides that all regulations prescribed by the Secretary relating to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation or order and that does not unreasonably burden interstate commerce. With the exception of a provision directed at an essentially local safety hazard that is not inconsistent with a Federal law, regulation or order and that does not unreasonably burden interstate commerce, 49 U.S.C. 20106