

will preempt any State statutory or common law, local ordinance or State or local regulatory agency rule covering the same subject matter as the regulations contained in this interim final rule. *See Norfolk Southern v. Shanklin*, 529 U.S. 344 (2000) and *CSX v. Easterwood*, 507 U.S. 658 (1993).

Paragraph (b) makes clear the intention of FRA that by including SSMs and ASMs in this regulation (or by approving additional SSMs or ASMs subsequent to issuance of this interim final rule), FRA does not intend to preempt State law regarding use of those measures for traffic control. Individual States may, consistent with Federal Highway Administration regulations and the MUTCD, continue to determine whether specific SSMs or ASMs are appropriate for traffic control. State law and local ordinances concerning sounding of train horns in relation to the use of conventional crossing safety systems, SSMs and ASMs are, however, preempted. Thus, if a specific engineering improvement is approved as an SSM for purposes of this rule, and consistent with FHWA regulations and the MUTCD, a State has the discretion whether to accept its use for traffic control purposes. If a State decides that such SSM cannot be used within the State, such decision is not meant to be preempted by this rule—this interim final rule would not force State acceptance of an SSM. However, any State law or regulation relating the use of train horns to the SSM would be preempted by this rule.

The interim final rule published today permits localities to establish quiet zones irrespective of any State law regarding sounding of train horns or establishment of whistle bans and quiet zones. This view differs from that which FRA stated in the preamble to the NPRM—that the proposed rule “does not confer authority on localities to establish quiet zones if state law does not otherwise permit such actions.” Both the CPUC and the Florida Department of Transportation expressed the view that the rule should allow States to impose more stringent requirements for establishing quiet zones. Expressing an opposite view, the mayor of Middleburg Heights, Ohio is in favor of “empower[ing] the local elected officials to make the best decisions for their community. Local officials on the scene are more capable of judging any internal budgetary, safety or quality of life issues.” The representative of the Metropolitan Council of Governments, representing two cities in Minnesota and two cities in North Dakota, points out that because North Dakota currently prohibits quiet zones, the Council of

Governments wants the rule so as to be able to establish quiet zones. Counsel for the League of Wisconsin Municipalities, representing all of the cities and most of the villages in Wisconsin, stated that municipalities in Wisconsin are granted broad home rule powers and thus are concerned about the preemption of their authority to regulate the use of train horns within their communities. Wisconsin State Representative Miller expressed similar views. The County Commissioner of Olmstead County, Minnesota, testified to his opposition to additional preemption of State and local authority.

While the commenters representing local government may prefer to have no regulation of their ability to institute quiet zones, the decision as to the regulatory body has already been made by Congress. The issue raised in the NPRM, however, is whether, despite issuance of this rule, States may prohibit or permit localities to establish quiet zones. FRA is rejecting the view posited in the NPRM that the rule does not confer authority on localities to establish quiet zones if State law does not otherwise permit such actions. A close review of the statutory language leads to the conclusion that Congress intended that local communities be the primary parties in establishing quiet zones as long as this is done in accordance with Federal rules. Moreover, there can be no doubt that such State laws would clearly be within the subject matter covered by this rule, and would therefore be preempted.

Section 222.9 Definitions

This section defines various terms which are not widely understood or which, for purposes of this rule, have very specific definitions. This section defines the following terms:

“Administrator”

This definition makes clear that when the term “Administrator” is used in the rule, it refers to the Administrator of the Federal Railroad Administration. It also provides that the Administrator may delegate authority under this rule to other Federal Railroad Administration officials.

“Alternative safety measure”

This term was not included in the definition section of the NPRM. It is included in this section because of its unique meaning within this rule. The term “alternative safety measure” refers to a safety system or procedure established in accordance with this rule and which has been determined to be an effective substitute for the locomotive horn in the prevention of highway-rail casualties at specific highway-rail grade

crossings. All ASMs and SSMs listed as approved in appendices A and B have been approved by the Administrator. Section 222.55 addresses how new SSMs and ASMs are approved. Such new SSMs and ASMs are approved by the Associate Administrator.

“Alternative safety measure” should be read in conjunction with the definition of an SSM. Both SSMs and ASMs are safety systems or procedures determined to be an effective substitute for the locomotive horn in the prevention of highway rail casualties at highway-rail grade crossings. SSMs have been determined by the Administrator in appendix A to be effective substitutes for the horn at any grade crossing to which they are applied. Thus, the Administrator has determined that if, for example, four-quadrant gates are appropriately installed at a grade crossing, the warning and protections provided will at least equal that provided by the locomotive horn. Because these safety measures will compensate for the lack of the locomotive horn wherever they are used, FRA has not required prior approval for their use at specific locations. ASMs differ from SSMs in that they are capable of being an effective substitute for the locomotive horn, but can only be determined to be effective on a crossing-by-crossing basis. Because of that limitation, use of such ASMs requires prior approval of the Associate Administrator.

Appendix B lists ASMs currently accepted for the Associate Administrator’s review on an individual crossing-by-crossing basis.

“Associate Administrator” means the Associate Administrator for Safety of the Federal Railroad Administration. The term also includes the Associate Administrator’s delegate.

“Channelization device” means one of a continuous series of highly visible vertical markers placed between opposing highway lanes designed to alert or guide traffic around an obstacle or to direct traffic in a particular direction. This term was defined in more detail in the NPRM—minimum height and distance requirements were listed. Rather than dictating such detail to the community installing the devices, the present definition states that design specifications are determined by the standard design specifications used by the governmental entity constructing the channelization device. However, any channelization device used shall comply with the MUTCD and should be in compliance with applicable guidelines of the American Association of State Highway and Transportation Officials. The definition thus makes