

systems malfunction. The BRS expressed their support for this paragraph, stating that it is "imperative that this remain unchanged. An important element of safety for roadway workers is the warning conveyed by the engineer." With the exception of the additional language pertaining to railroad operating rules discussed above, the paragraph remains unchanged from the NPRM.

*Section 222.25 How Does This Rule Affect Private Highway-Rail Grade Crossings?*

This section clarifies the manner in which this rule affects private crossings. (Section (f) of the Act explicitly gives discretion to the Secretary as to the question of whether to subject private highway-rail grade crossings to the regulation.) FRA has determined that exercising its jurisdiction in a limited manner regarding these crossings is the appropriate course of action.

Although the subject of private crossings was discussed in the preamble to the NPRM, a specific regulatory section was not included. In an effort to clearly set out the manner in which the rule affects private crossings, this new § 222.25 is included in the rule.

Although only a relatively small number of commenters addressed the issue of the rule's applicability to private crossings, the majority of commenters suggested that the rule should apply to private crossings to some extent. For example, both the Missouri Department of Economic Development (MDED) and the CPUC recommended that the proposed rule apply to private crossings in the same manner as public crossings. The MDED explained that many private highway-rail grade crossings, especially those in rural areas where trains usually travel at speeds near the maximum authorized, have hardly any warnings indicating the presence of the crossings. The CPUC explained that some private crossings carry very high volumes of truck or employee automobile traffic at particular times. The CPUC also pointed out that California law on the use of locomotive horns at crossings applies to all crossings, both public and private, and that no empirical data exists that justifies reduced protection for private crossings in quiet zones. Accordingly, the CPUC also recommended that entities seeking to establish quiet zones should be required to provide notice of their intent to all owners of private property within the proposed zone.

Similarly, the New York Department of Transportation explained that almost half the grade crossings in New York are private, but many function essentially as

public crossings, with free access by anyone at any time of the day. Accordingly, the New York DOT suggested that the proposed rule apply to high-risk private crossings, as well as public crossings. The agency suggested that the determination of whether a private crossing was a high risk crossing could be based on a calculation similar to the New Hampshire Index, an analysis of train and highway volume. Alternatively, the agency suggested that a more complex review considering additional factors such as highway and train speed, as well as the type of railroad operations involved (e.g., intercity, commuter, freight, etc.) might be appropriate.

The UTU indicated it has "a problem with not requiring improved protection for private crossings in a quiet zone." The UTU expressed the view "that not to require a private crossing or crossings within the quiet zone to be similarly equipped as a public crossing will allow an unsafe condition to exist." Similarly, the CPUC is in favor of "applying the standards to all railroads, public, private, plant, because the motoring public cannot distinguish these categories."

Although not recommending that the proposed rule apply to private crossings in the same manner as public crossings, two local governments suggested that to ensure private crossings in quiet zones are safe, the rule should require advance warning signs advising users of the crossings that train horns will not be sounded. In addition, these commenters, the City of Moorhead, Minnesota, and the City of Fargo, North Dakota, suggested that the provision of the proposed rule addressing implementation of quiet zones, be revised to specifically indicate that railroad operations in established quiet zones should cease routine use of horns at private crossings, as well as public crossings.

FRA understands the concern expressed by those commenters recommending that private crossings be addressed in the same manner as public crossings. FRA remains unconvinced that private crossings at this time should be subject to Federally imposed mandatory sounding of horns. In expressing this view in the NPRM, FRA stated that "[A]lthough some private crossings experience heavy rail and motor vehicle use, we do not have sufficient information as to present practices, the number and type of such diverse crossings, and the impacts of locomotive horns at such crossings. Thus, FRA will not at this time require that the locomotive horn be sounded at private highway-rail crossings. Whether

horns must be sounded at such crossings will remain subject to State law (if any) and agreements between the railroad and the holder of crossing rights." As noted by the CPUC, California State law requires use of horns at private crossings. We note that FRA, by not applying this rule to private crossings which are not in quiet zones, has left States free to require the sounding of locomotive horns if it is determined by the appropriate State authority that it is appropriate given the circumstances within that State. Similarly, to the extent they are not constrained by Federal law (within a quiet zone) or State law, railroads remain free to elect whether to sound the horn at private crossings.

An FRA requirement to sound the horn at all private crossings would in some respects have more impact than the requirement to sound the horn at public crossings. By requiring the latter, Congress merely Federalized what had been uniform practice throughout the United States. Horns have sounded at public crossings for many decades throughout the country, first by railroad rules, and later based on State law. Horn use at private crossings, has, however, generally not been regulated by the States (presumably because there was less need for such requirement at private crossings), and horn use has thus been left up to railroads. Thus, if FRA were to require horn use at each of the more than 98,000 private crossings throughout the nation, the environmental impact in terms of increased noise would be significant. It is unclear at this time, based on the data available, if there would be a corresponding increase in safety as a result. Therefore, other than its effect on private crossings within quiet zones, the rule is not meant to affect present State laws or orders, or private contractual or other arrangements regarding the routine sounding of locomotive horns at private highway-rail grade crossings. See § 222.7.

FRA does agree that evaluation of the use of the train horn at private crossings merits further study. Because private crossings are generally not controlled by State transportation or regulatory officials, the current national inventory does not provide details regarding key data elements required to evaluate safety at individual private crossings to the same extent possible at public crossings. Clearly, further information is needed concerning the potential utility of using train horns at private crossings and the collateral issues such a policy might entail (including the effects on crew noise dose). FRA will pursue these issues in the context of a forthcoming