

review of safety at private highway-rail crossings.

There was also general agreement among commenters of the need to consider safety at private crossings located within proposed quiet zones. We agree. Although many private crossings do not present high risk in comparison with active public crossings (e.g., entrances to individual residences; lightly used agricultural crossings), other private crossings may present considerable risk. In some cases, railroads instruct crews to sound the horn at particular private crossings where risk is perceived to be high; in other cases train horns provide effective warning as an accident of geography (i.e., where the private crossing is sandwiched between two nearby public crossings). Although, as noted, the statute does not mandate that FRA require use of the train horn at private crossings, it is imperative that actions to facilitate establishment of quiet zones not significantly increase risk at these crossings, and that their presence in the midst of public crossings not be allowed to defeat the purpose of a quiet zone.

This section specifically states that this rule does not require the routine sounding of locomotive horns at private highway-rail grade crossings. Although FRA has jurisdiction over locomotive horn use at private crossings based on both 49 U.S.C. 20153 and 49 U.S.C. 20103, it has not exercised that jurisdiction at this time except as to the use of horns at private crossings within quiet zones.

Paragraph (a) of this section provides that private highway-rail grade crossings may be included in a quiet zone. To do otherwise would defeat the purpose of such a quiet zone. Paragraph (b) provides that private grade crossings which allow access to the public, or which provide access to active industrial or commercial sites, may be included in a quiet zone only if a diagnostic team evaluates the crossing to determine whether the institution of the quiet zone will significantly increase risk at the private crossing. The crossing must then be equipped or treated in accord with the recommendations of such team. A diagnostic team is composed of a group of knowledgeable representatives of the parties of interest in a grade crossing. Typically, the team would be composed of railroad personnel, public safety or law enforcement representatives, and engineering personnel for the public authority. In appendix F, FRA has set forth crossing safety issues for the diagnostic team to consider. The diagnostic team, using crossing safety management principles, should evaluate

conditions at the grade crossing to make determinations and recommendations concerning safety needs at that crossing. The diagnostic team can evaluate a crossing from many perspectives and can make recommendations as to what improvements might be needed to compensate for the lack of a train horn at the crossing. FRA will expect that the results of diagnostic review will be reflected in the filings submitted under § 222.39, so that FRA can determine the appropriateness of the proposed action.

The following options should be available if the diagnostic team determines that the private crossing could experience increased significant risk as a result of quiet zone implementation: (1) The public authority "adopts" the crossing by agreement with the holder or through condemnation and the crossing is then included in the corridor-based risk-reduction program; (2) the crossing is closed; or (3) safety improvements are implemented that address increased risk at that crossing, as evaluated by the diagnostic team.

FRA does not believe it is necessary to specify a means of resolving any differences within the diagnostic team. In the event of disagreement, the contrasting views can be documented and included in the public authority's submission to FRA. If necessary, FRA will undertake additional fact finding before accepting or rejecting the proposed course of action. FRA expects public authorities to make these determinations in the first instance; FRA's role is to determine whether these authorities have considered the grade crossing safety issues set forth in the appendix and have stated an accurate and reasonable basis for their determinations.

This rule does not specify the financial responsibility of parties for safety improvements at private crossings. Responsibility will be determined under normal principles of property law and based upon whatever contracts and cooperative agreements may be entered into by the parties. At private crossings, the holder of the right to cross has normal common law obligations regarding the safe passage of employees and guests; and the community as a whole has an interest in a quiet environment. It is expected that the private crossing holder and the public authority would cooperate to effect any necessary improvements, with the railroad assuming practical responsibility for maintenance of any automated warning systems at the crossing. (Allocation of expense between the railroad and the crossing holder might be further influenced by

any existing contractual arrangements between them.) In the case of a failure of parties to agree on new arrangements, the public authority might elect to adopt the roadway (using condemnation authority as necessary), in which case the crossing would be treated as public in nature.

Paragraph (c) of this section establishes that the private crossings within a quiet zone must at a minimum be equipped with crossbucks and "STOP" signs conforming to MUTCD standards together with advance warning signs in compliance with § 222.35(c).

#### *Section 222.33 Can Locomotive Horns Be Silenced at an Individual Public Highway-Rail Grade Crossing Which Is Not Within a Quiet Zone?*

This section addresses the situation in which locomotive horns need not be sounded even though the crossing is not part of a quiet zone. A railroad operating over an individual public highway-rail grade crossing may, at its discretion, cease the sounding of locomotive horns under certain conditions. Locomotive horns need not be sounded when the locomotive speed is 15 miles per hour or less and train crewmembers or properly equipped flaggers (as defined by 49 CFR 234.5) provide warning to motorists. These limited types of rail operations do not present a significant risk of loss of life or serious personal injury and thus, under the Act, may be exempted from the requirement to sound the locomotive horn. Locomotive horns will still be required to be sounded if automatic warning systems have malfunctioned and the crossing is being flagged pursuant to 49 CFR 234.105, 234.106, or 234.107. Horns will still be required in these limited circumstances in order to offset the temporary loss of the active warning which motorists have presumably come to rely on.

This section is an exception to the requirement that silencing of locomotive horns must include all crossings within a designated quiet zone. This section permits a railroad, on its own initiative, to silence its horns at individual crossings under certain circumstances in which the safety risk is low. FRA anticipates that this section will be used primarily at crossings located in industrial areas where substantial switching occurs, and thus would avoid unnecessary noise impacts on those railroad personnel working on the ground in very close proximity to the locomotive horn. This section also has the potential to reduce noise impacting residences and businesses near crossings where railroad switching