

occurs. This section recognizes that under the noted conditions, public and railroad safety do not require the sounding of locomotive horns—a railroad is thus free to eliminate them. Since the primary beneficiary of this section is not nearby residences, the reasoning for the establishment of quiet zones rather than individual quiet crossings would not be applicable here. There is no additional burden placed on an engineer in this situation since the flagger will generally be a member of the train crew itself, and the engineer will not be placed in the position of having to determine when horns must be silenced or sounded as would be the case if horns could be silenced on an individual crossing basis. Additionally, prevention of noise spill-over from a crossing would not be a consideration in these situations.

FRA received a number of comments on the equivalent section in the NPRM (§ 222.31). The representative of Miami Springs, Florida felt that if train speed is less than 15 miles per hour, local authorities can decide if an exemption for the horn is appropriate. The representative did not think flaggers are needed in this situation. The AAR recommended that the decision to flag be left to railroads. In addition, this AAR representative pointed out that proposed § 222.31 identified the threshold speed of 15 miles per hour as the maximum authorized operating speed established by the railroad, not the actual operating speed. This commenter suggested that the maximum authorized speed is not the critical factor and recommended that the maximum speed identified in § 222.31 be revised to refer to actual operating speed. FRA agrees with this suggestion and has changed this provision accordingly. However, FRA will retain the requirement to flag the crossing in the absence of the horn. To do otherwise would put the traveling public at risk, in that the motorist could not be certain of the warning to be provided at the crossing. If a train passes through at 20 miles an hour, a horn would sound, but at 15 miles per hour a horn would not sound. Only if actual warning is provided by the horn at train speeds greater than 15 miles per hour and by a flagger at speeds of 15 miles per hour or less would the motorist consistently receive warning of the train's approach. The BLE provided the general comment that the assumption on which proposed § 221.31 is based, that slow moving trains or less frequent train movements lead to a diminished safety risk, must be carefully evaluated and must be supported by substantial relevant data.

We agree, however, that is a less significant an issue in this case because flagging is required to provide an alternative methods of warning. Further, careful review of accident data shows that, even if the flagger's warning is not heeded, the likely severity of a collision will be much lower than at higher speeds.

Another railroad industry commenter, the Florida East Coast Railway Company, stated that it interpreted proposed § 222.31 as leaving it to the discretion of railroads to decide whether to sound the locomotive horn or not when the specified conditions are present. The commenter is correct that if all the conditions are met under this section, the railroad may, but is not required to forgo sounding the horn. The reason for leaving significant discretion with the railroad in this instance is that in many cases highly restricted sight distances and complex traffic patterns may complicate the flagger's job and make use of the horn virtually mandatory.

#### *Section 222.35 What Are the Minimum Requirements for Quiet Zones?*

This section details the minimum requirements for quiet zones established in conformity with this part. It addresses the minimum length of a quiet zone, minimum level of active warning to be provided, and minimum type of signage required.

The requirements of this section appeared in the NPRM in proposed § 222.33, "Establishment of quiet zones." Because of the breadth of that proposed section, in this interim final rule, it has been broken down into smaller sections for ease of use and reference. Thus, this § 222.35 addresses minimum physical requirements, § 222.37 addresses who may establish a quiet zone, and § 222.39 addresses how a quiet zone is established.

In the NPRM, FRA discussed the rationale for requiring quiet zones rather than permitting a ban on locomotive horns on a crossing-by crossing basis. A quiet zone is defined in this rule as a segment of a rail line, within which is situated one or a number of consecutive public highway-rail crossings at which locomotive horns are not routinely sounded. FRA believes that if locomotive horns are to be prohibited along a segment of track, the underlying purpose of the prohibition will not be served unless the prohibition is effective on a corridor basis. Without a quiet zone, the sounding of horns may be prohibited at one crossing, required at the next few crossings and then prohibited at another crossing perhaps one-quarter mile down the tracks.

Because locomotive horns must be sounded in advance of the crossing, the horn being sounded at one crossing will effectively negate a large measure of the benefit of the prohibition elsewhere along the rail line. Imposition of a horn prohibition on a corridor basis will eliminate excessive and unnecessary workload demands on the engineer, permitting greater attention to other locomotive operating requirements. Without a zone prohibition, the engineer will be faced with the need to constantly be aware of which crossings are, or are not, subject to a prohibition.

Paragraph (a) addresses the length of quiet zones. Unlike the NPRM, which required an across the board one-half mile length irrespective of when the quiet zone was established, this Interim Final Rule provides for a minimum length for New Quiet Zones and permits Pre-Rule Quiet Zones to retain their length under specified conditions.

Paragraph (a)(1) provides that the minimum length of a New Quiet Zone established under this part shall be one-half mile along the length of railroad right-of-way. This is consistent with the NPRM, which as stated, required that all quiet zones to be at least one-half mile long. This provision did not generate a large number of comments; however, the concept of a minimum length was generally supported. The communities of Moorhead, Minnesota, Fargo, North Dakota, and Rocky River, Ohio supported the one-half mile length. New Jersey Department of Transportation pointed out that the purpose of a quiet zone and the requirement for minimum length may not be met throughout the entire length of a quiet zone "because of stations, private grade crossings, curves and points where the locomotive horn would routinely be sounded regardless of its proximity to public grade crossings. \* \* \* The definition and minimum length of a quiet zone \* \* \* may need additional refinement regarding non-grade crossing safety points on the rail segment." While New Jersey DOT's points are well taken, it remains a local decision as to whether to implement a quiet zone. It is true that sounding of locomotive horns at stations and around curves would not be affected by this rule (although horn use at private crossings within quiet zones is regulated by this rule (see § 222.25)), but if a community determines that it wishes to reduce train noise even if it can not be totally eliminated, it may do so under this rule. The CPUC recommended that minimum length not be codified in the rule, but should be determined by the railroad and applicant and approved by the State agency. The Illinois Commerce