

Commission agrees with the one-half mile length but argues that it should not be binding since shorter lengths may be appropriate. FRA believes that establishment of a minimum length of one-half mile is appropriate. It is, however, a local community decision as to whether to establish a quiet zone and it is the community which, after weighing the costs, can best determine where a quiet should be established. FRA understands that there may be situations in which a quiet zone must, for legitimate reasons, be shorter than one-half mile. In any such situation, the community may apply for a waiver from this requirement under the waiver provisions of § 222.15, showing special circumstances.

The Florida Department of Transportation recommended that FRA establish a minimum distance between quiet zones because without a specified distance between quiet zones, the actual separation may be as short as 50–100 feet. The agency claimed that the lack of a specified distance would violate the spirit of the one-half mile requirement. While a short distance between quiet zones may not be ideal in that the train horn may sound at a crossing within that distance, the horns will still be silenced within the minimum one-half mile length, which should provide relief to residents and businesses within that segment. FRA expects that there will indeed be situations in which a number of quiet zones are established in accordance with this section which will result in some crossings not included in quiet zones created on both sides of them. We anticipate that communities will calculate the Quiet Zone Risk Index for a number of different combinations of crossings in order to establish the right mix of crossings and anticipated costs. It is perfectly acceptable for a community to create two quiet zones (each at least one-half mile long) on a segment between them at which horns will sound. FRA believes that such a decision on the local level best reflects the needs and views of local residents and businesses. In such a situation FRA will not substitute its judgment for that of the local authorities.

Paragraph (a)(2) provides that the length of a Pre-Rule Quiet Zone may continue unchanged from that which existed as of October 9, 1996. FRA chose to exempt Pre-Rule Quiet Zones from the minimum one-half mile requirement in order to fairly take into consideration the interests of communities with existing whistle bans. While FRA does not believe there are many Pre-Rule Quiet Zones less than one-half mile in length, those that otherwise qualify to continue quiet zones under this rule

may retain the original length of the quiet zone. This provision will prevent disruption in communities with established and effective whistle bans. FRA has determined that the addition of any crossing to a Pre-Rule Quiet Zone will end the grandfathered status of that quiet zone. Such additional crossing will change the status of a Pre-Rule Quiet Zone to a New Quiet Zone. To do otherwise would confer additional benefits to those communities with existing whistle bans not contemplated by the statutory directive to take into account *existing* restrictions on the sounding of the horn. Additionally, the Pre-Rule Quiet Zone has a safety record while horns did not sound, and presumably the ban had been continued because it met certain safety standards. There is no such safety record for the new crossing to be added to the quiet zone. Therefore, because new and additional risk is added by the new crossings added to the Pre-Rule Quiet Zone, risk needs to be calculated for the entire quiet zone. The resulting quiet zone must therefore comply with the requirements for New Quiet Zones and thus must be at least one-half mile in length.

Paragraph (a)(2) further states that the deletion of any crossing from a Pre-Rule Quiet Zone, with the exception of a grade separation or crossing closure, must result in a quiet zone of at least one-half mile in length in order to retain Pre-Rule Quiet Zone status. Of course, in addition to not qualifying for Pre-Rule Quiet Zone status, the resulting proposed quiet zone, if less than one-half mile, would also not qualify for New Quiet Zone status.

Paragraph (a)(3) makes clear that a quiet zone may extend beyond the boundaries of a political jurisdiction. This will permit the establishment of quiet zones reflective of the needs of the nearby residents and businesses rather than of artificial political boundaries. A quiet zone may thus extend for its full appropriate length, rather than being broken into two or three separate quiet zones. Of course, if more than one public authority is involved due to the fact that the quiet zone extends into more than one political jurisdiction, the different public authorities must agree to the establishment of the quiet zone, and must jointly, or by delegation provided to one of the authorities, take necessary actions under this rule. See § 222.34(a).

Paragraph (b) addresses the need for the presence of active grade crossing warning devices at crossings within quiet zones. Paragraph (b)(1) addresses active warning devices at crossings within New Quiet Zones. Each public

highway-rail grade crossing in a New Quiet Zone must be equipped, no later than the implementation date of the New Quiet Zone, with active grade crossing warning devices comprising both flashing lights and gates which control traffic over the crossing. Such devices must conform to the standards contained in the MUTCD issued by the Federal Highway Administration. As noted in the general discussion above, flashing lights and gates alone provide an unambiguous warning to the motorist of the arrival of the train. Removing the active warning provided by the train horn without providing flashing lights and gates would put the motorist in the position of relying exclusively on visual sighting of the train to make a decision, which is impractical under many circumstances (e.g., permanently or temporarily obscured sight lines, compromised night vision, adverse weather and other factors that create visual clutter).

Such warning devices shall be equipped with power-out indicators. A power-out indicator is a device which is capable of indicating to trains approaching a grade crossing equipped with an active warning system whether commercial electric power is activating the warning system at that crossing. Presence of such power-out indicator adds another level of protection at the crossing in that it helps the railroad know as soon as possible if electric power is out at the crossing. While all crossing warning systems are equipped with back-up battery power, it is essential that the railroad know as soon as possible if the system is operating on reserve battery power rather than commercial power in order to allow the railroad to take appropriate action before the battery fails. (Of course, because all grade crossing warning systems are designed on the “fail-safe” principle, if a warning system does lose all power, the gates will descend across the roadway. However, no additional visible warning is provided; and it is not uncommon for gates to be broken off by motor vehicles under such circumstances, leaving the crossing a potential trap for motorists subsequently seeking to cross.)

Paragraph (b)(2) addresses active warning devices at crossings within Pre-Rule Quiet Zones. Such quiet zones must retain the grade crossing safety warning devices which existed at the crossing as of the date of publication of this rule. Such warning systems may be upgraded, but in no event may the warning system be downgraded from that which was in existence as of this date. This provision is consistent with the statutory mandate that FRA take into