

consideration the interest of communities which had existing horn restrictions in place. Permitting quiet zones with crossings not equipped with both flashing lights and gates, is appropriate since the safety history, and thus the risk level, is known at such crossings. For existing quiet zones, where the risk level without locomotive horns can be determined, the risk level, rather than the equipment level, will determine whether an existing quiet zone qualifies as a Pre-Rule Quiet Zone. While this approach may strike one as inconsistent with the approach of paragraph (b)(1), which requires both flashing lights and gates, the determining distinction is the lack of non-horn safety history at New Quiet Zones. In such circumstances, FRA is not willing to permit elimination of the train horn when active warning systems are absent. This distinction also further reflects the statutory mandate that this rule take into account the interest of communities with existing bans.

Paragraph (c) addresses the requirement for advance warning signs at crossings within a quiet zone. Paragraph (c)(1) requires that each highway approach to every public and private highway-rail grade crossing within a Pre-Rule Quiet Zone or New Quiet Zone shall be equipped with an advance warning sign which advises the motorist that train horns are not sounded at the crossing. Such sign shall conform to the standards contained in the MUTCD issued by the Federal Highway Administration. Paragraph (2) provides a period of three years from this date of publication for such signs to be installed at public and private crossings in a Pre-Rule Quiet Zone. This three-year interval tracks the period during which existing quiet zones may be continued without the necessity of a commitment by the public authority to continue the quiet zones as Pre-Rule Quiet Zones. Without this three-year exception, those communities with existing quiet zones with no advance warning signs would be forced to install such signs even if they were to discontinue the quiet zones within that three-year grace period. We note that, although we strongly encourage such signs wherever use of locomotive horns are prohibited, lack of signs is only being permitted for a short period of time, and only where they are not already in use.

Paragraph (d) requires that all private grade crossings within a quiet zone must be treated in accordance with this section and with § 222.25.

#### *Section 222.37 Who May Establish a Quiet Zone?*

This section addresses which entities may establish quiet zones. In the NPRM, FRA proposed that a local political jurisdiction, in addition to a State, have authority to establish a quiet zone. Additionally, in the preamble to the NPRM, FRA stated that "FRA does not intend that the proposed rule confer authority on localities to establish quiet zones if State law does not otherwise permit such actions. Local political jurisdictions are creations of their respective states and their powers are thus limited by their individual State law or constitution."

Understandably, this provision generated many comments from State and local governments. Of those States commenting, the consistent view was that States should have the primary role in establishing quiet zones and in administering a quiet zone program. Florida DOT strongly supported the view that a State agency should be the only governmental entity to designate or apply for quiet zone approval, comparing that process with the State agency's role in prioritizing grade crossing projects and administering Federal funds. Florida DOT suggested that there needs to be "uniformity within a given State for the treatment applied to the crossings to permit quiet zones" and thus the only way to achieve this is for a State agency to be the only party to designate or apply to the FRA for a quiet zone. New Jersey DOT similarly felt that all designations and applications should come from a State agency which would provide more consistent and systematic approach within each State. The State also felt that having a single contact per State would lessen the burden on FRA. Washington DOT also felt that it is simpler to have one contact per State rather than have each community deal with the issue individually. California DOT echoed these views and added the suggestion that States should be free to provide more stringent protections above the Federal floor. The State recommended that references in the rule to "state or local government" should be replaced with "State agency." Missouri's Division of Motor Carrier and Railroad Safety suggested that the State agency with regulatory authority over grade crossings should process quiet zone applications, thereby removing a burden on FRA. North Carolina Department of Transportation (NCDOT) suggested that each State DOT serve as a clearinghouse for quiet zone requests to FRA since these agencies have already been charged with evaluating

public crossing safety and thus would be appropriately involved in safety evaluations for proposed quiet zones.

Comments from local governments tended to support the view that localities are in the best position to apply for quiet zones, however some communities favored State agency involvement. Brighton, Colorado expressed the view that local political subdivisions should establish quiet zones. Carrollton, Texas favors local government's role, as does Fort Collins, Colorado and Fargo, North Dakota. Chicago encourages "FRA to allow state and local governments to agree to the most appropriate procedure for managing quiet zone implementation and maintenance."

FRA notes that Congress, in mandating issuance of this rule, established the criteria and parameters under which the rule would be issued. Congress did not specifically provide a State role in managing the quiet zone program,<sup>13</sup> and FRA has not provided one either. Thus, despite suggestions to the contrary, FRA will not delegate to individual States any of its authority to manage this program. FRA did, however, solicit suggestions as to which is the appropriate party to establish quiet zones under the provisions of this rule. Commenters claiming that State oversight would provide consistency and only State agencies have the experience evaluating crossings from a safety standpoint are accurate to some extent. However, this rule has been crafted to provide a level of consistency while at the same time providing a range of options for quiet zone implementation. The "consistency" is found within the boundaries of this rule. Application of the same provisions throughout the State and nation will provide the needed level of consistency, without unduly preventing implementation of quiet zones under various situations. Similarly, reliance on a State agency's expertise in grade crossing safety will be helpful to public authorities in determining which among various alternatives should be followed, but this expertise should not determine which public body should make the ultimate decision. We encourage the use of diagnostic teams (such teams are required if specified categories of private crossings are proposed for inclusion in a quiet zone (*See* § 222.25)), but using diagnostic teams or others with safety expertise should not affect who the ultimate decision making authority should be. After reviewing public comments and testimony, and

<sup>13</sup> By contrast, see 49 U.S.C. 20105 and 49 CFR part 212 (State Safety Participation).