

further review of § 20153, FRA has determined that the public entity with safety authority over the roadway that crosses the railroad is the appropriate public body to determine whether quiet zones should be established. As the authority over the roadway, that body is the logical entity to make such decisions. That authority, as the public entity responsible for safety and maintenance of the roadway (be it State, city, county or township), already has the legal authority over the roadway and therefore ostensibly has the necessary expertise or judgment to make decisions regarding that roadway. To the extent a State agency retains control over engineering decisions at highway-rail crossings, nothing in this rule should be read to compromise that authority. It is only the conditions under which the train horn will sound or be silenced that is reserved for resolution under this rule.

A review of section 20153 indicates a clear Congressional preference that decision-makers be the "traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing." The statute refers to SSMs being provided by such body. Similarly, in the event a waiver from the regulation is desired, the statute requires that such application be from the traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing. The statute also requires that FRA take into account the interest of "communities" and that FRA "work in partnership with affected communities to provide technical assistance and provide a reasonable amount of time for local communities to install SSMs." Nowhere does the statute refer to State agencies. The focus of the statute, and thus the focus of this rule is on the public bodies that are the "traffic control authority or law enforcement authority responsible for safety at the highway-rail grade crossing." Yet States do have an interest in this issue, and will of course play an important role as the discussion of paragraph (b) below details.

There are many different roadways crossing railroad tracks. Some are roads maintained by a small local jurisdiction, such as a town or village, and some are State highways maintained by the State. We do not expect, nor do we think it advisable, that a small political jurisdiction, such as a township desiring a quiet zone, have authority under this rule to determine what the State installs on its State highway within the borders of that town or village. Therefore, we have crafted this rule to provide that the political entity having safety

jurisdiction over the highway have the authority to implement quiet zones involving those crossings.

FRA wishes to emphasize that it expects to participate in a broad cooperative effort involving States, local public authorities, and railroads that will identify the dimensions of potential quiet zones, staff diagnostic teams, identify funding sources, and help resolve any technical issues related to issues such as effectiveness rates for proposed ASMs. In this context, the strong participation of State departments of transportation and regulatory commissions will be crucial to project success, particularly since in many States the primary expertise for grade crossing safety issues resides at the State level.

FRA appreciates the offers made by several State-level departments and agencies to manage the implementation of this rule within their States. Although FRA does recognize that these agencies will need to play a strong role in implementation of the rule, FRA has not chosen to grant to State governments final approval functions for several reasons, any one of which is independently sufficient as a decisional criterion.

First, the obvious objective of the statute is to create a uniform and consistent pattern nationwide with respect to the conditions under which use of the train horn will and will not occur. It would be virtually impossible for FRA to ensure that a variety of State agencies were consistently applying the regulation; in fact, the burden of doing so could exceed the burden of administering the regulation directly. Congress did not direct that the States play any specific role in this regard.

Second, as a practical matter it is not clear that State agencies are authorized to take on this duty; and the delays inherently involved in obtaining this authority from legislatures could defeat the expectations of communities seeking to preserve or establish quiet zones.

Third, unlike many other situations where existing State programs are incorporated into a new Federal effort, this is not a field where State innovation has provided the model for Federal action. Although certain States have distinguished themselves in providing for safety at crossings by insisting on use of the train horn, and others have been responsive to local concerns by providing exceptions to its use, perhaps no more than one or two States has settled on an approach that appears to adequately balance the two interests and provide a foundation for a ready

transition to functioning under this interim final rule.¹⁴

Paragraph (a) of this section provides that a public authority may establish quiet zones which are consistent with the provisions of this part. If a proposed quiet zone includes public grade crossings under the authority and control of more than one public authority (such as a county road and a State highway crossing the railroad tracks at different crossings), both public authorities must agree to establishment of the quiet zone, and must jointly, or by delegation provided to one of the authorities, take such actions as are required by this part. We anticipate that many quiet zones will encompass roadways under the control of more than one political jurisdiction, thereby requiring cooperation among the various jurisdictions in order to establish a quiet zone. We recognize that under this scenario one jurisdiction could prevent the establishment of a quiet zone, but the alternative of one jurisdiction imposing its will on another in such decisions is unacceptable. If a multi-jurisdictional quiet zone is established, the various jurisdictions are free to make whatever arrangements are administratively helpful to those entities. The entities may, by agreement, delegate all decision-making and administrative actions, such as notifications and official contact with FRA, to one body. On the other hand, the entities may decide to act as a group, with each entity being involved in each activity throughout the application and implementation process. Thus, how, and to what extent the entities organize, is left up to the individual jurisdictions within the proposed quiet zone.

Paragraph (b) of this section provides that a public authority may establish quiet zones irrespective of State laws covering the subject matter of sounding or silencing locomotive horns at public highway-rail grade crossings. It is unlikely that a State would attempt to restrict a community's freedom to create a quiet zone after issuance of this rule. However, were a State to impose such a restriction and be upheld in doing so, the other provisions of this rule would be left intact. This would mean that the mandate of § 222.21 would go into

¹⁴ This is not a criticism, but merely an observation. Until the studies undertaken by FRA beginning in the 1990s, there was insufficient data available to anyone to fairly evaluate the actual impact of silencing the train horn. By the same token, supplementary and alternative safety measures emerged as a credible alternative to the train horn only as a result of innovation and research that flowered in the 1990s as a result of broad partnerships at the State and Federal levels, with strong participation by passenger and freight railroads.