

effect, but the community's authority to create an exemption to that mandate would not. Nothing in this part, however, is meant to affect any other applicable role of State agencies or the Federal Highway Administration in decisions regarding funding or construction priorities for grade crossing safety projects, selection of traffic control devices, or engineering standards for roadways or traffic control devices.

This section (along with § 222.5 "Preemption") makes clear that State laws covering the subject of locomotive horn use at public highway-rail grade crossing are preempted by this rule and thus are of no effect. State laws which establish minimum distances in advance of a public crossing at which locomotive horns must be sounded are thus preempted. Also preempted by this rule are State laws which establish criteria for the prohibition of horn use at public crossings, as are State laws which prohibit the creation of whistle ban crossings or quiet zones. This paragraph also makes clear that the rule does not affect the traditional role of State agencies, or the Federal Highway Administration, in their role of funding and constructing grade crossing safety projects, the selection of traffic control devices, or engineering standards for roadways or traffic control devices.

Paragraph (c) of this section makes clear that State agencies may provide administrative and technical services to public authorities by advising them, acting on their behalf, or acting as a central contact point in dealing with FRA, however, any public authority eligible to establish a quiet zone under this part may do so.

Section 222.39 How Is a Quiet Zone Established?

This section addresses the manner in which a New Quiet Zone is established. FRA chose to use a quiet zone as a basis for this rule. While it would be possible to approve a locomotive horn ban on a crossing-by-crossing basis, the desired result of less disruption to the surrounding community by locomotive horn noise would be minimal. Because a locomotive horn must be sounded in advance of a grade crossing, the noise spill-over from a crossing not subject to a ban could still disrupt the residents and businesses near a crossing where horns are banned. As a result, the concept of a quiet zone was developed, which is meant to fulfill the following purposes: ensure that banning of locomotive horns would have the greatest impact in terms of noise reduction; ease the added burden on locomotive crews of the necessity of

determining on a crossing-by-crossing basis whether or not to sound the horn; and enable grade crossing safety initiatives to be focused on specific areas within the quiet zone.

In the NPRM, FRA proposed two different methods of establishing quiet zones, depending on local circumstances. In one method (set forth in proposed § 222.33(a)), every public grade crossing within the proposed quiet zone would have an SSM applied to the crossing and the governmental entity establishing the quiet zone would only need to designate perimeters of the quiet zone, install the SSMs, and comply with various notice and information requirements set forth in the rule. The second proposed method (set forth in § 222.33(b)) would provide a governmental entity greater flexibility in using SSMs or ASMs to address problem crossings. The second method would allow FRA to consider a quiet zone that does not have a supplemental safety measure at every crossing as long as implementation of the proposed SSMs and ASMs in the quiet zone as a whole would cause a reduction in risk to compensate for the lack of locomotive horn. Because the success of ASMs in compensating for the lack of the locomotive horn is dependent on the level of time and effort expended by the governmental entity, and because estimates of effectiveness for ASMs will entail a degree of judgment, FRA retained a review and approval function where the governmental entity proposed less than using SSMs at every crossing.

Regardless of the method used, the proposed rule contemplated that both State and local governments would have authority to establish quiet zones. Some State commenters recommended that authority to establish quiet zones should be limited to State agencies, and thus recommended that FRA revise the language of § 222.33 to remove all references to local governments. The CPUC recommended that State agencies retain the primary authority for review and approval of quiet zones. The North Carolina Department of Transportation (NCDOT) similarly expressed the view that it is essential that State transportation agencies serve as clearinghouses for quiet zone designations and applications to FRA since these agencies are the administrators of the Section 130 Federal safety program. The NCDOT further recommended that the criteria for establishment of quiet zones should strongly encourage States to perform Traffic Separation Studies in order to identify additional safety devices that may be required at particular crossings. The NCDOT also recommended that

FRA, along with registered Professional Engineers, review the underlying diagnostic process undertaken by the requesting agency when reviewing applications to establish quiet zones.

The Oregon DOT expressed the belief that the establishment of quiet zones should require more than just installing FRA pre-approved SSMs as articulated in § 222.33(a). The Oregon DOT suggested that some sort of safety review should be required before quiet zones are designated. The CPUC similarly agreed that States should review each crossing proposed for inclusion in a quiet zone under proposed § 222.33(a), even if FRA requires no further review. The New Jersey DOT suggested that any rule providing for quiet zones needs to address other non-highway-rail crossings in areas near railroad stations, curves, or at other points along rail lines where views may be obscured and the locomotive horn would normally be sounded. While FRA does not require a diagnostic team to review a proposed quiet zone (with the exception of reviewing improvements to private crossings), we anticipate that in most instances, such a team will be utilized. FRA is not requiring such a review because, in the case of SSMs, such measures have already been found to be effective in compensating for the lack of a horn. FRA believes that a public authority will use the best talent available to determine the appropriate manner of establishing a quiet zone.

Railroad industry commenters voiced strong disagreement with the proposed rule in that it does not provide for railroad participation in the process of establishing quiet zones. Specifically, the American Short Line and Regional Railroad Association (ASLRRA) and the Florida East Coast Railway Company (FEC) emphasized that including railroads in the process of establishing quiet zones is a logical and practical necessity. Both ASLRRA and FEC insisted that railroads must have the right to review and respond to any request for a quiet zone that may affect the railroads' operations. In support of its position, FEC cited its previous experience with whistle bans established in Florida that led to numerous lawsuits against the company. FRA notes that Florida's whistle ban law, which led to imposition of FRA Emergency Order No. 15, only required that crossings subject to the ban be equipped with gates and flashing lights—it did not provide for the extensive set of safeguards which are the subject of this rule. As discussed earlier, collisions increased dramatically during the whistle ban period, which naturally resulted in increased lawsuits.