

This rule is crafted specifically to avoid such increased risk at subject crossings. One local government commenter, however, expressed concern over the potential inclusion of railroads in the process of establishing quiet zones. This commenter emphasized the necessity of communities being able to take unilateral action to implement quiet zones.

FRA appreciates the role that railroads must play in establishing quiet zones, from possible installation of four-quadrant gates to providing information for the National Grade Crossing Inventory. We also anticipate that, with or without use of diagnostic teams, railroads will play an integral role with public authorities in designing the most effective and most cost effective quiet zones. Despite the clear need for railroad involvement, FRA does not intend that railroads have a veto power over the establishment of quiet zones. The decision to establish such zones resides with the public authority. Once a public authority establishes a quiet zone under the terms of this rule, the railroad is legally prohibited from routinely sounding the locomotive horn at crossings within the quiet zone. As discussed earlier, such prohibition preempts local ordinances and State laws regarding sounding of locomotive horns at public crossings and private crossings within quiet zones. We expect court decisions will reflect that reality and will not hold the railroad liable based on a cause of action of failure to sound a locomotive horn. Please see also § 222.7 “What is this regulation’s effect on State and local laws and ordinances?” and § 222.23 “How does this regulation affect sounding of a horn during any emergency or other situation?”

Other railroad industry commenters agreed with State commenters as to the necessity of either limiting the authority to establish quiet zones to State agencies, or at least mandating the inclusion of State agencies in the process. The AAR voiced support for the position of CPUC that only States should have the authority to establish quiet zones. The BLE, on the other hand, felt that the language of § 222.33 giving State and local governments the authority to establish quiet zones was appropriate, but that the relevant State governmental agency should always be included in the process in order to provide a consistent and efficient approach. FRA continues to believe the best approach, and the approach consistent with the statutory mandate, requires that public authorities with safety authority over the roads and highways within a quiet zone make the

ultimate decision as to establishment of quiet zones. FRA anticipates that public authorities will work closely with State agencies with expertise in the area and with State funding agencies, but, as in a public authority’s relationship with a railroad, the ultimate decision must be left to the public authority.

In additional comments from railroad industry participants, the BRS voiced general support for the two methods of establishing quiet zones in proposed § 222.33, but a representative of the Wisconsin Central System expressed concern about FRA’s ability to analyze and process quiet zone petitions in a timely manner. In comments specifically relevant to passenger operations, the National Railroad Passenger Corporation (Amtrak) expressed concern about the exposure of train passengers to the dangers of accidents at highway-rail grade crossings. Amtrak suggested that communities seeking to establish quiet zones should be required to provide for the re-routing of heavy commercial motor vehicles away from crossings that appear to have dangerous characteristics or that have a history of violations or accidents. Amtrak also suggested that diagnostic teams reviewing crossings for potential inclusion in quiet zones should focus on heavy truck traffic because such vehicles pose the greatest risk of accidents. FRA appreciates Amtrak’s concerns, however, quiet zones will only be established under this rule where there is compensation for the lack of a locomotive horn. Specifically, the requirement that flashing lights and gates be provided at each crossing in a New Quiet Zone, together with other requirements of the rule, should limit any possibility that this rule will adversely affect safety on Amtrak routes. (In fact, the exposure provided to innovative safety measures during this rulemaking and prior public outreach has already had a beneficial effect on emerging corridors.) However, FRA does recognize the possibility that passenger risk may be susceptible to special analysis as this rule is revised in future years based on the results of research.

In this rule, FRA has retained the basic framework as proposed in the NPRM, but has modified it in response to the many comments pertaining to the perceived inflexibility of the proposal. The NPRM was crafted in order to provide flexibility to the local communities. As stated in the NPRM at page 2246, “In this more flexible approach, risk will be viewed in terms of the quiet zone as a whole, rather than at each individual grade crossing. Thus, FRA would consider a quiet zone under

this approach that does not have a supplemental safety measure at every crossing as long as implementation of the proposed SSMs and ASMs on [sic] the quiet zone as a whole will cause a reduction in risk to compensate for the lack of a locomotive horn. If the aggregate reduction in predicted collision risk for the quiet zone as a whole is sufficient to compensate for the lack of a horn, a quiet zone may be established.”

This interim final rule continues the concept of viewing risk on a corridor-wide basis, however the rule includes measurements of risk that reflect commenters’ suggestions that FRA should give greater weight to the safety history and circumstances locally. Thus, FRA will permit quiet zones where risk has been addressed in one of three ways: one is the reduction of risk by compensating for the lack of the locomotive horn by implementation of SSMs at every crossing within a quiet zone; second, by reducing the risk level within the quiet zone to a level at least equal to the average risk level nationwide at crossings equipped with flashing lights and gates and at which horns are sounded; or third, by implementation of safety measures that will cause the risk level within the quiet zone to fall to or below the risk level which would exist if locomotive horns sounded at all crossings within the quiet zone.

Paragraph (a)—Public Authority Designation

Paragraph (a) of this section addresses the situations in which the public authority may designate a quiet zone without the need for formal application to, or approval by, FRA. Paragraph (a)(1), which is similar to proposed § 222.33(a), provides that a quiet zone may be established by implementing at every public highway-rail grade crossing within the quiet zone one or more SSMs identified in Appendix A. Because each of those SSMs have been determined to have an effectiveness rate which is at least equivalent to that of a locomotive horn, and there is an SSM at every public crossing, FRA can be assured that there is compensation for the lack of a locomotive horn in the quiet zone. FRA’s role in this situation is thus minimal. The public authority would only need to designate the extent of the quiet zone and comply with the information and notice requirements of § 222.43.

Paragraph (a)(2) permits quiet zones if the risk level is, or can be made to be, no higher than a national standard of risk where train horns are used. The section compares the risk level at