

crossings within the quiet zone to the average risk level on a nationwide basis at crossings equipped with flashing lights and gates, and at which locomotive horns are sounded. Thus, if the Quiet Zone Risk Index is at, or below, the Nationwide Significant Risk Threshold, the risk at crossings within the quiet zone would be at least equal to the risk level at the average crossing where horns are sounded. Paragraph (a)(2)(i) provides that a quiet zone may be established if the Quiet Zone Risk Index is already at, or below, the Nationwide Significant Risk Threshold. If so, there is no need to implement SSMs.

Paragraph (a)(2)(ii) provides that a quiet zone can be established if SSMs are implemented which are sufficient to reduce the Quiet Zone Risk Index to a level at, or below, the Nationwide Significant Risk Threshold. Under this provision, there is no requirement to implement SSMs at every public crossing within the quiet zone. The public authority has discretion both as to which crossing or crossings will be equipped with an SSM and which type of SSM to use. FRA will provide the basic calculations to the public authority. Such information will be available on FRA's Web site at <http://www.fra.dot.gov>. Additionally, software and technical assistance will be available from FRA's Regional Grade Crossing Managers. The general idea behind paragraph (a)(2) and the Nationwide Significant Risk Threshold is that communities desiring quiet zones should not be required to achieve a higher degree of safety than the average level of risk at public crossings with lights and gates where the horn is sounded. This can relieve some communities of the need to make expensive improvements to eliminate risk below the significant level.

Paragraph (a)(3) provides an additional manner of establishing quiet zones by designation. A public authority may implement SSMs which reduce the Quiet Zone Risk Index to a level at or below the risk level which would exist if locomotives horns sounded at all public crossings within the quiet zone. This permits quiet zones to exist even if the level of risk will be above the national average for train horn crossings as long as measures are taken to ensure risk in the quiet zone does not increase when the horn is silenced. The quiet zone is viewed in the aggregate to determine if there has been compensation for the lack of the locomotive horn.

It is important to note that under any of the alternatives within this section any additional safety measures must be

SSMs as listed in Appendix A. Because of this, FRA does not need to review the proposal. The safety measures have already been reviewed individually by FRA in determining their effectiveness rates and the risk levels have been also been determined in accord with the Appendix D, "Determining Risk Levels."

Paragraph (b)—Public Authority Application to FRA

Paragraph (b) addresses the circumstances in which a quiet zone may be established after application to, and approval by, FRA. This paragraph is intended to provide greater flexibility to the public authority to use ASMs, ASMs and SSMs at different crossings, and variations of SSMs, such as a median shorter than is required when it is used as an SSM. (An "SSM" which does not fully comply with the requirements of Appendix A is considered to be an ASM.) This paragraph is based on proposed § 222.33(b). As in the proposal, not every public crossing within a quiet zone necessarily needs to be treated with an SSM or ASM. However, sufficient data must be submitted to the Associate Administrator to demonstrate that implementation of the measures will cause a reduction in the Quiet Zone Risk Index to, or below either the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone or to a risk level at, or below the Nationwide Significant Risk Threshold.

Paragraph (b)(1) provides that a public authority may apply to the Associate Administrator for approval of a quiet zone that does not meet the standards for public authority designation under paragraph (a). The application must contain a proposal to implement one or more SSMs or ASMs and must contain sufficient detail concerning the present and proposed safety measures at the public and private crossings within the proposed quiet zone. The paragraph also requires that the membership and recommendations of a diagnostic team, if used, must be included in the application. FRA is requiring that a diagnostic team be used only when private grade crossings are to be included in a quiet zone, although their use elsewhere is highly recommended. The public authority must also commit to implement the proposed safety measures and demonstrate through data and analysis that implementation of these measures will reduce the Quiet Zone Risk Index to, or below the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone or to a risk level at, or below

the Nationwide Significant Risk Threshold.

Paragraph (b)(2) addresses approval by the Associate Administrator. If, in the Associate Administrator's judgment, the public authority is in compliance with paragraph (b)(1) and has satisfactorily demonstrated that the SSMs and ASMs proposed by the public authority result in a Quiet Zone Risk Index which is at or below the risk level which would exist if locomotive horns sounded at all crossings in the quiet zone, or is at, or below, the Nationwide Significant Risk Threshold, the quiet zone will be approved. Because of the greater flexibility and the greater variation in possible risk reduction, FRA's role is much greater than when a public authority designates a quiet zone; thus, the Associate Administrator may include in any decision of approval such conditions as may be necessary to ensure that the proposed safety improvements are effective. The Associate Administrator may also not approve the quiet zone, in which case the reasoning behind the rejection will be provided to the public authority. § 222.57. A decision disapproving a request for approval may be challenged by filing a petition for reconsideration with the Associate Administrator. The petitioner will have the opportunity for an informal hearing.

Proposed § 222.33(c) and Proposed Appendix C—Quiet Zones in Which SSMs or ASMs Are Not Necessary

Proposed § 222.33(c) addressed the limited circumstances in which a quiet zone could be established without the need for SSMs or ASMs. The limited conditions under which such a quiet zone could be established were proposed in Appendix C of the NPRM. FRA proposed five criteria that must be met for a quiet zone to be established under § 222.339(c): (1) Train speed does not exceed 15 miles per hour; (2) trains travel between traffic lanes of a public street or on an essentially parallel course within 30 feet of the street; (3) signs are posted at every grade crossing indicating that locomotive horns do not sound; (4) unless the railroad is actually situated on the surface of the public street, traffic on all crossing streets is controlled by STOP signs or traffic lights which are interconnected with automatic crossing warning devices; and (5) the locomotive bell is rung when approaching and traveling through the crossing.

The Oregon Department of Transportation expressed strong disagreement with FRA's inclusion in proposed Appendix C of slow moving trains running within a street right-of-