

way. The Oregon DOT claimed that although crossings where slow moving trains run within a street right-of-way could qualify for a quiet zone, such situations should not be globally exempt from the requirement to sound the locomotive horn. The Town of Andover, Massachusetts, recommended that the Appendix C criteria be expanded to take into account the volume of traffic at a crossing and historical accident data and safety measures in place at the crossing. Recognizing that Appendix C as written would require that all five of the listed conditions be present in order to establish a quiet zone, another local government commenter, Jefferson Parish, Louisiana, suggested a more flexible approach to identifying situations which should qualify as quiet zones without any additional safety measures. Specifically, Jefferson Parish explained that many residential areas are located directly adjacent to railroad rights-of-way, with no intervening public streets. Thus, even if crossings in these areas meet all of the conditions listed in Appendix C except for close proximity to a public street, these areas would never be able to qualify as quiet zones. Jefferson Parish therefore suggested that either some flexibility be allowed on the criterion pertaining to the distance of the track from a parallel street, or to require that areas meet some percentage of the criteria (e.g., four out of five) listed in Appendix C in order to be designated a quiet zone with no additional safety measures necessary.

The Northern Indiana Commuter Transportation District recommends a new categorical exclusion for an intersection of two streets, one of which has railroad tracks, a highway speed limit of 25 miles per hour and railroad speed limit of 15 with passive warnings. In support of this exclusion, the Transportation District cited 17 "non-serious" accidents at its crossings during a recent eight year period. Given the limited information regarding this type of operation, it would not be appropriate to provide a categorical exclusion.

One commenter testifying at the Salem, Massachusetts, public hearing, expressed the view that the Appendix should be eliminated in its entirety. This commenter, a locomotive engineer, explained that while some situations may exist which require no safety measures to offset the lack of use of the locomotive horn, such situations are rare and should be dealt with on an individual case-by-case basis after local public hearings. This commenter also expressed concern regarding the inclusion of crossings where the railroad and a highway run parallel to

each other with only a small distance separating the two. This commenter explained that even if a train is operating at slow speed, it is very difficult for a motorist driving parallel and close to the track to see a train coming up from behind when the motorist is at an intersection and about to turn and cross the track.

Several commenters, unable to determine whether specific crossings in their communities would meet the requirements of Appendix C, requested clarification of the listed criteria. Specifically, some commenters were unclear as to whether all five of the conditions must be present together or if the requirements must only be met individually. In addition, one local government commenter specifically requested clarification of the requirement that trains be traveling between or parallel to traffic lanes of a public street, and what was meant by the phrase "railroad is actually situated on the surface of a public street."

One commenter, representing the City of Saint Paul, Minnesota, expressed support for the inclusion of train speed as a factor in Appendix C. The City of Saint Paul expressed the opinion that as compared to fast moving trains, slow moving trains greatly reduce the safety risk involved with train-auto collisions. However, this commenter also noted that because slow moving trains take a longer time to travel through the same amount of track as fast moving trains, slow moving trains lead to greater noise disturbances if required to sound their horns at every crossing.

Other commenters indicated that the NPRM's Appendix C required revision or that the Appendix should be eliminated altogether. One commenter speaking at the Salem, Massachusetts, public hearing suggested that the criteria listed in Appendix C do not address safety. Instead, this commenter suggested that the listed criteria address a certain pattern of railroad and roadway coexistence, which pattern is not exclusive of other safe conditions. This commenter suggested that in lieu of the proposed Appendix C, FRA should adopt performance based criteria which do not exempt single crossings, but instead exempt collections of crossings within an area that already have a demonstrated safety record. FRA notes that essentially performance based criteria have in fact been adopted in response to public comments.

The proposed language addressed a very specific, limited, situation which, in FRA's judgment, was of inherently low risk. It was FRA's judgment that such low risk crossings need not be required to have SSMs or ASMs in order

to silence the horn. Providing this exception to the proposed rule was appropriate given the structure of the NPRM. However, because the actions required of public authorities in creating quiet zones under this interim final rule are based to a much greater extent on risk at those crossings, there is no longer a need to retain this proposed provision. Communities which would have likely qualified under the proposed section will likely qualify for a quiet zone pursuant to § 222.39(a) (public authority designation) by being below the NSRT and thus will not need to apply SSMs or ASMs to retain a quiet zone. If a quiet zone meeting the conditions of the proposed section does not qualify under § 222.39(a), it is likely that certain conditions are present which add to the risk level. In such unlikely circumstance, an SSM or ASM might be appropriate, or the public authority may wish to apply for a waiver.

Based on the above, and the comments calling into question its provisions, FRA is deleting proposed Appendix C and is not carrying forward to this interim final rule language of proposed § 222.33(c).

#### *Section 222.41 How Does This Rule Affect Pre-Rule Quiet Zones?*

This section addresses the effect of this rule on Pre-Rule Quiet Zones. A Pre-Rule Quiet Zone is a segment of a rail line within which is situated one, or a number of consecutive public highway-rail grade crossings at which State statutes or local ordinances restricted the routine sounding of locomotive horns, or at which locomotive horns did not sound due to formal or informal agreements between the community and the railroad or railroads, and such statutes, ordinances or agreements were in place and enforced or observed as of October 9, 1996 and on the date this rule was published.

In the NPRM, FRA proposed to provide communities with pre-existing whistle bans with a three-year grace period for compliance with the final rule. To take advantage of this three-year grace period, the NPRM would require that these communities initiate or increase highway-rail grade crossing safety public awareness initiatives and grade crossing traffic law enforcement programs within two years after the date of issuance of the final rule if no quiet zone was yet designated or accepted for its jurisdiction in accordance with the rule.

FRA received numerous comments regarding its proposal from State and local governments, as well as representatives of the railroad industry.