

Most local governments commented that the three-year grace period was insufficient, citing lack of adequate funding and the costs involved with installing the approved SSMs. Most local governments felt that it would take 5–10 years to arrange funding and actually install the approved SSMs. One Illinois municipality suggested that even with adequate funding, bringing the State's quiet zones into compliance with the rule could take up to 15 years.

On the other hand, the Washington Department of Transportation suggested that a three-year grace period is too long and indicated that communities with existing quiet zones should be able to comply with the rule within one year of the issuance of the final rule. Several railroad industry commenters also suggested that the three-year grace period for communities with pre-existing whistle bans is excessive. The United Transportation Union suggested a six-month grace period, while the BRS recommended two years as an appropriate period.

Most State commenters emphasized the importance of grandfathering existing quiet zones where substantial investment has already been made by State transportation agencies, railroads, and affected communities. The Illinois Commerce Commission suggested that all crossings in communities with pre-existing whistle bans be grandfathered under the rule until the responsible State oversight agency establishes a recognized quiet zone for the area. Likewise, the Oregon DOT noted that requiring a community with a pre-existing whistle ban to initiate or increase both highway-rail grade crossing safety public awareness initiatives and crossing traffic law enforcement programs, if no quiet zone is designated or accepted under the final rule within two years, imposes a new financial burden on the community. In particular, the Oregon DOT questioned the efficacy of this requirement in situations where a community has had a whistle ban in place for several years with no reported accident history that would be impacted by the additional initiatives or enforcement.

In its comments, the BLE recognized the past efforts and investments of communities regarding the issue of locomotive horn noise. However, citing concerns that crossings in localities with pre-existing quiet zones which are grandfathered from the requirements of the final rule could continue to exist without appropriate safety measures, the BLE requested that the final rule explicitly state that the provisions for termination of quiet zones set forth in

§ 222.39(d) apply to crossings with pre-existing quiet zones.

The AAR was the only commenter to specifically oppose the blanket grandfathering of pre-existing quiet zones for any period of time. Specifically, the AAR recommended that FRA examine the crossings within these pre-existing quiet zones to ensure that additional safety measures are not needed. The AAR suggested a number of specific prerequisites to the granting of quiet-zone status to communities where locomotive horns have not historically been sounded. First, the AAR suggested that all public crossings within pre-existing quiet-zones be equipped with gates and lights, and signs warning of the existence of the quiet zone should be placed at the approach to each crossing. Second, the AAR recommended that notices of quiet zone implementation or termination be published in the **Federal Register**. Third, reasoning that the ability of a local community to institute a quiet zone has historically been dependent on approval of the State, the AAR recommended that only States be permitted to apply for quiet zone status. Next, the AAR recommended that States have the burden of demonstrating the safety of grade crossings, and diagnostic teams should be used to analyze crossing issues before any quiet zone is instituted. Finally, the AAR recommended that only crossings where locomotive horns have not sounded for the previous five years should be eligible for grandfathered status.

In comments specifically relevant to railroad operations and highway-rail grade crossings within the State of Florida, the Florida East Coast Railway Company ("FEC") noted that the NPRM does not address the pre-existing restrictions on the sounding of locomotive horns that were preempted by Emergency Order No. 15 in 1991 which required FEC to sound warning devices at grade crossings and required that FEC revoke operating rules and bulletins to the contrary. In its comments, FEC explained that it considers all local ordinances preempted by Emergency Order No. 15 null and void and understands that for purposes of the final rule, the subject crossings will not be viewed as being within pre-existing quiet zones. FEC, however, requested that FRA specifically address the status of the affected crossings in the final rule so as to avoid any confusion among affected jurisdictions. The status of such affected crossings is in fact addressed in this rule. Florida crossings subject to Emergency Order No. 15 do not fall within the definition of Pre-Rule Quiet

Zones inasmuch as Florida State statutes and local ordinances permitting whistle bans were not enforced or observed as of October 9, 1996, having been preempted by the Emergency Order in 1991. Therefore, any quiet zones to be established in Florida would need to qualify as New Quiet Zones under this rule.

FRA recognizes the strong feelings associated with the issues raised by this provision. As noted, some commenters recommended a longer grandfathering period while others recommended substantially shorter periods. FRA, after considering the comments, and reviewing the statutory mandate that FRA take into account the interest of communities that have in effect restrictions on the sounding of a locomotive horn at highway-rail grade crossings, has determined that extension of the grandfathering period is appropriate. FRA has also considered that budgetary cycles and funding planning may require more time than was proposed in the NPRM. As discussed further below, the grandfathering period will extend from three to eight years from the publication date of this rule in the **Federal Register**. The determining factor as to how long within that period a community has will depend on the actions taken by that community and the appropriate State agency. FRA agrees with Oregon DOT and has crafted the rule in such a manner that the public authority does not need to expend construction or program funds (other than for planning and application purposes) until it has determined, and has had approved when necessary, the actions to be taken. FRA has also provided for State involvement to the extent that if a public authority wishes to take advantage of the entire eight-year grandfathered period, the plans of the public authority must be part of a State-wide implementation plan. Thus, the appropriate State agency will be involved in working with public authorities in resolving planning and funding issues.

Paragraph (a) of § 222.41 addresses Pre-Rule Quiet Zones which qualify for automatic approval. A Pre-Rule Quiet Zone will be considered to be automatically approved if (in addition to compliance with §§ 222.35 and 222.43) the quiet zone is in compliance with one of a number of conditions. The quiet zone may remain in effect if there are SSMs at every public highway-rail grade crossing within the quiet zone (paragraph (a)(1)). Similarly, the quiet zone may continue automatically if the Quiet Zone Risk Index as last published by FRA is at, or below, the Nationwide