

This paragraph also provides that failure of the public authority to comply with paragraph (a)(2) (implementation of safety measures) shall result in the termination of the quiet zone three years after the date of receipt of notification from FRA.

**Paragraph (c)—Review at FRA Initiative**

Paragraph (c) provides that the Associate Administrator may, at any time, review the status of any quiet zone. This section is included in the rule to enable the Associate Administrator to deal with unforeseen safety situations which may arise in the future. Under this provision, if the Associate Administrator makes a preliminary determination that safety systems and measures do not fully compensate for the absence of the locomotive horn, or that there is significant risk with respect to loss of life or serious personal injury, (e.g., if the collision history in the quiet zone indicates that removal of the train horn has resulted in a dramatically higher than expected increase in risk similar to the FEC experience) he or she will provide a written notice of that determination to the public authority and other parties originally provided notice under § 222.43. FRA appreciates the comment of the MDEC which pointed out that the original language in proposed § 222.39(d) limited actual notice of such preliminary determination to the public authority. MDEC commented that limiting notice of FRA's preliminary determination to publication in the **Federal Register** is insufficient. Accordingly, FRA has modified the notification procedures to include notification of those parties originally receiving notification of the establishment of the quiet zone under § 222.43.

The Associate Administrator will also publish a notice in the **Federal Register**. The public authority and other interested parties will have the opportunity to provide comments to the Associate Administrator before any action is taken by the Associate Administrator. After the comment period, the Associate Administrator may require that additional safety measures be taken or that the quiet zone be terminated. If the public authority wishes the decision to be reconsidered, it may petition the Associate Administrator for reconsideration under the provisions of § 222.57(b). Upon the filing of such a petition, the Associate Administrator will give the petitioner an opportunity to submit additional materials and an opportunity for an informal hearing. Although very unlikely, conditions at any particular

crossing or quiet zone could pose such an imminent hazard that such a protracted process may be contrary to public safety. Thus, paragraph (c) makes clear that the paragraph is not intended to limit the Administrator's emergency order authority under 49 U.S.C. 20104 and 49 CFR part 211. That statutory authority provides the Administrator emergency orders "when an unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death or personal injury."

**Paragraph (d)—Public Authority Responsibility**

Paragraph (d) provides that if a quiet zone is terminated under a provision of this section, the public authority has the responsibility to notify all parties listed in § 222.43(a) of the termination. The manner of such notification shall be in accordance with § 222.43(a).

**Paragraph (e)—Railroad Responsibility**

Paragraph (e) provides that upon notification from either the public authority, or from FRA, that the quiet zone is being terminated, the railroads shall, within seven days, sound the locomotive horn when approaching and passing through all public highway-rail crossings within the former quiet zone.

*Section 222.53 What Are the Requirements for Supplementary and Alternative Safety Measures?*

This section, through reference to Appendices A and B, lists acceptable SSMs and ASMs. Paragraph (a) states that approved SSMs are listed in Appendix A, while paragraph (b) states that Appendix B lists those ASMs that may be included in a request for FRA approval of a quiet zone under § 222.39(b).

Paragraph (c) states that standard traffic control device arrangements such as reflectorized crossbucks, STOP signs, flashing lights, or flashing lights with gates that do not completely block travel over the line of railroad, or traffic signals are not considered SSMs or ASMs. This provision is consistent with the statutory definition of an SSM (49 U.S.C. 20153(a)(3)).

*Section 222.55 How Are New Supplementary Safety Measures Approved?*

This section addresses the manner in which new SSMs are demonstrated and approved for use. This section is similar to the NPRM's proposed § 222.43, with three exceptions. Paragraph (e) has been revised to provide that when the Associate Administrator approves the

use of a new SSM, notice of that approval will be published in the **Federal Register**. Paragraph (d) has been revised to provide that the Associate Administrator may impose any conditions or limitation on use of the SSMs which the Associate Administrator deems necessary in order to provide the level of safety at least equivalent to that provided by the locomotive horn. The standard of a level of safety "at least equivalent to that provided by the locomotive horn" is more appropriate and consistent with the rest of the rule than the former standard of "the highest level of safety." Paragraph (d) has also been revised to provide that the Associate Administrator, rather than approving a proposed safety measure as an SSM, may approve it as an ASM.

Paragraph (b) provides that interested parties may demonstrate proposed new SSMs or ASMs to determine if they are an effective substitute for the locomotive horn in the prevention of highway-rail grade crossing casualties. Paragraph (c) provides that the Associate Administrator may order railroad carriers operating over a crossing or crossings to temporarily cease the sounding of locomotive horns at such crossings to demonstrate proposed new SSMs or ASMs. This paragraph reflects statutory language and requires that proposed new SSMs (and ASMs) have been subject to prior testing and evaluation before such an order is issued. The Administrator's order to the railroads to temporarily cease sounding of horns may contain any conditions or limitations deemed necessary in order to provide the highest level of safety. These provisions provide an opportunity for the testing and introduction of new grade crossing safety technology which would provide a sufficient level of safety to enable locomotive horns to be silenced.

Paragraph (d) provides that upon the successful completion of a demonstration of proposed SSMs or ASMs, interested parties may apply for their approval. This section requires certain information to be included in every application for approval.

Paragraphs (e) and (f) provide that if the Associate Administrator is satisfied that the proposed SSM fully compensates for the absence of the locomotive horn, its use as an SSM (with any conditions or limitations deemed necessary) will be approved and it will be added to Appendix A. Rather than approving the proposed safety measure as an SSM, the Associate Administrator may approve it as an ASM. The applicant is notified and a