

notice of such approval is published in the **Federal Register**.

Paragraph (g) provides an opportunity to appeal a decision of the Associate Administrator for Safety. The party applying for approval of an SSM or ASM may appeal to the Administrator a decision by the Associate Administrator rejecting a proposed SSM or ASM or the conditions or limitations imposed on its use.

Section 222.57 Can Parties Seek Review of the Associate Administrator's Actions?

This new section has been added to explicitly detail the right of parties to seek review of the Associate Administrator's actions. Paragraph (a) addresses decisions by the Associate Administrator granting or denying approval of a new SSM or ASM under § 222.55. A public authority or other interested party may petition the Administrator for review of a decision by the Associate Administrator approving or denying such an application. This paragraph requires that the petition be filed within 60 days of the decision to be reviewed. The petition must specify the grounds for the requested relief, and be served on all parties identified in § 222.43(a) (all railroads operating over the public highway-rail grade crossings within the quiet zone, the highway or traffic control authority or law enforcement authority having control over vehicular traffic at the crossings within the quiet zone, the landowner having control over any private crossings within the quiet zone, and the State agency responsible for highway and road safety). Filing of a petition under this paragraph does not stay the effectiveness of the action sought to be reviewed unless the Administrator specifically provides otherwise and either gives notice to the petitioner or publishes a notice in the **Federal Register** to that effect. The Administrator may reaffirm, modify, or revoke the decision of the Associate Administrator without further proceedings and shall notify the petitioner and other interested parties in writing or by publishing a notice in the **Federal Register**.

Paragraph (b) addresses reviews of decisions by the Associate Administrator: denying an application for approval of a quiet zone; requiring additional safety measures at crossings within a quiet zone; or terminating a quiet zone. This paragraph provides that a public authority may challenge a decision by the Associate Administrator in the above situations by filing a petition for reconsideration with the Associate Administrator. The petition

must specify the grounds for the requested relief, be filed within 60 days of the decision to be reconsidered, and be served upon all parties identified in § 222.43 (a). The Associate Administrator will then provide the petitioner an opportunity to submit additional materials and an opportunity for an informal hearing. Upon review of the additional materials and completion of any hearing requested, the Associate Administrator will issue a decision on the petition. This decision will be administratively final.

Section 222.59 When May a Wayside Horn Be Used?

The effectiveness of wayside horns as compensating for the lack of a locomotive horn has been addressed earlier in this notice. This section addresses the circumstances in which wayside horns may be used in lieu of the locomotive horn.

Paragraph (a) provides that a wayside horn conforming to the requirements of Appendix E may be used in lieu of a locomotive horn at any highway-rail grade crossing equipped with an active warning system consisting of, at a minimum, flashing lights and gates. Thus, installation of wayside horns are not limited to quiet zones, but may be used at any grade crossing equipped with at least gates and lights.

Paragraph (b) addresses use of wayside horns within quiet zones. Wayside horns conforming to the requirements of Appendix E may be installed within a quiet zone. FRA is fully aware that in one sense, the purpose of a quiet zone may be considered to be defeated if horns still sound to indicate the approach of a train, irrespective of whether the horn is stationary or is located on a locomotive. However, the choice is left up to the public authority. That entity may find the wayside horn, with a horn sounding in a less obtrusive manner, to be preferable to installation of SSMs. The presence of a wayside horn will be considered to be the same as a crossing treated with an SSM in determining the length of a quiet zone. Thus, a crossing equipped with a wayside horn may be in the middle of a one-half mile long quiet zone without jeopardizing the establishment of the quiet zone. In those situations in which the Quiet Zone Risk Index must be calculated, any grade crossings equipped with a wayside horn shall not be included in such calculations. The risk level will thus be determined by the average risk level at the remaining crossings.

Appendices A and B

Appendix A lists those SSMs which FRA has determined effectively compensate for the lack of a locomotive horn. Because each SSM in this appendix fully compensates for the lack of a locomotive horn, a quiet zone may be established without specific FRA approval. Appendix B lists those ASMs which may compensate for the lack of a locomotive horn depending on the extent of implementation of the safety measure. Because of the many possible variations, FRA acceptance of the proposed implementation plan is required. The introduction to Appendix A discusses the issues and actions that State and local governments should be aware of in determining how to proceed in implementing quiet zones. It is meant to assist in the community's decision-making process in determining whether to designate a quiet zone under § 222.39(a) or to apply for approval of a quiet zone under § 222.39(b).

Appendix A

This Appendix lists those SSMs which FRA has determined effectively compensate for the lack of a locomotive horn. Included in the discussion of each SSM is an "effectiveness" figure for that measure. That figure indicates the effectiveness of the SSM in reducing the probability of a collision at a highway-rail grade crossing.

As discussed earlier, effectiveness rates are based on actual experience showing how much each SSM has reduced the probability of a collision. The issue of what should constitute an SSM or ASM generated a number of comments to the NPRM. Generally, communities expressed displeasure with the proposed list of SSMs. Railroads, however, expressed general satisfaction with the suggested SSMs.

The majority of public comments focused on communities' dissatisfaction with the proposed SSMs because they are thought to be: (1) Prohibitively expensive to implement; (2) impracticable, unfeasible or inapplicable to their particular community's street grid; and (3) incompatible with the three-year implementation period proposed in the NPRM. The cost of installation and maintenance is of particular concern to communities. State Senator Patrick J. O'Malley of Illinois predicted that the cost of installing SSMs will be "enormous." Selectman Attilio Paglia from the Town of Rawley, Massachusetts expressed displeasure that local funds would have to be spent implementing expensive SSMs instead of funding other local concerns such as