

violation rates may be monitored for one quarter per year.

Example: Continuing with the above example, the periodic monitoring during the five years following implementation of the quiet zone showed that the violation rate never exceeded 20 violations per 100 gate activations. It then would only be necessary to monitor every fourth quarter thereafter.

7. In the event that the violation rate is ever greater than the violation rate used to determine the effectiveness rate that was approved by FRA, the public authority may continue the quiet zone for another quarter. If, in the second quarter the violation rate used to determine the effectiveness rate that was approved by FRA, a new effectiveness rate must be calculated and the Quiet Zone Risk Index re-calculated using the new effectiveness rate. If the new Quiet Zone Risk Index indicates that the ASM no longer fully compensates for the lack of a train horn, or that the risk level is equal to, or exceeds the Nationwide Significant Risk Threshold, the procedures for dealing with unacceptable effectiveness after establishment of a quiet zone should be followed.

Example: Three years after initiating the quiet zone cited above, the violation rate was 30 violations per 100 gate activations. The quiet zone continues with monitoring. In the next quarter, the violation rate was still 30 violations per 100 gate activations. When compared to the original baseline violation rate, this represents a violation rate reduction of 50 percent. The new effectiveness rate is calculated by multiplying .50 by .78. The new effectiveness rate of .39 would then be used in the calculation of a new Quiet Zone Risk Index. If the new Quiet Zone Risk Index is no longer below the Nationwide Significant Risk Threshold or no longer fully compensates for the loss of the train horn, the provisions of 229.51 would then apply.

Section 229.129 Audible Warning Device

Paragraph (a) of this section requires that each lead locomotive be provided with an audible warning device that produces a minimum sound level of 96dB(A) and a maximum sound level of 110 dB(A) at 100 feet forward of the locomotive in its direction of travel. The device shall be arranged so that it can be conveniently operated from the engineer's usual position during operation of the locomotive. The phrase "usual position during operation of the locomotive" replaces "normal position in the cab." This change, which was not proposed in the NPRM, will bring this

section into conformity with the first sentence of § 229.53 which refers to the location of the various brake gauges used by a locomotive engineer. FRA removed § 229.53's reference to "normal position in the cab" in the final rule revising the regulations governing braking systems and equipment used in freight and other non-passenger railroad train operations. See 66 FR 4104, January 17, 2001. FRA, in its response to petitions for reconsideration, stated that the phrase, "normal position in the cab" is unnecessary and antiquated. FRA stated that "FRA's intent when removing the language was to ensure that the gauges used by an engineer to aid in the control or braking of a train or locomotive were located so as to be read from the engineer's usual position when operating the locomotive, whether that be in the cab of the locomotive or elsewhere. FRA's intent when issuing the final rule was to accommodate and facilitate advanced technologies and designs." See 67 FR 17562, April 10, 2002. Because the rationale for the language change as it pertains to brake gauges applies equally well to the location of horn controls, FRA has modified § 229.129 to be consistent with § 229.53. Because this change was not proposed in the NPRM, interested parties are encouraged to provide comment on this aspect of the interim final rule. FRA will take into consideration comments when ^{thnspr} issuing the final rule.

Paragraph (b) addresses the schedule of testing to determine if locomotive horns are in compliance with this section. Locomotives built on or after December 18, 2004, must be tested and brought into compliance with this section prior to being placed in service. Locomotives built before December 18, 2004, have five years from the date of this notice in which to be tested. Thus they must be tested and brought into compliance with this section by December 18, 2008. Additionally, horns must be tested and brought into compliance with this section whenever a locomotive is rebuilt (as determined in accordance with 49 CFR 232.50).

Paragraph (c) specifies the testing requirements and measurement procedures. The paragraph also specifies that the railroad must maintain records sufficient to show the date, manner and result of locomotive horn testing conducted in compliance with this part.

Paragraph (d) provides that this section of part 229 addressing audible warning devices does not apply to rapid transit operations which are otherwise subject to part 229. Rapid transit operations which are subject to part 222 solely because they share track or rail corridors at public highway-rail crossings with general system railroads are thus not subject to this section. While such operations are subject to all provisions of part 222, including the requirement to sound the horn at public rail grade crossings which they share with general system railroads, and to silence the horn within quiet zones which include such shared crossings, they are not subject to § 229.129's requirements, including those regarding locomotive horn volume and testing.

17. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

FRA has conducted a Regulatory Evaluation of this Interim Final Rule in accordance with Executive Order 12866. A copy of this document has been placed in the docket for this rulemaking. Following is a summary of the findings.

FRA identified 1,988 existing whistle ban or no-horn crossings that would qualify for inclusion in Pre-Rule Quiet Zones. FRA also identified 442 potential New Quiet Zone crossings. Using information available about the crossing characteristics and the number of persons that would be or currently are severely affected by the sounding of train horns, FRA estimated the costs and benefits of the actions that communities would take in response to this rule. FRA believes that many communities will take advantage of the many options available to establish quiet zones. FRA also estimated the costs associated with the maximum horn sound level requirements. Some existing whistle ban crossings may not be included in quiet zones.

The table below presents estimated twenty-year monetary costs associated with complying with the requirements contained in the Interim Final Rule using a 7 percent discount rate. Given the high prevalence of existing whistle ban crossings in the Chicago Region¹⁵ and the significant level of interest commenters from this area have shown regarding this rulemaking, costs are presented separately from the rest of the nation where applicable.

¹⁵ The Chicago area is comprised of the following six counties: Cook, Du Page, Kane, Lake, McHenry, and Will.