

(SBA) did not submit comments to the docket for this rulemaking in response to the Initial Regulatory Flexibility Assessment that accompanied the NPRM. FRA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

FRA has performed a Regulatory Flexibility Assessment (RFA) on small entities that potentially can be affected by this interim final rule. The RFA is summarized in this preamble as required by the Regulatory Flexibility Act. The full RFA is included in the Regulatory Evaluation, which is available in the public docket of this proceeding.

This is essentially a safety rule that implements as well as minimizes the potential negative impacts of a Congressional mandate to blow train whistles and horns at all public crossings. Some communities believe that the sounding of train whistles at every crossing is excessive and an infringement on community quality of life, and therefore have enacted "whistle bans" that prevent the trains from sounding their whistles entirely, or during particular times (usually at night). Some communities would like to establish "quiet zones" where train horns would not be routinely sounded, but are awaiting issuance of this rule to do so. FRA is concerned that with the increased risk at grade crossings where train whistles are not sounded, or another means of warning utilized, collisions and casualties may increase significantly. The rule contains low risk based provisions for communities to establish quiet zones. Some crossing corridors may already be at risk levels that are permissible under this rule and would not need to reduce risk levels any further to establish quiet zones. Otherwise, communities establishing Pre-Rule Quiet Zones may implement sufficient safety measures along whistle-ban corridors to reduce risk to permissible levels. In addition to having permissible risk levels, all crossings in New Quiet Zones will have to be equipped with gates and flashing lights. If a community elects to simply follow the mandate, horn sounding will resume and there will be a noise impact on small businesses that exist along crossings where horns are not currently

routinely sounded. If a community elects to implement sufficient safety measures to comply with the requirements for establishing a quiet zone, then the governmental jurisdiction will be impacted by the cost of such program or system. To the extent that potential quiet zone crossing corridors already have average risk levels permissible under this rule, and, in the case of New Quiet Zones, every crossing is equipped with gates and flashing lights, communities will only incur administrative costs associated with establishing and maintaining quiet zones.

The costs of implementing this interim final rule will predominately be on the governmental jurisdictions of communities some of which are "small governmental jurisdictions." As defined by the SBA this term means governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than fifty thousand. The most significant impacts from this rule will be on about 260 governmental jurisdictions whose communities currently have either formal or informal whistle bans in place. FRA estimates that approximately 70 percent (*i.e.* 193 communities) of these governmental jurisdictions are considered to be small entities.

FRA has recently published final a policy which establishes "small entity" as being railroads which meet the line haulage revenue requirements of a Class III railroad. As defined by 49 CFR 1201.1-1, Class III railroads are those railroads who have annual operating revenues of \$20 million per year or less. Hazardous material shippers or contractors that meet this income level will also be considered as small entities. FRA is using this definition of small entity for this rulemaking. The RFA believes that approximately 640 small railroads would be minimally impacted by train horn sound level testing requirements contained in this rule. In addition, some small businesses that operate along or nearby rail lines that currently have whistle bans in place that potentially may not after the implementation of this rule, could be moderately impacted.

Alternative options for complying with this rule include allowing the train

whistle to be blown. This alternative has no direct costs associated with it for the governmental jurisdiction. Other alternatives include "gates with median barriers" which are estimated to cost \$13,000 for a mountable curb with frangible delineators and "Photo enforcement" which is estimated to cost \$28,000-\$65,500 per crossing, and have annual maintenance costs of \$6,600-\$24,000 per crossing. Finally, FRA has not limited compliance to the lists provided in Appendix A or Appendix B of the rule. The rule provides for supplementary safety measures that might be unique or different. For such an alternative, an analysis would have to accompany the option that would demonstrate that the number of motorists that violate the crossing is equivalent of less than that of blowing the whistle. FRA intends to rely on the creativity of communities to formulate solutions which will work for that community.

FRA does not know how many small businesses are located within a distance of the affected highway-rail crossings where the noise from the whistle blowing could be considered to be nuisance and bad for business. Concerns have been advanced by owners and operators of hotels, motels and some other establishments as a result of numerous town meetings and other outreach sessions in which FRA has participated during development of this rule. If supplementary safety measures are implemented to create a quiet zone then such small entities should not be impacted. FRA held 12 public hearings nationwide following issuance of the NPRM and requested comments to the docket from small businesses that feel they will be adversely impacted by the requirements contained in the NPRM. FRA received no comments in response.

C. Paperwork Reduction Act

The information collection requirements in this interim final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

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