

enable citizens and local officials to comment on how FRA might implement the Act and to provide insight to FRA. FRA received comments from representatives of Portland, Maine; Maine Department of Transportation; Acton, Massachusetts; Wisconsin's Office of the Commissioner of Railroads; a Wisconsin State representative; a Massachusetts State senator; the Town of Ashland, Massachusetts; Bellevue, Iowa; and the mayor of Batavia, Illinois.

Since passage of the Act in 1994, FRA has consulted and briefed representatives of the American Association of State Highway and Transportation Officials (AASHTO), the National League of Cities, National Association of Regulatory Utility Commissioners, National Conference of State Legislatures, and others. Additionally we have provided extensive written information to all United States Senators and a large number of Representatives with the expectation that the information would be shared with interested local officials and constituents.

Prior to issuance of the NPRM, FRA had been in close contact with, and has received many comments from Chicago area municipal groups representing suburban areas in which, for the most part, locomotive horns are not routinely sounded. The Chicago area Council of Mayors, which represents over 200 cities and villages with over 4 million residents outside of Chicago, provided valuable information to FRA as did the West Central Municipal Conference and the West Suburban Mass Transit District, both of suburban Chicago.

Another association of suburban Chicago local governments, the DuPage [County] Mayors and Managers Conference, provided comments and information. Additionally, FRA officials met with many Members of Congress, who have invited FRA to their districts and have provided citizens and local officials with the opportunity to express their views on this rulemaking process. These exchanges, and others conducted directly through FRA's regional crossing managers, have been very valuable in identifying the need for flexibility in preparing the proposed rule.

Under 49 U.S.C. 20106, issuance of this regulation preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard, that is not incompatible with Federal law or regulation and does not unreasonably burden interstate commerce. For further discussion of the effect of this rule on State and local laws

and ordinances, see § 222.7 and its accompanying discussion.

As noted, this rulemaking is required by 49 U.S.C. 20153. The statute both requires that the Department issue this rule and sets out clear guidance as to the structure of such rule. The statute clearly and unambiguously requires the Department to issue rules requiring locomotive horns to be sounded at every public grade crossing. The Department has no discretion in as to this aspect of the rule. The statute also makes clear that the Federal government must have a leading role in establishing the framework for providing exceptions to the requirement that horns sound at every public crossing. While some States and communities expressed opposition to Federal involvement in this area which historically has been subject to State regulation, the majority of State and local community commenters recognized and accepted the statutorily required Federal involvement. Of concern to many of these commenters, however, was the issue as to whether States or local communities should have primary responsibility for creation of quiet zones. As further discussed in the section-by-section analysis of § 222.37, "Who may establish a quiet zone?", States generally felt that they should have a primary role in establishing quiet zones and in administering a quiet zone. Comments from local governments tended to support the contrary view that local political subdivisions should establish quiet zones. A review of § 20153 indicates a clear Congressional preference that decision-makers be local authorities. This Interim Final Rule provides non-Federal parties extensive involvement in decision-making pertaining to the creation of quiet zones. However, given the nature of the competing interests of State and local governments in this area, FRA could not fully meet the concerns of both groups. For the reasons detailed in the above section-by-section analysis, the concerns of local communities have been substantially met.

F. Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Sec. 201. Section 202 of the Act further requires that "before promulgating any general notice of

proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * * detailing the effect on State, local and tribal governments and the private sector. The rule issued today will not result in the expenditure, in the aggregate, of \$100,000,000 or more in any one year, and thus preparation of a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this Interim Final Rule in accordance with Executive Order 13211 and has determined that this Final Rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

18. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment), if submitted on behalf of an association, business, labor union, *etc.*. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.