

Dated: September 1, 2004.

**Mark B. McClellan,**

*Administrator, Centers for Medicare & Medicaid Services.*

Approved: December 2, 2004.

**Tommy G. Thompson,**

*Secretary.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Parts 222 and 229

[Docket No. FRA-1999-6439, Notice No. 15]

RIN 2130-AA71

#### Use of Locomotive Horns at Highway-Rail Grade Crossings

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of public conference.

**SUMMARY:** FRA is issuing notice of a public conference that will be held in Fort Lauderdale, FL to discuss the appropriate excess risk estimate that should be applied to highway-rail grade crossings that are currently subject to FRA Emergency Order 15 ("E.O. 15"). The public conference will provide an opportunity for interested parties to provide information to FRA on the effect of silencing the locomotive horn at highway-rail grade crossings that are currently subject to E.O. 15.

**DATES:** Public Conference: The public conference will be held on Friday, April 15, 2005, beginning at 9 a.m.

**ADDRESSES:** The public conference will be held at the Holiday Inn Fort Lauderdale Beach, 999 Fort Lauderdale Beach Blvd., Fort Lauderdale, Florida 33304.

**FOR FURTHER INFORMATION CONTACT:** Ivornette Lynch, FRA Docket Clerk, Office of Chief Counsel, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202-493-6030); Ron Ries, Office of Safety, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202-493-6299); or Kathy Shelton, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone: 202-493-6038).

**SUPPLEMENTARY INFORMATION:** Any person who would like to provide an oral statement at the public conference should notify the FRA Docket Clerk at least 10 calendar days prior to the date of the public conference and provide either a telephone number or e-mail

address at which the person may be contacted. (Please refer to the **FOR FURTHER INFORMATION CONTACT** section for contact information for the FRA Docket Clerk.) Any speaker who will be speaking on behalf of an organization should also provide the name of the organization that he/she will be representing.

FRA will attempt to accommodate all persons who wish to provide an oral statement. However, depending on the number of conference participants, FRA may find it necessary to limit the length of oral statements, in order to accommodate as many people as possible. Conference participants may choose to submit complete written statements for inclusion in the record, while providing an oral summary of their written statements at the conference.

Please note that 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>.

#### Background

Effective July 1, 1984, a Florida statute authorized counties and municipalities to restrict the nighttime sounding of the locomotive horn by intrastate railroads at highway-rail grade crossings equipped with flashing lights, bells, crossing gates, and advance warning signs indicating that the locomotive horn would not be sounded at night. However, FRA noted an alarming increase in the number of accidents at highway-rail grade crossings subject to these nighttime whistle bans. Therefore, FRA issued Emergency Order 15 ("E.O. 15") on July 26, 1991, which required the Florida East Coast Railway Company (an intrastate railroad) to sound the locomotive horn when approaching and entering public highway-rail grade crossings. E.O. 15 was later amended to allow communities to establish quiet zones, provided FRA approval was obtained prior to the implementation of sufficient safety measures at every highway-rail grade crossing within the proposed quiet zone to alleviate excess risk resulting from the absence of the warning provided by the locomotive horn.

On November 2, 1994, Congress passed Public Law 103-440 ("Act"), which added § 20153 to title 49 of the

United States Code. This Act required FRA to issue regulations that would require railroads to sound the locomotive horn at public grade crossings, but gave FRA the authority to make reasonable exceptions. After issuing a Notice of Proposed Rulemaking on January 13, 2000 (65 FR 2230), FRA published an Interim Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings on December 18, 2003 (68 FR 70586).

Under the Interim Final Rule, public authorities are authorized to create quiet zones by implementing supplementary safety measures and alternative safety measures to offset the excess risk that results from prohibiting routine use of the locomotive horn at highway-rail grade crossings within the proposed quiet zone. However, the Interim Final Rule provides greater flexibility in the types of safety improvements that can be employed within a proposed quiet zone than E.O. 15. Therefore, FRA stated in the Interim Final Rule that it would re-examine the effect of silencing the locomotive horn at E.O. 15 grade crossings.

The upcoming public conference will provide an opportunity for interested parties to provide information to FRA on the effect of silencing the locomotive horn at highway-rail grade crossings that are currently subject to E.O. 15. In particular, FRA is soliciting comments on whether the national excess risk estimate on the effect of silencing the locomotive horn at highway-rail grade crossings equipped with flashing lights and gates (*i.e.*, 66.8% increase in risk) should be applied to E.O. 15 grade crossings. In that regard, participants are requested to address FRA's findings in the report titled, "Florida's Train Whistle Ban", that accident frequency increased by 195% when train horns were banned at nighttime at crossings later subject to E.O. 15. In the alternative, should a regional excess risk estimate be applied to E.O. 15 grade crossings? Or, would a nighttime-specific excess risk estimate be more appropriate?

Conference participants are asked to review the following documents available in the electronic docket of this rulemaking at <http://dms.dot.gov> prior to the conference: Document no. FRA-1999-6439-16 ("Florida's Train Whistle Ban"); Document no. FRA-1999-6439-2391 ("Analysis of the Safety Impact of Train Horn Bans at Highway-Rail Grade Crossings: An Update Using 1997-2001 Data"); and Document no. FRA-1999-6439-2392 ("Interim Final Rule on the Use of Locomotive Horns at Highway-Rail Grade Crossings").

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Issued in Washington, DC on March 21,  
2005.

**S. Mark Lindsey,**

*Chief Counsel.*

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