



Train noise abatement background

Summer 2010

As the cost of gasoline rises and the nation becomes more aware of green transportation alternatives, trains are making a comeback. The energy efficiency and nostalgia come with the unfortunate side effect of loud whistles and horns that can disturb residents who live near train tracks. When a constituent calls to complain about train whistles, what can you do as an elected member of local government? Here is some background information on federal train laws that may help you remedy a situation within the federal framework.

Federal legislation requires locomotives to sound their whistles when approaching and entering an intersection with any road. In many cases, these intersections are located near residential areas. When trains pass through these intersections, particularly at night, the sound of the train whistle can disturb residents. To abate this noise, localities can apply for a Quiet Zone with the Federal Railroad Administration.

The U.S. Code requires that locomotive horns be sounded when trains approach and enter public “highway-rail grade crossings.” It allows the Secretary of Transportation to identify exceptions to this rule. 49 U.S.C.A. § 20153. On April 27, 2005, the Federal Railroad Administration (FRA) issued a Final Rule that provided these exceptions to when the horns must be sounded. 71 FR 47614-01 (Aug. 17, 2006). The rule and its 2006 amendments, contained in 49 CFR Parts 222 and 229, create various mechanisms for localities to establish “Quiet Zones,” areas where locomotives do not sound their horn when approaching and entering highway-rail crossings.

Quiet Zones can be sought based on the existing safety conditions of the proposed zone and any pre-existing quiet zone status. Some crossings qualify as a pre-rule crossing if train horns were restricted by local regulation as of Oct. 9, 1996 and Dec. 18, 2003. If so qualified, these zones can be established as Quiet Zones under the 2005 Final Rule by completing forms with the FRA. 49 C.F.R. § 222.9. If train horns were not regulated and routinely sounded in the zone on the dates listed above, the locality may apply for a new Quiet Zone with the FRA. The

process for creating the new zone varies based on existing safety precautions at crossings within the zone. Each Quiet Zone must be at least one-half mile long, and localities seeking to silence horns on separate tracks must apply for multiple Quiet Zones. 49 C.F.R. § 222.35. Twenty-five Quiet Zones exist in Virginia.

Virginia law sets forth requirements for locomotives to sound their horns, but does not provide any exceptions for localities to silence train horns at desired zones. Va. Code §56-414. The Code does not reference Quiet Zones, the FRA Final Rule, or the applicable section of the U.S. Code. Even though there is no specific enabling legislation, localities can pursue quiet zones as an inherent use of their police power. Furthermore, the Final Rule from the FRA explains that “[a] public authority¹ may establish quiet zones irrespective of State laws . . .” 49 C.F.R. § 222.37.

Online resources

Federal Railroad Administration, *Final Rule on the Use of Locomotive Horns at Highway Rail-Grade Crossings*, available: <http://www.fra.dot.gov/Pages/1318.shtml>

Federal Railroad Administration, *Creating a New Quiet Zone (Flowchart)*, available: http://www.fra.dot.gov/downloads/safety/trainhorn_2005/chart3_0806.pdf

Federal Railroad Administration, *Flowchart Explanatory Text*, Available: http://www.fra.dot.gov/downloads/safety/trainhorn_2005/flowchart_explanatory_textv4_0806.pdf

Federal Railroad Administration, *Locations of Quiet Zones*, available: http://www.fra.dot.gov/downloads/safety/trainhorn_2005/amended_final_rule_081706.pdf

United States Department of Transportation, Federal Railroad Administration, *Final Rule*, 71 F.R. 47614-01 (Aug. 17, 2006). Available: http://www.fra.dot.gov/downloads/safety/trainhorn_2005/amended_final_rule_081706.pdf

¹ Here, Public Authority is defined broadly as “the public entity responsible for traffic control or law enforcement at the public highway-rail grade or pedestrian crossing.” 49 C.F.R. § 222.9.