

concern at the results. However, there are a variety of practical considerations that FRA would need to consider that have not been fully developed in this proceeding before any mandatory standard could be issued (e.g., the difficulties created by passively- and actively-signed crossings in close proximity to one another). FRA will continue a dialogue with railroads and communities on this issue. The rule does not foreclose this approach where it fits local conditions, and FRA will encourage railroads using locomotives that are dedicated to particular line segments to explore this option.

Steam Locomotives

FRA has elected not to address horn sound levels on steam locomotives in the rulemaking. Steam locomotives constitute a small fraction of the locomotive fleet and are mainly concentrated on tourist and scenic railroad operations with infrequent service in a largely rural area. Given the strained financial circumstances of many museum and tourist operations, and the limited noise impact the small number of steam locomotives have on local communities, FRA has not, at this time, elected to apply the maximum sound level limits to steam locomotives. It should be noted, however, that a railroad operating a steam locomotive within a quiet zone must silence its steam whistle in accordance with this rule.

14. Chicago Regional Issues

A. Introduction

The six-county Chicago Region is host to the largest rail terminal area in the Nation, and it accounts for the biggest concentration of "whistle bans" and associated casualties. Chicago communities and Chicago industries have grown up with and around the extensive rail complex, and the metropolitan area has benefitted greatly from an extensive commuter rail system established by the State and funded by the State and region with Federal assistance. Chicago's Union Station is also a major hub for Amtrak intercity service. The most voluminous and many of the most spirited comments we received came from Chicago Region organizations and residents who wished to maintain existing whistle bans. The train horn issue has a unique history in the region that has contributed to the need for different treatment with respect to the impact of no-whistle policies at gated crossings. For these reasons, we provide considerable detail on train horn issues in the Chicago Region.

This section of the preamble describes the regulation of horn use at the State level in Illinois, explores its implications for horn use and safety at the Chicago regional level, reports the comments from Chicago Region and State officials in this proceeding, discusses the difficulties in obtaining reliable and consistent data on where Chicago Region whistle bans were actually in effect at a given time and how FRA has attempted to resolve those difficulties and data anomalies, and explains the actions FRA has taken in the interim final rule to respond to Chicago-area concerns.

B. Legislative and Administrative Actions in Illinois

The recent history of train horn use in the Region has been reported to FRA as follows. Historically, the State of Illinois tolerated local ordinances banning whistles, and it appears railroads had observed them to a substantial extent. On July 29, 1988, Illinois Public Act 85-1144 (625 ILCS 5/18c-7402) became effective, requiring that the horn be sounded by registered rail carriers at all public highway-rail crossings.⁵ Railroads complied, resulting in a substantial public outcry and court action.

The Illinois Commerce Commission (ICC) responded by excusing (exempting) all registered carriers from sounding horns at all highway-rail crossings which (i) were provided with automatic flashing light signals, or flashing light signals and gates, and (ii) had experienced less than three accidents involving a train and a vehicle within the prior 5 years.⁶ In general, to qualify for being exempted, it appears that the crossing was required to have had the same type of warning system in place over the past 3 years. ICC Docket Nos. T88-0050 (orders of August 31, 1988; September 8, 1988; and October 12, 1988) and T88-0053 (orders of August 31, 1988; October 12, 1988; and January 25, 1989).

Notably, the Northeast Illinois Regional Commuter Railroad Corporation (Metra) was not a named party in the ICC proceedings. Metra is not regulated as a registered carrier due to its status as a public benefit corporation of the State of Illinois (and accordingly is also not required to

sound the horn at crossings under State law).

By contrast, Metra service operated by freight railroads as contractors to Metra, and Metra service provided over lines controlled by freight operators, has been subject to the State law and the jurisdiction of the Commission. Under Docket No. T88-0050 the ICC addressed crossings on the lines of Metra's freight partners. The Commission initially found all crossings meeting the basic requirements (active warning and fewer than 3 accidents in 5 years) to be "reasonably and adequately protected" with the exception of two crossings.

The Commission further found 16 crossings "adequately protected" despite the occurrence of (in one case) up to 5 accidents in the previous 5 years, stating that "at least part of that finding is based on a commitment by or on behalf of the named governmental units to increase enforcement of State laws as they apply to motorists obeying automatic flashing light signals and gates. * * *" The Commission went on to require reports referencing enforcement and awareness programs at the 16 crossings, stating in effect that it expected to see an increase in safety enforcement activity (Interim Order of August 31, 1988 at 3). Notations attached to the copy of this order provided by the Commission indicated that, in addition to the said 16 crossings, 29 crossings were initially identified for exemption under this order. In a subsequent interim order of September 8, 1988, the Chicago and Northwestern was excused from sounding the horn at the Nagle Avenue crossing, again based on a commitment for law enforcement and education.

The final order in this docket provided by the Commission was dated October 12, 1988. In this order the Commission revised its express decisional criteria as to at least the Nagle Avenue crossing, stating that certain of the accidents at that crossing "were the result of persons deliberately ignoring the flashing lights and driving their automobiles around the gates."⁷ The commission also provided relief for two named crossings where warning systems had been recently upgraded (notwithstanding the previous accident history). The net effect of these actions appeared to have left the majority of the roughly 565 crossings on the Metra system subject to the requirement that

⁵ A copy of the Illinois code provision, and copies of major Commission orders, have been placed in the docket of this proceeding. This material was provided by the Commission at FRA request.

⁶ Three accidents at a single crossing within 5 years in a very large multiple of the typical accident experience among public crossings. Most individual crossings will not experience a single accident over a 10-year or greater period.

⁷ This constitutes the leading cause of collisions sought to be prevented by this rulemaking, although the horn also has value to the motorist who has misunderstood the message sought to be conveyed by the traffic control device, has stalled on the crossing and needs to vacate the vehicle, or who is faced with an activation failure.