

some electing to blow the horn at all crossings and others taking a more selective approach.

Much of the highway-rail crossing safety exposure in the Chicago Region is found on the Metro commuter rail network, which includes the following:

- Lines over which Metra has operated service directly and subject to its own rules throughout the period 1988 to date (the Rock Island District, South Shore Line, Southwest Service, and the Electric District);
- Lines on which Metra operates in effect as a tenant, with the freight railroad imposing operating rules and providing dispatching (Milwaukee District West and North lines (Soo Line) and the Heritage Corridor (CN));
- New service established using Metra crews over Wisconsin Central in 1996 (North Central Service); and
- Freight lines over which the freight railroads provide Metra service as contract operators (UP North Line, UP Northwest Line, Wisconsin Central North Central Service, and BNSF Aurora line service).

Most of these lines carry significant freight volumes, as well as significant numbers of daily commuter trains.

Throughout the period Metra has enjoyed discretion with respect to whether to sound the locomotive horn at crossings where it provides service directly, and Metra's host railroads and contract freight operators have also enjoyed significant latitude as a result of the ICC exemption policy. Metra testimony and filings in this docket indicate that 69 percent of the 565 public grade crossings on the Metra route system were no-horn crossings as of spring 2000. It follows that Metra trains sounded horns at about 175 crossings and did not sound the horn at about 390 crossings during that time period, but the picture may have been somewhat different during earlier periods. FRA concludes that Metra and its contractor operators have exercised

discretion in whether to sound horns, even where exemptions from the State mandate existed, based upon safety concerns and community quiet concerns. Given FRA's knowledge of safety programs, FRA believes that Metra has likely tended to emphasize safety where risk is known to be relatively high based on factors such as crossing characteristics (angle of intersection, complexity of the roadway geometry including nearby roadway intersections, history of accidents, crew reports of near hits, and other factors). According to the ICC, Metra has also utilized some time-of-day partial bans to address infrequent train movements during early morning hours. While freight railroads in the Chicago Region have apparently run silent as commuter operators over crossings where horn sounding was excused, they have been much more likely to use the horn when operating freight trains for their own accounts.

D. Current Chicago Region Whistle Ban Status

Quite obviously, the fact that the ICC excused use of the horn does not mean that trains are running silent over the crossing. The current total number of crossings in no-whistle status in the Chicago Region is apparently significantly smaller than the original 846 identified by the AAR and others in the early 1990's. As of August 3, 2000, the ICC was estimating only 23 no-whistle freight-only crossings, all on the Indiana Harbor Belt, and 320 crossings used by passenger and freight trains (Metra system), for a total of 343 no-whistle crossings. Of this number, 13 were affected by bans only during part of the day (e.g., nighttime or off-peak), and the remainder were 24-hour bans.

Information provided by the AAR on October 24, 2000 indicated a total of 28 no-whistle freight-only crossings in the Chicago Region and 227 no-whistle crossings on the Metra route system for

a total of 255. The AAR noted that "none of these railroads operates at public crossings in Chicago without sounding the whistle unless the crossings are equipped with gates or trains operate at speeds under 10 m.p.h." At approximately the same time Metra informed FRA that 130 crossings on their property were no-whistle crossings. Between the year 2000 and 2002 some of these crossings were reported in the inventory as being closed or no longer public. When combined and checked against year 2002 inventory records some 304 Chicago Region crossings were considered no-whistle based upon AAR and Metra sources.

In November of 2002, the ICC provided an updated listing of crossings in the State of Illinois indicating current whistle status (based on actual practice). It showed 278 no-whistle crossings in the Chicago Region and, of those, 226 corresponded with the 304 provided by AAR and Metra. FRA also learned of 29 additional quiet crossings in some other suburban Chicago communities for a total of 385.

To the extent that the ICC and AAR may not have queried all railroads, particularly smaller short line and regional railroads, a few crossings may have been omitted from these counts. The AAR and ICC filings are also notable in omitting lines directly operated by Metra, which is an AAR member. However, it is clear from the AAR's filing, as well as representations made by railroads to the Commission in 1994 and recent lists provided by the Commission, that the horn has been sounded at the vast preponderance of freight-only crossings in the Chicago Region since at least the 1994 time period.

The following table summarizes the available data for the mid-2000 period, including both partial and 24-hour bans for the Chicago Region:

	Total Cross-ings in Region (2002)	FRA Updated Nationwide Study (Jan. 2002)	No-whistle crossings per 8/23/2000 CATS estimates	No-whistle crossings per 10/24/2000 AAR letter	No-whistle crossings per ICC 11/19/2002	No-whistle crossings as of 2002 (FRA reconciliation)
Commuter .....	.....	.....	320	227	.....	347
Other .....	.....	.....	23	28	.....	38
Total	1,671*	846**	343	255	278	385

* Current total from FRA inventory with adjustments for known closures.

** Based on early AAR survey and crossings identified during outreach largely prior to the NPRM.

FRA's reconciliation in effect adds no-whistle crossings on Metra's home lines to the AAR estimates and the information from the ICC. AAR had

included the no-whistle crossings on Union Pacific, BNSF, and Wisconsin Central property, but not on Metra owned and operated routes. Again, it is

possible that these counts omit a few no-whistle crossings, possibly those on railroads not surveyed by the parties.