

E. Community Reaction to the Proposed Rule

Testimony from public officials representing the Chicago Region was reasonably consistent in content. The major Chicago Region groups argued that the collision rate at grade crossings in the Chicago Region is lower than the nation—even with whistle bans. They argued that FRA's Inventory data were outdated, that the rule is too costly, and that it would take much longer to implement than FRA had proposed to allow. Chicago commenters also postulated that the Chicago area will be the most impacted by the rule. The general conclusion suggested by most of the commenters was that the Chicago Region (or Illinois as a whole) should be excluded from the final rule and left to implement its own programs, which are said to be better suited to local conditions. This testimony was supported by State-level officials.

FRA is familiar with the efforts of the Illinois Commerce Commission, the Illinois Department of Transportation, Metra, freight railroads, and many counties and cities to improve safety at highway-rail crossings in Illinois, and specifically in the Chicago Region. These efforts are presently well led and well coordinated, and the State contributes significant resources. Nevertheless, in the year prior to the testimony on the proposed rule, Illinois led the Nation in fatalities at highway-rail crossings. The State regularly places second or third in that category, even though collisions and casualties declined over the decade of the 1990s (as they did in the Nation).

This record is driven to a significant extent by the very heavy exposure in the Chicago Region, where every weekday over a thousand trains compete with millions of motor vehicles at almost 2,000 highway-rail crossings. Collisions on major Chicago-area lines are more likely to result in serious injuries or fatalities because of relatively high train speeds associated with commuter service. FRA calls attention to this issue not to be critical in any way, but rather to note the importance of sustained effort by all responsible parties to meet this continuing safety challenge.

FRA thoroughly reviewed all studies, testimony and comments submitted by Chicago-area commenters, including the Speaker of the House of Representatives, other Members of Congress, the Chicago Area Transportation Study (CATS), Northwest Municipal Council (NWMC), Dupage Mayors and Managers, and the City of Chicago, Department of Transportation, among others. FRA also took official notice of testimony before

the Subcommittee on Ground Transportation of the Committee on Transportation and Infrastructure, U.S. House of Representatives, on July 18, 2000 ("Implementation of the Federal Railroad Administration Grade-Crossing Whistle Ban Law," No. 106–101), which focused heavily on the Chicago Region.

FRA endeavored to fairly evaluate the claim of special circumstances, as well as to take the specific points into account in relation to the National issue posed in this proceeding. What follows is a discussion of FRA's findings, comparing FRA's data and methodologies with those in submissions by Chicago-area groups. We also discuss further the statistical analysis reported above with respect to its significance for the final rule. We conclude that many comments from the Chicago Region have valid application when tempered by other available information, and we call attention to aspects of this rule that reduce the impact of the rule at no-whistle gated crossings in the region. As described above, FRA also developed a risk-based method for excepting many communities from the train horn requirement. Moreover, this interim final rule provides significantly more time for implementation than did the NPRM.

F. Methodology/Inventory Data

As noted above, Chicago Region commenters generally viewed the grade crossing safety record in the region as good. Many commenters suggested that the train horn could not be an effective warning device in the Chicago setting because of the number of train movements (motorists would become inured to the warning). Thus, it was felt that there was no difference in safety performance between crossings where the horn is sounded and those where it is not sounded. (By contrast, the ICC implicitly recognized the usefulness of the train horn but argued more widespread use of the train horn would not be accepted by the public and was not necessary given existing administrative standards.) FRA has responded to the comments by thoroughly reviewing the underlying data as well as conclusions derived from the data in the NPRM.

To understand the controversy over Chicago data it is necessary to recall several points regarding the Chicago Region at the outset. First, virtually all of the crossings identified during public contacts as of concern to Chicago residents with respect to termination of existing horn exemptions are equipped with flashing lights and gates ("gated crossings"). Second, as discussed above,

the ICC required use of the train horn at some of most hazardous crossings during at least portions of the FRA study period; and, even when the Commission excused use of the train horn, Metra and freight railroads often elected to use the horn notwithstanding public opposition, if any.

It is also necessary to understand some basic information regarding the data that FRA has available to work with. Accident/incident data used in this rulemaking are reported to FRA by the railroads under regulations having the force and effect of Federal law (49 CFR Part 225). The data are available on FRA's public Web site at the individual crossing level, so local officials have the opportunity to call any problems to the agency's attention. In general, FRA has every reason to believe that these data are accurate, with the exception that a recently-added field to identify the presence of a whistle ban appears to be eliciting information of questionable quality (and FRA has not relied on that field in this proceeding).

The characteristics of crossings (number of tracks, trains, motor vehicle traffic, etc.) are determined by reference to the Department of Transportation's national Inventory of highway-rail crossings, which is maintained by FRA on behalf of all users. This is a voluntary data collection effort, and the degree of cooperation in maintaining its currency varies from year to year and among contributors. Substantially all highway-rail crossings have been assigned Inventory numbers. Both the State departments of transportation (for public crossings) and the railroads (for public and private crossings) are requested to contribute updates to the Inventory whenever circumstances change. Since State departments of transportation receive Federal-aid highway funds for crossing safety and other highway improvements, and since under the "section 130" program States are required to maintain a ranking of crossings by degree of hazard in order to plan allocation of funds reserved for crossing safety purposes, it is reasonable to ask the States to share data needed to analyze crossing risk at the National level. It is also reasonable to ask railroads to provide these data, since they have an interest in avoiding collisions at crossings, as well as liability associated with such collisions. FRA has actively promoted participation in maintaining the Inventory for the benefit of all users.⁹

⁹In 1999, and again in 2002, the Department of Transportation transmitted to the Congress draft legislation that would make submission of current data to the Inventory mandatory for both States and railroads.