

argued representations of the State and local jurisdictions that they are actively promoting safety at highway-rail crossings. The bottom line is that Chicago-area railroads and the ICC have acted to employ the train horn at many of the most hazardous crossings, but it is very probable (in FRA's judgment) that excess risk continues to be unabated at many no-whistle crossings where the train horn is silenced. This interim final rule offers the region automatic approval of the demonstrably safest quiet zones and, for quiet zones exhibiting higher degrees of risk, a mechanism for implementing supplementary and alternative safety measures, over a longer period of time and at lower cost than originally proposed, with the result that existing quiet can be preserved and New Quiet Zones can be established with a reasonable degree of confidence.

G. "Chicago Anomaly"

In the NPRM at page 2234, FRA reported results of the *Updated Analysis of Train Whistle Bans*, January 2000, which examined data for the five year period from 1992 through 1996 (Updated Nationwide Study). The most widely cited passage in that analysis reads as follows:

The updated analysis also indicated that whistle ban crossings without gates, but equipped with flashing light signals and/or other types of active warning devices, on average, experienced 119 percent more collisions than similarly equipped crossings without whistle bans. This finding made it clear that the train horn was highly effective in deterring collisions at non-gated crossings equipped only with flashing lights. The only exception to this finding was in the Chicago area where collisions were 16 percent less frequent. This is a puzzling anomaly. One possible explanation for this result is that more than 200 crossings (approximately one third of the crossings in Chicago) still included in the DOT/AAR National Inventory have in all likelihood been closed. They would continue to be included in the Inventory until reported closed by State or railroad officials. (At this time submission of grade crossing Inventory data to FRA is voluntary on the part of States and railroads.) FRA believes this could contribute to the low collision count for Chicago area crossings without gates. Collisions cannot occur at crossings that have been closed. The retention of closed crossings in the Inventory would, therefore, have the effect of incorrectly reducing the calculated collision rate for the Chicago area crossings.

The Nationwide study showed a similar unexpected result for passively signed crossings in the Chicago Region.

Over three years after this analysis was published, FRA still has not received a full update of the Inventory for the City of Chicago, despite frequent

requests. FRA did, however, test its thesis that the data set is not suitable for analysis by checking crossing status directly with railroads and through site visits to a representative sample of crossings. The result is that, based on current conditions many of the crossings identified in the Inventory have long since been closed (over half of the passive crossings and almost a third of flashers-only crossings) or the type of warning device has changed. It is logical to assume that the remaining crossings have experienced other changes since the last inventory records that may have further confounded the analysis.

More importantly, when post-NPRM filings from the ICC, AAR and Metra were examined and compared with declarations in the ICC proceeding during the period 1988–1994, it became evident that there likely were very few passively-signed and flashers-only crossings that were in no-whistle status during the most of the study period 1992–1996. Certainly there are very few today—too few to yield meaningful comparative data towards a regional estimate.

As explained above, FRA finds no reason to apply estimates other than the national averages to these categories of crossings. Since the crossings equipped with flashing lights only or passive devices are generally low-train-speed and single-track crossings, FRA knows of no supportable reason why there should be a special effect in the Chicago Region at those crossings. Indeed, since the ICC did not excuse use of the train horn at passive crossings, it is likely that no bans have been observed at those crossings during the period or—as suggested by the AAR in its October 2000 filing—that this has occurred only at crossings where train speeds were less than 10 mph, which is typical only within yards and on track approaching industries. Accordingly, National averages are appropriate for use under this interim final rule for both passive crossings and flashers-only crossings.

H. Safety Trend Lines

Chicago-area and other Illinois respondents asked FRA to consider the improving safety record at grade crossings before imposing a train horn requirement. CATS noted that collisions at crossings in Northeast Illinois had declined 59 percent since 1988. FRA recognizes that the safety record at Chicago Region crossings has improved markedly during the last several decades, and this is also true for the State of Illinois and for the Nation as a whole. These gains have resulted from expenditure of Federal and State funds

on improved warning systems, local and National public awareness efforts sponsored by a variety of parties (including U.S. DOT and the States through Operation Lifesaver, Inc.), improved engineering of highway-rail crossing and related traffic control systems, installation of alerting lights on locomotives and cab cars, general efforts devoted to improving highway safety (e.g., seat belt campaigns, impaired driver campaigns, etc.), closure of redundant crossings, and targeted law enforcement in some local jurisdictions supported by a 1995 Illinois State law imposing a high monetary penalty for disregarding warning systems at crossings. It is also possible that freight railroads operating in Illinois have been more aggressive in sounding the horn since the publication of FRA's Florida and National studies (as they have been in other jurisdictions where permitted to do so by repeal of bans or as a result of favorable Federal court rulings).

As noted above, FRA has further updated its safety analysis to capture developments in the period 1997–2001. The result is a much lower estimate for current ban-induced risk at Chicago gated crossings—the great majority of no-whistle crossings in the regions.

I. Accident-Free and Low Risk Jurisdictions

Chicago-area commenters, including the Northwest Municipal Conference, were prominent among those arguing that extended periods of safe outcomes at local crossings should be recognized. As explained elsewhere in this preamble, the interim final rule provides a conditional exclusion for existing whistle bans where all crossings in the jurisdiction have been collision-free for the past 5 years, provided the projected risk is below the product of two times the Nationwide Significant Risk Threshold. The interim final rule employs a risk-based approach that credits good safety results. In fact, some existing whistle ban jurisdictions may be able to avoid additional costs indefinitely provided their safety record stays within the required parameters outlined in the interim final rule.

J. Impracticability

Many Chicago-area commenters were particularly strong in making the point that several of the identified supplementary and alternative safety measures would not work in their local communities. Although many of these comments are discussed in other portions of this preamble, it is appropriate to call attention to three safety alternatives to the horn which were cited as impractical due to local