

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION

OMB CONTROL NO. 2130-0630;
DOCKET NO. FRA-2022-0002-N-4;
INFORMATION COLLECTION REQUEST – GRADE CROSSING PORTAL

COMMENTS OF
THE
ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads (“AAR”), on behalf of itself and its member railroads, submits the following comments on FRA’s April 1, 2022, information collection request (“ICR”), addressing information currently submitted to the agency’s public website by the public, and state and local officials regarding trains occupying highway-rail grade crossings.¹ 87 Fed. Reg. 19,176 (Apr. 1, 2022).

Blocked highway rail grade crossings are a matter of substantial concern to the railroads, which expend significant resources to minimize delays to vehicle traffic and pedestrians, and to improve crossing safety -- while still fulfilling their common carrier obligations. We support Congress’ enactment of Section 22404 of the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. No. 117-58, 135 Stat. 429 (November 15, 2021)), addressing FRA’s use of the blocked crossing portal. And we appreciate FRA’s request for input on how to enhance the quality, utility, and clarity of the information being collected. We

¹ AAR is a trade association whose membership includes freight railroads that operate approximately 83% of the line-haul mileage, employ 95% of the workers, and account for 97% of the freight revenues of all railroads in the United States; and passenger railroads that operate intercity passenger trains and provide commuter rail service.

believe FRA recognizes that in order to actually define and address the challenge, relevant and reliable data, not anecdotes, is necessary. Unfortunately, as AAR has previously noted, FRA's public portal simply does not provide such actionable information.

The Data Collected by the Portal is Unreliable.

Any time a train moves across a highway-rail grade crossing – even at maximum authorized speed in the normal course of business -- cars and pedestrians must wait, and any member of the public who happens to be stopped at that crossing watching that train go by might understandably consider that crossing “blocked” and report that incident to FRA. This is obviously not a remediable situation, and is not the blocked crossing scenario Congress, FRA and railroads are concerned about. For their part, railroads do not typically collect data on the occupation of highway-rail grade crossings as trains travel over them in the ordinary course of operation. Thus, reports submitted by the general public asserting that a moving train “blocked” a crossing while traveling over it cannot be investigated or verified by FRA or railroads. This is the heart of the problem with the portal: it does not collect only verifiable or relevant information.

As an example, more complaints have been submitted for crossings located in the state of Ohio than for any other state.² FRA's portal data indicates that a significant portion of those Ohio-based complaints occurred at only two crossings located near each other in a rural area (a

² See <https://railroads.dot.gov/sites/fra.dot.gov/files/2021-11/Blocked%20Crossings%20Fast%20Facts%20110921.pdf>.

very lightly populated locale, but near a manufacturing facility) near Raymond, Ohio.³ These two crossings in Ohio comprise 3,016 reports, or approximately 7% of all the total portal submissions FRA has received to date for the entire country. Indeed, twelve crossings in the U.S. account for 15% of all the reports FRA has received to date. Based on the railroad's knowledge of certain of these locations, it seems likely – and in any event, FRA has no basis to rule out – that a small number of persons are repeatedly submitting a high volume of complaints regarding trains at specific locations (notably, there is no mechanism in place to guard against someone submitting multiple reports of a single event.) "Data" collection of this sort cannot reliably reveal the crossings where the largest avoidable impacts to the traveling public are occurring.

The railroads concur both with Congress' approach in Sec. 22404 of IIJA and also OMB's prior ICR approval in this proceeding, which dictate that complaints, data, and other information received by FRA's portal may not be used for any regulatory or enforcement purposes and cannot serve as (nor are intended to be) a representative sample or generalizable statistics.

The Data Collected Does Not Distinguish Avoidable Blocked Crossing Incidents from Ordinary Train Operations.

FRA has described a blocked crossing occurrence as one in which "a stopped train obstructs motor vehicle and pedestrian traffic at a grade-crossing for more than 20 minutes."⁴ This description acknowledges that the occupation of highway-rail grade crossings by trains is

³ Crossing No. 262126E had the highest count with 1,831 reports filed through May 19, 2022. Crossing No. 513811S had the second highest count, with 1,185 reports.

⁴ See, e.g., <https://twitter.com/USDOTFRA/status/1420413749262004229>.

unavoidable during normal operations, including necessary switching operations at critical infrastructure facilities (e.g., power plants, drinking water sanitation/distribution facilities, and other critical manufacturing industries). However, the portal collects information regarding crossings that were blocked between “zero to fifteen” minutes. In fact, such “zero to fifteen minute” complaints are a significant percentage of all complaints submitted to the crossing portal.⁵ On its face, this category of “blocked” crossings is meaningless -- not only does it include alleged “delays” of zero minutes, it also includes incidents of reasonable train movement durations that constitute normal operations.

FRA has failed to account for the burden imposed on the railroads.

FRA’s 2019 submission to OIRA justifying the existing information collection stated “FRA does not believe the proposed data collection will create the expectation that FRA and the railroads involved will investigate and take action in response to reported blocked crossing incidents.” This statement certainly throws into question the very purpose of the portal. But that was FRA’s justification for failing to take into account any burdens imposed upon railroads including small businesses (short line railroads) as part of its undertaking to collect blocked crossing data.⁶ FRA continues to rely on this rationale -- which has subsequently been confirmed as incorrect.

Since shortly after the crossing portal’s launch in 2019, railroads have regularly been contacted by FRA as a result of data submitted through the portal. FRA has requested (and has

⁵ Approximately 22% of all the “zero to fifteen minutes” submissions to the FRA portal were reported at the two crossings in rural Ohio noted above.

⁶ See 84 Fed. Reg. 27832 (June 14, 2019); 84 Fed. Reg. 49,611 (Sept. 20, 2019). See also https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201909-2130-001.

even purported to require), railroads to investigate blocked crossing incidents based on information submitted by the public to the website (which often turn out to be unfounded). FRA has requested information in various formats regarding the reasons certain crossings may have been blocked. FRA staff have requested grade crossing occupation information for dozens of one Class I railroad's crossings, over a period of several weeks. FRA has requested that at least one railroad complete a form (without OMB approval) explaining why crossings might have been occupied. FRA's requests to the railroads to investigate reports received on the crossing portal represent a burden on the industry that has not been accounted for by the agency. While Section 22402 of IIJA specifies that portal data can be the "basis for conducting outreach to communities, emergency responders, and railroads", that provision does not authorize FRA to ask or require railroads to conduct time-consuming and resource-intensive investigations to attempt to verify often illusory or unfounded public complaints.

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Thank you for your consideration of these comments.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Kathryn', followed by a long horizontal flourish.

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