

Robert Brogan, Information Collection Clearance Officer  
Office of Railroad Safety, Regulatory Analysis Division  
Federal Railroad Administration  
1200 New Jersey Avenue SE  
Washington, DC 20590

August 6, 2019

Dear Mr. Brogan:

The staff of the Railroad Safety Section of the Illinois Commerce Commission offers the following comments in response to the Federal Railroad Administration's Notice of Information Collection, request for comment regarding highway-rail crossing blockage.

**Title:** Inquiry into Blocked Highway-Rail Grade Crossings throughout the United States.

**OMB Control Number:** 2130-NEW.

**Docket No.** FRA-2019-0004-N-10

Highway-rail crossings are blocked on a routine basis throughout the State of Illinois endangering the public, disrupting commerce, impeding mobility and negatively impacting the quality of life for citizens of Illinois. The problem is constant, widespread and to the best of our knowledge, worsening with the adoption of precision scheduled railroading. The problem was documented in the 2006 report to Congress: ***Impact of Blocked Highway/Rail Grade Crossings on Emergency Response Services***. The problem has been further documented most recently with the May publication of the Government Accountability Office's report: ***Freight Trains Are Getting Longer, and Additional Information Is Needed to Assess Their Impact***.

The fundamental findings of these two reports indicate:

1. "Communities are the best judges of the severity of the problem of blocked crossings," (*Impact of Blocked Highway/Rail Crossings on Emergency Response Services*; FRA, August 2006)
2. That the Federal Railroad Administration is "not in a position to address community-specific public safety issues." (*Freight Trains Are Getting Longer, and Additional Information Is Needed to Assess Their Impact*. GAO Report 19-443; May 2019)

Therefore, we respectfully:

1. Suggest that there is no need to conduct additional data collection to quantify what is already a well-established public safety concern. Over thirty States have already enacted laws addressing the problem of crossing blockage. However, numerous state and federal courts have determined States are preempted from enforcing such laws.
2. Request FRA develop a rule addressing crossing blockage via an Advance Notice of Proposed Rulemaking (ANPRM), or
3. Delegate the authority to States to address crossing blockage at the local level.

The following comments pertain specifically to the request for comments outlined in the June 14, 2019 Federal Register posting.

***Specifically, FRA invites interested parties to comment on the following:***

1. *Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility;*

**ICC comment:** This information is not necessary for the FRA to execute its functions as the problem of blocked highway-rail crossings is already sufficiently documented as a public safety risk. No additional data collection is required to move to the next step of an Advance Notice of Proposed Rulemaking or delegating the authority to regulate crossing blockage to local units of government entrusted with public safety.

2. *The accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates;*

**ICC Comment:** FRA did not indicate the proposed duration of the survey, so it is not possible to estimate the number of anticipated responses. ICC recommends that if the survey is implemented, the survey continue for 12 months to encompass the variability of freight rail traffic which has pronounced seasonal trends.

**ICC comment:** FRA's burden estimate dramatically under estimates the number of responses (485) that will be received if the proposed survey is properly promoted. For example, there were 4,097 comments submitted to Docket 1999-6439 regarding the development of the "Horn Rule." Blocked crossings are likely to solicit a similar, if not greater public response if sufficiently promoted.

**ICC Comment:** FRA's burden estimate significantly over estimates the time for a response to be submitted via a web-based survey instrument. FRA's estimate of 15 minutes is not realistic. A relatively simple survey of eight to ten questions should take no more than two minutes for a member of the public to complete.

**ICC Comment:** FRA did not publish or provide any documentation showing how it could possibly take 15 minutes for a person to complete a web-based survey, so it is not possible to gauge the accuracy of FRA's estimate, only to note that it is wildly out of line with similar surveys.

3. *Ways for FRA to enhance the quality, utility, and clarity of the information being collected;*

**ICC Comment:** ICC supports the concept of surveying the public to attempt to gauge the magnitude of highway-rail crossing blockage at public highway-rail crossings.

**ICC Comment:** FRA did not provide any information regarding the actual data elements to be implemented in a survey, so it is not possible to gauge quality, utility or clarity of the proposed survey instrument (information collection) specifically.

**ICC Comment:** FRA's proposal to have separate and restricted access for law enforcement personnel requiring login credentials is neither necessary nor desired.

**ICC Comment:** A single on-line web-based form should be used.

**ICC Comment:** In order to determine the type of person responding, ICC suggests incorporating a question that inquires the type of person submitting the blockage report.

**ICC Comment:** Requiring law enforcement, or anyone else for that matter, to use a login and password will diminish the number of returns while not adding to either the quantity or quality of responses.

4. *Ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.*

**ICC Comment:** Should the survey move forward, ICC suggests having one on-line web-based survey for use by all participants and that no login credentials be required. Sub-fields for the type of respondent should be provided via a drop-down:

- Public
- Police, Fire, EMT, Ambulance with a sub-field:
  - to indicate if on a Call – Yes/No format
- Public Employee – Public Works, DOT, Village Manager, Etc.
- Elected Official
- School Bus Driver or other school official
- Railroad employee

**ICC Comment:** Attached to/submitted with the ICC comments is a proposed survey instrument for consideration. ICC's proposed survey instrument consists of eight questions and takes approximately 90 seconds to complete.

**ICC Comment:** Should the survey move forward, for participants not using the FRA Locator App, ICC suggests using a map (see <https://fragis.fra.dot.gov/GISFRASafety/>) as a supplemental on-line tool to assist survey participants with locating and supplying the correct US DOT Crossing Inventory number for reporting the location of the crossing blockage.

**ICC Comment:** The current search function of the FRA GIS website is not functional for users of the general public and will require revisions to enable easy searching on County Name, City Name; rather than the existing fields which have absolutely no meaning to the public (CountyCode, STCYFIPS, CITYCD, TYPE). The current FRA GIS site is not oriented (or optimized) for public use; however, making these simple changes to the search functionality is not difficult and could offer an easy to use tool for the public to correctly supply the single most critical piece of information – exact location identified as the US DOT Crossing Inventory Number.

The ICC Comments above address two of the three general objectives denoted by FRA in the Federal Register Notice: reduce reporting burdens; and organize information collection requirements in a “user-friendly” format to improve the use of such information. However, FRA did not discuss the third objective of accurately assessing the resources expended to retrieve and produce information requested.

**ICC Comment:** In order to easily retrieve and produce information, ICC suggests it is vitally important to enable survey respondents to accurately provide the correct crossing location identified as the US DOT Crossing Inventory Number. Every survey response data record should have a US DOT Crossing Inventory Number assigned. In the attempt to assign the correct US DOT Crossing Inventory Number, the use of automated geocoding or address matching routines should be limited and knowledgeable field staff should be consulted to determine the correct location.

**ICC Comment:** The data captured should be stored in a SQL compliant database.

The next section of this document provides an item-by-item commentary on the contents of the Abstract.

**Abstract contents sentence by sentence:**

5. *FRA is interested in obtaining more information regarding the frequency, location, and impacts of highway-rail grade crossings blocked by slow-moving or idling trains.*

**ICC Comment:** Attached to/submitted with the ICC comments is a sample survey instrument developed by ICC staff. Internal testing showed it took an average of 90 seconds to complete.

6. *Currently, there are no federal laws or regulations that specifically address how long a train may occupy a crossing, whether idling or operating at slow speeds.*

**ICC Comment:** There are FRA requirements addressing unnecessarily activating highway-rail crossing warning systems (see 49 C.F.R. § 234.209) so the general premise of regulating train occupancy of highway-rail crossings is not outside the FRA's realm of expertise.

7. *Some States and local municipalities have laws that vary in how long trains are permitted to occupy crossings.*

**ICC Comment:** Numerous state and federal appeals courts have determined that State or local laws are preempted and unenforceable. The Interstate Commerce Commission Termination Act of 1995 and/or the Federal Railroad Safety Authorization Act of 1994 take precedence over any state or local laws on this topic.

**ICC Comment:** It is disingenuous and misleading to continue to suggest that States or local authorities have any legal authority to control highway-rail crossing blockage at public highways under their jurisdiction. Cease continuing this practice and unambiguously state that there are no legally enforceable local or state laws capable of regulating highway-rail crossing blockage.

**ICC Comment:** See "An Analysis of Possible Federal Preemption of Kansas Law on Trains Blocking Highways" for an excellent summary of the issue published by the Kansas Legislative Research Department December 3, 2018.

8. *There are potential safety concerns with crossings that are blocked by trains.*

- a. *For instance, pedestrians may crawl under or through idling trains.*
- b. *Also, emergency response vehicles and first responders may be significantly delayed from responding to an incident or transporting patients to a hospital.*
- c. *In addition, drivers may take more risks, such as driving around lowered gates at a crossing or attempting to beat a train through a crossing without gates, in order to avoid a lengthy delay if they are aware that trains routinely block a crossing for extended periods of time.*

**ICC Comment:** These are not "potential" safety concerns but actual well documented concerns that result in the loss of life.

9. *Economics - There are also potential economic impacts that affect businesses, such as stores or restaurants not being accessible to a customer base for an extended period of time.*

**ICC Comment:** These are not "potential" economic impacts but actual economic impacts that occur daily throughout Illinois when customers cannot reach their destination, employees cannot reach their place of employment and school children cannot reach their school in a safe and timely manner.

10. *Finally, highway-rail grade crossings that are blocked for extended periods of time may create societal nuisances, such as roadway congestion, late mail service and deliveries, disrupted school and work arrival and dismissal, or missed appointments.*

**ICC Comment:** These are not "potential societal nuisances" but actual negative societal impacts that occur throughout Illinois on a daily basis.

11. *Over a recent two-year period, from April 1, 2017 to March 31, 2019, FRA's Office of Railroad Safety received 669 email complaints about blocked crossings through FRA's "Contact Us" website.*

**ICC Comment:** ICC staff receives complaints and inquiries from the public on a regular basis. The advent of new railroad operating practices, such as Precision Scheduled Railroading (PSR) has led to additional locations being identified with repeated instances of highway-rail crossing blockage.

**ICC Comment:** In addition to the 669 complaints FRA indicated were received, State rail safety program managers from Illinois, Ohio, Texas and other states, were also collating and forwarding complaints on to FRA. Have these complaints collected via the State rail safety program managers been included in FRA's tabulation?

12. *FRA proposes to add new dedicated links to its existing website and its existing phone application (app) for users to report blocked crossings. This would simplify the reporting of blocked crossing information and standardize the data received about blocked crossings.*

**ICC Comment:** Excellent idea to use the Locator App and FRA website. As discussed previously, ICC suggests that for either/both applications only a single on-line form identical in nature be used and that the on-line form not require any sort of login specific to a sub-class of participant, such as law enforcement. There is no logical reason to require a law enforcement officer to use a password to simply enter the same information the public can enter.

13. *The proposed data collection would be conducted using three methods:*

- a. *A link would be added to FRA's existing website directing a user to a web-based form to submit information about a blocked crossing to FRA. Access to this web-based form would be unrestricted and available to the general public.*
- b. *A link would be added to the existing FRA phone app "FRA Crossing Locator App" that will direct users to an app-based form to submit information about a blocked crossing to FRA. Access to the form on the phone app would be unrestricted and available to the general public.*
- c. *A link would be added to FRA's existing website directing law enforcement personnel to submit information about a blocked crossing to FRA. Access for law enforcement personnel would be restricted to users with a username and password and managed by FRA.*

**ICC Comment:** ICC suggests striking the separate sub-form/access routine for law enforcement and having a single access point for all survey respondents to use. The survey instrument can have a single field to indicate the type of person responding as previously indicated and as shown on the attached ICC draft survey form.

14. *Upon accessing the form, a user would be notified that there are no federal laws or regulations that specifically address the length of time a train may occupy a highway-rail grade crossing.*

**ICC Comment:** ICC suggests adding language indicating that there are also no state or local laws that are enforceable that regulate the length of time a train may block a crossing.

**ICC Comment:** ICC suggests it would be very helpful to add a link on the survey instrument, or the instructions to the survey instrument, to a highway-rail crossing FAQ page where the body of recent court cases and related information could be located.

15. *The user would be notified that the information submitted will not be forwarded to a railroad, State, or local agency, and is only being used for data collection purposes to determine the locations, times, and impacts of blocked crossings.*

**ICC Comments:** ICC suggests that the information collected via the public survey be provided to State agencies to assist them in addressing highway-rail crossing blockage. Collecting crossing data in the abstract but not utilizing the data to help mitigate the occurrence of blocked crossings is illogical and in-consistent with the mission of the FRA, as well as State agencies charged with ensuring the safety of the travelling public.

16. *The questions asked on each form will be identical for all three methods of collection.*

**ICC Comments:** ICC concurs that the survey instrument be identical for all respondents.

17. *Type of Request: Approval of a new collection of information.*

**ICC Comment:** Not required – move to ANPRM or direct delegation of authority to states to address highway-rail crossing blockage.

18. *Affected Public: Public individuals and law enforcement personnel.*

**ICC Comment:** ICC suggests the respondent universe as the public with six sub-types. ICC does not recommend separate login and password functions for law enforcement.

19. *Form(s): FRA F 6180.XXX.*

**ICC Comment:** None.

20. *Respondent Universe: General public and national law enforcement personnel.*

**ICC Comment:** ICC suggests the six sub-types of respondents as noted:

- Public
- Police, Fire, EMT, Ambulance with a sub-field:
  - to indicate if on a Call – Yes/No format
- Public Employee – Public Works, DOT, Village Manager, Etc.
- Elected Official
- School Bus Driver or other school official
- Railroad employee

21. *Frequency of Submission: On occasion; one-time.*

**ICC Comment:** ICC suggests duration of 12 months to encompass the variability of freight rail traffic which has pronounced seasonal trends. Adding the highway-rail crossing blockage reporting tool as a permanent FRA website function is recommended.

22. *Reporting Burden:*

**ICC Comment:** FRA's estimate of 485 responses at 15 minutes per response is unrealistic. Both the number of anticipated responses, as well as the time per response are unrealistic. ICC staff developed and tested a survey instrument (attached) of eight questions with a completion time of approximately 90 seconds.

**ICC comment:** FRA's burden estimate dramatically underestimates the number of responses (485) that will be received if the proposed survey is properly promoted. For example, there were 4,097 comments submitted to Docket 1999-6439 regarding the development of the "Horn

Rule.” Blocked crossings are likely to solicit a similar, in not greater, public response if sufficiently promoted.

**ICC Comment:** FRA did not indicate the proposed duration of the survey, so it is not possible to estimate the number of anticipated responses. ICC recommends that if the survey is implemented, the survey continue for 12 months to encompass the variability of freight rail traffic which has pronounced seasonal trends.

**ICC Comment:** FRA’s burden estimate significantly over estimates the time for a response to be submitted via an automated web-based survey instrument. FRA’s estimate of 15 minutes is not realistic. A relatively simple survey of eight to ten questions should take no more than two minutes for a member of the public to complete.

**ICC Comment:** FRA did not publish or provide any documentation showing how it could possibly take 15 minutes for a person to complete an automated web-based survey, so it is not possible to gauge the accuracy of FRA’s estimate, only to note that it is wildly out of line with similar surveys.

**ICC Comment:** FRA’s estimate of the burden appears lacking any basis in fact or practical experience. The Notice does not provide any documentation or supporting documents illustrating the methodology used by FRA to estimate the burden of either estimating the number of respondents, or the time per response.

**ICC Comment:** FRA does not address the effort required to:

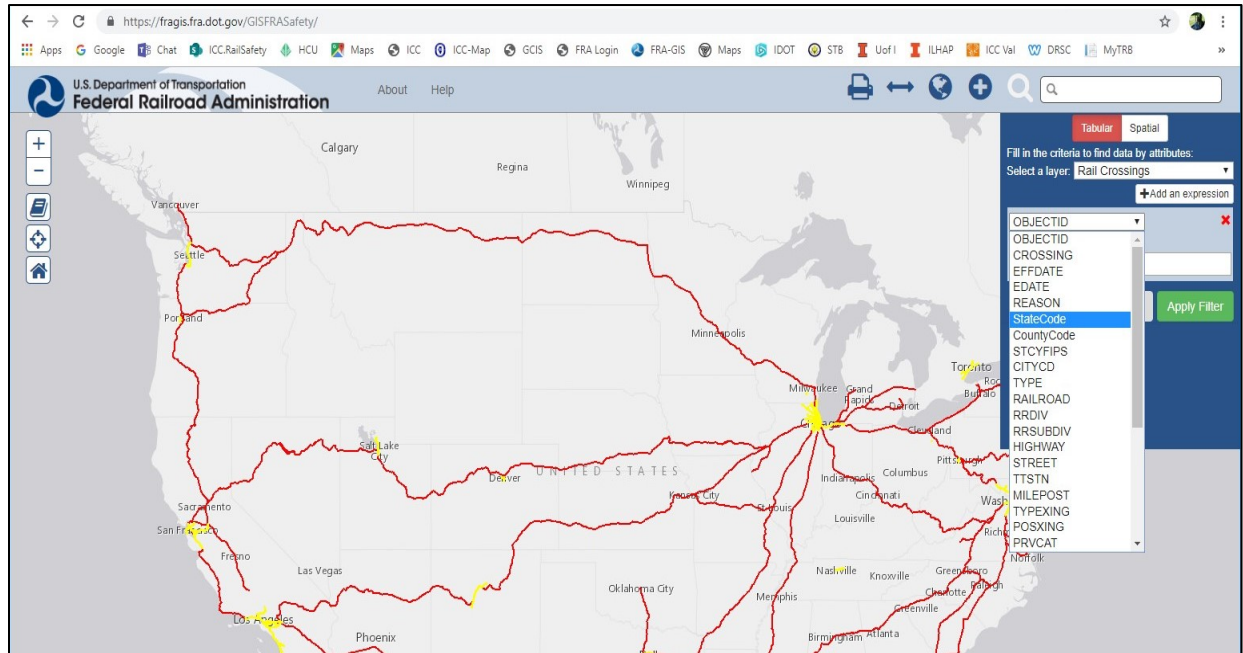
- Review and/or “clean” the data submitted
- Determine what a “valid” record is
- Provide missing US DOT Crossing Inventory numbers for data records missing the data
- Extract and/or format the data extracted from the database
- What the analytical objective is
- The time to prepare a summary or other analysis of the data compiled that meets the analytical objective
- How the expected output will be used to inform FRA management to pursue the next policy making step

**ICC Comment:** Shown below is a revised estimate of the burden based on 5,000 surveys being submitted at an average time of 2 minutes per survey. The option of a dedicated sub-form for law enforcement is eliminated.

REVISED ICC Estimate: Form	Total estimated annual responses	Average time per response (min)	Total annual burden hours
General Public via the unrestricted form on the FRA website.	3,000	2	100.00
General Public via the FRA Crossing Locator Phone Application	2,000	2	66.67
Law Enforcement Personnel via the limited access form on the FRA website	0	0	0.00
<b>Total</b>	<b>5,000</b>	<b>2</b>	<b>166.67</b>

The total burden remains negligible at 166.67 hours for 5,000 completed surveys as opposed to FRA’s initial estimate of just 485 completed surveys at an average time of 15 minutes per response for a total burden of 122 hours.

23. **ICC Comment:** FRA GIS Website – has great potential to assist survey respondents to correctly identify the Crossing Inventory number but the current search function is largely useless due to the lack of easy for the public to use fields, such as City Name rather than CITYCD; County Name rather than CountyCode, etc.



For example: the data fields OBJECTID, EFFDATE, EDATE, StateCode, CountyCode, STCYFIPS, CITYCD, TYPE, as presented, are all meaningless to members of the public and provide no value in their current format. The data fields should either be reformatted into English that the public can understand and search on or hidden from the public search view.