

**FEDERAL RAILROAD ADMINISTRATION
State Highway-Rail Grade Crossing Action Plans
(Title 49 Code of Federal Regulations Part 234)
SUPPORTING JUSTIFICATION
RIN 2130-AC72; (OMB Control No. 2130-0589)**

Summary of Submission

- This information collection submission is a request for **reinstatement** of a previously approved collection of information that was discontinued at the end of **August 2016**.
- The total number of burden **hours requested** for this submission is **13,391 hours**.
- Total number of **responses requested** for this submission is **42**.
- There are currently **zero (0) hours** and **zero (0) responses** in the OMB inventory associated with this OMB control number.
- **Program changes** increased the burden by **13,391 hours** and by **42 responses**.
- There are no adjustments at this time for this information collection submission.
- ****The answer to question number 12 itemizes the hourly burden associated with each requirement of this rule (See pp. 8-16).**

1. Circumstances that make collection of the information necessary.

This rulemaking responds to the Fixing America’s Surface Transportation Act (Public Law 114-94) (FAST Act) mandate that the FRA Administrator promulgate a regulation requiring States to develop, implement (and update, if applicable) State highway-rail grade crossing action plans. See section 11401 of the FAST Act. In the Rail Safety Improvement Act of 2008 (RSIA), Congress directed the Secretary of Transportation to identify the ten States that had the most highway-rail grade crossing collisions, on average, over the previous three years and require those States to develop grade crossing action plans for the Secretary of Transportation’s approval. See section 202 of the RSIA. RSIA required the action plans to “identify specific solutions for improving” grade crossing safety and to “focus on crossings that have experienced multiple accidents or are at high risk” for accidents. Using FRA’s database of reported highway-rail grade crossing accidents/incidents that occurred at public and private grade crossings, FRA determined the following 10 States had the most reported highway-rail grade crossing accidents/incidents at public and private grade crossings during the three-year period from 2006 through 2008: Alabama, California, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Ohio, and Texas. Therefore, on June 28, 2010, FRA issued a final rule (2010 final rule) requiring these 10 States to develop highway-rail grade crossing action plans

and submit them to FRA for approval (based on the Secretary of Transportation's delegation of authority to the Federal Railroad Administrator in 49 CFR 1.89). See 75 FR 36551 (June 28, 2010) (codified at 49 CFR 234.11).

Section 11401 of the FAST Act tasks the FRA Administrator with promulgating a regulation requiring these 10 States to update the highway-rail grade crossing action plans they previously submitted to FRA under 49 CFR 234.11. This statutory mandate also directs FRA to include a regulatory provision that requires each of these 10 States to submit reports to FRA describing: (a) what the State did to implement its previous highway-rail grade crossing action plan; and (b) how the State will continue to reduce highway-rail grade crossing safety risks. As for the other 40 States and the District of Columbia, the FAST Act mandate also requires the FRA Administrator to promulgate a regulation requiring them to develop and implement State highway-rail grade crossing action plans. See FAST Act section 11401(b)(1)(B).

The FAST Act mandate contains specific requirements for the contents of the highway-rail grade crossing action plans. As set forth in section 11401(b)(2) of the FAST Act, each highway-rail grade crossing safety plan must identify highway-rail grade crossings that: (a) have experienced recent highway-rail grade crossing accidents or incidents; (b) have experienced multiple highway-rail grade crossing accidents or incidents; or (c) are at high-risk for accidents or incidents. Section 11401(b)(2) of the FAST Act further provides that each highway-rail grade crossing action plan must identify specific strategies for improving safety at highway-rail grade crossings, including highway-rail grade crossing closures or grade separations. Each State highway-rail grade crossing action plan must also designate a State official responsible for managing implementation of the plan. See FAST Act section 11401(b)(2).

The FAST Act mandate also contains requirements related to FRA's review and approval of State highway-rail grade crossing action plans, as well as requirements related to the publication of FRA-approved plans. For example, when FRA approves a State's highway-rail grade crossing action plan, section 11401(b)(4) of the FAST Act requires FRA to make the approved plan publicly available on an "official Internet Web site."

If a State submits a highway-rail grade crossing action plan FRA deems incomplete or deficient, section 11401(b)(6) of the FAST Act requires FRA to notify the State of the specific areas in which the plan is deficient. In addition, section 11401(b)(6) requires States to correct any identified deficiencies and resubmit their corrected plans to FRA within 60 days of FRA's notification of the deficiency. If a State fails to meet this 60-day deadline for correcting deficiencies identified by FRA, section 1401(b)(8) of the FAST Act requires FRA to post a notice on an "official Internet Web site" that the State has an incomplete or deficient highway-rail grade crossing action plan.

FRA personnel, including FRA regional grade crossing managers, inspectors, and specialists and experts from FRA's Highway-Rail Crossing and Trespasser Programs

Division, will be available to assist States with developing, implementing, and updating their highway-rail grade crossing action plans. For example, FRA will provide highway-rail grade crossing accident/incident data to States upon request. FRA will also assist State agencies who wish to use FRA's Office of Safety Analysis website to generate customized reports of highway-rail grade crossing accident/incident data.

Section 11401(b)(5) of the FAST Act authorizes the Secretary of Transportation to condition the awarding of grants under chapter 244 of Title 49 of the United States Code on submission of an acceptable highway-rail grade crossing action plan.

In sum, FRA is promulgating this proposed rule in response to a mandate from the FAST Act to issue a rule requiring 40 States and the District of Columbia to develop and implement highway-rail grade crossing action plans. This proposed rule would also require the 10 States previously required to develop highway-rail grade crossing action plans by the RSIA and FRA's implementing regulation to update their plans and to submit reports to FRA describing the actions they have taken to implement them.

2. How, by whom, and for what purpose the information is to be used.

The information to be collected under this proposed rule will be used by FRA to ensure that 40 States and the District of Columbia develop and implement highway-rail grade crossing action plans—as mandated by section 11401 of the FAST Act—to reduce/eliminate the number of accidents/incidents that occur at public and private grade crossings in their States. This collection of information will also be used by FRA to make sure that the initial 10 States—specified by section 202 of the RSIA and FRA's implementing regulation at 49 CFR 234.11—with the most reported highway-rail grade crossing accidents/incidents at public and private grade crossings during the three-period from 2006 to 2008 update their highway-rail grade crossing action plans and submit reports to FRA describing the actions that they have taken to implement their plans and addressing how each State will continue to reduce highway-rail grade crossing safety risks. FRA intends to use these implementation reports to monitor and assess the implementation progress of these 10 initial States in carrying out their highway-rail grade crossing action plans, and to prepare the report to Congress required by Section 11401(c) of the FAST Act addressing the progress these initial 10 States have made in implementing their previously submitted action plans.

FRA will review 40 State and District of Columbia highway-rail grade crossing action plans to verify that each State and District plan has identified highway rail-grade crossings that have experienced recent highway-rail grade crossing accidents or incidents, or are at high-risk for accidents or incidents. FRA will also review these plans to confirm that they cover a period of at least five-years and that they describe specific strategies for improving safety at highway-rail grade crossings, including highway-rail grade crossing closures or grade separations. Further, FRA will review each State plan to make sure that they include a designated State official who is responsible for managing implementation

of the plan.

Additionally, if a State or the District of Columbia (State/DC) submits a highway-rail grade crossing action plan that FRA determines is incomplete or deficient, FRA will notify them of the specific areas in which the plan is deficient. Within 60-days of receipt of the FRA notification of the deficiency, the State or the District of Columbia must correct any identified deficiencies and resubmit its corrected plan to FRA. FRA will review these revised plans to make sure that specific areas found deficient in the plan are improved to meet agency safety standards to meet the Congressional goal of reducing highway-rail grade collisions and the injuries, fatalities, and property damage that normally accompany them. If a State or the District of Columbia fails to meet this 60-day deadline for correcting deficiencies identified by FRA, section 1401(b)(8) of the FAST Act requires FRA to post a notice on an “official Internet Web site” that the State has an incomplete or deficient highway-rail grade crossing action plan.

The information is also used by each of the 50 States and the District of Columbia (State/DC) affected by this proposed rule. Specifically, development and updating of such plans enhances each State’s ability to view its population of highway-rail grade crossings in a more careful and critical way, interpret historical accident information, evaluate the overall state of highway-rail grade crossing safety, and identify particular areas in need of attention. Collision patterns and causal factors become more readily apparent as a result of the detailed study, assessment, and status reporting involved in the development of the State Action Plan. In each plan, the State identifies specific solutions for improving safety at crossings, among them, highway-rail grade crossing closures or grade separations, with a special focus on those crossings that have experienced multiple accidents or are at a heightened risk for accidents. States and the District of Columbia may also identify special emphasis corridors of high-risk crossings as a result of the analysis component of the State Action Plan. Furthermore, each State may coordinate its highway-rail grade crossing Action Plan with other State or Federal planning requirements. Consequently, each State/DC may obtain additional benefits through closer integration of grade crossing safety issues into the overall State/DC transportation safety planning efforts.

3. Extent of automated information collection.

FRA strongly supports and highly encourages the use of advanced information technology, wherever possible, to reduce burden on respondents. FRA has championed the use of advanced information technology for many years now. Under this regulation, FRA proposes to require States and the District of Columbia to submit their highway-rail grade crossing action plans and updates electronically through FRA’s website in Portable Document Format (PDF). FRA intends to provide a secure document submission site for States and the District of Columbia to use to upload their highway-rail grade crossing action plans for FRA review and approval. Also, FRA envisions the report required submitted by the initial 10 States describing to FRA how the State implemented the

highway-rail grade crossing action plan that it previously submitted to FRA under 49 CFR 234.11 could simply be electronically submitted as an appendix to the State's updated plan. The official designated under paragraph (e)(5) would be given primary user access to the secure document submission site, as well as the authority to grant access to secondary users. Accordingly, FRA envisions that the designated official will need to register with the agency to gain primary user access to the secure document submission site.

Under this proposed rule then, one hundred percent (100%) of the estimated responses will be submitted electronically.

4. Efforts to identify duplication.

The information collection requirements, to our knowledge, are not duplicated anywhere.

Similar data are not available from any other source.

5. Efforts to minimize the burden on small businesses.

“Small entity” is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and it stipulates in its size standards that a “small entity” in the railroad industry is a for profit “line haul railroad” that has fewer than 1,500 employees, a “short line railroad” with fewer than 500 employees, or a “commuter rail system” with annual receipts of less than 15 million dollars. See “Size Eligibility Provisions and Standards,” 13 CFR part 121, subpart A. Additionally, 5 U.S.C. 601(5) defines as “small entities” governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. Federal agencies may adopt their own size standards for small entities, in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes “small entities” or “small businesses” as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is \$20 million or less in inflation-adjusted annual revenues and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. See 68 FR 24891 (May 9, 2003), codified at appendix C to 49 CFR part 209. The \$20-million limit is based on the STB's revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for this rulemaking.

FRA identified 51 entities (the 50 States and the District of Columbia) that would be affected by this proposed rule. The proposed rule would not impact any other entity—public or private. Each of the 50 States and the District of Columbia have a population

greater than 50,000. Therefore, the proposed rule would not directly regulate any small entities.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601(b), the FRA Administrator hereby certifies that this proposed rule would not have a significant impact on a substantial number of small entities. *(Note: To reduce the compliance burden on the 50 States/DC, FRA will develop and distribute a model State highway-rail grade action plan (Model Plan) as required by Section 11401(a) of the FAST Act. Further, FRA personnel, including FRA regional grade crossing managers, inspectors, and specialists and experts from FRA's Highway-Rail Crossing and Trespasser Programs Division, will be available to assist States with developing, implementing, and updating their highway-rail grade crossing action plans. Additionally, in conjunction with the Federal Highway Administration, FRA developed a "Highway-Railway Grade Crossing Action Plan and Project Prioritization Noteworthy Practices Guide." FRA shared this guide with States via letters that included the data requirements as discussed in Section 11401 of the Fast Act. The guide is currently available on the Department of Transportation's website.¹)*

6. Impact of less frequent collection of information.

If this information were not collected or were collected less frequently, national rail safety would be significantly impaired. Specifically, if FRA were unable to collect the mandated information or were to collect it less frequently, FRA would have had no way to know whether the additional 40 States/DC had developed and implemented highway-rail grade crossing action plans to reduce/eliminate highway-rail grade crossing accidents/incidents and the corresponding injuries, fatalities, and property damage that almost invariably accompany them. Without the generation and implementation of these highway-rail grade crossing action plans, the 40 States/DC would not have identified highway-rail grade crossings that have experienced recent highway-rail grade crossing accidents/ incidents or were at high risk for such accidents/incidents and would not have devised specific strategies or measures to improve safety at these crossings. One of FRA's top priorities is to reduce the number and severity of accidents/incidents at highway-rail grade crossings throughout the country, especially those with multiple accidents/incidents.

Also, without this proposed collection of information, the initial 10 States with the most reported highway-rail grade crossing accidents/incidents at public and private crossings during the period 2006 to 2008 would not have updated their highway-rail grade crossing action plans and would not have submitted the required reports describing the actions that they have taken to implement their plans and how they will continue to reduce highway-rail grade crossing safety risks. These updated plans and reports will enable FRA to monitor and assess the implementation progress of these initial 10 States in carrying out

¹ United States Department of Transportation, Federal Railroad Administration, "Highway-Railway Grade Crossing Action Plan and Project Prioritization Noteworthy Practices Guide." Report Number FHWA-SA-16-075. November 2016. <https://www.fra.dot.gov/Elib/Document/16793>.

their strategies to make these crossings and rail/motor vehicle transportation for the affected communities safer in these States.

Without the information collected, FRA could not be assured that every one of these 10 identified States are focusing on those crossings that have experienced multiple accidents or are at high risk for such accidents; and could not be assured that their plans cover the required five-year time period.

Without this proposed collection of information, a new and essential means of enhancing highway-rail grade safety throughout the 50 States/DC aimed at saving lives would be unavailable to FRA and its Highway-Rail Grade Crossing Division.

In sum, the collection of information helps FRA to promote and enhance safe rail transportation throughout the United States.

7. **Special circumstances.**

All the information collection requirements contained in the rule are in compliance with this section.

8. **Compliance with 5 CFR 1320.8.**

FRA is publishing a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* on **September XX, 2019**, titled State Highway-Rail Grade Crossing Action Plans soliciting comments on the proposed rule and its accompanying information collection requirements from the regulated community, the general public, and interested parties. See 84 FR XXXX.

FRA will respond to any comments received concerning the proposed rule and its associated collection of information at the final rule stage and in the final rule Supporting Justification.

9. **Payments or gifts to respondents.**

There are no monetary payments provided or gifts made to respondents in connection with this information collection.

10. **Assurance of confidentiality.**

Information collected is not of a confidential nature, and FRA pledges no confidentiality.

11. **Justification for any questions of a sensitive nature.**

There are no questions or information of a sensitive nature or data that would normally be

considered private contained in this information collection.

12. Estimate of burden hours for information collected.

Note: The proposed rule in response to a statutory mandate would require 40 States and the District of Columbia to develop and implement highway-rail grade crossing action plans. The proposed rule would also require the 10 States that were previously required to develop highway-rail grade crossing action plans by the RSIA and FRA's implementing regulation to update their plans and submit reports to FRA describing actions they have taken to implement them. Thus, the respondent universe is the 50 States plus the District of Columbia, for a total of 51 entities.

Per the Office of Management and Budget's (OMB) request, FRA is including the annual dollar cost equivalent of the requested burden hours below. Based on the Department of Labor, Bureau of Labor Statistics, Occupational Employment and Wages, May 2017, 11-3011, Administrative Services Managers, NAICS 999200 as stated in the Regulatory Impact Analysis (RIA) accompanying this proposed rule (p. 7), the average hourly wage for State employees responsible for submitting a State Highway-Rail Grade Action Plan/updated plans/ implementation reports is \$61.20 (\$42.84 wage rate + \$18.36 hourly benefit).

NOTE: As mentioned in the RIA associated with this proposed rule, all the burden incurred respondents occurs in the first year. However, since FRA is requesting a two-year approval from OMB to account for any State/DC that submits the required State Action Plan after the first year, the burden for each individual requirement has been divided by two to determine the annual burden for the approval period requested.

§ 234.11 State Highway-Rail Grade Crossing Action Plans

(a) Purpose. The purpose of this section is to reduce collisions at highway-rail grade crossings nationwide by requiring States and the District of Columbia to develop or update highway-rail grade crossing action plans and implement them. This section does not restrict any other entity from adopting a highway-rail grade crossing action plan. This section also does not restrict any State or the District of Columbia from adopting a highway-rail grade crossing action plan with additional or more stringent requirements not inconsistent with this section.

(b) New action plans. (1) Except for the 10 States identified in paragraph (d)(2) of this section, each State and the District of Columbia shall develop a State highway-rail grade crossing action plan that addresses each of the required elements listed in paragraph (e) and submit such plan to FRA for review and approval not later than **[DATE 426 DAYS**

FROM DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER].

(2) Each State and the District of Columbia shall submit its highway-rail grade crossing action plan electronically through FRA’s Web site in PDF.

Based on input from FRA subject matter experts and feedback from States, FRA groups the 40 States and District of Columbia that do not have an FRA-approved highway-rail grade crossing action plan into three burden levels: high, medium, and low. As noted in the RIA accompanying this proposed rule, of these 40 States and DC, FRA determined that seven (7) would have a high burden, 20 would have a medium burden, and 14 would have a low burden. Some of the low burden States have very few public highway-railroad grade crossings and even fewer average annual highway-railroad accidents. Nevertheless, because the NPRM statutorily requires all 50 States and the DC to create or update a Plan, no State is excepted from the NPRM’s requirements.

For the seven (7) high burden States, it is estimated that it will take approximately 700 hours to develop each plan and electronically submit it to FRA. For the 20 medium burden States, it is estimated that it will take approximately 550 hours to develop each plan and electronically submit it to FRA. For the 14 low burden States/DC, it is estimated that it will take approximately 200 hours to develop each plan. As noted above at the beginning of question 12, the NPRM RIA states that all costs would be incurred in the first year following issuance of the NPRM/Final Rule. However, FRA is requesting a **two-year approval** from OMB to account for States that will submit their plans after the first year. Thus, to determine the annual information collection burden for this requirement, the estimated burden listed above must be divided by two (7 plans ÷ 2 x 700 hrs. ea. + 20 plans ÷ 2 x 550 hrs. + 14 plans ÷ 2 x 200 hrs. ea. = 3.5 plans x 700 hrs. ea. + 10 plans x 550 hrs. ea. + 7 plans x 200 hrs.). Total annual burden for this requirement 9,350 hours.

Respondent Universe:

40
States
+
District
of
Colum
bia

Burden time per response:

700

hours
+ 550
hours
+ 200
hours

Frequency of Response:		Annually; one-time
Annual number of Responses:	3.5 new grade crossing action plans + 10 new grade crossing action plans + 7 new grade crossing action plans	
Annual Burden:		9,350 hours
Annual Cost:		\$572,220 (9,350 hrs. x \$61.20)

Calculation: 3.5 new grade crossing action plans (high burden) x 700 hrs. ea. +
10 new grade crossing action plans (medium burden) x 550 hrs. ea.
+ 7 new grade crossing action plans (low burden) x 100 hrs. ea. =
Total = 9,350 hours

(c) Updated action plan and implementation report. (1) Each of the 10 States listed in paragraph (d)(2) of this section shall develop and submit an updated State highway-rail grade crossing action plan that addresses each of the required elements listed in paragraph (e) of this section to FRA for review and approval, not later than **[DATE 426 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER]**.

Again, based on input from FRA subject matter experts and feedback from States, FRA groups the 10 States listed in paragraph (e) of this section that previously had an FRA-approved highway-rail grade crossing action plan into three burden levels: high, medium, and low. As noted in the RIA accompanying this proposed rule, of these 10 States, FRA determined that three (3) would have a high burden, three (3) would have a medium burden, and four (4) would have a low burden.

For the three (3) high burden States, it is estimated that it will take approximately 1,100 hours to develop each plan and electronically submit it to FRA. For the three (3) medium burden States, it is estimated that it will take approximately 640 hours to develop each plan and electronically submit it to FRA. For the four (4) low burden States, it is estimated that it will take approximately 225 hours to develop each plan. Again, as noted above at the beginning of question 12, the NPRM RIA states that all costs would be incurred in the first year following issuance of the NPRM/Final Rule. However, FRA is

requesting a **two-year approval** from OMB to account for States that will submit their plans after the first year. Thus, to determine the annual information collection burden for this requirement, the estimated burden listed above must be divided by two (3 plans ÷ 2 x 1,100 hrs. ea. + 3 plans ÷ 2 x 640 hrs. + 4 plans ÷ 2 x 225 hrs. ea. = 1.5 plans x 1,100 hrs. ea. + 1.5 plans x 640 hrs. ea. + 2 plans x 225 hrs.). Total annual burden for this requirement is 3,060 hours.

Respondent Universe:

10
States

Burden time per response:

1,100
hours
+ 640
hours
+ 225
hours

Frequency of Response:

Annually;

one-time

Annual number of Responses:

5 updated grade crossing action plans

Annual Burden:

3,060 hours

Annual Cost:

\$187,272 (3,060 hrs.

x \$61.20)

Calculation: 1.5 updated grade crossing action plans (high burden) x 1,100 hrs. ea. + 1.5 updated grade crossing action plans (medium burden) x 640 hrs. ea. + 2 new grade crossing action plans (low burden) x 225 hrs. ea. = **Total = 3,060 hours**

(2) Each of the 10 States listed in paragraph (d)(2) of this section shall also develop and submit to FRA, not later than **[DATE 426 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER]**, a report describing:

(A) How the State implemented the State highway-rail grade crossing action plan that it previously submitted to FRA for review and approval; and

(B) How the State will continue to reduce highway-rail grade crossing safety risks.

Again, based on input from FRA subject matter experts and feedback from States, FRA groups the 10 States (listed in paragraph (e) of this section) that will need to complete implementation reports into three burden levels: high, medium, and low. Further, as noted in the RIA accompanying this proposed rule, of these 10 States, FRA determined that three (3) would have a high burden, three (3) would have a medium burden, and four (4) would have a low burden.

For the three (3) high burden States, it is estimated that it will take approximately 160 hours to complete each implementation report and electronically submit it to FRA. For the three (3) medium burden States, it is estimated that it will take approximately 120 hours to complete each implementation report and electronically submit it to FRA. For the four (4) low burden States, it is estimated that it will take approximately 40 hours to develop each plan. Again, as noted above at the beginning of question 12, the NPRM RIA states that all costs would be incurred in the first year following issuance of the NPRM/Final Rule. However, FRA is requesting a **two-year approval** from OMB to account for States that will submit their plans after the first year. Thus, to determine the annual information collection burden for this requirement, the estimated burden listed above must be divided by two (3 plans ÷ 2 x 160 hrs. ea. + 3 plans ÷ 2 x 120 hrs. + 4 plans ÷ 2 x 40 hrs. ea. = 1.5 plans x 1,100 hrs. ea. + 1.5 plans x 640 hrs. ea. + 2 plans x 225 hrs.). Total annual burden for this requirement is 500 hours.

Respondent Universe:

10
States

Burden time per response:

160
hours
+ 120
hours
+ 40
hours

Frequency of Response:

Annually

Annual number of Responses:

5 implementation reports

Annual Burden:

500 hours

Annual Cost:

\$30,600 (500 hrs. x

\$61.20)

Calculation: 1.5 implementation reports (high burden) x 160 hrs. ea. +
1.5 implementation reports (medium burden) x 120 hrs. ea. +
2 implementation reports (low burden) x 40 hrs. ea. = **Total =**
500 hours

(d) Electronic submission of updated action plan and implementation report. (1) Each of the 10 States listed in paragraph (d)(2) of this section shall submit its updated highway-rail grade crossing action plan and implementation report electronically through FRA's Web site.

(2) The requirements of paragraph (c) of this section and this paragraph (d) apply to the following States: (A) Alabama; (B) California; (C) Florida; (D) Georgia; (E) Illinois; (F) Indiana; (G) Iowa; (H) Louisiana; (I) Ohio; and (J) Texas.

The burden for this requirement is included above under § 234.11(c)(1) + § 234.11(c)(2) Consequently, there is no additional burden associated with it.

(e) Required elements for State highway-rail grade crossing action plans. Each State highway-rail grade crossing action plan described in paragraphs (b) and (c) of this section shall:

(1) Identify highway-rail grade crossings that:

(A) Have experienced at least one accident or incident within the previous 3 years;

(B) Have experienced more than one accident or incident within the previous 5 years; or

(C) Are at high-risk for accidents or incidents as defined by the State or the District of Columbia in the action plan;

(2) Identify data sources used to identify the category of highway-rail grade crossings selected in paragraph (e)(1) of this section;

(3) Discuss specific strategies, including highway-rail grade crossing closures or grade separations, to improve safety at those crossings over a five-year period;

(4) Provide an implementation timeline for the strategies discussed in paragraph (d)(2); and

(5) Designate an official responsible for managing implementation of the State highway-rail grade crossing action plan.

The burden for this requirement is included above under § 234.11(b) and § 234.11(c) above. Consequently, there is no additional burden associated with it.

(f) *Electronic submission.* (1) When the State or the District of Columbia submits its highway-rail grade crossing action plan or updated action plan and implementation report electronically through FRA's Web site, the State or the District of Columbia shall provide the following information to FRA for the designated official described in paragraph (e)(6) of this section:

- (A) The name and title of the designated official;
- (B) The business mailing address for the designated official;
- (C) The e-mail address for the designated official; and
- (D) The daytime business telephone phone for the designated official.

The burden for this requirement is included above under § 234.11(b) and § 234.11(c) above. Consequently, there is no additional burden associated with it.

(2) If the State or the District of Columbia designates another official to assume the responsibilities described in paragraph (e)(6) of this section, the State or the District of Columbia shall contact FRA and provide the information listed in paragraph (f)(1) of this section for the new designated official.

FRA estimates that approximately four (4) States every year will designate another official to assume the responsibilities described in paragraph (e)(6) of this section and subsequently notify/contact FRA concerning these designations under the above requirement. It is estimated that it will take approximately five (5) minutes to complete each agency notification/contact. Total annual burden for this requirement is .33 hour.

Respondent Universe:

40
States
+
District
of
Colum
bia

Burden time per response:

5
minute

Frequency of Response: On occasion

Annual number of Responses: 4 agency notifications/contacts
 Annual Burden: .33 hour
 Annual Cost: \$20 (.33 hr. x \$61.20)

Calculation: 4 agency notifications/contacts x 5 min =
 .33 hour

(g) *Review and approval.* (1) FRA will update its website to reflect receipt of each new, updated, or corrected highway-rail grade crossing action plan submitted pursuant to this section.

(2)(A) Within sixty (60) days of receipt of each new, updated, or corrected highway-rail grade crossing action plan, FRA will conduct a preliminary review of the action plan to determine if the elements prescribed in paragraph (e) of this section are included in the plan.

(B) Each new, updated, or corrected State highway-rail grade crossing action plan shall be considered conditionally approved for purposes of this section unless FRA notifies the designated official described in paragraph (e)(5) of this section within sixty (60) days of receipt that the highway-rail grade crossing action plan is incomplete or deficient.

(C) FRA reserves the right to conduct a more comprehensive review of each new, updated, or corrected State highway-rail grade crossing action plan within 120 days of receipt.

(3) If FRA determines that the new, updated, or corrected highway-rail grade crossing action plan is incomplete or deficient:

(A) FRA will provide email notification to the designated official described in paragraph (e)(5) of this section of the specific areas in which the plan is deficient and allow the State or the District of Columbia to complete the plan and correct the deficiencies identified.

(B) Within 60 days of the date of FRA's email notification that the highway-rail grade crossing action plan is incomplete or deficient, the State or District of Columbia shall correct all deficiencies and submit the corrected State highway-rail grade crossing action

plan to FRA for approval. The State or District of Columbia shall submit its corrected highway-rail grade crossing action plan electronically through FRA's Web site in PDF format.

Again, as noted above, FRA groups the 40 States and District of Columbia, which do not have an FRA-approved highway-rail grade crossing action plan and will have to develop a **new** plan, into three burden levels: high, medium, and low. As noted in the RIA accompanying this proposed rule, of these 40 States and the District of Columbia, FRA determined that seven (7) would have a high burden, 20 would have a medium burden, and 14 would have a low burden.

As noted previously, the RIA accompanying this NPRM estimates that all estimated State burdens will be incurred in the first year after the NPRM/Final Rule takes effect. However, FRA is requesting a **two-year approval** from OMB to account for States that will submit their plans after the first year. Thus, to determine the annual information collection burden for this requirement, the estimated burden listed above must be divided by two.

Of the estimated seven (7) high burden States, FRA estimates that approximately two (2) State highway-rail grade crossing action plans will be found incomplete or deficient and will need to be corrected/revised under the above requirement. It is estimated that it will take approximately 105 hours per railroad per year to correct each State highway-rail grade crossing action plan and resubmit it to FRA. Of the 20 medium burden States, FRA estimates that approximately six (6) State highway-rail grade crossing action plans will be found incomplete or deficient and will need to be corrected/revised under the above requirement. It is estimated that it will take approximately 60 hours per railroad per year to correct each State highway-rail grade crossing action plan and resubmit it to FRA. Of the 14 low burden States, FRA estimates that approximately four (4) State highway-rail grade crossing action plans will be found incomplete or deficient and will need to be corrected/revised under the above requirement. It is estimated that it will take approximately 24 hours per railroad per year to correct each State highway-rail grade crossing action plan and resubmit it to FRA. However, FRA is requesting a **two-year approval** from OMB to account for States that will submit their plans after the first year. Thus, to determine the annual information collection burden for this requirement, the estimated burden listed above must be divided by two (2 plans ÷ 2 x 105 hrs. ea. + 6 plans ÷ 2 x 60 hrs. + 4 plans ÷ 2 x 24 hrs. ea. = 1 plan x 105 hrs. ea. + 3 plans x 60 hrs. ea. + 2 plans x 24 hrs.). Total annual burden for this requirement is 333 hours.

Respondent Universe:

40
States
+

Burden time per response:

105
hours
+ 60
hours
+ 24
hours

Frequency of Response:

Annually

Annual number of Responses:

1 corrected State highway-rail grade
crossing action plans + 3 corrected State
highway-rail grade crossing action plans
222 hours + 2 corrected State
highway-rail grade crossing action plans

Annual Burden:

333 hours

Annual Cost:

\$20,380 (333hrs. x

\$61.20) (rounded)

Calculation: 1 high burden State revised/corrected State highway-rail grade crossing action plans x 105 hrs. + 3 medium burden State revised/corrected State highway-rail grade crossing action plans x 60 hrs. + 2 low burden State revised/corrected State highway-rail grade crossing action plans x 24 hrs. = 333 hours

Again, based on input from FRA subject matter experts and feedback from States, FRA groups the 10 States listed in paragraph (e) of this section that previously had State highway-rail grade crossing action plans into three burden levels: high, medium, and low.

Of the three (3) high burden States, FRA estimates that approximately one (1) State highway-rail grade crossing action plans will be found incomplete or deficient and will be needed to be corrected/revised under the above requirement. It is estimated that it will take approximately 165 hours per railroad to correct each State highway-rail grade crossing action plan and resubmit it to FRA. Of the three (3) medium burden States, FRA estimates that approximately one (1) State highway-rail grade crossing action plans will be found incomplete or deficient and will be needed to be corrected/revised under the above requirement. It is estimated that it will take approximately 96 hours per railroad to

correct each State highway-rail grade crossing action plan and resubmit it to FRA. Of the four (4) low burden States, FRA estimates that approximately one (1) State highway-rail grade crossing action plans will be found incomplete or deficient and will be needed to be corrected/revised under the above requirement. It is estimated that it will take approximately 34 hours per railroad to correct each State highway-rail grade crossing action plan and resubmit it to FRA. However, FRA is requesting a **two-year approval** from OMB to account for States that will submit their plans after the first year. Thus, to determine the annual information collection burden for this requirement, the estimated burden listed above must be divided by two (1 plan ÷ 2 x 165 hrs. ea. + 1 plan ÷ 2 x 96 hrs. + 1 plan ÷ 2 x 34 hrs. ea. = .5 plan x 165 hrs. ea. + .5 plan x 96 hrs. ea. + 1 plan x 34 hrs.). Total annual burden for this requirement is 148 hours.

Respondent Universe:

10
States

Burden time per response:

165
hours
+ 96
hours
+ 34
hours

Frequency of Response:

On occasion

Annual number of Responses: .5 revised corrected State highway-rail grade crossing action plans + .5 revised corrected State highway-rail grade crossing action plans + .5 revised corrected State highway-rail grade crossing action plans

Annual Burden: 148 hours

Annual Cost: \$9,058 (148 hrs. x \$61.20) (rounded)

Calculation: .5 high burden State revised/corrected State highway-rail grade crossing action plans x 165 hrs. + .5 medium burden State revised/corrected State highway-rail grade crossing action plans x

96 hrs. +.5 low burden State revised/corrected State highway-rail grade crossing action plans x 34 hrs. = 148 hours

Total annual requested burden for this entire information collection is **13,391** hours, and **42 responses**. Total dollar equivalent cost for these requested burden hours is **\$819,550**.

13. Estimate of total annual costs to respondents.

There are no additional costs to respondents besides those enumerated in the answer to question number 12 above.

14. Estimate of Cost to Federal Government.

Because some States/DC may submit their State Action Plans, plan updates, and plan implementation reports after the first year, and because FRA is requesting a two-year approval to account for this situation, FRA is calculating the annual cost to the Federal Government over a two-year period. Thus, the annual cost over **two years** to the Federal Government associated with the information collection requirements of this proposed rule is comprised of the sum of the following six (6) costs:²

- I. In support of the Plan submission process, FRA would create a **secure submission site**. Because FRA plans to rely on existing software, this analysis includes only the cost of employee time to create this site. FRA estimates that it would take one (1) employee eight (8) hours to create this site.

Calculation: 1 employee creating site x 8 hrs. x \$84 p/hr. = **\$672 ÷ 2 = \$336**

- II. For preparing and conducting a webinar, this analysis includes the cost of the employee time to conduct the webinar for the 40 States/DC (6 hours) developing and implementing their State Action Plans and the cost of the employee time (2 hours) to conduct the webinar for the initial 10 States that previously created SAPs that will be updating these plans. FRA estimates that it would take one (1) employee eight (8) hours to create this site.

Calculation: 1 employee conducting seminar (40 States/DC) x 6 hrs. x \$84 p/hr. = **\$504 ÷ 2 = \$252**

Calculation: 1 employee conducting seminar (10 States) x 2 hrs. x \$84 p/hr. = **\$168 ÷ 2 = \$84**

- III. For reviewing plan updates and plan implementation reports (10 States), FRA estimates that it would take one (1) employee eight (8) hours to review a State's plan update and

² Wage rate estimates are calculated for FRA Headquarters employees at the GS-13-1 grade level, which amounts to \$84 per hour (\$47.52 per hour + 75% overhead).

report.

Calculation: 10 plans x 8 hrs. x \$84 p/hr. = **\$6,720** ÷ 2 = **\$3,360**

- IV. For reviewing the resubmission of plan updates and plan implementation reports (10 States), FRA estimates that it would take one (1) employee two (2) hours to review a resubmission of a State's plan update and report.

Calculation: 3 plans x 2 hrs. x \$84 p/hr. = **\$504** ÷ 2 = **\$252**

- V. For reviewing new State Action Plans for 41 States/DC, FRA estimates that it would take one (1) employee six (6) hours to review a State's/DC's plan.

Calculation: 41 plans x 6 hrs. x \$84 p/hr. = **\$20,664** ÷ 2 = **\$10,332**

- VI. For reviewing resubmission of new plans, FRA estimates that it would take one (1) employee two (2) hours to complete the review.

Calculation: 12 plans x 2 hrs. x \$84 p/hr. = **\$2,016** ÷ 2 = **\$1,008**

TOTAL ANNUAL COST = \$15,624

15. Explanation of program changes and adjustments.

As noted in the summary on page 1 of this document, this information collection submission is a request for reinstatement of a previously approved OMB Control Number (**OMB No. 2130-0589**), which was discontinued at the end of August 2016, when all previous requirements had been completed by the initial 10 States. There is zero (0) burden currently in the OMB inventory under this Control Number.

The total burden requested for this information collection submission is **13,391 hours** and **42 responses**. The dollar equivalent cost for these requested burden hours is **\$819,550**. The entire requested burden is a **program change**. The table that completely itemizes all information collection requirements for this proposed rule and their associated burden is included below.

TABLE OF PROGRAM CHANGES

CFR Section	Respondent Universe	Total Annual Responses	Average Time per Response	Total Annual Burden Hours ³	Total Annual Dollar Cost Equivalent
234.11 – State Highway-Rail Grade Crossing Action Plans – Development and submission of New Plans (40 States + DC) -- State Highway-Rail Grade Crossing Action Plans – Development and submission of updated plans for listed States in Section 234.11e with FRA Previously Plans (10 States) -- State Highway-Rail Grade Crossing Action Plan Implementation Reports (10 listed States in Section 234.11e) -- Notification to FRA by State or District of Columbia (DC) of another official to assume responsibilities described in paragraph (e)(6) of this Section -- FRA Review and approval of State Highway-Rail Grade Crossing Action Plans: Disapproved plans needing revision (40 States + DC) -- FRA Review and approval of State Highway-Rail Grade Crossing Action Plans: Disapproved plans needing revision (Reports (10 listed States in Section 234.11e)	40 States + District of Columbia	3.5 plans + 10 plans + 7 plans	700 hours + 550 hours + 200 hours	9,350 hours	\$572,220
	10 States	1.5 plans + 1.5 plans + 2 plans	1,100 hours + 640 hours + 225 hours	3,060 hours	\$187,272
	10 States	1.5 reports + 1.5 reports + 2 reports	160 hours + 120 hours + 40 hours	500 hours	\$30,600
	50 States + District of Columbia	4 notifications	5 minutes	.33 hour	\$20
	40 States + District of Columbia	1 plan + 3 plans + 2 plans	105 hours + 60 hours + 24 hours	333 hours	\$20,380
	10 States	.5 plan + .5 plan + .5 plan	55 hours + 32 hours + 11 hours	148 hours	\$9,058

³ As noted in the RIA accompanying this proposed rule, the States/DC will incur the costs for this proposed rule's requirements in the first year. However, since FRA is requesting a two-year approval from OMB for the information collection associated with this proposed rule, FRA has divided by two (2) the number of burden responses, burden hours, and dollar equivalent cost to obtain the average annual burden once the proposed/final rule goes into effect. Also, please note that the dollar equivalent cost for the estimated burden hours is based on Bureau of Labor Statistics data for the average hourly wage for State employees responsible for submitting a State highway-rail grade action plan/ updated plans/ implementation reports and amounts to \$61.20 per hour. Please see the RIA for this proposed rule for more details.

CFR Section	Respondent Universe	Total Annual Responses	Average Time per Response	Total Annual Burden Hours	Total Annual Dollar Cost Equivalent
TOTAL	N/A	42 (plants/ reports/ notifications)	N/A	13,391 hours	\$819,550

Program changes shown above *increased* the burden by *13,391 hours* and by *42 responses*. The total dollar equivalent cost for these requested burden hours is *\$819,550*.

The current OMB agency inventory for this requested reinstated OMB Control Number shows a total burden of *zero (0) hours and zero (0) responses*, while the present submission reflects a total burden of *13,391 hours and 42 responses*. Hence, there is a total increase in burden of **13,391 hours and 42 responses**.

There are no additional costs to respondents.

16. Publication of results of data collection.

There are no plans for publication of this submission. The information will be used exclusively for the purposes of determining compliance with U.S. laws and FRA safety regulations.

17. Approval for not displaying the expiration date for OMB approval.

Once OMB approval is received, FRA will publish the approval number for these information collection requirements in the *Federal Register*.

18. Exception to certification statement.

No exceptions are taken at this time.

Meeting Department of Transportation (DOT) Strategic Goals

This information collection supports DOT's top strategic goal, namely transportation safety. Without this collection of information, FRA would be unable to carry out a Congressional mandate, and FRA's goal of enhancing national rail safety would be significantly impaired. Specifically, if FRA were unable to collect the mandated information or were to collect it less frequently, FRA would have had no way to know whether the additional 40 States/DC have developed and implemented highway-rail grade crossing action plans to reduce/eliminate highway-rail grade crossing accidents/incidents

and the corresponding injuries, fatalities, and property damage that almost invariably accompany them. Without the generation and implementation of these highway-rail grade crossing action plans, the 40 States/DC would not have identified highway-rail grade crossings that have experienced recent highway-rail grade crossing accidents/incidents or at high risk for such accidents/incidents and would not have devised specific strategies or measures to improve safety at these crossings. One of FRA's top priorities is to reduce the number and severity of accidents/incidents at highway-rail grade crossings throughout the country, especially those with multiple accidents/incidents.

Also, without this proposed collection of information, the initial 10 States with the most reported highway-rail grade crossing accidents/incidents at public and private crossings during the period 2006 to 2008 would not have updated their highway-rail grade crossing action plans and would not have submitted the required reports describing the actions that they have taken to implement their plans and how they will continue to reduce highway-rail grade crossing safety risks. These updated plans and reports will enable FRA to monitor and assess the implementation progress of these initial 10 States in carrying out their strategies to make these crossings and rail/motor vehicle transportation for the affected communities safer in these States.

Without the information collected, FRA could not be assured that every one of these 10 identified States are focusing on those crossings that have experienced multiple accidents or are at high risk for such accidents, and it could not be assured that their plans cover the required five-year period.

Without this proposed collection of information, a new and essential means of enhancing highway-rail grade safety throughout the 50 States/DC aimed at saving lives would be unavailable to FRA and its Highway-Rail Grade Crossing Division.

In sum, the collection of information helps FRA to promote and enhance safe rail transportation throughout the United States.

In this information collection, as in all its information collection activities, FRA seeks to do its utmost to fulfill DOT Strategic Goals and to be an integral part of One DOT.