

**1FEDERAL RAILROAD ADMINISTRATION**  
**Inquiry into Blocked Highway-Rail Grade**  
**Crossings throughout the United States**  
**FRA F 6180.175**  
**SUPPORTING JUSTIFICATION**  
**OMB Control No. 2130-0630**

Summary of Submission

- This submission is a request for a revision of the last three-year approval granted by the Office of Management and Budget (OMB) on November 22, 2019, which now expires on November 30, 2022.
- The Federal Railroad Administration (FRA) published the required 60-day *Federal Register* Notice on April 1, 2022. See 87 FR 19176. FRA received one public comment in response to this Notice.
- The adjustment increased the burden by 783 hours and by 10,862 responses.
- The answer to question number 12 itemizes information collection requirements.
- The answer to question number 15 itemizes adjustments.

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**1. Circumstances that make the collection of information necessary.**

In 2020, FRA created a dedicated website allowing the public, law enforcement personnel, and first responders to use web-based forms to voluntarily submit information about blocked crossings to FRA. Under the currently approved information collection request, users provide information regarding the location, date, time, duration, and immediate impacts of highway-rail grade crossings blocked by slow-moving or stationary trains. FRA uses the data collected to gain a more complete picture of where, when, for how long, and what impacts result from reported blocked crossing incidents.

Additionally, FRA uses the information to respond to congressional inquiries so that congressional staff can respond to their constituents. Furthermore, FRA uses the information gathered to facilitate meetings, outreach, and other solutions for stakeholders to reduce or eliminate blocked crossing concerns.

On November 15, 2021, the Infrastructure Investment and Jobs Act of 2021 (Pub. L. 117-58) “Bipartisan Infrastructure Law (BIL)” was enacted. In addition to mandating that FRA establish an online portal and corresponding database to receive information regarding blocked highway-rail grade crossings, section 22404 of BIL “encourages each complainant to report the blocked crossing to the relevant railroad.” Therefore, in preparation for this new statutory mandate, FRA proposes to modify the existing web-

based forms by adding one question, “have you contacted the railroad?” Otherwise, the rest of the questions on the web-based forms will remain the same.<sup>1</sup>

Currently, there are no Federal laws or regulations that specifically address how long a train may occupy a crossing, whether stationary or operating at slow speeds. Some States and local municipalities have laws that vary in how long trains are permitted to occupy crossings. However, there are legitimate operational reasons why trains may block grade crossings, including trains stopping for compliance with Federal regulatory requirements (such as required safety tests and inspections). Therefore, some courts have found that State laws and regulations that address how long trains may occupy grade crossings have the effect of regulating aspects of railroad operations currently regulated by FRA and are thus preempted by the Federal railroad safety statutes and regulations. (See *CSX Transp., Inc. v. City of Plymouth*, 283 F.3d 812 (6<sup>th</sup> Cir. 2002)). In addition, some courts have found State laws and regulations attempting to limit the time trains are permitted to occupy grade crossings to be preempted by the Interstate Commerce Commission Termination Act, which provides the Surface Transportation Board with broad jurisdiction over railroad operations. (See *Elam v. Kansas City So.*, 635 F.3d 796 (5<sup>th</sup> Cir. 2011)).

There are potential safety concerns with crossings that are blocked by trains. For instance, pedestrians may crawl under or through stationary trains. Also, emergency response vehicles and first responders may be delayed when responding to an incident or transporting persons to a hospital. 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. There are also potential economic impacts that affect businesses, such as stores or restaurants not being accessible to a customer base for an extended time period. Finally, highway-rail grade crossings that are blocked for extended time periods may create societal nuisances, such as roadway congestion, delayed mail service and deliveries, disrupted school and work arrival and dismissal, or missed appointments.

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

FRA is revising the blocked inquiry reporting form by adding a question requesting the users to note if they have contacted the railroad prior to submitting information about a blocked crossing.

The information collection is gathered using two methods:

1. A link FRA’s existing website directs users to a web-based form to submit information about a blocked crossing to FRA. Access to this web form is unrestricted

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<sup>1</sup> The average time per response will be remain at 3 minutes per response since the modification made under BIL requirement is *de minimis*.

and available to the general public.

2. A link FRA's existing website directs Law Enforcement Personnel (LE) and first responders to submit information about a blocked crossing. Access for LE and first responders to use the form is restricted to a username and password, managed by FRA to ensure only LE and first responders can access this form.

FRA uses the data to gain a more complete picture of where, when, for how long and what impacts result from reported blocked crossing incidents. FRA maintains this data to facilitate meetings, outreach, and other solutions between stakeholders to reduce or eliminate blocked crossing concerns. Also, FRA is better able to respond to congressional inquiries so that congressional staff can respond to their constituents.<sup>2</sup>

### **3. Extent of automated information collection.**

The collection of information is completed through electronic means over the internet. The website portal contains form questions to be entered and submitted online by the general public for free with unrestricted access. The existing Rail Crossing Locator smartphone app also contains a link to the online website portal. Finally, LE and first responders have free access via a secured login website to the same form to report the information to FRA.

There is no cost to the general public, LE or first responders to access the form and submit the information. It is more efficient and less burdensome than printing hard-copy forms and mailing them to FRA. Using the web form also reduces FRA's costs by automating how the data is received.

### **4. Efforts to identify duplication.**

FRA encourages reports of blocked crossings through the website portal only and not through the generic "Contact Us" link. FRA is also looking into the feasibility of adding a link to the blocked crossing website portal from FRA's Highway-Rail Crossing and Trespasser Programs Division website to further facilitate the reporting of blocked crossing incidents to the website portal.

### **5. Efforts to minimize the burden on small businesses.**

There are no impacts to small businesses anticipated in this data collection.

### **6. Impacts of less frequent collection of information.**

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<sup>2</sup> Note: The data collection is not designed to provide a representative sample or create generalizable statistics. Additionally, the data gathered from this collection is not suitable for use in budgetary requests, nor regulatory proposals.

Along with the fast and efficient movement of people and goods throughout the United States, FRA's core mission is to improve safety by reducing the number of rail accidents/incidents that occur annually and the injuries, property damage, and fatalities that accompany them. Both missions may be compromised by blocked highway-rail grade crossings. Without accurate data on the locations, times, durations, and impacts of blocked crossings, FRA cannot effectively help the parties involved mitigate or eliminate the safety, economic, and quality of life issues from blocked crossings.

**7. Special circumstances.**

There are no special circumstances related to the information being collected for this study.

**8. Compliance with Title 5 Code of Federal Regulations Section 1320.8.**

As required by the Paperwork Reduction Act of 1995 (PRA) and 5 CFR 1320, FRA published a notice in the Federal Register on April 1, 2022, soliciting comments.<sup>3</sup> FRA received one comment from the Association of American Railroads (AAR) related to the proposed collection of information.

In its comment letter, AAR expressed its concerns about the reliability of the data collected by the blocked crossing portal, noting the potential for the public to submit reports of trains moving through highway-rail grade crossings in the ordinary course of operations rather than of avoidable, blocked crossing incidents. AAR also noted that there is no mechanism in place to guard against individuals submitting multiple reports of a single event, asserting that a small number of people could repeatedly submit a high volume of complaints regarding trains at specific locations. Finally, AAR stated that FRA failed take into account the paperwork burden imposed when FRA requests further information from a railroad as part of its blocked crossing investigation.

As referenced below, the Infrastructure Investment and Jobs Act (BIL) requires that FRA maintain an online portal and corresponding database to receive information from the public regarding blocked highway-rail grade crossings. Section 22404(i) of BIL requires FRA to submit a report to Congress that discusses, among other things, whether FRA's blocked crossing portal continues to be an effective method to collect blocked crossing information, as well as changes that could be made to improve its effectiveness. On June 14, 2022, FRA published a request for information (RFI) in the *Federal Register* soliciting comments on how FRA's engagement with affected parties and changes to the portal and related operations can improve the effectiveness of the portal. See 87 FR 36036. FRA encourages AAR and other affected parties to submit its suggestions on how to improve the effectiveness of the portal to the RFI docket.

FRA appreciates AAR's comments about the quality of the blocked crossing portal's

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<sup>3</sup> 87 FR 19176.

collected data and seeks comments through the RFI on ways in which it can be improved. Before FRA follows up with a railroad on a reported blocked crossing, FRA reviews information available about the blocked crossing incident. If FRA determines that the blocked crossing arose because a train moved through a highway-rail grade crossing in the ordinary course of operations, FRA will not investigate the incident further. In addition, if FRA determines that the railroad had an operational justification for blocking the crossing, FRA will include this information in its records.

Since the introduction of the blocked crossing portal in 2020, FRA has streamlined its procedures for following up with railroads in response to blocked crossing reports. In response to AAR feedback that FRA’s inquiries were too onerous, FRA completes the majority of its follow-up requests after a brief phone call with the involved railroad or during stakeholder meetings. Additionally, FRA also recognizes that railroads may not collect the requested information and, in those circumstances, FRA considers the response of “not known” sufficient. Nonetheless, FRA agrees with AAR that it should adjust its estimated paperwork burdens to account for railroad responses to FRA’s inquiries. Accordingly, FRA is updating its burden estimates in the re-published PRA table to better account for railroads’ burdens in response to FRA’s follow-up inquiries.

**9. Payment or gifts to respondents.**

There are no payments or gifts for the respondents of this collection.

**10. Assurances of Confidentiality.**

There will be no personally identifying information collected from the respondents. The questions on the form will only ask about the date, time, location, duration, and impacts of the blocked crossings. The respondent will not be able to submit any personal information, such as their name, address, phone number, email address, etc. Therefore, there are no concerns with confidentiality.

**11. Justification for collection of sensitive information.**

There will be no sensitive information collected from the respondents. The questions on the form will only ask about the date, time, location, duration, and impacts of the blocked crossings.

**12. Estimate of burden hours for information requested.**

Section	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C) = A * B	Total cost equivalent (D) = C * wage rate <sup>4</sup>
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<sup>4</sup> For the value of the public's time, FRA used an hourly rate of \$27 per hour from the Department of Labor, Bureau of Labor Statistics (BLS). For law enforcement and first responder respondents, FRA used an hourly wage rate of

General public via the unrestricted form on the FRA website	15,500 responses	3 minutes	775 hours	\$20,925
Law enforcement personnel (including first responders) via the limited access form on the FRA website	350 responses	3 minutes	17.5 hours	\$486
Monthly meeting between FRA and Class I railroads on blocked crossings—Review of blocked crossings data from FRA’s blocked crossings portal	12 meetings and reviews	20 hours	240 hours	\$18,586
Total	15,862 responses	N/A	1,033 hours	\$40,406

**13. Estimate the total annual costs to respondents.**

There are no additional costs to respondents in addition to those in question number 12 above.

**14. Estimate of costs to the Federal Government.**

FRA estimates that approximately 520 hours (at the GS-12 level) are spent processing the respondents’ submissions. To calculate the government administrative cost, the 2022 Office of Personnel Management hourly wage rates was used. The average wage (step 5) was used as a midpoint. Wages were considered at the burdened wage rate by multiplying the actual wage rate by an overhead cost of 75 percent (or times 1.75). Multiplying 520 times \$48.78 per hour times 1.75 (75 percent for overhead) equals \$44,392 in annualized costs.

**15. Explanation of program changes or adjustments.**

This submission is a revision to a current collection of information. Currently, the OMB inventory for this collection of information shows a total burden of 250 hours and 5,000 responses, while this submission reflects a total burden of 1,033 hours and 15,862 responses. Overall, the burden increased by 783 hours and increased by 10,862 responses from the last approved submission due to adjustments.

CFR Sections	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Difference	Burden Hours (Previous Submission)	Burden Hours (This Submission)	Difference
General public via the unrestricted	3,500 (3 minutes)	15,500 (3 minutes)	12,000 responses	175 hours	775 hours	600 hours

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\$49.74 per hour that includes an average benefit rate of \$20.87 from BLS’ Occupational Employment Statistics (OES) 11-3000, classified within NAICS 999200, State Government—excluding schools and hospitals. See [https://www.bls.gov/oes/current/naics4\\_999200.htm](https://www.bls.gov/oes/current/naics4_999200.htm). For railroad respondents, FRA used an hourly wage rate of \$77.44 that includes a 75-percent overhead charge from the Surface Transportation Board’s 2020 Full Year Wage A&B data series for railroad workers.

form on the FRA website						
General Public via the FRA Crossing Locator Phone Application ( <i>no app; zero out this section</i> ).	500 (3 minutes)	0	-500 responses	25 hours	0	-25 hours
Law enforcement personnel (including first responders) via the limited access form on the FRA website	1,000 (3 minutes)	350 (3 minutes)	-650 responses	50 hours	18	-32 hours
Monthly meeting between FRA and Class I railroads on blocked crossings— Review of blocked crossings data from FRA’s blocked crossings portal	0	12 (20 hours)	12 responses	0	240 hours	240 hours
Total	5,000 responses	15,862 responses	10,862 responses	250 hours	1,033 hours	783 hours

- FRA added an additional burden (240 hours) in response to AAR’s comments that FRA should account for railroads’ estimated paperwork burdens in responding to FRA’s follow up inquiries on blocked crossings.
- FRA anticipated an increase in the number of responses from the general public.
- FRA anticipated a decrease in the number of responses from law enforcement personnel and first responders.

**16. Publication of results of data collection.**

As required by the BIL, FRA will implement and make publicly available procedures for sharing any nonaggregated information received through the blocked crossing portal with the public. FRA is also required to publish an annual report on a public website regarding the blocked crossing program, including the underlying causes of blocked crossings, program challenges, and other findings. One year after the enactment of the BIL, FRA will also be submitting a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure regarding data collected from the blocked crossing portal.

**17. Approval for not displaying the expiration date of OMB Approval.**

FRA is not seeking approval to not display the expiration date.

**18. Exceptions to certification statement.**

No exceptions are taken at this time.