



U.S. Department
of Transportation

Region VII

801 I Street, Suite 466
Sacramento, California 95814-255

**Federal Railroad
Administration**

March 27, 2019

Zoe Lofgren
Congresswoman
19th District, California
635 North First Street, Suite B
San Jose, CA 95112

RECEIVED

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**Zoe Lofgren, M.C.
District Office**

Dear Zoe Lofgren:

We received your letter dated March 18, 2019 indicating that the Union Pacific Railroad (UP) has recently changed its operating schedule with increasing train activity in the evening hours which has led to a growing number of calls and written correspondence by your constituents. The Federal Railroad Administration (FRA) conducted an investigation both in the day and evening hours, which included: interviews of Union Pacific (UP) Managers, and general public, multiple site inspections, and observations of the use of train horns.

On Tuesday March 19, 2019, a Grade Crossing Safety Specialist contacted your office to inform that FRA would be opening an investigation immediately based on your letter. We received some additional specific information from your staff regarding the locations of the complaints. This useful information helped us to focus on the areas most affected. On Thursday, March 21, 2019, through Friday March 22, 2019, FRA's Region 7 Grade crossing team conducted field investigations, primarily in the vicinity of Downtown San Jose and Japantown. The area of the investigation included 14 highway-rail grade crossings in the vicinity of the complainants' addresses. Along with the field investigations, the FRA team conducted interviews of the Union Pacific Director of Regional Operations, Manager of Road Operations, and the general public.

A phone interview with the UP Manager of Road Operations indicated that there was an increase of 1 train trip per night. There is a total of 3 trains per day between the hours of 9pm and 3am, Sunday through Friday on the Warm Springs Subdivision.

The field inspections observed multiple homeless encampments, graffiti, and signs of significant illegal trespassing on the railroad right-of-way. During the observation of UP train movements, the train horn was sounded as prescribed by 49 CFR 222.21(a) which states:

"Except as provided in this part, the locomotive horn on the lead locomotive of a train, lite locomotive consist, individual locomotive or lead cab car shall be sounded when such locomotive or lead cab car is approaching a public highway-rail grade crossing. Sounding of the locomotive horn with two long blasts, one short blast and one long blast shall be initiated at a location so as to be in accordance with paragraph (b) of this section and shall be repeated or prolonged until the locomotive occupies the crossing. This pattern may be varied as necessary where crossings are spaced closely together."

In addition to the above, a locomotive engineer may sound the locomotive horn when:

- Grade crossing warning devices are malfunctioning.

- Grade crossing warning systems are temporarily out of service during inspection, maintenance, or testing.
- To provide a warning to animals, vehicle operators, pedestrians, trespassers or crews on other trains.
- In any emergency situation if, in the locomotive engineer's sole judgment, such horn action is appropriate in order to prevent imminent injury, death, or property damage.

Trespassing is a contributing factor to the horn use as determined by this investigation. If there is a trespasser or homeless encampment on the railroad right-of-way, the engineer is required by rule to sound the horn.

Regarding establishing a Quiet Zone, it must be established by the Public Authority having jurisdiction of the public roadway which crossed the railroad tracks, in this case the City of San Jose. The FRA's role in the establishment of the Quiet Zone is to ensure the Public Authority establishes a quiet zone consistent with the provisions of 49 CFR part 222. Additionally, the State of California Public Utilities Commission (CPUC) is the State agency responsible for Highway and Road Safety. The CPUC must approve all modifications to the grade crossing warning systems associated with the quiet zone.

The City of San Jose is aware of the process to establish a quiet zone since they have already established a quiet zone at 15 highway-rail crossings in 2005.

FRA investigated the complaint and concluded there was no violation of federal regulations. At the direction of FRA Administrator, Ronald Batory, the FRA Region 7 team has scheduled a meeting of Law Enforcement Officials throughout Region 7 for April 16, 2019. The invitees include the San Jose Police Department and the Union Pacific Public Safety Departments. The purpose of this meeting is to have a listening session facilitated by the FRA Regional Grade Crossing Specialist and Transportation Specialist from our Washington DC Headquarters Grade Crossing and Trespass Branch. This is part of the "Implementation Milestones and Timeline by Strategic Area" identified in "Report to Congress: National Strategy to Prevent Trespassing on Railroad Property, October 2018." Although we have yet to receive confirmation from San Jose or the Union Pacific Railroad, it is our intent to have a specific discussion regarding the trespass and homeless encampment issues in the City of San Jose and the ways the Federal Government may assist in expeditious mitigation of trespassing, the risk of fatality, and the associated costs to commerce and society.

Based on field inspections, train ride observations, and interviews, the railroad engineers are following Federal Railroad Administrations regulations per 49 CFR Part 222 Use of Locomotive Horns at Public Highway-Rail Grade Crossings, and UP Operating Rules. Until the homeless encampments are removed, and trespassing is addressed, it is the locomotive engineer's sole judgement to take appropriate horn action to attempt to prevent imminent injury, death, or property damage. The FRA will continue to work with San Jose and encourage the enforcement of local laws to mitigate risk of fatality.

Respectfully,



James Jordan,
Regional Administrator
DOT – Federal Railroad Administration (R7)
801 I Street, Suite 466
Sacramento, California 95814-2559
Telephone: (916) 498-6540