

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION

OMB CONTROL NO. 2130-0004;
DOCKET NO. FRA-2021-0006-N-10;
INFORMATION COLLECTION REQUEST - 49 C.F.R. PART 229

COMMENTS OF
THE ASSOCIATION OF AMERICAN RAILROADS
AND
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

The Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association, on behalf of themselves and their member railroads (the Railroads), submit the following comments in response to FRA's August 23, 2021, information collection request (ICR; 60-day notice) reflecting the agency's renewal of a paperwork collection approval for the locomotive safety standards at 49 C.F.R. Part 229.¹

FRA's notice claims an approximately 94% decrease in the estimate of paperwork collection burdens on the railroad industry from the collection and recordkeeping requirements approved in 2018 under this same OMB control number – with little to no substantive change in the scope of the requirements. More specifically, FRA's notice estimates an annual paperwork

¹ AAR is a trade association whose membership includes freight railroads that operate approximately 83% of the line-haul mileage, employ 95% of the workers, and account for 97% of the freight revenues of all railroads in the United States; and passenger railroads that operate intercity passenger trains and provide commuter rail service. ASLRRRA is a non-profit trade association representing the interests of approximately 500 short line and regional railroad members and railroad supply company members in legislative and regulatory matters. Short lines operate 50,000 miles of track in 49 states, touching in origination or termination one out of every four cars moving on the national railroad system, serving customers who otherwise would be cut off from the national railroad network. 86 Fed. Reg. 47,195, Aug. 23, 2021.

burden of 232,348 hours, while in 2018 OMB determined the collection burden for complying with essentially the same rules was 3,815,751 hours.

The only information publicly available to compare FRA's significant reduction in estimated burdens is a chart appearing in the 60-day notice.² The chart reflects that in some instances FRA has excluded estimates of paperwork burdens that were included in the 2018 proceeding, even though the provisions creating those burdens still appear in FRA regulation.³ The chart also reflects that for many different categories, FRA simply substantially reduced the estimated time to complete the paperwork collection requirements as compared with the estimates approved by OMB in 2018.

For example, in 2018 FRA estimated 31 to 33 minutes were necessary to complete the required locomotive daily inspection and required record under 49 C.F.R. § 229.21. The record must contain the name of the railroad carrier; the initials and the number of the locomotive; the place, date, and time of the inspection; a description of the non-complying conditions disclosed by the inspection; and the signature of the employee making the inspection. In the 60-day notice, FRA has reduced that estimate to three minutes for completion of a paper record, or one minute for an electronic record. FRA has reduced the total 2018 burden for the locomotive daily inspection requirement from 3,615,647 hours to 148,860 hours -- even though the locomotive daily inspection regulation at § 229.21 *has not changed* since 2002.

² 86 Fed. Reg. at 47,196.

³ See the Attachment to this comment listing some of the provisions for which FRA estimated reductions in associated time burdens but which rationale for such change is not yet publicly available.

Under 5 C.F.R. § 1320.3(b) and OMB guidance addressing estimation of paperwork burdens, the time needed to compile the necessary information, the employee training involved to be able to respond to collection burdens, and numerous other relevant considerations must be included in the calculation of associated time burdens.⁴ FRA offers no explanation of how the necessary information to complete the locomotive daily inspection form can be gathered and the form completed in a compliant manner in one to three minutes, and instead appears to have simply reduced the estimates dramatically. If there is some basis for this and the other estimate changes listed in the Attachment to this comment – such as updated time studies or other data that would support the accuracy of the agency’s reduced burden estimates -- the Railroads request that it be produced and included in the record.

As another example of changes from the approved 2018 calculation, in 2018 FRA estimated under § 229.25(d) that approximately 700 locomotive event recorders would fail the pre-maintenance test required under that section annually and estimated a total burden of 350 hours to conduct the required inspections and tests and to make the required notation on the data verification result. These activities have simply been dropped from FRA’s calculation, even though the regulatory requirement remains in place, unchanged.⁵

FRA’s estimate here, taken at face value, would lead a reader (whether Congress, OMB, or industry stakeholders) to believe that FRA has significantly changed regulations in order to

⁴ See <https://pra.digital.gov/burden/>.

⁵ There also appears to be an error in the notice related to the § 229.317(g) requirement that railroads must conduct regular and periodic evaluations of the effectiveness of certain required training. The chart in the 60-day notice estimates 90 annual evaluations will be conducted and will take two hours each. However, the total time estimate for this burden in the 60-day notice is listed as 3 hours, instead of 180 hours.

reduce paperwork burdens on the railroad industry, when in reality no such changes and no such burden reductions have occurred. To the extent data or other information exists to support these substantial changes in estimated recordkeeping burdens, the Railroads look forward to having the opportunity to review and comment on it. In the absence of such support, these proposed changes are arbitrary and capricious.

Respectfully submitted,



Kathryn D. Kirmayer
Joseph St. Peter
Association of American Railroads
425 3rd Street, SW, Suite 1000
Washington, DC 20024
(202) 639-2100



Sarah Grimmer Yurasko
General Counsel
American Short Line and Regional Railroad
Association
50 F Street, NW, Suite 500
Washington, DC 20001-1597
(202) 585-3448

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Attachment

| Comparison of FRA 2021 Proposed Burden Estimates vs 2018 OMB Approved ICR Burden Estimates | | | | | |
|--|--|-----------------------------------|---|--|---------------------------|
| Citation | Description | Type Requirement | Calculation Notes | Burden time reduced | Burden no longer Included |
| Subpart B - Inspections & Tests | | | | | |
| Daily Inspection (229.21) - locomotives | This report must contain the name of the carrier; the initials and the number of the locomotive; the place, date, and time of the inspection; a description of the non-complying conditions disclosed by the inspection; and the signature of the employee making the inspection. | Inspection with Record | Inspection time eliminated (30 minutes). Kept 1-3 minutes. | 3,615,647 hours to 148,860 hours. | |
| Daily Inspection (229.21) - Multiple Unit Locomotives | Each MU locomotive in use shall be inspected at least once during each calendar day and a written report of the inspection shall be made. | Inspection with Record | Inspection time eliminated (10 minutes). Kept 3 minutes. | No. Increased due to more MU inspections. | |
| Event Recorder Periodic Inspection (229.25)Pre-Maintenance Tests -- Failures | If the pre-maintenance test reveals that the device is not recording all the specified data and that all recordings are within the designed recording elements, this fact must be noted, and maintenance and testing must be performed as necessary until a subsequent test is successful. | Failure record required notations | 30 minutes. 700 failures annually. | | Yes |
| Subpart C - Safety Requirements | | | | | |
| Brakes: General (229.46) | A tag shall immediately be placed on the isolation switch of the locomotive giving the date and location and stating that the unit may only be used in a trailing position and may not be used as a lead or controlling locomotive; | Tag | 2,100 tags x 2 minutes = 70 hours. Revised to 1 minute x 2269 tags. | 2 minutes to 1 minute to tag . | |
| Electrical System, High Voltage Danger: Doors, Cover Plates, or Barriers (229.85) | The required marking is done at the factory. However, there will be instances will the marking will fade and need to be repainted or a new decal affixed with the words "Danger-High Voltage" or with the word "Danger" | Stencil/Marking | 3 minutes to 1 minute. 1,080 times annually. | 3 minutes to 1 minute. Surfaces need to be clean to affix decal and painting takes time. | |
| Subpart E - Locomotive Electronics | | | | | |
| Operations and Maintenance Manual (229.315) | The OMM shall contain the plans and detailed information necessary for the proper maintenance, repair, inspection, and testing of products subject to this Subpart. The plans shall identify all software versions, revisions, and revision dates. | Update manuals | 40 hours assemble new manual and 5 hours to assemble each updated manual. | 5 hours to update reduced to 1 minute. 255 updates reduced to 3. | |
| | Hardware, software, and firmware revisions shall be documented in the OMM according to the railroad's configuration management control plan. | Update manuals | 40 hours assemble new manual and 2 hours to assemble each updated manual. | 2 hours to update reduced to 1 minute. 255 updates reduced to 3. | |
| Training and Qualification Program (229.317) | A railroad shall establish and implement training and qualification program for products subject to this Subpart. | Program establishment | 40 hours to 1 minute for training & qualification program. | 40 hours reduced to 1 minute for training & qualification program. | |
| | Employee training. | Train employees | 10,000 employees trained. | 60 minutes per employee reduced to 1 minute. | |
| | Refresher training. | Periodic employee training | 1,000 employees per year. | 60 minutes per employee reduced to 1 minute. | |
| | A railroad shall conduct regular and periodic evaluations of the effectiveness of the training program, verifying the adequacy of the training material and its validity with respect to the railroad's products and operations. | Program evaluation | 300 evaluations/yr. reduced to 90 per year and 4 hours to 2 hours. | 4 hours reduced to 2 hours or 2 minutes. Math error or typo since total is 3 hours vs 180 hours. | |
| | Records for Qualified employees. | Employee record | 10,000 employee records at 10 min each reduced to 1 minute. | 10 minutes per record reduced to 1 minute. | |