

SUPPORTING JUSTIFICATION
49 CFR 228 HOURS OF SERVICE REGULATIONS
OMB No. 2130-0005

Summary of Submission

- This submission is a request for a three-year extension without change of the previous (temporary) approval granted by OMB on January 12, 2010, that expires on August 31, 2010.
- The total number of burden hours requested for this submission is **3,707,346 hours**.
- Total number of responses is **30,146,199**.
- ****The answer to question number 12 itemizes the hourly burden associated with each requirement of this rule (See pp. 31-51).**
- Per the January 12, 2010, Notice of Action, FRA has corrected the deficiencies in the cost to respondents so that the costs are accurately reflected in the burden inventory.

1. Circumstances that make collection of the information necessary.

Background

Section 20103 of title 49 U.S.C. authorizes the Secretary of Transportation (“Secretary”) to issue regulations governing all areas of railroad transportation safety, supplementing laws and regulations in effect on October 16, 1970. Federal laws governing railroad employees’ hours of service date back to 1907. See Pub. L. No. 59-274, 34 Stat. 1415 (1907). These laws are intended to promote safe railroad operations by limiting the hours of service of certain railroad employees and ensuring that they receive adequate opportunities for rest in the course of performing their duties. The Secretary is charged with the administration of those laws, 49 U.S.C. '103(a), now collectively referred to as the Hours of Service Laws (HSL). These functions have been delegated to the FRA Administrator. 49 U.S.C. '103(c); 49 CFR 1.49(d).

Congress substantially amended the HSL on two previous occasions. The first significant amendments occurred in 1969. Pub. L. No. 91-169, 83 Stat. 463. The 1969 amendments reduced the maximum time on duty for train employees from 16 hours to 14 hours effective immediately, with a further reduction to 12 hours automatically taking effect two years later. Congress also established provisions for determining, in the case of a train employee, whether a period of time is to be counted as time on duty. 49 U.S.C. 21103(b). In so doing, Congress also addressed the issue of deadhead transportation

time, providing that “[t]ime spent in deadhead transportation to a duty assignment” is counted as time on duty. [Emphasis added.] Although time spent in deadhead transportation from a duty assignment is not included within any of the categories of time on duty, Congress further provided that it shall be counted as neither time on duty nor time off duty. 49 U.S.C. 21103(b)(4). This provision effectively created a third category of time, known commonly as “limbo time.”

In 1976, Congress again amended the Hours of Service Laws in several important respects. Most significantly, Congress expanded the coverage of the laws, by including hostlers within the definition of a train employee, and adding the section providing hours of service requirements for signal employees, now codified at 49 U.S.C. 21104. Congress also added a provision that prohibited a railroad from providing sleeping quarters that are not free from interruptions of rest caused by noise under the control of the railroad, and that are not clean, safe, and sanitary, and prohibited the construction or reconstruction of sleeping quarters in an area or in the immediate vicinity of a rail yard in which humping or switching operations are performed. *See* Pub. L. No. 94-348, 90 Stat. 818 (1976).

With the formation of DOT and its regulatory agencies in 1966, the oversight and enforcement of the HSL was transferred from the Interstate Commerce Commission (ICC) to the newly established Federal Railroad Administration (FRA). Prior to this transfer, the ICC had enforced reporting requirements based on its May 2, 1921, Order that established the records required to be maintained by carriers relating to the time on duty of employees who were involved in either the movement of trains (referred to in the current HSL as “train employees”) or the issuance of movement authority (referred to in the current HSL as “dispatching service employees”). The ICC Order mandated both the content and the format of the hours of service record for train employees and dispatching service employees.

The records required by the ICC Order included one titled “Time Return and Delay Report of Engine and Train Employees.” The format and required fields mandated for this record formed the basis for all train employee hours of service recordkeeping and reporting, and for the reporting requirements initially established by FRA for hours of service recordkeeping by railroad employees in 49 CFR Part 228, and specifically § 228.11.

The ICC Order also mandated the format for a form titled “Details of Service,” which was a required part of the train employee’s hours of service record. This segment of the employee’s record required the railroads to report operational data that included train number, engine number, departure station at the time that the employee went on duty, the time the train departed, the arrival station, the time the train arrived, the time the employee went off duty, and the kind of service in which the employee was working, i.e.,

passenger, freight, work train, or deadhead. The “Details of Service” form contained entries for each train with which an employee was associated during a duty tour.

As noted earlier, the 1969 amendments to the HSL addressed the issue of time spent by train employees in deadhead transportation from a duty assignment to the point of final release, establishing that such time is neither time on duty nor time off duty, which created a new category of time that has come to be known as “limbo time.” Following the 1969 amendments, the railroads continued to use the ICC recordkeeping formats. The “Time Return” portion of the recordkeeping document only provided a place to enter on-duty time and off-duty time, and could not accommodate the separate entry of limbo time. However, the railroads also continued to use the “Details of Service” portion, and this form became critical to proper recordkeeping. The “Details of Service” required train arrival and departure times, usually included comments as to when the crew had finished securing the train and therefore was relieved from covered service, and indicated the departure and arrival times of the deadhead vehicle and final release from service. With this information, it was possible to differentiate an employee’s time spent on duty in covered service from time that was spent awaiting deadhead transportation and in deadhead transportation to the point of final release, which was limbo time.

The 1921 ICC Order also required records and provided recordkeeping formats for dispatching service employees, including records of dispatchers time on duty, and records documenting train operation over the territory controlled by each dispatcher. The required records for dispatching service employees included the “Daily Time Report of Dispatchers,” the “Dispatchers Record of Movement of Trains,” and for those dispatching service employees known as operators, in addition to the “Daily Time Report of Dispatchers,” a “Station Record of Train Movements,” a form that identified the operators by shift, and required the operator to list the train or engine number, along with the arrival and departure times for each train passing the specific station where the operator was located. Following the transfer of responsibilities, FRA adopted the ICC’s established reporting requirements for dispatching service employees, but did not require its specific format. However, the formats and data fields are still used, even currently, by virtually all railroads that employ dispatching service employees.

As discussed above, the Federal Railroad Safety Authorization Act of 1976 expanded coverage of the HSL to signal employees. Congress defined a signal employee as an individual employed by a railroad carrier who is engaged in installing, repairing, or maintaining signal systems. This, in effect, excluded contract signal employees from the coverage of the HSL. The statutory limitations for signal employees were very similar to those for train employees. Also, in both cases, the HSL treated the time that these employees reported for duty as the time covered service began, irrespective of whether or not a covered function was actually performed. In addition, both train employees and signal employees had periods of time spent in travel to and from a duty location, some of which the HSL treated as limbo time. Also, in both cases, the HSL treated the time that

one of these employees “reports for duty” as the time that time on duty began. Because of the similarities in their statutory provisions, the recordkeeping requirements for these two functions were also quite similar, and FRA did not need to revise its reporting requirements to establish distinct recordkeeping provisions for signal employees.

The 1921 ICC Order also stated, in part, that “each carrier may at its option, and with the approval of the Commission, add to such records appropriate blanks for any additional information desired by it.” Over time, railroads came to record information for employee pay claims, railroad operations, and crew management on the same form that was used for hours of service recordkeeping. The combination of pay and hours of service information on the same document facilitated employee hours of service reporting practices that were greatly influenced by collective bargaining agreements and pay considerations, where differences existed between the activities for which a collective bargaining agreement required an employee to be paid, and those activities required to be reported for the purposes of the HSL. For example, an employee might report that he or she went off duty at the time that his or her paid activities ended. This would not be accurate reporting for the purposes of the HSL, if the duty tour included deadhead transportation to the point of final release. Regardless of whether an employee received additional pay for the deadhead transportation, the HSL required the time to be recorded, and the employee would not be off duty for the purposes of the HSL until after the completion of the deadhead transportation.

As technology expanded in the rail industry, some railroads in the 1980s became interested in electronically recording and reporting employee hours of service data. By the mid to late 1980s, the CSX Transportation, Inc. (CSX) had developed an automated program generated from its crew management system. CSX began using the program to generate and maintain hours of service records for its train employees. The program produced paper copies of the recorded entries for the employee’s signature. Then, in 1991, CSX and the Union Pacific Railroad Company jointly presented a proposal to use an electronic record, without a signature, as the railroad’s official train employee hours of service record. Section 228.9 of the existing hours of service recordkeeping regulations required that the hours of service record be signed. Therefore, it was necessary for FRA to waive the signature requirement, to allow for the development of a program that would allow the railroad and its train employees to electronically record and store hours of service information, with the employee electronically certifying the accuracy of the entered data, so that this record would become the official hours of service record, in lieu of a signed paper record. As CSX worked to develop an electronic program for which FRA would grant a waiver, a number of issues became apparent. These issues had to be resolved to ensure that the system would have sufficient data fields to allow the employee to record the different events that occurred in his or her duty tour, to capture all of the data necessary for FRA to determine compliance with the HSL.

The concept of electronic recordkeeping presented a significant change in how employees were used to reporting their hours of service information. Data entry moved from a dynamic manual reporting method, in which a record was continually updated by the reporting employee during the course of his or her duty tour, to an automated end-of-trip report where all reporting related to a particular duty tour was made in after-the-fact entries into the railroad's computer system, after the completion of the duty tour. In addition, manual records afforded the employee flexibility to provide information about any activities that occurred during the duty tour, as well as any comments that might be necessary to understand any apparent anomalies in reported information. However, an electronic record would be limited to the data fields provided by the recordkeeping program, so it was essential that the programs were designed to provide sufficient data fields to accommodate the variety of reporting scenarios that an employee might encounter, so that the employee had the opportunity to record all relevant data for the events that occurred in his or her duty tour.

CSX's first attempt to develop an electronic record keeping system resulted in a program that functioned in much the same manner as a paper record, but without the comprehensive information provided by the "Details of Service" portion of the employee's record. It was on this portion of their record that employees recorded a number of items that were necessary for determining compliance with the HSL, including deadhead transportation either to or from a duty assignment, multiple covered service assignments, other activities performed for the carrier that constituted commingled service if not separated from covered service by a statutory off-duty period, and the distinct times that an employee was relieved from covered service, and then subsequently released from all service to begin a statutory off-duty period, which would not be the same times when limbo time was present at the end of the duty tour. In addition, the first attempt at an electronic recordkeeping system also had not considered the features of the system itself, that were necessary for ensuring the accuracy of the data and the ability of FRA to use the data to determine compliance with the HSL. These features included program logic that was necessary, for example, to calculate total time on duty from the appropriate data entered in the record, to require explanation when the total time on duty exceeded the statutory maximum, and to use program edits to identify obvious employee input errors. The mechanism for providing FRA with the ability to access the electronic records was also an issue that needed to be resolved. Because Part 228, as drafted in 1972, did not contemplate the existence of electronic recordkeeping, it provided no framework for addressing these issues.

However, FRA and CSX pledged to work together through a "test waiver" process to develop a program with logic, edits, and access that would accommodate FRA oversight and enforcement of the current HSL provisions, and ultimately allow FRA to grant a waiver of the signature requirement, thereby allowing hours of service data to be both reported and recorded electronically. The FRA and CSX partnership eventually resulted

in the development of a system containing sufficient data entry fields and system features to resolve many of the issues facing movement to electronic record keeping.

Another significant issue that arose in the development of electronic recordkeeping systems was providing sufficient data fields to differentiate limbo time from time spent performing covered service, which distinction was necessary to correctly determine an employee's total time on duty. The electronic programs that were initially devised required the employee to report only an on-duty time and an off-duty time, and the beginning and ending times of periods spent in transportation. The records did not include the features of the delay report that had been a part of the paper records, on which employees included their beginning and ending location, date, and time for periods spent in covered service assignments, and noted, for example, that the ending time was the time at which the employee secured the train, which completed his or her covered service on that train.

The railroads viewed this information as not being required by Part 228, but this information was regularly used by FRA in reviewing records for compliance with the HSL, and it was essential that the information continue to be captured in electronic records. Without an indication of the time that the employee stopped performing covered service, there was no way to determine when the employee stopped accumulating time on duty and when he or she began limbo time. Once the employee stopped performing covered service, limbo time began, as the time that the employee spent awaiting transportation to the point of final release, like the transportation itself, was limbo time. However, if the employee's record showed only the time that the employee reported for duty, the time spent in transportation, and the off-duty time, all of the time between reporting for duty and beginning deadhead to the point of final release would necessarily be calculated as time on duty, which could result in a record that incorrectly showed a total time on duty in excess of the statutory maximum, because limbo time was not properly reflected.

To resolve these complex issues, FRA developed a 3X3 matrix, in which an employee entered the location, date, and time for each time that he or she went on duty in covered service, the location, date, and time for each time that he or she was relieved from a covered service assignment, and the location, date, and time for each time that he or she was released from an assignment, to begin another assignment or activity, or to be released from all service to begin a period of off-duty time. This 3X3 matrix was eventually incorporated in all of the waiver-approved electronic programs.

However, deadhead transportation, and activities that constitute other service for the carrier (which may commingle with covered service) do not have relieved and released times in the activity. These activities have only a beginning and an ending time for each event. Thus, FRA also developed a second section of data entry, in which the employee reported the location, date, and time for the beginning and the ending of all non-covered

service activities that are part of the employee's duty tour, but may or may not be calculated in the employee's total time on duty.

FRA and CSX continued to work together until these early issues were sufficiently resolved, and eventually, CSX was granted a waiver of the signature requirement in § 228.9. As a result, CSX was allowed to utilize an electronic recordkeeping program, in which its train employees reported their hours of service at the end of each duty tour, and those electronic records constituted the official hours of service record for CSX train employees. As the use of electronic information systems further expanded in the industry, other railroads began developing, with assistance from FRA, electronic hours of service recordkeeping programs patterned somewhat after the original CSX program. During the development of the later programs, as well as audits of the CSX program after it was fully functioning, other issues began to surface, some of which remained topics of discussion during this rulemaking. Among those issues was the reporting of multiple covered-service assignments in a duty tour, and administrative duties performed after the twelfth hour on duty.

Multiple-train duty tours have occurred in the railroad industry for decades. As was discussed above, employees used the "Details of Service" section of the paper hours of service record to provide the times spent in covered service on each train to which the employee was assigned, and on each train on which the employee may have been in deadhead transportation, whether that deadhead transportation was transportation to the first covered service assignment of a duty tour, transportation from one covered service assignment to another within a duty tour, or transportation to the point of final release at the end of a duty tour. For many years, employees diligently reported each train to which they were assigned or on which they deadheaded, because employees were paid for a minimum 100-mile day for each such train. However, following deregulation of the railroad industry, employees were instead paid based on actual miles. As collective bargaining agreements evolved in response to these changes, it became more common to use a single crew to handle multiple trains.

In the development of electronic programs, FRA was concerned that the programs initially lacked the ability to segment the employee's record by train, for data entry and program logic purposes, as well as for inspection and enforcement purposes. If an employee did not report individually the locations, dates, and times that he or she went on-duty, was relieved, and was released for each covered service assignment in a multiple-train duty tour, the program read the data as if the employee had worked on one train with a lengthy and continuous period of time on duty, often in excess of the statutory 12-hour limit when statutory interim release was present. In addition, FRA inspections yielded records that did not present all crew members assigned to a particular train, or records in which trains appeared to disappear at one point on line-of-road and reappear at another point, suggesting that a record was missing in the database.

Because all of the existing and developing programs were tied to the railroad's crew management, FRA proposed that railroad crew management initiate a separate call for each assignment, so that each would have a data entry screen created to differentiate between multiple covered-service assignments in a duty tour. The railroads resisted this proposal because the additional calls would increase the level of work for crew dispatchers. The railroads also expressed concerns about collective bargaining issues regarding pay claims for each call. FRA noted, however, that there was past historical precedent for employees completing a separate report for each assignment, although there were pay-related reasons for doing so which were not now always present. However, this dispute led to a solution that would not require additional crew dispatcher involvement. Programs were designed to allow the employee to use a function key to access additional reporting screens for reporting multiple trains or non-covered service activities. This feature of the programs mimicked the manner in which employees previously added additional forms to reflect multiple assignments prior to electronic recordkeeping. Once the crew dispatcher has called a crew to duty on one train or job and has established the employee's initial reporting screens, the employee may work multiple assignments at the discretion of the railroad and report the activities involved in each train without the crew dispatcher having to take any further action to create another call to establish the necessary additional reporting screens. This feature not only allows the employee to report the actual events of his or her duty tour, but also allows the program's FRA Inspection System to identify and present records based on train identification.

As remarked earlier, one of the many ways in which electronic recordkeeping represents a significant change in the way that employees report their time is that with electronic recordkeeping programs, all reporting is accomplished at time of tie-up, just prior to the employee's being released from all service to the carrier to begin a statutory off-duty period, the electronic record thereby becoming an "end-of-trip report." In contrast, manual records maintained by the reporting employee allowed the employee to periodically add information to the record while continuing with the activities of his or her duty tour. Then, when the reporting employee reached his or her point of final release, he or she would complete the reporting, sign the record, and place it in the appropriate collection receptacle. Also, any other reporting or recording activities, including payroll, or other data beyond hours of service for the benefit of either the railroad or the employee, were completed at this time. As long as the reporting employee had not reached the statutory limits for the duty tour, he or she was allowed to take as long as necessary to complete any reporting, recording and other administrative duties. However, in the event that the reporting employee was at or beyond his or her statutory limits, FRA had a long standing policy of exercising prosecutorial discretion to allow a few minutes for the reporting employee to complete his or her administrative duties.

However, as railroads moved to electronic recordkeeping, the reporting employee could not begin reporting any of his or her train operation, pay and hours of service data in an electronic program prior to arrival at his or her final terminal, so the time involved in

completing the necessary reporting might exceed a few minutes, especially if a large amount of work order reporting or other documentation beyond hours of service was required. Railroad labor organizations challenged FRA's practice of allowing a few minutes in excess of the 12-hour statutory maximum time on duty to complete administrative duties. FRA recognized the validity of these concerns, but also recognized the need for certain information at the conclusion of the duty tour to ensure compliance with the HSL. The railroad must know both the time that an employee is relieved from covered service and the time that the employee is released from all duties, in order to determine the minimum off-duty period that the employee required under the HSL, when to start the statutory off-duty period, and at what time the employee would have completed the minimum required rest to remain in compliance with the HSL. Because the employee is the one with first-hand knowledge of these times as applied to his or her own duty tour, FRA believed that the employee was best suited to certify the accuracy of these times.

FRA convened a Technical Resolution Committee (TRC) in 1996 to resolve this issue. Initially, the TRC leaned toward limiting the employee initiated tie-up to just a relieved time and a released time. Ultimately, however, two additional items were included, which were necessary to both the railroads and the employees from an operational perspective. Because many collective bargaining agreements contained provisions for how and when an employee would be placed back in a pool or on an extra board following tie-up, both the railroad and the employee needed to be aware of the employee's placement time before the employee began the statutory off-duty period. Finally, FRA allowed the employee to enter information to provide a contact number, if different from the number on record, to ensure that the railroad could contact the employee regarding his or her next assignment.

With these four items (a relieved time, a released time, a board placement time and a contact number, if different from that of record), FRA believed that the railroad would have sufficient information to know when the employee could legally next be called to duty. Although the HSL does not authorize performance of any administrative duties in the period beyond the employee's statutory maximum, FRA announced a policy that allowed an employee who was being released from a duty tour to begin a statutory off-duty period after more than 12 hours of total time on duty (including limbo time) to complete a "quick tie-up" limited to entering and certifying these four items. The quick tie-up was not intended for use when the employee had time remaining within the statutory limits to complete a full record at the end of the duty tour. The intention was to require the employee whose duty tour had exceeded the statutory limits to perform only the minimum administrative duties necessary to determine when the employee would next be available to be called for duty. If the railroad did not require the employee to perform any other administrative duties in addition to the quick tie-up, FRA would exercise its prosecutorial discretion and not prosecute the railroad for requiring the employee to perform administrative duties beyond the employee's statutory limits. FRA

allowed the completion of any record in which only quick tie-up information had been entered prior to the statutory off-duty period, when the employee returned to duty. FRA announced this policy in a Technical Bulletin OP No. 96-03 (since renumbered as OP 04-27). After this policy was announced, railroads developed data entry screens that allowed employees to enter and certify only the quick tie-up information when appropriate, allowing the completion of the record when the employee next reported for duty. Electronic recordkeeping systems were also designed to require completion of the full record before it could be certified if the employee had not reached the maximum statutory limit for the duty tour.

In addition to the many issues related to ensuring that the developing electronic recordkeeping systems allowed the employees to enter sufficient data to determine compliance with the HSL, there were also issues to be resolved as to how FRA would access the system and the records that it created. The initial proposal from CSX provided that an officer would log into the railroad's network using his or her identification number (ID) and password and access the employees' entry screens. The officer would then turn over the computer to the FRA Inspector, who would directly review all of the data entered by the employee. This procedure presented a security issue that FRA wanted to avoid. Instead, CSX developed an inspection system that was available only to FRA inspectors through the use of unique FRA IDs and passwords that allowed FRA inspectors to access and retrieve only hours of service records, using a combination of selection criteria to retrieve a specific record or group of records. Selection criteria for records searches were: by employee name or ID; by train or job; and by location (which could include a yard, a subdivision or division (service unit) or other railroad area) combined with a date or date range. Another option for the FRA or participating State inspector is to search for records reporting in excess of 12 hours total time on duty, combining this with a date or date range, and possibly other selection criteria. Combinations of the "optional" fields can narrow a selection to a precise time frame. This method of access allowed FRA to ensure that the hours of service records were protected from alteration and unauthorized access, which would not be possible if the same method of access allowed access to other railroad data, which FRA could not restrict.

Using the selection criteria, FRA could retrieve records in a manner that was crew based and duty tour oriented, even if employees each reported individually. This meant that the records for all members of a requested train or job were displayed together. In addition, if a duty tour involved multiple covered service assignments, the whole crew would be displayed for each train or job ID, and all records for a given duty tour would be displayed together, with total time on duty for the entire duty tour displayed on the last record of a multiple-train covered-service assignment duty tour.

In the early stages of program development with the CSX, FRA began to develop a guide for electronic recordkeeping, which has been used for several years to assist railroads to

develop electronic recordkeeping programs for which FRA might likely grant waiver approval. The guide has been used successfully for approximately 15 years. The requirements for electronic recordkeeping systems imposed by this regulation are largely based on the guide and the resulting waiver-approved programs currently in existence.

At present, four Class I carriers (CSX, Norfolk Southern Railway Company, Union Pacific Railroad Company and Canadian National Railway) have waiver authority to use their existing electronic hours of service recordkeeping programs to record and report the official hours of service records for their train employees. There are no waiver-approved electronic recordkeeping programs for the records of signal employees or dispatching service employees, although there has been interest in moving to electronic recordkeeping for these employees, and there are some programs in various stages of development.

On October 16, 2008, President Bush signed into law the Rail Safety Improvement Act (RSIA) of 2008 (Pub. L. 110-432). Section 108 of the Act substantively amends the HSL in a number of ways. It also provides the statutory mandate for this rulemaking, because it requires FRA to revise its hours of service recordkeeping requirements to take into account these substantive changes, as well as to provide for electronic recordkeeping and to require training.

Effective July 16, 2009, section 108(a) amends the definition of “signal employee,” to eliminate the words “employed by a railroad carrier.” With this amendment, employees of contractors or subcontractors to a railroad who are engaged in installing, repairing, or maintaining signal systems (the functions within the definition of signal employee in the HSL) will be covered by the HSL, because a signal employee under the HSL is no longer by definition only a railroad employee.

Section 108(b) amends the hours of service requirements for train employees in many ways, all of which are effective July 16, 2009. The provision limits train employees to 276 hours of time on duty, awaiting or in deadhead transportation from a duty assignment to the place of final release, or in any other mandatory service for the carrier per calendar month. The provision retains the existing maximum of 12 consecutive hours on duty, but increases the minimum off-duty period to 10 hours consecutive hours during the prior 24-hour period.

Section 108(b) also requires that after an employee initiates an on-duty period each day for six consecutive days, the employee must receive at least 48 consecutive hours off duty at the employee’s home terminal, during which the employee is unavailable for any service for any railroad; except that if the sixth on-duty period ends at a location other than the home terminal, the employee may initiate an on-duty period for a seventh consecutive day, but must then receive at least 72 consecutive hours off duty at the

employee's home terminal, during which time the employee is unavailable for any service for any railroad.

Section 108(b) further provides that employees may also initiate an on-duty period for a seventh consecutive day and receive 72 consecutive hours off duty if such schedules are provided for in existing collective bargaining agreements for a period of 18 months, or after 18 months by collective bargaining agreements entered into during that period, or a pilot program that is either authorized by collective bargaining agreement, or related to work rest cycles under section 21108 of the HSL.

Section 108(b) also provides that the Secretary may waive the requirements of 48 consecutive hours off duty and 72 consecutive hours off duty if a collective bargaining agreement provides a different arrangement that the Secretary determines is in the public interest and consistent with safety.

The RSIA of 2008 also significantly changes the hours of service requirements for train employees by establishing for the first time a limitation on the amount of time an employee may spend awaiting and in deadhead transportation. These new requirements, also found in section 108(b), provide that a railroad may not require or allow an employee to exceed 40 hours per month awaiting or in deadhead transportation from duty that is neither time on duty nor time off duty in the first year after the date of enactment, with that number decreasing to 30 hours per employee per month after the first year, except in situations involving casualty, accident, track obstruction, act of God including weather causing delay, derailment, equipment failure, or other delay from unforeseeable cause. Railroads are required to report to the Secretary all instances in which these limitations are exceeded. In addition, the railroad is required to provide the train employee with additional time off duty equal to the amount that combined on-duty time and time awaiting or in transportation to final release exceeds 12 hours.

Finally, section 108(b) restricts communication with train employees except in case of emergency during the minimum off-duty period, statutory periods of interim release, and periods of additional rest required equal to the amount that combined on-duty time and time awaiting or in transportation to final release exceeds 12 hours. However, the Secretary may waive this provision for train employees of commuter or intercity passenger railroads if the Secretary determines that a waiver would not reduce safety and is necessary to efficiency and on time performance.

However, section 108(d) of the RSIA of 2008 provides that the requirements described above for train employees do not go into effect on July 16, 2009, for train employees of commuter and intercity passenger railroads. This section provides the Secretary with the authority to issue hours of service rules and orders applicable to these train employees, which may be different than the statute applied to other train employees. It further provides that these train employees will continue to be governed by the HSL as it existed

prior to the RSIA of 2008 until the effective date of regulations promulgated by the Secretary. However, if no new regulations have been promulgated before October 16, 2011, the provisions of section 108(b) would be extended to these employees at that time. Section 108(c) of the RSIA of 2008 amends the hours of service requirements for signal employees in a number of ways, effective July 16, 2009. As was noted above, by amending the definition of “signal employee,” it extends the reach of the substantive requirements to a contractor or subcontractor to a railroad carrier and its officers and agents. In addition, as section 108(b) does for train employees, section 108(c) retains for signal employees the existing maximum of 12 consecutive hours on duty, but increases the minimum off-duty period to 10 hours consecutive hours during the prior 24-hour period.

Section 108(c) also eliminates language in the HSL stating that last hour of signal employee’s return from final trouble call is time off duty, and defines “emergency situations” in which the HSL permits signal employees to work additional hours not to include routine repairs, maintenance, or inspection.

Section 108(c) also contains language virtually identical to that in section 108(b) for train employees, prohibiting railroad communication with signal employees during off-duty periods except for in an emergency situation.

Finally, section 108(c) provides that the hours of service, duty hours, and rest periods of signal employees are governed exclusively by the HSL, and that signal employees operating motor vehicles are not subject to other hours of service, duty hours, or rest period rules besides FRA’s.

Section 108(e) specifically provides FRA a statutory mandate to issue hours of service regulations for train employees of commuter and intercity passenger railroads. It also provides FRA additional regulatory authority not relevant to the present rulemaking, and requires FRA to complete at least two pilot projects.

Section 108(f)(1) requires the Secretary to prescribe a regulation revising the requirements for recordkeeping and reporting for Hours of Service of Railroad Employees contained in 49 CFR part 228 to adjust recordkeeping and reporting requirements to support compliance with chapter 211 of Title 49, United States Code, as amended by the RSIA of 2008; to authorize electronic record keeping, and reporting of excess service, consistent with appropriate considerations for user interface; and to require training of affected employees and supervisors, including training of employees in the entry of hours of service data.

Section 108(f)(2) further provides that the regulation must be issued not later than 180 days after October 16, 2008, and that, in lieu of issuing a Notice of Proposed Rulemaking

as contemplated by 5 U.S.C. 553, the Secretary may utilize the Railroad Safety Advisory Committee (RSAC) to assist in development of the regulation.

In light of the above, FRA is amending its hours of service recordkeeping and reporting regulations to ensure the creation of records that support compliance with the Hours of Service Laws (49 U.S.C. 21101 et seq.). This regulation will provide for electronic recordkeeping and reporting, and will require training of those employees and supervisors of employees, who are required to complete hours of service records, or are responsible for making determinations as to excess service and the reporting of excess service to FRA as required by the regulation.

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

The collection of information associated with this final rule is a revision to the last OMB previously approved submission. The collection of information has been and will be used by FRA to monitor and enforce compliance with the existing and newly revised Hours of Service Laws (HSL) and regulations. In particular, under amended § 228.11, the *Hours of Duty* records will be monitored and reviewed by FRA to ensure that train and engine employees, dispatchers, and railroad signal workers and newly covered signal workers of contractors and subcontractors to railroads provide the required information and work the stipulated number of hours and experience the necessary rest periods now prescribed for their job category.

There are approximately 109,200 covered employees, comprising approximately 90,000 train and engine employees, and approximately 19,200 dispatchers and signalmen. FRA Federal and participating State inspectors will examine *Hours of Duty* records to ensure that a record of duty hours is maintained for each railroad worker and for each job category covered by the newly enacted Hours of Service Laws as provided in Section 108 of the Rail Safety Improvement Act of 2008 and as provided in this final rule.

For covered train and engine employees, FRA Federal and participating State inspectors will examine *Hours of Duty* records to ensure that each record contains the following information: (1) Identification of the employee (initials and last name; or if last name is not the employee's surname, provide the employee's initials and surname); (2) Each covered service position in a duty tour; (3) Amount of time off duty before beginning a new covered service assignment or resuming a duty tour; (4) Train ID for each assignment required to be reported by this part, except for the following employees, who may instead report the unique job or train ID identifying their assignment: (i) utility employees assigned to perform covered service, who are identified as such by a unique job or train ID; (ii) employees assigned to yard jobs, except that employees assigned to perform yard jobs on all or parts of consecutive shifts must at least report the yard assignment for each shift; (iii) assignments, either regular or extra, that are specifically established to shuttle trains into and out of a terminal during a single duty tour that are

identified by a unique job or train symbol as such an assignment; (5) Location, date, and beginning time of the first assignment in a duty tour, and, if the duty tour exceeds 12 hours and includes a qualifying period of interim release as provided by 49 U.S.C. 21103(b), the location, date, and beginning time of the assignment immediately following the interim release; (6) Location, date, and time relieved for the last assignment in a duty tour, and, if the duty tour exceeds 12 hours and includes a qualifying period of interim release as provided by 49 U.S.C. 21103(b), the location, date, and time relieved for the assignment immediately preceding the interim release; (7) Location, date, and time released from the last assignment in a duty tour, and, if the duty tour exceeds 12 hours and includes a qualifying period of interim release as provided by 49 U.S.C. 21103(b), the location, date, and time released from the assignment immediately preceding the interim release; (8) Beginning and ending location, date, and time for periods spent in transportation, other than personal commuting, if any, to the first assignment in a duty tour, from an assignment to the location of a period of interim release, from a period of interim release to the next assignment, or from the last assignment in a duty tour to the point of final release, including the mode of transportation (train, track car, railroad-provided motor vehicle, personal automobile, etc.); (9) Beginning and ending location, date, and time of any other service performed at the behest of the railroad; (10) Identification (code) of service type for any other service performed at the behest of the railroad; (11) Total time on duty for the duty tour; (12) Reason for any service that exceeds 12 hours total time on duty for the duty tour; (13) The total amount of time by which the sum of total time on duty and time spent awaiting or in deadhead transportation to the point of final release exceeds 12 hours; (14) The cumulative total for the calendar month of -- (i) Time spent in covered service; (ii) Time spent awaiting or in deadhead transportation from a duty assignment to the place of final release; and (iii) Time spent in any other service at the behest of the railroad; (15) The cumulative total for the calendar month of time spent awaiting or in deadhead transportation from a duty assignment to the place of final release following a period of 12 consecutive hours on duty; (16) Number of consecutive days in which a period of time on duty was initiated.

For covered dispatching service employees, FRA Federal and participating State inspectors will examine *Hours of Duty* records to ensure that each record contains the following information: (1) Identification of the employee (initials and last name; or if last name is not the employee's surname, provide the employee's initials and surname); (2) Each covered service position in a duty tour; (3) Amount of time off duty before going on duty or returning to duty in a duty tour; (4) Location, date, and beginning time of each assignment in a duty tour; (5) Location, date, and time released from each assignment in a duty tour; (6) Beginning and ending location, date, and time of any other service performed at the behest of the railroad; (7) Total time on duty for the duty tour.

For covered signal employees, FRA Federal and participating State inspectors will examine *Hours of Duty* records to ensure that each record contains the following information: (1) Identification of the employee (initials and last name; or if last name is

not the employee's surname, provide the employee's initials and surname); (2) Each covered service position in a duty tour; (3) Headquarters location for the employee; (4) Amount of time off duty before going on duty or resuming a duty tour; (5) Location, date, and beginning time of each covered service assignment in a duty tour; (6) Location, date, and time relieved for each covered service assignment in a duty tour; (7) Location, date, and time released from each covered service assignment in a duty tour; (8) Beginning and ending location, date, and time for periods spent in transportation, other than personal commuting, to or from a duty assignment, and mode of transportation (train, track car, railroad-provided motor vehicle, personal automobile, etc.); (9) Beginning and ending location, date, and time of any other service performed at the behest of the railroad; (10) Total time on duty for the duty tour; (11) Reason for any service that exceeds 12 hours total time on duty for the duty tour. Also, FRA Federal and participating State inspectors will examine these records to ensure that each contractor or subcontractor to a railroad records the name of the railroad for which its employee performed covered service during the duty tour covered by the record.

Thus, FRA Federal and State inspectors will carefully monitor and review the *Hours of Duty* records to ensure that covered railroad employees do not work an excessive and illegal amount of hours such that they are overtired and exhausted, and thereby pose a high safety risk not only to themselves and other railroad workers but also to the safe movement of passenger and freight trains along the areas they are working. Eliminating worker fatigue to the greatest extent possible is a high priority both for the railroad industry and FRA.

Moreover, *Hours of Duty* Records are used by FRA attorneys for enforcement purposes. Since both railroads and railroad workers certify the hours worked in these records, FRA attorneys will use them to enforce violations of the Hours of Service Laws by imposition of regulatory fines, or other court mandated civil and/or criminal penalties.

Under § 228.17, the *Dispatcher's Records of Train Movements* are and will be used by FRA and participating State safety inspectors to monitor and ensure compliance with statutory provisions and FRA regulations by each of the 150 dispatching offices nationwide. Each carrier is required to keep a record of train movements for each dispatching district under the direction and control of a dispatcher who uses a telegraph, telephone, radio, or any other electrical or mechanical device to dispatch, report, transmit, receive, or deliver orders relating to train movements. Each record must include the following information: (1) Identification of timetable in effect; (2) Location and date; (3) Identification of dispatchers and their times on duty; (4) Weather conditions at six (6) hour intervals; (5) Identification of enginemen and conductors and their times on duty; (6) Identification of trains and engines; (7) Station names and office designations; (8) Distances between stations; (9) Direction of movement and the time each train passes all reporting stations; (10) Arrival and departure times of trains at all reporting stations; and (11) Unusual events affecting movement of trains and identification of trains affected.

Under § 228.19, the *Monthly Reports of Excess Service* are and will be used by FRA and participating State safety inspectors to monitor and ensure that each railroad or contractor or subcontractor of a railroad reports to the Associate Administrator for Railroad Safety/Chief Safety Officer each instance of excess service mandated under this section and in the manner prescribed within 30 days after the calendar month in which the instance occurs. Specifically, for train and engine employees, these safety inspectors will closely scrutinize the required reports to ensure that the following information is reported: (1) A train employee is on duty for more than 12 consecutive hours; (2) A train employee continues on duty without at least 10 consecutive hours off duty during the preceding 24 hours*; (3) A train employee returns to duty without at least 10 consecutive hours off duty during the preceding 24 hours*; (4) A train employee returns to duty without additional time off duty, equal to the total amount of time by which the employee's sum of total time on duty and time spent awaiting or in deadhead transportation to the point of final release exceeds 12 hours; (5) A train employee exceeds a cumulative total of 276 hours in the following activities in a calendar month – (i) Time spent in covered service; (ii) Time spent awaiting or in deadhead transportation from a duty assignment to the place of final release; and (iii) Time spent in any other service at the behest of the railroad; (6) A train employee initiates an on-duty period on more than six (6) consecutive days, when the on-duty period on the sixth consecutive day ended at the employee's home terminal, and the seventh consecutive day is not allowed pursuant to a collective bargaining agreement or pilot project; (7) A train employee returns to duty after initiating an on-duty period on six (6) consecutive days, without 48 consecutive hours off duty at the employee's home terminal; (8) A train employee initiates an on-duty period on more than seven (7) consecutive days; (9) A train employee returns to duty after initiating an on-duty period on seven (7) consecutive days, without 72 consecutive hours off duty at the employee's home terminal; (10) A train employee exceeds the following limitations on time spent awaiting or in deadhead transportation from a duty assignment to the place of final release following a period of 12 consecutive hours on duty: (i) 40 hours in any calendar month completed prior to October 1, 2009; (ii) 20 hours in the transition period from October 1, 2009-October 15, 2009; (iii) 15 hours in the transition period from October 16, 2009-October 31, 2009; (iv) 30 hours in any calendar month completed after October 31, 2009. (* Note: Instances involving duty tours that are broken by less than 10 consecutive hours off duty which duty tours constitute more than a total of 12 hours time on duty must be reported.)

For train and engine employees who provide commuter rail passenger transportation or intercity rail passenger transportation during a duty tour, FRA and participating State safety inspectors will review the required *Monthly Reports of Excess Service* to ensure the following instances of excess service are reported to FRA: (1) A train employee is on duty for more than 12 consecutive hours; (2) A train employee returns to duty after 12 consecutive hours of service without at least 10 consecutive hours off duty; (3) A train employee continues on duty without at least eight (8) consecutive hours off duty during the preceding 24 hours*; (4) A train employee returns to duty without at without at least

eight (8) consecutive hours off duty during the preceding 24 hours*. (* *Note: Instances involving duty tours that are broken by less than eight (8) consecutive hours off duty which duty tours constitute more than a total of 12 hours time on duty must be reported.*)

For dispatching service employees, FRA and participating State safety inspectors will review the required *Monthly Reports of Excess Service* to ensure the following instances of excess service are reported to FRA: (1) A dispatching service employee is on duty for more than nine (9) hours in any 24-hour period at an office where one shift is employed; (2) A dispatching service employee is on duty for more than 12 hours in any 24-hour period at an office where one shift is employed.

For signal employees, FRA and participating State safety inspectors will review the required *Monthly Reports of Excess Service* to ensure the following instances of excess service are reported to FRA: (1) A signal employee is on duty for more than 12 consecutive hours; (2) A signal employee continues on duty without at least 10 consecutive hours off duty during the preceding 24 hours; (3) A signal employee returns to duty without at least 10 consecutive hours off duty during the preceding 24 hours.

All of the above records are also used/scrutinized by FRA and NTSB investigators whenever there is an accident/incident involving a train movement, and serve as a vital resource both in determining the cause(s)/contributing cause(s) that led to or contributed to the accident/incident, and in determining any necessary Federal remedial measures/actions to promote/increase rail safety.

Under § 228.103, *Construction of Employee Sleeping Quarters*, FRA's Headquarters Safety Board reviews petitions for construction, reconstruction, or acquisition of employee sleeping quarters in order to render an informed and logical decision regarding approval or denial of such petitions based on pertinent safety considerations relating to the affected railroad employees. In particular, the FRA Safety Board reviews each petition to make sure necessary information is provided so that they can make a fair and impartial decision. All such petitions must include the following information: (1) A brief description of the type of construction planned, including materials to be employed, means of egress from the quarters, and actual and projected exterior noise levels and projected interior noise levels; (2) The number of employees expected to utilize the quarters at full capacity; (3) A brief description of the site, including: (i) Distance from trackage where switching or humping operations are performed, specifying distances from particular functions such as classification, repair, assembling of trains from large groups of cars, etc.; (ii) Topography within a general area consisting of the site and all of the rail facilities close to the site; (iii) Location of other physical improvements situated between the site and areas where railroad operations are conducted; (4) A blueprint or other drawing showing the relationship of the site to trackage and other planned and existing facilities; (5) The proposed or estimated date for commencement of construction; (6) A description of the average number and variety of rail operations in the areas within

one-half mile (2,640 feet) (804 meters) of the site (e.g., number of cars classified in 24-hour period; number of train movements); (7) An estimate of the average daily number of placarded rail cars transporting hazardous materials through the railroad facility (where practicable, based on a 365-day period sample, that period not having ended more than 120 days prior to the date of filing the petition), specifying the (i) Number of such cars transporting class A explosives and poison gases; and (ii) Number of DOT Specification 112A and 114A tank cars transporting flammable gas subject to FRA emergency order No. 5; (8) A statement certified by a corporate officer of the carrier possessing authority over the subject matter explaining any plans of that carrier for utilization of existing trackage, or for the construction of new trackage, which may impact on the location of switching or humping operations within one-half mile of the proposed site (if there are no plans, the carrier official must so certify); and (9) Any further information which is necessary for evaluation of the site.

The Safety Board also examines these petitions to ensure that they contain a statement that a copy of the petition has been served on the recognized representatives of the railroad employees who will be utilizing the proposed sleeping quarters and that they contain a list of the employees' representatives served with a copy of the petition.

New § 228.201, *Electronic Recordkeeping*, provides that a railroad or a contractor or subcontractor to a railroad may create and maintain any of the records required by Subpart B of this rule (i.e., records specified in sections 228.7-228.23) through electronic transmission, storage, and retrieval. This option is particularly important regarding *Hours of Duty* records. Currently, there are four Class I railroads and one Class II railroad, which were previously granted waivers and which now keep the required *Hours of Duty* records electronically. These railroads fully met the conditions spelled out in the guide developed by FRA related to electronic recordkeeping that addressed such issues as accuracy, security, reliability, employee and FRA access, etc. Other railroads now have the option to keep their *Hours of Duty* records electronically as well, provided the requirements specified in new sections 228.201 and 228.203 are met. In particular, FRA personnel will examine any new electronic recordkeeping systems to ensure that all of the following conditions are met: (1) The system used to generate electronic records meet all requirements of this subpart; (2) The electronically generated records contain the information required by § 228.11; (3) The railroad or contractor or subcontractor to the railroad monitors its electronic database of employee hours of duty records through sufficient number of monitoring indicators to ensure high degree of accuracy of these records; (4) The railroad or contractor or subcontractor to the railroad trains its employees on the proper use of the electronic recordkeeping system to enter the information necessary to create their hours of service record, as required by § 228.207; and (5) The railroad or contractor or subcontractor to the railroad maintains an information technology security program adequate to ensure the integrity of the system, including the prevention of unauthorized access to the program logic or individual records.

Finally, under the requirements stipulated in 49 U.S.C. 21102, FRA's Office of Safety carefully reviews exemption petitions from the *Hours of Service Laws* – on a case-by-case basis – to determine whether it is consistent with rail safety and in the public interest to grant an exemption from these regulations. Exemptions that are granted are for a specific period of time, and are reviewed by FRA annually.

In sum, FRA would be seriously hindered in enforcing the *Hours of Service Laws* and accompanying regulations and in promoting and maintaining a safe rail environment, as well in determining the cause(s) of rail accidents/incidents, without this vital collection of information.

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

For many years now, FRA has strongly endorsed and highly encouraged the use of advanced information technology, wherever possible, to reduce burden on respondents. As mentioned earlier, this amended rule specifically provides for electronic recordkeeping and reporting for all the rule's Subpart B requirements and requires training of those covered employees and supervisors of employees who are required to complete *Hours of Service (Hours of Duty)* records. Previously, railroads that wanted to keep their *Hours of Duty* records electronically had to petition the agency for a waiver in order to meet the signature requirement of § 228.9 and could only do so after the waiver was granted by FRA. As a result of this revised rule, the process of keeping *Hours of Duty* records electronically has been greatly simplified and facilitated for other railroads interested in keeping these records electronically. This has been a much sought after goal by the Association of American Railroads (AAR), and one that this revised rule now realizes. Consequently, once this rule goes into effect, waivers will no longer be necessary.

In its last submission, FRA estimated that approximately 43% of the total number of *Hours of Duty* records generated each year and 43% of all responses associated with this collection of information are now kept electronically. In this revised submission, FRA estimates that 45 % of the total number of *Hours of Duty* records generated each year and 45% of all responses associated with this collection of information will be kept electronically.

In the future, FRA expects other railroads besides the five railroads currently granted waivers to take advantage of the new electronic recordkeeping and reporting option (provided they have the necessary resources). It bears mentioning that there are now no waiver-approved electronic recordkeeping programs for the records of signal employees or dispatching service employees. However, there are some systems under development, and railroads and signal employees have expressed interest in moving to electronic recordkeeping for their *Hours of Duty* records. Consequently, there is considerable potential to further reduce hourly and cost burdens regarding these required records, if

railroads or contractors or subcontractors to railroads elect this option over paper. FRA anticipates that the percentage of records kept electronically will continue to increase and that the overall burden for this requirement will be correspondingly reduced.

Nevertheless, it will be up to each individual railroad to decide for itself whether and to what extent it keeps its *Hours of Duty* records electronically or on paper. *(Note: If all of the currently estimated 29,893,500 Hours of Duty records were still kept on paper, the burden for this single requirement would amount to 4,837,710 hours instead of the currently estimated 3,049,210 hours. Thus, over the course of many years, the burden for this single requirement has been gradually and substantially reduced through FRA waiver approvals and the increased use of electronic recordkeeping by railroads. It would be an estimated 1,788,500 hours greater right now without the waiver option that FRA provided so that railroads could create and maintain these required records electronically.)*

4. Efforts to identify duplication.

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

Similar data are not available from any other source.

5. Efforts to minimize the burden on small businesses.

The revised rule exempts train employees of commuter passenger railroads or intercity passenger railroads from recording the new recordkeeping requirements pertaining to the need to track the limits on work and rest mandated in the RSIA of 2008. Although the revised rule now categorizes the requirements by each type of covered service employee (train, dispatching, and signal), it also exempts those types of employees that would likely handle several trains a day, such as utility employees performing covered service, employees assigned to yard jobs, and employees assigned to shuttle trains in and out of terminals. This exemption should benefit large (Class I), medium (Class II), and small (Class III) railroads.

Section 228.11(b)(14) requires that a train employee record include the cumulative total for the calendar month of time spent in covered service, awaiting or in deadhead transportation from a duty assignment to the place of final release, and time spent in any other service at the behest of the railroad, the elements that make up the cumulative total for the month toward the 276-hour limitation. Members of the RSAC Working Group representing the Class III railroads pointed out that compliance with this requirement would be much more complicated for those employees completing paper records. Electronic recordkeeping systems will likely be programmed to calculate the cumulative monthly total, but it will be more difficult for an employee to have to keep track of the running total and note it on his or her signed record each day. FRA is persuaded that this could be burdensome, and could result in inaccurate reporting of the totals, and could

possibly cause an employee to inadvertently exceed the monthly limitations by calculating it inaccurately and certifying that number. Therefore, FRA agreed to allow Class III railroads to track the cumulative total throughout the month, note it on the records, and make it available to FRA. The employee will be expected to certify the monthly total promptly after the end of the month.

With respect to the new RSIA and rule required data and training requirements related to the *Hours of Duty* records, it should be noted that railroads with paper systems, which are largely smaller railroads, will probably use a generic training program developed by the American Short Line and Regional Railroad Association (ASLRRA). ASLRRA will then most likely provide it to their members free of charge, and these smaller railroads will then customize it to meet their particular needs. This will considerably reduce the time and cost burden associated with the new training requirements for small (Class III) railroads

It should be pointed out that the respondent burden varies with the number of covered employees. Small railroads with a limited number of employees would incur a very small cost/hourly burden concerning the required *Hours of Duty* records. Also, since smaller railroads operate on a much smaller scale with less train movements, there would be a relatively small cost/hourly burden in maintaining the required record of *Dispatchers Train Movements*. Moreover, it is worth noting that the provisions regarding sleeping quarter construction are not applicable to small entities, as they traditionally do not have away-from-home lodging facilities.

6. Impact of less frequent collection of information.

If this information were not collected or collected less frequently, rail safety in the United States would be seriously jeopardized. Specifically, without the data collected in the *Hours of Duty* Records and the careful review and examination of these records by FRA and participating State inspectors, covered railroad employees might work excessive and illegal amounts of hours. Such overwork could lead to fatigue, poor judgment, and mistakes on the part of train and engine employees, dispatching service employees, and signal employees, which could result in increased numbers of accidents/incidents where railroad workers and members of the public are seriously injured and possibly killed. The *Hours of Duty* records and Monthly Reports of Excess Service reports allow FRA's Office of Safety to closely monitor the railroad industry to ensure that the law and its regulations are being complied with. If the law and agency regulations are not complied with and covered railroad employees are working excessive hours, FRA can take immediate corrective action upon discovering this.

If FRA did not collect the information provided by the *Dispatcher's Record of Train Movements*, or collected this information less frequently, the agency would lose a valuable resource used by agency and NTSB investigators to determine the cause(s) or

contributing cause(s) of rail accidents/incidents. These records provide vital information such as the identification of the timetable in effect, location and date, the identification of dispatchers and their times on duty, weather conditions at six-hour intervals, identification of enginemen and conductors and their times on duty, identification of trains and engines, station names and office designations, distances between stations, direction of movement and the time each train passes all reporting stations, arrival and departure times of trains at all reporting stations, and unusual events affecting movement of trains and identification of trains affected.

If FRA did not collect the information contained in the petitions for approval for construction of employee sleeping quarters, the safety of certain railroad workers could be greatly endangered. Specifically, if FRA were not permitted to collect this information, agency Regional staff would not be able to investigate these petitions, and the Associate Administrator for Safety/Chief Safety Officer would not be able to render an informed and logical approval or denial of such petitions. As a result, the construction, reconstruction, or acquisition of sleeping quarters for railroad employees covered by the RSIA and revised agency rule might be unsafely located “within or actually in the immediate vicinity” of an area where railroad switching or humping operations are performed. Railroad workers might be seriously injured or killed if this were to occur.

If FRA did not collect the information required under new sections 228.201-228.207, FRA would have no means to ensure that railroads keeping their *Hours of Duty* through the use of electronic recordkeeping systems actually conform to the RSIA and the new agency requirements. In particular, FRA would have no way to verify that railroads electronic recordkeeping systems are meeting the prescribed standards for system security, program logic, search capability, and access by FRA and participating State employees (as previously approved systems did under the FRA waiver program). Without the information prescribed and collected in these sections, FRA would have no means to determine whether railroads and contractors/subcontractors to railroads electronic recordkeeping systems are keeping specific *Hours of Duty* data required by § 228.11. Moreover, FRA and participating State inspectors would be unable to monitor and enforce compliance with the new *Hours of Service* laws and regulation because they did not have proper access to railroads newly created/developed electronic recordkeeping systems. Additionally, without the information collected in these sections, FRA and participating State inspectors would have no way to confirm that covered employees actually received the required initial and refresher training related to completion of their *Hours of Duty* records.

Finally, without the petition information collected under 49 U.S.C. 21102, *Federal Hours of Service Laws*, FRA would have no means to determine whether it is safe or in the public interest to grant exceptions to the *Hours of Service* Laws. There may be times when exceptions benefit both public safety and the interests of the railroads.

In sum, this collection of information facilitates the accomplishment of FRA's main mission, which is to promote and maintain rail safety throughout the country.

7. Special circumstances.

Excess Service Reports (Form FRA F 6180.3) are required to be filed monthly (within 30 days of the close of the month in which the excess service occurred). This is so FRA can closely monitor circumstances where employees work excessive hours, and take any necessary measures to correct situations where the safety of train crews (and correspondingly the travelling public), signalmen, and other railroad employees might be put in jeopardy.

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

8. Compliance with 5 CFR 1320.8.

As required by the Paperwork Reduction Act of 1995, FRA published a notice in the Federal Register on April 21, 2010, soliciting comment on this particular information collection. *See 75 FR 20875.* FRA received no comments in response to this notice.

Background

As mentioned previously, Section 108(f)(1) of the Rail Safety Improvement Act (RSIA) of 2008 provides the following: "Not later than 180 days after the date of enactment of this Act [October 16, 2008], the Secretary shall prescribe a regulation revising the requirements for recordkeeping and reporting for Hours of Service of Railroad Employees contained in part 228 of title 49, Code of Federal Regulations." Section 108(f)(1) stipulates that, that in lieu of issuing a notice of proposed rulemaking as contemplated by 5 U.S.C. 553, the Secretary may utilize the Railroad Safety Advisory Committee (RSAC) to assist in development of the regulation.

Given the time constraints within which FRA was required to issue this regulation, FRA decided to request the assistance of the Railroad Safety Advisory Committee (RSAC) in developing it. In order to take advantage of the provisions of the statutory mandate that allowed FRA to proceed to a final rule, without having first issued a Notice of Proposed Rulemaking, FRA proposed Task No. 08-06 to the RSAC on December 10, 2008.

In March 1996, FRA established the RSAC, which provides a forum for developing consensus recommendations on rulemakings and other safety program issues. The Committee includes representation from all of the agency's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups follows:

American Association of Private Railroad Car Owners (AARPCO)
 American Association of State Highway & Transportation Officials (AASHTO)
 American Chemistry Council (ACC)
 American Petroleum Institute (API)
 American Public Transportation Association (APTA)
 American Short Line and Regional Railroad Association (ASLRRA)
 American Train Dispatchers Department (ATDD)
 Association of American Railroads (AAR)
 Association of Railway Museums (ARM)
 Association of State Rail Safety Managers (ASRSM)
 Brotherhood of Locomotive Engineers and Trainmen (BLET)
 Brotherhood of Maintenance of Way Employees Division (BMWED)
 Brotherhood of Railroad Signalmen (BRS)
 Chlorine Institute
 Federal Railroad Administration (FRA)
 Federal Transit Administration (FTA)*
 Fertilizer Institute
 High Speed Ground Transportation Association
 Institute of Makers of Explosives
 International Association of Machinists and Aerospace Workers
 International Brotherhood of Boilermakers and Blacksmiths
 International Brotherhood of Electrical Workers (IBEW)
 Labor Council for Latin American Advancement (LCLAA)*
 League of Railway Industry Women*
 National Association of Railroad Passengers (NARP)
 National Association of Railway Business Women*
 National Conference of Firemen & Oilers
 National Passenger Railroad Corporation (Amtrak)
 National Railroad Construction and Maintenance Association
 National Transportation Safety Board (NTSB)*
 Railway Progress Institute (RPI)
 Safe Travel America
 Secretaria de Comunicaciones y Transporte*
 Sheet Metal Workers International Association
 Tourist Railway Association Inc.
 Transport Canada*
 Transport Workers Union of America (TWUA)
 Transportation Communications International Union/BRC (TCIU/BRC)
 United Transportation Union (UTU)
 *Indicates associate membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a working group that

possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The individual task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff has played an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. If the working group or RSAC is unable to reach consensus on recommendations for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

As noted earlier, given the time constraints within which FRA was required to issue this regulation, FRA decided to request the assistance of the RSAC in developing it, in order to take advantage of the provisions of the statutory mandate which allowed FRA to proceed to a final rule, without having first issued a notice of proposed rulemaking. FRA proposed Task 08-06 to the RSAC on December 10, 2008. The RSAC accepted the task and formed the Hours of Service Working Group (Working Group) for the purpose of developing the hours of service recordkeeping regulations required by section 108(f) of the RSIA of 2008.

The Working Group was comprised of members from the following organizations:

- American Association of State Highway & Transportation Officials (AASHTO)
- American Public Transportation Association (APTA);
- American Short Line and Regional Railroad Association (ASLRRA);
- American Train Dispatchers Association (ATDA);
- Association of American Railroads (AAR)
- Brotherhood of Locomotive Engineers (BLET);
- Brotherhood of Railroad Signalmen (BRS);
- BNSF Railway Company (BNSF);
- Canadian National Railway Company (CN);
- Canadian Pacific Railway, Limited (CP);
- CSX Transportation, Inc. (CSXT);
- Federal Railroad Administration (FRA);
- International Brotherhood of Electrical Workers (IBEW)

- Iowa Interstate Railroad, Ltd. (IAIS);
- Kansas City Southern (KCS);
- Long Island Rail Road (LIRR);
- Metro-North Commuter Railroad Company (Metro-North);
- National Passenger Railroad Corporation (Amtrak);
- Norfolk Southern Corporation (NS);
- Southeastern Pennsylvania Transportation Authority (SEPTA);
- Tourist Railway Association;
- Union Pacific Railroad Company (UP));
- UTU; and Western New York and Pennsylvania Railroad (WNY&P).

The Working Group completed its work after four meetings and two conference calls. The first meeting of the Working Group took place on January 22-23, 2009, in Washington, D.C. Subsequent meetings were held on February 4-6, 2009, February 18-20, 2009, and March 23-24, 2009, each also in Washington, DC. Conference calls were held on March 30 and March 31, 2009. The Working Group achieved consensus on the rule text with the exception of one issue. The group's recommendation, including the one area of non-consensus, was presented to the full RSAC on April 2, 2009, and the full RSAC accepted its recommendation. This regulation is consistent with the recommendation of the Working Group, with the exception of the issue on which the group failed to reach consensus.

Prior to the first meeting of the Working Group, FRA distributed draft rule text to provide a framework for the discussions. This enabled the group to focus its discussions on those issues with which the other members of the group disagreed or had concern. The issues that led to significant discussion and subsequent changes in the initial rule text can generally be characterized in one of four ways: (1) disagreement of members of the Working Group with some aspects of FRA's current approach to electronic recordkeeping that had been mirrored in the draft rule text; (2) concern about making the requirements for electronic recordkeeping systems sufficiently flexible to accommodate the circumstances of those groups of employees who are not currently reporting and recording their hours of service electronically, but may do so in the future; (3) concern about the burden of some of the recordkeeping requirements on those railroads or contractors or subcontractors to a railroad who use paper records; and (4) concerns about FRA's interpretation of the substantive provisions of the HSL that have an effect on recordkeeping, including new issues arising from the RSIA of 2008, as well as other substantive interpretations that some members of the group wished to have clarified or urged FRA to change.

As noted previously, FRA required that electronic recordkeeping programs for which it granted a waiver would require the employee to report each assignment in a duty tour. In brief, FRA's reason for this approach was that it allowed FRA to search for records by the job or assignment, and to retrieve the full records of each employee on that

assignment, so that they could be cross-referenced against each other. This approach also allowed the system to link the records for each assignment in a duty tour, so that an employee's prior time off before an assignment would indicate whether it was preceded by another assignment, or was the first assignment following a statutory off-duty period. Thus, the full duty tour would be represented, without gaps in the data that would suggest a missing record. This approach was also consistent with the way that FRA had historically reviewed paper records, because this information was available on the "Details of Service" portion of the form, which the railroads had since stopped using because of changes in pay structures and other operational issues, and which they therefore resisted incorporating in electronic recordkeeping.

AAR objected to the requirements initially included by FRA in § 228.11 of this rule, because FRA required the employee to report the beginning time, relieved time, and released time of each assignment in a duty tour, as it had in the waiver-approved electronic programs. AAR contended that FRA did not need this level of detail for each assignment because the time was all counted as time on duty, and also contended that the requirements were too burdensome because of the number of data fields that an employee would be required to enter, and the amount of time that this data entry could consume.

During the working group proceedings, FRA made a number of concessions from its original language. FRA excluded from the requirement to list each assignment employees having several kinds of assignments likely to result in their handling a large number of trains in a single duty tour. Specifically, FRA excluded utility employees, employees assigned to yard jobs, and assignments established to shuttle trains into and out of a terminal that are identified by a unique job or train symbol as such an assignment. When AAR continued to object to these requirements, FRA limited them further, by requiring only that the employee record the first train and the last train to which he or she was assigned, and any train immediately preceding or immediately following a period of interim release. FRA reasoned that information was needed regarding assignments before and after a period of interim release, so that the interim release period, which would not count toward total time on duty, could be determined. FRA reluctantly agreed that it would not require the recording of trains in the middle of a duty tour that were not associated with an interim release, agreeing in those limited circumstances to resort to other methods of piecing together the duty tour if necessary.

Ultimately, however, AAR wanted FRA to require that the employee record only the beginning time of the first train and any train following a period of interim release, and only the relieved time and released time of any train preceding a period of interim release and the last train in a duty tour. The limited issue of the specific requirements to record the relieved time and released time for an employee for the first train in the employee's duty tour and for any train preceding a period of interim release by the employee, and the beginning time of the last train or any train following a period of interim release for the

employee, was the only area of non-consensus during the working group proceedings and before the full RSAC.

Following the RSAC vote, FRA decided to further modify the requirements of section 228.11(b). This paragraph now requires that an employee record only the beginning time of the first train and any train following a period of interim release, and only the relieved time and released time of any train preceding a period of interim release and the last train in a duty tour, as requested by AAR. It also requires, however, that employees report the train ID for each train required to be reported. Utility employees, employees assigned to yard jobs, and assignments established to shuttle trains into and out of a terminal that are identified by a unique job or train symbol as such an assignment, are excluded from the requirement to report separate train IDs. In addition, this paragraph requires employees to report periods spent in deadhead transportation from a duty assignment to a period of interim release, and from a period of interim release to a duty assignment.

AAR proposed elimination of the concept of the quick tie-up. As was discussed above, the quick tie-up is a feature that allows an employee who is at or beyond the statutory maximum time on duty to report only the four items necessary for the employee and the railroad to determine the beginning of the statutory off-duty period and for the railroad to be allowed to call the employee for the next duty tour. The employee completes the remainder of the record for any duty tour ended with a quick tie-up when he or she next reports for duty. AAR suggested that the regulation instead limit those items required for a full tie-up, or a complete record, and allow those items that are required to be pre-populated on the record by the railroad, so that the time required for a full tie-up would be decreased. FRA could not agree to limit the required data as AAR suggested. In addition, there are a number of items not related to hours of service related issues (such as pay claims and details as to the cars in the train) that are normally a part of a full tie-up, but which FRA does not believe should be required of an employee who is at or near the statutory maximum time on duty. Therefore, the group agreed not to eliminate the quick tie-up, but continued to discuss the concept of pre-population of the data on the hours of service record.

FRA did not allow pre-population of data as electronic recordkeeping programs were developed during the waiver process, because when pre-population was attempted, records were pre-populated with data from sources not likely to be accurate reflections of the duty tour, such as payroll or other times related to collective bargaining. The Working Group spent substantial time discussing which data fields on the record might be pre-populated. However, the group could not agree on data fields that always may be pre-populated, or those that never should, as a wide variety of factors may affect whether pre-population of certain data is appropriate for a particular employee or assignment. It was generally agreed, however, that pre-population could reduce the time and effort required for completion of the record if the data were reliable.

The group reached a compromise, reflected in § 228.203(a)(1)(i) of this regulation. This paragraph provides that a record may be pre-populated with data known to be factually accurate for a specific employee. Estimated, historical, or arbitrary data are not to be used to pre-populate data in a record. However, a railroad is not in violation of this requirement if it makes a good faith judgment as to the factual accuracy of data for a specific employee but the pre-populated data turns out to be incorrect. In addition, the employee must be able to make any necessary changes to pre-populated data by simply typing into the data field, without having to access another screen or obtain clearance from the railroad. Finally, this paragraph also provides that an electronic recordkeeping system may provide the ability for an employee to copy data from one field of a record to another where appropriate.

Labor representatives of the Working Group, and particularly representatives of the Brotherhood of Railroad Signalmen, expressed concern that the requirements for electronic recordkeeping systems were not appropriate to the way that signal employees tie up at the end of a duty tour and complete their records. Although there are currently no waiver-approved programs allowing electronic recordkeeping by signal employees, there are some systems currently under development, and railroads and signal employees are interested in moving to electronic recordkeeping. The requirements for electronic recordkeeping systems as originally drafted by FRA were based on the past experience of FRA and the industry with electronic recordkeeping, which was admittedly limited to train employees.

Through the Working Group discussions, FRA learned that signal employees tie up differently, and some of the limitations on the system that are appropriate for train employees would not allow signal employees to complete their records. Unlike train employees, signal employees are not usually released from their duty tour at a location where there is likely to be a computer available to complete a record, because they often travel home from their duty location, and do not go by way of a railroad headquarters. In addition, signal employees do not tie-up on a daily basis, rather they complete a number of records at one time, on a day when they have time in their schedule to prepare this paperwork. Signal employees do not generally need to do a quick tie up to know when they are eligible to return to duty, because they have a scheduled eight-hour shift. They do call into the trouble desk if they work beyond their scheduled hours, or after returning from a trouble call. Although the primary purpose of this call is to report the nature of the trouble that was found and what was done to fix it, the employee also reports the time that he or she completed the work, and this allows the railroad to determine if the employee has enough time remaining to respond to another trouble call, or if a late trouble call causes the employee not to be rested for the beginning of the next scheduled shift.

FRA agrees that the regulation should establish requirements appropriate to all employees, so that the regulation will not need to be revised to reflect future systems that

may be developed. To accommodate the differences in the reporting practices of signal employees, FRA modified several paragraphs of § 228.203(c). Paragraph (c)(7) of § 228.203 allows an employee to certify a release time in the past compared to the clock time of the computer, except for the current duty tour being concluded, so that a signal employee may complete multiple records at one time. This limitation is not a problem for train employees, who will have provided a release time through the quick tie-up for any record being completed that relates to a previous duty tour. The rule text also excludes signal employees from the scope of requirements in subparagraphs that provide that electronic recordkeeping systems must require employees to complete a full record, and disallow a quick tie-up at the end of any duty tour in which the employee has less than the statutory maximum time on duty. Even with less than the statutory maximum time on duty, a signal employee may not complete any record at the end of that duty tour, or may complete a form of quick tie-up through communication regarding trouble calls and how much time the employee has remaining to work.

FRA notes that railroads and signal employees will need to have some way of keeping track of when the employee goes off duty, to ensure that they receive the 10 hours uninterrupted rest required by the RSIA of 2008.

9. Payments or gifts to respondents.

There are no monetary payments or gifts made to respondents associated with the information collection requirements contained in this regulation.

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.

These requirements have nothing to do with sensitive matters such as sexual behavior and attitudes, religious beliefs, and other matters commonly considered private.

12. Estimate of burden hours for information collected.

Note: Based on the FRA database, respondent universe is estimated at approximately 720 entities (680 railroads plus 40 signal employee contractors. The number of railroad workers covered by the Hours of Service Regulations is estimated to be approximately 109,200 (which includes current signal employees and newly hired employees as well). The number of employees is based on contacts with railroad industry representatives (ASLRRA, BRS, National Railroad Construction and Maintenance Association (NRCMA), signal contractors, FRA Regional Specialists, and those contractors covered by FRA's drug and alcohol rule).

49 C.F.R. Part 228.9 - Railroads records; general.

(a) Each manual record maintained under this part must be (1) signed by the employee whose time on duty is being recorded or, in the case of a train and engine crew or a signal employee gang, signed by the ranking crew member; (2) retained for two years at locations identified by the carrier; and (3) available upon request at the identified location for inspection and copying by the Administrator during regular business hours.

(b) Each electronic record maintained under this part must be: (1) Certified by the employee whose time on duty is being recorded, or in the case of a train and engine crew or a signal employee gang, certified by the reporting employee who is member of the train crew or signal gang whose time is being recorded; (2) Electronically stamped with the certifying employee's name and the date and time of certification; (3) Retained for two (2) years in a secured file that prevents alteration after certification; (4) Accessible by the Administrator through a computer terminal of the railroad, using a railroad-provided identification code and a unique password; (5) Reproducible using the printing capability at the location where records are accessed.

The burden for specific manual and electronic records that incorporate the above requirements is accounted for under § 228.11 below. Consequently, there is no additional burden associated with this provision.

49 C.F.R. Part 228.11 - Hours of Duty Records.

(a) In general. Each railroad, or a contractor or a subcontractor of a railroad, must keep a record, either manually or electronically, concerning the hours of duty of each employee. Each contractor or a subcontractor of a railroad must also record the name of the railroad for whom its employee performed covered service during the duty tour covered by the record. Employees who perform covered service assignments in a single duty tour that are subject to the recordkeeping requirements of more than one paragraph of this section must complete the record applicable to the covered service position for which they were called, and record other covered service as an activity constituting other service at the behest of the railroad.

(b) For train employees. Except as provided by paragraph (c), each hours of duty record for a train employee must include the following information about the employee:

(1) Identification of the employee (initials and last name; or if last name is not the employee's surname, provide the employee's initials and surname).

(2) Each covered service position in a duty tour.

(3) Amount of time off duty before beginning a new covered service assignment or resuming a duty tour.

(4) Train ID for each assignment required to be reported by this part, except for the following employees, who may instead report the unique job or train ID identifying their assignment: (i) utility employees assigned to perform covered service, who are identified as such by unique job or train ID; (ii) employees assigned to yard jobs, except that employees assigned to perform yard jobs on all or parts of consecutive shifts must at least report the yard assignment for each shift; (iii) assignments, either regular or extra, that are specifically established to shuttle trains into and out of a terminal during a single duty tour that are identified by a unique job or train symbol as such an assignment.

(5) Location, date, and beginning time of the first assignment in a duty tour, and, if the duty tour exceeds 12 hours and includes a qualifying period of interim release as provided by 49 U.S.C. 21103(b), the location, date, and beginning time of the assignment immediately following the interim release.

(6) Location, date, and time relieved for the last assignment in a duty tour, and, if the duty tour exceeds 12 hours and includes a qualifying period of interim release as provided by 49 U.S.C. 21103(b), the location, date, and time relieved for the assignment immediately preceding the interim release.

(7) Location, date, and time released from the last assignment in a duty tour, and, if the duty tour exceeds 12 hours and includes a qualifying period of interim release as provided by 49 U.S.C. 21103(b), the location, date, and time released from the assignment immediately preceding the interim release.

(8) Beginning and ending location, date, and time for periods spent in transportation, other than personal commuting, if any, to the first assignment in a duty tour, from an assignment to the location of a period of interim release, from a period of interim release to the next assignment, or from the last assignment in a duty tour to the point of final release, including the mode of transportation (train, track car, railroad-provided motor vehicle, personal automobile, etc.).

(9) Beginning and ending location, date, and time of any other service performed at the behest of the railroad.

(10) Identification (code) of service type for any other service performed at the behest of the railroad.

(11) Total time on duty for the duty tour.

(12) Reason for any service that exceeds 12 hours total time on duty for the duty tour.

(13) The total amount of time by which the sum of total time on duty and time spent awaiting or in deadhead transportation to the point of final release exceeds 12 hours;

(14) The cumulative total for the calendar month of -- (i) Time spent in covered service; (ii) Time spent awaiting or in deadhead transportation from a duty assignment to the place of final release; and (iii) Time spent in any other service at the behest of the railroad.

(15) The cumulative total for the calendar month of time spent awaiting or in deadhead transportation from a duty assignment to the place of final release following a period of 12 consecutive hours on duty.

(16) Number of consecutive days in which a period of time on duty was initiated.

(c) Exceptions to requirements for train employees. Subparagraphs (13) through (16) of paragraph (b) do not apply to the hours of duty records of train employees providing commuter rail passenger transportation or intercity rail passenger transportation.

(d) For dispatching service employees. Each hours of duty record for a dispatching service employee must include the following information about the employee:

(1) Identification of the employee (initials and last name; or if last name is not the employee's surname, provide the employee's initials and surname).

(2) Each covered service position in a duty tour.

(3) Amount of time off duty before going on duty or returning to duty in a duty tour.

(4) Location, date, and beginning time of each assignment in a duty tour.

(5) Location, date, and time released from each assignment in a duty tour.

(6) Beginning and ending location, date, and time of any other service performed at the behest of the railroad.

(7) Total time on duty for the duty tour.

(e) For signal employees. Each hours of duty record for a signal employee must include the following information about the employee:

(1) Identification of the employee (initials and last name; or if last name is not the employee's surname, provide the employee's initials and surname).

- (2) Each covered service position in a duty tour.
- (3) Headquarters location for the employee.
- (4) Amount of time off duty before going on duty or resuming a duty tour.
- (5) Location, date, and beginning time of each covered service assignment in a duty tour.
- (6) Location, date, and time relieved for each covered service assignment in a duty tour.
- (7) Location, date, and time released from each covered service assignment in a duty tour.
- (8) Beginning and ending location, date, and time for periods spent in transportation, other than personal commuting, to or from a duty assignment, and mode of transportation (train, track car, railroad-provided motor vehicle, personal automobile, etc.).
- (9) Beginning and ending location, date, and time of any other service performed at the behest of the railroad.
- (10) Total time on duty for the duty tour.
- (11) Reason for any service that exceeds 12 hours total time on duty for the duty tour.

A record of duty hours must be maintained for each job category covered by the Act. Based on the latest data available to FRA from railroad industry sources and from agency independent research conducted in conjunction with other future agency rulemakings, there are approximately 109,200 covered employees – 90,000 train and engine employees plus 19,200 dispatchers, and signalmen. It is estimated that 75% of this total will work 365 days per year (taking into account days off, etc.). FRA estimates then that a total of 29,893,500 hours of duty records (81,900 workers x 365 days) will be generated each year.

It is further estimated that three-quarters (75%) of the records of the approximately 49,000 train and engine employees will be kept electronically and that three-quarters of the other 41,000 train and employee (T&E) records will be kept on paper. Thus, a total of 13,413,750 T&E records (36,750 records x 365) will be kept electronically by the Union Pacific, (UP), CSX Transportation (CSX), Florida East Coast Railway (FEC), and Norfolk Southern (NS) railroads and a total of 11,223,750 T&E records (30,750 records x 365) will be kept on paper. It is estimated that it will take approximately two (2) minutes to keep each electronic record and approximately 10 minutes to keep each paper record.

Of the additional 19,200 covered employees, approximately 6,336 employees are dispatchers and 12,864 are signalmen. All these records are currently kept on paper. The paper records for dispatchers are less involved than those for the T&E employees and signalmen employees, and will thus take less time to complete. FRA estimates that three-quarters of the dispatchers records (4,752 records x 365 days) or a total of 1,734,480 records will take approximately five (5) minutes to finish and that three-quarters of the signalmen records (9,648 records x 365 days) or a total of 3,521,520 records will take approximately 10 minutes to finish. The total annual burden for this requirement then is 3,049,210 hours.

	Respondent Universe:
	720 railroads/signal contractors
Burden time per response:	2 minutes/5minutes/10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	29,893,500 records
Annual Burden:	3,049,210 hours

Calculation: 13,413,750 electronic T&E records x 2 min. + 11,223,750 T&E paper records x 10 min. + 1,734,480 dispatchers records x 5 min + 3,521,520 signalmen records x 10 min. = 3,049,210 hours

Total annual burden for this requirement is 3,049,210 hours.

49 C.F.R. Part 228.17 - Dispatchers Record of Train Movements.

Each carrier must keep, for each dispatching district, a record of train movements made under the direction and control of a dispatcher who uses telegraph, telephone, radio, or any other electrical or mechanical device to dispatch, report, transmit, receive, or deliver orders pertaining to train movements. The following information must be included in the record: (1) Identification of timetable in effect; (2) Location and date; (3) Identification of dispatchers and their times on duty; (4) Weather conditions at six (6) hour intervals; (5) Identification of enginemen and conductors and their times on duty; (6) Identification of trains and engines; (7) Station names and office designations; (8) Distances between stations; (9) Direction of movement and the time each train passes all reporting stations; (10) Arrival and departure times of trains at all reporting stations; and (11) Unusual events affecting movement of trains and identification of trains affected.

Each dispatching office is required to maintain a record of train movements made under the direction of a dispatcher. There are approximately 550 dispatching desks in the approximately 150 dispatching offices nationwide, and each dispatching desk will keep a

record 365 days a year. A total of 200,750 records then will be kept each year. It is estimated that it will take approximately three (3) hours to complete each record. Total annual burden for this requirement is 602,250 hours.

Respondent Universe:	150 dispatch offices
Burden time per response:	3 hours
Frequency of Response:	On occasion
Annual number of Responses:	200,750 records
Annual Burden:	602,250 hours

Calculation: 200,750 records x 3 hrs. = 602,250 hours

49 CFR Part 228.19 - Monthly Reports of Excess Service.

(a) In general. Except as provided in paragraph (h) of this section, each railroad, or contractor or subcontractor to a railroad, must report to the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, Washington, D.C. 20590, each instance of excess service listed in paragraphs (b) through (e) of this section, in the manner provided by paragraph (f) of this section, within 30 days after the calendar month in which the instance occurs.

(b) For train employees. Except as provided in paragraph (c), the following instances of excess service by train employees must be reported to FRA as required by this section:

(1) A train employee is on duty for more than 12 consecutive hours.

(2) A train employee continues on duty without at least 10 consecutive hours undisturbed off duty during the preceding 24 hours. Instances involving duty tours that are broken by less than 10 consecutive hours undisturbed off duty which duty tours constitute more than a total of 12 hours time on duty must be reported.* (**Instances involving duty tours that are broken by four or more consecutive hours of undisturbed off duty time at a designated terminal which duty tours do not constitute more than a total of 12 hours time on duty are not required to be reported, provided such duty tours are immediately preceded by 10 or more consecutive hours of undisturbed off-duty time.*)

(3) A train employee returns to duty without at least 10 consecutive hours undisturbed off duty during the preceding 24 hours. Instances involving duty tours that are broken by less than 10 consecutive hours undisturbed off duty which duty tours constitute more than a total of 12 hours time on duty must be reported.* (**Instances involving duty tours that are broken by four or more consecutive hours of off duty time at a designated terminal which duty tours do not constitute more than a total of 12 hours time on duty are not required to be reported, provided such duty tours are immediately preceded by 10 or more consecutive hours undisturbed off-duty time.*)

(4) A train employee returns to duty without additional time off undisturbed, equal to the total amount of time by which the employee's sum of total time on duty and time spent awaiting or in deadhead transportation to the point of final release exceeds 12 hours.

(5) A train employee exceeds a cumulative total of 276 hours in the following activities in a calendar month:

(i) Time spent in covered service;

(ii) Time spent awaiting or in deadhead transportation from a duty assignment to the place of final release; and

(iii) Time spent in any other service at the behest of the railroad.

(6) A train employee initiates an on-duty period on more than six (6) consecutive calendar days, when the on-duty period on the sixth consecutive day ended at the employee's home terminal, and the seventh consecutive day is not allowed pursuant to a collective bargaining agreement or pilot project.

(7) A train employee returns to duty after initiating an on-duty period on six (6) consecutive calendar days, without 48 consecutive hours undisturbed off duty at the employee's home terminal.

(8) A train employee initiates an on-duty period on more than seven (7) consecutive calendar days.

(9) A train employee returns to duty after initiating an on-duty period on seven (7) consecutive calendar days, without 72 consecutive hours off duty undisturbed at the employee's home terminal.

(10) A train employee exceeds the following limitations on time spent awaiting or in deadhead transportation from a duty assignment to the place of final release following a period of 12 consecutive hours on duty:

(i) 40 hours in any calendar month completed prior to October 1, 2009;

(ii) 20 hours in the transition period from October 1, 2009-October 15, 2009;

(iii) 15 hours in the transition period from October 16, 2009-October 31, 2009; and

(iv) 30 hours in any calendar month completed after October 31, 2009;

(c) Exception to requirements for train employees. For train employees who provide commuter rail passenger transportation or intercity rail passenger transportation during a

duty tour, the following instances of excess service must be reported to FRA as required by this section:

(1) A train employee is on duty for more than 12 consecutive hours.

(2) A train employee returns to duty after 12 consecutive hours of service without at least 10 consecutive hours off duty.

(3) A train employee continues on duty without at least eight (8) consecutive hours off duty during the preceding 24 hours. Instances involving duty tours that are broken by less than eight (8) consecutive hours off duty which duty tours constitute more than a total of 12 hours time on duty must be reported.* (**Instances involving duty tours that are broken by four or more consecutive hours of off-duty time at a designated terminal which duty tours do not constitute more than a total of 12 hours time on duty are not required to be reported, provided such duty tours are immediately preceded by eight (8) or more consecutive hours off-duty time.*)

(4) A train employee returns to duty without at least eight (8) consecutive hours off duty during the preceding 24 hours. Instances involving duty tours that are broken by less than eight (8) consecutive hours off duty which duty tours constitute more than a total of 12 hours time on duty must be reported.* (**Instances involving duty tours that are broken by four or more consecutive hours of off-duty time at a designated terminal which duty tours do not constitute more than a total of 12 hours time on duty are not required to be reported, provided such duty tours are immediately preceded by eight (8) or more consecutive hours off-duty time.*)

(d) For dispatching service employees. The following instances of excess service by dispatching employees must be reported to FRA as required by this section:

(1) A dispatching service employee is on duty for more than nine (9) hours in any 24-hour period at an office where two or more shifts are employed.

(2) A dispatching service employee is on duty for more than 12 hours in any 24-hour period at any office where one shift is employed.

(e) For signal employees. The following instances of excess service by signal employees must be reported to FRA as required by this section:

(1) A signal employee is on duty for more than 12 consecutive hours.

(2) A signal employee continues on duty without at least 10 consecutive hours undisturbed off duty during the preceding 24 hours.

(3) A signal employee returns to duty without at least 10 consecutive hours undisturbed off duty during the preceding 24 hours.

(f) Except as provided in paragraph (h), reports required by paragraphs (b) through (e) of this section must be filed in writing on Form FRA F 6180.3 with the Office of Railroad Safety, Federal Railroad Administration, Washington, D.C. 20590. A separate form must be used for each instance reported.

(g) Use of electronic signature. For the purpose of complying with paragraph (f) of this section, the signature required on Form FRA F 6180.3 may be provided to FRA by means of an electronic signature provided that:

(1) The record contains the printed name of the signer and the date and actual time the signature was executed, and the meaning (such as authorship, review, or approval) associated with the signature;

(2) Each electronic signature must be unique to one individual and must not be used by, or assigned to, anyone else;

(3) Before a railroad, or a contractor or subcontractor to a railroad, establishes, assigns, certifies, or otherwise sanctions an individual's electronic signature, or any element of such electronic signature, the organization must verify the identity of the individual;

(4) Persons using electronic signatures must, prior to or at the time of such use, certify to the agency that the electronic signatures in their system, used on or after the effective date of this regulation, are the legally binding equivalent of traditional handwritten signatures;

(5) The certification must be submitted, in paper form and signed with a traditional handwritten signature, to the associate Administrator for Railroad Safety/Chief Safety Officer; and

(6) Persons using electronic signatures must, upon agency request, provide additional certification or testimony that a specific electronic signature is the legally binding equivalent of the signer's handwritten signature.

(h) Exception. A railroad, or a contractor or subcontractor to a railroad, is excused from the requirements of paragraphs (a) and (f) of this section as to any employees for which --

(1) The railroad or a contractor or subcontractor to a railroad, maintains hours of service records using an electronic recordkeeping system that complies with the requirements of subpart D of this Part; and (2) The electronic recordkeeping system referred to in paragraph (h)(1) of this section requires: (i) the employee to enter an explanation for any excess service certified by the employee; and (ii) the railroad, or a contractor or

subcontractor of a railroad, to analyze each instance of excess service certified by one of its employees, make a determination as to whether each instance of excess service would be reportable under the provisions of paragraphs (b) through (e) of this section, and allows the railroad, or a contractor or subcontractor to a railroad, to append its analysis to its employee's electronic record; and (iii) allows FRA inspectors and State inspectors participating under 49 CFR 212 access to employee reports of excess service and any explanations provided.

Each carrier then must report the circumstances where their employees have exceeded maximum duty hour limitations. There are approximately 300 respondents. The excess service situations vary considerably due to carrier size and compliance considerations. Due to additional requirements to keep track of limbo time and consecutive days on duty time, FRA estimates that the average annual number of submissions will number approximately 2,640. It is estimated that it will take approximately two (2) hours to prepare the report and forward it to FRA. Total annual burden for this requirement is 5,280 hours.

Respondent Universe:	300 railroads
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	2,640 reports (forms)
Annual Burden:	5,280 hours

Calculation: 2,640 reports x 2 hrs. = 5,280 hours

FRA estimates that the provision under (g)(4) above pertaining to certifying electronic signatures will not be utilized by railroads for quite some time. Consequently, there is no burden associated with this requirement.

Total annual burden for this requirement is 5,280 hours.

49 CFR Part 228.23 - Criminal Penalty For False Report or Record

Any person who knowingly and willfully falsifies a report or record required to be kept under this Part or otherwise knowingly and willfully violates any requirement of this Part may be liable for criminal penalties of a fine up to \$5,000, imprisonment for up to two years, or both, in accordance with 49 U.S.C. 21311(a).

FRA estimates that there will be zero (0) falsified reports or records kept by railroad under this Part. Consequently, there is no burden associated with this requirement.

49 CFR Part 228.103 - Construction of Employee Sleeping Quarters.

A common carrier that has developed plans for the construction or reconstruction of

sleeping quarters subject to this Subpart and which is considering a site less than one-half mile (2,640 feet) (804 meters) from any area where switching or humping operations are performed, measured from the nearest rail of the nearest trackage utilized on a regular or intermittent basis for switching or humping operations to the point on the site where the carrier proposes to construct or reconstruct the exterior wall of the structure, or portion of such wall, which is closest to such operations, must obtain the approval of the Federal Railroad Administration before commencing construction or reconstruction on that site. Approval may be requested by filing a petition conforming to the requirements of this Subpart.

A petition must be filed in triplicate with the Secretary, Railroad Safety Board, Federal Railroad Administration, Washington, D.C. 20590 and must contain the following information: (1) A brief description of the type of construction planned, including materials to be employed, means of egress from the quarters, and actual and projected exterior noise levels and projected interior noise levels; (2) The number of employees expected to utilize the quarters at full capacity; (3) A brief description of the site, including: (i) Distance from trackage where switching or humping operations are performed, specifying distances from particular functions such as classification, repair, assembling of trains from large groups of cars, etc.; (ii) Topography within a general area consisting of the site and all of the rail facilities close to the site; (iii) Location of other physical improvements situated between the site and areas where railroad operations are conducted; (4) A blueprint or other drawing showing the relationship of the site to trackage and other planned and existing facilities; (5) The proposed or estimated date for commencement of construction; (6) A description of the average number and variety of rail operations in the areas within one-half mile (2,640 feet) (804 meters) of the site (e.g., number of cars classified in 24-hour period; number of train movements); (7) An estimate of the average daily number of placarded rail cars transporting hazardous materials through the railroad facility (where practicable, based on a 365-day period sample, that period not having ended more than 120 days prior to the date of filing the petition), specifying the (i) Number of such cars transporting class A explosives and poison gases; and (ii) Number of DOT Specification 112A and 114A tank cars transporting flammable gas subject to FRA emergency order No. 5; (8) A statement certified by a corporate officer of the carrier possessing authority over the subject matter explaining any plans of that carrier for utilization of existing trackage, or for the construction of new trackage, which may impact on the location of switching or humping operations within one-half mile of the proposed site (if there are no plans, the carrier official must so certify); and (9) Any further information which is necessary for evaluation of the site. A petition filed under this section must contain a statement that the petition has been served on the recognized representatives of the railroad employees who will be utilizing the proposed sleeping quarters, together with a list of the employee representatives served.

Each railroad then must petition FRA to allow the construction or reconstruction of employee sleeping quarters in the vicinity of any area where switching is performed.

There have been no submissions under this requirement in the last five years. However, it is possible that FRA could receive one such a petition a year over the next three (3) years and, if a railroad should decide to petition FRA under this requirement, it is estimated that it would take approximately 16 hours to gather the necessary data, prepare the petition and other required documentation, and send the stipulated number of copies to the appropriate parties. Total annual burden for this requirement is 16 hours.

Respondent Universe:	50 railroads
Burden time per response:	16 hours
Frequency of Response:	On occasion
Annual number of Responses:	1 petition
Annual Burden:	16 hours

Calculation: 1 petition x 16 hrs. = 16 hours

Total annual burden for this requirement is 16 hours.

49 CFR Part 228.201 - Electronic Recordkeeping; general.

For the purposes of compliance with the recordkeeping requirements of Subpart B, a railroad or a contractor or subcontractor to a railroad may create and maintain any of the records required by Subpart B through electronic transmission, storage, and retrieval provided that all of the following conditions are met:

- (1) The system used to generate the electronic record meets all requirements of this Subpart;
- (2) The electronically generated record contains the information required by § 228.11;
- (3) The railroad or contractor or subcontractor to the railroad monitors its electronic database of employee hours of duty records through sufficient number of monitoring indicators to ensure a high degree of accuracy of these records; and
- (4) The railroad or contractor or subcontractor to the railroad trains its employees on the proper use of the electronic recordkeeping system to enter the information necessary to create his or her hours of service record, as required by § 228.207;
- (5) The railroad or contractor or subcontractor to the railroad maintains an information technology security program adequate to ensure the integrity of the system, including the prevention of unauthorized access to the program logic or individual records;
- (6) FRA's Associate Administrator for Railroad Safety/Chief Safety Officer may prohibit or revoke the authority to use the electronic system if FRA finds the system is not properly secure, is inaccessible to FRA, or fails to record and store the information

adequately and accurately. FRA will record such a determination in writing, including the basis for such action, and will provide a copy of its determination to the railroad.

The burden for this requirement is included under that of § 228.11, § 228.203, and § 228.207. Consequently, there is no additional burden associated with this provision.

49 CFR Part 228.203 - Program Components.

(a) System Security. The integrity of the program and database must be protected by a security system that utilizes an employee identification number and password, or a comparable method, to establish appropriate levels of program access meeting all of the following standards:

(1) Data input is restricted to the employee or train crew whose time is being recorded, with the following exceptions:

(i) A railroad, or a contractor or subcontractor to a railroad, may allow its recordkeeping system to pre-populate fields of the hours of service record provided that --

A. The recordkeeping system may pre-populate fields of the hours of service record with information known to the railroad, or contractor or subcontractor to the railroad to be factually accurate for a specific employee.

B. The recordkeeping system may also provide the ability for employees to copy data from one field of a record into another field, where applicable.

C. Estimated, historical, or arbitrary data are not used to pre-populate any field of an hours of service record.

D. A railroad, or a contractor or subcontractor to a railroad, is not in violation of this paragraph if it makes a good faith judgment as to the factual accuracy of the data for a specific employee but nevertheless errs in pre-populating a data field.

E. The employee may make any necessary changes to the data by typing into the field, without having to access another screen or obtain clearance from the railroad, or a contractor or subcontractor to a railroad.

(ii) A railroad, or a contractor or subcontractor to a railroad, shall allow employees to complete a verbal quick tie-up, or to transmit by facsimile or other electronic means the information necessary for a quick tie-up, if --

(A) The employee is released from duty at a location at which there is no other terminal available;

(B) Computer systems are unavailable as a result of technical issues; or

(C) Access to computer terminals is delayed and the employee has exceeded his or her maximum allowed time on duty.

(2) No two individuals have the same electronic identity.

(3) A record cannot be deleted or altered by an individual after the record is certified by the employee who created that record.

(4) Any amendment to a record is either –

(i) Electronically stored apart from the record that it amends, or

(ii) Electronically attached to the record as information without changing the original record.

(5) Each amendment to a record uniquely identifies the individual making the amendment.

(6) The electronic system provides for the maintenance of inspection records as originally submitted without corruption or loss of data.

(7) Supervisors and crew management officials can access, but cannot delete or alter the records of any employee after the report-for-duty time of the employee or after the record has been certified by the reporting employee.

(b) Identification of the individual entering data. The program must be capable of identifying each individual who entered data for a given record. If a given record contains data entered by more than one individual, the program must be capable of identifying each individual who entered specific information within the record.

(c) Capabilities of program logic. The program logic must have the ability to –

(1) Calculate the total time on duty for each employee, using data entered by the employee and treating each identified period as defined in § 228.5;

(2) Identify input errors through use of program edits;

(3) Require records, including outstanding records, the completion of which was delayed, to be completed in chronological order;

(4) Require reconciliation when the known (system-generated) prior time off differs from the prior time off reported by an employee;

(5) Require explanation if the total time on duty reflected in the certified record exceeds the statutory maximum for the employee;

(6) Require the use of a quick tie-up process when the employee has exceeded or is within three minutes of his or her statutory maximum time on duty;

(7) Require that the employee's certified final release be not more than three minutes in the future, and that the employee may not certify a final release time for a current duty tour that is in the past, compared to the clock time of the computer system at the time that the record is certified, allowing for changes in time zones;

(8) Require automatic modification to prevent miscalculation of an employee's total time on duty for a duty tour that spans changes from and to daylight savings time;

(9) For train employees, require completion of a full record at the end of a duty tour when the employee initiates a tie-up with less than the statutory maximum time on duty and a quick tie-up is not mandated;

(10) For train employees disallow use of quick tie-up when the employee has time remaining to complete a full record, except as provided in paragraph (a)(1)(ii) of this section.

(11) Disallow any manipulation of the tie-up process that precludes compliance with any of requirements specified by subparagraphs (1) through (10) of this subparagraph (c).

(d) Search capabilities. The program must contain sufficient search criteria to allow any record to be retrieved through a search of one or more of the following data fields, by specific date or by a date range not exceeding 30 days for the data fields specified by subparagraphs (1) and (2), and not exceeding one day for the data fields specified by subparagraphs (3) through (7):

(1) Employee, by name or identification number;

(2) Train or job symbol;

(3) Origin location, either yard or station;

(4) Released location, either yard or station;

(5) Operating territory (i.e., division or service unit, subdivision, or railroad-identified

line segment);

(6) Certified records containing one or more instances of excess service; and

(7) Certified records containing duty tours in excess of 12 hours.

(e) The program must display individually each train or job assignment within a duty tour.

In reference to the above requirements, five (5) railroads already have FRA approved electronic recordkeeping programs. The only change that they will need to make concerning these requirements is referenced in (c)(8) above pertaining to daylight savings time. It is estimated that it will take approximately 120 hours for each of the five (5) railroads to write and test the computer programming that will fulfill this requirement. The burden for this part of § 228.203 then is 600 hours.

Further, over the next three years covered by this submission, FRA estimates that approximately one (1) railroad per year will develop electronic recordkeeping systems with the required security and search capability that will meet the above requirements. It is estimated that it will take approximately 720 hours to create such a program. Total annual burden for this entire requirement is 1,320 hours.

Respondent Universe:	9 railroads
Burden time per response:	120 hours; 720 hours
Frequency of Response:	One-time
Annual number of Responses:	5 adjusted programs (daylight savings) + 1 developed security/search capability program
Annual Burden:	1,320 hours

Calculation: 5 adjusted programs (daylight savings) x 129 hrs. + one (1) developed security/search capability programs x 720 hrs.= 1,320 hours

Total annual burden for this requirement is 1,320 hours.

49 C.F.R. Part 228.205 - Access to Electronic Records

(a) FRA inspectors and State inspectors participating under 49 C.F.R. Part 212 must have access to hours of service records created and maintained electronically that is obtained as required by § 228.9(b)(4).

(b) Railroads must establish and comply with procedures for providing an FRA inspector or participating State inspector with an identification number and temporary password for

access to the system upon request, which access will be valid for a period not to exceed seven days. Access to the system must be provided as soon as possible and no later than 24 hours after a request for access.

(c) The inspection screen provided to FRA inspectors and participating State inspectors for searching employee hours of duty records must be formatted so that –

(1) Each data field entered by an employee on the input screen is visible to the FRA inspector or participating State inspector; and

(2) The data fields are searchable as described in § 228.203(d) and yield access to all records matching criteria specified in a search.

(3) Records are displayed in a manner that is both crew-based and duty tour oriented, so that the data pertaining to all employees who worked together as part of a crew or signal gang will be displayed together, and the record will include all of the assignments and activities of a given duty tour that are required to be recorded by this part.

FRA estimates that approximately five (5) railroads will establish procedures to enable FRA and participating State inspectors to access electronic hours of service records under the above requirement. It is estimated that there will be approximately 100 inspections per year and that it will take approximately 30 minutes for each railroad to establish such procedures. Total annual burden for this requirement is 50 hours.

Respondent Universe:	720 railroads/signal contractors
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	100 electronic records access procedures
Annual Burden:	50 hours

Calculation: 100 electronic records access procedures x 30 min. = 50
hours

Total annual burden for this requirement is 50 hours.

49 C.F.R. Part 228.207 - Training

(a) In general. A railroad must provide its train employees, signal employees, and dispatching service employees and its supervisors of these employees with initial and refresher training in the use of the electronic system.

(b) Initial training. (1) Initial training must include the following:

(i) Instructional components presented in a classroom setting or by electronic means; and

(ii) Experiential (“hands-on”) components; and

(iii) Training on –

(A) The aspects of the hours of service laws relevant to the employee’s position that are necessary to understanding the proper completion of the hours of service record required by this part, and

(B) The entry of hours of service data, into the electronic system or on the appropriate paper records used by the railroad or contractor or subcontractor to a railroad for whom the employee performs covered service, and

(iv) Testing to ensure that the objectives of training are met.

(2) Initial training must be provided –

(i) To each current employee and supervisor of an employee as soon after [ENTER DATE OF PUBLICATION OF FINAL RULE IN THE FEDERAL REGISTER] as practicable; and

(ii) To new employees and supervisors prior to the time that they will be required to complete an hours of service record or supervise an employee required to complete an hours of service record.

Based on the current FRA waiver program, FRA estimates that this will be a one-day class and that approximately 47,000 employees will be initially trained and tested on the proper use of the electronic recordkeeping system and relevant aspects of the Hours of Service laws under the above requirement. It is estimated that it will take approximately one (1) hour to train and test each employee. Total annual burden for this requirement is 47,000 hours.

Respondent Universe:	720 railroads/signal contractors
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	47,000 trained employees
Annual Burden:	47,000 hours

Calculation: 47,000 trained employees x 1 hr. = 47,000 hours

(c) Refresher Training. (1) The content and level of formality of refresher training should

be tailored to the needs of the location and employees involved, except that the training must:

(i) Emphasize any relevant changes to the hours of service laws, the reporting requirements in this Part, or the carrier's electronic recordkeeping system since the employee last received training; and

(ii) Cover any areas in which supervisors or other railroad managers are finding recurrent errors in the employees' records through the monitoring indicators.

(2) Refresher training must be provided to each employee any time that recurrent errors in records prepared by the employee, discovered through monitoring indicators, suggest, for example, the employee's lack of understanding of how to complete hours of service records.

FRA estimates that approximately 2,200 employees (roughly 2% of the 109,200 covered employees) will receive refresher training on the proper use of the electronic recordkeeping system and relevant aspects of the hours of service laws under the above requirement. It is estimated that it will take approximately one (1) hour to train each employee. Total annual burden for this requirement is 2,200 hours.

Respondent Universe:	720 railroads/signal contractors
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	2,200 refresher trained employees
Annual Burden:	2,200 hours

Calculation: 2,200 refresher trained employees x 1 hr. = 2,200 hours

Total annual burden for this entire requirement is 49,200 hours (47,000 + 2,200).

49 U.S.C. 21102 - The Federal Hours of Service Laws.

The Secretary of Transportation may exempt a railroad carrier having not more than 15 employees covered by chapter 211 from the limitations imposed by this chapter. The Secretary may allow the exemption after a full hearing, for good cause shown, and upon deciding that the exemption is in the public interest and will not adversely affect safety. The exemption shall be for a specific period of time and is subject to review at least annually. The exemption may not authorize a carrier to require or allow its employees to be on duty more than a total of 16 hours in a 24-hour period.

As stipulated above, a railroad that employs not more than 15 persons covered by the

Federal Hours of Service Laws may be exempted from the laws' requirements by FRA after a hearing and for good cause shown. FRA estimates that it will receive approximately two (2) petitions annually under this provision. It is estimated that it will take approximately 10 hours to accumulate the necessary data, and prepare each petition. Total annual burden for this requirement is 20 hours.

Respondent Universe:	10 railroads
Burden time per response:	10 hours
Frequency of Response:	On occasion
Annual number of Responses:	2 petitions
Annual Burden:	20 hours

Calculation: 2 petitions x 10 hrs. = 20 hours

Total annual burden for this requirement is 20 hours.

The total burden for this entire collection of information is 3,707,346 hours.

13. Estimate of total annual costs to respondents.

Additional Costs to Respondents are as follows:

Cost to Maintain IT Electronic Database of Hours of Duty Record	\$ 10,000
Postage and Miscellaneous	1,000
TOTAL	11,000

14. Estimate of Cost to Federal Government.

Federal Costs

49 C.F.R. 228.11

The cost to the Federal Government in connection with these recordkeeping requirements

is included under the costs listed below for sections 228.201 and 228.203.

49 C.F.R. 228.17

There is no cost to the Federal Government in connection with these recordkeeping requirements because the requirements are essentially the same as before.

49 C.F.R. 228.19

Approximately, an estimated 1,200 hours will be spent by FRA inspectors interviewing, processing and following up on the reports submitted by the railroads. Multiplying 1,200 hours times the estimated \$70 per hour (including 75 percent overhead) would be \$84,000 in labor costs annually.

The cost for providing 2,640 forms used to file excessive service is approximately \$185 (2,640 x \$.07 for cost of form and distribution). Since the required form is available on FRA's Website and can be easily downloaded, the cost here is most likely zero.

However, FRA -- to be conservative -- is calculating a cost to take into account any railroads which might not have access to the Internet.

Total Cost = **\$84,185.**

49 C.F.R. Part 228.103

The estimated total annual cost to the Federal Government for obtaining, evaluating, and processing the required information is \$1,288.

This is calculated as follows: One-half hour for each petition to prepare public notice, eight hours field investigation and reporting of findings, three hours evaluating investigative report and preparing recommendation. As stated earlier, FRA estimates that it will receive and handle one petition annually. Government cost is calculated at \$112 per hour which includes a 75 percent allowance for overhead and operational expenses. (11.5 hours x 1 petition x \$112 = \$1,288).

Total Cost = **\$1,288.**

49 C.F.R. Part 228.201 and 49 C.F.R. 228.203

For four of the large major railroads previously approved under the old electronic waiver process, FRA's Headquarters **Hours of Service** program manager and two FRA field inspectors will spend approximately 10 weeks each monitoring compliance with the new *Hours of Duty* requirements spelled-out in section 228.11 and the new requirements specified in the two section listed above.

Thus, the estimated annual cost to the Federal Government for this first portion of these new requirements is as follows:

10 full weeks (5 days p/wk @ 9 hours p/day) or a total of 450 hours for one GS-14 (@ \$112 p/hr.) = \$50,400

10 full weeks per field inspector (5 days p/wk @ 9 hours p/day) or a total of 900 hours for two GS-12s @ \$70 p/hr).= \$63,000

Regarding the new electronic recordkeeping requirements, waivers are no longer necessary (as previously mentioned). However, it is estimated that FRA's Headquarters **Hours of Service** program manager will spend an estimated six (6) weeks annually monitoring compliance and conducting audits on the four (4) new/additional railroads that are expected to convert their *Hours of Duty* records from paper to an electronic recordkeeping system. Also, it is estimated that two (2) FRA field inspectors will also spend approximately six (6) weeks annually visiting these four (4) new railroads and answering questions/ resolving program issues related to their *Hours of Duty* electronic recordkeeping systems.

Thus, the estimated annual cost to the Federal Government related to the new electronic recordkeeping requirements is as follows:

6 full weeks (5 days p/wk @ 9 hours p/day) or a total of 270 hours for one GS-14 (@ \$112 p/hr.) = \$30,240

6 full weeks per field inspector (5 days p/wk @ 9 hours p/day) or a total of 540 hours for the two GS-12 inspectors (@ \$70 p/hr).= \$37,800

Total Cost = \$181,440

49 C.F.R. Part 228.205

The cost to the Federal Government related to the requirement that FRA inspectors must be given a unique ID and password to access the railroads *Hours of Duty* electronic recordkeeping system are included above under those for sections 228.201 and 228.203.

49 C.F.R. Part 228.207

Under this new requirement, railroads must provide its train employees, signal employees, and dispatching service employees and its supervisors of these employees with initial and refresher training in the use of the electronic system. FRA inspectors will monitor this process. It is estimated that approximately 18 field inspectors will spend about six (6) hours each annually conducting monitoring/auditing activities regarding

training. Thus, the cost to the Federal Government is as follows:

18 FRA field inspectors x 6 hrs. or a total 108 hours (@ \$70 p/hr).= \$7,560

Total Cost = **\$7,560**

49 U.S.C. 21102 - The Federal Hours of Service Laws.

Under this requirement, the Secretary of Transportation may exempt a railroad carrier having not more than 15 employees covered by chapter 211 from the limitations imposed by this chapter. The Secretary may allow the exemption after a full hearing, for good cause shown, and upon deciding that the exemption is in the public interest and will not adversely affect safety. The exemption shall be for a specific period of time and is subject to review at least annually. The exemption may not authorize a carrier to require or allow its employees to be on duty more than a total of 16 hours in a 24-hour period.

This cost is calculated as follows: One-half hour for each petition to prepare public notice, eight hours field investigation and reporting of findings, three hours evaluating investigative report and preparing recommendation. As stated earlier, FRA estimates that it will receive and handle one petition annually. Government cost is calculated at \$112 per hour which includes a 75 percent allowance for overhead and operational expenses. (11.5 hours x 2 petitions x \$112 = \$2,576).

Total Government Cost = **\$2,576**

Grand Total Government Cost = \$277,049

15. Explanation of program changes and adjustments.

As mentioned at the top of this document in the submission summary, this is a request without change of the currently approved burden for this information collection.

Per the January 12, 2010, Notice of Action, FRA has corrected its mistake from the earlier submission. The cost to respondents has increased by \$11,000 from the previously approved submission. This is an adjustment. FRA listed this cost in its last two submissions, but it was not properly accounted for in its ROCIS submissions. *(Also, please note that there was a typo in the last ROCIS submission concerning the total number of responses where the total number of responses was incorrectly listed as 30,145,699 instead of the correct 30,146,199. This submission shows the correct number as an adjustment by 500 responses.)*

16. Publication of results of data collection.

There are no plans to publish the information collected in this submission.

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 the main DOT strategic goal, namely transportation safety. Without this collection of information, rail safety throughout the U.S. might be seriously jeopardized. Specifically, the number of accidents/incidents and the severity of injuries might increase because railroad employees performing covered service worked excessive amounts of hours. Such excessively heavy work schedules could lead to fatigue, poor judgment, and mistakes on the part of these employees that could result in a greater likelihood/increased risk of accident/incidents. The collection of information, particularly the Hours of Duty Records and the Monthly Reports of Excess Service, enhances rail safety by allowing FRA to closely monitor the railroad industry to ensure compliance with Federal regulations, and to take immediate corrective action in situations where the law and Federal regulations are not being observed.

The collection of information, notably the Dispatcher's Record of Train Movements, further enhances rail safety by providing a valuable resource that FRA and other investigating agencies can use in determining the cause(s) or contributing cause(s) of accidents/incidents. These records provide vital information, such as the identification of the timetable in effect; location and date; the identification of dispatchers and their times on duty; weather conditions at six-hour intervals; identification of enginemen and conductors and their times on duty; identification of trains and engines, direction of movement and the time each train passes all reporting stations; and unusual events affecting movement of trains and identification of trains affected. By accurately determining the cause(s) of accidents/incidents, FRA and the railroad industry can take measures to reduce the likelihood of similar events occurring in the future.

Lastly, the collection promotes rail safety by providing a safe environment for railroad workers. In particular, the petitions for approval for construction of employee sleeping quarters that must be submitted to FRA ensures that any construction or reconstruction of sleeping quarters located "within or in the immediate vicinity" of an area where railroad

switching or humping operations are performed is done in a manner consistent with railroad safety. Thus, it is highly unlikely that railroad workers will be injured or killed because sleeping quarters were placed in an unsafe area.

In summary, this collection of information enhances railroad safety by providing an additional layer of protection through the agency's close monitoring and full awareness of the number of hours worked by railroad employees performing covered service. It furthers DOT's goal of promoting the public health and safety by working toward the elimination of transportation-related deaths, injuries, and property damage.

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.