

**SUPPORTING JUSTIFICATION
RAILROAD POLICE OFFICERS
RIN 2130-AC62
OMB No. 2130-0537**

Summary of Submission

- This submission is a request for an extension with change to the three-year approval granted by OMB on **October 24, 2016**, which now expires on **October 31, 2019**.
- FRA is publishing a Final Rule in the Federal Register titled Railroad Police Officers on **December 7, 2016**. See 81 FR 88127.
- The total number of burden **hours requested** for this information collection submission is **188 hours**.
- The total number of burden **hours previously approved** for this information collection was **181 hours**.
- Total burden increase then amounts to **seven (7) hours**.
- Total number of **responses requested** for this information collection submission is **110**.
- Total number of responses **previously approved** for this information collection was **70**.
- **Adjustment(s)** increased the burden by **seven (7) hours** and increased the number of **responses** by **40**.
- There are no **program changes** at this time.
- ****The answer to question number 12 itemizes the hourly burden associated with each requirement of this rule (See pp. 8-11).**

1. Circumstances that make collection of the information necessary.

Prior to enactment of the FAST Act (Public Law 114-94 (Dec. 4, 2015)), 49 U.S.C. 28101 (Section 28101) authorized railroad employees commissioned or certified as police officers by any state to enforce, consistent with DOT regulations, the laws of any state where the railroad police officer's employer owns property to protect railroad property, personnel, passengers, and cargo. Section 28101 did not allow railroads to hire contractor railroad police officers or allow a railroad police officer to transfer from one

state to another unless that officer was immediately commissioned or certified in the new state. Section 28101 also did not address training railroad police officers, except general references to the certification or commissioning of the officers under state law. FRA's regulations at 49 CFR part 207 (Part 207) implement Section 28101.

FAST Act Section 11412(b) (Section 11412) revised Section 28101 to allow: (1) railroads to hire contractors as railroad police officers; (2) railroad police officers to transfer from one state to another without immediately needing to be commissioned or certified in the new state; and (3) a state to recognize an officer's training at another state's recognized police academy or a Federal law enforcement training center meets the state's basic police officer certification or commissioning requirements.¹

Section 11412 also requires the Secretary of Transportation (Secretary) to, within one year of enactment of the FAST Act, revise Part 207 consistent with Section 11412. The authority to carry out this mandate is delegated to FRA. See 49 CFR 1.89(a). In issuing this final rule, neither the Secretary nor FRA is exercising any discretion in modifying Part 207. Instead, this final rule merely incorporates the new Section 11412 statutory language into existing Part 207 and, in certain instances, updates Part 207 to ensure consistent application of the regulation, as modified by the FAST Act.

The FAST Act made three substantive revisions to existing Section 28101. First, the FAST Act revised Section 28101 paragraphs (a) and (b) to allow railroad police officers to be either direct employees of a railroad or contractors to a railroad (prior to the FAST Act, Section 28101 required railroad police officers to be "employed by" a railroad). Specifically, the FAST Act amended Section 28101(a) (the general authorizing provision for railroad police officers) to specify railroad police officers may be "directly employed by or contracted by" railroads. This change allows railroads to not only directly employ railroad police officers, but also to hire contractors as railroad police officers. In Section 28101(b) (which allows a railroad police officer to be temporarily assigned to assist a second railroad), the FAST Act revised the words "employed by" to "directly employed by or contracted by" and specified that a railroad police officer assisting a second railroad is an employee "or agent, as applicable" of the second railroad carrier.

Second, the FAST Act added a new paragraph (c) to Section 28101 addressing the transfer of railroad police officers from one state of employment or residence to a state other than the one where he or she is commissioned. New paragraph (c) provides a one year interim period for the officer to become commissioned in the new state, while retaining authority to enforce laws in the new state under Section 28101.

Third, the FAST Act added a new paragraph (d) to Section 28101 specifically allowing a state to allow a railroad police officer's training at another state's recognized police

¹ Section 11412 of the FAST Act also contained provisions modifying 49 U.S.C. 24305(e) (authorizing Amtrak to employ railroad police officers) and 18 U.S.C. 922(z)(2)(B) (excepting railroad police officers from certain restrictions related to handguns). These provisions are self-executing and require no revision to Part 207 or any other FRA regulation.

academy or at a Federal law enforcement training center to meet the state's basic police officer certification or commissioning requirements.

This rule then amends FRA's regulations on railroad police officers to implement certain provisions of the Fixing America's Surface Transportation (FAST) Act. Consistent with the FAST Act, FRA is amending its regulations to allow the following: (1) railroads to hire contractors as railroad police officers; (2) railroad police officers to transfer from one state to another without immediately needing to be commissioned or certified in the new state; and (3) a State to recognize an officer's training at another State's recognized police academy or at a Federal law enforcement training center as meeting the State's basic police officer certification or commissioning requirements.

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

The information collected under the current rule is used – and will be used once this final rule takes effect – by the States. Specifically, the application information collected under new 207.6 will be used by States to facilitate the transfer of railroad police officers from one State where they are certified or commissioned and have primary employment or residence under the laws of that State to another State to be certified or commissioned as a police officer under the laws of the State of new primary employment or residence.

During the period beginning on the date of transfer and ending one (1) year after the date of transfer, a railroad police officer certified or commissioned as a police officer under the laws of a State may enforce the laws of the new State or jurisdiction in which the railroad police officer resides to the same extent as stipulated in § 207.5(a) of this regulation. Thus, the railroad police officer is immediately authorized to enforce the laws of the new State where the railroad own property. The railroad police officer may enforce only the relevant laws in the new State for the protection of the following: (1) The railroad's employees, passengers, or patrons; (2) The railroad's property or property entrusted to the railroad for transportation purposes; (3) The intrastate, interstate, or foreign movement of cargo in the railroad's possession or in possession of another railroad or non-rail carrier while on the railroad property; and (4) The railroad movement of personnel, equipment, and materials vital to the national defense.

The information collection under the training provision in new § 207.7 will also be used by States to facilitate the certification or commissioning of railroad police officers from one State to another State. Most notably, once this final rule take effect, a State may consider an individual to have met that State's basic police officer certification or commissioning requirements for qualification as a railroad police officer if that individual has successfully completed a program at a State-recognized police training academy in another state or at a Federal law enforcement training center; and is certified or commissioned as a police officer by the other State.

The purpose of the notice provisions of 49 CFR § 207.4 is to provide a mechanism

whereby States can determine which railroad police officers have authority to act in their States by virtue of the designation procedures authorized by the Crime Control Act of 1990, as opposed to individuals commissioned by the States themselves. The required notice will fully identify railroad police officers by name, badge number, identification number, rank code, or other identifying information, date of commission, State or States where the officers are commissioned, the date(s) of training, and the names of the designating railroad officials. Also, the required notice must include color photographs of badges, identification cards, and other identifying materials the railroad uses to identify its railroad police officers. These records will provide positive proof of the authority of such railroad police officers to operate in such states in the event this authority is ever questioned. The railroad companies are also required to maintain this information on file at a central location in the event the designation is questioned by state officials.

If these procedures were not in place, there would be no way of determining which railroad police officers were given authority in states other than their original state(s) of commissioning and, hence, no way of providing the effective law enforcement which the Crime Control Act of 1990 envisioned. Without the notice and recordkeeping requirements of the rule, the entire procedure for designating railroad police officers to operate beyond their state(s) of original commissioning would be meaningless.

FRA does not make use of the information because the information is not required to be provided or intended to be provided to the agency. Rather, the information is provided to state authorities as a method of implementing the Crime Control Act of 1990.

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

Although the regulation cites notification by paper, FRA strongly supports and highly encourages the use of advanced information technology, wherever possible, to reduce burden. If railroads are so equipped, FRA strongly endorses sending the information required in § 207.4 electronically. Even photographs can now be sent electronically with the proper equipment. Electronic filing is left up to discretion of the railroads. FRA strongly believes in the goal set forth both in the Paperwork Reduction Act (PRA) and the Government Paperwork Elimination Act (GPEA) to reduce burden on respondents, and is doing its best to meet those goals.

It should be noted that the information collection requirements of this rule and the corresponding burden are already extremely minimal. Since this is the case, electronic filing would not substantially decrease the burden.

4. **Efforts to identify duplication.**

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

Similar data are not available from any other source.

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

The “universe” of entities under consideration includes only those small entities that can reasonably be expected to be directly affected by this final rule. The only small entities potentially affected by this final rule are small railroads that employ or contract for railroad police officers.

“Small entity” is defined in 5 U.S.C. 601 (Section 601). Section 601(6) defines “small entity” as having “the same meaning as the terms ‘small business’, ‘small organization’ and ‘small governmental jurisdiction’ as defined by Section 601. Section 601(3) defines “small business” as having the same meaning as “small business concern” under Section 3 of the Small Business Act. Section 601(4) defines “small organization” as “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Section 601(5) defines “small governmental jurisdiction” as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”

The U.S. Small Business Administration (SBA) stipulates “size standards” for small entities. It provides that the largest a for-profit railroad business firm may be (and still be classified as a “small entity”) is 1,500 employees for “Line-Haul Operating Railroads” and 500 employees for “Short-Line Operating Railroads.”² Additionally, 5 U.S.C. 601(5) defines as “small entities” governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Under that authority, FRA has published a final statement of agency policy formally establishing for FRA’s regulatory purposes “small entities” or “small businesses” as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1-1 (which is \$20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less).³ FRA used this definition for this rulemaking.

FRA could not exactly quantify the number of entities that could be impacted by this final rule if there was a burden. However, evidence exists that, because of resource constraints, most Class III railroads (small entities) do not employ railroad police

² “Table of Size Standards,” U.S. Small Business Administration, Jan. 31, 1996, 13 CFR part 121.

³ See 49 CFR part 209, appendix C.

officers. See ASLRRA Aims to Help 560 Roads Address Hazmat Car Security, Progressive Railroading, April 2009. Nevertheless, there may be commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less that would be considered small entities and would be impacted by this final rule with no associated burden. Although there is no associated burden, FRA conservatively estimates this final rule will impact approximately 30 railroads, five of which meet FRA's definition of a "small entity."

There are approximately 695 small railroads (as defined by revenue size). Class III railroads do not report to the STB, and the precise number of Class III railroads is difficult to ascertain due to conflicting definitions, conglomerates, and even seasonal operations. Potentially, all small railroads could be impacted by this final regulation, but there is no reason to believe that any additional small railroads are likely to employ or contract for railroad police officers.

Previously, FRA sampled small railroads and found that revenue averaged approximately \$4.7 million (not discounted) in 2006. One percent of that average annual revenue per small railroad is \$47,000. FRA realizes that some railroads will have lower revenue than \$4.7 million. FRA estimates that this rule will not result in any additional expense to small railroads over the next ten years, as the final rule does not require entities to comply with anything. That is, while this final rule provides entities with relaxed constraints on how to employ railroad police officers, this final rule does not introduce any new requirements itself. Therefore, FRA concludes there is no expected burden for this final rule so it will not have a significant impact on the financial position of small entities, or on the small entity segment of the railroad industry as a whole.

Because this final rule does not contain any provision requiring action on the part of entities, either large or small, this final rule will not impact a substantial number of small entities. Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies this final rule will not have a significant economic impact on a substantial number of small entities.

6. Impact of less frequent collection of information.

If this information were not collected, the safety of railroad employees, passengers, property, and cargo might be considerably jeopardized in States where there was no valid method of determining who is and who is not a genuinely commissioned railroad police officer from another State. Consequently, crime in States other than the original commissioning State might rise significantly with more theft, more vandalism, and more assaults from persons impersonating a railroad police officer. Thus, the crime prevention program envisaged by Congress would be impeded/not be properly implemented without these requirements.

Failure to collect the information would inhibit interstate communication and cooperation

between railroad police officers and State law enforcement authorities. Without this interstate cooperation, the property, personnel, passengers, and cargo of the railroads could not be adequately protected to the same extent while travelling across State lines. Railroads might then experience significant financial losses as well as injuries to personnel and passengers. In the case of the transportation of hazardous or nuclear material, theft of these materials could have disastrous consequences to the health and welfare of the general public as well as to the overall security of this country.

Further, without the new requirement added in § 207.6, railroads would not have the flexibility to transfer their police officers from one State where they own property to another State where these employees are more urgently needed or have asked to be transferred. Without the new requirement added in § 207.7, railroads would be denied the opportunity to add new police officers who have received training in another State or who have received training from a Federal law enforcement training center. The flexibility provided by these two new provisions aids both the States in controlling/reducing crime and the railroads in employing their limited personnel to the greatest possible benefit.

Frequency of submission is not an issue for this collection of information since the required notice is to be given only once for each state for which authority is sought.

7. Special circumstances.

Records of notices of commission are to be retained indefinitely or as long as the police officer remains employed. A specific timeframe can not be addressed by virtue of the regulation itself, which is intended to provide continuing evidence of railroad police authority.

With this one exception, all other information collection requirements contained in the rule are in compliance with this section.

8. Compliance with 5 CFR 1320.8.

As noted in the Summary on page 1 of this document, FRA is publishing a Final Rule in the **Federal Register** titled Railroad Police Officers on **December 7, 2016**. See 81 FR 88127.

Background

FRA is proceeding directly to a final rule in this proceeding because it finds, for good cause, notice and public comment is unnecessary because the public would not benefit from such notice. See 5 U.S.C. 553(b)(B). In this rule, FRA is merely incorporating the new statutory language of the FAST Act into existing Part 207, and, in doing so, is exercising no discretion. See, e.g., Komjathy v. National Transp. Safety Bd., 832 F.2d

1294 (D.C. Cir. 1987), cert. denied, Komjathy v. Administrator, Federal Aviation Admin., 486 U.S. 1057 (1988).

9. Payments or gifts to respondents.

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

10. Assurance of confidentiality.

Assurances concerning confidentiality were not made, except for those implicit in the Privacy Act. It should be noted, though, that the two parties involved in the requirements – railroads and states – have a strong cooperative interest in utilizing the information only for the purposes for which the information is generated. Moreover, this information is not the kind of information for which privacy concerns typically arise.

11. Justification for any questions of a sensitive nature.

There are no questions or information of a sensitive nature or data that would normally be considered private contained in this information collection.

12. Estimate of burden hours for information collected.

Note: According to the latest agency data, there are 763 railroads now operating in the United States. These railroads constitute the respondent universe.

Section 207.4 - Notice to State officials

(a) After the designated railroad police officer is commissioned by a state or states, the railroad shall send, by certified mail, written notice to appropriate officials of every other state in which the railroad police officer shall protect the railroad's property, personnel, passengers, and cargo. The notice of commission shall contain the following information: (1) The name of the railroad police officer; (2) The badge number, identification number, rank, code, or other identifying information assigned to the railroad police officer; (3) The date of commission; (4) The state or states where the railroad police officer is commissioned; (5) The date the railroad police officer received training or retraining regarding the laws of such state or states; (6) The name of the railroad official who designated the employee as a railroad police officer; and (7) Color photographs of the types of badges, identification cards, and other identifying materials the railroad uses to identify its railroad police officers. The authority set forth in § 207.5 shall be effective upon receipt by such state(s) of written notice conforming to the requirements of this section.

FRA estimates that approximately 35 railroads will be affected by this requirement. It is

estimated that approximately one (1) new police officer will be commissioned per railroad annually. Furthermore, it is estimated that it will take each railroad approximately five (5) hours to prepare each notice or report with the required information, and send it by certified mail to appropriate officials of the relevant state(s). Total annual burden for this requirement is 175 hours.

Respondent Universe:

763
railroads

Burden time per response:

5 hours

Frequency of Response:

On occasion

Annual number of Responses:

35 notices/reports

Annual Burden:

175 hours

Calculation:

35
notices
/report
s x 5
hrs. =
175
hours

(b) The railroad shall keep copies of all such notices at a central location.

FRA estimates that approximately 35 railroads will keep records or copies of notices as required under this section. It is estimated that each railroad will keep one record and that it will take approximately 10 minutes to prepare each record. Total annual burden for this requirement is six (6) hours.

Respondent Universe:

763

railroads

Burden time per response:

10
minute
s

Frequency of Response:

On occasion

Annual number of Responses: 35 records

Annual Burden: 6 hours

Calculation: 35 records x 10 min. = 6 hours

Additionally, because of the conforming requirement under section 207.6 below, FRA estimates that approximately 40 railroad police officers will transfer from one state to another state and a record will be kept by railroads for these police officers as well. It is estimated that it will take approximately 10 minutes to prepare each record. Total annual burden for this requirement is seven (7) hours.

Respondent Universe:

763
railroads

Burden time per response:

10
minute
s

Frequency of Response:

On occasion

Annual number of Responses: 40 records

Annual Burden:

7 hours

Calculation: 40 records x 10 min. = 7 hours

Total annual burden for this entire requirement is 188 hours (175 + 6 + 7).

Section 207.5(a) - Authority in States where officer not commissioned

A railroad police officer who is designated by a railroad and commissioned under the laws of any state is authorized to enforce the laws of any state (as specified in paragraph (b) of this section) of any state in which the railroad owns property and to which the railroad has provided notice in accordance with § 207.4.

The burden for this requirement is included under § 207.4(a) above. Consequently, there is no additional burden associated with it.

Section 207.6 - Transfers

(a) **General.** If a railroad police officer certified or commissioned as a police officer under the laws of a state or jurisdiction transfers primary employment or residence from the certifying or commissioning state to another state or jurisdiction, then the railroad police officer must apply to be certified or commissioned as a police officer under the laws of the state of new primary employment or residence not later than one (1) year after the date of transfer. **(New/Conforming Requirement)**

Railroad police officers were already doing this before the conforming requirements of Part 207 were issued in the Final Rule published on December 7, 2016. See 81 FR 88127. Consequently, there is no additional burden associated with this requirement.

Section 207.7 – Training

(a) **General.** A state may consider an individual to have met that state's basic police officer certification or commissioning requirements for qualification as a railroad police officer under this section if that individual: **(New/Conforming Requirement)**

(1) Has successfully completed a program at a state-recognized police training academy in another state or at a Federal law enforcement training center; and

(2) Is certified or commissioned as a police officer by the other state.

Railroad police officers were already doing this before the conforming requirements of Part 207 were issued in the Final Rule published on December 7, 2016. See 81 FR 88127. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire collection of information is 188 hours (175 + 6 + 7).

13. Estimate of total annual costs to respondents.

There are no additional costs associated with this final rule besides the added burden hours delineated in the new requirements under question number 12 above.

Previous Costs

Cost to Respondents: (Note: Costs are estimated high since not all railroads impacted own property in 16 states)

Postage:	\$952.00 (35 envelopes x 16 states x \$1.70)
Photos:	\$4,900 (35 Railroads x 1 new police officer x 5 photos x 16 states x \$1.75)
TOTAL	\$5,852.00

35 = number of railroads

35 = number of envelopes with required information

16 = average number of States that receive required information

5 = number of photos per police officer

1 = number of new police officers per year

\$1.75 = Estimated cost per photo

\$1.70 = Estimated cost of postage per envelope

14. Estimate of Cost to Federal Government.

There is no cost to the Federal Government since the rule imposes notice and recordkeeping requirements solely upon railroads and states. No information is provided to FRA.

15. Explanation of program changes and adjustments.

The burden for this information collection submission has increased by **seven (7) hours** from the last approved submission. The change in burden is solely due to the one **adjustment** shown in the table below.

TABLE FOR ADJUSTMENTS

CFR Section	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	FRA Burden Hours (This Submission)	Difference (plus/minus)
207.4 – Copy/record of written notice of commission due to railroad police officer transfers	N/A	40 records	N/A	7 hours	+ 7 hours + 40 responses

Adjustment above increased the burden by *seven (7) hours* and increased the number of *responses* by *40*.

The current burden in the OMB inventory for this information collection shows a total of *181 hours*, while the present submission exhibits a total burden of *188 hours*. Hence, there is an increase in burden of **seven (7) hours** from the last approved submission.

There is **no change** in costs to respondents.

16. Publication of results of data collection.

There are no plans for publication of this submission. The information will be used exclusively for purposes of determining proper police authority.

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 proper identification of railroad police officers, interstate communication and cooperation between railroad police officers and state law enforcement authorities would be inhibited. Without this interstate cooperation, the passengers, personnel, property, and cargo of the railroads would not be protected to the same extent while traveling across state lines. Consequently, rail transportation would be more susceptible to a variety of crimes, including higher rates of robbery, assault, and vandalism. The will of Congress – as expressed in the Crime Control Act of 1990 – would then be thwarted. Higher crime rates might easily translate into additional injuries to crews and possibly injuries to passengers, and most certainly would result in financial losses for the railroads.

In summary, in an age of terrorism, this collection of information enhances railroad safety by providing an additional layer of protection in the form of railroad police officers who can watch over passengers, personnel, property, and cargo. 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.