

**11 FEDERAL RAILROAD ADMINISTRATION
RAILROAD POLICE OFFICERS
(Title 49 Code of Federal Regulations Part 207)
SUPPORTING JUSTIFICATION
OMB Control No. 2130-0537**

Summary of Submission

- This submission is a request for an extension with change of the last three-year approval granted by the Office of Management and Budget (OMB) on **March 21, 2017**, which now expires on **March 31, 2020**.
- FRA published the required 60-day Notice in the *Federal Register* (FR) on **December 30, 2019**. FRA received no comments in response to this Notice.
- The total number of burden hours **previously approved** by OMB for this collection is **188 hours** and the total number of responses **previously approved** is **110**.
- The total number of burden **hours requested** is **11 hours** and the total number of responses **requested** is **110**.
- **Adjustment(s)** decreased the burden by **177 hours**. There were no adjustments to the number of **responses**.

*The answer to question **number 12** itemizes the hourly burden associated with each requirement of this rule (See pages 7-8).

The answer to question **number 15 itemizes all adjustments associated with this rule. (See page 9).

1. Circumstances that make collection of the information necessary.

Background

In 2016, FRA published the Railroad Police Officers final rule. (See 81 FR 88127, December 7, 2016). The rule amends FRA's regulations on railroad police officers to implement certain provisions of the Fixing America's Surface Transportation (FAST) Act.

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 revise Part 207 consistent with Section 11412. The authority to carry out this mandate is delegated to FRA (See 49 CFR 1.89(a)). Neither the Secretary nor FRA is exercising any discretion in modifying Part 207. The rule incorporated the new Section 11412 statutory language into existing Part 207 and updated 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. Paragraph (c) provided 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.

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.

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

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

This is an extension with change to a current collection of information associated with FRA's Part 207 rule. The information collected under the current rule is used by the States. Specifically, the application information collected under § 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 owns 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 training provision in § 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, 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 in § 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.

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. Extent of automated information collection.

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. FRA strongly believes in the goal set forth both in the Paperwork Reduction Act and the Government Paperwork Elimination Act 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 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 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 a “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 were a burden. However, evidence exists that, because of resource constraints, most Class III railroads (small entities) do not employ railroad police 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) on the general system. Class III railroads do not report to the Surface Transportation Board (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

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.

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.

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 or would not be implemented properly 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 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 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 provisions aids both the States in controlling and reducing crime, and the railroads in employing their limited personnel to the greatest possible benefit.

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.

FRA published the required 60-day Notice in the *Federal Register* on December 30, 2019. (See 84 FR 72128.) FRA received no comments in response to this Notice.

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.

CFR Section	Respondent universe	Total annual responses	Average time per responses	Total annual burden hours	Total cost equivalent ⁴
207.4(a) – RR Notice to State Officials – Written notice of RR police officer’s commission to each state in which the RR police officer shall protect the railroad’s property, personnel, passengers, and cargo	746 railroads	35 written notices	15 minutes	9 hours	\$684

⁴ FRA derived the wage rates from the Surface Transportation Board Website for 2018 wage data, and it uses the average annual wages for each employee group as follows: For Professional and Administrative staff, this cost amounts to \$76 per hour.

(b) – RR Copy of Written Notices to State Officials	746 railroads	35 records	2 minutes	1 hour	\$76
207.6 – Transfers – Application by RR Police Officer for new State certification/ commission when transferring primary employment or residence from one State to Another	746 railroads	40 records	2 minutes	1 hour	\$76
Total	746 railroads	110 responses	N/A	11 hours	\$836

Total annual burden for this entire collection of information is 11 hours. The cost associated with the annual burden is \$836.

13. Estimate of total annual costs to respondents.

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

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

Postage: \$896.00 (35 envelopes x 16 states x \$1.60⁵)

Photos: \$2,800 (35 Railroads x 1 new police officer x 5 photos x 16 states x \$1.00⁶)

TOTAL \$3,696

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

\$1.00 = Estimated cost per photo

\$1.60 = 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.

⁵ The cost is based on a large, first class 4-ounce envelope.

⁶ The cost is based on the average price of a wallet size photo.

15. Explanation of program changes and adjustments.

The current burden in the OMB inventory for this information collection shows a total of *188 hours*, while the present submission exhibits a total burden of *11 hours*. Hence, there is a decrease in burden of 177 hours from the last approved submission. Further, there were no adjustments to the number of responses.

FRA provided a thorough review of this package and determined many of our initial figures were based on rough estimates. Thus, our latest review has refined our estimates to be more accurate. The chart below provides specific information on the review of any that have changed.

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(a) – RR Notice to State Officials – Written notice of RR police officer’s commission to each state in which the RR police officer shall protect the railroad’s property, personnel, passengers, and cargo	35 written notices 5 hours	35 written notice 15 minutes	175 hours	9 hours	-166 hours 0 responses
(b) – RR Copy of Written Notices to State Officials	35 records 10 minutes	35 records 2 minutes	6 hours	1 hour	-5 hours 0 responses
207.6 – Transfers – Application by RR Police Officer for new State certification/ commission when transferring primary employment or residence from one State to Another	35 records 10 minutes	35 records 2 minutes	7 hours	1 hour	-6 hours 0 responses

Adjustment above decreased the burden by **177 hours**.

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.