

11 FEDERAL RAILROAD ADMINISTRATION
Hours of Service Regulations
(Title 49 Code of Federal Regulations (CFR) Part 228)
SUPPORTING JUSTIFICATION
OMB Control No. 2130-0005

Summary of Submission

- This submission is a request for an extension without change (with changes in estimates) of the last three-year approval granted by the Office of Management and Budget (OMB) on February 15, 2022, which now expires February 28, 2025.
- The Federal Railroad Administration (hereafter “FRA” or the “Agency”) published the required 60-day Notice in the Federal Register on November 4, 2024. See 89 FR 87718. FRA received no comments in response to this Notice.
- Overall, FRA adjustments increased the burden by 1,325 hours and responses by 588.
- The answer to question number 12 itemizes all information collection requirements.
- The answer to question number 15 itemizes all adjustments.

1. Circumstances that make collection of the information necessary.

The Hours of Service laws (HSL), first enacted in 1907¹ and was amended in 2018 as mandated by the Rail Safety Improvement Act of 2008 (RSIA 2008).² The HSLs³ include substantive hours of service requirements for train employees (i.e., locomotive engineers and conductors) providing commuter and intercity rail passenger transportation (e.g., maximum on-duty periods, minimum off-duty periods, and other limitations). The regulations also require railroads to evaluate passenger train employee work schedules for risk of employee fatigue and implement measures to mitigate the risk, and to submit to FRA for approval certain schedules and mitigation plans. Finally, the regulations include recordkeeping and reporting provisions requiring railroads to keep hours of service records, and report excessive service, for train employees, signal employees, and dispatching service employees on both freight and passenger railroads.

¹ See the Hours of Service Act (Public Law 59-274, 34 Stat. 1415 (1907)). Effective July 5, 1994, Public Law 103-272, 108 Stat. 745 (1994), repealed the Hours of Service Act as amended, then codified at 45 U.S.C. 61-64b, and also revised and reenacted its provisions, without substantive change, as positive law at secs. 21101-21108, 21303, and 21304.

² FRA received regulatory authority in RSIA 2008 to establish hours of service limitations for train employees providing commuter and intercity rail passenger transportation service (passenger train employees).

³ See 74 FR 25346, May 27, 2009, as amended at 76 FR 50396, Aug. 12, 2011; 76 FR 67087, Oct. 31, 2011; 83 FR 43997, Aug. 29, 2018

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

The information collected is used by FRA to verify that railroads do not require or allow their employees to exceed maximum on-duty periods and ensure that they abide by minimum off-duty periods, and adhere to other limitations in this regulation, to enhance rail safety and reduce the risk of accidents/incidents caused, or contributed to, by train employee fatigue.

The rule covers tourist, scenic, historic, and excursion railroads as well as commuter and intercity passenger railroads. Under Subpart F, railroads having not more than 15 train employees, signal employees, and dispatching service employees may apply for an exemption from the requirements of the rule. FRA reviews and evaluates exemption requests to determine whether it is appropriate, safe, and in the public interest to grant such requests.

Under § 228.11, the *Hours of Duty* records are monitored and reviewed by FRA to ensure that train and engine employees, dispatchers, and railroad signal workers and covered signal workers of contractors/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.

Under § 228.17, the *Dispatcher's Records of Train Movements*, the information collected is used by FRA and participating State safety inspectors to monitor and obtain compliance with statutory provisions and FRA regulations by 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.

Under § 228.19, the *Monthly Reports of Excess Service*, the information collected is used by FRA and participating State safety inspectors to monitor and ensure that each railroad or contractor or subcontractor of a railroad reports to FRA 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. Additionally, participating NTSB investigators use the monthly reports whenever there is an accident/incident involving a train movement.

Under § 228.103, *Construction of Employee Sleeping Quarters*, FRA reviews petitions for construction, reconstruction, or acquisition of employee sleeping quarters.

Under §228.401-§228.413 (Subpart F) each railroad must perform an analysis of one cycle of the work schedules of its train employees engaged in commuter and intercity rail

passenger transportation and identify those schedules that, if worked, put the train employee at risk for a level of fatigue at which safety may be compromised. Railroads must use an FRA approved valid bio-mathematical model of performance and fatigue (e.g., FAST, FAID, or any other approved model) to determine where the fatigue risk posed exceeds the fatigue threshold.

Additionally, under Subpart F, each covered railroad must provide training to its employees, signal employees, and dispatching service employees and its supervisors of these employees with initial training and refresher training. FRA reviews railroad training programs (and records) to ensure that critical topics are covered and fully explained to railroad employees during their trainings.

3. Extent of automated information collection.

FRA provides a simplified method of computerized recordkeeping (an automated system)—in which employees apply their electronic signatures to automated records stored in a railroad computer system without the complexity and functionality of an electronic system—for eligible smaller railroads (and contractors and subcontractors providing covered service employees to such railroads). Although FRA does not require the use of automated recordkeeping, but, when implemented by the small operations for which it is tailored, it will decrease the burden hours spent on hours-of-service recordkeeping.

To date, FRA estimates that approximately 80 percent of all responses are kept 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 Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities.

“Small entity” is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses and stipulates in its size standards that a “small entity” in the railroad industry is a for profit “line-haul railroad” that has fewer than 1,500 employees, a “short

line railroad” with fewer than 500 employees, or a “commuter rail system” with annual receipts of less than seven million dollars.⁴

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes “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.⁵

The \$20 million limit is based on the Surface Transportation Board’s revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. The current threshold is \$40.4 million or less. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, rail equipment supplier, or other respondent is a small entity.

FRA does not anticipate that this rule will negatively impact a substantial number of small entities.

6. Impact of less frequent collection of information.

If this information were not collected or were collected less frequently, rail safety in the United States would be seriously jeopardized. The data collected under Part 228 allows FRA to verify that railroads do not require or allow their employees to exceed maximum on-duty periods and ensure that they abide by minimum off-duty periods, and adhere to other limitations in this regulation, to enhance rail safety and reduce the risk of accidents/incidents caused, or contributed to, by train employee fatigue.

Without the required training requirements, FRA would have no way of knowing if railroads developed essential training programs regarding human performance and fatigue. High fatigue increases the probability of mistakes or omissions that could lead to greater numbers of rail accidents/incidents.

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.

⁴ Size Eligibility Provisions and Standards, 13 CFR part 121, subpart A.

⁵ 68 FR 24891 (May 9, 2003) (codified at appendix C to 49 CFR part 209).

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 to FRA and DOT.

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.

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

7. Special circumstances.

The 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 would allow FRA to 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 (PRA) and 5 CFR part 1320, FRA published a notice in the Federal Register on November 4, 2024,⁶ soliciting comment from the public, railroads, and other interested parties on these information collection requirements. FRA received no comments from the public.

Consultations with representatives of the affected population:

As a part of FRA's oversight and enforcement of the Hours of Service Laws, individuals from the railroad industry are generally in direct contact with the FRA's HOS Specialists and District Inspectors at the time of the site inspection and can provide any comments or concerns to the FRA's HOS team. The railroad industry as a whole has greatly benefited from HOS transitioning to electronic records, the average of time railroad employees spends recording their HOS has been reduced.

⁶89 FR 87718

Additionally, in recent site visits, FRA encouraged the industry to review the estimates, and provide any comments to the docket.

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.

There are no questions or information of a sensitive nature, nor data that would normally be considered private matters contained in this rule.

12. Estimate of burden hours for information collected.

The estimates for the respondent universe, annual responses, and average time per responses are based on the experience and expertise of FRA’s Office of Railroad Systems and Technology.

CFR Part 228 Section	Respondent Universe	Total Annual Responses (A)	Average Time per Response (Hours) (B)	Total Annual Burden Hours (A*B=C)	Total Cost Equivalent U.S.D (D=C*wage rate ⁷)	PRA Analyses and Estimates
SUBPART B – Records and Reporting						
228.9 —Railroad records; general	<i>The burden for this requirement is accounted for under § 228.11.</i>					
228.11 —Hours of duty records Electronic and paper	797 Railroads signal contractors & subcontractors	17,448,669 (electronic) 918,351 (paper)	3/60 8/60	872,433.45 119,385.63	\$77,759,993.40 \$10,640,841.20	Each railroad, or a contractor or a subcontractor of a railroad, shall keep a record of the hours of duty of each employee. Based on this latest data available from railroad industry sources and from agency independent research conducted in conjunction with other future agency rulemakings, there are approximately 85,712 covered employees. It is estimated the employees will work 210 days by taking into account days off,

⁷ The dollar equivalent cost is derived from the 2023 Surface Transportation Board Full Year Wage A&B data series using employee group 200 (Professional Administrative Staff) hourly wage rate of \$50.93. The total burden wage rate (straight time plus 75%) used in the table is \$89.13 (\$50.93 x 1.75 = \$89.13).

						<p>etc.). FRA estimates then that a total of 18,367,020 hours of duty records (85,712 workers' records x 210 days) will be generated each year.</p> <p>FRA estimates that 95 percent of the records will be kept electronically while 5 percent will be kept on paper.</p> <p>It is estimated that automated records will take an average of three (3) minutes to complete while paper record will take about eight (8) minutes to complete.</p>
228.17—Dispatchers record of train movements	63 dispatch offices	285,000 cumulative train-movement tracking (records)	1	285,000	\$25,402,050.00	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.
228.19(g)-(h)—Monthly reports of excess service—Exception (FRA F 6180.3)	797 railroads/signal contractors & subcontractors	2,317 reports	1	2,317	\$206,514.21	Each carrier then must report the circumstances where their employees have exceeded maximum duty hour limitations.
SUBPART C – Construction of Railroad-Provided Sleeping Quarters						
228.103/.107—Construction of employees' sleeping quarters—Petition request to FRA to allow construction	FRA anticipates zero petition submissions over the next three-year period.					

near work areas						
SUBPART D – Electronic Recordkeeping System and Automated Recordkeeping system						
228.207(b)— Training—Initial training—New employees and supervisors	671 railroads	250 training records	2/60	7.5	\$668.48	Railroads that move to automated recordkeeping will need to train their staff, specifically train and engine, and dispatchers and signalmen, on how to enter their time on the automated system.
—(c) Refresher training—System audits for irregularities by railroads and contractors	797 railroads signal contractors & subcontractors	797 audits and records	2	1,594	\$142,073.22	Refresher training shall be provided to each employee any time that recurrent errors in records prepared by the employee, discovered through the monitoring indicators, suggest, for example, the employee's lack of understanding of how to complete hours of service records.
SUBPART F – Substantive Hours of Service Requirements for Train Employees Engaged in Commuter or Intercity Rail Passenger Transportation						
228.407(a)— Analysis of work schedules— Railroads' analysis of one cycle of work schedules of employees engaged in commuter or intercity passenger transportation	36 railroads	3 analyses	2	6	\$534.78	Each railroad subject to this subpart must perform an analysis of one cycle of the work schedules (the period within which the work schedule repeats) of its train employees engaged in commuter or intercity rail passenger transportation and identify those work schedules intended to be assigned to its train employees, that, if worked by such a train employee, put the train employee at risk for a level of fatigue at which safety may be compromised.
—(b) Submissions of certain work schedules and any	36 railroads	3 Fatigue Mitigation	20	60	\$5,347.80	Railroads must use an FRA approved valid bio-mathematical model of performance and fatigue (e.g., FAST,

fatigue mitigation plans, and determinations of operational necessity or declarations		plans				FAID, or any other approved model) to determine where the fatigue risk posed exceeds the fatigue threshold.
—(b) Submissions to FRA for review and approval	36 railroads	1 submission	1	1	\$89.13	FRA estimates that approximately one (1) work schedule, proposed fatigue mitigation tools, and determination of operational necessity will need to be revised/corrected under the above requirement. It is estimated that it will take approximately one (1) hour to complete each corrected document.
(c) Submission of models for FRA approval; validated models already accepted by FRA	<i>FRA anticipates zero submissions under this requirement over the next three-year period.</i>					
—(d) Analysis of certain later changes in work schedules— Analyses and mitigation plans— Resubmission to FRA for approval	36 railroads	1 analysis or plan	1	1	\$89.13	FRA estimates that approximately one (1) follow-up analyses will be performed by railroads and submitted to the agency whenever they change work schedules under the above requirement. It is estimated that it will take approximately one (1) hour to complete each follow-up analysis.
—(e) Fatigue mitigation plans	<i>The burden for this provision has already been fulfilled by railroads or included under § 228.407(b)-(d).</i>					
—(f) RR Consultation with directly affected employees on: (i) RR Work schedules at risk for fatigue level possibly compromising safety;	36 railroads	20	40	800.00	\$71,304.00	

and (ii) Railroad's selection of fatigue mitigation tools; and (iii) All RR Submissions required by this section seeking FRA approval						
228.409— Requirements for railroad-provided employee sleeping quarters during interim releases and other periods available for rest within a duty tour	<i>The estimated paperwork burden for requirement is included under § 228.407(f).</i>					
228.411—Training programs on fatigue and related topics (e.g., rest, alertness, changes in rest cycles, etc.).	36 railroads	36 railroads	2	72	\$6,417.36	FRA reviews railroad training programs to ensure that critical topics are covered and fully explained to railroad employees during their trainings.
—(e) Records of training on fatigue and related topics	36 Railroads	5,539 records	1/60	110.78	\$9,873.82	A railroad shall maintain a record of each employee provided training in compliance with this section and shall retain these records for three years.
228.411(f)— Conditional exclusion—Written declaration to FRA by tourist, scenic, historic, or excursion railroads seeking exclusion	93 railroads	1 Written declaration	1	1	\$89.13	A railroad engaged in tourist, scenic, historic, or excursion rail passenger transportation, may be excluded from the requirements of this section, if its train employees subject to this rule are assigned to work only schedules wholly within the hours of 4 a.m. to 8 p.m. on the same calendar day that comply with the provisions of § 228.405, upon that

						railroad's submission to the Associate Administrator of a written declaration, signed by an officer of the railroad, indicating that the railroad meets the limitations established in this paragraph.
Totals ⁸	797 railroads signal contractors & subcontractors	18,660,998 responses	N/A	1,284,832 Hours	\$114,517,098	

13. Estimate of total annual costs to respondents.

FRA estimates that there would be programming costs for railroads to modify computer software for the bio-mathematical models of fatigue that they will use for work schedule analyses. Additionally, employees from the railroad who will be performing the work schedule analysis would need training in the use of the models and subsequent support. The software model may also require periodic maintenance for updates and to resolve other issues that may arise when using the model. Purchasing a software license, training in its use, and providing for its future support and maintenance are typical features of many software applications.

Automated System ⁹		3.36 Inflation rate	Total Cost U.S.D
Programming modifications	\$75,000	\$2,520	\$77,520
Training	\$50,000	\$1,680	\$51,680
Support	\$7,500	\$252	\$7,752
Subtotal	\$132,500	\$4,452	\$136,952
Employee training and Support	\$15,000	\$504	\$15,504
Subtotal	\$147,500	\$4,956	\$152,456
Annual system maintenance	\$100,000	\$3,360	\$103,360
Total Annual Cost	\$247,500	\$8,316	\$255,816

⁸ Totals may not add due to rounding.

⁹ Estimates used in the table are based upon the FAST model and other automated systems.

14. Estimate of Cost to Federal Government.

To estimate the annual government administrative cost, the 2024 Office of Personnel Management (OPM) wage rates for Washington, D.C. were used. Wages were considered at the burdened wage rate by multiplying the actual wage rate by an overhead cost of 75%. The table below provides specific information.

CFR Section	No. of Employees	Grade/Step	Salary/hourly rate	Burdened Wage Rate (x 75%)	Percentage of Time/hours annually	Total Cost U.S.D
228.11—Hours of duty records FRA inspectors interview, process and follow up on reports submitted by the railroads.	2	GS-14/5	\$157,982.40		25%	\$78,991.20
228.207/411—Training Monitoring training programs	4	GS-12/5	\$53.87	\$94.27	32	\$12,066.88
	1	GS-14/5	\$75.70	\$132.48	32	\$4,239.20
228.407—Work schedules Work schedule analyses x 3	1	GS-12/5	\$53.87	\$94.27	32	\$9,050.16
Fatigue mitigation plans x 3	1	GS-14/5	\$75.70	\$132.48	4	\$1,589.70
Total Annual Cost						\$105,937.14

15. Explanation of program changes and adjustments.

This is an extension without change (with changes in estimates) to a current collection of information. The current OMB inventory for this information collection shows a total burden of 1,283,507 hours and 18,660,400 responses while the requesting inventory estimates a total burden of 1,284,832 hours and 18,660,988 responses. FRA made adjustments that increased the burden for this submission by 1,325 hours and increased responses by 588.

The table below details the adjustments made.

CFR Section	Total Annual Responses			Total Annual Burden Hours			PRA Analyses and Estimates
	Previous Submission	Current Submission	Difference	Previous Submission	Current Submission	Difference	
SUBPART B – Records and Reporting							
228.19(g)-(h)—Monthly reports of excess service—Exception (FRA F 6180.3)	1,750	2,317	567	1750	2,317	567	SMEs determined, based on submission received over the previous three years that the number of FRA F 6180.3 submitted to FRA will increase.
SUBPART C – Construction of Railroad-Provided Sleeping Quarters							
228.103/.107—Construction of employees’ sleeping quarters—Petition request to FRA to allow construction near work areas	2	0	-2	48	0	-48	SMEs anticipate, based on a review of previous years, that FRA will receive zero petition submission for this requirement.
SUBPART D – Electronic Recordkeeping System and Automated Recordkeeping system							
228.207(c) Refresher training—System audits for irregularities by railroads and contractors	796	797	1	1,592	1,594	2	This slight increase is a reflection of the increase in the number of railroads and signal contractors.
SUBPART F – Substantive Hours of Service Requirements for Train Employees Engaged in Commuter or Intercity Rail Passenger Transportation							
—(f) RR Consultation with directly affected employees on: (i) RR Work schedules at risk for fatigue level possibly compromising safety; and (ii) Railroad’s selection of	0	20	20	0	800	800	Previously this requirement was covered under the System Safety Program (SSP). FRA determined that this is a separate requirement from that covered in the SSP. An estimated 800 burden hours

fatigue mitigation tools; and (iii) All RR Submissions required by this section seeking FRA approval							has been added to reflect this requirement.
228.411—Training programs on fatigue and related topics (e.g., rest, alertness, changes in rest cycles, etc.).	34	36	2	68	72	4	This slight increase is a reflection of the increase in the number of railroads in the respondent universe.
Total	18,660,400 responses	18,660,988 responses	588	1,283,507 hours	1,284,832 hours	1,325	

16. Publication of results of data collection.

FRA does not plan to publish the results of the data collection.

17. Approval for not displaying the expiration date for OMB approval.

FRA intends to display the expiration date.

18. Exception to certification statement.

No exceptions are taken at this time.