

**DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION**

**DOCKET NO. FRA-2023-0002-N-09
(OMB CONTROL NO. 2130-0500)
PROPOSED AGENCY INFORMATION
COLLECTION ACTIVITIES; COMMENT
REQUEST**

**COMMENT SUBMITTED BY
THE ASSOCIATION OF AMERICAN RAILROADS**

The Association of American Railroads (AAR), on behalf of itself and its member railroads, submits the following comment in response to the Federal Railroad Administration's (FRA's) April 21, 2023, Notice of Information Collection; Request for Comment.¹

The Infrastructure Improvement and Jobs Act (IIJA), Pub. L. 117-58, sec. 22421(b) (49 USC 20901 note) mandated that FRA begin collecting train length information and the number of crew members in the controlling cab of a locomotive on FRA's Accident/Inspection Report Form no later than November 21, 2022. Nearly a year and a half after enactment, and well past the Congressional deadline, FRA has finally published a notice soliciting public comment on a proposed Information Collection Request (ICR) that would revise 49 CFR part 225's accident/incident reporting requirements. 88 Fed. Reg. 24657 (Apr. 21, 2023). The ICR seeks to collect new information on FRA's Accident/Incident Report Form (Form FRA F 6180.54) by requiring railroads to report train length information and the number of crew members in the controlling cab of a locomotive when a train is involved in an accident that meets

¹ AAR is a trade association whose membership includes freight railroads that operate 83% of the line-haul mileage, employ 95% of the workers, and account for 97% of the freight revenues of all railroads in the United States; and passenger railroads that operate intercity passenger trains and provide commuter rail service.

the reporting threshold. If approved, FRA requests to collect the information for a projected period of five years.

FRA Uses an Artificially Low Monetary Reporting Threshold and its Failure to Incorporate the Latest Data Decreases the Utility of the Reporting Process.

FRA does not account for the increase in the number of superfluous reports that will result from FRA's use of an artificially low Monetary Reporting Threshold (MRT). FRA increased the MRT for 2023 by 1.76% from \$11,300 to \$11,500.² This change accounts for the impacts of a 1.99 % increase in equipment index from the 3rd quarter of 2021 to the second quarter of 2022 and a 0.83% increase in average employee wages. However, FRA's update does not take into account two important factors that will result in a spike in reporting even if there is no substantive change in safety conditions. First, FRA does not incorporate the 24% retroactive wage increase for railroad employees that was implemented in December 2022 through the national collective bargaining process.³ Second, FRA fails to incorporate the full inflationary impact on railroad equipment prices for 2022. If FRA accounted for the full increase in labor and equipment components the MRT would increase by about 11% to \$12,700. As a result, a number of railroad accidents that would not have been reportable in past years will be reportable moving forward. The estimated number of submissions should be adjusted for this increase.

One of the important benefits of updating the MRT annually is that railroads, federal officials, state officials, and others can use the data to drive decision making because it allows them to compare accident rates across time to evaluate safety performance and identify trends. The quality and utility of the information collected is greatly diminished by having an artificially low MRT that results in accident reports filed for accidents that would not have been reportable

² <https://railroads.dot.gov/safety-data/forms-guides-publications/guides/monetary-threshold-notice>

³ The new agreements increase wages by 24 percent during the five-year period from 2020 through 2024.

in prior years. Accidents that Congress/FRA did not intend to make reportable when it issued legislation/regulation will now be reported and artificially inflate the accident rate for 2023 giving the inaccurate impression that safety levels are lower than they really are.

This issue is compounded by FRA's failure to fully account for the number of reports filed each year. FRA estimates that annually there will be 1,699 reports on Form FRA F 6180.54 (*see* total annual responses for 225.11 – Reporting of accident/incidents), which underestimates the total annual responses. The FRA estimate appears to be based on the average number of reportable accidents (excluding highway-rail grade crossing collisions) in the past three years, which was 1,760. However, the estimate ignores the reporting burden for highway-rail crossing collisions that not only meet the monetary reporting threshold for submitting the FRA F 6180.54, but those that also require Form FRA F 6180.57 submissions, as well as other types of accidents that may require multiple Form FRA F 6180.54 reports because more than one railroad's on-track equipment and/or track is involved in the incident. For example, if a train operated by Railroad A on track maintained by Railroad B derails and strikes a train operated by Railroad C, each of the three railroads involved will be required to fill out a separate Form FRA F 6180.54, FRA fails to consider this type of scenario in its estimate.

FRA Underestimates the Amount of Time Required to Gather Information on Crew Size and Train Length.

FRA suggests that the extra time required to complete the Accident/Incident Report Form with the new information is two minutes. This underestimates the amount of time required to gather train length and crew information. To collect the information, railroads would at a minimum need to run separate reports and conduct searches in other systems to find the information. Railroads may also need to contact employees in the field to collect part of the information. For example, while AAR would agree that it would be relatively easy to determine

the number of crew members assigned to a train, it is likely to take additional time to determine the location of all the crew at the time of an incident. They may all be in the locomotive cab, but it is also possible that a conductor or other crew member could be on the ground or on the point of a shoving movement at the time of the accident, and such information is not necessarily immediately available. Similarly, it will take more time than FRA anticipates to accurately determine the train length at the time of the accident/incident for reporting purposes. AAR estimates that the extra time needed to complete each task likely exceeds ten minutes for each report.

The IIJA Limits the Time Period for the Information Collection to Four Years.

FRA states that it intends to collect information on train length and the number of crewmembers in the controlling cab of the locomotive for a period of five years. However, section 22421(b) only authorizes FRA to collect such information for four years. Therefore, the ICR should be adjusted to collect such information for four years.

FRA Needs to Clarify Reporting Requirements for Special Study Blocks 49A and 49B.

Section 22421(b) of the IIJA directs FRA to use Special Study Block 49 to collect information on train length and number of crew members in the controlling cab. Based on the FRA Guide for Preparing Accident/Incident Reports, Special Study Block 49A is currently used to report the type of track an accident occurred on (e.g., “CWR” or “OTH”). For Special Study Block 49b, FRA has instructed railroads to provide information related to the number of cars carrying crude oil since February 26, 2016.⁴ AAR understands that FRA contends that railroads are no longer required to report the type of track and the number of cars carrying crude oil on Form FRA F 6180.54. Therefore, AAR requests that FRA revise the FRA Guide for Preparing

⁴ <https://railroads.dot.gov/safety-data/forms-guides-publications/new-instructions-completing-form-fra-f618054-rail-equipment>

Accident/Incident Reports to clarify the information that railroads are required to provide in Special Study Blocks 49A and 49B. AAR also requests that FRA remove references from the FRA website and elsewhere that instruct railroads to use Special Study Blocks 49A and 49B for purposes other than for train length and number of crew members in the controlling cab of the locomotive.

FRA’s Delayed Action Undermines the Existing Rulemaking Activities on Crew Size.

Congress specifically mandated that FRA gather information on train length and the number of crew members in the controlling cab when it passed the Infrastructure Improvement and Jobs Act (IIJA) on November 21, 2021. The IIJA mandated that FRA begin collecting such information on FRA’s Accident/Inspection Report Form no later than November 21, 2022. This was a clear indication that Congress intended for FRA to collect relevant data before regulating crew size. However, instead of acting quickly to comply with the IIJA mandate, FRA waited one year and 5 months before publishing the current ICR. In the interim, FRA decided to publish an NPRM mandating two-person crews for almost all train operations in the United States. *See* Train Crew Size Safety Requirements, 87 Fed. Reg. 45564 (July 28, 2022). In deciding to publish the crew size NPRM prior to implementing the statutory mandate, FRA rushed into action without collecting congressionally mandated data that would help it make an informed decision. According to FRA’s current estimate, the Train Crew Size Safety Requirements rulemaking is scheduled to be completed by February 2024.⁵ Depending on the timing of the ICR approval process, it is possible that FRA will have collected no accident/incident data by February 2024. At best, if the process moves quickly, FRA will have

⁵ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202304&RIN=2130-AC88>

collected only a few months of data, which is completely inadequate to inform the rulemaking as Congress intended.

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Thank you for your consideration of these comments.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'S. Gordon', with a stylized flourish at the end.

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