

**DEPARTMENT OF TRANSPORTATION  
FEDERAL RAILROAD ADMINISTRATION**

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

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

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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.<sup>1</sup>

**FRA Uses an Artificially Low Monetary Reporting Threshold.**

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.<sup>2</sup> This change incorporates 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 failure to consider recent real-world events 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 freight railroad employees that was implemented in December 2022 through the national

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<sup>1</sup> 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.

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

collective bargaining process.<sup>3</sup> 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 in 2023. In order to enhance the quality, utility, and clarity of the information being collected, FRA should adjust estimated number of submissions to account 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 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. If FRA is unwilling to adjust the MRT to match existing economic data, then FRA should, at a minimum, note on its safety data website that an artificially low MRT in 2023 will impact comparability with other years. This can be accomplished by adding a footnote to the existing footnotes that already appear on train accident reports that are run from FRA's safety data website.<sup>4</sup> Doing so would ensure that users of the data are able to make more informed assessments when considering the potential causes of year-over-year changes.

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

<sup>4</sup> See e.g., 1.12 Ten Year Accident/Incident Overview at <https://safetydata.fra.dot.gov/OfficeofSafety/publicsite/Query/TenYearAccidentIncidentOverview.aspx>

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's burden estimate for the information activities is inaccurate. AAR alerted FRA to this error in response to the first notice, but FRA rejected the comment stating that "the reporting data is readily available to railroads at the onset of the accident." As a result, FRA continues to assert that the extra time required to complete the Accident/Incident Report Form with the new information is only two minutes. This underestimates the amount of time required to gather train length and crew information because it fails to adequately assess how long it takes to gather the information and does not factor into its analysis any potential contingencies that would result in higher time estimate. 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 also

will likely 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 just by running a report. 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's conservative estimate is that the extra time needed to complete each task likely exceeds ten minutes for each report.

#### **FRA's Delayed Action Undermines the Existing Rulemaking Activities on Crew Size.**

The Infrastructure Improvement and Jobs Act (IIJA) mandated that FRA begin collecting information train length and number of crew in the controlling cab on FRA's Accident/Inspection Report Form no later than November 21, 2022. Pub. L. 117-58, § 22421(b) (49 U.S.C. 20901 note). This was a clear indication that Congress intended for FRA to collect relevant data before regulating train length and crew size. However, instead of acting quickly to comply with the IIJA mandate, FRA waited one year and 5 months before initiating 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. FRA's current estimate is that the Train Crew Size

Safety Requirements rulemaking will be completed by February 2024.<sup>5</sup> 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 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,



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