



ASSOCIATION OF AMERICAN RAILROADS
Law Department
50 F Street, N.W.
Washington, D.C. 20001-1564

Michael J. Rush
Associate General Counsel

Phone: (202) 639-2503
Fax: (202) 639-2868
E-Mail: mrush@aar.org

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Mr. Robert Brogan
Federal Railroad Administration
Safety, Planning and Evaluation Div.
1120 Vermont Ave., NW
Washington, DC 20590

Mr. Victor Angelo
Federal Railroad Administration
Office of Support Systems, RAD-43
1120 Vermont Ave., NW
Washington, DC 20590

Dear Messrs. Brogan and Angelo :

On June 16, 2006, FRA published a *Federal Register* notice concerning renewal of its information collection requirements for its hours of service regulations (71 Fed. Reg. 34990). AAR opposes the renewal of FRA's hours of service information collection requirements.

As AAR has discussed with FRA in the past, FRA's hours of service regulations illegally discriminate against electronic records. FRA's regulations only permit paper records because 49 C.F.R. section 228.9 requires that HOS records be "signed" by the employee whose time on duty is being recorded (or by the ranking crew member, in the case of train crews). A railroad has to apply for a waiver to keep HOS records electronically.

FRA has chosen to use the waiver process to impose requirements that do not apply for paper records. FRA has required railroads to, *inter alia*,

- develop computer programs capable of measuring and analyzing records to determine compliance with HOS requirements, focusing on issues such as time spent "deadheading" (nonworking travel not including commuting), "commingled" service (service not subject to HOS restrictions), and employee reports of excessive service;

- establish quality-assurance programs consisting of regular and remedial training as

determined by FRA and utilizing materials reviewed by FRA; and

- make electronic records accessible to FRA through various field locations.

There are no comparable requirements for paper records.

The Government Paperwork Elimination Act (GPEA) required the Office of Management and Budget (OMB) to develop procedures for the acceptance of electronic records. By Oct. 21, 2003, OMB was to ensure that agencies provide an option for the maintenance of records electronically and, where practicable, the use of electronic signatures (49 U.S.C. § 3504 note).

OMB did issue procedures for implementation of GPEA. OMB Circular No. A-130, App. II, <http://www.whitehouse.gov/omb/circulars/a130/a130trans4.html>, requires that each agency have a plan for the electronic maintenance of information, including the use of electronic signatures.

FRA's hours of service regulations violate the GPEA's mandate to facilitate electronic records. In addition, AAR is unaware of any FRA plan to bring its regulations into compliance.

On January 26, 2005, the Department of Transportation initiated a department-wide review of its regulations. AAR participated in that review and identified this issue as one that should be addressed. On June 12, 2005, DOT published a *Federal Register* notice discussing how the issues raised in that review would be handled (71 Fed. Reg. 33780). DOT stated that "FRA agrees that Part 228 should be reviewed and revised to facilitate electronic recordkeeping and expects to initiate work on a notice of proposed rulemaking in the current fiscal year."

There are less than two months remaining in this fiscal year and AAR has no indication that there will be a notice of proposed rulemaking addressing electronic records for hours of service. Consequently, since the current recordkeeping requirements do not comply with the GPEA and OMB mandates, AAR opposes their renewal.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael J. Rush". The signature is fluid and cursive, with the first name "Michael" being more prominent.

Michael J. Rush