

**DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION**

**DOCKET NO. FRA-2024-0012
(OMB CONTROL NO. 2130-0008)
PROPOSED AGENCY INFORMATION
COLLECTION ACTIVITIES; COMMENT
REQUEST**

**COMMENT SUBMITTED BY
THE ASSOCIATION OF AMERICAN RAILROADS
AND
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION**

The Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) (jointly referred to as “the Associations”), on behalf of themselves and their member railroads, submit the following comment in response to the Federal Railroad Administration’s (FRA’s) September 17, 2024, Notice of Information Collection; Request for Comment.¹

**FRA underestimates the annual reporting burden by excluding
job briefings from its burden estimate.**

FRA regulations require railroads to “implement operating rules and practices requiring the job briefing of securement for any activity that will impact or require the securement of any

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. ASLRRA is a non-profit trade association representing the interests of approximately 600 short line and regional railroad members in legislative and regulatory matters. Short lines operate nearly 50,000 miles of track in the United States, or a nearly 30% of the national freight network, touching in origin or destination one out of every five cars moving on the national railroad system, serving customers who otherwise would be cut off from the national railroad network.

unattended equipment in the course of the work being performed.” 49 CFR 232.103(n)(9). FRA says that these required safety briefings—along with roll-by inspections required by § 232.209—should “not [be] considered information collections under the PRA because the agency is not collecting any information or requiring a third party to collect any information or keep any records.” 89 FR 56474, 56475 (July 9, 2024). Using this rationale, FRA proposes to drastically reduce the estimated reporting burden associated with 49 CFR Part 232 from an approved estimate of 528,432 burden hours in December 2020 to 324,638 burden hours in September 2024 (i.e. a total reduction of 203,794 burden hours) even though there have been no regulatory changes in the intervening four years.

Nearly 195,000 hours of the 203,794-hour reduction in the burden estimate is attributable to FRA’s decision to exclude the job briefing requirement in § 232.103(n)(9) from its burden estimate. However, this was not made clear in the initial information collect request (ICR) notice published by FRA in the Federal Register on July 9, 2024. In that initial ICR notice, FRA stated that excluding the burdens associated with job briefings and roll-by inspections from the burden estimate would reduce the overall burden estimate by only 328 hours. 89 FR at 56475. It also was not made clear in the second ICR notice that was published on September 17, 2024, which does not provide any additional details about the sources of the reduction in the burden estimate. 89 FR 76181. The Associations were only able to determine the source of the reduction in the burden estimate when it conducted an independent analysis of the current ICR to previous ICRs.

Understanding the primary source of the drastic reduction in burden hours, the Associations are compelled to comment on the ICR at this stage because FRA’s reasoning for

excluding job briefings from its paperwork burden estimate is based on an incorrect application of the Paperwork Reduction Act (PRA) and the PRA's implementing regulations. 44 U.S.C. 3501 *et seq.*, and 5 CFR Part 1320. Office of Management and Budget (OMB) regulations define the "collection of information" at 5 CFR 1320.2, which states in part:

"Collection of information" includes any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. As used in this Part, "collection of information" refers to the act of collecting or disclosing information, to the information to be collected or disclosed, to a plan and/or an instrument calling for the collection or disclosure of information, or any of these, as appropriate.

Section 1320.2 also makes clear that a collection of information does not need to be written down or recorded and may be in any form or format, including oral statements. Therefore, if an agency requires a regulated entity to obtain information, that information is considered a collection of information, even if the requirement is handled verbally through job briefings.

Section 232.103(n)(9) clearly requires railroads to collect and share train-specific information amongst employees who are responsible for securing the train. The paragraph was added to Part 232 in August 2015, when FRA finalized new regulatory requirements incorporating the securement provisions in FRA Emergency Order 28, which FRA had previously issued following the Lac Megantic derailment in Canada. 80 FR 47350 (Aug. 6, 2015).

Emergency Order 28 included a requirement to conduct a job briefing on securement and also required that certain securement information be sent to the dispatcher for recordation. 78 FR 48218, 48223 (Aug. 7, 2013). In the 2015 final rule, FRA dropped the dispatcher recordation requirement, but left the substantive job briefing requirement from Emergency Order 28 intact. In the preamble to the 2015 final rule, FRA delineated that it expects required job briefings to include discussions about "the equipment that is impacted, the responsibilities of each

employee involved in the securement of a train or vehicle, the number of hand brakes that will be required to secure the affected equipment, the process for ensuring that securement is sufficient, how the verification will be determined, and any other relevant factors affecting securement.” 80 FR at 47366. At a minimum, the people participating in the job briefing must obtain train-specific information on the equipment that is impacted, each person’s individual responsibilities, and the number of handbrakes that are required for securement. These requirements squarely fall within the definition of a “collection of information,” as defined in 5 CFR 1320.2, because railroad employees must collect train-specific information to conduct the job briefing on securement.

Notwithstanding the above, FRA seems to suggest that the required job briefings are not a “collection of information” because FRA does require railroads to send information on the specific job briefings to the agency and does not require railroads to keep any records. But, this misreads the definition of “collection of information.” The definition includes “any requirement or request for persons obtain, maintain, retain, report, *or* publicly disclose information.” (Emphasis added.) The text of the definition demonstrates that “collection of information” is not limited to records that must be retained or submitted to an agency. The sole act of obtaining the information pursuant to a regulatory requirement is enough to trigger the PRA. Therefore, OMB should require FRA to reassess its burden estimate with § 232.103(n)(9) job briefings included in the burden estimate.

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Thank you for your consideration of these comments.

Respectfully submitted,



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