

ROADWAY WORKER PROTECTION

49 CFR 214

- 1. EXPLAIN THE CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY. IDENTIFY ANY LEGAL OR ADMINISTRATIVE REQUIREMENTS THAT NECESSITATE THE COLLECTION. ATTACH A COPY OF THE APPROPRIATE SECTION OF EACH STATUTE AND REGULATION MANDATING OR AUTHORIZING THE COLLECTION OF INFORMATION.**

This collection of information is a request for an extension of a currently approved submission. The Federal Railroad Administration (FRA) has revised the information in this collection – where appropriate and necessary – to reflect the most current data, and FRA’s experience over the past three years in implementing the requirements of this rule.

Background: Roadway Maintenance Machines

In May 1990, the Brotherhood of Maintenance of Way Employees (BMWE) filed a petition with FRA to revise the Track Safety Standards and add to them new regulations addressing the safety of roadway workers and roadway maintenance machines. In response, FRA first initiated a negotiated rulemaking to address roadway worker safety. The final rule resulting from that rulemaking was published in December 1996 (*see* 61 FR 65959), and the regulations addressing roadway worker safety now reside in 49 CFR Part 214, Subpart C. Also in 1996, FRA requested the newly formed Railroad Safety Advisory Committee (RSAC) develop recommendations to the Administrator on how to address by rulemaking the revision of the Track Safety Standards petitioned by the BMWE. The RSAC agreed to the task and formed a Track Working Group to draft a proposed revision. The Track Working Group decided by consensus that the draft revision would update the Track Safety Standards found at 49 CFR Part 213, and that a new set of regulations addressing the safety of on-track roadway maintenance machines would be initiated in a separate rulemaking. The RSAC approved by majority consensus a draft Notice of Proposed Rulemaking (NPRM) for revision of Part 213 in October 1996. The Administrator approved and signed the NPRM, which was published on July 3, 1997 (*see* 62 FR 36138). The final rule was published on June 22, 1998 (*see* 63 FR 33992), and the revised track standards became effective on September 21, 1998.

Even after the publication of the revised Track Safety Standards, the Track Working Group remained in existence to accomplish two additional tasks accepted by the RSAC: (i) the amendment of Part 213 to add safety standards for Gage Restraint Measuring Systems (GRMS), and (ii) the amendment of Part 214 to add safety standards for on-track roadway maintenance machines. To accomplish the latter, the Track Working Group appointed a six-member Task Group to draft, by consensus, rule language. The Track Working Group initially divided roadway maintenance machines into three broad

categories: (i) on-track, (ii) on/off track (such as hi-rail vehicles) and (iii) off-track. The Group quickly decided to confine the regulations to on-track equipment and equipment used both on and off track. The Task Group further divided two remaining categories of roadway maintenance machines into five subcategories: (i) large self-propelled equipment; (ii) medium self-propelled equipment; (iii) small “walk-along” equipment; (iv) hi-rail equipment; and (v) motor cars.

The Task Group conducted a systematic review of various types and configurations of machinery, as well as their current use in the railroad industry. The Task Group determined that the railroad industry is rapidly phasing out the use of motor cars, replacing them with hi-rail vehicles. In fact, motor cars have not been manufactured for use in the United States in several years. Therefore, it was decided there was no need to write a rule covering motor cars. Next, the Task Group decided to eliminate small “walk-along” track equipment from the scope of the new regulations. “Walk-along” equipment includes small pieces of track maintenance equipment that rolls on the rails but may not be self-propelled. This type of equipment includes tie borers, nut runners, portable rail grinders, and other track maintenance equipment of similar size which can be placed on, or removed from, the track with relative ease by one or more roadway workers. The Group determined that the great variety of this type of equipment would dictate writing a very complicated set of regulations governing a category of equipment that does not pose a very significant safety hazard. Therefore, the Task Group decided to focus the rulemaking on the three remaining sub-category groups of roadway maintenance machines: (i) large on-track machines, (ii) medium on-track machines, and (iii) hi-rail vehicles.

Background: Roadway Workers Protection

In 1990, the BMWF petitioned the Federal Railroad Administration (FRA) to amend its track safety standards. Issues relating to the hazards of roadway workers were part of this petition.

In September 1992, the Rail Safety Enforcement and Review Act, Pub. L. No. 102-365, 106 Stat. 972, formally required FRA to review its track safety standards and revise them based on information derived from that review.

FRA issued an Advanced Notice of Proposed Rulemaking (ANPRM) on November 16, 1992 (*see* 57 FR 54038), announcing the opening of a proceeding to amend the Federal Track Safety Standards. Workshops were held in conjunction with this effort to solicit the views of the railroad industry and representatives of railroad employees on the need for substantive change in the track regulations. A workshop held on March 31, 1993, in Washington, D.C., specifically addressed the protection of employees from the hazards of moving trains and equipment. The subject of injury and death to roadway workers was of such great concern that FRA received petitions for emergency orders and requests for

rulemaking from both the BMW E and the Brotherhood of Railroad Signalmen (BRS). FRA did not grant the petitions for emergency orders, but instead initiated a separate proceeding to consider regulations to eliminate hazards faced by these employees. FRA removed this issue from the track standards docket, FRA Docket No. RST-90-1, and formed a new docket, FRA Docket No. RSOR 13, specifically to address hazards to roadway workers to expedite the effective resolution of this issue.

FRA convened a Safety Summit Meeting on June 3, 1994, with affected railroad industry, contractor, and labor representatives. This meeting considered certain aspects of FRA accident data involving roadway workers. The meeting also facilitated a discussion of various short-term and long-term actions that could be taken by FRA and the industry to prevent injuries and deaths among roadway workers. One long-range alternative suggested by FRA was to use the negotiated rulemaking process to allow input from both railroad management and labor to develop standards addressing risks faced by roadway workers. The agency determined that this was an appropriate subject for a negotiated rulemaking and initiated this process.

FRA issued an NPRM on March 14, 1996, which amended FRA's Railroad Workplace Safety regulations (49 CFR Part 214) by adding definitions to Subpart A, and by adding a new Subpart C, Roadway Worker Protection. The NPRM required that each railroad devise and adopt a program of on-track safety to provide employees working along the railroad with protection from the hazards of being struck by a train or other on-track equipment. The NPRM also required a railroad's on-track safety program to include an on-track safety manual; a clear delineation of employers' responsibilities for providing on-track safety, as well as employees' related rights and responsibilities; well defined procedures for communication and protection; and annual on-track safety training. Further, the NPRM required that programs adopted by each railroad must be reviewed and approved by FRA.

FRA published a final rule for roadway worker protection on December 16, 1996 (*see 61 FR 65959*). The final rule affirmed safety standards for railroad employees (and contractors) working on or near railroad tracks established earlier in the NPRM. The regulation was a successful result of the negotiated rulemaking process, and was achieved by a consensual agreement between FRA, railroad management, and railroad labor. The rule became effective January 15, 1997.

Regarding Form FRA F 6180.119, Part 214 regulations have been deemed different enough from the Part 213 regulations so as to require a separate and distinct report form. Regardless of safety discipline, FRA and State inspectors will complete the form when recommending civil penalties for serious infractions of Part 214.

FRA presents this updated information collection submission to account for the burden

incurred by Form FRA F 6180.119 and to reflect any changes in reporting and recordkeeping burdens of the rule. The current approval for this information collection expires August 31, 2008, and FRA is requesting extended approval for a full three years.

2. INDICATE HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED. EXCEPT FOR A NEW COLLECTION, INDICATE THE ACTUAL USE THE AGENCY HAS MADE OF THE INFORMATION RECEIVED FROM THE CURRENT COLLECTION.

The information is used by railroad workers to improve safety and prevent accidents and casualties caused by the operation of on-track roadway maintenance machines and hi-rail vehicles. Employees operating on-track roadway maintenance machines are required to notify their employer whenever they make a good faith determination that the machines do not comply with FRA regulations. For their part, employers must have in place and follow written procedures to assure prompt and equitable resolution of these challenges resulting from the good faith determination made by employees. The employer can not require an employee challenging the fitness of a machine to operate the machine until the challenge has been resolved. By calling the employer's attention to problems with roadway maintenance machines, roadway workers can ensure that safety deficiencies and other defects are immediately addressed. Under the rule, employers are generally allowed up to seven days to repair a roadway maintenance machine found to be non-compliant.

Employers are required to maintain a list of new and designated roadway maintenance machines that are equipped with enclosed cabs with operative heating systems, operative air conditioning systems, and operative positive pressurized ventilation systems. Included among these machines are the following: ballast regulators, tampers, mechanical brooms, rotary scarifiers, undercutters, or the functional equipment of any of these. FRA and other federal and state inspectors use these rosters to determine which agency has responsibility for inspection and enforcement of respiratory safety regulations for each roadway machine in order to further protect railroad workers' health and safety.

The information is also used to help protect the health and safety of railroad workers in other ways. For example, audible warning devices are required on new on-track roadway maintenance machines. The triggering mechanism for this audible warning device must be clearly identifiable and within easy reach of the machine operator. Also, within a specified time frame (March 28, 2005), each existing on-track maintenance machine must be equipped with a permanent or audible warning device that produces a sound loud enough to be heard by roadway workers and other machine operators within the immediate work area. The triggering mechanism for the audible warning device must be clearly identifiable and within easy reach of the machine operator. Thus, in critical situations, roadway workers will readily know where the triggering mechanism is located and will be able to sound the warning device before a potential accident/incident occurs

and a fellow roadway worker is injured or possibly killed.

Moreover, each existing on-track maintenance machines must have stenciling or documentation on the machine identifying the light weight of the machine clearly displayed on it, and also the location of safe and secure positions for the machine operator and roadway workers to be transported on the machine. Thus, the displayed light weight identifies the machines's proper category and provides essential information to crane operators in the event the machine is lifted on to or loaded off a flat bed truck or rail car for movement from one work site to another. If roadway workers are not permitted on the machine, the prohibition must be noted by the stenciling or documentation on the machine. In both cases, such additional clear markings serve to reduce the likelihood of accidents/incidents and potentially serious injuries to machine operators and other roadway workers, as well as serve to mitigate lost productivity to employers that such injuries bring.

The information collected is used by employers and serves to further enhance roadway workers' safety because their employers are now required to evaluate the feasibility of providing an overhead cover for existing on-track roadway maintenance machines, if requested in writing by the operator assigned to operate that machine or by the operator's designated representative. The employer must provide a written response for each request within 60 days. When the employer finds the addition of an overhead cover is not feasible, the response must include an explanation of the reasoning used by the employer to reach that conclusion. It is noteworthy that many older on-track roadway maintenance machines were not designed with overhead covers. Covers or canopies provide important benefits to machine operators, most notably by shielding them from overhead sunlight and from snow and rain. As a result of these information collection requirements, employers are not able to deny roadway workers equipment that will protect their health and safety, unless they have a legitimate reason. Being protected from blinding sun or exposure to inclement weather will help to cut down on the number of accidents/incidents and corresponding casualties that typically accompany them due to weather related factors.

Other information requirements resulting from this Part are used by railroad management to train – on an initial and recurring basis – and update roadway workers about on-track safety rules and procedures, and thereby enable them to avoid the hazards and risks associated with working on or near tracks by moving trains or other on-track equipment. The information is used by railroads to ensure that all roadway workers are well-qualified for their positions, and are completely familiar with on-track safety program provisions, as well as rules and operating procedures governing track occupancy and protection. Consequently, through ongoing training programs, railroad management has the ability to do its part to lessen the likelihood and number of accidents/incidents and corresponding injuries to roadway workers. Management then can play a major role in enhancing overall safety in today's rail environment.

FRA also uses the information collected. Specifically, FRA uses the records now required regarding mandatory hi-rail vehicle annual safety inspections to ensure that the safety critical components of these vehicles are adequately maintained and, if necessary, promptly repaired or replaced. In particular, tram, wheel wear and gage measurements must be checked at least annually and adjusted, as warranted, to provide for continued safe operation of these vehicles. FRA then uses these hi-rail inspection records to verify compliance with this subpart. Non-complying conditions that can not be immediately repaired must be tagged and dated in a manner determined by the employer and reported to the designated official. Thus, these requirements alert roadway workers to potential hazards and further enhance railroad safety by reducing the likelihood of accidents/incidents involving hi-rail vehicles.

Furthermore, FRA uses the other information required under this Part to verify that each railroad has established the required safety program. FRA uses the required written records regarding roadway worker qualifications to assist its investigators after an accident or incident resulting in roadway worker casualties. These records are required to contain the type of qualification attained by each roadway worker and the most recent date of qualification. By examining these and other records, FRA can determine whether or not appropriate personnel followed the required on-track safety procedures. Together with railroad management, FRA can then take corrective action, if necessary. The lack of this information would make the rail environment much more dangerous for roadway workers and impede FRA in its goal of reducing roadway worker injuries and deaths.

Finally, FRA inspectors of all five rail safety disciplines use the violation report form (FRA F 6180.119) to cite any violations of the Part 214 regulations and to recommend civil penalties for serious infractions.

3. DESCRIBE WHETHER, AND TO WHAT EXTENT, THE COLLECTION OF INFORMATION INVOLVES THE USE OF AUTOMATED, ELECTRONIC, MECHANICAL, OR OTHER TECHNOLOGICAL COLLECTION TECHNIQUES OR OTHER FORMS OF INFORMATION TECHNOLOGY, E.G. PERMITTING ELECTRONIC SUBMISSION OF RESPONSES, AND THE BASIS FOR THE DECISION FOR ADOPTING THIS MEANS OF COLLECTION. ALSO DESCRIBE ANY CONSIDERATION OF USING INFORMATION TECHNOLOGY TO REDUCE BURDEN.

In keeping with the requirements of the Paperwork Reduction Act (PRA) and the Government Paperwork Elimination Act (GPEA), FRA has strongly supported and highly encouraged the use of advanced information technology, including electronic recordkeeping, wherever possible to reduce burden on respondents for many years. In reference to the requirements involving Subpart D, FRA has explicitly provided railroads the option of maintaining the required records electronically. For example, under

§ 214.505, railroads are required to maintain a roster of machinery that falls under FRA's jurisdiction for purposes of this regulation. The roster may be maintained on paper or electronically, but it must be accessible and available to FRA, OSHA, and other Federal, as well as State, agencies so that inspectors may determine which agency has responsibility for inspection of which machines and for enforcement of respiratory safety regulations relating to each roadway maintenance machine. Also, under § 214.523, compliance records pertaining to hi-rail vehicle annual safety inspections may be kept electronically. The employer must maintain the record of the last inspection of each vehicle until the next inspection is performed. Additionally, under § 214.533, roadway maintenance machine or new hi-rail vehicle records pertaining to compliance with the schedule of repairs may be kept electronically.

Although most of the burden associated with the rest of this Part is administered verbally in the form of a daily safety briefings and is not conducive to use of the advanced information technology available today, FRA has provided the option of using advanced information technology, wherever possible. For example, railroads are given the authority to use computers for the recording of training examinations. They may also use an interactive training course to train the roadway workers on the hazards and risks involved while working on or around tracks cause by moving trains and other on-track equipment. Moreover, the train dispatcher or control operator in charge of the track may record by electronic means all authorities issued to establish exclusive track occupancy. Each employer may also use electronic recordkeeping to maintain the required records of each roadway worker's current qualification.

Railroads are always looking for ways to improve their operations and presently have in development technology such as Positive Train Separation (PTS) and personnel warning devices. Once these new technologies are tested and implemented, they may further reduce or eliminate some of the hazards and, therefore, risks for roadway workers, and concomitantly also reduce the paperwork burden by making unnecessary some of the requirements imposed by this rule.

Finally, Form FRA F 6180.119 is used within FRA's Railroad Inspection System for the personal computer (RISPIC system) by agency and state safety inspectors. As a result, the top one-third of the form is automatically filled-in or auto-populated once the inspector fills out the inspection report (Form FRA F 6180.96). This serves to reduce the time necessary to complete the entire form. Also, as a result of this form being in the RISPIC system, it can be easily updated by the safety inspector and can be quickly transmitted to FRA regional office specialists if further action is warranted.

It should be pointed out that it is up to the railroads to decide the timing and extent of their use of advanced information technology for reporting and recordkeeping purposes.

4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION. SHOW SPECIFICALLY

WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSES DESCRIBED IN ITEM 2 ABOVE.

To our knowledge, this information is not duplicated anywhere.

Similar data is not available from any other source.

5. IF THE COLLECTION OF INFORMATION IMPACTS SMALL BUSINESSES OR OTHER SMALL ENTITIES (ITEM 5 OF OMB FORM 83-I), DESCRIBE ANY METHODS USED TO MINIMIZE BURDEN.

FRA believes that this rule and associated collection of information have a minimal information impact on small entities. FRA took steps during the proceedings for the final rulemaking to minimize any adverse effects of the rule on small entities by obtaining wide input from many different groups and organizations. The rule and its associated information collection requirements have a minimal effect on small entities because the overwhelming majority of roadway maintenance machines owned and operated by small entities were manufactured before 1991, and thus would be exempt from the rule's requirements. Also, FRA, in this rulemaking, was careful to limit retrofit requirements, which might have imposed an undue burden on small entities. In fact, overall the information collection requirements of the recently added Subpart D constitute a very small fraction of the overall total burden hours. Moreover, it is worthwhile to note that FRA's required Regulatory Flexibility Assessment concluded that the (final) rule (amendment to Part 214) will not have a significant economic impact on a substantial number of small entities.

Regarding the rest of Part 214, the American Short Line and Regional Railroad Association (ASLRRA) has provided the lead in development of a generic On-Track Safety Program for small railroads that comprise its membership. This blanket program has been adopted by a majority of the small railroads (tailored to each system), and has eliminated the need for small railroads to create their own separate on-track safety programs. Additionally, FRA believes that ASLRRA will further take the lead in amending the generic On-Track Safety Program and that most small railroads will follow suit.

Regarding tourist and excursion railroads, it is FRA's understanding that many tourist and excursion railroads, operating on the general system of railroad transportation, do not conduct their maintenance work under traffic but do so during periods when there is little or no traffic. Therefore, any program devised to adhere to the standards of this Part by these railroads could be fairly simple, and any required training for roadway workers would be of a basic and general nature. Tourist and excursion railroads that do not operate on the general system of transportation are excluded from these requirements.

Concerning contractors, FRA examined the circumstances under which many contractors conduct their work and realized that adhering to the standards of this Part might seem burdensome to them. However, a closer examination of the standards in the rule shows that contractors will not normally devise their own on-track safety programs, but would follow the programs established by the railroads on which they are working. Therefore, this fact would serve to minimize burdens on contractors engaged by a railroad. Most of a contractor's employee training will be of a basic nature as railroad employees are usually working with and protecting contractors working near moving trains. Those railroad employees will normally arrange protection in accordance with the rules and procedures of the railroad.

As far as providing positive protection, it should be noted that the operation of small railroads is generally simpler and slower. Roadway worker protection can be provided easier by taking a line out of service to conduct major roadway work, and therefore, eliminate many of the requirements for worker briefings.

Finally, Form FRA F 6180.119 has no impact on small entities because it is completed by FRA and State safety inspectors.

6. DESCRIBE THE CONSEQUENCE TO FEDERAL PROGRAM OR POLICY ACTIVITIES IF THE COLLECTION IS NOT CONDUCTED OR IS CONDUCTED LESS FREQUENTLY, AS WELL AS ANY TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN.

If this collection were not conducted or if this collection were conducted less frequently, the risk of injury or death to those working on or about railway tracks would be much greater. Specifically, if roadway workers could not challenge the fitness of on-track roadway machines and hi-rail vehicles and if employers were not required to have in place and follow written procedures to assure prompt and equitable resolution of these challenges, these workers might be forced to operate machines with safety and other defects. This could lead to greater numbers of accidents/incidents and corresponding increases in roadway worker casualties, resulting in lost productivity to the employer.

Without the requirement that employers maintain a list of new and designated roadway maintenance machines that are enclosed with cabs with operative heating systems, operative air conditioning systems, and operative ventilation systems, FRA and other Federal and State inspectors would not be able to use these rosters to determine which agency has the responsibility for inspection and enforcement of respiratory safety regulations for each roadway machine. The roster is intended to eliminate the possibility that certain machines would be inspected by two Federal agencies while other machines go uninspected altogether. If this were to occur, the health of roadway workers would suffer as a consequence, and also avoidable accident/incidents might take place because a

machine was not inspected. Furthermore, without the provision that the triggering mechanism of audible warning devices required on new on-track roadway maintenance machines be clearly identifiable and within easy reach of the machine operator, more railway workers might be injured or killed because they did not know where the mechanism was in a critical situation and were not able to sound it in time.

Without the requirement that employers will now have to evaluate the feasibility of providing an overhead cover for existing on-track roadway maintenance machines if requested in writing by the operator assigned to a particular machine or by the operator's representative, the safety and health of railroad workers would be at increased risk. Employers are now required to provide a written response within 60 days, and have to include an explanation of the reasoning used if it is determined that an overhead cover is not feasible. Unless employers have a valid reason, they can not deny roadway workers essential equipment. Covers or canopies provide protection from blinding sun and from inclement weather such as rain and snow, and thus serve to improve roadway worker visibility. Overhead covers then could make all the difference in preventing accidents/incidents and the often accompanying injuries experienced by roadway workers.

More accidents/incidents and corresponding casualties might ensue if records were not required to be kept regarding hi-rail vehicle annual safety inspections. In particular, safety-critical components might not be checked at least once annually and adjusted, if necessary. Without this type of oversight, employers might not be as conscientious to check tram, wheel wear, and gage measurements, and FRA would have no way to verify compliance with this new subpart. As a result of this information collection, each non-complying condition not immediately repaired following an inspection must be tagged and reported to the employer's designated official, which further protects roadway workers. Non-complying conditions that were left uncorrected could lead to severe consequences, including damaged/unusable machinery, lost productivity, and lost time on-the-job, for both railroads and their employees.

Without this collection of information, roadway workers would be less well-trained and, therefore, less well-qualified for their respective crafts (whether watchmen/lookouts, flagmen, lone workers, roadway machine operators, etc.). They would not receive the initial and recurring training (once every year) now required under this rule. Consequently, they would not be as knowledgeable of railroad operating procedures and safety practices, nor would they be as familiar with overall conditions in today's railroad environment. Furthermore, if this collection were not conducted (or conducted less frequently), there would not be the clear delineation of employers' responsibilities for providing on-track safety and employees' corresponding rights and responsibilities. Roadway workers might then unnecessarily or inadvertently place themselves in hazardous situations. Additionally, without this collection of information, there would not be the well-defined

procedures for communication and protection now required of roadway workers. As a result, there would likely be greater confusion around railroad tracks and greater uncertainty regarding the correct use of railroad equipment. More roadway worker injuries and fatalities would inevitably follow. FRA data tend to support this conclusion. FRA data indicate a continuing downward trend in roadway worker injuries and fatalities. For example, there were 3,107 injuries to maintenance of equipment and stores employees in 2000, while there were 2,024 to this same class of employees in 2007.??? FRA's objective is to continue and facilitate this downward trend.

As a result of this collection, each employer must maintain written or electronic records of each roadway worker's current qualifications, and make these records available to FRA for inspection and copying upon request. Also, roadway workers who provide on-track safety for roadway work groups are required to take a recorded examination as part of the qualification process. These and other required records are very valuable in assisting investigators after an injury or fatality involving a roadway worker or group of roadway workers. Furthermore, should a potential violation of roadway worker rights and responsibilities occur, FRA can consider all the available evidence, including written records maintained by parties in the case now required by this collection, in making its determination. Without this collection, all the required records would be unavailable to FRA.

Finally, without Form FRA F 6180.119, FRA would not have a mechanism to cite serious individual or corporate violations of Part 214 that it could use to recommend civil penalties. Such a mechanism – recommending civil penalties – has a deterrent effect and helps prevent similar violations from occurring, thereby improving overall rail workplace safety for roadway workers and other rail employees who perform their various jobs each and every day in a very dangerous work environment.

In summary, the net result of not collecting this information or collecting it less frequently would be to permit a more dangerous rail environment for roadway workers, as well as a more costly operational environment for rail employers because of lost productivity due to roadway workers killed or injured on the job. Moreover, FRA would be denied another important tool to promote and indeed enhance rail safety. This collection is another instrument which assists FRA in achieving its core agency mission and that of the Department as well.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES THAT WOULD CAUSE AN INFORMATION COLLECTION TO BE CONDUCTED IN A MANNER:

- **REQUIRING RESPONDENTS TO REPORT INFORMATION TO THE AGENCY MORE OFTEN THAN QUARTERLY;**
- **REQUIRING RESPONDENTS TO PREPARE A WRITTEN RESPONSE**

TO A COLLECTION OF INFORMATION IN FEWER THAN 30 DAYS AFTER RECEIPT OF IT;

- **REQUIRING RESPONDENTS TO SUBMIT MORE THAN AN ORIGINAL AND TWO COPIES OF ANY DOCUMENT;**
- **REQUIRING RESPONDENTS TO RETAIN RECORDS, OTHER THAN HEALTH, MEDICAL, GOVERNMENT CONTRACT, GRANT-IN-AID, OR TAX RECORDS FOR MORE THAN THREE YEARS;**
- **IN CONNECTION WITH A STATISTICAL SURVEY, THAT IS NOT DESIGNED TO PRODUCE VALID AND RELIABLE RESULTS THAT CAN BE GENERALIZED TO THE UNIVERSE OF STUDY;**
- **REQUIRING THE USE OF A STATISTICAL DATA CLASSIFICATION THAT HAS NOT BEEN REVIEWED AND APPROVED BY OMB;**
- **THAT INCLUDES A PLEDGE OF CONFIDENTIALITY THAT IS NOT SUPPORTED BY AUTHORITY ESTABLISHED IN STATUE OR REGULATION, THAT IS NOT SUPPORTED BY DISCLOSURE AND DATA SECURITY POLICIES THAT ARE CONSISTENT WITH THE PLEDGE, OR WHICH UNNECESSARILY IMPEDES SHARING OF DATA WITH OTHER AGENCIES FOR COMPATIBLE CONFIDENTIAL USE; OR**
- **REQUIRING RESPONDENTS TO SUBMIT PROPRIETARY TRADE SECRET, OR OTHER CONFIDENTIAL INFORMATION UNLESS THE AGENCY CAN DEMONSTRATE THAT IT HAS INSTITUTED PROCEDURES TO PROTECT THE INFORMATION'S CONFIDENTIALITY TO THE EXTENT PERMITTED BY LAW.**

All information collection requirements contained in this rule are in compliance with this section.

8. **IF APPLICABLE, PROVIDE A COPY AND IDENTIFY THE DATE AND PAGE NUMBER OF PUBLICATION IN THE FEDERAL REGISTER OF THE AGENCY'S NOTICE, REQUIRED BY 5 CFR 1320.8(d), SOLICITING COMMENTS ON THE INFORMATION COLLECTION PRIOR TO SUBMISSION TO OMB. SUMMARIZE PUBLIC COMMENTS RECEIVED IN RESPONSE TO THAT NOTICE AND DESCRIBE ACTIONS TAKEN BY THE AGENCY IN RESPONSE TO THOSE COMMENTS. SPECIFICALLY ADDRESS COMMENTS RECEIVED ON COST AND HOUR BURDEN.**

DESCRIBE EFFORTS TO CONSULT WITH PERSONS OUTSIDE THE AGENCY TO OBTAIN THEIR VIEWS ON THE AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, THE CLARITY OF INSTRUCTIONS AND RECORDKEEPING, DISCLOSURE, OR REPORTING FORMAT (IF ANY), AND ON THE DATA ELEMENTS TO BE RECORDED, DISCLOSED, OR REPORTED.

CONSULTATION WITH REPRESENTATIVES OF THOSE FROM WHOM INFORMATION IS TO BE OBTAINED OR THOSE WHO MUST COMPILE RECORDS SHOULD OCCUR AT LEAST ONCE EVERY 3 YEARS--EVEN IF THE COLLECTION OF INFORMATION ACTIVITY IS THE SAME AS IN PRIOR PERIODS. THERE MAY BE CIRCUMSTANCES THAT MAY PRECLUDE CONSULTATION IN A SPECIFIC SITUATION. THESE CIRCUMSTANCES SHOULD BE EXPLAINED.

In accordance with the Paperwork Reduction Act of 1995, Public Law No.104-13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. §§ 3501-3520), and its implementing regulations, 5 C.F.R. Part 1320, FRA published a notice in the Federal Register on February 26, 2008 (See 73 FR 10322) soliciting public comments on these information collection requirements. FRA received no comments in response to this notice.

Background

FRA published the Roadway Maintenance Machine Final Rule on July 28, 2003 (See 68 FR 44388). It published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on January 10, 2001, regarding Safety Standards for Roadway Maintenance Machines as an amendment to Part 214, Code of Federal Regulations (See 66 FR 1930). As mentioned at the beginning of this document, a new Subpart D was added which specifically addressed the prevention of accidents and casualties caused by operation of on-track roadway maintenance machines and hi-rail vehicles. FRA received comments on a variety of issues from five (5) organizations in response to the proposed rule. The commenters included the Brotherhood of Maintenance of Way Employees (BMWE), the Association of American Railroads (AAR), Loram Maintenance of Way, Inc. (Loram), Transtar Inc. (Transtar), and the Wisconsin Central System (Wisconsin Central). FRA received only one comment pertaining to the rule's information collection burden hours or burden costs. Specifically, Loram commented on the records that employers are required to maintain under § 214.533, *Schedule of Repairs Subject to Availability of Parts*, to demonstrate compliance with this section. Loram stated that the required record keeping will detract from machine crews' ability to complete assigned objectives, and will be costly to employers.

After careful consideration, FRA noted the following in response to Loram's comment:

(1) The Final Rule is the product of a collaborative process where a wide array of industry representatives and interested parties had considerable input as members of the RSAC throughout both the earlier and later stages of this rulemaking; (2) The agency is keenly aware and sensitive to the added costs related to the required recordkeeping. However, the recordkeeping requirements are necessary in order to ensure that adequate safety measures are taken relating to the operation of on-track roadway maintenance machines and hi-rail vehicles so as to protect roadway workers in an admittedly very dangerous environment and also in order for FRA to be able to enforce the rule; (3) The additional costs created by the recordkeeping requirements have been factored into the cost/benefit analysis performed for this (final) rule. The safety benefits of this rule in terms of accidents/incidents prevented and thus injuries averted, lives saved, and damage to rail property eliminated/reduced exceed the overall costs of this rule's requirements; (4) Over the years, rail industry representatives have clearly and repeatedly expressed their preference for reporting and recordkeeping provisions in lieu of more expensive and onerous regulatory mandates; and (5) As in its other rulemakings, FRA has attempted to provide as much flexibility as possible in the requirements that it imposes in this (final) rule, particularly those requirements concerning recordkeeping. Thus, these records may be kept on forms provided by the employer or by electronic means. Also, the records may be kept on the on-track roadway maintenance machine or hi-rail vehicle, or at a location designated by the employer. Each employer then gets to decide the method that is most suitable for its railroad operations and most practicable for its employees. In light of the above, FRA has declined to modify the recordkeeping requirement in response to the Loram comment.

In March 1996, FRA established the RSAC, which provides a forum for consensual rulemaking and program development. The Committee includes representation from all of the agency's major customer groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups includes the following:

- Association of State Rail Safety Managers
- American Association of Private Railroad Car Owners (AARPCO)
- American Association of State Highway & Transportation Officials (AASHTO)
- American Public Transportation Association (APTA)
- American Short Line and Regional Railroad Association (ASLRRRA)
- American Train Dispatchers Department/BLE (ATDD/BLE)
- Amtrak
- Association of American Railroads (AAR)
- Association of Railway Museums (ARM)
- Brotherhood of Locomotive Engineers (BLE)
- Brotherhood of Maintenance of Way Employees (BMWE)
- Brotherhood of Railroad Signalmen (BRS)

High Speed Rail/Maglev Association
Hotel Employees & Restaurant Employees International Union
International Association of Machinists and Aerospace Workers
International Brotherhood of Boilermakers and Blacksmiths
International Brotherhood of Electrical Workers (IBEW)
Labor Council For Latin American Advancement (LCLAA)
League of Railway Industry Women (LRIW)
National Association of Railway Business Women (NARBW)
National Association of Railroad Passengers (NARP)
National Conference of Firemen & Oilers
National Railroad Construction and Maintenance Association
Railway Progress Institute (RPI)
Safe Travel America
Secretaria de Comunicaciones y Transportes (non-voting)
Sheet Metal Workers International Association
Tourist Railway Association Inc.
Transport Canada (non-voting)
Transport Workers Union of America (TWUA)
Transportation Communications International Union/BRC (TCIU/BRC)
United Transportation Union
National Transportation Safety Board (NTSB) (non-voting)
Federal Transit Administration (FTA) (non-voting)

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. If a working group comes to consensus on recommendations for action, the package is presented to the RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. If the working group is unable to reach consensus on recommendations for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

The Task Group formed to develop this rule consisted of representatives from FRA, the AAR, the BMW, Norfolk Southern Railway Company (NS), and an equipment supplier. The group met several times and conducted conference calls before drafting rule language to recommend to the RSAC for approval. The Group's recommended rule was approved by the RSAC in 2000 and, as noted above, the proposed rule was published in the Federal Register on January 10, 2001.

In February 2002, the Task Group met with most of the commenters, as well as other representatives from the railroad industry, to gain clarification of, and further discuss, some 35 separate comments and suggestions provided by the commenters. The Task

Group met with representatives of Loram, Plasser American, and the Railway Progress Institute, and then, by unanimous vote, agreed how the (final) rule would respond to each of these comments. Detailed discussion of those decisions is included in the section-by-section analysis segment of this rulemaking.

Background to Roadway Workers Protection

In May 1990, the BMWWE filed a petition with FRA to revise the Track Safety Standards and add to them new regulations addressing the safety of roadway workers and roadway maintenance machines. In response, FRA first initiated a negotiated rulemaking to address roadway worker safety. FRA convened a Safety Summit Meeting on June 3, 1994, with affected railroad industry, contractor, and labor representatives. One of the topics at this meeting was a discussion of various actions that could be taken by FRA and the industry to prevent injuries and deaths among roadway workers. FRA suggested the use of the negotiated rulemaking process to allow input from both railroad management and labor to develop standards addressing these risks. On August 17, 1994, FRA published its notice of intent to establish a Federal Advisory Committee for regulatory negotiation (*see* 59 FR 42200). Based on responses received from this notice, FRA established an Advisory Committee in accordance with the Federal Advisory Committee Act, 5 U.S.C. 581. The Advisory Committee was responsible for submitting a report, including an NPRM, containing the Committee's consensus decision. The Charter to establish a Roadway Worker Safety Advisory Committee was approved by OMB on December 27, 1994.

The twenty-five member Advisory Committee included representatives from the following organizations:

- American Public Transit Association (APTA)
- The American Short Line Railroad Association (ASLRA; now ASLRRRA)
- Association of American Railroads (AAR)
- Brotherhood of Locomotive Engineers (BLE)
- Brotherhood of Locomotive Engineers, American Train Dispatchers Department (ATDD)
- Brotherhood of Maintenance of Way Employees (BMWWE)
- Brotherhood of Railroad Signalmen (BRS)
- Burlington Northern Railroad (BN)
- Consolidated Rail Corporation (Conrail)
- CSX Transportation, Inc. (CSX)
- Florida East Coast Railway Company (FEC)
- Federal Railroad Administration (FRA)
- Northeast Illinois Regional Railroad Corporation (METRA)
- National Railroad Passenger Corporation (AMTRAK)
- Norfolk Southern Corporation (NS)

Regional Railroads of America (RRA)
Transport Workers Union of America (TWU)
Union Pacific Railroad Company (UP)
United Transportation Union (UTU)

The Advisory Committee held seven multiple-day negotiating sessions that were open to the public. In an effort to assist this proceeding, information was presented at the first Advisory Committee meeting by committee members who had participated earlier in an independent task force. This task force, comprised of representatives of several railroads and labor organizations, had met during the preceding year to independently analyze the issue of on-track safety. The findings and recommendations of the task force were considered along with information presented by other Advisory Committee members.

The Advisory Committee was responsible for submitting a report, including an NPRM, containing the Committee's consensus decisions. The Advisory Committee reached consensus on eleven specific recommendations and nine general recommendations to serve as the basis for a regulation. These recommendations were incorporated into a report that was submitted to the Secretary of Transportation and the Federal Railroad Administrator on May 17, 1995. The Advisory Committee held one additional two-day session, and reached consensus on a proposed rule that conformed to the recommendations submitted in the report.

FRA published a notice of proposed rulemaking on March 14, 1996 (*61 FR 10528*). In that notice, FRA specifically solicited comments from contractors and tourist railroads since these two groups were not represented on the Advisory Committee (*61 FR 10531, 10532*). FRA received a request for a public hearing in response to the NPRM. A public hearing was held July 11, 1996, where various parties made oral presentations. A final Advisory Committee meeting was held July 12, 1996, where committee members considered comments made to the docket.

FRA received several comments in reference to the NPRM. These comments dealt almost exclusively with the rule's regulatory requirements. Several commenters expressed concern that the effective dates listed in the NPRM were not feasible for adoption and implementation of the necessary on-track safety programs. These comments indirectly addressed one of the rule's main paperwork requirements. The proposed rule required each railroad to notify FRA of its on-track safety program at least 30 days prior to its respective compliance date. The NPRM provided for staggered effective dates of June 1st, September 1st, and December 1, 1996.

As it turned out, the time required to complete this rulemaking necessitated an extended implementation schedule. FRA issued a Final Rule on December 16, 1996 (*61 FR 65959*), and included final dates in this publication. The final dates were extended to March 15th, April 15th, and May 15, 1997. In response to the Final Rule, FRA received

no comments that specifically addressed cost and hour burdens. As required by 5 CFR 1320.8(d), FRA published a 60-day notice in the Federal Register on March 18, 1999 (64 FR 13465). FRA received no comments in response to this notice.

9. EXPLAIN ANY DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS, OTHER THAN REMUNERATION OF CONTRACTORS OR GRANTEES.

There are no monetary payments or gifts made to respondents associated with the information collection requirements contained in this rulemaking.

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS AND THE BASIS FOR THE ASSURANCE IN STATUTE, REGULATION, OR AGENCY POLICY.

Information collected is not of a confidential nature, and FRA pledges no confidentiality.

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE, SUCH AS SEXUAL BEHAVIOR AND ATTITUDES, RELIGIOUS BELIEFS, AND OTHER MATTERS THAT ARE COMMONLY CONSIDERED PRIVATE. THIS JUSTIFICATION SHOULD INCLUDE THE REASONS WHY THE AGENCY CONSIDERS THE QUESTIONS NECESSARY, THE SPECIFIC USES TO BE MADE OF THE INFORMATION, THE EXPLANATION TO BE GIVEN TO PERSONS FROM WHOM THE INFORMATION IS REQUESTED, AND ANY STEPS TO BE TAKEN TO OBTAIN THEIR CONSENT.

No sensitive information is requested.

12. PROVIDE ESTIMATES OF THE HOUR BURDEN OF THE COLLECTION OF INFORMATION. THE STATEMENT SHOULD:

- **INDICATE THE NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, ANNUAL HOUR BURDEN, AND AN EXPLANATION OF HOW THE BURDEN WAS ESTIMATED. UNLESS DIRECTED TO DO SO, AGENCIES SHOULD NOT CONDUCT SPECIAL SURVEYS TO OBTAIN INFORMATION ON WHICH TO BASE HOUR BURDEN ESTIMATES. CONSULTATION WITH A SAMPLE (FEWER THAN 10) OF POTENTIAL RESPONDENTS IS DESIRABLE. IF THE HOUR BURDEN ON RESPONDENTS IS EXPECTED TO VARY WIDELY BECAUSE OF DIFFERENCES IN ACTIVITY, SIZE, OR COMPLEXITY, SHOW THE RANGE OF ESTIMATED HOUR BURDEN, AND EXPLAIN THE REASONS FOR THE VARIANCE. GENERALLY, ESTIMATES**

SHOULD NOT INCLUDE BURDEN HOUR FOR CUSTOMARY AND USUAL BUSINESS PRACTICES

- **IF THIS REQUEST FOR APPROVAL COVERS MORE THAN ONE FORM, PROVIDE SEPARATE HOUR BURDEN ESTIMATES FOR EACH FORM AND AGGREGATE THE HOUR BURDENS IN ITEMS 13 OF OMB FORM 83-I.**
- **PROVIDE ESTIMATES OF ANNUALIZED COST TO RESPONDENTS FOR THE HOUR BURDENS FOR COLLECTIONS OF INFORMATION, IDENTIFYING AND USING APPROPRIATE WAGE RATE CATEGORIES. THE COST OF CONTRACTING OUT OR PAYING OUTSIDE PARTIES FOR INFORMATION COLLECTION ACTIVITIES SHOULD NOT BE INCLUDED HERE. INSTEAD, THIS COST SHOULD BE INCLUDED IN ITEM 14.**

The burden hour estimates for the information collection requirements listed below have been updated, where appropriate and necessary, based on the latest information available to FRA. Cost estimates for all information collection requirements reflect the most recent salary data available to FRA.

In an effort to more accurately gauge the average hourly wage of the different labor crafts, FRA checked the most recent Surface Transportation Bureau (STB) data, and discovered that railroad personnel work more than an average 40 hour work week (or 2,080 hours per year). Specifically, executives, officials, and staff assistants worked 2,105 hours per year (2006); professional and administrative worked 2,219 hours per year (2006); maintenance of way and structures employees worked 2,519 hours per year (2006); maintenance of equipment and stores worked 2,363 hours per year (2006); transportation employees (other than train and engine) worked an 2,338 hours per year (2006); and train and engine employees worked 2,953 hours per year (2006).

The cost to respondents is primarily a function of labor hours. Employees in the maintenance of way and structure category will be responsible for the majority of the burden hours. Employees in this group have an average hourly wage rate of \$32. Employees in the professional and administrative occupational categories have an average hourly wage rate of \$40. Hourly rates used to estimate labor costs are derived by burdening 2006 AAR compensation rates 40 percent (see AAR's publication Railroad Facts, 2007 edition).

Respondent universe is estimated at 703 railroads, and the number of roadway workers is estimated to be 50,000.

Form FRA F 6180. 119 - Part 214 Railroad Workplace Safety Violation Report Form

FRA estimates that approximately 150 of these forms will be completed each year by FRA inspectors. It is estimated that it will take approximately four (4) hours to complete each violation report form. Total annual burden for this requirement is 600 hours.

Respondents Universe:	350 Safety Inspectors
Burden time per response:	4 hours
Frequency of Response:	On occasion
Annual Number of responses:	150 report forms
First Year Burden:	600 hours
First Year Cost:	\$19,200

Calculation: 150 report forms x 4 hours = 600 hrs.
600 hrs. x \$32 = \$19,200

SUBPART C

A. RAILROAD ON-TRACK SAFETY PROGRAMS

(1) **Railroad on-track Safety Programs** (214.303)

Each railroad to which this Part applies must adopt and implement a program that will afford on-track safety to all roadway workers whose duties are performed on that railroad. Each such program must provide for the levels of protection specified in this Subpart.

Each on-track safety program adopted to comply with this Part must include procedures to be used by each railroad for monitoring effectiveness of and compliance with the program.

(2) **On-track Safety Program Documents** (214.309)

Rules and operating procedures governing track occupancy and protection must be maintained together in one manual and be readily available to all roadway workers. Each roadway worker responsible for the on-track safety of others, and each lone worker must be provided with and must maintain a copy of the program document.

(3) **Roadway Maintenance Machines** (214.341)

- Each employer must include in its on-track safety program specific provisions for the safety of roadway workers who operate or work near roadway maintenance machines. Those provisions must address:
- Training and qualification of operators of roadway maintenance machines.
- Establishment and issuance of safety procedures both for general application and for specific types of machines.
- Communication between machine operators and roadway workers assigned to work near or on roadway maintenance machines.
- Spacing between machines to prevent collisions.
- Space between machines and roadway workers to prevent personal injury.
- Maximum working and travel speeds for machines dependent upon weather, visibility, and stopping capabilities.
- Instructions for the safe operation of each roadway machine shall be provided and maintained with each machine large enough to carry the instruction document.
- No roadway worker shall operate a roadway maintenance machine without having been trained in accordance with § 214.355.
- No roadway worker shall operate a roadway maintenance machine without having complete knowledge of the safety instructions applicable to that machine.
- No employer shall assign roadway workers to work near roadway machines unless the roadway worker has been informed of the safety procedures applicable to persons working near the roadway machines and has acknowledged full understanding.
- Components of roadway maintenance machines must be kept clear of trains passing on adjacent tracks. Where operating conditions permit roadway maintenance machines to be less than four feet from the rail of an adjacent track, the on-track safety program of the railroad must include the procedural instructions necessary to provide adequate clearance between

the machine and passing trains.

(4) **Notification to FRA for Review and Approval of Individual On-track Safety Programs** (214.307)

Each railroad must notify, in writing, the Associate Administrator for Safety, Federal Railroad Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590, not less than one month before its on-track safety program becomes effective. The notification must include the effective date of the program, the address of the office at which the program documents are available for review and photocopying by representatives of the Federal Railroad Administrator, and the name, title, address, and telephone number of the primary person to be contacted with regard to review of the program. This notification procedure shall also apply to subsequent changes to a railroad's on-track safety program.

(5) **Written Procedure for Resolution of Challenges Made to On-Track Safety Procedures** (214.311)

Each employer must have in place a written procedure to achieve prompt and equitable resolution of challenges made in accordance with §§ 214.311(b) and 214.313(d)). These procedures will be written and become part of the on-track safety program.

Any burden associated with the above information collection requirements has been included in the earlier one-time burden associated with the development of the roadway worker safety program, or is included in the burden below which accounts for amendments to the original on-track safety program .

Since railroads have already established on-track safety programs under this rule, they will submit amendments to FRA whenever it is necessary to revise their on-track safety programs. FRA estimates that the approximately 20 programs (one-third of the approximately 60 programs adopted originally) will be amended annually under the above requirement (§ 214.303). This figure includes all Class I railroads, and some of the Class II and Class III railroads. FRA estimates that the remainder of the Class II and Class III railroads (584) will also amend their on-track safety programs.

FRA estimates that it will take approximately 20 hours per program for each of the 20 railroads mentioned above to complete their amendments, and to prepare and mail their notification letter to FRA. It is also estimated that it will take approximately four (4) hours per program for the remaining Class II and Class III railroads to complete their amendments, and to prepare and mail their notification letter to FRA. Total annual burden for this requirement is 2,736 hours.

Respondents Universe:

60 Railroads

Burden time per response:	20 hours/4 hours
Frequency of Response:	On occasion
Annual Number of responses:	20 prog. amend./584 prog. amend.
First Year Burden:	2,736 hours
First Year Cost:	\$109,440

Calculation: 20 amend. x 20 hrs + 584 amend. x 4 hours = 2,376 hrs.
2,736 hrs. x \$40 = \$109,440

Subsequent Years

FRA estimates that approximately five (5) new railroads will come into existence each year. These railroads will be classified as Class III. It is assumed that these railroads will most likely adopt one of the blanket programs. If the new railroads adopt one of the blanket programs, there will be no burden involved. However, if each new railroad decides to prepare its own safety program, it is estimated that it will take approximately 250 hours per program. Total annual burden for this requirement is 1,250 hours.

Respondents Universe:	5 Railroads
Burden time per response:	250 hours
Frequency of Response:	One-time
Annual Number of responses:	5 safety programs
Subsequent Year Burden:	1,250 hours
Subsequent Year Cost:	\$50,000

Calculation: 5 safety programs x 250 hrs. = 1,250 hours
1,250 hrs. x \$40 = \$50,000

B. Responsibility of Individual Roadway Workers (214.313)

Each roadway worker may refuse any directive to violate an on-track safety rule, and must inform the employer in accordance with § 214.311 whenever the roadway worker makes a good faith determination that on-track safety provisions to be applied at the job location do not comply with the rules of the operating railroad.

It is estimated that written records will be kept of these challenges approximately 80 times each year. It is estimated that approximately 20 railroads will be challenged four (4) times a year under this requirement. Based on the complexity of each individual challenge, the burden could vary from 15 minutes to 16 hours per occurrence. FRA estimates that an overall industry average for this information collection requirement would be four (4) hours for each challenge. Total annual burden for this requirement is 320 hours.

Respondents Universe:	20 Railroads
Burden time per response	4 hours per challenge
Frequency of Response:	On occasion
Annual Number of responses:	80 challenges
Annual Burden:	320 hours
First Year Cost:	\$10,240

Calculation: 80 challenges x 4 hrs./challenge = 320 hours
320 hrs. x \$32 = \$10,240

C. Supervision and Communication (214.315; 214.335)

- When an employer assigns duties to a roadway worker that call for that employee to foul a track, the employer must provide the employee with a job briefing that includes information on the means by which on-track safety is to be provided, and instruction on the on-track safety procedures to be followed.
- A job briefing for on-track safety shall be deemed complete only after the roadway worker has acknowledged understanding of the on-track safety procedures and instructions presented.
- Every roadway work group whose duties include fouling a track must have one roadway worker designated by the employer to provide on-track safety for all members of the group. The designated person must be qualified under the rules of the railroad that conducts train operations on those tracks to provide the protection necessary for on-track safety of each individual in the group. The responsible person may be designated generally, or specifically for a particular work situation.
- Before any member of a roadway work group fouls a track, the designated person providing on-track safety for the group under the preceding paragraph must inform each roadway worker of the on-track safety procedures to be used and followed during the performance of the work at that time and location. Each roadway worker must again be so informed at any time the on-track safety procedures change during the work period. Such information must be given to all roadway workers affected before the change is effective, except in cases of emergency. Any roadway workers who, because of an emergency, cannot be notified in advance must be immediately warned to leave the fouling space and must not return to the fouling space until on-track safety is re-established.
- Each lone worker must communicate at the beginning of each duty period with a supervisor or another designated employee to receive a job briefing and to advise

of his or her planned itinerary, and the procedures that he or she intends to use for on-track safety. When communication channels are disabled, the job briefing must be conducted as soon as possible after the beginning of the work period when communications are restored.

Job briefings are a usual and customary procedure on most railroads today. From the survey data, FRA has determined that roadway workers have on average 327 job briefings each per year. For 50,000 employees, a total then of 16,350,000 briefings would occur annually.

The data provided in the responses from the AAR Survey show that the average job briefing is 12.3 minutes. It also shows that the average additional minutes that will be required by the rule will be 4.75 minutes. FRA believes this average is too high. This is common practice. FRA has determined that a more accurate estimate would be an additional two (2) minutes per job briefing. The estimated burden hours to the industry would be 545,000 hours, while the estimated cost would be \$17,440,000 per year.

It should be noted that this is not an information collection per se but a verbal communication between supervisors and employees. There is no actual paperwork kept, information gathered/collected, or reporting required in reference to this provision.

Respondents Universe:	50,000 Roadway Workers
Burden time per response:	2 minutes each briefing
Frequency of Response:	On occasion
Annual Number of responses:	16,350,000 briefings (327 x 50,000)
Annual Burden:	545,000 hours
Annual Cost:	\$17,440,000

Calculation: 16,350,000 briefings x 2 min. = 545,000 hours
545,000 hrs. x \$32 = \$17,440,000

D. Working Limits (214.319)

All affected roadway workers must be notified before working limits are released for the operation of trains. Working limits must not be released until all affected roadway workers have either left the track or have been afforded on-track safety through train approach warning in accordance with § 214.329 of this subpart.

This requirement corresponds with current practice in the railroad industry, and is not considered an additional requirement of this regulation. The notification will be given verbally in nearly all cases. Since this a usual and customary procedure, there is no additional burden associated with this provision.

E. Exclusive Track Occupancy - Working Limits (214.321)

An authority for exclusive track occupancy given to the roadway worker in charge of the working limits must be transmitted on a written or printed document directly, by relay through a designated employee, in a data transmission, or by oral communication, to the roadway worker by the train dispatcher or control operator in charge of the track.

- Where authority for exclusive track occupancy is transmitted orally, the authority must be written as received by the roadway worker in charge and repeated to the issuing employee for verification.
- The roadway worker in charge of the working limits must maintain possession of the written or printed authority for exclusive track occupancy while the authority for the working limits is in effect.
- The train dispatcher or control operator in charge of the track must make a written or electronic record of all authorities issued to establish exclusive track occupancy.

The rule requires that the authority must be in writing. This procedure is nearly universal throughout the railroad industry today. However, the employee working in the field does not always record the authority in writing. FRA estimates that approximately 700,739 additional authorities annually will now need to be recorded by the roadway workers. It is estimated that it will take approximately 1 minute to record and repeat each authority. This breaks down to 30 seconds for the roadway worker and 30 seconds for the dispatcher. Total annual burden for this requirement is 11,679 hours.

Respondents:	8,583
	employees/roadway workers
Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual Number of responses:	700,739 written authorities
Annual Burden:	11,679 hours
Annual Cost:	\$373,728

Calculation: 700,739 written authorities x 1 min. = 11,679 hours
11,679 hours x \$32 = \$373,728

F. Foul Time Working Limit Procedures (214.323)

Foul time may be given orally or in writing by the train dispatcher or control operator only after that employee has withheld the authority of all trains to move into the working

limits during the foul time period.

Each roadway worker to whom foul time is transmitted orally must repeat the track number, track limits and time limits of the foul time to the issuing employee for verification before the foul time becomes effective.

The train dispatcher or control operator must not permit the movement of trains or other on-track equipment onto the working limits protected by foul time until the roadway worker who obtained the foul time has reported clear of the track.

This requirement corresponds with current practice in the railroad industry, and is not considered an additional requirement of this regulation. The notification will be given verbally in nearly all cases. Since this is the usual and customary procedure, there is no additional burden associated with this provision.

G. Train Coordination (214.325)

The roadway worker who establishes working limits by train coordination must communicate with a member of the crew of the train holding the exclusive authority to move, and must determine that:

- (1) The train is visible to the roadway worker who is establishing the working limits;
- (2) The train is stopped;
- (3) Further movements of the train will be made only as permitted by the roadway worker in charge of the working limits while the working limits remain in effect; and
- (4) The crew of the train will not give up its exclusive authority until the working limits have been released to the train crew by the roadway worker in charge of the working limits.

FRA estimates that approximately 100 communications per day (36,500 annually) involving train coordination will be made by roadway workers under this requirement. It is estimated that it will take approximately 15 seconds to make each communication. Total annual burden for this requirement is 152 hours.

Respondents:	50,000 Roadway
	Workers
Burden time per response:	15 seconds
Frequency of Response:	On occasion

Annual Number of responses:	36,500 communications
Annual Burden:	152 hours
Annual Cost:	\$4,864
Calculation:	36,500 communications x 15 sec. = 152 hours
	152 hours x \$32 = \$4,864

H. Inaccessible Track (214.327)

Working limits on non-controlled track must be established by rendering the track within working limits physically inaccessible to trains at each possible point of entry by one of the following features:

- A flagman with instructions and capability to hold all trains and equipment clear of the working limits;
- A switch or derail aligned to prevent access to the working limits and secured with an effective securing device by the roadway worker in charge of the working limits;
- A discontinuity in the rail that precludes passage of trains or engines into the working limits;
- Working limits on controlled track that connects directly with the inaccessible track, established by the roadway worker in charge of the working limits on the inaccessible track; or
- A remotely controlled switch aligned to prevent access to the working limits and secured by the control operator of such remotely controlled switch by application of a locking or blocking device to the control of that switch, when:
 - The control operator has secured the remotely controlled switch by applying a locking or blocking device to the control of the switch, and
 - The control operator has notified the roadway worker who has established the working limits that the requested protection has been provided, and
 - The control operator is not permitted to remove the locking or blocking device from the control of the switch until receiving permission to do so from the roadway worker who established the working limits.
- Trains and roadway maintenance machines within working limits established by means of inaccessible track shall move only under the direction of the roadway worker in charge of the working limits, and shall move at restricted speed.

- No operable locomotives or other items of on-track equipment, except those present or moving under the direction of the roadway worker in charge of the working limits, shall be located within working limits established by means of inaccessible track.

FRA estimates that this will occur approximately 50,000 times annually. It is estimated that it will take approximately 10 minutes per occurrence. Total annual burden for this requirement is 8,333 hours.

Respondent Universe:	703 Railroads
Burden time per responses:	10 minutes
Frequency of Response:	On occasion
Annual Number of responses:	50,000 occurrences
Annual Burden:	8,333 hours
Annual Cost:	\$266,656

Calculation: 50,000 occurrences x 10 min. = 8,333 hours
 8,333 hrs. x \$32 = \$266,656

I. Train Approach Warning Provided by Watchmen/Lookouts (214.329)

Roadway workers in a roadway work group who foul any track outside of working limits must be given warning of approaching trains and engines by one or more watchmen/lookouts in accordance with the provisions of this section.

Every roadway worker who is assigned the duties of a watchman/lookout must first be trained, qualified, and designated in writing by the employer in accordance with the provisions of § 214.349.

FRA believes that all of the 50,000 roadway workers have already been trained and designated in writing as watchmen and/or lookouts. Consequently, there is no burden associated with this requirement.

J. Definite Train Location Information (214.331)

A roadway worker may establish on-track safety by using definite train location information only where permitted by and in accordance with the provisions stipulated in paragraphs (a), (b), and (c) of this section and with the provisions listed in this section.

(d) Definite train location information must only be used to establish on-track safety according to the following provisions: (1) Definite train location information shall be

issued only by the one train dispatcher who is designated to authorize train movements over the track for which the information is provided. (2) A definite train location list must indicate all trains to be operated on the track for which the list is provided during the time for which the list is effective. (3) Trains not shown on the definite train location list must not be operated on the track for which the list is provided, during the time for which the list is effective, until each roadway worker to whom the list has been issued has been notified of the train movement, has acknowledged the notification to the train dispatcher, and has canceled the list. A list thus canceled will then be invalid for on-track safety. (4) Definite train location must not be used to establish on-track safety within the limits of a manual interlocking, or on track over which train movements are governed by a Traffic Control System or by a Manual Block System. (5) Roadway workers using definite train location for on-track safety must not foul a track within 10 minutes before the earliest time that a train is due to depart the last station at which time is shown in approach to the roadway worker's location nor until that train has passed the location of the roadway worker. (6) A railroad must not permit a train to depart a location designated in a definite train location list before the time shown therein. (7) Each roadway worker who uses definite train location to establish on-track safety must be qualified on the relevant physical characteristics of the territory for which the train location information is provided.

The only determinable burden from this section of the rule would be for the establishment of a schedule for phase-out. This is only for two or three Class I railroads and the task can reasonably be performed in four to five hours per railroad. This burden is accounted for in the previous burden of developing on track safety programs or, if revised, is accounted for in the burden for amendments to on-track safety programs listed above.

For the new Class III railroads that enter the market each year, the burden will be very minimal. This is because most small railroads will have low enough traffic volume that they should be able to work around the limitations and restrictions of the definite train location information system. Therefore, no burden is calculated for subsequent years.

K. On-Track Safety Procedures for Roadway Work Groups (214.335)

No roadway worker who is a member of a roadway work group shall foul a track without having been informed by the roadway worker responsible for the on-track safety of the roadway work group that on-track safety is provided.

The burden for this requirement is addressed in § 214.315, Supervision and Communication.

L. On-track Safety Procedures for Lone Workers (214.337)

A lone worker who uses individual train detection to establish on-track safety must first

complete a written Statement of On-Track Safety. The Statement must designate the limits of the track for which it is prepared and the date and time for which it is valid. The statement must show the maximum authorized speed of trains within the limits for which it is prepared, and the sight distance that provides the required warning of approaching trains. The lone worker using individual train detection to establish on-track safety must produce the Statement of On-Track Safety when requested by a representative of the Federal Railroad Administrator.

This statement will only be prepared by lone workers who are not under protection by train approach warning or working limits. According to the requirements of this rule, this will primarily occur when a lone worker will be working outside a manual interlocking or remote hump yard facility, and not within hearing distance of any power tools. Results from an earlier BRS Survey determined that this is only 2.33 percent of the time. This figure has not changed. FRA estimates that, at any one time, only one-fifth or 10,000 roadway workers will be working as lone workers. It is estimated that each of these workers on average will write a Statement of On-Track safety about four times a week. This amounts to a total of 2,080,000 statements for the industry per year. It is estimated that it will take approximately 30 seconds to prepare this statement. Some railroads will provide lone workers with charts that have the necessary distance to clear the track for the different speed limits. It is expected that most railroads will also develop a one-page form that will make this task less burdensome. Total annual burden for this requirement is 17,333 hours.

Respondent Universe:	703 Railroads
Burden time per response:	30 seconds
Frequency of Response:	On occasion
Annual Number of responses:	2,080,000 statements
Annual Burden:	17,333 hours
Annual Cost:	\$554,656

Calculation: 2,080,000 statements x 30 sec. = 17,333 hours
 17,333 hrs. x \$32 = \$554,656

M. TRAINING REQUIREMENTS

(1) Training and Qualification (214.343;214.345)

- No employer shall assign an employee to perform the duties of a roadway worker, and no employee shall accept such assignment, unless that employee has received training in the on-track safety program procedures associated with the assignment to be performed, and that employee has demonstrated the ability to fulfill the responsibilities for on-track safety that are required of an individual roadway worker performing that assignment.

- Each employer must provide to all roadway workers in its employ initial or recurrent training once every calendar year on the on-track safety rules and procedures that they are required to follow.
- Railroad employees other than roadway workers, who are associated with on-track safety procedures, and whose primary duties are concerned with the movement and protection of trains, must be trained to perform their functions related to on-track safety through the training and qualification procedures prescribed by the operating railroad for the primary position of the employee, including maintenance of records and frequency of training.
- Each employer of roadway workers must maintain written or electronic records of each roadway worker's qualifications in effect. Each record must include the name of the employee, the type of qualification made, and the most recent date of qualification. These records must be kept available for inspection and photocopying by the Federal Railroad Administration during regular business hours.
- The training for all roadway workers must include, as a minimum, the following:
 - Recognition of railroad tracks and understanding of the space around them within which on-track safety is required;
 - The functions and responsibilities of various persons involved with on-track safety procedures;
 - Proper compliance with on-track safety instructions given by persons performing or responsible for on-track safety functions;
 - Signals given by watchmen/lookouts, and the proper procedures upon receiving a train approach warning from a lookout;
 - The hazards associated with working on or near railroad tracks, including review of on-track safety rules and procedures.

(2) Training and Qualification for Lone Workers (214.347)

Each lone worker must be trained and qualified by the employer to establish on-track safety in accordance with the requirements of this section, and must be authorized to do so by the railroad that conducts train operations on those tracks.

The training and qualification for lone works must include, as a minimum, consideration

of the following factors:

- Detection of approaching trains and prompt movement to a place of safety upon their approach;
- Determination of the distance along the track at which trains must be visible in order to provide the prescribed warning time;
- Rules and procedures prescribed by the railroad for individual train detection, establishment of working limits, and definite train location; and
- On-track safety procedures to be used in the territory on which the employee is to be qualified and permitted to work alone.

Initial and periodic qualification of a lone worker must be evidenced by demonstrated proficiency.

(3) Training and Qualification of Watchmen/Lookouts (214.349)

The training and qualification for roadway workers assigned the duties of watchmen/lookouts must include, as a minimum, consideration of the following factors:

- Detection and recognition of approaching trains;
- Effective warning of roadway workers of the approach of trains;
- Determination of the distance along the track at which trains must be visible in order to provide the prescribed warning time; and
- Rules and procedures of the railroad to be used for train approach warning.

Initial and periodic qualification of a watchman/lookout must be evidenced by demonstrated proficiency.

(4) Training and Qualification of Flagman (214.351)

The training and qualification for roadway workers assigned the duties of flagmen must include, as a minimum, the content and application of the operating rules of the railroad pertaining to giving proper stop signals to trains and holding trains clear of working limits.

Initial and periodic qualification of a flagman must be evidenced by demonstrated proficiency.

(5) Training and Qualification of Roadway Workers Who Provide On-track Safety For Roadway Work Groups (214.353)

The training and qualification of roadway workers who provide for the on-track safety of groups of roadway workers through establishment of working limits or the assignment and supervision of watchmen/lookouts or flagmen must include, as a minimum:

- All the on-track safety training and qualification required of the roadway workers to be supervised and protected;
- The content and application of the operating rules of the railroad pertaining to the establishment of working limits;
- The content and application of the rules of the railroad pertaining to the establishment or train approach warning; and
- The relevant physical characteristics of the territory of the railroad upon which the roadway worker is qualified.

Initial and periodic qualification of a roadway worker to provide on-track safety for groups must be evidenced by a recorded examination.

(6) Training and Qualification For Operators of Roadway Maintenance Machines (214.355)

The training and qualification of roadway workers who operate roadway maintenance machines must include, as a minimum:

- Procedures to prevent a person from being struck by the machine when the machine is in motion or operation;
- Procedures to prevent any part of the machine from being struck by a train or other equipment on another track;
- Procedures to provide for stopping the machine short of other machines or obstructions on the track; and
- Methods to determine safe operating procedures for each machine that the

operator is expected to operate.

Initial and periodic qualification of a roadway worker to operate roadway maintenance machines must be evidenced by demonstrated proficiency.

FRA estimates that approximately 50,000 roadway workers will be trained annually. It is estimated that it will take approximately 4.5 hours to train each employee every year under the above requirements. Total annual burden for this requirement is 225,000 hours.

Respondents:		50,000
	Roadway Workers	
Burden time per response:	4.5 hours	
Frequency of Response:	On occasion	
Annual Number of responses:	50,000 trained employees	
Annual Burden:	225,000 hours	
Annual Cost:		\$9,000,000

Calculation: 50,000 trained roadway workers x 4.5 hrs. = 225,000 hours
225,000 hours x \$40 = 9,000,000

Additionally, FRA estimates that it will take approximately two (2) minutes per employee to keep a written or electronic record of their qualifications. Total annual burden for this requirement is 1,667 hours.

Respondents:		50,000
	Roadway Workers	
Burden time per response:	2 minutes	
Frequency of Response:	On occasion	
Annual Number of responses:	50,000 records	
Annual Burden:	1,667 hours	
Annual Cost:		\$66,680

Calculation: 50,000 roadway workers x 2 min. = 1,667 hours
1,667 hours x \$40 = \$66,680

The total burden for Subpart C is 813,470 hours (2,736 + 1,250 + 320 + 545,000 + 11,679 + 152 + 8,333 + 17,333 + 225,000 + 1,667).

SUBPART D

§ 214.503 Good Faith Challenges; Procedures For Notification and Resolution.

- A. An employee operating an on-track roadway maintenance machine or hi-rail vehicle must

inform the employer whenever the employee makes a good faith determination that the machine or vehicle does not comply with FRA regulations or has a condition that inhibits its safe operation.

FRA estimates that approximately 125 notifications/communications will be made each year by employees to employers under this requirement. It is estimated that it will take approximately 10 minutes to make each notification/communication to the employer. Total annual burden for this requirement is 21 hours.

Respondent Universe:	50,000 Roadway Workers
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	125 notifications/communications
Annual Burden:	21 hours
Annual Cost:	\$672

Calculation: 125 notifications/communications x 10 min. = 21 hours
21 hrs. x \$32 = \$672

- B. Each employer must have in place and follow written procedures to assure prompt and equitable resolution of challenges resulting from good faith determinations made in accordance with this section. The procedures must include specific steps to be taken by the employer to investigate each good faith challenge, as well as procedures to follow once the employer finds a challenged machine or vehicle does not comply with this subpart or is otherwise unsafe to operate. The procedures must also include the title and location of the employer’s designated official.

FRA estimates that approximately 10 resolution procedures will be developed each year by railroads under this requirement. It is estimated that it will take approximately two (2) hours to develop each resolution procedure. Total annual burden for this requirement is 20 hours.

Respondent Universe:	644 Railroads
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	10 resolution procedures
Annual Burden:	20 hours
Annual Cost:	\$800

Calculation: 10 resolution procedures x 2 hrs. = 20 hours
20 hrs. x \$40 = \$800

Total annual burden for this requirement is 41 hours (21 + 20).

§ 214.505 Required Environmental Control and Protection Systems For New On-Track Roadway Maintenance Machines with Enclosed Cabs.

- A. An employer must maintain a list of new and designated existing on-track roadway maintenance machines of the types listed in paragraph (a)(1) through (a)(5) of this section, or functionally equivalent thereto. The list must be kept current and made available to the Federal Railroad Administration and other Federal and State agencies upon request.

FRA estimates that approximately nine (9) lists of new and designated roadway machines of the types specified in paragraph (a) of this section will be kept by railroads under this requirement. It is estimated that it will take approximately one (1) hour to develop/compile each list. Total annual burden for this requirement is nine (9) hours.

Respondent Universe:		644 Railroads
Burden time per response:		1 hour
Frequency of Response:		On occasion
Annual number of Responses:	9 lists	
Annual Burden:		9 hours
Annual Cost:		\$360

Calculation: 9 lists x 1 hrs. = 9 hours
9 hrs. x \$40 = \$360

- B. An existing roadway maintenance machine of the types listed in paragraphs (a)(1) through (a)(5) of this section, or functionally equivalent thereto, becomes “designated” when the employer adds the machine to the list required in paragraph (c) of this section. The designation is irrevocable, and the designated existing roadway maintenance machine remains subject to paragraph (b) of this section until it is retired or sold.

FRA estimates that there will be zero (0) roadway maintenance machines that will become “designated” under the above requirement. Consequently, there is no burden associated with this requirement.

Total annual burden for this entire requirement is nine (9) hours (9 + 0).

§ 214.507 Required Safety Equipment For New On-Track Roadway Maintenance Machines.

Each new on-track roadway maintenance machine must have its as-built light weight displayed in a conspicuous location on the machine.

FRA estimates that approximately 1,000 new on-track roadway maintenance machines are built each year. It is estimated that it will take approximately five (5) minutes to display a sticker or stencil on each machine indicating its as-built light weight in a conspicuous location. Total annual burden is approximately 83 hours.

Respondent Universe:	644 Railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	1,000 stickers/stencils
Annual Burden:	83 hours
Annual Cost:	\$2,656

Calculation: 1,000 stickers/stencils x 5 min. = 83 hours
 83 hrs. x \$32= \$2,656

§ 214.511 Required Audible Warning Devices For New On-Track Roadway Maintenance Machines.

Each new on-track roadway maintenance machine must be equipped with: (1) A horn or audible warning device that produces a sound loud enough to be heard by roadway workers and other machine operators within the immediate work area. The triggering mechanism for the device must be clearly identifiable and within easy reach of the machine operator; and (2) An automatic change-of-direction alarm which provides an audible signal that is at least three seconds long and is distinguishable from the surrounding noise. Change of direction alarms may be interrupted by the machine operator when operating the machine in the work mode if the function of the machine would result in a constant, or almost constant, sounding of the device. In any action brought by FRA to enforce the change-of-direction alarm requirement, the employer shall have the burden of proving that use of the change-of-direction alarm in a particular work function would cause constant, or almost constant, sounding of the device.

FRA estimates that approximately 3,700 roadway maintenance machines will be affected, requiring that triggering mechanisms for these new machines be made clearly identifiable and within easy reach of the machine operator. It is estimated that it will take approximately five (5) minutes to identify each triggering mechanism. Total annual burden for this requirement is 308 hours.

Respondent Universe:	644 Railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	3,700 identified mechanisms
Annual Burden:	308 hours

Annual Cost: \$9,856

Calculation: 3,700 identified mechanisms x 5 min. = 308 hours
308 hrs. x \$32 = \$9,856

§ 214.513 Retrofitting of Existing On-Track Roadway Maintenance Machines; General.

By March 28, 2005, each existing on-track roadway maintenance machine must be equipped with a permanent or portable horn or other audible warning device that produces a sound loud enough to be heard by roadway workers and other machine operators within the immediate work area. The triggering mechanism for the device must be clearly identifiable and within easy reach of the machine operator.

FRA estimates that approximately 200 existing on-track roadway machines will have the required audible warning device and will have the triggering mechanism clearly identified and within easy reach of the machine operator. It is estimated that it will take approximately five (5) minutes to identify the triggering mechanism of each device on the on-track roadway machine. Total annual burden for this requirement is 17 hours.

Respondent Universe:	703 Railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	200 identified mechanisms
Annual Burden:	17 hours
Annual Cost:	\$544

Calculation: 200 identified mechanisms x 5 min. = 17 hours
17 hrs. x \$32 = \$544

§ 214.515 Overhead Covers For Existing On-Track Roadway Maintenance Machines.

For those existing on-track roadway maintenance machines that are not already equipped with overhead covers for the operator's position, the employer shall evaluate the feasibility of providing an overhead cover on such a machine if requested in writing by the operator assigned to operate that machine or by the operator's designated representative. The employer shall provide the operator a written response for each request within 60 days. When the employer finds the addition of an overhead cover is not feasible, the response must include an explanation of the reasoning used by the employer to reach that conclusion.

FRA estimates that approximately 500 written requests for an overhead cover for an existing on-track roadway machines will be made by machine operators or their designated representatives. It is estimated that each written request by operators or their representatives will take approximately 10 minutes to complete. Further, it is estimated that there will be 500 written responses by employers within the required 60 days to these requests (including explanations when overhead covers are not feasible), and that each response will take approximately 20 minutes to complete. Total annual burden for this entire requirement is 250 hours.

Respondent Universe:	644 Railroads
Burden time per response:	10 minutes + 20 minutes
Frequency of Response:	On occasion
Annual number of Responses:	500 requests + 500 responses
Annual Burden:	250 hours
Annual Cost:	\$9,336

Calculation: 500 requests x 10 min + 500 responses x 20 min. = 250 hours
83 hrs. x \$32 + 167 hrs. x \$40 = \$9,336

§ 214.517 Retrofitting of Existing On-Track Roadway Maintenance Machines Manufactured On or After January 1, 1991.

In addition to meeting the requirements of §214.513, after March 28, 2005, each existing on-track roadway maintenance machine manufactured on or after January 1, 1991, must have the following: (1) A change-of-direction alarm or rearview mirror or other rearward viewing device, if either device is feasible, given the machine's design, and if either device adds operational safety value, given the machine's function. In any action brought by FRA to enforce this requirement, the employer shall have the burden of proving that neither device is feasible or adds operational safety value, or both, given the machine's design or work function; (2) An operative heater, when the machine is operated at an ambient temperature less than 50 degrees Fahrenheit and is equipped with, or has been equipped with, a heater installed by the manufacturer or the railroad; (3) The light weight of the machine stenciled, or otherwise clearly displayed, on the machine if the light weight is known; (4) Reflective material, or a reflective device, or operable brake lights; (5) Safety glass when its glass is normally replaced, except that replacement glass that is specifically intended for on-track roadway maintenance machines and is in the employer's inventory as of September 26, 2003, may be utilized until exhausted; (6) A turntable restraint device, on machines equipped with a turntable, to prevent undesired lowering, or a warning light indicating that the turntable is not in the normal travel position.

FRA estimates that approximately 500 existing on-track roadway machines will have the lightweight of the machine stenciled, or otherwise clearly displayed, if the light weight is known. It is estimated that it will take approximately five (5) minutes to stencil or clearly mark each existing on-track roadway machine. Total annual burden for this requirement is 42 hours.

Respondent Universe:	644 Railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	500 stencils/displays
Annual Burden:	42 hours
Annual Cost:	\$1,344

Calculation: 500 stencils/displays x 5 min. = 42 hours
 42 hrs. x \$32 = \$1,344

§ 214.518 Safe and secure positions for riders.

On or after March 1, 2004, a roadway worker, other than the machine operator, is prohibited from riding on any on-track roadway maintenance machine unless a safe and secure position for each roadway worker on the machine is clearly identified by stenciling, marking, or other written notice.

FRA estimates that approximately 1,000 existing on-track roadway maintenance machines will have stenciling, marking, or other documentation (written notice) on the machine identifying the location of safe and secure positions for roadway workers to be transported on the machine. It is estimated that it will take approximately five (5) minutes to stencil/mark/document each machine with the required information. Total annual burden for this requirement is 83 hours.

Respondent Universe:	644 Railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	1,000 stencils/marks/notices
Annual Burden:	83 hours
Annual Cost:	\$2,656

Calculation: 1,000 stencils/marks/notices x 5 min. = 83 hours
 83 hrs. x \$32 = \$2,656

§ 214.523 Hi-Rail Vehicles.

- A. The hi-rail gear of all hi-rail vehicles must be inspected for safety at least annually and with no more than 14 months between inspections. Tram, wheel wear and gage must be measured and, if necessary, adjusted to allow the vehicle to be safely operated.

Each employer must keep records pertaining to compliance with paragraph (a) of this section. Records may be kept on forms provided by the employer or by electronic means. The employer must retain the record of each inspection until the next required inspection is performed. The records must be available for inspection and copying during normal business hours by representatives of FRA and States participating under Part 212 of this chapter. The records may be kept on the hi-rail vehicle or at a location designated by the employer.

FRA estimates that approximately 2,000 hi-rail vehicles will have safety critical components inspected at least annually, if not more often. It is estimated that it will take approximately 60 minutes to complete each hi-rail vehicle safety inspection and record the results, either electronically or in writing. Total annual burden for this requirement is 2,000 hours.

Respondent Universe:	644 Railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	2,000 inspection records
Annual Burden:	2,000 hours
Annual Cost:	\$64,000

Calculation: 2,000 inspection records x 60 min. = 2,000 hours
 2,000 hrs. x \$32 = \$64,000

- B. The operator of the hi-rail vehicle must check the vehicle for compliance with this subpart, prior to using the vehicle at the start of the operator’s work shift. A non-complying condition that cannot be repaired immediately must be tagged and dated in a manner prescribed by the employer and reported to the designated official. Non-complying automatic change-of-direction alarms, back-up alarms, and 360-degree intermittent warning lights or beacons must be repaired or replaced as soon as practicable within seven calendar days.

FRA estimates that approximately 500 non-complying conditions that cannot be repaired immediately will be tagged and dated in a manner prescribed by the employer and reported to the designated official. It is estimated that it will take approximately 10 minutes to complete each tag and an additional 15 minutes to complete each report to the designated official. Total annual burden for this requirement is 208 hours.

Respondent Universe:	644 Railroads
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Burden time per response:	10 minutes + 15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	500 tags + 500 reports
Annual Burden:	208 hours
Annual Cost:	\$6,656

Calculation: 500 tags x 10 min. + 500 reports x 15 min. = 208 hours
208 hrs. x \$32 = \$6,656

Total annual burden for this requirement is 2,208 hours (2,000 + 208).

§ 214.527 On-Track Roadway Maintenance Machines; Inspection For Compliance and Schedule For Repairs.

The operator of an on-track roadway maintenance machine must check the machine components for compliance with this subpart, prior to using the machine at the start of the operator’s work shift. Any non-complying condition that cannot be repaired immediately must be tagged and dated in a manner prescribed by the employer and reported to the designated official.

FRA estimates that approximately 550 non-complying conditions relating to on-track roadway maintenance machines that cannot be repaired immediately will be tagged and dated in a manner prescribed by the employer and reported to the designated official. It is estimated that it will take the operator approximately five (5) minutes to check the machine components for compliance with this subpart and complete the tag. Further, it is estimated that it will take an additional 15 minutes to complete each report to the designated official. Total annual burden for this requirement is 184 hours.

Respondent Universe:	644 Railroads
Burden time per response:	5 minutes + 15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	550 tags+ 550 reports
Annual Burden:	184 hours
Annual Cost:	\$5,888

Calculation: 550 tags x 5 min. + 550 reports x 15 min. = 184 hours
184 hrs. x \$32 = \$5,888

§ 214.533 Schedule of Repairs Subject to Availability of Parts.

(a) The employer must order a part necessary to repair a non-complying condition on an on-track roadway maintenance machine or a hi-rail vehicle by the end of the next

business day following the report of the defect. (b) When the employer cannot repair as required by § 214.531 because of the temporary unavailability of a necessary part, the employer must repair the on-track roadway maintenance machine or hi-rail vehicle within seven calendar days after receiving the necessary part. The employer may continue to use the on-track roadway maintenance machine or hi-rail vehicle with a non-complying condition until receiving the necessary part(s) for repair, subject to the requirements of § 214.503. However, if a non-complying condition is not repaired within 30 days following the report of the defect, the employer must remove the on-track roadway maintenance machine or hi-rail vehicle from on-track service until it is brought into compliance with this subpart. (c) If the employer fails to order a part necessary to repair the reported non-complying condition, or if it fails to install an available part within the required seven calendar days, the on-track roadway maintenance machine or hi-rail vehicle must be removed from on-track service until brought into compliance with this subpart. (d) Each employer must maintain records pertaining to compliance with this section. Records may be kept on forms provided by the employer or by electronic means. The employer must retain each record for at least one year, and the records must be available for inspection and copying during normal business hours by representatives of FRA and States participating under Part 212 of this chapter. The records may be kept on the on-track roadway maintenance machine or hi-rail vehicle or at a location designated by the employer.

FRA estimates that approximately 250 records will be kept, either electronically or on paper, in order to comply with the requirements of this section. It is estimated that it will take approximately 15 minutes to complete each record. Total annual burden for this requirement is 63 hours.

Respondent Universe:	644 Railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	250 records
Annual Burden:	63 hours
Annual Cost:	\$2,520

Calculation: 250 records x 15 min. = 63 hours
63hrs. x \$ 40 = \$2,520

Total annual burden for Subpart D is 3,288 hours (21 + 20 + 9 + 83 + 308 + 17 + 250 + 42 + 83 + 2,000 + 208 + 184 + 63).

Total annual burden for the entire information collection (Form FRA 6180.119 + Subparts C + D) is 817,358 hours (600 + 813,470 + 3,288).

13. PROVIDE AN ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO

RESPONDENTS OR RECORDKEEPERS RESULTING FROM THE COLLECTION OF INFORMATION. (DO NOT INCLUDE THE COSTS OF ANY HOUR BURDEN SHOWN IN ITEMS 12 AND 14).

- **THE COST ESTIMATES SHOULD BE SPLIT INTO TWO COMPONENTS: (A) A TOTAL CAPITAL AND START-UP COST COMPONENT (ANNUALIZED OVER IT EXPECTED USEFUL LIFE); AND (B) A TOTAL OPERATION AND MAINTENANCE AND PURCHASE OF SERVICES COMPONENT. THE ESTIMATES SHOULD TAKE INTO ACCOUNT COSTS ASSOCIATED WITH GENERATING, MAINTAINING, AND DISCLOSING OR PROVIDING THE INFORMATION. INCLUDE DESCRIPTIONS OF METHODS USED TO ESTIMATE MAJOR COSTS FACTORS INCLUDING SYSTEM AND TECHNOLOGY ACQUISITION, EXPECTED USEFUL LIFE OF CAPITAL EQUIPMENT, THE DISCOUNT RATE(S), AND THE TIME PERIOD OVER WHICH COSTS WILL BE INCURRED. CAPITAL AND START-UP COSTS INCLUDE, AMONG OTHER ITEMS, PREPARATIONS FOR COLLECTING INFORMATION SUCH AS PURCHASING COMPUTERS AND SOFTWARE; MONITORING, SAMPLING, DRILLING AND TESTING EQUIPMENT; AND RECORD STORAGE FACILITIES.**

- **IF COST ESTIMATES ARE EXPECTED TO VARY WIDELY, AGENCIES SHOULD PRESENT RANGES OF COST BURDENS AND EXPLAIN THE REASONS FOR THE VARIANCE. THE COST OF PURCHASING OR CONTRACTING OUT INFORMATION COLLECTION SERVICES SHOULD BE A PART OF THIS COST BURDEN ESTIMATE. IN DEVELOPING COST BURDEN ESTIMATES, AGENCIES MAY CONSULT WITH A SAMPLE OF RESPONDENTS (FEWER THAN 10), UTILIZE THE 60-DAY PRE-OMB SUBMISSION PUBLIC COMMENT PROCESS AND USE EXISTING ECONOMIC OR REGULATORY IMPACT ANALYSIS ASSOCIATED WITH THE RULEMAKING CONTAINING THE INFORMATION COLLECTION, AS APPROPRIATE.**

- **GENERALLY, ESTIMATES SHOULD NOT INCLUDE PURCHASES OF EQUIPMENT OR SERVICES, OR PORTIONS THEREOF, MADE (1) PRIOR TO OCTOBER 1, 1995, (2) TO ACHIEVE REGULATORY COMPLIANCE WITH REQUIREMENTS NOT ASSOCIATED WITH THE INFORMATION COLLECTION, (3) FOR REASONS OTHER THAN TO PROVIDE INFORMATION OR KEEP RECORDS FOR THE GOVERNMENT, OR (4) AS PART OF CUSTOMARY AND USUAL BUSINESS OR PRIVATE PRACTICES.**

FRA estimates that there will be no additional costs for the requirements of the new section (Subpart D). Listed below are the other costs associated with the information collection requirements of Subpart C that are not covered under item 12 or 14 of this document:

\$604	-	Notification letter to FRA (604 letters@ \$1 per letter to cover postage, paper, and envelopes).
\$250	-	Printing and other related expenses for required program manuals for five (5) new start-up Class III railroads (@ \$50 per manual).
\$2,800,000	-	Training costs (2 hours per employee - 50,000 roadway workers)
\$ 200,000	-	Miscellaneous Costs
\$3,000,854	-	Total Cost

14. PROVIDE ESTIMATES OF ANNUALIZED COST TO THE FEDERAL GOVERNMENT. ALSO, PROVIDE A DESCRIPTION OF THE METHOD USED TO ESTIMATE COSTS, WHICH SHOULD INCLUDE QUANTIFICATION OF HOURS, OPERATIONAL EXPENSES SUCH AS EQUIPMENT, OVERHEAD, PRINTING, AND SUPPORT STAFF, AND ANY OTHER EXPENSE THAT WOULD NOT HAVE BEEN INCURRED WITHOUT THIS COLLECTION OF INFORMATION. AGENCIES ALSO MAY AGGREGATE COST ESTIMATES FROM ITEMS 12, 13, AND 14 IN A SINGLE TABLE.

Except for some minimal training costs for FRA safety inspectors who will have to monitor silica dust exposure inside the cabs of roadway maintenance machines and hi-rail vehicles under the new Subpart D, FRA estimates no additional costs.

15. EXPLAIN THE REASONS FOR ANY PROGRAM CHANGES OR ADJUSTMENTS REPORTED IN ITEMS 13 OR 14 OF THE OMB FORM 83-I.

The total burden for this information collection has increased by 227,518 hours since the last submission. The increase in burden results solely from **adjustments**. There were adjustments that both increased and decreased the previous burden.

The following requirement reflects an increase in burden:

(1) Under § 214.321, *Exclusive Track Occupancy – Working Limits*, FRA revised (raised) its estimate of the average time it takes to complete written authorities for exclusive track occupancy (from 40 seconds to 60 seconds). This change in estimate *increased* the burden by 3,893 hours (from 7,786 hours to 11,679 hours).

(2) Under § 214.343345/347/349/351/353/355, *Training Requirements*. Although this is not a new requirement, FRA did not previously account for the annual training that the approximately 50,000 roadway workers go through each year to stay qualified for their positions. This training takes approximately 4.5 hours per roadway worker. This change in estimate *increased* the burden by 225,000 hours (from zero (0) hours to 225,000 hours).

These two adjustments then *increased* the burden by a total of 228,893 hours.

The following requirements reflect a decrease in burden:

(1) Under Form FRA F 6180.119, FRA revised (lowered) its estimate of the annual number of forms that will be completed (from 200 to 150). This change in estimate *decreased* the burden by 200 hours (from 800 hours to 600 hours).

(2) Under § 214.513, *Retrofitting of Existing On-Track Roadway Maintenance Machines; General*, FRA revised (lowered) its estimate of the number of existing on-track machines that will have clearly identified triggering mechanisms for their audible warning devices (from 2,300 to 200). This change in estimate *decreased* the burden by 175 hours (from 192 hours to 17 hours).

(3) Under § 214.517, *Retrofitting of Existing On-Track Roadway Maintenance Machines Manufactured On or After January 1, 1991*, FRA revised (lowered) its estimate of the number of existing on-track machines that will have their lightweight stenciled/marked (from 6,000 to 500). This change in estimate *decreased* the burden by 458 hours (from 500 hours to 42 hours).

(4) Under § 214.518, *Safe and Secure Positions for Riders*, FRA revised (lowered) its estimate of the number of on-track roadway maintenance machines that will have a safe and secure position stenciled/marked (from 7,500 to 1,000). This change in estimate *decreased* the burden by 542 hours (from 625 hours to 83 hours).

These adjustments then *decreased* the burden by a total of 1,375 hours.

Currently, the OMB inventory for this information collection shows a total of 589,840 hours, while this revised submission reflects a total burden of 817,358 hours. Hence, there is an increase of 227,518 hours.

There is no change in cost to respondents since the last submission.

- 16. FOR COLLECTIONS OF INFORMATION WHOSE RESULTS WILL BE PUBLISHED, OUTLINE PLANS FOR TABULATION AND PUBLICATION. ADDRESS ANY COMPLEX ANALYTICAL TECHNIQUES THAT WILL BE USED. PROVIDE THE TIME SCHEDULE FOR THE ENTIRE PROJECT, INCLUDING BEGINNING AND ENDING DATES OF THE COLLECTION OF INFORMATION, COMPLETION OF REPORT, PUBLICATION DATES, AND OTHER ACTIONS.**

FRA does not have any plans to publish the results of this collection of information.

- 17. IF SEEKING APPROVAL TO NOT DISPLAY THE EXPIRATION DATE FOR OMB APPROVAL OF THE INFORMATION COLLECTION, EXPLAIN THE REASONS THAT DISPLAY WOULD BE INAPPROPRIATE.**

Once OMB approval is received, FRA will publish the approval number for these information collection requirements in the Federal Register.

- 18. EXPLAIN EACH EXCEPTION TO THE CERTIFICATION STATEMENT IDENTIFIED IN ITEM 19, "CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS," OF OMB FORM 83-I.**

No exceptions are taken at this time.

Meeting Department of Transportation (DOT) Strategic Goals

This information collection supports the main DOT strategic goal, namely transportation safety. Without this collection of information, rail safety throughout the U.S. might be seriously hindered. Specifically, if roadway workers could not challenge the fitness of on-track roadway machines and hi-rail vehicles and if employers were not required to have in place and follow written procedures to assure prompt and equitable resolution of these challenges, these workers might be forced to operate machines with safety and other defects. This could lead to greater numbers of accidents/incidents and corresponding increases in the number of roadway worker casualties.

Without the provision that the triggering mechanism of audible warning devices required on new on-track roadway maintenance machines be clearly identifiable and within easy reach of the machine operator, more railway workers might be injured or killed because they did not know where the mechanism was in a critical situation and were not able to sound it in time. Additionally, without the requirement that employers will now have to evaluate the feasibility of providing an overhead cover for existing on-track roadway maintenance machines if requested in writing by the operator assigned to a particular machine or by the operator's representative, the safety and health of railroad workers would be at increased risk. Employers will now be required to provide a written response within 60 days, and will have to include an explanation of the reasoning used if it is determined that an overhead cover is not feasible. Unless employers have a valid reason, they will not be able to deny roadway workers essential equipment. Covers or canopies provide protection from blinding sun and from inclement weather such as rain and snow. Overhead covers then could make all the difference in preventing accidents/incidents and the injuries to roadway workers which often ensue.

This information collection advances rail safety by requiring that records be kept regarding hi-rail vehicle annual safety inspections. In particular, these records allow FRA to verify that safety-critical components are checked once a year and adjusted, if necessary. Without this type of oversight, employers might not be as conscientious to check tram, wheel wear, and gage measurements. FRA would have no way to verify compliance with this new subpart. Non-complying conditions that were left uncorrected could lead to severe consequences for both railroads and their employees.

The collection of information provides that roadway workers will be well-trained and, therefore, well-qualified for their respective crafts (whether watchmen/lookouts, flagmen, lone workers, roadway machine operators, etc.). Without this rule and corresponding information collection, roadway workers would not receive the initial and recurring training (once every year) now required. Consequently, they would not be as knowledgeable with railroad operating procedures and safety practices nor would they be as familiar with overall conditions in today's railroad environment. Also, if this collection were not conducted, there would not be the clear delineation of employers' responsibilities for providing on-track safety as well as employees' corresponding rights and responsibilities. Roadway workers might then unnecessarily or inadvertently place themselves in hazardous situations.

Furthermore, without this collection of information, there would not be the well-defined procedures for communication and protection now required of roadway workers. As a result, there would likely be greater confusion around railroad tracks and greater uncertainty regarding the correct use of railroad equipment. More roadway worker injuries and fatalities would inevitably follow. FRA data tend to support this conclusion. FRA data indicate a continuing downward trend in roadway worker injuries and fatalities. For example, there were 3,107 injuries to maintenance of equipment and stores employees in 1994, while there were 2,024 to this same class of employees in 1998. FRA's objective is to continue and facilitate this downward trend.

As a result of this collection, each employer must maintain written or electronic records of each roadway worker's current qualifications, and make these records available to FRA for inspection and copying upon request. Also, roadway workers who provide on-track safety for roadway work groups are required to take a recorded examination as part of the qualification process. These and other required records are very valuable in investigations after an injury or fatality involving a roadway worker or group of roadway workers. Furthermore, should a potential violation of roadway worker rights and responsibilities occur, FRA can consider all the available evidence by parties in the case, including written records maintained now required by this collection, in making its determination. Without this collection, FRA would not have available this valuable resource.

In summary, this collection of information enhances railroad safety by providing another tool through which FRA can monitor a crucial area of railroad operations nationwide. It furthers DOT's goal of promoting the public health and safety by working toward the elimination of transportation-related accidents and corresponding deaths, injuries, particularly to roadway workers, and property damage.

In this information collection, as in all its information collection activities, FRA seeks to do its utmost to fulfill DOT Strategic Goals and to be an integral part of One DOT.