

**INFORMATION COLLECTION
SUPPORTING JUSTIFICATION
ACCIDENT/INCIDENT REPORTING AND RECORDKEEPING
49 CFR Part 225**

Summary of Submission

- This final rule information collection submission is a revision to the last approved submission, which was granted by OMB on February 19, 2008, for the current rule and which remains in effect under the terms of the January 13, 2009, Notice of Action for the NPRM information collection submission until February 28, 2011. FRA published a Notice of Proposed Rulemaking titled **Miscellaneous Amendments to the Federal Railroad Administration’ Accident/Incident Reporting and Recordkeeping Requirements** on September 9, 2008 (see 73 FR 52496) and electronically transmitted the associated information collection submission that same day (as required under the PRA). OMB elected not to review this NPRM information collection submission and stated in its January 13, 2009, NOA that “terms of the previous clearance remain in effect.”
- The previous clearance was granted by OMB on February 19, 2008, for renewal of the OMB approval associated with the current rule. In its February 19, 2008, Notice of Action, OMB granted re-approval for the maximum time period (three years). The new expiration date listed was February 28, 2011. The total burden approved was 47,521 hours, and the total number of responses approved was 78,002.
- The Final Rule for Miscellaneous Amendments to the Federal Railroad Administration’s Accident/Incident Reporting Requirements is being published in the Federal Register on November 9, 2010. See 75 FR 68862.
- It should be noted that all program changes and adjustments are associated with this final rule information collection submission, and that this information collection is entirely associated with this rule and its associated forms.
- The total number of burden hours requested for this submission is **59,432 hours**.
- The total number of responses requested for this submission is **139,746**.
- The change/increase in burden from the last approved submission is **11,911 hours**.
- Total **program changes** amount to/increased the burden by **6,069 hours** (*see the the answer to question 15 for details or Summary of Changes Supplementary document*).

- Total **adjustments** amount to/increased the burden by **5,842 hours** (see question 15 for details or Summary of Changes supplementary document).

The answer to question **number 12 itemizes the hourly burden associated with each requirement of this rule (See pp. 27-70).

1. Circumstances that make collection of the information necessary.

*Note: ****As with every Supporting Justification associated with an agency rulemaking, each individual information collection requirement is clearly spelled out in the precise language of the rule in the answer to question 12 of the aforementioned document.*

FRA’s accident/incident reporting requirements in Part 225, both as they exist today and as they are amended by this final rule, were issued primarily under the statutory authority of the following three statutes:

- 49 U.S.C. 20901 (formerly, part of the Accident Reports Act);
- 49 U.S.C. 20103(a) (formerly, part of the Federal Railroad Safety Act of 1970);
- 49 U.S.C. 322(a) (formerly, part of the Department of Transportation Act).

The Accident Reports Act was enacted in 1910, Pub. L. 165, the Act of May 6, 1910, Ch. 208, 36 Stat. 350 (1910). Section 1 of the Accident Reports Act required --

every common carrier engaged in interstate or foreign commerce by railroad to make to the Interstate Commerce Commission [ICC] . . . a monthly report, under oath, of all collisions, derailments, or other accidents arising from the operation of such railroad under such rules and regulations as may be prescribed by the [ICC], which report shall state the nature and causes thereof and the circumstances connected therewith . . .

[Emphasis added.] In addition, Section 5 of the Accident Reports Act authorized the ICC “to prescribe for such common carriers a method and form for making the reports hereinbefore provided.” Together, Sections 1 and 5 of the Accident Reports Act afforded the ICC the authority to promulgate regulations to carry out the reporting provisions of the Accident Reports Act.

In 1960, the Accident Reports Act was amended to remove language in Section 1 conferring rulemaking authority on the ICC to require railroads to (“report . . . under such rules and regulations as may be prescribed by the [ICC]”) and to add to Section 5 clearer language conferring that rulemaking authority (“The [ICC] is authorized to prescribe such rules and regulations and such forms for making the reports herein before provided as are necessary to implement and effectuate the purpose of this Act.”). Pub. L. 86-762 (September 13, 1960); 74 Stat. 903.) In 1966, the Department of Transportation Act transferred the responsibility for prescribing regulations to carry out the Accident Reports

Act, as amended, from the ICC to the Secretary of Transportation. Sec. 6(e)(1)(K) of Pub. L. 89-670 (October 15, 1966), 80 Stat. 939. In addition, the Secretary delegated this responsibility to the Administrator of the Federal Railroad Administration by regulation. 49 CFR 1.49(c)(11). Later, in 1988, the Accident Reports Act was amended so as to expand its applicability from “common carriers engaged in interstate commerce by railroad” to include all “railroads.” Sec. 15 of Pub. L. 100-342 (June 22, 1988), 102 Stat. 633. The same legislation required railroads to include in any of their reports that assigned employee error as a cause of an accident/incident to include, at the employee’s option, a statement “explaining any factors the employee alleges contributed to the accident or incident.” *Id.* at Sec. 24.

In 1994, the Accident Reports Act, as amended (then codified at 45 U.S.C. 38-43a), along with virtually all of the other Federal railroad safety laws, was repealed, and its provisions were revised, re-enacted as positive law, and re-codified without substantive change at 49 U.S.C. 20901-20903, Accidents and Incidents, with its penalty provisions in 49 U.S.C. chapter 213, Penalties, Pub. L. 103-272, 108 Stat. 745 (July 5, 1994). During the 1994 re-codification of the rail safety laws, Congress repealed, but did not reenact or re-codify the text of Section 5 of the Accident Reports Act, as amended (then codified at 45 U.S.C. 42), which authorized the Secretary “to prescribe such rules and regulations and such forms for making the reports hereinbefore provided as are necessary to implement and effectuate the purposes of [the Accident Reports Act].” Congress concluded that this section was “[un]necessary because of 49 [U.S.C.] 322(a).” See H.R. Rep. No. 103-180, 502, 584 (1993); reprinted in 1994 U.S.C.C.A.N. 1319, 1401. Although Public Law No. 103-272 was not intended to change the substance of the laws as re-codified, this is an example of how its repeal of an “unnecessary” law apparently changed the statutory basis of a regulation. Of course, re-codification did not change any law substantively, so in a sense, Section 5 of the Accident Reports Act survives to the extent that it is legally necessary.

The preamble to this final rule refers to the current, re-codified version of what was formerly known as the Accident Reports Act, by its section numbers in title 49 of the U.S. Code. Currently, § 20901 requires, in part, that railroad carriers file with the Secretary of Transportation reports on “all accidents and incidents resulting in injury or death to an individual or damage to equipment or a roadbed arising from the carrier’s operations during the month.”

The second major statutory authority for the accident/incident reporting requirements in Part 225 is 49 U.S.C. 20103, formerly section 202 of the Federal Railroad Safety Act of 1970 (FRSA). Pub. L. 91-458 (October 16, 1970), 84 Stat. 971. Like the Accident Reports Act, the FRSA was repealed in 1994, and its provisions were revised, re-enacted as positive law, and re-codified without substantive change primarily at 49 U.S.C. chapter 201, with penalty provisions in 49 U.S.C. chapter 213. As amended, 49 U.S.C. 20103(a) provides, in pertinent part, that “[t]he Secretary of Transportation, as necessary, shall

prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.” The Secretary also delegated this authority to the Administrator of FRA. 49 CFR 1.49(m). In 1974, FRA reissued its accident reporting regulations under the added authority of the FRSA to cover additional railroads and require reporting of occupational illnesses. 39 FR 43222, December 11, 1974.

The third major statutory authority for the accident/incident reporting requirements in Part 225 is 49 U.S.C. 322(a), which was enacted in 1966 as part of the Department of Transportation Act. The statutory provision at 49 U.S.C. 322(a) reads as follows:

The Secretary of Transportation may prescribe regulations to carry out the duties and powers of the Secretary. An officer of the Department of Transportation may prescribe regulations to carry out the duties and powers of the officer.

Under 49 U.S.C. 322(a), an officer of the Department of Transportation may prescribe regulations to carry out the duties of the officer. Section 103(d) of title 49, U.S. Code, provides that the head of the FRA is the Administrator, and the Administrator of FRA is an “officer of the Department of Transportation,” within the meaning of 49 U.S.C. 322(a). Section 103(g)(1) of title 49, U.S. Code, provides that “the Administrator shall carry out — . . . duties and powers related to railroad safety vested in the Secretary by . . . chapters 203-211 of this title, and by chapter 213 of this title for carrying out chapters 203 through 211.” Consequently, the duty of carrying out 49 U.S.C. chapter 209 is clearly one of the “duties of the officer,” within the meaning of 49 U.S.C. 322(a). Accordingly, the FRA Administrator may prescribe regulations to carry out 49 U.S.C. chapter 209.

Although not a statutory authority for the accident/incident reporting requirements of Part 225, the Occupational Safety and Health Act (OSH Act), which Congress enacted in 1970, has shaped these requirements. Pub. L. 91-596, codified as amended at 29 U.S.C. 651 *et seq.* While the OSH Act gives the Secretary of Labor a broad, general authority to regulate working conditions that affect the occupational safety and health of employees, it also recognized the existence of similar authority in other Federal agencies. Section 4(b)(1) of the OSH Act, codified at 29 U.S.C. 653(b)(1), provides that the OSH Act shall not apply to working conditions as to which another Federal agency exercises statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

Because FRA exercises statutory authority to prescribe and enforce standards and regulations for all areas of railroad safety under 49 U.S.C. chapter 201, OSHA’s jurisdiction may be preempted by FRA under section 4(b)(1) of the OSH Act with regards to certain matters related to railroad safety. See Policy Statement asserting FRA

jurisdiction over matters involving the safety of railroad operations, 43 FR 10584, March 14, 1978.

With respect to employee injury and illness recordkeeping, however, the Occupational Safety and Health Review Commission ruled that the railroad industry must comply with OSHA requirements and must afford the Secretary of Labor's representatives access to these records. Secretary of Labor v. Conrail (OSHRC Docket No. 80-3495, 1982). In doing so, the Commission indicated that employee injury and illness recordkeeping does not come within the purview of section 4(b)(1) of the OSH Act and, therefore, OSHA's jurisdiction has not been displaced by FRA's employee injury and illness recordkeeping and reporting regulations. Nevertheless, the Commission did state, "[t]his does not mean that railroad industry employers must use the OSHA form, No. 200, mentioned in section [29 CFR] 1904.2(a). Section 1904.2(a) allows an employer to maintain 'an equivalent which is as readable and comprehensible [as the OSHA 200 form] to a person not familiar with it.'" Under OSHA's current regulations, 49 CFR 1904.3 states that "[i]f you create records to comply with another government agency's injury and illness recordkeeping requirements, OSHA will consider those records as meeting OSHA's Part 1904 recordkeeping requirements if OSHA accepts the other agency's records under a memorandum of understanding with that agency, or if the other agency's records contain the same information as this Part 1904 requires you to record." Accordingly, because FRA's employee injury and illness recordkeeping and reporting requirements employ equivalent standards to those promulgated by OSHA, OSHA does not require railroad carriers to maintain OSHA records in addition to FRA records. Rather, railroad carriers are only required to report employee injuries and illnesses to FRA in accordance with FRA's regulations. FRA makes all railroad employee injury and illness data available to OSHA for use in its complementary program of regulation, and provides this data to the Bureau of Labor Statistics (BLS) each year for inclusion in the Department of Labor's national occupational injury and illness database.

Part 225 contains a series of specific accident/incident recording and reporting requirements. The purpose of FRA's accident/incident recordkeeping and reporting regulations is "to provide the Federal Railroad Administration with accurate information concerning the hazards and risks that exist on the Nation's railroads." FRA needs this information to effectively carry out its statutory responsibilities under 49 U.S.C. chapters 201-213. FRA also uses this information for determining comparative trends of railroad safety and to develop hazard elimination and risk reduction programs that focus on prevention railroad injuries and accidents." 49 CFR 225.1. Part 225's central provision requires that each railroad subject to Part 225 submit to FRA monthly reports of all accidents and incidents that meet FRA's reporting criteria. 49 CFR 225.11. Railroad accidents/incidents are divided into three groups, each of which corresponds to the type of reporting form that a railroad must file with FRA: (1) Highway-rail grade crossing accidents/incidents; (2) Rail equipment accidents/incidents; and (3) Deaths, injuries and occupational illnesses. See 49 CFR 225.19.

In 1996, FRA published extensive amendments to its accident/incident reporting regulations. 61 FR 30940, June 18, 1996; 61 FR 67477, December 23, 1996. This was the first major revision of the accident/incident reporting requirements since 1974. The primary purpose of the revision was to increase the accuracy, completeness, and utility of FRA's accident database and to clarify certain definitions and regulatory requirements. Among other things, these amendments required railroads to adopt and comply with an Internal Control Plan (ICP) to ensure accurate reporting of accidents and incidents.

In 2003, FRA again published extensive amendments to its accident/incident reporting regulations (FRA's 2003 Final Rule). 69 FR 10107-10140, March 3, 2003. The primary purpose of these revisions was to conform FRA's accident/incident reporting requirements to OSHA's newly revised occupational injury and illness recording and reporting requirements. 66 FR 5916-6135, January 19, 2001 (codified at 29 CFR Parts 1904 and 1952) (OSHA's 2001 Final Rule). FRA's 2003 Final Rule also addressed other issues and provided for an alternative method of recording claimed occupational illnesses with the advent of Form FRA F 6180.107, "Alternative Record for Illness Claimed to be Work-Related."

FRA is amending its accident/incident reporting regulations in order to accomplish the following: clarify ambiguous regulations; add necessary definitions; require the reporting of additional types of injuries to all persons; require the reporting of suicide data; include a comprehensive list of accident/incident reporting exceptions; allow for consolidated accident/incident reporting by integrated railroad systems; set forth requirements for railroad electronic recordkeeping systems for purposes of part 225; update regulatory text, as applicable; enhance the quality of information available for railroad casualty analysis; clarify and limit which highway-rail grade crossing fatalities must be telephonically reported to the National Response Center (NRC); clarify and refine the requirements and criteria for using and retaining Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related," and the alternative railroad-designed record; eliminate the oath and notarization requirements for Form FRA F 6180.55, "Railroad Injury and Illness Summary"; allow for the electronic submission via the Internet of Forms FRA F 6180.54, "Rail Equipment Accident/Incident Report"; FRA F 6180.55, "Railroad Injury and Illness Summary"; FRA F 6180.55a, "Railroad Injury and Illness Summary" (Continuation Sheet); FRA F 6180.57, "Highway-Rail Grade Crossing Accident/Incident Report"; and FRA F 6180.81, "Employee Human Factor Attachment"; set forth record retention requirements for certain accident/incident recording and reporting records not previously addressed; and update FRA's address information.

Further, FRA is revising its accident/incident recording and reporting forms to capture essential additional data and is amending the FRA Accident/Incident Guide to provide clear information to railroads on the completion of the required forms.

2. How, by whom, and for what purpose the information is to be used.

FRA is the primary user of the information obtained under this collection. Accident and Incident reporting information is entered into FRA's database, and information in the database is made publicly available on FRA's Website for anyone wishing to see it. The information is used and will continue to be used by FRA to assess the risks that exist on the Nation's railroads. The information allows FRA to track the nature, number, type, severity, and cause(s) of railroad-related accidents and incidents, and to develop strategies and programs to reduce the occurrence of such accident/incidents.

FRA will use the new information collected under § 225.6, Consolidated Reporting, to determine whether the parent corporation of an integrated system of railroads, composed of commonly controlled railroad subsidiary railroads, should be permitted to report to FRA the accidents and incidents of its subsidiary railroads, which operate as integrated railroad system, on a consolidated basis rather than discreetly. By treating all components of an integrated system as a single railroad, FRA seeks to gather more meaningful and accurate accident/incident data.

FRA uses telephonic reports mandated under § 225.9 to promptly respond to and investigate the following accidents/incidents caused by an event or exposure arising from the operation of a railroad: (1) Death of a rail passenger or railroad employee; death of an employee of a contractor to a railroad performing work for the railroad on property owned, leased, or maintained by the contracting railroad; or death or injury of five or more persons; (2) A train accident that results in serious injury to two or more train crewmembers or passengers requiring their admission to a hospital; a train accident resulting in the evacuation of a passenger train; a fatality resulting from a train accident or train incident at a highway-rail grade crossing when death occurs within 24 hours of the accident/incident; a train accident resulting in damage (based on a preliminary gross estimate) of \$150,000 or more to railroad and non-railroad property; or a train accident resulting in damage of \$25,000 or more to a passenger train, including railroad and non-railroad property; and (3) Certain train accidents on or fouling passenger service main lines.

FRA uses the information collected under § 225.11 to monitor, on a continuing (monthly) basis, all accident/incidents described in § 225.19. For reporting purposes, reportable accident/incidents are divided into three groups: (i) Highway-Rail Grade Crossing; (ii) Rail Equipment; and (iii) Death, Injury, and Occupational Illness. The reports must be made on forms prescribed in § 225.21, and must be submitted within 30 days after the expiration of the month during which the accidents/incidents occurred. FRA uses this constantly updated information to detect actual or potential serious problems at highway-rail grade crossings or with the use and operation of rail equipment, as well as to discern trends affecting the safety or health of railroad employees. This information enables the agency to take necessary steps to eliminate the likelihood/cause(s) of similarly caused

accidents/incidents in the future.

FRA uses the information collected under § 225.12 to track the number of rail equipment accidents/incidents where railroads cite employee human factor(s), such as an employee's act/omission/physical condition, as a primary or contributing cause of the accident. FRA safety specialists use this data to spot dangerous practices by railroad employees, individually and system-wide, and to develop and institute appropriate remedial safety measures to save lives and protect railroad property from similar future occurrences. FRA employs a wide range of remedial safety measures, including issuing safety advisories and, where stronger action is needed, promulgating emergency orders to ensure that railroads and their employees follow essential safety practices and procedures.

FRA reviews late and amended reports submitted to the agency under § 225.13 to gather the most accurate and complete data that it can obtain involving railroad accidents/incidents that are reported to the agency on a monthly basis. These reports give FRA a clearer picture of the causes and circumstances of rail accident/incidents throughout the Nation, and aid the agency in formulating measures to reduce/eliminate such occurrences.

FRA carefully examines the information submitted by railroads under § 225.18 to assess whether alcohol or drug use by railroad employees played a primary or contributing role in the occurrence of a rail equipment accident/incident. FRA's rule on the control of alcohol and drug use in railroad operations (49 CFR Part 219) requires railroads to make a specific inquiry into the possible involvement of alcohol or drugs in an accident/incident. Any information developed concerning possible drug or alcohol use must be reported by the railroads to FRA. All the submitted information enables FRA to make a thorough evaluation of each specific case and to determine whether appropriate action(s) have been taken or need to be taken by the railroad and/or FRA to ensure that employees in safety-sensitive positions do not abuse alcohol and drugs while on duty. FRA's top priority is the safety of the traveling public and that of all railroad employees. Section 225.19 describes in detail the types of accident/incidents that must be reported under the requirements of § 225.11, and what forms such accident/incident must be reported on. To elaborate on the on the information obtained under § 225.19 (as required under § 225.11), FRA uses this information to keep close watch on the causes, extent, number, and frequency of highway-rail grade crossing accidents, rail equipment accident/incidents, and railroad related casualties that occur throughout the country. By keeping a current and historical database of these accidents/incidents, FRA can not only take immediate corrective action, where necessary, but can also spot trends in the types, causes, severity, and occurrences of accidents/incidents. FRA can then use this information in the development and/or modification of its rail safety program.

FRA has eliminated the exceptions for reporting suicides and attempted suicides. In so doing, FRA is requiring that casualties due to suicides and attempted suicides that meet

the general reporting criteria listed in § 225.19(d)(1)-(d)(6) be reported to the agency on Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)." Further, when appropriate, FRA is requiring railroads to record employee suicides and attempted suicides on Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record" and to provide that information in the narrative section. FRA will use the new data collected about suicides/attempted suicides to discern problem areas on the rail system/on rail property throughout the nation and then use that information to devise strategies and programs to prevent future causalities and to improve rail safety.

New § 225.21(k) addresses new Form FRA F 6180.150, "Highway User Statement." These forms must be sent out by railroads to individuals whenever there is a highway-rail grade accident/incident. FRA will use the information collected on this form from highway users or their representative to gather data on whether highway user suffered a reportable injury or illness, to ascertain the nature and extent of any injuries/illnesses, to discover problematic highway-rail grade crossings across the country, and to design programs to reduce and eliminate these types of accidents/incidents from happening in the future.

FRA uses the records that are required under §225.25 to ensure that the Nation's railroads are complying with applicable Federal safety regulations. FRA requires railroads to complete records for all reportable, and certain non-reportable, accidents/incidents involving rail equipment and accidents/incidents resulting in death, injury or occupational illness. These records are required to be kept as early as practicable, but no later than seven (7) working days after the railroad receives information or acquires knowledge that a recordable accident/incident has occurred. These records work as an initial recordation of the accident/incident and the information therein allows FRA to verify whether the railroads' judgments for determining FRA reportability rest on a reasonable basis. Accordingly, these records are essential to the enforcement of FRA's accident/incident reporting requirements. FRA and the National Transportation Safety Board (NTSB) also review these records in conducting accident/incident investigations, as such records are an extremely valuable resource in sorting out the cause(s) of an accident/incident. Section 225.25 (h) requires that railroads post a listing of all employee injuries and occupational illnesses that were reported to FRA (under the requirements of § 225.11) within 30 days after the expiration of the month during which the injuries and illnesses occurred. These listings must be posted in a conspicuous location at establishments where the railroad reasonably expects its employees to report to work during a 12-month period and to have an opportunity to observe the posted list containing any reportable illnesses or injuries they have suffered during the applicable period. This listing must be posted and must remain continuously displayed for the next 12 consecutive months and be displayed in date sequence. This requirements allows employees to verify that the railroad has reported to FRA their work-related injuries and illnesses. Railroads must retain accident/incident records and reports in accordance with the time periods set forth in § 225.27. Retention of these records and reports is necessary so that FRA can audit the

records to ensure railroad compliance with its accident/incident recordkeeping and reporting requirements and to serve as a backup in the event FRA does not receive a railroad's submission.

This collection of information enables FRA to prepare and publish annual summaries of accidents/incidents that occur during a calendar year, as well as issue other standardized reports for distribution throughout the report year. Additionally, accident/incident data are provided on FRA's Website for use by the public, members of academia, the media, the railroad community, and other Federal and State agencies. For example, other governmental users of the data include the following: National Transportation Safety Board (NTSB), Department of Labor, Research and Special Programs Administration, National Highway Traffic Safety Administration (NHTSA), Hazardous Materials Transportation Office, Bureau of Economic Statistics, and various State transportation agencies. Non-governmental users include railroads and their trade associations, rail labor organizations, shippers and manufacturers, universities and research institutions, attorneys, major newspapers, and television stations. Anyone concerned with transportation or rail safety is a potential user of this data.

In sum, this information collection enables FRA to establish and maintain an extensive current and historical database that it utilizes to develop, tailor, and implement appropriate safety programs, in conjunction with the nation's railroads, so as to reduce train collisions and derailments, grade crossing accidents, trespassing and other incidents which cause injuries and deaths to train passengers, railroad employees, and other members of the public and significant property damage. The information collected is essential to the agency's mission and to the fulfillment of its regulatory responsibilities mandated under the various Federal railroad safety laws. It is used as background information in the development of new regulations, and provides a means of measuring the effectiveness of regulations or policies dealing with rail safety issues. Furthermore, the information is used by FRA to discern and monitor existing safety problems and emerging trends that may adversely affect the operational safety of a large number of the nation's rail carriers, as well as the health and well-being of railroad employees. FRA is especially concerned with reducing, to the greatest extent possible, rail occupational injuries and deaths. The information collected helps facilitate prompt agency corrective action, where necessary.

3. Extent of automated information collection.

Over the years, FRA has strongly encouraged and highly endorsed the use of advanced information technology, wherever possible, to reduce burden. FRA has long championed the use of electronic recordkeeping by railroads to lessen their paperwork burdens. In keeping with the requirements of the Paperwork Reduction Act (PRA) and the Government Paperwork Elimination Act (GPEA), FRA allows railroads to submit accident/incident reports, updates, and amendments to FRA through optical media

transfer (formerly through magnetic media transfer). As noted in the answer to question 1 above, FRA permits railroads to submit accident/incident reports, updates, and amendments to FRA electronically via the Internet in the final rule. Specifically, FRA allows the data captured by the following reports/forms by optical media or electronic transfer via the Internet: (1) The Rail Equipment Accident/Incident Form (Form FRA F 6180.54); (2) The Railroad Injury and Illness Summary (Form FRA F 6180.55; must be in .pdf or .jpg format only); (3) The Railroad Injury and Illness Summary Form (Continuation Sheet) (Form FRA F 6180.55a); (4) The Highway-Rail Grade Crossing Accident/Incident Report Form (Form FRA F 6180.57); (5) The Employee Human Factor Attachment (Form FRA F 6180.81) (the Employee Human Factor Attachment must be in .pdf or .jpg format only).

Further, under § 225.37 of this new final rule, FRA is making two changes regarding Form FRA F 6180.55 that it believes will reduce railroad burden related to completing and/or submitting this form. First, FRA is replacing the oath and notarization requirement for this form with a requirement that the signature be signed under penalty of perjury in accordance with 28 U.S.C. § 1746. Second, FRA is allowing railroads to make their monthly submission of this form via optical media (CD-ROM) or electronically via the Internet in .pdf or .jpg file format rather than in hard copy. However, because these documents are signed by the railroad reporting officer under penalty of perjury, FRA needs to ensure that the original copies of the documents are available to FRA in the event of litigation. FRA believes that the reduced burden of filing this report via optical media or the Internet compensates for any increased railroad burden due to the related additional retention period of Form FRA F 6180.55. Currently, railroads must retain a duplicate of their original hard copy of Form FRA F 6180.55 report submissions for a period of two years under § 225.27(b).

Regarding the above paragraph, it should be noted that the statute states that a person may replace the affidavit requirements by making an unsworn declaration in writing using language substantially similar to that provided. When FRA adopted this provision, we used the language provided in the statute and stated that the railroad must comply with the statutory requirements when making unsworn declarations, which requires that the declaration be in writing. The statute reads as follows:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form: **(1)** If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on

(date). (Signature)”. (2) If executed within the United States, its territories, possessions, or commonwealths: “I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)”.

The other forms required by this collection of information are either kept on the premises by railroad and are not filed with FRA (they are subject to production upon agency request), sent by railroads to employees, or are completed/collected by FRA and not the railroads. Records required to be retained by the railroads under § 225.27 (a) and (b) may be kept electronically or on paper by the railroads. The railroads choose the method most convenient and cost-effective for them. Under § 225.27(c), railroads that choose to take advantage of FRA’s new submission options and file their Form FRA F 6180.55 reports through optical media transfer must retain the original completed and signed submission for a period of five (5) years; railroads that choose to file their Form FRA F 6180.55 reports with FRA electronically via the Internet must retain the original completed and signed submission, as well as a hard copy print out of FRA’s acknowledgment receipt, for a period of five (5) years.

FRA provides all its forms, including the accident/incident forms, and the *Guide for Preparing Accident/Incident Reports*, on its Website for convenient downloading. Naturally, the revised *Guide* will be placed on the agency Website once approval is received from OMB. Additionally, FRA provides free software called the Accident/Incident Report Generator (AIRG) to railroads to allow them to do their Federally required accident/incident recordkeeping on a personal computer. This software allows railroads to send a diskette or to transmit the information over the Internet. FRA will send an updated or new version of the AIRG software to approximately 200 railroads that will reflect the updated agency *Guide* and minor changes to some of the required forms/reports. To increase convenience and use, the last version of the AIRG software, sent to approximately 170 railroads, enabled railroads to perform the required recordkeeping on a client/server system. Additionally, AIRG software is sent free to any railroad that requests it. Overall, approximately 58% of responses required by railroads can be submitted electronically to FRA under the proposed regulation, if railroads so choose.

4. Efforts to identify duplication.

The promotion/enhancement of rail safety is perhaps the most important function of FRA, and the agency has been granted regulatory authority in this area. One of the agency’s primary tools in accomplishing this is the collection of accident/incident data. Although other Federal agencies use this information, there are none that collect duplicate information. In areas where there are mutual concerns among agencies, arrangements have been made to exchange information rather than impose new requirements. For example, the Department of Labor (DOL) performs studies concerning casualties to employees in the work environment and collects data from all industries

except railroads for that purpose. To eliminate duplication and reduce burden, FRA collects worker on-duty injuries and illnesses for the Department of Labor's Occupational Safety Health Administration (OSHA), and reports them annually to OSHA. Since FRA's data is adequate for DOL's needs, this information is routinely made available for use in DOL's studies. Similarly, the Office of Hazardous Materials Transportation collects data from all transportation modes concerning unintentional releases of hazardous materials. FRA uses this office's information that pertains to railroads rather than impose a separate reporting burden.

FRA and the National Transportation Safety Board (NTSB) conduct investigations of major accidents. These represent a very small percentage of the accidents/incidents that occur annually. While the amount of information obtained in these investigations is extensive, the limited number of accidents investigated would be insufficient to provide any understanding of railroads operating environment if FRA did not collect additional data so that it can obtain the broadest possible picture. Doing so fulfills the requirements of the Federal railroad safety laws and the agency's overall mission.

In sum, the information collected by FRA is not available from other sources.

5. **Efforts to minimize the burden on small businesses.**

There are a number of provisions in this rule which serve to reduce burden on small railroads. For example, this part applies to all railroad carriers except: (1) A railroad carrier that operates freight trains only on track inside an installation which is not part of the general railroad system of transportation or that owns no track except for track that is inside an installation that is not part of the general railroad system of transportation and used for freight operations; (2) A railroad carrier that operates mass transit operations in an urban area that are not connected with the general railroad system of transportation; (3) A railroad carrier that exclusively hauls passengers inside an installation that is insular or that owns no track except for track used exclusively for the hauling of passengers inside an installation that is insular. An operation is not considered insular if one or more of the following exists on its line: (i) A public highway-rail grade crossing that is in use; (ii) An at-grade rail crossing that is in use; (iii) A bridge over a public road or waters used for commercial navigation; or (iv) A common corridor with a railroad carrier, i.e., its operations are within 30 feet of those of any railroad carrier.

The Internal Control Plan requirements in § 225.33(a)(3) through (a)(11) do not apply to: (1) Railroad carriers that operate or own track on the general railroad system of transportation that have 15 or fewer employees covered by the hours of service law (49 U.S.C. 21101 - 21107); and (2) Railroad carriers that operate or own track exclusively off the general system. The recordkeeping requirements regarding accountable injuries and illnesses and accountable rail equipment accidents/incidents found in § 225.25(a) through (g) do not apply to: (1) Railroad carriers that operate or own track on the general railroad

system of transportation that have 15 or fewer employees covered by the hours of service law (49 U.S.C. 21101 - 21107); and (2) Railroad carriers that operate or own track exclusively off the general system.

Additionally, all requirements in this Part to record or report an injury or illness incurred by any classification of person that results from a non-train incident do not apply to railroad carriers that operate or own track exclusively off the general railroad system of transportation, unless the non-train incident involves in-service on-track equipment.

“Small entity” is defined in 5 U.S.C. § 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a “small entity” in the railroad industry is a for profit “line-haul railroad” that has fewer than 1,500 employees, a “short line railroad” with fewer than 500 employees, or a “commuter rail system” with annual receipts of less than seven million dollars. See “Size Eligibility Provisions and Standards,” 13 CFR part 121 subpart A. SBA’s “size standards” may be altered by Federal agencies, in consultation with SBA and in conjunction with public comment. Pursuant to that authority FRA has published a final statement of agency policy that formally establishes “small entities” or “small businesses” as being railroads, contractors and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR § 1201.1-1, which is \$20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. See 68 FR 24891, May 9, 2003, codified at Appendix C to 49 CFR part 209. The \$20 million limit is based on the Surface Transportation Board’s revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR § 1201.1-1.

This final rule applies to railroads. There are approximately 665 small railroads that could potentially be affected. FRA anticipates that most of the recording and reporting burdens imposed by this regulation will be borne by railroads that are not considered small, due to the decreased likelihood that a small railroad will experience an accident/incident necessitating such recording and/or reporting. For example, on average from 2005 through 2007, small railroads reported approximately only nine percent of all reportable casualties and only 10 percent of all reportable accidents/incidents.

FRA also anticipates that the computer-related burdens will be borne by the larger railroads because the large railroads have chosen to retain their accident/incident records and reports electronically in their own systems. Large railroads also submit their accident/incident reports to FRA electronically via their own systems. Most small railroads complete their federally required accident/incident recordkeeping and reporting on a personal computer using FRA supplied Accident/Incident Report Generator (AIRG)

software. This software allows railroads to send reports to FRA on a CD-ROM or to transmit the information to FRA over the Internet. FRA will send a free updated or new version of the AIRG software to any railroad that requests it. Other small railroads do not use a computer system for reporting. Accordingly, FRA does not anticipate that these burdens will be imposed on small entities.

Furthermore, it is important to observe that the rule reduces recordkeeping burdens by simplifying the method used to count employee absences and work restrictions and by reducing the requirement to keep track of lengthy employee absences. The rule also simplifies reporting requirements with clarifying definitions for things such as “medical treatment” and “first aid.” In the revised forms for this final rule, “Train Accident Cause Codes” and Probable Reason for Injury/Illness Circumstances Codes” have been added so that accident and injury data will be more precise and the need for some narratives eliminated, thus reducing the time and effort necessary to complete reporting forms. These changes help both large and small railroads.

Finally, based on its Regulatory Impact Analysis (RIA) accompanying this final rule, FRA has determined and certified that this rule will not have a significant economic impact on a substantial number of small entities.

6. Impact of less frequent collection of information.

If this information were not collected or collected less frequently, railroad safety in the United States would be significantly impeded. Without this collection of information, FRA would be less able to fulfill a variety of Congressionally mandated responsibilities and would be hindered in its ability to carry out its mission of promoting and enhancing national rail safety by means of regulation, emergency orders, bulletins, and the establishment of different types of safety programs.

To be effective, a safety program requires timely and detailed information that only the railroads can provide. In order to detect actual and potentially hazardous conditions in the national rail environment, as well as dangerous operational trends, it is imperative that FRA have the latest available data so that it can study the nature, frequency, type, severity, and causes of accidents/incidents and other relevant events. Timely information provides a valuable resource that can be used by FRA, railroads, diverse Federal and State agencies, and others interested in rail safety to take necessary and proper safety measures to reduce accidents/incidents and casualties to railroad workers, contractors, members of the general public and others working or living in or around the rail environment, as well as to mitigate damage to rail and other property and harm to the environment. It is critical for FRA, the nation’s railroads, and other Federal and State agencies to have an accurate picture of the current state of the nation’s rail industry, and to know whether a given accident/incident resulted from human error, improper or illegal business practices, mechanical defect(s), inadequate equipment maintenance, insufficient

training of railroad personnel, environmental conditions, or some combination of these factors.

Without the consolidated reporting information collected under new § 225.6, FRA would not be able to obtain accurate and necessary data. Because merged railroads may operate as independent entities, or as a single larger commonly controlled integrated railroad system, compliance with and enforcement of part 225 is increasingly difficult, because the operations of merged railroads often become so integrated that parent railroad corporations (as well as FRA) cannot simply disaggregate their operations, especially in terms of identifying which subsidiary railroad employs a worker or owns the equipment or trackage involved in an accident/incident. As a result, accident and incident recording and reporting inaccuracies are more likely to occur, and remain undiscovered by FRA, which undermines the integrity of FRA's accident and incident data.

If FRA did not receive immediate telephonic reports by railroads of certain accidents/incidents and other events, the agency and other first responders to these rail emergencies could not act as quickly and appropriately as they need to during such occurrences. Consequently, lives could be lost, injuries could be more numerous and severe, and possibly greater damage to rail and personal property and harm to surrounding communities and the environment could result.

Without this collection of information, rail employees alleged to have caused or contributed to an accident/incident or other event would not have a forum to respond on the record (or confidentially, if they so choose) to give their version of events to FRA and their employer so that the true sequence of events and the true cause(s) of that particular accident/incident could be determined and any recurrences prevented.

Without this collection of information, FRA would not have necessary information about the possible use of alcohol or drugs by employees in an accident/incident. It is essential for FRA and the railroads to know whether or not drugs or alcohol played any role in a collision, derailment, fire, explosion, or some other adverse rail event where railroad employees, contractors, or members of the public are injured or killed, or where there is substantial damage to rail property or the surrounding community. Such drug or alcohol involvement might be an individualized problem or might reflect a far larger problem, perhaps even a regional or systemic problem. FRA and the railroads need to know the extent of the problem so that correct and effective action can be promptly taken.

Without this collection of information, FRA would be unable to get a clear idea of injuries and illnesses affecting the nation's railroad employees. Review of railroad Injury and Illness Summary reports each month allows FRA to get the big picture of the nation's rail environment and facilitates the ability to quickly spot actual or potential problems that might indicate increased operational dangers or heightened risk to the health and welfare of railroad employees and the traveling public. If data indicate a trend is

emerging, FRA and the railroads can institute immediate corrective measures to reduce any risk/dangers and thus avert the potentially high human and economic costs that might otherwise result. This holds especially true of suicide data, which this final rule and associated information collection seek to capture and mitigate.

Regarding obstacles to reducing burden, it should be noted that the Accident Reports Act and successor legislation require that reports be made monthly. FRA is constrained by the law from changing the collection period to a less frequent basis. However, the reporting requirements do allow for reports to be filed up to thirty days following the month in which they occur.

In sum, this collection of information provides essential data that enables FRA to promote and enhance national rail safety, and thereby fulfill its primary mission.

7. Special circumstances.

Under § 225.25 of this rule, FRA requires railroads to complete records for all reportable, and certain non-reportable, accidents/incidents involving rail equipment and accidents/incidents resulting in death, injury or occupational illness. These records are required to be kept as early as practicable, but no later than seven (7) working days after the railroad receives information or acquires knowledge that a recordable accident/incident has occurred. Timeliness is crucial, and these records work as an initial recordation of the accident/incident so the claimed occupational illness is not forgotten. The closer in time it is to the event that created the record, the more detail and accuracy the record will contain. Also, the information contained in record allows FRA to verify whether the railroads' judgment for determining FRA reportability rests on a reasonable basis. Moreover, these records are essential to the enforcement of FRA's accident/incident reporting requirements.

Title 49 U.S.C. 20901 specifies that reports shall be made on a monthly basis.

Additionally, railroads are required to maintain the Railroad Employee Injury and/or Illness Record, Form FRA F 6180.98; the Alternative Record for Illnesses Claimed to be Work-Related, Form FRA F 6180.107; and the Monthly List of Injuries and Illnesses required by § 225.25 for at least five years after the end of the calendar year to which they relate. If a railroad opts to submit its monthly Railroad Injury and Illness Summary, Form FRA F6180.55, to FRA on optical media or electronically via the Internet, the railroad must retain the original signed and completed report for a period of five years. If the submission is made electronically via the Internet, the railroad must also retain a hard copy of FRA's electronic acknowledgment receipt. The final rule also adds a five-year retention requirement for Form FRA F 6180.150, Highway User Statement. Furthermore, the final rule adds a requirement that, in the event a railroad opts to submit their monthly Form FRA F 6180.55, "Railroad Injury and Illness Summary", via optical

media or electronically via the Internet rather than in hard copy, the railroad must retain the original completed hard copy for a period of five years after the calendar year to which it relates. If the railroad opts to submit the report to FRA via the Internet, the final rule requires the railroad to also retain a hard copy print out of FRA's electronic notice acknowledging receipt of the submission for a period of five years after the calendar year to which the report acknowledged relates. These requirements are made in light of the new electronic submission options in § 225.37, "Magnetic media transfer and electronic submission," of this final rule.

FRA requires the above records be kept for a period of five years so that there is a valid document available in the future that the agency can consult when conducting periodic and annual audits to ensure that railroads are fully complying with the requirements of this regulation. The five year retention period also assists FRA and participating State agencies when conducting follow-up accident/incident investigations. All other information collection requirements are in compliance with this section.

8. Compliance with 5 CFR 1320.8.

On September 9, 2008, FRA published a Notice of Proposed Rulemaking (NPRM), which proposed miscellaneous amendments to FRA's accident/incident reporting regulations in order to clarify ambiguous regulations and to enhance the quality of information available for railroad casualty analysis. See 73 FR 52496. The NPRM also proposed revisions to the 2003 FRA Guide and FRA's Accident/Incident recording and reporting forms.

The NPRM further requested comments and suggestions on four issues of concern. First, FRA requested comments and suggestions for any additional information that might be gathered on Form FRA F 6180.57, "Highway-Rail Grade Crossing Accident/Incident Report," that would be useful in determining how and why highway-rail grade crossing accidents/incidents occur. Second, FRA requested comments and suggestions on whether FRA should require railroads to complete the longitude and latitude blocks on Form FRA F 6180.55a, "Railroad Injury and Illness Summary (Continuation Sheet)" (blocks 5s and 5t), for reportable trespasser casualties only, and on Form FRA F 6180.54, "Rail Equipment Accident/Incident Report" (blocks 50 and 51). Third, FRA requested comments and suggestions on whether FRA should change the method by which telephonic reports of accidents/incidents, as required by § 225.9, are made to FRA. Fourth, FRA requested comments and suggestions on whether FRA should require railroads to report to FRA on Form FRA F 6180.55a suicides and attempted suicides, otherwise referred to as "suicide data," and on concerns regarding State access to such reports.

On September 10, 2008, during the 36th Railroad Safety Advisory Committee (RSAC) meeting, RSAC Task No. 2008-02 was presented for acceptance. The task offered to the

RSAC for consideration was to review comments received on FRA's NPRM and would have allowed the RSAC to make recommendations for the content of the final rule. The task was withdrawn at the meeting without RSAC acceptance.

Following publication of the NPRM in the Federal Register, FRA held a public hearing in Washington, D.C., on December 18, 2008, and extended the comment period for an additional thirty (30) days following the hearing. The hearing enabled the exchange of information regarding FRA's proposed amendments, and allowed the public to articulate their issues and concerns regarding the NPRM, so that such concerns could be addressed in the final rule. The hearing was attended by a number of railroads, organizations representing railroads, and labor organizations. FRA received oral and written testimony at the hearing as well as written comments during the extended comment period. During the initial and extended comment period, FRA received comments and heard testimony from the following organizations, in addition to comments from individuals, listed in alphabetical order:

- American Association for Justice (AAJ)
- Association for American Railroads (AAR)
- American Train Dispatchers Association (ATDA)
- BNSF Railway Company (BNSF)
- Brotherhood of Locomotive Engineers and Trainmen (BLET)
- Brotherhood of Maintenance of Way Employees Division (BMWED)
- Brotherhood of Railroad Signalman (BRS)
- California Public Utilities Commission (CPUC)
- U.S. Department of Labor (DOL)
- Illinois Commerce Commission/Transportation Bureau/Rail Safety Section (ICC)
- Kansas City Southern Railway Company (KCS)
- Metro-North Commuter Railroad Company (MNCW)
- National Railroad Passenger Corporation (Amtrak)
- New York State Metropolitan Transportation Authority (NYSMT)
- NJ Transit Rail Operations (NJT)
- Norfolk Southern Corporation (NS)
- Southeastern Pennsylvania Transportation Authority (SPTA)
- Union Pacific Railroad Company (UP)
- United Transportation Union (UTU)

As an initial matter, when developing this final rule, FRA carefully considered all of the comments, information, data, and proposals submitted to Docket No. FRA-2006-26173 and discussed during the hearing. In addition, FRA's extensive knowledge and experience with enforcing the existing accident/incident reporting regulations was also relied upon when developing this final rule.

FRA received no specific comments on the burden hour estimates that the agency

provided in the published NPRM. FRA did receive comments on the four issues of concern mentioned above. First, FRA requested comments and suggestions for any additional information that might be gathered on Form FRA F 6180.57 that would be useful in determining how and why highway-rail grade crossing accidents/incidents occur. A comment requested that FRA revise block 32 by adding a field to indicate whether there was a stop/yield sign at the highway-rail grade crossing, to determine whether such signs are effective. This final rule does not adopt this suggestion because this data can be captured in the U.S. DOT National Highway-Rail Crossing Inventory.

A comment also requested that FRA eliminate the “Watchman” code in block 32 because it is rarely used. The final rule does not adopt this suggestion because the “Watchman” code provides valuable safety data. A comment also requested that FRA revise block 32 by adding a field to show whether the crossing warning was a pedestrian or vehicular warning device. The final rule does not adopt this suggestion because block 32 sufficiently captures data relating to the type of crossing warning. A comment also requested that Form FRA F 6180.57 be revised to collect near miss information. The final rule does not adopt this suggestion because it would be very difficult to obtain such information and it is overly burdensome.

A comment also requested that Form FRA F 6180.57 require railroad carriers to submit up-to-date crossing information because the inventory is out of date. The final rule does not adopt this suggestion because § 204 of the Railroad Safety Improvement Act of 2008, once implemented, imposes a mandatory inventory updating scheme for both States and railroads. A comment also requested that Form FRA F 6180.57 capture whether trains involved in highway-rail grade crossing accidents/incidents had retroreflective sheeting. The final rule does not adopt this suggestion because, in general, all trains will be required to have such retroreflective sheeting, capturing the data is overly burdensome, and it would be difficult to enforce. A comment also requested that Form FRA F 6180.57 be reconciled with the U.S. DOT Crossing Inventory Form, so that discrepancies between the forms would be flagged. The final rule does not adopt this suggestion because it is not germane to the substance of Form FRA F 6180.57, and FRA can check for mismatches in certain data fields between the Form FRA F 6180.57 and the U.S. DOT Crossing Inventory Form. A comment also requested that Form FRA F 6180.57 capture the relevant police report number for reported accidents/incidents as well as the police department information. The final rule does not adopt this suggestion because it does not contribute material safety information to the Form, is overly burdensome, and is not supported by the November, 28, 2005, report by the Department of Transportation’s Office of Inspector General, entitled, “Audit of Oversight of Highway-Rail Grade Crossing Accident Reporting, Investigations, and Safety Regulations,” Report No. MH-2006-016.

A comment also requested that Form FRA F 6180.57 require a narrative when “other” is

checked in a data field and when there is a collision resulting in a fatality. The final rule does not make any revisions to Form FRA F 6180.57 in response to this suggestion because the narrative is already mandatory in such cases. A comment also requested that Form FRA F 6180.57 capture the total tonnage of trains involved in collisions. The final rule does not adopt this suggestion because such data do not contribute additional material safety information, as the U.S. DOT Crossing Inventory Form captures the number of trains that use the track. A comment also requested that Form FRA F 6180.57 capture whether the train or the automatic warning device at the crossing had an event recorder. The final rule does not adopt this suggestion because such data do not contribute material safety information to the Form and, regardless, in general, every train should have an event recorder.

A comment also requested that Form FRA F 6180.57 capture annual track density and total train tonnage. The final rule does not adopt these suggestions because such data do not contribute material safety information to the Form. A comment also requested that Form FRA F 6180.57 capture the relevant posted speed limit. The final rule does not adopt this suggestion because such data can be captured in the U.S. DOT National Highway-Rail Crossing Inventory. A comment also requested that Form FRA F 6180.57 capture, with respect to collisions that occur at a private crossing, whether the crossing was located within the limits of a railroad yard and whether the collision involved an on-duty railroad employee or contractor. The final rule does not adopt this suggestion because such data do not contribute material safety information to the Form, there are few such accidents, and such information may be captured by the Form FRA F 6180.55a if the accident resulted in an injury or a fatality. A comment also requested that Form FRA F 6180.57 capture data regarding the quality and “rideability” of the surface of the highway-rail grade crossing at the time of the collision. The final rule does not adopt this suggestion because it is subjective, difficult data to capture, and overly burdensome. A comment also requested that Form FRA F 6180.57 capture data regarding whether a sidewalk was available for non-motorized vehicles, the type of sidewalk, and whether the person used the sidewalk. The final rule does not adopt this suggestion because it is overly burdensome. Lastly, a comment requested that Form FRA F 6180.57 capture whether a traffic violation was issued. The final rule does not adopt this suggestion because such data do not contribute material safety information to the Form. In sum, the final rule does not add additional fields, and only clarifies the available selections for existing fields on Form FRA F 6180.57.

Second, FRA requested comments and suggestions on whether FRA should require railroads to complete the longitude and latitude blocks on Form FRA F 6180.55a, “Railroad Injury and Illness Summary (Continuation Sheet)” (blocks 5s and 5t) for reportable trespasser casualties, and on Form FRA F 6180.54, “Rail Equipment Accident/Incident Report” (blocks 50 and 51). Currently, completion of longitude and latitude data on both of these forms is optional. Because railroads do not report longitude and latitude to FRA, FRA cannot currently geo-

locate reportable trespasser casualties. In addition, although FRA can geo-locate reportable accidents/incidents based on the information available in the Form FRA F 6180.54, it is time consuming. The final rule provides FRA with the ability to determine the precise location of accidents and trespasser injuries. For example, FRA will be able to determine the exact location of releases of hazardous materials or leakages of diesel fuel. Having the location information for all train accidents will allow FRA to develop better inspection planning, identify locations of hazardous materials contamination affecting the health and/or environment, and provide to the Transportation Security Administration another tool for security planning. Traditionally, FRA and the railroad industry have relied on the railroad milepost system to reference location, and, in many cases, such location information is accurate for short-term issues. However, the railroad milepost system is not reliable. Over the long-term, railroads change mileposts during mergers and reorganizations. Also, mileposts can be inaccurate when a railroad is able to build a shorter link, or when a railroad does not remove old mileposts when replacement mileposts, which have a different starting location, are installed.

Several commenters generally supported the collection of this type of data. One commenter, while not opposed to the collection of such data, was concerned about the resulting costs and indicated that the requirement should be phased-in so railroads had time to acquire the technology to comply with the regulation. This commenter also indicated that FRA should consider providing funding for GPS equipment, and that longitude and latitude should only be required for certain types of incidents. Commenters who were opposed to the mandatory inclusion of longitude and latitude generally argued that the cost to obtain GPS technology was too costly, that the technology was unreliable, that the industry was not ready for such a change, and that the regulation would not improve data collection or railroad safety.

After considering the comments received, this final rule requires the mandatory completion of the longitude and latitude blocks on Form FRA F 6180.55a (blocks 5s and 5t) for any reportable casualty to a trespasser, and on Form FRA F 6180.54 (blocks 50 and 51). In order to defray potential costs, the longitude and latitude coordinates may be either actual or estimated. Obtaining actual coordinates requires GPS technology in the field, but obtaining estimated coordinates only requires internet access. For example, this requirement may be satisfied by providing either: the actual longitude and latitude, as determined at the time of the accident/incident or injury using GPS technology; or an estimated longitude and latitude, as determined by using a website, such as Google maps or the FRA's free website (<http://fragis.frasafety.net/GISFRASafety/default.aspx>). Moreover, with the exception of § 225.27(d) of this final rule, the final rule is effective six months after the date of publication in the Federal Register. As such, railroads have a significant period of time to come into compliance. Further, the latitude/longitude requirement has been an optional field on both forms, and while it will be mandatory on the Form FRA F 6180.54 for all reportable accidents/incidents, with respect to the FRA Form F 6180.55a, it will only be a requirement for reportable casualties to trespassers.

FRA believes that the majority of railroads already have the capability to determine actual longitude and latitude for such events on-site. Moreover, within the next five years, about one half of the general rail system will be equipped with Positive Train Control (PTC). While such PTC systems will vary widely in complexity and sophistication, such systems will provide railroads with longitude and latitude coordinates for specific track locations. For the above reasons, FRA does not anticipate that this requirement will impose any new or additional burden because access to internet services is prevalent in the industry today. Moreover, FRA believes that any additional time burden incurred by railroads in order to obtain this information and complete the accident/incident reporting form will be nominal. Third, FRA requested comments and suggestions on the issue of telephonic reporting required under § 225.9. Specifically, the NPRM noted that FRA was considering changing the method by which telephonic reports of accidents/incidents are made. Under FRA's current regulations, railroads are required to telephonically report certain accidents/incidents to staff at the National Response Center (NRC) who, in turn, provide notification of the accidents/incidents to FRA. The NPRM indicated that FRA was reviewing whether it would be preferable for railroads to report these accidents/incidents directly to FRA via electronic transmission, and invited interested parties to reply.

FRA received comments that were generally in favor of reporting such accidents/incidents directly to FRA via electronic transmission. One comment suggested that certain data should be collected, including railroad contact information closely associated with the accident/incident, train equipment identification, and hazardous materials identification. Another comment suggested that railroads should immediately report any type of railroad related fatality, including trespasser fatalities and suicides.

After reviewing the issue and the comments, the final rule does not adopt any changes related to direct reporting to the agency at this time because FRA does not currently have the infrastructure to adequately address such reporting. However, FRA will take these comments into consideration in any further evaluation concerning direct reporting.

A comment to the NPRM suggested that the immediate notification of such fatalities is not necessary because such data are captured in the monthly report submitted to FRA. FRA believes, however, that immediate reporting is necessary so that FRA has the opportunity to physically investigate the accident/incident before the scene is cleared. Such reporting ultimately results in the collection of more accurate data.

A comment to the NPRM also suggested that a railroad cannot easily determine whether there has been a fatality if the individual does not die at the scene of the accident/incident. FRA believes that railroads must take reasonable steps to learn whether a fatality occurred within 24 hours of the highway-rail grade crossing accident/incident. Under the current regulation, there is no such time limit. As such, the

final rule lessens the burden on the railroads to follow-up on such accidents/incidents by only requiring railroads to report if a fatality occurs within 24 hours. The final rule is consistent with the DOT Inspector General's November 28, 2005, recommendation (see Report No. MH-2006-016).

Fourth, FRA requested comments and suggestions on whether FRA should require railroads to report to FRA on Form FRA F 6180.55a suicides and attempted suicides, otherwise referred to as "suicide data," and on concerns regarding State access to such reports. Comments to the NPRM stated that this information is too difficult to obtain and that public authorities will often not cooperate with the railroads. Similarly, SEPTA suggested that the law prevents them from obtaining the written confirmation necessary to prove that a person committed suicide or attempted to commit suicide. However, railroads have been able to obtain this information and, therefore, FRA expects that they will continue to be able to do so. In addition, FRA hopes that allowing verbal confirmation will ease the railroad's burden. Moreover, if a railroad cannot obtain the required information after making a documented, good faith effort for six months, then the railroad may discontinue its investigation.

Comments also stated that the follow-up requirements are too burdensome. SEPTA suggested that railroads should only have to follow-up for three months rather than six months. Moreover, other comments suggested that only one document request and one follow-up request should be necessary. However, based on past comments, railroads have asserted that public authorities require additional time to conclude that a fatality is a suicide. Therefore, FRA believes that the extended investigation period is necessary. Once a railroad obtains a determination, they may terminate their investigation. The FRA Guide indicates that a railroad must follow-up in writing only if a public authority cannot be reached by telephone, and then must continue such efforts for six months or until they have received confirmation. FRA does not mandate how the continued efforts be conducted, in writing or by telephone, so long as those efforts are documented. Consequently, after attempting to reach the public authority once by phone and in writing, a railroad may select the means by which they continue their investigation. FRA believes that these efforts are necessary based on the past over reporting of trespasser casualties that were actually suicides.

Finally, in the NPRM, FRA requested comments and suggestions regarding States' access to records containing "suicide data." Comments to the NPRM stated that States wanted access to these reports to ensure the accuracy of their own databases and for other safety purposes. FRA is concerned about the public use and dissemination of this data due to its sensitive nature, but also wants States to have access to such information for safety and enforcement purposes. Under the prior rule, States could obtain reports directly from railroads pursuant to § 225.1. In addition, State agencies participating in investigative activities under Part 212 could obtain records and reports from the railroads and FRA.

The final rule does not amend § 225.1 as it relates to State access. As such, States may still obtain reports directly from a railroad. All of the reports that the States may access, with two exceptions, contain no personally identifiable information and, therefore, FRA is not concerned about their availability and use. In addition, the final rule does not amend the States' access pursuant to Part 212 as that access is subject to an FRA agreement (see § 212.105) and allows States to assist FRA with its safety mission. State agencies participating in investigative activities under Part 212 will have access to relevant claims and medical records in addition to Federal records and reports pursuant to § 225.35(b), which do contain personally identifiable information. Once a State obtains copies of those documents pursuant to Part 212, their disclosure and use will be pursuant to a State's privacy laws. Again, FRA wants to limit the distribution and use of the individual records and reports due to the sensitive nature of the information and has limited the general public's access to the extent reasonably practicable by limiting its availability online through FRA. The States' access to these documents is limited to their role in investigative activities and is for the purpose of improving safety; therefore, the final rule does not limit the States' access pursuant to Part 212.

9. Payments or gifts to respondents.

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

10. Assurance of confidentiality.

The information contained on various report forms is a matter of public record and, therefore, confidentiality is not promised to any respondent.

Pursuant to 49 U.S.C. 20903, monthly reports filed by railroads under the accident/incident reporting requirements may not be admitted as evidence or used for any purpose in any action for damages growing out of any matters mentioned in these monthly reports.

Injury/illness reports submitted to FRA do not have names, social security numbers, or similar information.

It should be noted that § 225.25(h)(15) of the rule was amended to apply to "privacy concern cases." Under this subsection, a railroad is permitted not to post information on an occupational injury or illness that is a "privacy concern case." As defined in § 225.5, 'privacy concern case' is any occupational injury or illness, other than a musculoskeletal disorder, that is listed as follows: (1) Any injury or illness to an intimate body part or the reproductive system; (2) An injury or illness resulting from sexual assault; (3) Mental illnesses; (4) HIV infection, hepatitis, or tuberculosis; (5) Needlestick and sharps injuries;

and (6) Other injuries or illnesses, if the employee independently and voluntarily requests in writing to the railroad reporting officer that his or her injury or illness not be posted.

Regarding suicide/attempted suicide data, the final rule does not amend 225.1, as it relates to State access. Thus, State agencies participating in investigative activities under 49 CFR Part 212 could obtain records and reports from the railroads and FRA. All of the reports that the States may access, with two exceptions, contain no personally identifying information (PII). State agencies participating in investigative activities under Part 212 will have access to relevant claims and medical records, in addition to Federal records and reports pursuant to § 225.35(b), which do contain PII. Once the State agencies' obtain these documents, their disclosure will be subject to State privacy laws, rather than FOIA requests. While FRA wants to limit the general public's access to these documents and their dissemination due to their sensitive nature, FRA believes that States will be able to use this information to improve safety. FRA has limited the availability of this information to the extent reasonably practicable.

FRA emphasizes that it will not report suicide data cases to OSHA and that it will not include suicide data in its periodic summaries of data on the number of injuries and illnesses associated with railroad operations. FRA will maintain a database that is not publicly accessible. Accordingly, suicide data will not be available on FRA's Website for individual reports or downloads. Suicide data will be available to the public in aggregate format on FRA's Website and via requests under the Freedom of Information Act.

11. Justification for any questions of a sensitive nature.

Except as noted above in the response to question number 10, there are no questions or information of a sensitive nature, or data that would normally be considered private matters contained in this collection of information,

Concerning the new suicide data requirements, FRA believes that it is important to collect data on suicides. Death by suicide is a national problem as indicated by the fact that more than 30,000 Americans die by suicide each year. Currently, there are no reliable reports about how many of these deaths occur on railroad property. The California Public Utilities Commission (CPUC) indicates that more than 55 percent of pedestrian railroad fatalities in California are attributed to suicide, and according to the American Association of Suicidology, railroads that have tracked probable suicides on the rail system report that suicides are responsible for 39 percent of pedestrian fatalities.

Additionally, a March 3, 2005, Chicago Tribune article, "Suicide is Top Cause of Train Track Deaths; State Looks for Ways to Prevent Fatalities," indicates that, in 2004, there were 30 probable suicide deaths and an additional three attempts involving trains in Chicago alone, and that suicide was the leading cause of rail-related fatalities in Illinois

that year, which led Illinois to implement a systematic tracking program of such incidents on rail property. This information illustrates that there are a large number of fatalities occurring on railroad property without any national initiative to collect data that might be used to address these events.

Since it appears that suicides contribute significantly to the total number of fatalities that are occurring on railroad tracks, it is appropriate to report and collect data about suicides, in addition to the other causes of death in the industry. By requiring that the information be reported as suicide data, these fatalities will not be included in the normally reported fatality data. This new data may help FRA, organizations promoting safety on and around railroad property, and suicide prevention agencies assess the problem and develop programs to decrease the incidence of suicides by train.

Finally, FRA notes that the collection of suicide data will also aid the Federal Transit Administration (FTA) in its collection and analysis of commuter railroad accidents, since FRA provides certain commuter railroad safety data to FTA. FTA relies on FRA to provide to it data on the types of accidents occurring on commuter rail, their primary causes, and the consequences, in terms of fatalities (which for FTA includes suicides under 49 CFR part 659), injuries, and property damage.

12. Estimate of burden hours for information collected.

Note: For the NPRM submission, FRA used 2007 agency reporting data to arrive at estimates for both the regulatory and paperwork analyses. Since the latest available 2009 agency reporting data have no discernable impact on either the regulatory or paperwork analyses and since 2010 data are not yet collected and compiled, FRA is retaining that data for the final rule regulatory and paperwork analyses as well.

Based on 2007 agency reporting data, respondent universe is estimated at 718 railroads. This is the approximate number of railroads that reported operating information in that year. It should be noted that all requirements listed below in answer to this question precisely follow the final rule.

§ 225.6 - CONSOLIDATED REPORTING.

- A. A parent corporation may request in writing that FRA treat its commonly controlled railroad carriers, which operate as a single, seamless, integrated United States rail system, as a single railroad carrier for purposes of this Part. **(New requirement)**

The written request must include the following: (1) A list of the subsidiary railroads controlled by the parent corporation; and (2) An explanation as to how the subsidiary railroads operate as a single, seamless, integrated United States railroad system.

The request must be sent to the FRA Docket Clerk, Federal Railroad Administration,

U.S. Department of Transportation, RCC-10, Mail Stop 10, West Building 3rd Floor, Room W 31-109, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

FRA estimates that it will receive approximately four (4) requests per year under the above requirements. It is estimated that it will take approximately 40 hours to complete the consolidated justification and each request letter. Total annual burden for this requirement is 160 hours.

Respondent Universe:

718
railroads

Burden time per response:

40
hours

Frequency of Response:

On occasion

Annual number of Responses: 4 requests

Annual Burden: 160 hours

Calculation: 4 requests x 40 hrs. = 160 hours

- B. If FRA approves the request, the parent corporation must enter into a written agreement, with FRA specifying which subsidiaries are included in its railroad system, agreeing to assume responsibility for compliance with this Part for all named subsidiaries making up the system, and consenting to guarantee any monetary penalty assessments or other liabilities owed to the United States government that are incurred by the named subsidiaries for violating Federal accident/incident reporting requirements. (**New requirement**)

FRA estimates that approximately four (4) written agreements will be entered into by railroads and FRA under the above requirements. It is estimated that it will take approximately two (2) hours to complete the required agreement. Total annual burden for this requirement is eight (8) hours.

Respondent Universe:

718
railroads

Burden time per response:

2 hours

Frequency of Response:

On occasion

Annual number of Responses: 4 written agreements

Annual Burden: 8 hours

Calculation: 4 written agreements x 2 hrs. = 8 hours

- C. Any change in the subsidiaries making up the railroad system requires immediate notification to FRA and execution of an amended agreement. Executed agreements will be published in the docket. (**New requirement**)

FRA estimates that approximately one (1) notification and one (1) amended agreement will be made each year under the above requirements. It is estimated that it will take approximately 60 minutes to complete each notification and 60 minutes to complete each amended agreement. Total annual burden for this requirement is two (2) hours.

Respondent Universe:

718
railroads

Burden time per response:

60
minute
s + 60
minute
s

Frequency of Response:	On occasion
Annual number of Responses:	1 notification + 1 amended written agreement
Annual Burden:	2 hours

Calculation: 1 notific. x 60 min. + 1 am. written agreement x 60 min. = 2 hours

Total annual burden for this entire requirement is 170 hours (160 + 8 + 2).

§ 225.9 - TELEPHONE REPORTS OF CERTAIN ACCIDENTS/INCIDENTS AND OTHER EVENTS

(a) Types of accidents/ incidents and other events to be reported – (1) Certain deaths or injuries. Each railroad must report immediately, as prescribed in paragraphs (b) through (d) of this section, whenever it learns of the occurrence of an accident/incident arising from the operation of the railroad, or an event or exposure that may have arisen from the operation of the railroad, that results in the – (i) Death of a rail passenger or a railroad employee; (ii) Death of an employee of a contractor to a railroad performing work for the railroad on property owned, leased, or maintained by the contracting railroad; (iii) Death or injury to five or more persons.

(2) Certain train accidents or train incidents. Each railroad must report immediately, as prescribed in paragraphs (b) through (d) of this section, whenever it learns of the occurrence of any of the following events that arose from the operation of the railroad: (i) A train accident that results in serious injury to two or more train crewmembers or passengers requiring their admission to a hospital; (ii) A train accident resulting in the evacuation of a passenger train; (iii) A fatality resulting from a train accident or train incident at a highway-rail grade crossing when death occurs within 24 hours of the accident/incident; (iv) A train accident resulting in damage (based on a preliminary gross estimate) of \$150,000 or more to railroad and non-railroad property; or (v) A train accident resulting in damage of \$25,000 or more to a passenger train, including railroad and non-railroad property.

(3) Train accidents on or fouling passenger service main lines. The dispatching railroad must report immediately, as prescribed in paragraphs (b) through (d) of this section, whenever it learns of the occurrence of any train accident reportable as a rail equipment accident/incident under §§ 225.11 and 225.19(c) that involves a collision or derailment on a main line that is used for scheduled passenger service; or that fouls a main line used for scheduled passenger service.

Method of Reporting. Telephonic reports required by this section must be made by toll-free telephone to the National Response Center, Area Code 800-424-8802 or 800-424-

0201. Through one of the same telephone numbers (800-424-0201), the National Response Center (NRC) also receives notification of rail accidents for the National Transportation Safety Board (49 CFR 840) and the Research and Special Programs Administration of the U.S. Department of Transportation (Hazardous Materials Regulations, 49 CFR 171.15). FRA Locomotive Safety Standards require certain locomotive accidents to be reported by telephone to the NRC at the same toll-free number (800-424-0201). 49 CFR 229.17. (*Note: The burden for reporting locomotive accidents is covered under OMB No. 2130-0004*).

Contents of Report. Each report must state the following: (1) Name of the railroad; (2) Name, title, and telephone number of the individual making the report; (3) Time, date, and location of the accident/incident; (4) Circumstances of the accident/incident; (5) Number of persons killed or injured; and (6) Available estimates of railroad and non-railroad property damage.

Timing of report. To the extent that the necessity to report an accident/incident depends upon a determination of fact or an estimate of property damage, a report will be considered immediate if made as soon as possible following the time that the determination or estimate is made, or could reasonably have been made, whichever comes first, taking into consideration the health and safety of those affected by the accident/incident, including actions to protect the environment. The National Transportation Safety Board (NTSB) has other specific requirements regarding the timeliness of reporting. (*See* 49 CFR 840).

FRA estimates that it will receive approximately 3,300 telephonic reports each year under the above requirements. It is estimated that it will take approximately 15 minutes to complete each phone report. Total annual burden for this requirement is 825 hours.

Respondent Universe:

718
railroads

Burden time per response:

15
minute
s

Frequency of Response: On occasion

Annual number of Responses: 3,300 phone reports
Annual Burden: 825 hours

Calculation: 3,300 phone reports x 15 min. = 825 hours

§ 225.11 - REPORTING OF RAIL EQUIPMENT ACCIDENTS/INCIDENTS (FORM FRA F 6180.54)

Each railroad subject to this Part must submit to FRA a monthly report of all railroad accidents/incidents described as follows: (1) Highway-Rail Grade crossing accidents/incidents described in § 225.19; (2) Rail Equipment accidents/incidents described in § 225.19; and (3) Death, Injury, and Occupational Illness accidents/incidents described in § 225.19. (*Note: The burden for § 225.11 (a) and § 225.11 (c) are included under that of § 225.19.*)

The report must be made on the forms prescribed in § 225.21 in hard copy or, alternatively, by means of optical media or electronic submission via the Internet, as prescribed in § 225.37, and must be submitted within 30 days after expiration of the month during which the accident/incidents occurred. Reports must be completed as required by the current FRA Guide.

The required form for this report is Form FRA F 6180.54. Form FRA F 6180.54 must be used to report each reportable rail equipment accident/incident which occurred during the preceding month. The updated rule makes minor changes to Form FRA F 6180.54 in order to improve FRA's accident analysis capability.

Under this requirement then, a monthly report must be prepared and submitted to FRA for each collision, derailment, fire, explosion, act of God, or other event involving the operation of railroad on-track equipment (standing or moving) that results in reportable damages greater than the current FRA established reporting threshold to railroad on-track equipment, signals, track, track structures, and roadbed. The 2008 monetary threshold is \$8,500. [*Note: The monetary threshold is set at \$9,200 for calendar year 2010, and will be set at \$9,400 for calendar year 2011.*]

The potential number of respondents is 718. The actual number of railroads involved in this type of accident in 2007 was 192, which represents 27% of the total. The number of reports per respondent ranged from 1 to 989.

The total number of reports received was 3,570 in 2007; approximately 4,073 in 2006; and approximately 3,223 in 2005. Based on past history and the most recent data, FRA

estimates that it will receive approximately 3,600 forms reporting railroad accidents/incidents per year. FRA estimates that it will take approximately two (2) hours to prepare each report. Total annual burden for this requirement is 7,200 hours.

Respondent Universe:

718
railroads

Burden time per response:

2 hours

Frequency of Response:

Monthly

Annual number of Responses: 3,600 forms

Annual Burden: 7,200 hours

Calculation: 3,600 forms x 2 hrs. = 7,200 hours

§ 225.12 - RAIL EQUIPMENT ACCIDENT/INCIDENT REPORTS ALLEGING HUMAN FACTOR AS CAUSE (FORM FRA F 6180.81); EMPLOYEE HUMAN FACTOR ATTACHMENT; NOTICE TO EMPLOYEE; EMPLOYEE SUPPLEMENT.

(a) *Rail Equipment Accident/Incident Report alleging employee human factor as cause; completion of Employee Human Factor Attachment.* If, in reporting a rail equipment accident/incident to FRA on Form FRA F 6180.54, Rail Equipment Accident/Incident Report, a railroad cites an employee human factor as the primary cause or a contributing cause of the accident, then the railroad that cited such employee human factor must complete, in accordance with instructions on the form and in the current “FRA Guide for Preparing Accident/Incident Reports,” an Employee Human Factor Attachment form (Form FRA F 6180.81) on the accident. For purposes of this section, “employee” is defined as a Worker on Duty – Employee, Employee not on Duty, Worker on Duty – Contractor, or Worker on Duty – Volunteer.

This form must be completed only when a railroad, in reporting a rail equipment accident/incident to FRA, assigns any of the cause codes listed in Appendix C of the FRA Guide under "Train Operations-Human Factors" as the primary cause or a contributing

cause of the rail equipment accident/incident. The form must be attached to the Rail Equipment Accident/Incident Report and must be submitted within 30 days after the expiration of the month in which the accident/incident occurred.

In 2007, 2006, and 2005, there were 1,394; 1,540; and 1,839 railroad accidents/incidents reports filed, respectively, with FRA that alleged the primary cause as an employee human factor. Based on recent data, FRA estimates that it will receive approximately 1,600 railroad accident/incident reports (Form FRA F 6180.81) annually alleging employee human factor as the primary cause of the accident. It is estimated that it will take approximately 15 minutes to fill out each form and send it to FRA. Total annual burden for this requirement is 400 hours.

Respondent Universe:

718
railroads

Burden time per response:

15
minute
s

Frequency of Response:

On occasion

Annual number of Responses:

1,600 reports/forms

Annual Burden:

400 hours

Calculation: 1,600 reports/forms x 15 min. = 400 hours

*Note: Although there is a **new requirement** included in the updated FRA Guide that a narrative on suicide data must be included on Form FRA F 6180.81, FRA data show that an accident/incident involving rail equipment and caused by a rail employee committing suicide or attempting to commit suicide has never happened/would not happen. Consequently, FRA estimates that zero (0) forms will be completed and that there is no burden pertaining to this new requirement.*

(b) Notice to identified implicated employees (Part I Form FRA F 6180.78). Except as provided in paragraphs (e) and (f) of this section, for each employee whose act, omission,

or physical condition was alleged by the railroad as the employee human factor that was the primary cause or a contributing cause of a rail equipment accident/incident and whose name was listed in the employee Human Factor Attachment for the accident and for each such railroad employee of whose identity the railroad has actual knowledge, the alleging railroad must: (1) Complete, Part I, “Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor,” of Form FRA F 6180.78 with information regarding the accident, in accordance with instructions on the form and in the current “FRA Guide for Preparing Accident/Incident Reports”; and (2) Hand-deliver or send by first class mail (postage prepaid) to that employee, within 45 days after the end of the month in which the rail accident/incident occurred, the following: (i) A copy of Form FRA F 6180.78, “Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report,” with Part I completed as to the applicable employee and accident; (ii) A copy of the railroad’s Rail Equipment Accident/Incident Report and Employee Human Factor Attachment on the rail equipment accident/incident involved; and (iii) If the accident/incident was also reportable as a highway-rail grade crossing accident/incident, a copy of the railroad’s Highway-Rail Grade Crossing Accident/Incident Report for that accident.

FRA estimates that railroads will fill-out approximately 1,000 Notices (Part I: Form FRA 6180.78) annually. FRA also estimates that railroads will make approximately 1,000 copies of the required Notices, approximately 4,000 copies of Rail Equipment Accident/Incident Report and Human Factor Attachment, and approximately 10 copies of the railroad’s Highway-Rail Grade Crossing Accident/Incident Report under the above requirement. It is estimated that it will take railroads approximately 10 minutes to complete Part I of each Form FRA F 6180.78 and approximately three (3) minutes to make the required copies of the other forms/reports and hand-deliver/mail them to the affected employees. Total annual burden for this requirement is 367 hours.

Respondent Universe:

718
railroads

Burden time per response:

10
minute
s + 3
minute
s
(copies)

)

Frequency of Response: On occasion

Annual number of Responses: 1,000 Notices + 4,000 copies of Rail Equipment Accident/Incident Report and Human Factor Attachment + 10 copies of the railroad’s Highway-Rail Grade Crossing Accident/Incident Report

Annual Burden: 367 hours

Calculation: 1,000 Notices x 10 min. + 4,010 copies x 3 min. = 367 hours

*Note: Although there is a **new requirement** included in the updated FRA Guide that a narrative on suicide data must be included on Form FRA F 6180.78, FRA data show that an accident/incident involving rail equipment and caused by a rail employee committing suicide or attempting to commit suicide has never happened/would not happen. Consequently, FRA estimates that zero (0) forms will be completed and that there is no burden pertaining to this new requirement.*

(c) *Joint Operations.* If a reporting railroad makes allegations under paragraph (a) of this section concerning the employee of another railroad, the employing railroad must promptly provide the name, job title, address, and medical status of any employee reasonably identified by the alleging railroad, if requested by the alleging railroad. It is estimated that this will occur approximately 100 times a year. FRA estimates that it will take approximately 20 minutes for the alleging railroad to make the request and the employing railroad to collect and verify the required data and respond back to the alleging railroad. Total annual burden for this requirement is 33 hours.

Respondent Universe: 718 railroads

Burden time per response: 20 minutes

Frequency of Response: On occasion

Annual number of Responses: 100 requests
Annual Burden: 33 hours

Calculation: 100 requests x 20 min. = 33 hours

(d) *Late Identification.* Except as provided in paragraphs (e) and (f) of this section, if a railroad is initially unable to identify a particular railroad employee whose act, omission, or physical condition was cited by the railroad as a primary or contributing cause of the accident, but subsequently makes such identification, the railroad must submit a revised Employee Human Factor Attachment (Form FRA F 6180.81) to FRA immediately, and must submit the Notice described in paragraph (b) of this section to that employee within 15 days of when the revised report is to be submitted.

FRA estimates that railroads will revise approximately 20 Employee Human Factor Attachment Forms (Form FRA F 6180.81) and will submit approximately 20 Notices to affected employees under the above requirement. It is estimated that it will take approximately 15 minutes to complete each Human Factor Attachment Form and also approximately 15 minutes to submit the required Notice to railroad employees. Total annual burden for this requirement is 10 hours.

Respondent Universe: 718
railroads

Burden time per response: 15
minutes

Frequency of Response: On occasion

Annual number of Responses: 20 Attachments + 20 Notices
Annual Burden: 10 hours

Calculation: 20 Attachments x 15 min. + 20 Notices x 15 min. = 10 hours

(g) *Employee Statement Supplementing Railroad Accident Report (Supplements or*

Employee Supplements) - Form FRA F 6180.78 (Part II). Employee Statements Supplementing Railroad Accident Reports are voluntary, not mandatory; non-submission of a Supplement does not imply that the employee admits or endorses the railroad's conclusions as to cause or any other allegations.

Although a Supplement is completely optional and not required, if an employee wishes to submit a Supplement and assure that, after receipt, it will be properly placed by FRA in a file with the railroad's Rail Equipment Accident/Incident Report and that it will be required to be reviewed by the railroad that issued the Notice, the Supplement must be made on Part II of Form FRA F 6180.78 (entitled "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report"), following the instructions printed on the form. These instructions require that, within 35 days of the date that the Notice was hand-delivered or sent by first class mail (postage prepaid) to the employee (except for good cause shown), the original of the Supplement be filed with FRA and a copy be hand-delivered or sent by first class mail (postage prepaid) to the railroad that issued the Notice so that the railroad will have an opportunity to reassess its reports to FRA concerning the accident.

Part II of Form FRA F 6180.78 is completed at the option of the employee, and is used by the employee in describing his/her view as to what he/she believes caused the accident. FRA estimates that approximately 75 of the employees (or a rate of response of 7.5 % of the total number of rail equipment accident/incidents reported) who receive a Notice (FRA F 6180.78) will exercise their rights and file a supplementary statement, or a letter containing confidential information with FRA. It is estimated that it will take the employee approximately one-and-a-half (1.5) hours (based on AAR data) to prepare each statement/letter; make all necessary copies of supporting data; and forward copies of the form/letter and supporting data to FRA and the railroad making the allegation. Total annual burden for this requirement is 113 hours.

Respondent Universe:	Railroad employees	
Burden time per response:		1.5 hours

Frequency of Response:	On occasion
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Annual number of Responses:	75 statements/letters
-----------------------------	-----------------------

Annual Burden: 113 hours

Calculation: 75 statements x 1.5 hrs. = 113 hours

(g)(3) Employee Confidential Letter. Information that the employee wishes to withhold from the railroad must not be included in this (above-mentioned) Supplement. If an employee wishes to provide confidential information to FRA, the employee should not use the Supplement form (Part II of Form FRA F 6180.78, "Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report"), but rather provide such confidential information by other means, such as a letter to the employee's collective bargaining representative, or to the U.S. Department of Transportation, Federal Railroad Administration, Office of Safety Analysis, RRS-22, Mail Stop 25, West Building 3rd Floor, Room W 33-306, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590. The letter should include the name of the railroad making the allegations, the date and place of the accident, and the rail equipment accident/incident number.

FRA estimates that employees will compose approximately 10 letters annually under the above requirement. It is estimated that it will take each employee approximately two (2) hours to prepare his/her letter and forward it to FRA. Total annual burden for this requirement is 20 hours.

Respondent Universe:

Railroad employees

Burden time per response:

2 hours

Frequency of Response:

On occasion

Annual number of Responses: 10 letters

Annual Burden: 20 hours

Calculation: 10 letters x 2 hrs. = 20 hours

(h) *Willful False Statements; penalties.* If an employee chooses to submit a Supplement to FRA, all of the employee's assertions in the Supplement must be true and correct to the best of the employee's knowledge and belief.

Under 49 U.S.C. 21301, 21302, and 21304, any person who willfully files a false Supplement with FRA is subject to a civil penalty. (See Appendix A to this Part.) Any person who knowingly and willfully files a false Supplement is subject to a \$5,000 fine, or up to two years imprisonment, or both, under 49 U.S.C. 21311.

FRA estimates that it will receive zero (0) willfully false statements under the above requirement from railroad employees since they know that they would be subject to financial and criminal penalties that they could ill afford. Consequently, there is no burden associated with this requirement.

Total annual burden for this entire requirement is 943 hours (400 + 367 + 33 + 10 + 113 + 20).

§ 225.13 - LATE REPORTS

A. Whenever a railroad discovers that a report of an accident/incident, through mistake or otherwise, has been improperly omitted from or improperly reported on its regular monthly accident/incident report, a report covering this accident/incident together with a letter of explanation must be submitted immediately.

FRA estimates that approximately 25 late/amended reports will be completed under the above requirement. It is estimated that it will take approximately one (1) hour to complete each late report and send it to FRA. Total annual burden for this requirement is 25 hours.

Respondent Universe:		718
	Railroads	
Burden time per response:		1
	hour	
Frequency of Response:	On occasion	
Annual number of Responses:	25 late/amended reports	
Annual Burden:	25 hours	

Calculation: 25 late/amended reports x 1 hr. = 25 hours

B. Whenever a railroad receives a partially or fully completed Employee Statement Supplementing Railroad Accident Report (Part II of Form FRA F 6180.78), in response to a Notice to Railroad Employee (Part I of Form FRA F 6180.78) issued by the railroad carrier and mailed or hand-delivered to the employee, the railroad must: promptly review that Supplement; based on that review, reassess the accuracy and validity of the railroad's Rail Equipment Accident/Incident Report and of any other reports and records required by this part concerning the same accident, including the Employee Human Factor Attachment; make all justified revisions to each of those reports and records; submit any amended reports to FRA; and submit a copy of any amended Rail Equipment Accident/Incident Report, Employee Human Factor Attachment, and Highway-Rail Grade Crossing Accident/Incident Report on the accident to the employee. A second notice under § 225.12 is not required for the employee. If an employee who was never sent a notice under § 225.12 for that accident is implicated in the revised Employee Human Factor Attachment, the railroad must follow the procedures of § 225.12(d).

Because FRA has developed an amended procedure in the *FRA Guide for Preparing Accident/Incident Reports* (Ch. 1) to keep its database open for five years to accept late and amended accident/incident reports and has changed from optional to mandatory the filing of amended reports for certain accidents/incidents, the agency believes that there will be an increase in the number of late and amended reports submitted to it. FRA estimates that railroads will amend approximately 50 additional Rail Equipment Accident/Incident Reports under the above-cited circumstances. Of these 50 amended reports, FRA estimates that approximately 20 will involve human factors and/or highway-rail grade crossings and thus railroads will submit copies of these amended reports both to FRA and to employees. It is estimated that it will take railroad officials approximately one (1) hour to complete each amended report, and an additional three (3) minutes to make the required copies, and send one to FRA and one to the affected railroad employee. Total annual burden for this requirement is 52 hours.

Respondent Universe:	718 railroads
Burden time per response:	1 hour + 3 minutes
Frequency of Response:	On occasion
Annual number of Responses:	50 amended reports + 40 copies
Annual Burden:	52 hours

Calculation: 50 amended reports x 1 hr. + 40 copies x 3 min. = 52 hours

Total annual burden for this entire requirement is 77 hours (25 + 52).

§ 225.15 – ACCIDENT/INCIDENTS NOT TO BE REPORTED.

The following accident/incidents are not reportable:

(c) * * *

(3) The injury or illness is solely the result of an employee eating, drinking, or preparing food or drink for personal consumption. However, if the employee is made ill by ingesting food contaminated by workplace contaminants (such as lead), or gets food poisoning from food supplied by the employer, the case would be considered work-related and reported as either a Class A – Worker on Duty – Employee or Class B – Employee not on Duty depending on the employee duty status.

The burden for this requirement is included under that for Form FRA F 6180.98 below. Consequently, there is no additional or other burden associated with this requirement.

(c)(5) The injury or illness is solely the result of personal grooming, self-medication for a non-work related condition, or is intentionally self-inflicted; except that for FRA reporting purposes, a railroad must report suicides and attempted suicides.

The burden for this requirement is included under that of § 225.41 below. Consequently, there is no additional or other burden associated with this requirement.

(c)(7) The illness is a mental illness. Mental illness will not be considered work-related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience (psychiatrist, psychologist, psychiatric nurse practitioner, etc.) stating that the employee has a mental illness that is work-related.

The burden for this requirement is included under that for Form FRA F 6180.98 below. Consequently, there is no additional or other burden associated with this requirement.

§ 225.17 - DOUBTFUL CASES; ALCOHOL OR DRUG INVOLVEMENT

(a.) Even though there may be no witnesses to an accident/incident, if there is evidence indicating that a reportable accident/incident may have occurred, a report of that accident/incident must be made.

Since railroads are currently required to submit accident/incident reports to FRA on monthly basis for all reportable accidents/incidents, FRA believes that it will receive zero (0) additional reports concerning doubtful cases under the above scenario. Consequently, there

is no burden associated with this requirement.

§ 225.18 - ALCOHOL OR DRUG INVOLVEMENT

(a)(1) In preparing a Form FRA F 6180.54, "Rail Equipment Accident/Incident Report," under this Part, the railroad shall make such specific inquiry as may be reasonable under the circumstances into the possible involvement of alcohol or drug use or impairment in such accident or incident. If the railroad comes into possession of any information whatsoever, whether or not confirmed, concerning alleged alcohol or drug use or impairment by an employee who was involved in, or arguably could be said to have been involved in, the accident/incident, the railroad must report such alleged use or impairment as provided in the current FRA Guide. If the railroad is in possession of such information but does not believe that alcohol or drug impairment was the primary or contributing cause of the accident/incident, then the railroad must include in the narrative statement of such report a brief explanation of the basis of such determination.

FRA's current rule on the control of alcohol and drug use in railroad operations (Part 219) requires railroads to make a specific inquiry into the possible involvement of alcohol or drugs in an accident/incident. Any information developed concerning possible drug or alcohol involvement is required to be reported by the railroads.

Respondent universe is approximately 718 railroads. FRA estimates that approximately 80 narrative reports will be submitted annually. It is estimated that it will take approximately 30 minutes to prepare the report and append it to the accident report (based on AAR data). Total annual burden for this requirement is 40 hours.

Respondent Universe:	718
	railroads

Burden time per response:	30
	minutes

Frequency of Response:	On occasion
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Annual number of Responses:	80 narrative reports
Annual Burden:	40 hours

Calculation: 80 narrative reports x 30 min. = 40 hours

(b) For any train accident within the requirement for post-accident testing under § 219.201 of this chapter, the railroad must append to the Form FRA F 6180.54, “Rail Equipment Accident/Incident Report,” any report required by 49 CFR 219.209(b) (pertaining to failure to obtain samples for post-accident toxicological testing).

Employees are required to provide blood and urine samples for testing by FRA after certain accidents. Whenever a railroad is unable, as a result of non-cooperation of an employee or any other reason, to obtain a sample, it must provide FRA with a narrative report giving the reason for such failure and any responsible action to the cause of such failure (if appropriate).

FRA estimates that approximately five (5) reports required by §219.209(b) will be appended to the Rail Equipment Accident/Incident Report by railroads under the above situation. It is estimated that it will take approximately 30 minutes to append each such report. Total annual burden for this requirement is three (3) hours.

Respondent Universe:		718
		railroads
Burden time per response:		30 minutes
Frequency of Response:		On occasion
Annual number of Responses:	5 appended reports	
Annual Burden:		3 hours

Calculation: 5 appended reports x 30 min. = 3 hours

(c) For any train or non-train incident, the railroad must provide any available information concerning the possible involvement of alcohol or drug use or impairment in such accident or incident.

The burden for this requirement is included under that of §225.17(a) above.

Total annual burden for the entire requirement is 43 hours (40 + 3).

§225.19(a) - RAIL-HIGHWAY GRADE CROSSING ACCIDENT/INCIDENT REPORT (FORM FRA F 6180.57)

- A. Each railroad subject to this part must submit to FRA a monthly report of all Highway-Rail Grade crossing accidents/incidents described in § 225.19. *(Note: Although this requirement is set forth at § 225.11 (a), the burden is being evaluated under this section.)* The report must be made on Form FRA F 6180.57 as prescribed in § 225.21 in hard copy or, alternatively, by means of optical media or electronic transmission via the Internet, as prescribed in § 225.37, and must be submitted within 30 days after expiration of the month

during which the accident/incident occurred. Reports must be completed as required by the current FRA Guide.

The updated rule makes minor changes to Form FRA F 6180.57 in order to improve FRA's accident/incident capability.

Under this requirement then, a monthly report must be prepared and submitted to FRA for each Highway-Rail Grade Crossing accident/incident. Each highway-rail grade crossing accident/incident, which occurred during the preceding month, must be reported to FRA on Form FRA F 6180.57, regardless of the extent of damages or whether a casualty occurred.

A report then must be prepared and forwarded monthly whenever an impact between a train and a highway user occurs at a crossing site. The potential number of respondents is 718. The actual number of railroads involved in this type of accident in 2007 was 205, which represents 29% of the total. The number of reports filed by these respondents ranged from one (1) to 539. There were approximately 2,742 reports received in 2007 and 2,937 reports received in 2006. Based on recent data, FRA estimates that approximately 240 reports will be completed per month or an annual total of approximately 2,880. The average burden time associated with preparing this report is approximately two (2) hours. Total annual burden for this requirement is 5,760 hours.

Respondent Universe:	718
	railroads

Burden time per response:	2
	hours

Frequency of Response:	Monthly
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Annual number of Responses:	2,880 forms per year (240 forms per mo.)
Annual Burden:	5,760 hours

Calculation: 2,880 forms x 2 hrs. = 5,760 hours

In addition, whenever a highway-rail grade crossing accident/incident results in damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, or roadbed, that accident/incident must be reported to FRA on Form FRA F 6180.54. For reporting purposes, damages include labor costs and all other costs to repair or replace in kind damaged on-track equipment, signals, track, track structures, or roadbed, but do not include the cost of clearing a wreck. Form FRA F 6180.54 shall be used to report

each reportable rail equipment accident/incident which occurred during the preceding month.

Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, and other events involving the operation of on-track equipment (standing or moving) that result in damages higher than the current reporting threshold of \$8,500 for calendar year 2008 to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. Each rail equipment accident/incident (which occurred during the preceding month) must be reported to FRA on Form FRA F 6180.54. If the property of more than one railroad is involved in an accident/incident, the reporting threshold is calculated by including the damages suffered by all of the railroads involved. (See § 225.23, Joint Operations). The reporting threshold will be reviewed periodically, and, if necessary, will be adjusted every year. (Note: The monetary reporting threshold for 2010 is \$9,200, and the monetary reporting threshold for 2011 will be \$9,400.)

§225.19(b) - RAIL EQUIPMENT ACCIDENT/INCIDENT REPORT (FORM FRA F 6180.54)

- B. *The burden for this requirement is set forth in §225.11 above and under the burden for Joint Operations (§ 225.33) below.*

§225.19(d) – GROUP III – DEATH, INJURY, AND OCCUPATIONAL ILLNESS ACCIDENT/INCIDENT REPORT (FORM FRA F 6180.55a)

- C. Each death, injury, or occupational illness that is a new case and that meets the general reporting criteria listed in paragraphs (d)(1) through (d)(6) of this section must be reported to FRA on Form FRA F 6180.55a, “Railroad Injury and Illness Summary (Continuation Sheet)” if an event or exposure arising from the operation of a railroad is a discernable cause of the resulting condition or a discernable cause of a significant aggravation to a pre-existing injury or illness. The event or exposure arising from the operation of a railroad need only be one of the discernable causes; it need not be the sole or predominant cause.

The general injury/illness reporting criteria are as follows: (1) Death to any person; (2) Injury to any person that results in: (i) Medical treatment, (ii) Significant injury diagnosed by a physician or other licensed health care professional even if it does not result in death, medical treatment or loss of consciousness of any person or a day away from work, restricted work activity or job transfer of a railroad employee; or (iii) Loss of consciousness; (3) Injury to a railroad employee that results in (i) A day away from work, (ii) Restricted work activity or job transfer; or (iii) Significant injury diagnosed by a physician or other licensed health care professional even if it does not result in death, medical treatment, loss of consciousness, a day away from work, restricted work activity or job transfer of a railroad employee; (4) Occupational illness of a railroad employee that results in: (i) A day away from work, (ii) Restricted work activity or job transfer, (iii) Loss of consciousness, or (iv) Medical

treatment; (5) Significant illness of a railroad employee diagnosed by a physician or other licensed health care professional even if it does not result in death, a day away from work, restricted work activity or job transfer, medical treatment, or loss of consciousness; (6) Illness or injury that: (i) Meets the application of any of the following specific case criteria: (A) Needlestick or sharps injury to a railroad employee; (B) Medical removal of a railroad employee; (C) Occupational hearing loss of railroad employee; (D) Occupational tuberculosis of a railroad employee; or (E) Musculoskeletal disorder of a railroad employee if this disorder is reportable under one or more of the general reporting criteria; or (ii) Is a covered data case.

The report must be made on Form FRA F 6180.55a, Railroad Injury and Illness (Continuation Sheet), as prescribed in § 225.21 in hard copy or, alternatively, by means of optical media or electronic submission via the Internet, as prescribed in §225.37, and must be submitted within 30 days after expiration of the month during which the accidents/incidents occurred. Reports must be completed as required by the current FRA Guide.

The updated rule makes minor changes to Form FRA F 6180.55a in order to improve FRA's accident/incident capability. A report then must be prepared and forwarded monthly whenever there is a reportable casualty (death, injury, or occupational illness) associated with a railroad's operation. FRA collects worker on-duty injuries and illnesses, and reports this information to the Department of Labor's Occupational Safety and Health Administration (OSHA). Over 80% of the reports received are worker on-duty injuries. Without the FRA system, the railroads would still have the same burden of reporting to OSHA.

The potential number of respondents is 718; however, the actual number of respondents is lower since this form is completed only when reportable casualties occur. The actual number of railroads having reportable casualties in 2007 was 284, representing 40% of the potential respondents. The number of responses varies greatly among respondents, and is generally relative to a railroad's size. The number of records per respondent in 2007 ranged from 1 to 1,596. Of the 284 respondents in 2007, approximately 83% filed 12 or fewer reports during the year. The form used to report casualties can accommodate up to 30 entries per form. The minimum number of forms required from the railroad having 1,596 casualties would be 53.

There were 9,440 casualties reported in 2007; 9,358 casualties reported in 2006; 10,357 casualties reported in 2005. Based on recent statistics, as well as the new general criteria reportable under "covered data", and other requirements of the final rule, FRA estimates that approximately 962 forms will be filled-out monthly by railroads or a total of approximately 11,544 annually under the above requirement. It is estimated that it will take approximately 20 minutes to complete each form and send it to FRA. Further, FRA estimates that an additional 40.5 forms per month or a total of approximately 486 forms per year will be filled-out for trespasser fatalities, and that it will take approximately 50 minutes to complete the form (the normal 20 minutes for the form plus an another 30 minutes for additional investigation/documentation). Finally, FRA estimates that an additional 50.66 forms per month or a total of 608 forms per year will be filled-out for the new requirements concerning

suicides and attempted suicides and that it will take approximately 65 minutes to complete the form (the normal 20 minutes for the form plus an another 45 minutes for additional investigation/documentation). Total annual burden for this requirement is 4,912 hours. **(Revised Requirement)**

(Note: Covered data include cases involving an employee of a railroad that is reportable exclusively because a physician or other licensed health care professional recommended in writing that (1) the employee take one or more days away from work when the employee instead returned to work; (2) the employee’s work activity be restricted for one or more days when the work restriction was not imposed; or (3) the employee take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the employee takes the medication).

Respondent Universe:	718
	railroads

Burden time per response:	20
	mi
	nut
	es
	+
	50
	mi
	nut
	es
	+
	65
	mi
	n.

Frequency of Response:	Monthly
Annual number of Responses:	12,638 forms per year (1,053.1666 per month)
Annual Burden:	4,912 hours

Calculation: 11,544 forms x 20 min. + 486 forms x 50 min. + 608 forms x 65 min.
= 4,912 hours

Total annual burden for this entire requirement is 10,672 hours (5,760 + 4,912).

§225.21 - FORMS

FORM FRA F 6180-55 -- RAILROAD INJURY AND ILLNESS SUMMARY

Form FRA F 6180.55 must be filed each month, even though no reportable accident/incident occurred during the month covered. Each report must include an oath or verification, made by the proper officer of the reporting railroad, as provided for attestation on the form. If no reportable accident/incident occurred during the month, that fact must be stated on this form. All railroads subject to this part must show on this form the total number of freight train miles, passenger train miles, yard switching train miles, and other miles run during the month.

The total number of respondents is 718. The total number of responses annually is 8,616 forms (718 x 12). FRA estimates that the average burden time associated with completing this report is approximately 10 minutes. Total annual burden for this requirement is 1,488 hours.

Respondent Universe:	718 railroads	
Burden time per response:		10 minutes

Frequency of Response:	Monthly
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Annual number of Responses:	8,616 forms per year (718 forms per mo.)
Annual Burden:	1,436 hours

Calculation: 8,616 forms x 10 min. = 1,436 hours

FORM FRA F 6180-56 -- ANNUAL RAILROAD REPORT OF MANHOURS BY STATE

Form FRA F 6180.56 must be submitted as part of the monthly Railroad Injury and Illness Summary (Form FRA F 6180.55) for the month of December of each year.

Each railroad then is required to prepare this report annually. It provides the number of employee hours by State. Railroads that operate in a single State have a limited burden connected with this form since only a single entry would be required. Of the 718 respondents, approximately 620 reported man-hours in a single State.

(Note: A column reflecting a count for "casualties" was added to Form FRA F 6180.56 in a

previous update of the form.)

FRA estimates that approximately 718 forms will be filled-out annually, and estimates that the average burden for this form is approximately 15 minutes. Total burden for this requirement is 180 hours.

Respondent Universe:		718
	railroads	
Burden time per response:	15 minutes	
Frequency of Response:	Annually	
Annual number of Responses:	718 forms	
Annual Burden:	180 hours	

Calculation: 718 forms x 15 min. = 180 hours

FORM FRA F 6180.98 -- RAILROAD EMPLOYEE INJURY AND/OR ILLNESS RECORD

Form FRA F 6180.98 or an alternative railroad-designed record must be used by the railroads to record all reportable and accountable injuries and illnesses to railroad employees for each establishment. FRA is proposing to amend the definition of “Accountable injury or illness” related to injuries and illness that occur within the work environment. Specifically, FRA is proposing that, when an abnormal condition or disorder of a railroad employee manifests within the work environment and causes or requires the railroad employee to be examined or treated by a qualified health professional but does not meet the general reporting criteria listed in § 225.19(d)(1) through (d)(6), such condition or disorder is an accountable injury or illness **regardless of whether the condition or disorder is discernibly caused by an event or exposure in the work environment.** When such condition or disorder manifests outside the work environment, it is an accountable injury or illness if the condition or disorder is discernibly caused by an event or exposure in the work environment.

FRA’s purpose in making this amendment is to ensure that each potentially reportable injury and illness is tracked and evaluated. In many cases, injuries and illness, and/or the signs and symptoms thereof, of one kind or another, can be manifest in the work environment without the reason(s) (i.e., causes of or contributors to) being apparent. In such cases, railroads may prematurely attribute the cause of the injury or illness solely to a non-work related event or exposure that occurred outside the work environment. Consequently, the railroad does not consider the injury or illness to be “accountable” and does not complete a Form FRA F 6180.98, “Railroad Employee Injury and/or Illness Record” for that injury or illness. In many of these cases, however, an event or exposure in the work environment may in fact be a cause of, or contributor to, the injury or illness, but because the railroad made a premature

determination that the injury or illness is not work-related, the railroad may not subsequently perform adequate inquiry (e.g., communication with the employee when the employee returns to the work environment after treatment, review of medical records, etc.) to make an accurate causal determination. Ultimately, this type of oversight will result in the under-reporting of employee injuries and illnesses to FRA, and because the railroad did not complete a Form FRA F 6180.98 to initially record the injury or illness, no audit trail is created. Thus, FRA is unable to later evaluate the reportability of the injury or illness.

In order to rectify this problem, FRA is proposing that railroads complete Form FRA F 6180.98 records for all employee injuries and illnesses that involve signs or symptoms that surface at work, regardless of whether the injury or illness is discernibly caused or contributed to by an event or exposure in the work environment. Such revision is necessary in order for FRA to effectively enforce its railroad injury and illness reporting requirements. Unless FRA has the opportunity to examine those injuries and illnesses that manifest in the work environment but are deemed not work-related (thus “non-reportable”), as well as those deemed “reportable” by the railroad, it is difficult for FRA to determine whether a railroad is making appropriate reporting decisions. This recordation allows FRA the opportunity to examine those injuries and illnesses deemed “non-reportable” as well as those deemed “reportable” by the railroad. This recordation enables the agency to determine whether a railroad is making the appropriate and correct decision in reporting its injuries and illnesses.

This form was created by FRA in order to accurately identify and review both reportable and non-reportable railroad injuries and illnesses. Railroads have the option to design their own form (alternative form) as long as it contains the same information requested on Form FRA F 6180.98. Either this form, or the railroad designed alternative form, will be used by all railroads in fulfilling this information collection requirement. The “Railroad Employee Injury and/or Illness Record,” or its alternate, Form FRA F 6180.98.

FRA estimates that there will be just about as many non-reportable accidents/incidents yearly with corresponding injuries/illnesses as reportable accidents/incidents, resulting in a total of approximately 18,000 records being completed annually. However, because of the revised definition of accountable accidents/incidents in this final rule, FRA believes that there will be a five (5) percent increase in that number or a total of 18,900 forms completed (18,000 + 900). Since there will probably be a fair amount of narrative involved in filling-out these forms/records, it is estimated that it will take approximately one (1) hour to complete each form/alternative form. Total annual burden for this requirement is 18,900 hours.

	Respondent Universe:	718
	railroads	
Burden time per response:		1

hour

Frequency of Response: On occasion

Annual number of Responses: 18,900 records/forms
Annual Burden: 18,900 hours

Calculation: 18,900 forms x 1 hr. = 18,900 hours

*Note: Although there is a **new requirement** included in the updated FRA Guide that a narrative on suicide data must be included on Form FRA F 6180.98, FRA data show that it is extremely rare/highly unlikely that a railroad employee will commit suicide or attempt suicide. FRA data show that there has been one case in the last 10 years. Consequently, FRA estimates that zero (0) forms will be completed under the above new requirement and that there is no burden associated with it.*

B. When requested by the employee, a copy of the Railroad Employee Injury and/or Illness Report (Form FRA F 6180.98) (or the alternative railroad-designed report) must be provided to the employee. FRA estimates that an employee will request this information in approximately three percent (3%) of the 18,000 casualties reported annually, or a total of 540 times annually. With the revisions in the final rule, this number will be increased by five percent or another 27 copies or a total of 567 copies. It is estimated that it will take approximately two (2) minutes for the employee to verbally request a copy of the report and for the railroad to make the required copy and provide it to the employee. Total annual burden for this requirement is 19 hours.

Respondent Universe: 718
railroads

Burden time per response: 2
minutes

Frequency of Response: On occasion

Annual number of Responses: 567 form copies
Annual Burden: 19 hours

Calculation: 567 form copies x 2 min. = 19 hours

Total annual burden for the entire requirement is 18,919 hours (18,900 + 19).

FORM FRA F 6180.97 -- INITIAL RAIL EQUIPMENT ACCIDENT/INCIDENT RECORD

Form FRA F 6180.97 or an alternative railroad-designed record must be used by the railroads to record all reportable and accountable rail equipment accidents/incidents for each establishment. This record must be completed and maintained in accordance with the requirements set forth in § 225.25 and § 225.27.

In order to identify and review both reportable and accountable rail equipment accidents/incidents, FRA designed Form FRA F 6180.97. The railroads also have the option of designing their own form to record this information, as long as it contains all of the required data on FRA's Form FRA F 6180.97. This recordation allows FRA to identify the events that were determined by a railroad to be non-reportable. A non-reportable, or "accountable" rail equipment accident/incident, is a collision, derailment, fire, explosion, Act of God, or other event involving the operation of railroad on-track equipment (standing or sitting) that does not result in reportable damages greater than the current reporting threshold to railroad on-track equipment, signals, track, track structures, and roadbed.

In 2007, there were 12,873 accidents/incidents. In 2006 and 2005, there were 13,449 accident/incidents and 14,234 accidents/incidents, respectively. FRA estimates that there are probably an additional 10,000 accident/incidents a year that would be considered accountable but not reported to FRA.

Based on the latest data, FRA estimates there will be a total of approximately 14,000 reportable and accountable accident/incidents a year. However, because of the final rule, FRA believes that this number will be increased by an additional 30 percent or another 4,200 forms (for a total of 18,200 forms). It is estimated that it will take the average railroad approximately 30 minutes to collect the data and fill-in the report, since most of the accidents will be small, will not require detailed data, and will have low damage costs. Total annual burden for this requirement is 9,100 hours.

Respondent Universe:	718
	railroads

Burden time per response:	30
	mi
	nut
	es

Frequency of Response: On occasion

Annual number of Responses: 18,200 forms

Annual Burden: 9,100 hours

Calculation: 18,200 forms x 30 min. = 9,100 hours

Further, under the revised requirements of the final rule stipulated in the updated FRA Guide pertaining to required narrative of a suicide/attempted suicide, FRA estimates that there will be one (1) case out of the 608 estimated cases in § 225.19(d) where a Form FRA F 6180.97 will need be completed because of rail equipment involvement. It is estimated that it will take approximately 75 minutes (the usual 30 minutes + an additional 45 for the narrative) to complete the form. Total annual burden for this requirement is one (1) hour. (**New Requirement**)

Respondent Universe: 718 railroads

Burden time per response: 30 minutes

Frequency of Response: On occasion

Annual number of Responses: 1 form (with suicide/attempted suicide narrative)

Annual Burden: 1 hour

Calculation: 1 form x 30 min. = 1 hour

Total annual burden for this entire requirement is 9,101 hours (9,100 + 1).

FORM FRA F 6180.107 -- ALTERNATIVE RECORD FOR ILLNESSES CLAIMED

TO BE WORK-RELATED

Form FRA F 6180.107, "Alternative Records for Illnesses Claimed to be Work-Related", or an alternative railroad-designed record may be used by a railroad in lieu of Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record" (described in paragraph (h) of this section), to record each illness claimed by an employee to be work-related that is reported to the railroad for which there is insufficient information to determine whether the illness is work-related. This record must be completed and maintained in accordance with the requirements set forth in § 225.25 and § 225.27.

When a railroad does not receive sufficient information to determine whether a claimed occupational illness case is accountable or reportable, the railroad must make a good faith effort to obtain the necessary information by December 1 of the next calendar year.

For any claimed occupational illness case determined to be accountable or reportable, each railroad must: Complete a Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record" or alternative railroad-designed form within seven days of making such determination; retain the Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record", in accordance with § 225.27; and report the occupational illness, as applicable, in accordance with § 225.11.

For any claimed occupational illness case determined not to be accountable or reportable, each railroad must include the following information in narrative block 19 of Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related" or alternative railroad-designed form: Why the case does not meet the reporting criteria; the basis upon which the railroad made this determination; and the most authoritative information the railroad relied upon to make the determination.

Although Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related" (or alternative railroad-designed form), may not include all supporting documentation, such as medical records, the alternative record must note the custodian of those documents and where the supporting documents are located so that they are readily accessible to FRA upon request.

FRA estimates that railroads will complete approximately 300 forms under the above requirement. It is estimated that it will take approximately 75 minutes to collect the data and fill-in the form. Total annual burden for this requirement is 375 hours.

Respondent Universe:	718
	railroads
Burden time per response:	75
	minutes

Frequency of Response: On occasion

Annual number of Responses: 300 forms
Annual Burden: 375 hours

Calculation: 300 forms x 75 min. = 375 hours

FORM FRA F 6180-39i -- RAILROAD ACCIDENT/INCIDENT NOTIFICATION AND INITIAL INVESTIGATION REPORT

Form FRA F 6180.39i will be replacing and expanding the capabilities of a present form that is now used only by FRA inspectors to notify key personnel of railroad accidents/incidents. The present form FRA F 6180.41 is titled Railroad Accident Notification, and has very limited capabilities and adaptabilities for FRA's needs. Specifically, this form must be stored manually to a folder for retention purposes. Also, any querying of the data fields or narrative sections must be done manually as well. The new Form FRA F 6180.39i will be capable of automatically being stored in an electronic database and any querying of fields and narrative sections will be done electronically. Moreover, the new form will serve to expand FRA's accident/incident investigation capabilities, since it will act as an initial investigation report and will be used to record and track initial investigation information. The capabilities and functional adaptability of Form FRA F 6180.39i will enable FRA to more efficiently and comprehensively carry out core safety activities as well as its comprehensive safety program.

The total number of respondents is 708, and includes Class I and Class II railroads as well as 55 Federal and State Agencies and a total of 562 Federal/State inspectors. The estimated total number of responses annually is 1,000. FRA estimates that the average burden time associated with completing this report is approximately 90 minutes. Total annual burden for this requirement is 1,500 hours.

Respondent Universe:

654
Class I
and
Class
II

State Agencies/562 Inspectors

Burden time per response: 90 minutes

Frequency of Response: Annually

Annual number of Responses: 1,000 forms
Annual Burden: 1,500 hours

Calculation: 1,000 forms x 90 min. = 1,500 hours

FORM FRA F 6180.150 – HIGHWAY USER STATEMENT.

Form FRA F 6180.150 must be sent to every potentially injured highway user involved in a highway-rail grade crossing accident/incident. If a highway user died as a result of the highway-rail grade crossing accident/incident, a railroad must not send this form to any person. The railroad must hand deliver or send by first class mail the letter within a reasonable time period following the date of the highway-rail grade crossing accident/incident. The form must be sent along with a cover letter and a prepaid preaddressed return envelope. The form and cover letter shall be completed in accordance with instructions contained in the current “FRA Guide for Preparing Accident/Incident Reports.” Any response from a highway user is voluntary and not mandatory. A railroad shall use any response from a highway user to comply with part 225’s accident/incident reporting and recording requirements. **(New Requirement)**

The form then is to be returned to the railroad by the highway-user, and the information therein used to complete, correct, or update the information reported to FRA regarding the injury. If the form is not returned, the railroad must make one follow-up phone call. The railroad must keep a record of such contact.

The cover letter that accompanies Form FRA F 6180.150 shall be drafted in accordance with the instructions contained in the FRA Guide, Chapter 10. FRA has included a sample cover

letter in the FRA Guide for use by the railroads. See FRA Guide, Appendix N. Specifically, the cover letter should clearly explain the Federal reporting requirements imposed on the railroads, address only Federal reporting requirements and not the railroad's claims process, explain that the form is voluntary, and provide clear instructions on how to complete the form. Moreover, the railroad should clearly explain how it plans to use any medical information the highway user provides. The cover letter may ask the highway user to provide additional information, but the cover letter should not mandate that the individual provide certain information in order for a railroad to comply with Federal reporting requirements.

With regard to the cover letter, the instructions contained in the final rule require that the letter contain the following:

- An explanation of why the railroad is contacting the highway user;
- An explanation of part 225's accident/incident reporting requirements;
- An explanation of how the form and any response will be used for part 225's accident/incident reporting requirements;
- An explanation that the highway user is not required to respond and that an response is voluntary;
- An opportunity to correct incorrect information in Part I;
- Identify and provide contact information for a person at the railroad who can answer questions with regard to the form;
- Provide instructions on how to complete Part II; and,
- An explanation of how any medical records, if requested, personal identifying information or information will be handled.

The cover letter and Form FRA F 6180.150 are meant to be tools that allow the railroad to gather information and comply with Part 225's accident/incident reporting and recording requirements. As such, a railroad shall not require the highway user to provide any medical or personal information in order to report a casualty. Moreover, the cover letter and any communication for the purposes of Part 225 shall remain separate from and not reference the railroad's claims process in order to avoid confusion.

In 2008, there were 2,402 highway-rail grade crossing accidents, which resulted in 289 fatalities and 949 reportable injuries. Based on this agency data and that this form does not apply to fatalities, FRA estimates that approximately 950 FRA F 6180.150 forms will be sent out annually. Thus, approximately 950 forms and form cover letters will be sent out by railroads to potentially injured rail travelers. It is estimated that it will take railroads approximately 50 minutes to send the form and standardized cover letter and follow-up documentation (including that of any necessary phone calls. Total annual burden for this part of the requirement is 792 hours.

Respondent Universe:

		718
		Railroads
Burden time per response:		50
		minutes
Frequency of Response:		On occasion
Annual number of Responses:	950 cover letters/forms/records	
Annual Burden:	792 hours	

Calculation: 950 cover letters/records x 50 min. = 792 hours

Further, as noted above, FRA estimates that approximately 950 FRA F 6180.150 forms will be sent out annually. Of these 950 forms, approximately 70 percent will be completed and sent back to railroads. Consequently, approximately 665 forms will be completed each year. It is estimated that it will take approximately 45 minutes to complete the narrative portion of each form. Total annual burden for this requirement is 499 hours.

Respondent Universe:

		950
		Potentially Injured Individuals
Burden time per response:		45
		minutes
Frequency of Response:		On occasion
Annual number of Responses:	665 forms	
Annual Burden:	499 hours	

Calculation: 665 forms x 45 min. = 499 hours

Total annual burden for this entire requirement is 1,291 hours (792 + 499).

§ 225.23 - JOINT OPERATIONS (FORM FRA F 6180.55a)

(a) Any reportable death, injury, or illness of an employee arising from an accident/incident involving joint operations must be reported on Form FRA F 6180.55a by the employing railroad. Form FRA F 6180.55a must be used to report all reportable fatalities, injuries, and occupational illnesses that occurred during the preceding month.

(b) In all cases involving joint operations, each railroad must report on Form FRA 6180.55a the casualties to all persons on its train or other on-track equipment. Casualties to railroad employees must be reported by the employing railroad regardless of whether the employees were on or off duty. Casualties to all other persons not on trains or on-track equipment must be reported on Form FRA F 6180.55a by the railroad whose train or equipment is involved. Any person found unconscious or dead, if such condition arose from the operation of a railroad, on or adjacent to the premises or right-of-way of the railroad having track maintenance responsibility must be reported by that railroad on Form FRA F 6180.55a.

FRA believes that these reports would have already been filled-out and accounted for earlier under § 225.19C. Consequently, there is no burden associated with this requirement.

(c) In rail equipment accident/incident cases involving joint operations, the railroad responsible for carrying out repairs to, and maintenance of, the track on which the accident/incident occurred, and any other railroad directly involved in the accident/incident, each must report the accident/incident on Form FRA F 6180.54.

The burden for the above requirement is included under § 225.11.

§225.25 - RECORDKEEPING

(a.) Each railroad must maintain either the Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) or an alternative railroad-designed record as described in paragraph (b) of this section of all reportable and accountable injuries and illnesses of its employees for each railroad establishment where such employees report to work, including, but not limited to, an operating division, general office, and major installation, such as a locomotive or car repair or construction facility.

The burden for this requirement is already included under the various forms in § 225.21, specifically Form FRA F 6180.98. Consequently, there is no burden associated with this requirement.

(b.) The alternative railroad-designed record may be used in lieu of the Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) described in paragraph (a) of this section. Any such alternative record must contain all of the information required on the Railroad Employee Injury and/or Illness Record. Although this information may be

displayed in a different order from that on the Railroad Employee Injury and/or Illness Record, the order of the information must be consistent from one such record to another such record. The order chosen by the railroad must be consistent for each of the railroad's reporting establishments. Railroads may list additional information on the alternative record beyond the information required on the Railroad Employee Injury and/or Illness Record. The alternative record must contain, at a minimum, the following information: (1) Name of the railroad; (2) Case/incident number; (3) Full name of railroad employee; (4) Date of birth of railroad employee; (5) Gender of railroad employee; (6) Employee identification number; (7) Date the railroad employee was hired; (8) Home address of railroad employee; include the street address, city, State, Zip code, and home telephone number with area code; (9) Name of facility where the railroad employee normally reports to work; (10) Address of facility where railroad employee normally reports to work; include the street address, city, State, and Zip Code; (11) Job title of railroad employee; (12) Department assigned; (13) Specific site where accident/incident/exposure occurred, include the city, county, State, and Zip code; (14) Date and time of occurrence; military time or AM/PM; (15) Time employee's shift began; military time or AM/PM; (16) Whether employee was on premises when injury, illness, or condition occurred; (17) Whether employee was on or off duty; (18) Date and time when employee notified company personnel of condition; military time or AM/PM; (19) Name and title of railroad official notified; (20) Description of the general activity this employee was engaged in prior to the injury/illness/condition; (21) Description of all factors associated with the case that are pertinent to an understanding of how it occurred. Include a discussion of the sequence of events leading up to it; and the tools, machinery, processes, material, environmental conditions, etc., involved; (22) Description, in detail, of the injury/illness/condition that the employee sustained, including the body parts affected. If a recurrence, list the date of the last occurrence; (23) Identification of all persons and organizations used to evaluate or treat the condition, or both. Include the facility, provider and complete address; (24) Description of all procedures, medications, therapy, etc., used or recommended for the treatment of the condition; (25) Extent and outcome of injury or illness to show the following as applicable: (i) Fatality – enter date of death; (ii) Restricted work; number of days; beginning date; (iii) Occupational illness; date of initial diagnosis; (iv) Instructions to obtain prescription medication or receipt of prescription medication; (v) If one or more days away from work, provide the number of days away and the beginning date; (vi) Medical treatment beyond "first aid"; (vii) Hospitalization for treatment as an inpatient; (viii) Multiple treatments or therapy sessions; (ix) Loss of consciousness; (x) Transfer to another job or termination of employment; (xi) Significant injury or illness of a railroad employee; (xii) Needlestick or sharps injury to a railroad employee, medical removal of a railroad carrier employee, occupational hearing loss of a railroad employee, occupational tuberculosis of a railroad employee, or musculoskeletal disorder of a railroad employee which musculoskeletal disorder is reportable under one or more of the general reporting criteria; (26) Each railroad must indicate if the Railroad Injury and Illness Summary (Continuation Sheet) (Form FRA F 6180.55a) has been filed with FRA for the injury or illness. If FRA Form F 6180.55a was not filed with FRA, then the railroad must provide an explanation of the basis for its decision; (27) The reporting railroad must indicate if the

injured or ill railroad employee was provided an opportunity to review his or her file; and (28) The railroad shall identify the preparer's name; title; telephone number with area code; and the date the record was initially signed/completed.

The burden for this requirement is already included under the various forms in § 225.21 and § 225.19C. Consequently, there is no burden associated with this requirement.

(c.) Each railroad must provide the employee, upon request, a copy of either the completed Railroad Employee Injury and/or Illness Record (Form FRA F 6180.98) or the alternative railroad-designed record as described in paragraphs (a) and (b) of this section as well as a copy of forms or reports required to be maintained or filed under this part pertaining to that employee's own work-related injury or illness.

The burden for this requirement is already included under the various forms in § 225.21, § 225.19C, and various other requirements listed above. Consequently, there is no burden associated with this requirement.

(d.) Each railroad must maintain the Initial Rail Equipment Accident/Incident Record (Form FRA F 6180.97) or an alternative railroad-designed record as described in paragraph (e) of this section of reportable and accountable collisions, derailments, fires, explosions, acts of God, or other events involving the operation of railroad on-track equipment, signals, track, or track equipment (standing or moving) that result in damages to railroad on-track equipment, signals, track, track structures, or roadbed, including labor costs and all other costs for repairs or replacement in kind for each railroad establishment where workers report to work, including, but not limited to, an operating division, general office, and major installation such as a locomotive or car repair or construction facility.

The burden for this requirement is already included under that of the various forms listed in § 225.21. Consequently, there is no burden associated with this requirement.

(e.) The alternative railroad-designed record may be used in lieu of the Initial Rail Equipment Accident/Incident Record (Form FRA F 6180.97). Any such alternative record must contain all of the information required on the Initial Rail Equipment Accident/Incident Record. Although this information may be displayed in a different order from that on the Initial Rail Equipment Accident/Incident Record, the order of information must be consistent from one such record to another such record. The order chosen by the railroad must be consistent for each of the railroad's reporting establishments. Railroads may list additional information in the alternative record beyond the information required on the Initial Rail Equipment Accident/Incident Record.

The alternative record must contain, at a minimum, the following information: (1) Date and time of accident; (2) Reporting carrier, and accident/incident number; (3) Other railroad, if applicable, and other railroad's accident/incident number; (4) Railroad responsible for track

maintenance, and that railroad's incident number; (5) Type of accident/incident (derailment, collision, etc.); (6) Number of cars carrying hazardous materials that derailed or were damaged, and number of cars carrying hazardous materials that released product; (7) Division; (8) County and nearest city or town; (9) State; (10) Mileposts (to the nearest tenth); (11) Specific site; (12) Speed (indicate if actual or estimated); (13) Train number or job number; (14) Type of equipment (freight, passenger, yard switching, etc.); (15) Type of track (main, yard, siding, industry); (16) Total number of locomotives in train; (17) Total number of locomotives that derailed; (18) Total number of cars in train; (19) Total number of cars that derailed; (20) Total amount of damage in dollars to equipment based on computations as described in the "FRA Guide for Preparing Accident/Incident Reports"; (21) Total amount of damage in dollars to track, signal, way and structures based on computations as described in the "FRA Guide for Preparing Accident/Incident Reports"; (22) Primary cause; (23) Contributing cause; (24) Persons injured, persons killed, and employees with an occupational illness, broken down into the following classifications: worker on-duty – employee; employee not on duty; passenger on train; non-trespasser – on railroad property; trespasser; worker on-duty – contractor; contractor – other; worker on-duty – volunteer; volunteer – other; and non-trespasser – off railroad property; (25) Narrative description of the accident; (26) Whether the accident/incident was reported to FRA; (27) Preparer's name, title, telephone number with area code, and signature; and (28) Date the record was initially signed/completed.

The burden for this requirement is already included under the various forms listed in § 225.21. Consequently, there is no burden associated with this requirement.

(f.) Each railroad must enter each reportable and accountable injury and illness and each reportable and accountable rail equipment accident/incident on the appropriate record, as required by paragraphs (a) through (e) of this section, as early as practicable but no later than seven (7) working days after receiving information or acquiring knowledge of a claimed work-related injury or illness or knowledge that an injury or illness or rail equipment accident/incident has occurred.

The burden for this requirement is already included under the various forms listed in § 225.21, specifically Form FRA F 6180.98. Consequently, there is no burden associated with this requirement.

(g.) The records required under paragraphs (a) through (e) of this section may be maintained at the local establishment or, alternatively, at a centralized location. If the records are maintained at a centralized location, but not through electronic means, then a paper copy of the records that is current within 35 days of the month to which it applies must be available for that establishment. If the records are maintained at a centralized location through electronic means, then the records for that establishment must be available for review in a hard copy format within four (4) business hours of FRA's request. FRA recognizes that circumstances outside the railroad's control may preclude it from fulfilling the four-business-

hour time limit. In these circumstances, FRA will not assess a monetary penalty against the railroad for its failure to provide the requested documentation, provided the railroad made a reasonable effort to correct the problem.

The burden for this requirement is already included under the various forms listed in § 225.21, and other sections, as noted above. Consequently, there is no burden associated with this requirement.

(h.) Posting of Monthly Summary. Except as provided in paragraph (h)(15) of this section, a listing of all injuries and occupational illnesses reported to FRA as having occurred at an establishment must be posted in a conspicuous location at that establishment, within 30 days after the expiration of the month during which the injuries and illnesses occurred, if the establishment has been in continual operation for a minimum of 90 calendar days. If the establishment has not been in continual operation for a minimum of 90 calendar days, the listing of all injuries and occupational illnesses reported to FRA as having occurred at the establishment must be posted, within 30 days after the expiration of the month during which the injuries and illnesses occurred, in a conspicuous location at the next higher organizational level establishment, such as one of the following: an operating division headquarters; a major classification yard or terminal headquarters; a major equipment maintenance or repair installation, e.g., a locomotive or rail car repair or construction facility; a railroad signal and maintenance-of-way division headquarters; or a central location where track or signal maintenance employees are assigned as a headquarters or receive work assignments. These examples include facilities that are generally major facilities of a permanent nature where the railroad generally posts or disseminates company informational notices and policies, e.g., the policy statement in the internal control plan required by § 225.33 concerning harassment and intimidation. At a minimum, “establishment” posting is required and must include locations where a railroad reasonably expects its employees to report during a 12-month period and to have the opportunity to observe the posted list containing any reportable injuries or illnesses they have suffered during the applicable period. This listing must be posted and must remain continuously displayed for the next 12 consecutive months. Incidents reported for employees at that establishment must be displayed in date sequence.

The listing must contain, at a minimum, the information specified in paragraphs (h)(1) through (h)(14) of this section. (1) Name and address of the establishment; (2) Calendar year of the cases being displayed; (3) Incident number used to report case; (4) Date of the injury or illness; (5) Location of incident; (6) Regular job title of employee injured or ill; (7) Description of the injury or condition; (8) Number of days employee absent from work at time of posting; (9) Number of days of work restriction for employee at time of posting; (10) If fatality – enter date of death; (11) Annual average number of railroad employees reporting to this establishment; (12) Preparer’s name, title, telephone number with area code, and signature (or, in lieu of signing each establishment’s list of reportable injuries and illnesses, the railroad’s preparer of this monthly list may sign a cover sheet or memorandum

which contains a list of each railroad establishment for which a monthly list of reportable injuries and illnesses has been prepared. This cover memorandum must be signed by the preparer and must have attached to it a duplicate copy of each establishment's list of reportable injuries and illnesses. The preparer of the monthly lists of reportable injuries and illnesses must mail or send by facsimile each establishment's list to the establishment in the time frame prescribed in paragraph (h) of this section); and (13) Date the record was completed; (14) When there are no reportable injuries or occupational illnesses associated with an establishment for that month, the listing must make reference to this fact; (15) The railroad is permitted not to post information on an occupational injury or illness that is a privacy concern case.

There are 718 railroads required to post a monthly summary. A total then of 8,616 lists or summaries would be posted annually. FRA estimates that it will take approximately 16 minutes per report to meet this requirement (since this function is now done by computer). Total annual burden for this requirement is 2,298 hours.

Respondent Universe:		718
		railroads
Burden time per response:		16 minutes
Frequency of Response:		Monthly
Annual number of Responses:	8,616 monthly lists/summaries per year	
Annual Burden:	2,298 hours	

Calculation: 8,616 lists/summaries x 16 min. = 2,298 hours

(i.) Claimed Occupational Illnesses. (1) Each railroad may maintain a Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related," or an alternate railroad-designed record as described in paragraph (j) of this section, in place of a Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record," only for those claimed occupational illnesses for which the railroad has not received information sufficient to determine whether the occupational illness is work-related. (2) Each railroad must enter each illness claimed to be work related on the appropriate record, as required by paragraph (i)(1) of this section, as early as practicable, but no later than seven (7) working days after receiving information or acquiring knowledge that an employee is claiming he/she has incurred an occupational illness. (3) When a railroad does not receive information sufficient to determine whether a claimed occupational illness case is accountable or reportable, the railroad must make a good faith effort to obtain the necessary information by December 1 of the next calendar year. (4) Within 15 calendar days of receiving additional information regarding a claimed occupational illness case, each railroad must document receipt of the information, including date received and type of document/information received, in narrative

block 19 of Form FRA F 6180.107, “Alternative Record for Illnesses Claimed to be Work-Related.”(5) Within 45 calendar days of receiving additional information regarding a claimed occupational illness, each railroad must re-evaluate the claimed occupational illness to determine work-relatedness, taking into account the new information, and document any findings resulting from the re-evaluation in narrative block 19 of Form FRA F 6180.107, “Alternative Record for Illnesses Claimed to be Work-Related.” (6) For any claimed occupational illness case determined to be accountable or reportable, each railroad must: (i) Complete a Form FRA 6180.98, “Railroad Employee Injury and/or Illness Record” or alternative railroad-designed form within seven (7) days of making such determination; (ii) Retain the Form FRA F 6180.98, “Railroad Employee Injury and/or Illness Record,” in accordance with § 225.27; and (iii) Report the occupational illness, as applicable, in accordance with § 225.11. (7) For any claimed occupational illness case determined not to be accountable or reportable, each railroad must include the following information in narrative block 19 of Form FRA F 6180.107, “Alternative Record for Illnesses Claimed to be Work-Related” or alternative railroad-designed form: (i) Why the case does not meet reporting criteria; (ii) The basis upon which the railroad made this determination; and (iii) The most authoritative information the railroad relied upon to make the determination. (8) Although Form FRA F 6180.107, “Alternative Record for Illnesses Claimed to be Work-Related” (or the alternate railroad-designed form) may not include all supporting documentation, such as medical records, the alternative record must note the custodian of those documents and where the supporting documents are located so that they are readily accessible to FRA upon request.

The burden for this requirement is already included under the various forms listed in § 225.21, specifically under that of Forms FRA 6180.107 and FRA F 6180.98. Consequently, there is no burden associated with this requirement.

(j) An alternative railroad-designed record may be used in lieu of the Form FRA F 6180.107, “Alternative Record for Illnesses Claimed to be Work-Related.” Any such alternative record must contain all the information required on Form FRA F 6180.107. Although this information may be displayed in a different order from that on Form FRA F 6180.107, the order of the information must be consistent from one such record to another such record. The order chosen by the railroad must be consistent for all of the railroad’s reporting establishments. Railroads may list additional information in the alternative record beyond the information required on Form FRA F 6180.107. The alternative record must contain, at a minimum, the following information: (1) Name of Reporting Railroad; (2) Case/Incident Number; (3) Employee’s Name (first, middle, last); (4) Employee’s Date of Birth (mm/dd/yy); (5) Employee’s Gender; (6) Employee Identification Number; (7) Date Employee was Hired (mm/dd/yy); (8) Employee’s Home Address (include street address, city, State, and ZIP code); (9) Employee’s Home Telephone Number (with area code); (10) Name of Facility where Railroad Employee Normally Reports to Work; (11) Location, or Last Known Facility, where Employee Reports to Work; (12) Job Title of Railroad Employee; (13) Department to which Employee is assigned; (14) Date on which Employee or Representative Notified Company Personnel of Condition (mm/dd/yy); (15) Name of

Railroad Official Notified; (16) Title of Railroad Official Notified; (17) Nature of Claimed Illness; (18) Supporting Documentation; (19) Custodian of Documents (Name, Title, and Address); (20) Location of Supporting Documentation; (21) Narrative; (22) Preparer's Name; (23) Preparer's Title; (24) Preparer's Telephone Number (with area code); (25) Date the record was initially signed/completed (mm/dd/yy).

The burden for this requirement is already included under that of § 225.21 above. Consequently, there is no additional burden associate with this requirement.

The burden for this entire requirement then is 2,298 hours.

§225.27 - RETENTION OF RECORDS

(a)(1) Each railroad must retain the following forms for at least five years after the end of the calendar year to which they relate: (i) Form FRA F 6180.98, "Railroad Employee Injury and/or Illness Record;" (ii) Form FRA F 6180.107, "Alternative Record for Illnesses Claimed to be Work-Related;" (iii) Monthly List of Injuries and Illnesses required by § 225.25; and (iv) Form FRA F 6180.150, "Highway User Injury Inquiry Form." (**New Requirement**)

As noted above, FRA estimates that railroads will complete 18,900 Form 6180.98s and thus will keep them as a record to comply with the final rule's requirements. It is estimated that it will take approximately two (2) minutes to keep each record. Total annual burden for this requirement is 630 hours.

Respondent Universe:	718
	railroads

Burden time per response:	2
	minutes

Frequency of Response:	On occasion
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Annual number of Responses:	18,900 records
Annual Burden:	630 hours

Calculation: 18,900 forms x 2 min. = 630 hours

As noted above, FRA estimates that railroads will complete 300 Form 6180.107s and thus will keep them as a record to comply with the final rule's requirements. It is estimated that it will take approximately two (2) minutes to keep each record. Total annual burden for this

requirement is 10 hours.

Respondent Universe: 718
railroads

Burden time per response: 2
minutes

Frequency of Response: On occasion

Annual number of Responses: 300 forms/records
Annual Burden: 10 hours

Calculation: 300 forms x 2 min. = 10 hours

Further, as described above, FRA estimates that railroads will complete approximately 8,616 monthly lists of injuries/illnesses and thus will keep them as a record to comply with the final rule's requirements. It is estimated that it will take approximately two (2) minutes to keep each record. Total annual burden for this requirement is 288 hours.

Respondent Universe: 718
railroads

Burden time per response: 2
minutes

Frequency of Response: On occasion

Annual number of Responses: 8,616 records
Annual Burden: 288 hours

Calculation: 18,200 forms x 2 min. = 607 hours

(a)(2) Each railroad must retain the following forms for at least two years after the end of the calendar year to which they relate: (i) Form FRA F 6180.97, "Initial Rail Equipment Accident/Incident Record," required by § 225.25; (ii) The Employee Human Factor Attachments (Form FRA F 6180.81, "Employee Human Factor Attachment") required by

§ 225.12, that have been received by the railroad; (iii) The written notices to employees required by § 225.12 (Part I of Form FRA F 6180.78, “Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report”), that have been received by the railroad; and (iv) The Employee Statements Supplementing Railroad Accident Reports described in § 225.12(g) (Part II of Form FRA F 6180.78, “Notice to Railroad Employee Involved in Rail Equipment Accident/Incident Attributed to Employee Human Factor; Employee Statement Supplementing Railroad Accident Report”), that have been received by the railroad. **(New Requirement)**

Additionally, as stipulated above, FRA estimates that railroads will complete approximately 18,200 FRA F 6180.97 forms annually and thus will keep them as a record to comply with the final rule’s requirements. It is estimated that it will take approximately two (2) minutes to keep each record. Total annual burden for this requirement is 607 hours.

Respondent Universe:	718
	railroads

Burden time per response:	2
	minutes

Frequency of Response:	On occasion
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Annual number of Responses:	18,200 forms/records
Annual Burden:	607 hours

Calculation: 18,200 forms x 2 min. = 607 hours

Based on the estimates provided above under § 225.12, approximately 2,675 copies of the Employee Human Factor Attachments required by § 225.12, the written notices to employees required by § 225.12, and the Employee Statements Supplementing Railroad Accident Reports described in § 225.12(g) Alternative Record for Illnesses Claimed to be Work-Related or the alternate railroad-designed form will be kept annually by railroads under the above requirement. Since 90% of these records are kept electronically, it is estimated that it will take approximately two (2) minutes to make and file each copy. Total annual burden for this requirement is 89 hours.

Respondent Universe:	718
	railroads

Burden time per response:	2 minutes
Frequency of Response:	Annually
Annual number of Responses:	2,675 records
Annual Burden:	89 hours

Calculation: 2,695 records x 2 min. = 89 hours

(c) Each railroad must retain the original hard copy of each completed and signed Form FRA F 6180.55, "Railroad Injury and Illness Summary," that the railroad submits to FRA on optical media (CD-ROM) or electronically via the Internet to aireports@frasafety.net for at least five (5) years after the calendar year to which it relates. If the railroad opts to submit the report to FRA electronically via the Internet, the railroad must also retain a hard copy print out of FRA's electronic notice acknowledging receipt of the railroad's submission for a period of five (5) years after the calendar year to which the report acknowledged relates.

(d) Railroads may retain accident/incident records as required by paragraphs (a) and (b) of this section in hard copy format or in electronic format. After October 31, 2011, accident/incident records, retained by railroads as required by paragraphs (a) and (b) of this section, in hard copy format or electronic format are subject to the following system requirements:

(1) *Design Requirements.* Any electronic record keeping system used to retain a record required to be retained by this Part must meet the following design parameters: (i) The electronic record system must be designed such that the integrity of each record is retained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons shall have the same electronic identity; (ii) The electronic system must ensure that each record cannot be modified, or replaced, once the record is submitted to FRA; (iii) Any amendment to a record must be electronically stored apart from the record which it amends. Each amendment to a record must uniquely identify the person making the amendment and the date the amendment was made; (iv) The electronic system must provide for the maintenance of reports as originally submitted to FRA without corruption or loss of data; and (v) Policies and procedures must be in place to prevent persons from altering electronic records, or otherwise interfering with the electronic system.

(2) *Accessibility and Availability.* Any electronic record system used to create, maintain, or transfer a record required to be maintained by this Part must meet the following access and availability parameters: (i) Paper copies of electronic records and amendments to those records that may be necessary to document compliance with this Part must be provided to any representative of FRA or of a State agency participating in investigative and/or surveillance activities under Part 212 of this chapter or any other authorized representative for inspection and photocopying upon request in accordance with § 225.35; and (ii) Paper

copies provided to FRA or of a State agency participating in investigative and/or surveillance activities under Part 212 of this chapter or any other authorized representative must be produced in a readable text format and all data must be identified by narrative descriptions (e.g., “accident/incident number,” “number of days away from work,” “date of occurrence,” etc.).

FRA believes that 18 railroads may be affected by the above requirements. These railroads will be impacted to the extent that they are already storing records electronically using systems that do not meet the above standards. FRA estimates that it will take approximately 120 hours per railroad to make any necessary changes to its electronic recordkeeping system. Total annual burden for this requirement is 2,160 hours.

Respondent Universe:

		18
		rail
		roads
Burden time per response:		120
		hours
Frequency of Response:		One-time
Annual number of Responses:	18 modified electronic recordkeeping systems	
Annual Burden:	2,160 hours	

Calculation: 18 modified electronic recordkeeping systems x 120 hrs. = 2,160 hours

Total annual burden for this entire requirement is 3,784 hours (630 + 10 + 288 + 607 + 89 + 2,160).

§ 225.33 - INTERNAL CONTROL PLANS

Each railroad must adopt and comply with a written Internal Control Plan that shall be maintained at the office where the railroad’s reporting officer conducts his or her official business. Each railroad must amend its Internal Control Plan, as necessary, to reflect any significant changes to the railroad’s internal reporting procedures. The Internal Control Plan must be designed to maintain absolute accuracy and must include, at a minimum, each of the following components:

- 1) A policy statement declaring the railroad’s commitment to complete and accurate reporting of all accidents, incidents, injuries, and occupational illnesses arising from the operation of the railroad, to full compliance with the letter and spirit of FRA’s accident reporting regulations, and to the principle, in absolute terms, that harassment

or intimidation of any person that is calculated to discourage or prevent such person from receiving proper medical treatment or from reporting such accident, incident, injury or illness will not be permitted or tolerated and will result in some stated disciplinary action against any employee, supervisor, manager, or officer of the railroad committing such harassment or intimidation.

- (2) *The dissemination of the policy statement; complaint procedures.* Each railroad must provide to all employees, supervisory personnel, and management the policy statement described in paragraph (a)(1) (of this section). Each railroad must have procedures to process complaints from any person about the policy stated in paragraph (a)(1) being violated, and to impose the appropriate prescribed disciplinary actions on each employee, supervisor, manager, or officer of the railroad found to have violated the policy. These procedures must be disclosed to railroad employees, supervisors, managers, and officers. The railroad must provide “whistle blower” protection to any person subject to this policy, and such policy must be disclosed to all railroad employees, supervisors, and management.
- (3) Copies of internal forms and/or a description of the internal computer reporting system used for the collection and internal recording of accident and incident information.
- (4) A description of the internal procedures used by the railroad for the processing of forms and/or computerized data regarding accident and incident information.
- (5) A description of the internal review procedures applicable to accident and incident information collected, and reports prepared by, the railroad’s safety, claims, medical and/or other departments engaged in collecting and reporting accident and incident information.
- (6) A description of the internal procedures used for collecting cost data and compiling costs with respect to accident and incident information.
- (7) A description of applicable internal procedures for ensuring adequate communication between the railroad department responsible for submitting accident and incident reports to FRA and any other department within the railroad responsible for collecting, receiving, processing and reporting accidents and incidents.
- (8) A statement of applicable procedures providing for the updating of accident and incident information prior to reporting to FRA and a statement of applicable procedures providing for the amendment of accident and incident information as specified in “the FRA Guide for Preparing Accident/Incident Reports.”
- (9) A statement that specifies the name and title of the railroad officer responsible

for auditing the performance of the reporting function; a statement of the frequency (not less than once per calendar year) with which audits are conducted; and identification of the site where the most recent audit report may be found for inspection and photocopying.

(10)(i) A brief description of the railroad organization, including identification of:

(A) All components that regularly come into possession of information pertinent to the preparation of reports under this part (e.g., medical, claims, and legal departments; operating, mechanical, and track and structures departments; payroll, accounting, and personnel departments);

(B) The title of each railroad reporting officer;

(C) The title of each manager of such components, by component; and

(D) All officers to whom managers of such components are responsible, by component.

(ii) A current organization chart satisfies paragraphs (a)(10)(i)(B), (C) and (D) of this section.

(11) In the case of Form FRA F 6180.107 or the alternate railroad-designed form, a statement that specifies the name(s), title(s), and address(es) of the custodian(s) of these records, all supporting documentation, such as medical records, and where the documents are located.

At the request of Congress, the General Accounting Office (GAO) did a study to determine whether FRA's safety programs were adequate to protect railroad workers and the general public from injuries associated with train accidents. The GAO report (GAO/RCED-89-109) found that there was under reporting and inaccurate reporting of injury and accident data for 1987 (by the railroads audited). The GAO recommended that FRA require railroads to establish injury and accident reporting internal control procedures. In addition, the GAO recommended that FRA periodically review railroad internal control procedures and then use its enforcement authority to cite railroads for procedural deficiencies when inaccurate reporting is found and the cause can be attributed to internal control weakness. FRA's review of the accident/incident reporting supports the GAO findings that errors in reporting resulted primarily from the lack of internal control procedures within the railroads. Railroads with specific internal control procedures in place had far more accurate reporting records. FRA also found that most non-reporting or inaccurate reporting was due to a communication breakdown between the claims department, which maintained medical records, and the other railroad departments, e.g., operating, mechanical, and maintenance-of-way.

Each railroad subject to this requirement must also identify the location(s) where any representative of FRA, or of a State agency participating in investigative and surveillance activities under 49 CFR 212 or any other authorized representative has centralized access to all records and reports (including relevant claims and medical records) required under this information collection requirement, for examination and photocopying in a reasonable manner during normal business hours. FRA is assuming that this requirement will be part of the Internal Control Plan.

The burden for establishing Internal Control Plans is a one-time requirement which has already been fulfilled. Also, it should be noted that new railroads just starting up are invariably small railroads and generally have 15 or fewer employees, and are therefore exempted. Consequently, there is no burden associated with this requirement.

FRA has exempted railroads (433) that operate or own track on the general railroad system of transportation (general system) that have 15 or fewer employees covered by the Federal Hours of Service Laws and railroads that operate or own track exclusively off the general system from the requirements regarding an Internal Control Plan delineated in §225.33(a)(3) through (a)(11). However, these exempted railroads must adopt and comply with the intimidation and harassment policies outlined in §§ 225.33(a)(1) and 225.33(a)(2). FRA has developed model statements of policy on intimidation and harassment to be posted by these exempted railroads.

The burden for this requirement is also one-time requirement and has already been fulfilled. Consequently, there is no burden associated with this requirement.

Amendments to Internal Control Plan

It is estimated that a total of approximately 25 amendments to Internal Control Plans will be made annually by small railroads. It is estimated that it will take approximately 14 hours per amendment to complete each amendment. Total annual burden for this information collection requirement is 350 hours.

Respondent Universe:	718 railroads
Burden time per response:	14 hours
Frequency of Response:	On occasion
Annual number of Responses:	25 amendments

Subsequent Years Burden: 350 hours
Calculation: 25 amendments x 14 hrs. = 350 hours

Total annual burden for the entire requirement is 350 hours.

225.35 - ACCESS TO RECORDS AND REPORTS

Each railroad subject to this section must have at least one location, and must identify each location, where any representative of the Federal Railroad Administration or of a State agency participating in investigative and surveillance activities under Part 212 of this chapter or any other authorized representative, has centralized access to a copy of any record and report required under this part, for examination and photocopying in a reasonable manner during normal business hours.

Each railroad subject to this Part must also provide to any representative of the Federal Railroad Administration or of a State agency participating in investigative and surveillance activities under Part 212 of this chapter or any other authorized representative access to relevant medical and claims records for examination and photocopying in a reasonable manner during normal business hours. Such representatives must display proper credentials when requested. Each railroad must identify the locations where a copy of any record and report required under this Part is accessible for inspection and photocopying by maintaining a list of such establishment locations at the office where the railroad's reporting officer conducts his or her official business. A copy of any record and report required under this Part must be accessible within four (4) business hours after the request. The Form FRA F 6180.107 or the alternate railroad-designed form need not be provided at any railroad establishment within four (4) hours of a request. Rather, the Form FRA F 6180.107 or the alternate railroad-designed form must be provided upon request, within five (5) business days, and may be kept at a central location, in either paper or electronic format.

FRA will not assess a monetary penalty against the railroad for its failure to provide the requested documentation when circumstances outside the railroad's control preclude it from fulfilling the four-business-hour time limit and the railroad has made a reasonable effort to correct the problem. Should a railroad assert a legal privilege with respect to certain claims and medical records, failure to provide FRA access to such records would not constitute a violation of this section. FRA retains the right to issue a subpoena to obtain such records under 49 U.S.C. §§ 20107 and 20902 and §§ 209.7(a) and 225.31(b) of this title, and the railroad may contest that subpoena.

FRA estimates that approximately 400 lists of establishments with the necessary information will be kept by railroads under the above requirement. It is estimated that it will take each railroad approximately 20 minutes to complete the required list. Total annual burden for this requirement is 133 hours.

Respondent Universe: 15
railroads

Burden time per response: 20
minutes

Frequency of Response: On occasion

Annual number of Responses: 400 lists
Subsequent Years Burden: 133 hours

Calculation: 400 plans x 20 min. = 133 hours

Subsequent Years

FRA estimates that approximately 16 lists of establishments will be updated annually in subsequent years. It is estimated that it will take each railroad approximately 20 minutes to update its required list. Total annual burden for this requirement is five (5) hours.

Respondent Universe: 4
railroads

Burden time per response: 20
minutes

Frequency of Response: On occasion

Annual number of Responses: 16 lists
Subsequent Years Burden: 5 hours

Calculation: 16 lists x 20 min. = 5 hours

Total annual burden for this entire requirement is 138 hours (133 + 5).

§ 225. 37 - OPTICAL MEDIA TRANSFER AND ELECTRONIC SUBMISSION

(a) A railroad has the option of submitting the following reports, updates, and amendments by way of optical media (CD-ROM), or by means of electronic submission via the Internet: (1) The Rail Equipment Accident/Incident Form (Form FRA F 6180.54); (2) The Rail Injury and Illness Summary (Form FRA F 6180.55); (3) The Rail Injury and Illness Summary (Continuation Sheet) (Form FRA F 6180.55a); (4) The Highway-Rail Grade Crossing Accident/Incident Report (Form FRA F 6180.57); and (5) The Employee Human Factor Attachment (Form FRA F 6180.81) (the Employee Human Factor Attachment must be in .pdf or .jpg format only).

FRA estimates that approximately eight (8) railroads yearly will opt to use optical media in submitting these monthly reports to FRA. FRA estimates a total of 200 transfers annually will be submitted. It is estimated that it will take each railroad approximately three (3) minutes to complete each optical media transfer. Total annual burden for this requirement is 10 hours.

Respondents:	8 railroads
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Burden time per response:	3 minutes
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Frequency of Response:	Monthly
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Annual number of Responses:	200 optical media transfers
Annual Burden:	10 hours

Calculation: 200 optical media transfers x 3 min. = 10 hours

(b) Each railroad utilizing the optical media option must submit to FRA a computer CD-ROM containing the following: (1) An electronic image of the completed and signed hard copy of the Railroad Injury and Illness Summary (Form FRA F 6180.55) in .pdf or .jpg format only; (2) The completed accident/incident report submissions.

(c)(1) Each railroad utilizing the electronic submission via the Internet option must submit to FRA at aireports@frasafety.net: (i) An electronic image of the completed and signed hard copy of the Railroad Injury and Illness Summary (Form FRA F 6180.55) in .pdf or .jpg format only; and (ii) The completed accident/incident report submissions.

(2) FRA will provide to the railroad an electronic notice acknowledging receipt of

submissions filed electronically via the Internet.

FRA estimates that the agency will receive approximately 2,400 electronic submissions annually (200 per month) under the above requirements. It is estimated that it will take approximately three (3) minutes to complete each submission. Total annual burden for this requirement is 120 hours.

Respondents:	718 railroads
Burden time per response:	3 minutes

Frequency of Response:	Annually
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Annual number of Responses:	2,400 electronic submissions
Annual Burden:	120 hours

Calculation: 2,400 electronic submissions x 3 min. = 120 hours

(d) Each railroad employing either the optical media or electronic submission via the Internet option must submit its monthly reporting data for the reports identified in paragraph (a) of this section in a year-to-date file format as described in the FRA Guide.

The burden for this requirement is already included in that of § 225.37(a)(b), and (c) above. Consequently, there is no additional burden associated with this requirement.

(e) (e) A railroad choosing to use optical media or electronic submission via the internet must use one of the approved formats specified in the Companion Guide. FRA will reject submissions that do not adhere to the required formats, which may result in the issuance of one or more civil penalty assessments against a railroad for failing to provide timely submissions of required reports as required by § 225.11.

The burden for this requirement is already included in that of § 225.37(a)(b), and (c) above. Consequently, there is no additional burden associated with this requirement.

The total burden for this entire requirement is 130 hours (10 + 120).

§ 225. 41 - SUICIDE DATA

FRA does not include suicide data (as defined in § 225.5) in its periodic summaries of data on the number of injuries and illnesses associated with railroad operations. FRA will maintain suicide data in a database that is not publicly accessible. Suicide data will not be available on FRA's Website for individual reports or downloads. Suicide data will be available to the public in aggregate format on FRA's Website and via requests under the Freedom of Information Act.

The burden for suicide data is included under that of Forms FRA F 6180.55a, FRA F 6180.78, FRA F6180.81, FRA F6180.97, and FRA F 6180.98. Consequently, there is no additional or other burden associated with this requirement.

Also, please note, under the revised requirements stipulated in Chapter 6 of the updated FRA Guide, railroads are required to make an effort to obtain confirmation of a suicide/attempted suicide from a coroner, public police officer, or other public authority. When receiving verbal confirmation of a suicide or attempted suicide, a railroad must create an audit trail of that confirmation so that FRA can independently verify and confirm the determination. Thus, railroads must document the date and time of the confirmation as well as the name, title, address, and phone number of the person who determined the cause of the injury or death. This burden is also included under the burden for suicide data associated with Forms FRA F 6180.55a, FRA F 6180.78, FRA F6180.81, FRA F6180.97, and FRA F 6180.98. Consequently, there is no additional or other burden associated with this confirmation requirement.

The total burden for this entire information collection is 59,432 hours.

13. Estimate of total annual costs to respondents.

As noted in the regulatory impact analysis accompanying this final rule, additional costs to respondents include those related to complying with FRA's standards for electronic recordkeeping systems. Upon review, FRA believes that 18 railroads will be affected. Conforming electronic recordkeeping systems will involve a one-time cost. FRA estimates that the time required to build an archive subroutine and make any additional changes necessary to comply with the electronic recordkeeping requirements, including testing and documenting, would average 120 hours per system. FRA estimates that the cost of a journeyman programmer is \$100 per hour (including fringe benefits). Thus, the cost would be \$12,000 per affected railroad. For the 18 estimated railroads that will need to modify their electronic recordkeeping systems to be compliant with this final rule, the total additional costs would be \$216,000.

Calculation: 18 electronic recordkeeping systems x \$12,000 = \$216,000

TOTAL COST = \$216,000

14. Estimate of Cost to Federal Government.

I. Accident/Incident Report Generator (AIRG) Software

FRA provides free software called the Accident/Incident Report Generator (AIRG) to railroads to allow them to do their Federally required accident/incident reporting on a personal computer. This software allows railroads to send a CD-ROM or to transmit the information via the Internet. FRA estimates the final changes will cost the agency approximately \$70,000 for the AIRG and FRA's database revisions necessary to meet the requirements of this final rule. FRA will send a free, updated, or new version of the AIRG software to any railroad that requests it.

Cost = \$70,000

II. Development of FRA Websites to Display New Aggregate Suicide Data

FRA estimates the cost to develop the Websites at approximately \$10,000. The cost to FRA for maintaining these sites will be nominal.

Cost = \$10,000

III. Revised FRA Guide and Revised FRA Forms

FRA provides each reporting railroad with copies of the FRA Guide in hard copy and electronically on CD-ROM. Additionally, FRA's Guide is available from the agency Website. The FRA Guide is intended to assist railroad in reporting, and contains additional definitions, clarification interpretations, instructions, etc. Historically, FRA has printed a new or revised FRA Guide with pertinent changes every few years. FRA has not published a new edition of the FRA Guide since 2003, when the FRA Guide was, for the first time, subject to the notice and comment process. The proposed FRA Guide for this rulemaking was also published for notice and comment, and revisions to the FRA Guide are included in the final rulemaking. FRA estimates the cost of revising the FRA Guide and revisions to FRA's forms is approximately \$40,000.

Cost = \$40,000

IV. FRA Companion Guide

FRA's Companion Guide, like the FRA Guide, must also be revised as a result of this final rulemaking. Copies are available in hard copy. The Companion Guide is also accessible from the agency Website. The Companion Guide is intended to assist railroads in electronically submitting monthly reports to FRA. FRA estimates the cost of revising the Companion Guide is approximately \$30,000.

Cost = \$30,000

TOTAL COST = \$150,000

15. Explanation of program changes and adjustments.

The burden for this information collection has increased by *11,911 hours*. The increase in hours is due to both to **program changes** and **adjustments**. Specifically, the following **program changes – all associated with this final rulemaking** -- resulted in an *increase* in burden:

(1.) Under new § 225.6, Consolidated Reporting, there are three new requirements concerning consolidated reporting. This **program change** *increased* the burden by *170 hours*.

(2.) Under new § 225.19(d), Death, Injury, and Occupational Illness Accident/Incident Report (Form FRA F 6180.55a), there is a new requirement to report suicide/attempted suicide data on this form. Consequently, this **program change** *increased* the number of forms completed (from 12,000 to 12,638) and *increased* the burden by *912 hours* (from 4,000 hours to 4,912 hours).

(3.) Under new § 225.21, Forms, there is a new requirement to complete a narrative regarding suicide/attempted suicide on Form FRA F 6180.97. FRA estimates that one form will be completed. This **program change** *increased* the burden by *one (1) hour*.

(4.) Under new § 225.21, Forms, there is a new requirement that railroads must send new form FRA F 6180.150, along with a cover letter, to be completed by every potentially injured highway user involved in highway-rail grade crossing accident/incident. This **program change** *increased* the burden by *792 hours*.

(5.) Under new § 225.21, Forms, there is a new provision that new Form FRA F 6180.150 is to be returned by highway users who are injured in a highway-rail grade crossing accident/incident. This **program change** *increased* the burden by *499 hours*.

(6.) Under new § 225.27, Retention of Records, there is a new record retention requirement concerning Form FRA F 6180.98. FRA estimates that approximately 18,900 records will be kept regarding this form. This **program change** *increased* the burden by *630 hours*.

(7.) Under new § 225.27, Retention of Records, there is a new record retention requirement concerning Form FRA F 6180.107. FRA estimates that approximately 300 records will be kept regarding this form. This **program change** *increased* the burden by *10 hours*.

(8.) Under new § 225.27, Retention of Records, there is a new record retention requirement

concerning the monthly list of employee injuries and illnesses. FRA estimates that approximately 8,616 records will be kept regarding these lists. This **program change** *increased* the burden by *288 hours*.

(9.) Under new § 225.27, Retention of Records, there is a new record retention requirement concerning Form FRA F 6180.97. FRA estimates that approximately 18,200 records will be kept regarding this form. This **program change** *increased* the burden by *607 hours*.

(10.) Under new § 225.27, Retention of Records, there is a new requirement concerning the use of electronic recordkeeping systems by railroads. FRA estimates that approximately 18 railroads would need to modify their electronic recordkeeping systems. This **program change** *increased* the burden by *2,160 hours*.

Thus, total burden *increases* resulting from **program changes** amount to *6,069 hours*.

Based on the latest available agency data, there were also **adjustments to estimates provided in the last approves submission for various rule requirements**. The following adjustments resulted in burden *increases*:

(1.) Under § 225.9, Telephone Reports of Certain Accident/Incidents and Other Events, FRA *increased* its estimate of the number of phone reports that will be completed each year (from 500 to 3,300). This change in estimate *increased* the burden by *700 hours* (from 125 hours to 825 hours).

(2.) Under § 225.11, Reporting of Rail Equipment Accident/Incidents, FRA *increased* its estimate of the number of monthly accident/incident reports that it will be completed annually (from 3,000 to 3,600). This change in estimate *increased* the burden by *1,200 hours* (from 6,000 hours to 7,200 hours).

(3.) Under § 225.12a, Rail Equipment Accident/Incident Reporting Alleging Human Factor as a Cause, FRA *increased* its estimate of the number of accident/incident reports alleging human factors (Form FRA F 6180.81) that it will be completed (from 1,400 to 1,600). This change in estimate *increased* the burden by *50 hours* (from 350 hours to 400 hours).

(4.) Under § 225.13A, Late Reports, FRA *increased* its estimate of the number of late/amended reports that it will be completed (from zero (0) to 25). This change in estimate *increased* the burden by *25 hours* (from zero (0) hours to 25 hours).

(5.) Under § 225.21, Forms, FRA *increased* its estimate of the number of forms that will be filled-out each year (Form FRA F 6180.55) (from 8,220 to 8,616). This change in estimate *increased* the burden by *66 hours* (from 1,370 hours to 1,436 hours).

(6.) Under § 225.21, Forms, FRA *increased* its estimate of the number of forms filled out annually (Form FRA F 6180.56) (from 685 to 718). This change in estimate *increased* the burden by *nine (9) hours* (from 171 hours to 180 hours).

(7.) Under § 225.21, Forms, FRA *increased* its estimate of the number of form copies of Form FRA F 6180.98 that will be filled-out annually (from 18,000 a year to 18,900). This change in estimate *increased* the burden by *900 hours* (from 18,000 hours to 18,900 hours).

(8.) Under § 225.21, Forms, FRA *increased* its estimate of the number of copies of Form FRA F 6180.98 that will be requested by employees each year (from 540 to 567). This change in estimate *increased* the burden by *one (1) hour* (from 18 hours to 19 hours).

(9.) Under § 225.21, Forms, FRA *increased* its estimate of the number of forms filled out (Form FRA F 6180.97) (from 13,000 a year to 18,200 per year). This change in estimate *increased* the burden by *2,600 hours* (from 6,500 hours to 9,100 hours).

(10.) Under § 225.21, Forms, although there was no change in the number of forms filled out (Form FRA F 6180.107), FRA *increased* the average time to complete each form (from 15 minutes to 75 minutes). This change in estimate *increased* the burden by *300 hours* (from 75 hours to 375 hours).

(11.) Under § 225.25(h), Posting of Monthly Summary, FRA *increased* its estimate of the number of monthly summaries posted annually (from 8,220 to 8,616). This change in estimate *increased* the burden by *106 hours* (from 2,192 hours to 2,298 hours).

(12.) Under §§ 225.27, Retention of Records, FRA *increased* the number of records kept each year relating to copies of the Employee Human Factor attachments required by § 225.12, the written notices required by § 225.12, and the Employee Statements Supplementary Railroad Accident Report under § 225.12 (from 1,900 to 2,675). This change in estimate *increased* the burden by *26 hours* (from 63 hours to 89 hours).

(13.) Under §§ 225.37(b), FRA *increased* its estimate of the number of electronic submissions sent to FRA (from 200 forms to 2,400). This change in estimate *increased* the burden by *110 hours* (from 10 hours to 120 hours).

Total burden *increases* resulting from adjustments amount to *6,093 hours*.

There were also **adjustments** which resulted in burden *decreases*. The following revised estimates resulted in *decreases*:

(1.) Under § 225.12(b), Rail Equipment Accident/Incident Reporting Alleging Human Factor as a Cause, FRA *decreased* its estimate of the number of copies made of Form FRA F 6180.78 (from 100 to 10). This change in estimate *decreased* the burden by *five (5) hours*

(from 372 hours to 367 hours).

(2.) Under § 225.19(a), Rail-Highway Grade Crossing Accident/Incident Report, FRA decreased its estimate of the number of forms (FRA F 6180.57) that will be completed each year (from 3,000 to 2,880). This change in estimate *decreased* the burden by *240 hours* (from 6,000 hours to 5,760 hours).

(3.) Under § 225.37(a), Optical Media Transfer and Electronic Submission, although FRA increased its estimate of the number of optical media transfers it would receive (from 96 to 200), it decreased the average time that it would take to submit them (from 10 minutes to three (3) minutes). This change in estimate *decreased* the burden by *six (6) hours* (from 16 hours to 10 hours).

Total burden *decreases* resulting from adjustments amount to *251 hours*.

Overall then, **adjustments** *increased* the burden by *5,842 hours*.

Total burden *increases* then amounted to *12,162 hours*, while total burden *decreases* amounted to *251 hours*. The current burden for this collection of information listed in OMB's inventory shows *47,521 hours*, while the total burden for this renewal submission amounts to *59,432 hours*. Hence, there is an increase of *11,911 hours*.

The burden cost to respondents has increased by \$40,500 from the last approved submission. As noted in the final rule, notarization of documents (i.e., Form FRA F 6180.55) is no longer required and so this expense has been eliminated. The increase in cost is due to a **program change** concerning the modification of electronic recordkeeping systems by railroads. (*Note: The current OMB inventory has the cost to respondents listed at \$178,286. However, as listed in the last approved Supporting Justification, the actual/correct number is \$175,500.*)

16. Publication of results of data collection.

Summaries of railroad accidents have been published each year since enactment of the Reports Act in 1910. FRA currently prepares and distributes an annual publication summarizing the information collected under the requirements of 49 CFR 225. This publication is titled *Railroad Safety Statistics*. This publication is a summary of the accident/incident experience in a calendar year. Work on this publication begins in May following keypunching and verification of the December reports, and requires approximately 30 days to complete. This publication is available both on-line and in print (book form).

17. Approval for not displaying the expiration date for OMB approval.

Once OMB approval is received, FRA will publish the approval number for these

information collection requirements in the Federal Register.

18. Exception to certification statement.

No exceptions are taken at this time.

Meeting Department of Transportation (DOT) Strategic Goals

This information collection supports the top DOT strategic goal, namely transportation safety. Without this collection of information, rail safety in the U.S. would be seriously hampered. To be effective, a safety program requires timely information. It is essential that FRA have the latest available data so that it can study the causes and the frequency of accidents/incidents, and institute appropriate measures – in cooperation with the nation’s railroads – to reduce the likelihood of recurrences of these unfortunate events. Collecting

this information allows FRA and the railroads to ascertain the current state of the rail industry – at any given time – and to determine whether accidents/incidents are isolated events, or are indicative of a systemic problem. It is especially important that FRA and the railroads know whether an accident/incident resulted from human error, mechanical defect, environmental conditions, failure to properly follow Federal laws/regulations or internal railroad practices and operating rules, or some combination of these factors. Timely information enables FRA and the railroads to implement prompt, appropriate, and necessary safety measures. The information provided by this collection is an invaluable and constant resource that can be used by FRA, State and local transportation officials, the railroads, and other organizations/entities interested in rail safety to improve the day-to-day rail environment and to reduce the number of rail-related deaths, and the number and severity of injuries to railroad employees, railroad contractors, the traveling public and others working on or living near the rail environment and to mitigate the damage to property and the environment caused by accidents/incidents involving trains carrying hazardous materials.

In sum, this collection of information helps FRA to fulfill its mission, which is to promote and enhance rail safety throughout the United States. As always, FRA seeks to do its utmost to fulfill DOT Strategic Goals and to be an integral part of One DOT.