ROADWAY WORKER PROTECTION
49 CFR 214
RIN 2130-AB89; OMB No. 2130-0539

Summary of Submission

- The collection of information entirely associated with this Final Rule is a revision to the previous three year approval granted by OMB on **January 23, 2015**, and which expires on **January 31, 2018**.

- On **August 20, 2012**, FRA published a Proposed Rule in the **Federal Register** titled Railroad Workplace Safety; Roadway Worker Protection Miscellaneous Revisions (RRR) to amend its regulations on railroad workplace safety to resolve interpretative issues that have arisen since the 996 promulgation of the original Roadway Worker Protection (RWP) regulation. See 77 FR 50324. FRA submitted the required information collection request associated with this NPRM on the same day that the Proposed Rule was published in the **Federal Register**.

- FRA is publishing the Final Rule titled Railroad Workplace Safety; Roadway Worker Protection Miscellaneous Revisions (RRR) in the **Federal Register** on **June 10, 2016**. See 81 FR 37840.

- Total number of **hours previously approved** by OMB for this collection is **845,230 hours** and total number of **responses previously approved** is **22,816,613**.

- Total number of burden **hours requested** is **864,523 hours** (and the total number of **responses requested** is **25,078,191**). Thus, the total burden for this collection has increased by **19,293 hours**.

- The total number of responses from the previously approved submission has increased by **2,261,578**.

- **Program changes** from the previously approved collection of information amount to/increased the burden by **17,095 hours**.

- **Adjustments** from the previously approved collection of information amount to/increased the burden by **2,198 hours**.

- **The answer to question **number 12** itemizes the hourly burden associated with each requirement of this rule (See pp. 31-81). *** Also, please see pp. 85-86 below for a detailed explanation of a very significant decrease in cost to respondents.

- **The answer to question **number 15** itemizes program changes and adjustments associated with this final rule (See pp. 82-87).

1. Circumstances that make collection of the information necessary.

The Federal Railroad Safety Act of 1970, as codified at 49 U.S.C. 20103, provides 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's responsibility under this provision and the balance of the railroad safety laws have been delegated to the Federal Railroad Administrator (FRA). 49 CFR 1.49(m). In the field of railroad workplace safety, FRA has traditionally pursued a very conservative course of regulation, relying upon the industry to implement suitable railroad safety rules and mandating in the broadest of ways that employees be "instructed" in the requirements of those rules and that railroads create and administer programs of operational tests and inspections to verify rules compliance. This approach is based on several factors, including recognition of the strong interest of railroads in avoiding costly accidents and personal injuries, the limited resources available to FRA to directly enforce railroad safety rules, and the apparent success of management and employees in accomplishing most work in a safe manner.

Over the years, however, it became necessary to codify certain requirements, either to remedy perceived shortcomings in the railroads' rules to emphasize the importance of compliance, or to provide FRA a more direct means of promoting compliance. These actions, which in many cases were preceded or followed by statutory mandates, included adoption of rules governing:

- Bridge Worker Safety Standards (49 CFR part 214 subpart B);
- Roadway Worker Protection (49 CFR part 214 subpart C); and
- On-Track Roadway Maintenance Machines and Hi-Rail Vehicles (49 CFR part 214 subpart D).

In 1990, FRA received a petition to amend its track safety standards from the Brotherhood of Maintenance of Way Employees Division (BMWED), which included issues pertaining to the hazards faced by roadway workers. Subsequently, in response to the Rail Safety Enforcement and Review Act, Public Law No. 102-365, 106 Stat. 972, enacted September 3, 1992. FRA issued an Advanced Notice of Proposed Rulemaking (ANPRM) on November 16, 1992, announcing the opening of a proceeding to amend the Federal Track Safety Standards to, in part, address hazards faced by roadway workers. 57 FR 54038.

FRA held workshops to solicit the views of the railroad industry and representatives of railroad employees on the need for substantive change in the track regulations. The subject of injury and death to roadway workers was of such great concern that FRA

received petitions for emergency orders and requests for rulemaking from both the BMWED and the Brotherhood of Railroad Signalmen (BRS). Finding that no imminent hazards existed that would justify issuance of emergency orders at the time, FRA did not issue any emergency orders in response to those petitions, but instead initiated a separate proceeding to consider regulations to eliminate hazards faced by roadway workers.

On August 17, 1994, FRA published its notice of intent to establish a Federal Advisory Committee (FAC) for regulatory negotiation. 59 FR 42200. The FAC was tasked with submitting a report, including proposed regulatory language, containing the FAC's consensus recommendations. On December 27, 1994, the Office of Management and Budget approved the Charter to establish a Roadway Worker Safety Advisory Committee (Advisory Committee) comprised of twenty-five members. The Advisory Committee held seven multiple-day negotiating sessions. An independent task force, comprised of representatives of several railroads and labor organizations, had met during the preceding year and independently analyzed on-track safety practices. This task force presented information at the first Advisory Committee meeting. The Advisory Committee reached consensus on eleven specific recommendations and nine general recommendations. These recommendations served as the basis for FRA's first RWP Notice of Proposed Rule Making (NPRM), which was published on March 14, 1996. 61 FR 10528. FRA published a final rule establishing the original RWP regulation on December 16, 1996, which became effective on January 15, 1997 (61 FR 65959). The final rule largely incorporated the Advisory Committee's recommendations.

FRA is amending its regulations on railroad workplace safety to resolve interpretative issues that have arisen since the 1996 promulgation of the original Roadway Worker Protection (RWP) regulation. In particular, this NPRM proposes to define certain terms, establish new procedures for snow removal and cleaning on passenger station platforms, resolve miscellaneous interpretive issues, codify certain FRA Technical Bulletins, and requests comment on certain training requirements for roadway workers. FRA is also updating three incorporations by reference of industry standards in existing sections of FRA's Bridge Worker Safety Standards.

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

The new information required under § 214.315(a)(3) regarding disclosure of additional information during daily on-track job briefings will be used by railroads and their roadway worker employees to maintain and enhance safety when working on tracks by ensuring that information is conveyed about any tracks adjacent to the track to be fouled, on-track safety for such tracks, if required by this Subpart, and identification of any roadway maintenance machines that will foul such tracks.

The new information required under § 214.336 will be used by roadway work groups to ensure that it members are fully aware of adjacent track on-track safety procedures, know

when they must stop work and occupy a predetermined place of safety, and are properly notified in sufficient time to move to places of safety when a train or other on-track equipment is authorized to move on adjacent track at various legal speeds.

The new information required under § 214.336 spells out precise procedures and practices that the roadway worker in charge and roadway work groups must follow for track movements by trains or other on-track equipment operating at speeds both above and below 25 miles per hour. The required on-track safety must be established through working limits or train approach warning provided by watchmen/lookout warnings and by notifications and communications prescribed in this section. Thus, all affected roadway workers musty be notified before working limits are released for the operation of trains. Working limits must not be released until all affected roadway workers have either left the track or have been afforded on-track safety through train approach warning in accordance with § 214.329.

The new information required under § 214.336 enables roadway work groups to know when it is safe to resume work. Thus, a component of a roadway work group may resume on-ground work and movement of any roadway maintenance machine or couple equipment on or fouling an occupied track only after the trailing-end of all the trains or other on-track equipment moving on the adjacent controlled (for which a notification or warning has been received) has passed and remains ahead of that component of the roadway work group. If the train or other on-track equipment stops before its trailing-end has passed all of the roadway workers in the roadway work group, the work to be performed on or fouling the occupied track ahead of the trailing-end of the train or other on-track equipment on the adjacent controlled track may resume only if on-track safety through train approach warning (in accordance with § 214.329) has been established on the adjacent controlled track; or after the roadway worker in charge has communicated with the train engineer or equipment operator and established that further movements of the train or other on-track equipment shall be made only as permitted by the roadway worker in charge.

Under § 214.303 and § 214.307, the information collected is used by FRA to ensure that each railroad adopts and implements the required on-track safety program that will afford on-track safety to all roadway worker whose duties are performed on that railroad. Each such program – and any amendments to that program – must provide for the level of safety specified in this Subpart. Each on-track safety program adopted to comply with this Part must include procedures to be used by each railroad for monitoring for effectiveness and compliance with the program. When railroads determine that it is necessary to revise their on-track safety program, FRA reviews these program amendments to determine that the required level of safety is maintained.

The information collected under §§ 214.343/345/347/349/353/355 is used to ensure that all roadway workers receive necessary training and are well-qualified for their positions.

Railroad management must train – on an initial and recurring basis – roadway workers about on-track safety rules, practices, and procedures. Such training thereby enables roadway workers to be aware of and avoid inherent hazards and reduce risks associated with working on or near tracks with moving trains or other on-track equipment. Through ongoing training programs, railroad management has the ability to do its part to lessen the likelihood, number, and severity of accidents/incidents and corresponding casualties to roadway workers.

Further, under §§ 214.343/345/347/349/353/355, FRA uses the required written records regarding roadway worker qualifications to assist its investigators after an accident or incident resulting in roadway worker casualties. These records are required to contain the type of qualification attained by each roadway worker and the most recent date of qualification. By examining these and other records, FRA can determine whether or not appropriate personnel followed the required on-track safety procedures. Together with railroad management, FRA can then take corrective action, if necessary. The lack of this information would make the rail environment much more dangerous for roadway workers and impede FRA in its goal of reducing roadway worker injuries and deaths.

Under § 214.503, the information collected is used by railroad workers to improve safety and prevent accidents and casualties caused by the operation of on-track roadway maintenance machines and hi-rail vehicles. Employees operating on-track roadway maintenance machines are required to notify their employer whenever they make a good faith determination that the machines do not comply with FRA regulations. For their part, employers must have in place and follow written procedures to assure prompt and equitable resolution of these challenges resulting from the good faith determination made by employees. The employer cannot require an employee challenging the fitness of a machine to operate the machine until the challenge has been resolved. By calling the employer's attention to problems with roadway maintenance machines, roadway workers can ensure that safety deficiencies and other defects are immediately addressed. Under the rule, employers are generally allowed up to seven days to repair a roadway maintenance machine found to be non-compliant.

Under § 214.505, employers are required to maintain a list of new and designated roadway maintenance machines that are equipped with enclosed cabs with operative heating systems, operative air conditioning systems, and operative positive pressurized ventilation systems. The list determines employer responsibilities related to environmental control and protection systems for new and existing on-track roadway maintenance machines with enclosed cabs. New on-track roadway maintenance machines and existing on-track roadway maintenance machines specifically designated by the employer (of the types identified in paragraphs (a)(1) through (a)(5) of this section or functionally equivalent thereto) must be capable of protecting employees in the cabs of the machines from exposure to air contaminants, in accordance with 29 CFR 1910.1000. Included among the machines specified in paragraphs (a)(1) through (a)(5) of this section

are the following: ballast regulators, tampers, mechanical brooms, rotary scarifiers, undercutters, or the functional equipment of any of these. The designation is irrevocable, and the designated existing roadway maintenance machine remains subject to the above protection requirement until the machine is retired or sold. If the ventilation system on a new on-track roadway maintenance machine or existing on-track roadway maintenance machine identified in paragraphs (a)(1) through (a)(5) of this section (or functional equivalent thereto) becomes incapable of protecting an employee in the cab of the machine from exposure to air contaminants in accordance with 29 CFR 1910.1000, personal respiratory equipment must be provided for each such employee until the machine is repaired in accordance with § 214.531. The list must be kept current, and made available to FRA and other Federal and State agencies upon request. FRA and other Federal and State inspectors use these rosters to determine which agency has responsibility for inspection and enforcement (compliance) of respiratory safety regulations for each roadway machine in order to assure railroad workers' health and safety are protected.

The information is also used to help protect the health and safety of railroad workers in other ways. Under § 214.511, audible warning devices are required on new on-track roadway maintenance machines. The triggering mechanism for this audible warning device must be clearly identifiable and within easy reach of the machine operator. Additionally, each existing on-track maintenance machine must be equipped with a permanent or audible warning device that produces a sound loud enough to be heard by roadway workers and other machine operators within the immediate work area. Again, the triggering mechanism for the audible warning device must be clearly identifiable and within easy reach of the machine operator. Thus, in critical situations, roadway workers will readily know where the triggering mechanism is located and will be able to sound the warning device before a potential accident/incident occurs and a fellow roadway worker is injured or possibly killed.

The information collected under § 214.515 serves to further enhance roadway workers' safety because their employers are now required to evaluate the feasibility of providing an overhead cover for existing on-track roadway maintenance machines, if requested in writing by the operator assigned to operate that machine or by the operator's designated representative. The employer must provide a written response for each request within 60 days. When the employer finds the addition of an overhead cover is not feasible, the response must include an explanation of the reasoning used by the employer to reach that conclusion. Many older on-track roadway maintenance machines were not designed with overhead covers. Covers or canopies provide important benefits to machine operators, most notably by shielding them from overhead sunlight and from severe weather such as sleet, snow, hail, and rain. Due to these provisions and corresponding information collection requirements, employers are not able to deny roadway workers equipment that will protect their health and safety, unless they have a legitimate reason. Being protected from blinding sun or exposure to inclement weather enhances employee safety by serving

to reduce the number of accidents/incidents and corresponding casualties that typically accompany caused by weather related factors.

Under § 214.517 and § 214.518, each existing on-track roadway maintenance machines must have stenciling or documentation on the machine identifying the light weight of the machine clearly displayed on it, and also the location of safe and secure positions for the machine operator and roadway workers to be transported on the machine. Thus, the displayed light weight identifies the machines's proper category and provides essential information to crane operators in the event the machine is lifted on to or loaded off a flat bed truck or rail car for movement from one work site to another. If roadway workers are not permitted on the machine, the prohibition must be noted by the stenciling or documentation on the machine. In both cases, such additional clear markings serve to reduce the likelihood of accidents/incidents and potentially serious injuries to machine operators and other roadway workers, as well to mitigate lost productivity to employers that such serious injuries bring.

Under § 214.523, the operator of a high-rail vehicle must check the vehicle for compliance with this Subpart, prior to using the vehicle at the star of the operator's work shift. Non-complying conditions that can not be immediately repaired must be tagged and dated in a manner determined by the employer and reported to the designated official. This tagging requirement then serves to alert roadway workers to potential hazards and further enhance railroad safety by reducing the likelihood of accidents/incidents involving hi-rail vehicles.

FRA also uses the information collected under § 214.523. Specifically, FRA uses the records required regarding mandatory hi-rail vehicle annual safety inspections to ensure that the safety critical components of these vehicles are adequately maintained and, if necessary, promptly repaired or replaced. In particular, tram, wheel wear and gage measurements must be checked at least annually and adjusted, as warranted, to provide for continued safe operation of these vehicles. Thus, FRA uses these hi-rail inspection records to verify compliance with this subpart.

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

3. <u>Extent of automated information collection</u>.

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

the option of maintaining the required records electronically. For example, under § 214.307, each railroad to which this Part applies is authorized to retain its on-track safety program by electronic recordkeeping in accordance with §§ 217.9 (g) and 217.11(c) of this Subchapter. Also, under § 214.505, railroads are required to maintain a roster of machinery that falls under FRA's jurisdiction for purposes of this regulation. The roster may be maintained on paper or electronically, but it must be accessible and available to FRA, Occupational Safety and Health Administration (OSHA), and other Federal, as well as State, agencies so that inspectors may determine which agency has responsibility for inspection of which machines and for enforcement of respiratory safety regulations relating to each roadway maintenance machine. Also, under § 214.523, compliance records pertaining to hi-rail vehicle annual safety inspections may be kept electronically. The employer must maintain the record of the last inspection of each vehicle until the next inspection is performed. Additionally, under § 214.533, roadway maintenance machine or new hi-rail vehicle records pertaining to compliance with the schedule of repairs may be kept electronically.

Although 91 percent of this information collection's responses are completed verbally in the form of daily job safety briefings/other verbal communication (23,394,786 responses) and are not conducive to use of the advanced information technology available today, FRA has provided the option of using advanced information technology, wherever possible, to reduce burden. For example, railroads are given the authority to use computers for the recording of training examinations. They may also use an interactive training course to train the roadway workers on the hazards and risks involved while working on or around tracks caused by moving trains and other on-track equipment. Moreover, the train dispatcher or control operator in charge of the track may record by electronic means all authorities issued to establish exclusive track occupancy. Each employer may also use electronic recordkeeping to maintain the required records of each roadway worker's current qualification.

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

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

approximately one (1) percent of responses are collected electronically because of the nature of the rule's requirements.

4. Efforts to identify duplication.

To our knowledge, this information is not duplicated anywhere.

Similar data is not available from any other source.

5. Efforts to minimize the burden on small businesses.

"Small entity" is defined in 5 U.S.C. 601. Section 601(3) defines a "small entity" as having the same meaning as "small business concern" under § 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of "small entities" not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operations.

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.

Federal agencies may adopt their own size standards for small entities 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 part 1201-1. The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA is proposing to use this definition for this rulemaking.

Included in the entities impacted by the final rule are governmental jurisdictions or transit authorities—most of which are not small for purposes of this certification. There are two commuter railroads that are privately owned and would be considered small entities.

However, both of these entities are owned by Class III freight railroads and, therefore, are already considered to be small entities for purposes of this certification.
There are approximately 708 small railroads.[1] Class III railroads do not report to the STB, and the precise number of Class III railroads is difficult to ascertain due to conflicting definitions, conglomerates, and even seasonal operations. Potentially all small railroads (a substantial number) could be impacted by this proposed regulation. However, because of certain characteristics that these railroads typically have, there should not be very little impact on most, if not all of them. A large number of these small railroads only have single-track operations. Some small railroads, such as the tourist and historic railroads, operate on the lines of other railroads that would bear the burden or impact of the proposed rules requirements. Finally, other small railroads, if they do have more than a single track, typically have operations that are infrequent enough such that the railroads have generally always performed the pertinent trackside work with the track and right-of-way taken out of service, or conducted during hours that the track is not used.

Almost all commuter railroads do not qualify as small entities. This is likely because almost passenger/commuter railroad operations in the United States are part of larger governmental entities whose jurisdictions exceed 50,000 in population. As noted above two of these commuter railroads are privately owned and would be considered small. However, they are already considered to be small because of being owned by a Class III freight railroad. FRA is uncertain as to how many contractor companies would be involved with this issue. FRA is aware that some railroads hire contractors to conduct some of the functions of roadway workers on their properties. However, the costs for the burdens associated with the proposed requirements of this rulemaking would get passed on to the pertinent railroad. Most likely the contracts would be written to reflect that, and the contractor would bear no additional burden for the proposed requirements. Since contractors would not be the entities directly impacted by any burdens, it is not necessary to assess them in the certification.

No other small businesses (non-railroads) are expected to be impacted by this final rule.

The process used to develop most of this final rule provided outreach to small entities in two ways. First, the RSAC Working Group had at least one representative from a small railroad association, the American Short Line and Regional Railroad Association (ASLRRA). Second, members of the RSAC itself include the ASLRRA and other organizations that represent small entities. Thus, it is possible to conclude that small entities had an opportunity for input as part of the process to develop a consensus-based RSAC recommendation made to the FRA Administrator.

[1] FRA data for 2010 indicates that there are 754 railroads. Thus, 754 Total Railroads – 7 Class I Railroads – 12 Class II Railroads (Includes Alaska RR) – 27 Commuter/Amtrak (non-small) = 708 Small Railroads.

The impacts from this regulation are primarily a result of the proposed requirements for certain changes to the existing roadway worker protection regulations, particularly regarding job briefings and training of roadway workers.

The Regulatory Impact Analysis for this rulemaking estimates that for the 20-year period analyzed, the estimated quantified cost that would be imposed on industry totals $5,840,921, discounted to $3,103,980 (PV, 7 percent) and $4,350, 537 (PV, 3 percent). FRA believes nearly all of this cost will fall to railroads other than small railroads. Short line railroads, the vast majority of which are Class III railroads, represent an estimated eight (8) percent of the railroad industry. Since small railroads generally collect carloads in such small numbers and low densities, at low speeds, they require much less track maintenance. Furthermore, generally small railroads have single tracks that are not active around the clock. As such, road work can be done when the track is not active, greatly reducing the burden of having to provide roadway worker protection. As such, the cost of this rulemaking is very minimal to the small railroad segment of the industry. Eight percent of the total 20-year cost is $467,274. That is an average annual cost of $33 per small railroad.[2] Although the rule may impact a substantial number of small entities, FRA is confident that this final rule does not impose a significant burden.

This final rule produces benefits (or cost savings) for railroads with the addition of Section 214.324 and the provision of verbal protection. However, most small railroads would not be impacted by these cost savings because of the size of these railroads and the nature of their operations. Most small railroads would already be able to utilize other forms of protection, such and individual train detection, which are in the current regulation. Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

6. <u>Impact of less frequent collection of information</u>.

If this collection were not conducted or if this collection were conducted less frequently, the risk of injury or death to those working on or about railway tracks would be much greater. Without the new information required to be conveyed to roadway worker groups under § 214.315(a)(3) in the daily on-track safety briefing, it is highly likely that more roadway workers will sustain serious injuries or be killed because they did not have necessary information about any tracks adjacent to the track to be fouled, on-track safety for such tracks (if required by this Subpart), and identification of roadway maintenance machines that will foul such tracks.

Without the new requirements stipulated under § 214.336, the rail environment would be much more dangerous and deadly than it is presently. Without these requirements, roadway workers would not know the precise procedures and practices that they must

[2] $5,840,921 * .08 = $467,274 / 20 years / 708 small railroads = $33 per year per small railroad.

follow for track movements by trains or other on-track equipment operating at speeds both above and below 25 miles per hour. Without the specified watchmen/lookout warnings, notifications, and communications, affected roadway workers would not know when they must stop work and occupy a predetermined place of safety. Also, without this information, roadway workers might not be properly notified in sufficient time to move to places of safety when a train or other on-track equipment is authorized to move on adjacent track at various legal speeds. Consequently, there would likely be a greater number of serious injuries and fatalities to members of these roadway worker groups.

If roadway workers could not challenge the fitness of on-track roadway machines and hi-rail vehicles and if employers were not required to have in place and follow written procedures to assure prompt and equitable resolution of these challenges, these workers might be forced to operate machines with safety defects. This could lead to greater numbers of accidents/incidents and corresponding increases in roadway worker casualties, resulting in lost productivity to the employer.

Without the requirement that employers maintain a list of new and designated roadway maintenance machines that are enclosed with cabs with operative heating systems, operative air conditioning systems, and operative ventilation systems, FRA and other Federal and State inspectors would not be able to use these rosters to determine which agency has the responsibility for inspection and enforcement of respiratory safety regulations for each roadway machine. The roster is intended to eliminate the possibility that certain machines would be inspected by two Federal agencies while other machines go uninspected altogether. If this were to occur, the health of roadway workers would suffer as a consequence, and also avoidable accident/incidents might take place because a machine was not inspected. Furthermore, without the provision that the triggering mechanism of audible warning devices required on new on-track roadway maintenance machines be clearly identifiable and within easy reach of the machine operator, more railway workers might be injured or killed because they did not know where the mechanism was in a critical situation and were not able to sound it in time.

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

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

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

Additionally, without this collection of information, there would not be the well-defined procedures for communication and protection now required of roadway workers. As a result, there would likely be greater confusion around railroad tracks and greater uncertainty regarding the correct use of railroad equipment. More roadway worker injuries and fatalities would inevitably follow. FRA data tend to support this conclusion. FRA data indicate a continuing downward trend in roadway worker injuries and fatalities. For example, there were 4,481 injuries to maintenance of equipment and stores employees in 2008, while there were 4,039 to this same class of employees in 2010. FRA's objective is to continue and facilitate this downward trend.

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

collection of information, all the required records would be unavailable to FRA.

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

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

7. Special circumstances.

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

8. Compliance with 5 CFR 1320.8.

FRA published a Notice of Proposed Rulemaking (NPRM) titled Railroad Workplace Safety; Roadway Worker Protection Miscellaneous Revisions in the **Federal Register** on August 20, 2012. See 77 FR 50324. FRA received 14 comments in response to the NPRM. Comments were submitted by: AAR; APTA; ASLRRA; BMWED and BRS (jointly); Kimberly Clark Professional; Metro-North and LIRR jointly (MTA comment) ; New Jersey Transit (NJT); NTSB; Reflective Apparel Factory; SEPTA; and 3M Occupational Health and Environmental Safety Division (3M). FRA also received two comments from individuals (one of which was jointly submitted by two persons), and an additional late comment from BMWED. None of these comments specifically addressed burden hour and burden costs estimates provided by FRA in the NPRM.

One comment pertained to the on-track safety manual. In the NPRM, FRA proposed a definition for the term "on-track safety manual." Existing § 214.309 requires each roadway worker in charge and lone worker to have with them a manual containing the rules and operating procedures governing track occupancy and protection. The Working Group agreed to recommend consensus amendments to that existing section, where such manual is referred to as an "on-track safety manual." As such, the Working Group also came to consensus on a recommended definition for this new term. FRA largely proposed that consensus definition, which was intended to provide clarity regarding the

materials that must be included in the on-track safety manual, as the manual is a critical element of any on-track safety program.

BMWED/BRS submitted a comment that addressed this definition. The comment suggested FRA amend the definition as proposed to expressly state that the on-track safety rules and instructions must be maintained together in one manual and cited the preamble from the 1996 RWP final rule discussing the need for the manual to be easily accessible from a single source.

FRA concurs with this point. From the BMWED/BRS comment, FRA believes that the NPRM's discussion may have been misunderstood as indicating it was acceptable for the required on-track safety materials to be contained in distinct manuals rather than in a single source. The existing regulation and the proposal in the NPRM both require that the on-track safety rules be contained in a single manual. As discussed in the NPRM's preamble, and in the 1996 final rule preamble quoted by the BWMWED/BRS comment, that single manual may be divided into binders (separate sections) where appropriate, rather than requiring railroads to issue new manuals each time a railroad rule amendment or new section is created. For example, the manual could be broken into separate binders addressing on-track safety rules, good faith challenge procedures, roadway maintenance machine procedures, etc. In order to eliminate any confusion on that point, FRA is adopting the BMWED/BRS comment's suggested language, expressly stating that a single manual is required. The BMWED/BRS comment also suggested that the definition refer to "the entire set of on-track safety rules and instructions" as being required to be contained in the manual. The NPRM's proposed definition only referred to the "entire set of instructions" as being required. As the suggested BMWED/BRS language more accurately captures what is required to be contained in the manual (e.g., all rules and instructions relevant to providing on-track safety protections for a roadway work group), FRA has adopted that suggested amendment to this definition in this final rule.

As discussed in the NPRM, FRA Technical Bulletins G-05-12 and G-05-25 both addressed concerns regarding the requirement regarding on-track safety manuals. FRA Technical Bulletin G-05-12 explained that the on-track safety manual could take the form of the following: (1) one document containing on-track safety procedures, good faith challenge procedures, and on-track safety operating rules of a railroad (absent operating rules not pertaining on-track safety); or (2) a binder system holding together separate documents, such as the on-track safety procedures, on-track safety operating rules, and all operating rules/procedures, with the on-track safety procedures and good faith challenge procedures composing tabs or sections of that binder. Technical Bulletin G-05-25 explained that all changes to a railroad's procedures governing on-track safety must be made a part of the on-track safety manual and readily available to roadway workers, as soon as those changes are effective. These changes may be temporarily incorporated into the manual, perhaps through incorporation of bulletins and general orders into the

manual. Changes to the on-track safety manual made via bulletin or general orders must be permanently included when new printings of the on-track safety manual are undertaken. This final rule's adoption of the new definition of the term "on-track safety manual" and the accompanying preamble discussions have alleviated the need for Technical Bulletins G-05-12 and G-05-25, both of which are supplanted upon the effective date of this final rule.

Further, the BMWED/BRS comment also suggested that FRA add a new third sentence to paragraph § 214.309(c) requiring that employers update the on-track safety manual at least annually to incorporate any relevant changes. The comment proposed such in order to prevent " . . . an open-ended process where stacks of 'temporary' notices will ultimately supplant the manual."

FRA declines to adopt such a requirement in this final rule. This additional requirement regarding an annual update was not a Working Group consensus item and was not proposed in the NPRM. FRA wishes to unnecessarily avoid imposing additional costs on the industry where FRA does not have information that a lack of updates has regularly caused problems or accidents in the past. Even so, FRA does encourage regular updates to an entire on-track safety manual. Such updates would likely be of benefit to the roadway workers using on-track safety manuals with regard to the ease of reference/use to applicable on-track safety rules.

Another comment related to the notification requirement under section 214.307. Existing section 214.307 requires railroads to notify FRA in writing at least one-month in advance of its on-track safety program becoming effective and sets forth FRA's formal review and approval process for such plans. In the NPRM, FRA proposed to amend this section to modify the existing on-track safety program formal approval process. The NPRM proposed to rescind the requirement in this section that railroads notify FRA not less than one month before the effective date of their on-track safety programs. FRA also proposed to modify the requirement that FRA review and approve every railroad's program. Instead, FRA would be permitted to review a railroad's on-track safety program upon request, as wholesale review of every aspect of a railroad's program that took place when the original rule was promulgated in 1996 is not warranted. FRA proposed these amendments with the intention of alleviating burdens as part of a retrospective review of Subpart C.

BMWED's/BRS's comment was the only comment that addressed the NPRM proposals for § 214.307. That comment requested that – in this final rule – FRA add the words "FRA-approved" to paragraph (a) of this section, to make clear that each railroad's program must be FRA-approved. The comment also recommended additional text be added to paragraph (b) of this section, to clarify that each railroad either amending or adopting an on-track safety program must notify FRA one month prior to the effective date of any amendments to a program or of a new program, as the labor organizations'

comment stated the belief that FRA's proposal was too ambiguous in the absence of a definite timeline.

After evaluating this issue, FRA agrees with the BMWED/BRS comment regarding the retention of the advance notification requirement regarding adoption of a new program or amendments to a railroad's existing program. In the event that there are safety or compliance concerns implicated, FRA agrees that it should continue to have advance notice in order to review a new on-track safety program (or a railroads amendments to a program). In this respect, there will be no change to existing § 214.307's notification requirement. However, in this final rule, FRA is still alleviating burdens by eliminating a required formal review process for each new program submitted to FRA and for each amendment to a program. Rather, those programs only have to be made available to FRA upon request, in the event FRA wishes to review a program or an amendment to a program. FRA can better utilize its limited resources to address legitimate safety concerns brought to its attention, rather than conducting mandatory formal reviews of on-track safety programs, the bulk of whose contents have already been established and approved by FRA for many years, as the industry now has much experience with the requirements of Subpart C.

Another comment referred to the on-track safety manual under § 214.309 and touched on additional costs to railroads. BMWED/BRS suggested that FRA add a new third sentence to paragraph (c) requiring that employers update the on-track safety manual at least annually to incorporate any relevant changes. The comment proposed such in order to prevent " . . . an open-ended process where stacks of 'temporary' notices will ultimately supplant the manual."

FRA declines to adopt such a requirement in this final rule. This additional requirement regarding an annual update was not a Working Group consensus item, and was not proposed in the NPRM. FRA wishes to unnecessarily avoid imposing additional costs on the industry where FRA does not have information that a lack of updates has regularly caused problems or accidents in the past. Even so, FRA does encourage regular updates to an entire on-track safety manual. Such updates would likely be of benefit to the roadway workers using on-track safety manuals with regard to the ease of reference/use to applicable on-track safety rules.

A comment by AAR addressed the communication requirement under § 214.317 and the notification requirement. Paragraph (c)(1) requires that each railroad adopt and comply with a procedure for on-track snow removal and weed spraying operations. Paragraph (c)(1)(i) is to ensure that all other persons conducting on-track movements in the affected area are informed of the snow removal or weed spraying operations. AAR's comment expressed opposition to this requirement, stating this requirement was unnecessary and problematic in areas without radio reception.

FRA responds that, in areas without radio reception, it may be likely that there are no other persons conducting on-track movements in the "affected area" that would be required to be notified. Further, there are methods other than via radio to make the notification if a railroad wishes to utilize the exception in § 214.317(c). FRA also emphasizes that this is just an exception to the requirement that on-track safety be established in certain instances, and FRA anticipates that in the majority of instances that this exception can be utilized that radio reception will not be an issue. In the instances where radio reception is an issue and there is no other way to make notification to other on-track movements in the affected area, railroads will have to abide by the existing methods of establishing on-track safety to perform such work.

Another comment addressed a recordkeeping requirement under § 214.321. AAR's comment stated that paragraph (e)(3)'s requirement that the roadway worker in charge record the time of passage and the engine numbers of a train after the train has passed is problematic and unnecessary. AAR questioned where a roadway worker in charge should record such information if an electronic authority is being utilized. AAR also stated that it is unaware of an instance where the information regarding time of passage and train engine numbers would have proven useful.

AAR's comment also stated that paragraph (e)(4)'s requirement regarding additional roadway workers in charge could be costly, as a roadway worker in charge might have roadway workers acting under his or her working limits authority who are located miles apart. AAR asserted that this requirement could necessitate additional communication within a roadway group, and could lead to confusion in large work gangs accustomed to a single source for confirmation regarding whether it is safe to foul a track. Finally, AAR's comment questioned what constitutes a separate roadway work group under paragraph (e)(4), stating that the reasonable approach is that when all the workers are engaged in a common task only one employee qualified as a roadway worker in charge should be required.

In response to AAR's first question regarding where a roadway worker who is utilizing an electronic authority should copy the time of passage and engine numbers of a passing train, FRA refers to the response to SEPTA's similar inquiry above, and to the NPRM's discussion regarding a separate written document. 77 FR 50344. The roadway worker in charge can copy that information in writing such that it can be compared to the information contained in the electronic authority. The written information must be kept by the roadway worker in charge while the authority is in effect under § 214.321(b). 77 FR 50344. FRA believes roadway workers must copy this information, because if a dispatcher gives a roadway worker authority behind or after the passage of a train(s), the engine numbers are a simple check to ensure that the train that has passed the roadway worker in charge's location is indeed the train that the dispatcher had intended would pass before roadway workers fouled track. FRA staff members are aware of situations where there was confusion over whether the roadway workers could occupy a track after

the passage of a particular train. This provision helps eliminate any confusion and, in some instances, will save time by alleviating the need for additional dispatcher communication to verify the appropriate trains have passed the point to be occupied.

Regarding paragraph (e)(4)'s requirement regarding an additional roadway worker in charge for roadway work groups that might piggyback within the working limits of the roadway worker in charge named on the authority, FRA also refers to the response to SEPTA's comment above. FRA has clarified in rule text above that this requirement only applies to separate roadway work groups at a location away from the roadway worker in charge listed on the authority. This was FRA's intent in formulating the NPRM proposal. Regarding AAR's inquiry as to what constitutes a separate roadway work group, FRA agrees that a roadway work group is composed of roadway workers ". . . organized to work together on a common task" as defined by the definition of the term "roadway work group" at existing § 214.7. In this regard, roadway workers who are part of the same group will continue to follow the instructions of the roadway worker in charge when fouling track, as is required in all instances under the existing regulation. So, a large roadway work group that might be spread out over some distance will not be permitted to foul the track in question until the roadway worker in charge indicates the members of the roadway work group may do so (and after the passage of the trains listed on the authority).

In this final rule, FRA retains the NPRM's text addressing a roadway worker in charge of a roadway work group away from the location of the initial group. In an instance where a second roadway work group wishes to piggyback on an occupancy behind authority, the roadway worker in charge of that second group must also have a copy of the authority and confirm that the affected trains have passed the group's location before the group occupies the track. FRA notes that this procedure is not limited to two roadway work groups, but that multiple groups may be involved. As an example under this new provision, if the roadway worker in charge of a tie gang establishes working limits authority under paragraph (e) and a bridge gang two miles away wishes to piggyback on that authority, the bridge gang will be required to have its own roadway worker in charge who will communicate with the tie gang's roadway worker in charge before permitting the bridge gang to foul the track. In many regards, this is the same as how roadway work groups are utilized under another roadway worker in charge's authority under existing Part 214.

FRA believes that, from a safety perspective, these requirements are necessary. Where an additional roadway work group is located a distance from the roadway worker in charge who is listed on the authority, the only safe way for that additional roadway work group to ensure affected trains have passed their location is to make the required confirmation of train engine numbers. This is necessary because a second roadway work group may have arrived at location either before or after an affected train listed on the authority has already passed that location. Meaning, unless confirmation is made by each

roadway work group, the group may not know how many affected trains have already passed (or if a train exited the track to be occupied before reaching a roadway work group's location). If the roadway worker in charge listed on an authority is not physically present at a separate roadway work group's location which may be some distance away, he or she cannot know whether a train has actually passed that other location to be able to tell an additional roadway work group whether it is safe to foul the track yet. The roadway worker in charge at the particular location where the piggybacking group wishes to foul track must make that determination. This procedure is necessary in order to avoid miscommunications between separate roadway work groups on an occupancy behind authority, and addresses safety concerns regarding occupancy behind authorities discussed by the Working Group. Such qualification is necessary to ensure that the roadway worker in charge of a separate work group on utilizing another group's authority has been trained on, and can apply, the rules regarding occupancy behind procedures. It also ensures that a roadway worker in charge is present to recognize whether appropriate on-track safety measures are in place and to address any potential good faith challenges.

FRA has slightly amended the rule text of (e)(4) based on further evaluation of this issue, to more plainly account for situations where additional roadway work groups are located at the same place as the roadway worker in charge listed on the authority. In that instance, the roadway worker in charge who obtained authority may confirm the passage of affected train(s), and may communicate to an additional roadway work group that it is safe to foul the track (without need for an additional roadway worker in charge to have a copy of the authority). If the roadway worker in charge can visually see that the affected trains are past a separate roadway work group's location, the roadway worker in charge of the authority can verbally inform the other roadway work group that it is permissible to foul the track without need for that second group to have a copy of the authority per (e)(4)(i)-(ii).

There were several comments concerning exclusive track occupancy under § 214.322 and the requirement to obtain a written or printed copy of an authority. FRA received comments from BMWED/BRS, AAR, and SEPTA regarding the proposals in paragraph (a). The BMWED/BRS comment expressed support for proposed paragraph (a)'s requirement that, in the event of a electronic display failure, that roadway work must stop and the group must occupy a place of safety until a copy of the authority could be obtained or another form of on-track safety could be established. The comment indicated that there is no reason to delay the order to occupy a place of safety while the roadway worker in charge attempts to obtain access to the authority or establishes another form of on-track safety.

AAR's comment stated that a roadway worker in charge should have an opportunity to obtain a written copy of the authority expeditiously before work is required to stop, indicating that there is no reason to stop work immediately when a momentary lapse in

the visibility of the authority occurs. AAR stated that the failure of the display will be of no effect if a written copy of the authority is obtained without delay. AAR also stated that a concern over a roadway worker having a written copy of the authority at all times (either paper or on an electronic display) is inconsistent with the authorization of verbal protection in § 214.324 (as was proposed in the NPRM). AAR also questions what would constitute a place of safety for a worker on a bridge or in a tunnel should the electronic display fail.

The SEPTA comment expressed disagreement with the proposed requirement that roadway workers stop work and occupy a place of safety until a written copy of the authority is obtained or another form of on-track safety is obtained. SEPTA stated that so long as the working limits are not released, that the roadway workers would be no less safe than they were before the display failure. Rather than require a work stoppage, SEPTA suggested that the roadway worker in charge should have an opportunity to obtain an alternate copy of the authority, stating that there is no logical reason to stop work unless the actual work conditions change.

After evaluating this issue and the comments received, FRA has decided to consolidate proposed (a)(1)-(a)(2) into a single paragraph (b). FRA has decided to allow the roadway worker in charge an opportunity to obtain a written or printed copy of an authority without delay before requiring roadway workers to occupy a place of safety. FRA believes that so long as an authority is still in effect and the only issue is the display failure, that in many instances the track on which working limits have been established is the safest place for a roadway worker to occupy. However, FRA is specifying that any moving roadway maintenance machines must stop in the event of an electronic display failure, such that if there is a question about the limits of an authority that there is no risk of roadway workers traveling outside of protected working limits on a moving machine. In the event that a new authority cannot be obtained or another form of on-track safety cannot be established, work must then stop and roadway workers are required to occupy a place of safety. A job safety briefing shall then be conducted with the roadway work group to determine the safe course of action. FRA believes this is the appropriate course from a safety perspective in situations where a new authority cannot be obtained, because if questions arise regarding the on-track safety being provided, the working limits authority cannot be referenced or amended if necessary. Of course, a method to prevent this situation from even occurring is for a roadway worker in charge to also print a copy of the authority after it is issued via data transmission. In the event of a display failure, a copy of the authority is then already available for reference.

FRA has added the words “without delay” to describe how the roadway worker in charge shall go about obtaining another version of the authority if an electronic display fails. This means that the roadway worker in charge must contact the dispatcher or obtain new authority directly upon noticing a display failure. If, for example, the dispatcher responds by instructing the roadway worker to call back at a later time to obtain a new authority,

then the roadway work group would be required to stop work and occupy a place of safety until an authority can be obtained. If a dispatcher or control operator does not respond to contact attempts by the roadway worker in charge, the work group must stop work and occupy a place of safety. In response to AAR's comment regarding a tunnel or bridge and what constitutes a place of safety, FRA understands that the track on which working limits have been established might be the be best, or only, place of safety in such instances. As such, FRA would not take exception to such situations, and would expect that the on-track job safety briefing that would follow a display failure would be utilized to determine the safest course of action for the group, even if the safest course of action is to continue to occupy the track on which working limits had been established.

In its comment about § 214.322 pertaining to exclusive track occupancy, BMWED/BRS also suggested that all authorities be retained for one year.

FRA believes such a requirement is not necessary. First, FRA is already specifying that for electronic devices used to obtain an authority where an accident is then involved that such authority data must be kept for one-year, and for 72 hours in the absence of any accident. FRA notes that there are no such similar requirements for written authorities under the sections in Part 214 addressing working limits. For cost reasons, FRA has chosen not to adopt any similar requirements for written authorities (though 49 CFR Part 228's requirements apply to certain dispatcher-created records), and also because traditionally FRA has not had issue obtaining copies of written authorities after an accident and is also able to review dispatcher records and radio recordings. As such, FRA is not certain what utility a one-year electronic retention requirement in the absence of an accident would provide, and is not certain any utility would outweigh potential costs.

There were also comments relating to verbal protection under § 214.324. Under the RSAC's recommendation regarding the use of verbal protection, the roadway worker in charge is not required to copy a written authority and maintain possession of it while working limits were in effect. Rather, the consensus recommendation only specified that the roadway worker in charge would only be required to correctly repeat back the applicable working limits information to the train dispatcher or control operator. In the NPRM, FRA requested comment on whether a roadway worker in charge should be required to make and maintain a copy of the working limits information, so that, if necessary, he or she could reference a written document if any question regarding the working limits arose.

FRA received comments in response to this NPRM proposal from AAR, MTA, and the BMWED/BRS. AAR's comment stated that the roadway worker in charge should not be required to copy down a written authority when using verbal protection, as there is no ". . . significant opportunity for confusion if the procedures for verbal protection are followed." AAR stated that the use of a written authority would defeat the purpose of

verbal protection. The MTA comment made the same point, and added that requiring the roadway worker in charge to copy the information could add a potential distraction for that roadway worker in charge. The BMWED/BRS comment indicated that this section, as proposed in the NPRM, had the unintended consequence of excluding lone workers from being able to establish verbal protection working limits (due to the proposed definition of the term "roadway worker in charge" at § 214.7). The BMWED/BRS comment also advocated for the roadway worker in charge being required to make a copy of working limits authority via verbal protection. The comment indicated that because a roadway worker in charge can authorize trains and on-track equipment movements into working limits authorized by verbal protection (even some time after such verbal protection authority is conveyed to the roadway worker in charge), that a written document would enhance safety and eliminate mental errors regarding the working limits.

After evaluating this issue, FRA is requiring that the roadway worker in charge copy the track number (or identifier), track limits, and time limits as conveyed by the dispatcher or control operator. FRA notes that, in part, this is because an important difference between foul time and verbal protection is that under verbal protection a roadway work group can make a track impassable to the passage of trains, which is more similar to work able to be performed under exclusive track occupancy procedures. As a practical matter, the roadway worker in charge is already required to repeat this information back to the dispatcher, and can merely copy these three small pieces of information when conveyed by the dispatcher. In the case of an authority conveyed via data transmission, there is no need to copy anything as the roadway worker in charge will have reference to this information on the electronic display. FRA believes this is the prudent course from a safety perspective, in order that the roadway worker in charge can refer to the track number, limits, and any applicable time limits should the authority be in effect for a longer duration, or in the event the roadway worker in charge chooses to let a train or other movement into or through working limits. FRA does not believe this provision will add anything other than de minimis costs, because – as mentioned above – this same information consisting of three short items is already required to be conveyed by the train dispatcher to the roadway worker in charge, and then repeated back by the roadway worker in charge. As the information is conveyed, the roadway worker in charge can +merely copy the information as it is relayed. The written verbal protection must be kept by the roadway worker in charge to refer to if necessary while the working limits are in effect.

And, finally, there were comments relating to the issue of training and qualification for roadway workers/lone workers under§ 214.347. In the NPRM, FRA requested comment on how to proceed regarding the appropriate time interval for "periodic" qualification in a final rule. FRA received comments in response to this request from SEPTA, BMWED/BRS, AAR, and two individuals. SEPTA's comment advocated that FRA defer to the training standards regulation's three-year interval for training and qualification in this final rule. SEPTA questioned why, when training and re-certification

for safety-critical positions such as conductors, engineers, and train dispatchers only needs to occur every three years, roadway workers are treated differently and require annual training. SEPTA's comment stated that § 217.9 (operational testing) and § 243.205 (training standards training and qualification interval) already provide for adequate employee oversight to ensure employees know how to perform their work properly.

The BMWED/BRS comment expressed support for annual training and qualification for all roadway workers, and is opposed to changing the consensus recommendations of the Working Group (24-month periodic qualification interval) by defaulting to Part 243's three-year interval. The comment stated that there have been 44 roadway worker fatalities since 1997, indicating more frequent training should be required versus less frequent training.

AAR's comment stated that there is no basis for determining that more frequent refresher training or qualification should be required for roadway workers (and additional qualifications under §§ 214.347/349/351/353/355) than for other safety-related employees (three-year interval under Part 243). AAR argued that there is no evidence that the Working Group had a reason for recommending annual training and biennial qualification rather than triennial training and qualification and that the Working Group's consensus recommendation could not be justified from a cost-benefit perspective due to lack of a safety benefit to be derived from more frequent training. AAR pointed to FRA's regulatory impact analysis formulated as part of the training standards NPRM as indicating an estimated cost of $1.7 million annually in refresher training expenses for maintenance-of-way employees.

One comment submitted by two individuals expressed support for the Working Group's consensus recommendation to require annual training and periodic qualification every 24 months, stating that the more frequent the refresher training, the better the result. The comment indicates that the individuals believe that the benefits of more frequent refresher programs would outweigh the cost of the programs' development and implementation. The comment argued for FRA to adopt a uniform standard regarding appropriate time intervals for refresher training and pointed to OSHA's training standards as a model for FRA to emulate as a guide. The comment also noted that implementing programs similar to OSHA's would be burdensome.

After evaluating the comments and this issue further, in this final rule, FRA is not amending the annual training requirements that currently exist in subpart C. FRA's intent in this rulemaking was not to lessen the amount of training that roadway workers receive via existing requirements, and believes it prudent to stand by the existing annual training requirement. This approach will not result in any additional costs as annual training for roadway workers is an existing requirement in Part 214.

However, with regard to the previously unspecified "periodic" qualification requirement contained in § 214.347 (and also in the accompanying sections addressing the requirements for watchmen/lookouts, flagmen, roadway workers in charge, and roadway maintenance machine operators), the recent training standards rulemaking requirement in Part 243 of this subchapter will control. That rulemaking addresses qualification requirements for safety-related employees across the spectrum of railroad crafts, to include for roadway workers, and was the result of an RSAC-process that resulted in consensus recommendations. That rulemaking specifies that qualification must occur not less than every three calendar years. Further, that rulemaking has already accounted for the costs of qualification of safety-related employees to occur on a three calendar-year interval (at a minimum). FRA would obviously encourage a railroad to choose to conduct refresher qualifications more often than once every three calendar years as is required by new Part 243. FRA agrees with AAR that there is not clear evidence to support a more frequent qualification requirement (on a cost-benefit analysis basis) versus for other safety-related employees who have critical safety roles, such as locomotive engineers, especially in light of the fact that roadway workers already will continue to be required to be trained more frequently (annually) than other safety-related employees under applicable regulations. Further, from a safety and practical perspective, FRA agrees with SEPTA that existing § 217.9 of the Federal railroad safety regulations (requiring operational testing of roadway workers subject to a railroad's operating rules) already provides for what is typically a much more frequent opportunity for observations by railroad officials to determine employee proficiency with rules compliance than does either a two- or three-year required interval for determining qualification via demonstrated proficiency.

FRA understands that many of the requirements in new Part 243 will not take effect for a number of years, depending on a railroad's total employee work hours. See 49 CFR § 243.101(a). In the interim, while FRA encourages railroads to comply with new part 243's requirements as soon as possible, each railroad should continue to specify in its on-track safety program the interval at which their "periodic" qualification will take place, as was explained in FRA Technical Bulletin G-05-16. Upon the effective applicability date of part 243's requirements for a particular railroad, that railroad will then be required to comply with part 243's qualification requirements at a minimum of every three calendar years.

As explained in the 1996 RWP final rule, in order to demonstrate proficiency as required, the roadway worker (who is qualified for any additional roadway worker qualification under §§ 214.347/349/351/353, or 214.355) must, ". . . show to the employer sufficient understanding of the subject that the employee can perform the duties for which qualification is conferred in a safe manner. Proficiency may be demonstrated by successful completion of a written or oral examination, an interactive training program using a computer, a practical demonstration of understanding and ability, or an appropriate combination of these . . ." 61 FR 65972.

Background

In March 1996, FRA established the RSAC, which provides a forum for developing consensus recommendations to FRA's Administrator on rulemakings and other safety program issues. The Committee includes representation from all of the agency's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups includes the following:

American Association of Private Railroad Car Owners (AARPCO)
American Association of State Highway & Transportation Officials (AASHTO)
American Chemistry Council
American Petroleum Institute
American Public Transportation Association (APTA)
American Short Line and Regional Railroad Association (ASLRRA)
American Train Dispatchers Association (ATDA)
Association of American Railroads (AAR)
Association of Railway Museums (ARM)
Association of State Rail Safety Managers (ASRSM)
Brotherhood of Locomotive Engineers and Trainmen (BLET)
Brotherhood of Maintenance of Way Employees Division (BMWED)
Brotherhood of Railroad Signalmen (BRS)
Chlorine Institute
Federal Transit Administration (FTA)*
Fertilizer Institute
High Speed Ground Transportation Association (HSGTA)
Institute of Makers of Explosives
International Association of Machinists and Aerospace Workers
International Brotherhood of Electrical Workers (IBEW)
Labor Council for Latin American Advancement (LCLAA)
League of Railway Industry Women (LRIW)*
National Association of Railroad Passengers (NARP)
National Association of Railway Business Women (NARBW)*

National Conference of Firemen & Oilers
National Railroad Construction and Maintenance Association (NRC)
National Railroad Passenger Corporation (Amtrak)
National Transportation Safety Board (NTSB)*
Railway Supply Institute (RSI)
Safe Travel America (STA)
Secretaria de Communicaciones y Transportes*
Sheet Metal Workers International Association (SMWIA)
Tourist Railway Association, Inc.
Transport Canada*

Transport Workers Union of America (TWU)
Transportation Communications International Union/BRC (TCIU/BRC)
Transportation Security Administration (TSA)*
United Transportation Union
* Indicates associate, non-voting membership

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The individual task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff take an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined towards RSAC recommendation. However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. If the working group or RSAC is unable to reach consensus on a recommendation for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

On January 26, 2005, the RSAC formed the RWP Working Group ("Working Group") to consider specific actions to advance the on-track safety of employees of covered railroads and their contractors engaged in maintenance-of-way activities throughout the general system of railroad transportation, including clarification of existing requirements. The assigned task was to review the existing rule, technical bulletins, and a safety advisory dealing with on-track safety. The Working Group was to consider the implications and, as appropriate, consider enhancements to the existing rule. The Working Group would report to the RSAC any specific actions identified as appropriate, and would report planned activity to the full Committee at each scheduled Committee meeting, including milestones for completion of projects and progress toward completion.

The Working Group is comprised of members from the following organizations:

American Public Transportation Association (APTA)
The American Short Line and Regional Railroad Association (ASLRRA)

American Train Dispatchers Association (ATDA)
Association of American Railroads (AAR) [including members from BNSF Railway Company (BNSF), Canadian National Railway Company (CN), Canadian Pacific Railway, Ltd. (CP), Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSXT), Kansas City Southern (KCS), Norfolk Southern Corporation (NS), and Union Pacific Railroad Company (UP)]
Belt Railroad of Chicago
Brotherhood of Locomotive Engineers and Trainmen (BLET)
Brotherhood of Maintenance of Way Employees Division (BMWED)
Brotherhood of Railroad Signalmen (BRS)
Federal Railroad Administration (FRA)
Indiana Harbor Belt Railroad (IHB)
Long Island Railroad (LIRR)
Metro-North Commuter Railroad (Metro-North)
Montana Rail Link
National Railroad Construction and Maintenance Association (NRC)
Northeast Illinois Regional Railroad Corporation (Metra)
Rail America, Inc.
Southeastern Pennsylvania Transportation Authority (SEPTA)

Union Pacific Railroad Company (UP)
United Transportation Union (UTU)
Western New York and Pennsylvania Railroad (WNY&P)

The Working Group held 12 multi-day meetings. The group worked diligently, and was able to reach consensus on 32 separate items. The Working Group attained consensus to recommend that part 214[3] be amended to: add two new definitions; revise an existing definition; and, incorporate three other existing definitions from 49 CFR part 236. The Working Group also came to consensus to add or amend various provisions in the following sections in subpart C of part 214:

- § 214.309 - revision to address on-track safety manual for lone workers and changes to the manual.

- § 214.315 - requirement that information concerning adjacent tracks be included in on-track safety job briefings; accessibility of the roadway worker in charge.

- § 214.317 - new paragraph to formalize procedures for roadway workers to walk across tracks; new paragraph for on-track weed spray and snow blowing operations on non-controlled track.

- § 214.321 - new paragraph to address the use of work crew numbers.

[3] All references to the CFR in this document reference Title 49.

- § 214.323 - clarification of foul time provision whereby roadway worker in charge or train dispatcher may not permit movements into such working limits.

- § 214.324 - new section called “verbal protection” for abbreviated working limits within manual interlocking and controlled points.

- § 214.327 – three new paragraphs to formalize the following instruments to make non-controlled track inaccessible: occupied locomotive as a point of inaccessibility; block register territory; and, the use of track bulletins to make track inaccessible within yard limits.

- § 214.335 - complete revision of paragraph (c) concerning on-track safety for tracks adjacent to occupied tracks. Key elements are the elimination of “large-scale” and the addition of a new requirement for on-track safety for tracks adjacent to occupied tracks for specific work activities (addressed in separate rulemaking proceeding as discussed further below).

- § 214.337 - allowance for the use of individual train detection at controlled points consisting only of signals and a new paragraph limiting equipment/materials that can only be moved by hand by a lone worker.

- § 214.339 - complete revision of this section concerning audible warning by trains to address operational considerations.

- § 214.343 - new paragraph to ensure contractors receive requisite training/and or qualification before engaged by a railroad.

- § 214.345 - lead-in phrase requiring all training to be consistent with initial or recurrent training, as specified in § 214.343(b).

- §§ 214.347, .349, .351, .353, and .355 - consistent requirements for various roadway worker qualifications and a maximum 24-month time period between qualifications.

On June 26, 2007, the full RSAC voted to accept the above recommendations presented by the Working Group. In addition to the above, the Working Group worked on a proposal for use of electronic display of authorities as a provision under exclusive track occupancy. The Working Group developed lead-in regulatory text and agreed to some conceptual items. When circulated back to the Working Group prior to the full RSAC vote, however, technical issues were raised that could not be resolved in the time available. Accordingly, in this NPRM, FRA is addressing the electronic display issue, and certain of the other issues that the Working Group was unable to reach consensus on. The other items that the Working Group was unable to reach consensus on were:

- § 214.7 – new term and definition for a “remotely controlled hump yard facility.”
- § 214.7 – revision to the definition for the term “roadway worker.”
- § 214.317 – use of tunnel clearing bays.
- § 214.321 – track occupancy after passage of a train.
- § 214.329 – removal of objects from the track under train approach warning.
- § 214.336 – passenger station platform snow removal and cleaning.
- § 214.337 – consideration of allowance for the use of individual train detection at certain types of manual interlockings or controlled points.
- § 214.353 – qualification of employees other than roadway workers who directly provide for the on-track safety of a roadway work group.

The Working Group was able to reach consensus on items that dealt specifically with the adjacent-track on-track safety issues. In light of roadway worker fatality trends involving adjacent track protections, and to expedite the lowering of the safety risk associated with roadway workers fouling adjacent tracks, FRA decided to undertake a rulemaking proceeding separately, and in advance of this NPRM, to specifically address adjacent-track safety issues contemplated by the Working Group. As such, FRA published an NPRM addressing adjacent-track on-track safety on July 17, 2008 (73 FR 41214), but formally withdrew the NPRM on August 13, 2008 (73 FR 47124). FRA then issued a revised NPRM, which was published on November 25, 2009 (74 FR 61633), and a final rule was published on November 30, 2011 (76 FR 74586). FRA received two petitions for reconsideration of the final rule, and five public comments on those petitions for reconsideration. See Docket No. FRA-2008-0059, which is available online at www.regulations.gov. On December 27, 2013, FRA issued an amended final rule which made certain modifications to the adjacent track final rule in light of issues raised by the petitions for reconsideration. See 79 FR 1743. The final rule, as amended, became effective on July 1, 2014. The provisions contained in that rulemaking proceeding have limited interaction with the provisions of this miscellaneous revisions final rule. However, as a result of the adjacent track rulemaking, the Subpart C section numbering for the consensus items as agreed upon by the Working Group has changed slightly from that recommended. This final rule will note any relevant numbering changes in the section-by-section analysis of the rule.

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 rulemaking.

10. Assurance of confidentiality.

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

11. Justification for any questions of a sensitive nature.

No sensitive information is requested.

12. Estimate of burden hours for information collected.

Note: Based on the latest FRA data, respondent universe affected by this final rule is estimated at 722 railroads. The total number of roadway workers is estimated to be approximately 50,000. This includes employees of railroads and contractors to railroads.

The burden hour estimates for the information collection requirements listed below have been updated, where appropriate and necessary, based on the final rule's new requirements and the latest information available to FRA.

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

As part of their responsibilities, FRA Federal and State inspectors enforce compliance with Part 214. In order to do this, they obtain information from the railroads and railroad workers. Violations of workplace safety are reported on the above form. FRA estimates that approximately 120 of these forms will be completed each year by State inspectors. It is estimated that it will take approximately four (4) hours to complete each violation report form. Total annual burden for this requirement is 480 hours.

Respondents Universe:	350 Safety Inspectors
Burden time per response:	4 hours
Frequency of Response:	On occasion
Annual Number of responses:	120 report forms
Total Annual Burden:	480 hours

Calculation: 120 report forms x 4 hours = 480 hours

SUBPART C

A. RAILROAD ON-TRACK SAFETY PROGRAMS

(3) **On-track Safety Programs** (214.307)

(a) Each railroad subject to this Part shall maintain and have in effect an on-track safety program which complies with the requirements of this Subpart. New railroads must have an on-track safety program in effect by the date on which operations commence. The on-track safety program shall be retained at a railroad's system headquarters and division headquarters, and shall be made available to representatives of the FRA for inspection and copying during normal business hours. Each railroad to which this Part applies is authorized to retain its program by electronic recordkeeping in accordance with §§ 217.9(g) and 217.11(c) of this Subchapter. (**Revised requirements**)

FRA estimates that approximately 722 on-track safety programs which comply with the requirements of this Subpart will be developed/revised and approximately 851 on-track safety program copies will be retained by railroads under the above requirement. It is estimated that it will take approximately two (2) hours to develop each on-track safety program and approximately two (2) minutes to retain the on-track safety program at the railroad's system headquarters and division headquarters. Total annual burden for this requirement is 1,472 hours.

Respondents Universe:	722 Railroads
Burden time per response:	2 hours + 2 minutes
Frequency of Response:	On occasion
Annual Number of responses:	722 new/revised on-track safety programs + 851 on-track safety program copies
Total Annual Year Burden:	1,472 hours

Calculation: 722 new/revised on-track safety programs x 2 hrs. + 851on-track safety programs copies x 2 min. = 1,472 hours

(b) Each railroad shall notify, in writing, the Associate Administrator for Safety, and Chief Safety Officer, Federal Railroad Administration, RRS-15, 1200 New Jersey Avenue, SE, Washington, DC 20590, not less than one month before its on-track safety program becomes effective. The notification shall include the effective date of the program and the name, title, address and telephone number of the primary person to be

contacted with regard to review of the program. This notification procedure shall also apply to subsequent changes to a railroad's on-track safety program.

FRA estimates that approximately 825 notifications will be sent to the FRA Associate Administrator for Safety by railroads under the above requirement. It is estimated that it will take approximately 20 minutes to complete each notification and send it to FRA. Total annual burden for this requirement is 275 hours.

Respondents Universe:	722 Railroads
Burden time per response:	20 minutes
Frequency of Response:	On occasion
Annual Number of responses:	825 notifications
Total Annual Burden:	275 hours

Calculation: 825 notifications x 20 min. = 275 hours

(c) Upon review of a railroad's on-track safety program, the FRA Associate Administrator for Railroad Safety and Chief Safety Officer may, for cause stated, disapprove the program. Notification of such disapproval shall be made in writing and specify the basis for the disapproval decision. If the Associate Administrator for Railroad Safety and Chief Safety Officer disapproves the program,

(1) The railroad has 35 days from the date of the written notification of such disapproval to:

(i) Amend its program and submit it to the Associate Administrator for Railroad Safety and Chief Safety Officer for approval; or

(ii) Provide a written response in support of its program to the Associate Administrator for Railroad Safety and Chief Safety Officer.

(2) FRA's Associate Administrator for Railroad Safety and Chief Safety Officer will subsequently issue a written decision either approving or disapproving the railroad's program.

(3) Failure to submit to FRA an amended program or provide a written response in accordance with this paragraph will be considered a failure to implement an on-track safety program under this Subpart.

FRA estimates that approximately 34 on-track safety programs will be disapproved by the FRA Associate Administrator for Safety/Chief Safety Officer and will need to be amended under the above requirement. It is estimated that it will take approximately four

(4) hours to amend each on-track safety program and send it to FRA. Total annual burden for this requirement is 136 hours.

Respondents Universe:	722 Railroads
Burden time per response:	4 hours
Frequency of Response:	On occasion
Annual Number of responses:	34 amended on-track safety programs
Total Annual Burden	136 hours
Calculation:	34 amended on-track safety programs x 4 hrs. = 136 hours

Additionally, FRA estimates that approximately two (2) written responses in support of their programs will be submitted by railroads to the FRA Associate Administrator for Safety/Chief Safety Officer under the above requirement. It is estimated that it will take each railroad approximately 40 hours to complete the written response in support of its program and send it to FRA. Total annual burden for this requirement is 80 hours.

Respondents Universe:	722 Railroads
Burden time per response:	40 hours
Frequency of Response:	On occasion
Annual Number of responses:	2 written responses
Total Annual Burden	80 hours

Calculation: 2 written responses x 40 hrs. = 80 hours

Total annual burden for this entire requirement is 1,963 hours (1,472 + 275 + 136 + 80).

(4) **On-Track Safety Manual** (214.309)

(a) The applicable on track safety manual (as defined by § 214.7) shall be readily available to all roadway workers. Each roadway worker in charge responsible for the on-track safety of others, and each lone worker, shall be provided with and shall maintain a copy of the on-track safety manual.

Railroads are already doing this. It is a usual and customary procedure for them. Consequently, there is no burden associated with this requirement.

(b) When it is impracticable for the on-track safety manual to be readily available to a lone worker, the employer shall establish provisions for such worker to have alternative access to the information in the manual. (**New Requirement**)

FRA estimates that approximately 722 provisions for alternative access to the information in the on track safety manual will be established by railroads under the above requirement. This will usually take the form of a special instruction or special order to the on-track safety manual. It is estimated that it will take approximately 60 minutes to establish/develop each provision. Total annual burden for this requirement is 754 hours.

Respondents Universe:	722 Railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual Number of responses:	722 provisions
Total Annual Burden:	722 hours
Calculation:	722 provisions x 60 min. = 722 hours

(c) Changes to the on-track safety manual may be temporarily published in bulletins or notices. Such publications shall be retained along with the on-track safety manual until fully incorporated into the manual. (**New requirement**)

FRA estimates that approximately 100 bulletins or notices relaying changes to the on track safety manual will be published under the above requirement. It is estimated that it will take approximately 60 minutes to complete each bulletin/notice and provide it to affected roadway workers. Total annual burden for this requirement is 100 hours.

Respondents Universe:	60 Railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual Number of responses:	100 bulletins/notices
Total Annual Burden:	100 hours
Calculation:	100 bulletins/notices x 60 min. = 100 hours

Total annual burden for this entire requirement is 822 hours (722 + 100).

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

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

Any burden associated with the above information collection requirements has been included in the earlier one-time burden associated with the development of the roadway worker safety program, or is included in the burden below which accounts for new railroads that come into operation.

FRA estimates that 50 new railroads will come into operation each year and thus 50 new on-track safety programs with the required written procedure will be developed by railroads under the above requirements. These railroads will no longer be required to submit their plans to FRA, but only show them upon request of a FRA representative. Also, FRA estimates that half of these new railroads (25) will – in all probability – be short line railroads, and will use the generic plan developed by the American Short Line and Regional Railroad Association (ASLRRA) and modify it accordingly. The other 25 railroads will need to develop their own plans. It is estimated that it will take each new short line railroad approximately 30 minutes to modify the generic plan and that it will take the other 25 railroads approximately 24 hours each to develop their own plan. Total annual burden for this requirement is 613 hours.

Respondents Universe:	50 New Railroads
Burden time per response:	30 minutes + 24 hours
Frequency of Response:	One-time
Annual Number of responses:	50 on-track safety programs
Total Annual Burden:	613 hours

Calculation: 25 on-track safety programs x 30 min. + 25 on-track safety programs x 24 hrs. = 613 hours

B. Responsibility of Individual Roadway Workers (214.313)

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

It is estimated that written records will be kept of these challenges approximately 80 times each year. It is estimated that approximately 20 railroads will be challenged four (4) times a year under this requirement. Based on the complexity of each individual challenge, the burden could vary from 15 minutes to 16 hours per occurrence. FRA estimates that an overall industry average for this information collection requirement would be approximately eight (8) hours for each challenge. Total annual burden for this requirement is 640 hours.

Respondents Universe:	20 Railroads
Burden time per response	8 hours per challenge

Frequency of Response:	On occasion
Annual Number of responses:	80 challenges
Total Annual Burden:	640 hours

Calculation: 80 challenges x 8 hrs. per challenge = 640 hours

C. Supervision and Communication (214.315; 214.335)

(a) When an employer assigns a duty to a roadway worker that calls for that employee to foul a track, the employer must provide the employee with an on-track safety job briefing that, at a minimum, includes the following:

(1) Information on the means by which on-track safety is to be provided for each track identified to be fouled;

(2) Instruction on each on-track safety procedure to be followed;

(3) Information about any adjacent tracks, on-track safety for such tracks, if required by this Subpart or deemed necessary by the roadway worker in charge, and identification of any roadway maintenance machines that will foul such tracks;

(4) A discussion of the nature of the work to be performed and the characteristics of the work location to ensure compliance with this Subpart; and

(5) Information on the accessibility of the roadway worker in charge and alternative procedures in the event the roadway worker in charge is no longer accessible to the members of the roadway work group. (**New**)

(b) A job briefing for on-track safety shall be deemed complete only after the roadway worker(s) has acknowledged understanding of the on-track safety procedures and instructions presented.

(c) Every roadway work group whose duties include fouling a track shall have one roadway worker in charge designated by the employer to provide on-track safety for all members of the group. The designated person must be qualified under the rules of the railroad that conducts train operations on those tracks to provide the protection necessary for on-track safety of each individual in the group. The responsible person may be designated generally, or specifically for a particular work situation.

(d) Before any member of a roadway work group fouls a track, the roadway worker in charge designated under paragraph (c) of this section shall inform each roadway worker of the on-track safety procedures to be used and followed during the performance of the

work at that time and location. Each roadway worker must again be so informed at any time the on-track safety procedures change during the work period. Such information must be given to all roadway workers affected before the change is effective, except in cases of emergency. Any roadway workers who, because of an emergency, cannot be notified in advance must be immediately warned to leave the fouling space and must not return to the fouling space until on-track safety is re-established.

(e) Each lone worker shall communicate at the beginning of each duty period with a supervisor or another designated employee to receive an on-track safety job briefing and to advise of his or her planned itinerary and the procedures that he or she intends to use for on-track safety. When communication channels are disabled, the job briefing must be conducted as soon as possible after the beginning of the work period when communications are restored.

As noted above, there are approximately 50,000 roadway workers industry-wide, including employees of railroads and contractors for railroads. Job briefings are a usual and customary procedure on most railroads today. From the survey data, FRA has determined that roadway workers have on average 327 job briefings each per year. For 50,000 employees, a total then of 16,350,000 briefings would occur annually.

The data provided in the responses from the AAR Survey show that the average job briefing is 12.3 minutes. It also shows that the average additional minutes that will be required by the rule will be 4.75 minutes. FRA believes this average is too high. This is common practice. FRA has determined that a more accurate estimate would be an additional two (2) minutes per job briefing.

Approximately 30 percent of the 50,000 roadway workers will not be impacted by adjacent track standards for various reasons. For example, such workers may work on territories with only single track or areas of with only non-controlled track, typically much smaller regional railroads. Of the 35,000 roadway workers then who may work on adjacent track, approximately 30 percent will generally not be impacted by the adjacent track final rule revisions. Such workers would include signalmen, lone workers, and others who may be assigned to gangs, but generally do not work around on-track roadway maintenance machines or coupled equipment. Thus, FRA estimates that approximately 24,500 roadway workers will be affected by the requirement in paragraph (a)(3) of this section concerning information communicated to roadway workers about adjacent track on-track safety.

Of the 24,500 roadway workers affected by the new requirement in paragraph (a)(3), the requirement in the on-track safety procedures for adjacent tracks will cause an increase in time spent on some of the 16,350,000 annual briefings. FRA believes that many railroad operations are already including this information in their job briefings, where pertinent. Consequently, approximately 70 percent of these 8,011,500 briefings (24,500 workers x

327 daily briefings) either do not require discussion of any adjacent-track issues or any such issues are already being noted in job briefings today by very prudent and/or safety-conscious railroads. Thus, approximately 2,403,450 briefings (8,011,500 x .30) will relate to adjacent-track on-track issues, and will take an additional half-minute to complete. The burden then for this part of the above requirement is 20,029 hours. Total annual burden for the entire requirement is 565,029 hours. (*It should be noted that this is not an information collection per se but a verbal communication between supervisors and employees. There is no actual paperwork kept, information gathered/collected, or reporting required in reference to this provision.)*

Respondents Universe:	50,000 Roadway Workers
Burden time per response:	2 minutes ea. briefing + .5 min. ea. briefing
Frequency of Response:	On occasion
Annual Number of responses:	18,753,450 regular briefings
Total Annual Burden:	565,029 hours

Calculation: 16,350,000 regular briefings (327 x 50,000) x 2 min. = 545,000 hrs
2,403,450 adjacent track on-track safety briefings x .5 min. = 20,029 hours (Adjacent On-Track Requirement Burden)
545,000 hours + 20,029 hours = 565,029 hours

Additionally, under the final rule's new requirement in (a)(5) above, FRA estimates that there are approximately 300 production gang/capital improvement related briefings per day during the 22 work days per month from March through October and approximately 75 briefings per day during the 22 work days from November through February. Thus, there will be an additional 59,400 briefings resulting from the new requirement [(22 days * 8 months) * 300 briefings + (22 days * 4 months) * 75 briefings]. There are an estimated 10 employees per work gang who will receive the briefing. It is estimated that it will take approximately 20 seconds to complete each briefing. Total annual burden for this requirement is 3,300 hours.

Respondents Universe:	300 Roadway Work Gangs
Burden time per response	20 seconds
Frequency of Response:	On occasion
Annual Number of responses:	594,000 briefings (59,400 briefings x 10 work gang employees)
Total Annual Burden:	3,300 hours

Calculation: 594,000 briefings x 20 sec. = 3,300 hrs.

Total annual burden for this requirement is 568,329 hours (565,029 + 3,300).

D. **<u>On-Track Safety Procedures, Generally</u>** (214.317)

(a.) Each employer subject to the provisions of this Part shall provide on-track safety for roadway workers by adopting a program that contains specific rules for protecting .roadway workers that comply with the provisions of §§214.319 through 214.337.

The burden for on-track safety programs is included under that of §214.307 above. Consequently, there is no additional burden associated with this requirement.
(b.) Roadway workers may walk across any track provided that they can safely be across and clear of the track before a train or other on-track equipment would arrive at the crossing point under the following circumstances:

(1) Employers shall adopt, and roadway workers shall comply with, applicable railroad safety rules governing how to determine that it is safe to cross the track before starting across; [*Note: Railroads are already doing this. It is part of their usual and customary procedure. Consequently, there is no burden associated with this requirement.*]

(2) Roadway workers shall move directly and promptly across the track; and

(3) On-track safety protection is in place for all roadway workers who are actually engaged in work, including inspection, construction, maintenance or repair, and extending to carrying tools or material that restricts motion, impairs sight or hearing, or prevents an employee from detecting and moving rapidly away from an approaching train or other on-track equipment.

(c) On non-controlled track, on-track roadway maintenance machines engaged in weed spraying or snow removal may proceed under the provisions of § 214.301(c), under the following conditions: (**New Requirements**)

(1) Each railroad must establish and comply with an operating procedure for on-track snow removal and weed spray equipment to ensure that:

(i) All on-track movements in the affected area are informed of such operations,

(ii) All on-track movements shall operate at restricted speed as defined in §214.7, except on other than yard tracks and yard switching leads, where all on-track movements shall operate prepared to stop within one-half the range of vision but not exceeding 25 mph,

(iii) A means for communication between the on-track equipment and other on-track movements is provided, and

(iv) Remotely controlled hump yard facility operations are not in effect, and kicking of cars is prohibited unless agreed to by the roadway worker in charge.

The other requirement in § 214.317(c) above will affect about 20 railroads regarding an operating procedure for snow removal. Thus, FRA estimates that approximately 20 operating procedures for on-track snow removal and weed spray equipment on non-controlled track will be developed/established under the above requirement. It is estimated that it will take approximately 60 minutes to develop each operating procedure. Total annual burden for this requirement is 20 hours.

Respondents Universe:	20 Railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual Number of responses:	20 snow removal operating procedures
Total Annual Burden:	20 hours

Calculation: 20 snow removal operating procedures x 60 min. = 20 hours

Additionally, the requirement in § 214.317(c) above will affect all 722 railroads regarding an operating procedure for weed spray equipment. Thus, FRA estimates that approximately 754 operating procedure for on-track snow removal and weed spray equipment on non-controlled track will be developed/established under the above requirement. It is estimated that it will take approximately 60 minutes to develop each operating procedure. Total annual burden for this requirement is 722 hours.

Respondents Universe:	722 Railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual Number of responses:	722 weed spray equipment operating procedures
Total Annual Burden:	722 hours

Calculation: 722 weed spray equipment operating procedures x 60 min. = 722 hours

(d) Tunnel niches or clearing bays in existence prior to April 1, 2017, that are designed to permit roadway workers to occupy a place of safety when trains or other on-track equipment pass the niche or clearing bay, but are less than four feet from the field side of the nearest rail, may continue to be used as a place of safety provided that:

(1) Such niches or clearing bays are visually inspected by the roadway worker in charge or lone worker prior to making the determination that the niche or clearing bay is suitable for use as a place of safety (*Note: This is the usual and customary procedure. Consequently, there is no burden associated with this requirement*.);

(2) There is adequate sight distance to permit a roadway worker or lone worker to occupy the place of safety in the niche or clearing bay at least 15 seconds prior to the arrival of a train or other on-track equipment at the work location in accordance with §§ 214.329 and 337; and

(3) The roadway worker in charge or lone worker shall have the absolute right to designate a place of safety as a location other than that of a tunnel niche or clearing bay described by this paragraph, or to establish working limits. (**New requirement**)

FRA estimates that approximately 25 designations of a place of safety other than that of a tunnel niche or clearing bay will be made each year by the roadway worker in charge or lone worker under the above requirement. It is estimated that it will take approximately five (5) minutes to make each designation. Total annual burden for this requirement is two (2) hours.

Respondents Universe:	722 Railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual Number of responses:	25 designations
Total Annual Burden	2 hours
Calculation:	25 designations x 5 min. = 2 hours

Total annual burden for this entire requirement is 744 hours (20 + 722 + 2).

E. **Locomotive Servicing and Car Shop Repair Track Areas** (214.318)

(a) In lieu of the requirements of this Subpart, workers (as defined by § 218.5 of this Chapter) within the limits of locomotive servicing and car shop repair track areas (as both defined by § 218.5 of this Chapter) may utilize procedures established by a railroad in accordance with Subpart B of Part 218 of this Chapter (Blue Signal Protection) to perform duties incidental to inspecting, testing, servicing, or repairing rolling equipment when those incidental duties involve fouling a track that is protected by Blue Signal Protection. A railroad utilizing Blue Signal Protection in lieu of the requirements of this Subpart must have rules in effect governing the applicability of those protections to the incidental duties being performed. (**New Requirement**)

FRA estimates that approximately 722 railroads will develop and have in effect rules

governing the applicability of Subpart B of Part 218 to the aforementioned incidental duties under the above requirement. It is estimated that it will take approximately three (3) hours to develop the required rules. Total annual burden for this requirement is 2,166 hours.

Respondents Universe:	722 Railroads
Burden time per response:	3 hours
Frequency of Response:	On occasion
Annual Number of responses:	722 railroad rules
Total Annual Burden	2,166 hours
Calculation:	722 railroad rules x 3 hrs. = 2,166 hours

E. **Working Limits, Generally** (214.319)

Working limits established on controlled track shall conform to the provisions of §214.321 Exclusive track occupancy, § 214.323 Foul time, or § 214.325 Train coordination. Working limits established on non-controlled track shall conform to the provision of § 214.327 Inaccessible track. (**Revised Requirements**)

(a) Working limits established under any procedure shall, in addition, conform to the following provisions:

(1) Only a roadway worker in charge who is qualified in accordance with § 214.353 of this part shall establish or have control over working limits for the purpose of establishing on-track safety.

(2) Only one roadway worker in charge who is qualified in accordance with § 214.353 of this Part shall have control over working limits on any one segment of track.

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

Notification of all affected roadway workers is the usual and customary procedure carried out by railroads as part of their normal operations. Consequently, there is no additional burden associated with this requirement.

(b) Each Class I or Class II railroad or each railroad providing regularly scheduled intercity or commuter rail passenger transportation that utilizes controlled track working limits as a form of on-track safety (under §§214.321- §214.323) in signalized territory shall: (**Revised Requirements**)

(1) By July 1, 2017, evaluate its on-track safety program and identify an appropriate method(s) of providing redundant signal protections for roadway work groups who depend on a train dispatcher or control operator to provide signal protection in establishing controlled track working limits. For purposes of this section, redundant signal protections means risk mitigation measures or safety redundancies adopted to ensure the proper establishment and maintenance of signal protections for controlled track working limits until such working limits are released by a roadway worker in charge. Appropriate redundant protections could include the use of various risk mitigation measures (or a combination of risk mitigation measures) such as technology, training, supervision, or operating-based procedures; or could include use of redundant signal protection, such as shunting, designed to prevent signal system-related incursions into established controlled track working limits; and

Respondent universe is 47 railroads – 28 commuters, 7 Class Is, 11 Class IIs, and Amtrak. Of these 47 railroads, FRA estimates that 34 will evaluate their on-track safety programs/identify an appropriate method of providing redundant protection for their roadway work groups and will take approximately 40 hours each to complete this process. Of the remaining 13 railroads, FRA estimates that it will take approximately 16 hours each to complete this evaluation/identification process. Total annual burden for this requirement is 1,568 hours.

Respondents Universe:	47 Railroads
Burden time per response:	40 hours + 16 hours
Frequency of Response:	On occasion
Annual Number of responses:	47 on-track safety program evaluations and identification of redundant protections
Total Annual Burden	1,568 hours

Calculation: 34 on-track safety program evaluations/ID of redundant protections x 40 hrs. + 13 on-track safety program evaluations/ID of redundant protections x 16 hrs. = 1,568 hours

(2) By January 1, 2018, specifically identify, implement, and comply with the method(s) of providing redundant protections in its on-track safety program.

As with the other 32 railroads, CP and Metra will use job briefings between dispatchers and the roadway-worker in charge (RWIC) to implement the redundant protections of their on-track safety programs. FRA estimates that there will be approximately 69,294 job safety briefings per year between CP dispatchers and RWICs, and approximately 8,100 job safety briefings per year between Metra dispatchers and RWICs. Thus, a total

of 77,394 job safety briefings will be completed each year. It is estimated that each job safety briefing will take approximately four (4) minutes to complete. Total annual burden for this requirement is 5,160 hours.

Respondents Universe:	47 Railroads
Burden time per response:	4 minutes
Frequency of Response:	On occasion
Annual Number of responses:	77,394 job safety briefings
Total Annual Burden	5,160 hours
Calculation:	77,394 job safety briefings x 4 min. = 5,160 hours

(c) Upon a railroad 's request, FRA will consider an exemption from the requirements of paragraph (b) of this section for each segment of track(s) for which operations are governed by a positive train control system under Part 236, subpart I of this Chapter. A request for approval to exempt a segment of track must be submitted in writing to the FRA Associate Administrator for Railroad Safety and Chief Safety Officer. The FRA Associate Administrator for Railroad Safety and Chief Safety Officer will review a railroad's submission and will notify a railroad of its approval or disapproval in writing within 90 days of FRA's receipt of a railroad's written request, and shall specify the basis for any disapproval decision. (**New Requirement**)

FRA estimates that approximately that it will receive approximately five (5) written requests from railroads for an exemption under the above requirement. It is estimated that it will take approximately 60 minutes to complete each written request (including providing/copying any PTC documents). Total annual burden for this requirement is five (5) hours.

Respondents Universe:	47 Railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual Number of responses:	5 written requests
Total Annual Burden	5 hours
Calculation:	5 written requests x 60 min. = 5 hours

Total annual burden for this entire requirement is 6,733 hours (1,568 + 5,160 + 5).

F. Roadway Maintenance Machine Movements Over Signalized Non-Controlled Track (214.320)

Working limits must be established for roadway maintenance machine movements on non-controlled track equipped with automatic block signal systems over which trains are permitted to exceed restricted speed (for purposes of this section, on-track movements prepared to stop within one-half the range of vision but not exceeding 25 mph). This section applies unless the railroad's operating rules protect the movements of roadway maintenance machines in a manner equivalent to that provided for by limiting all train and locomotive movements to restricted speed, and such equivalent level of protection is first approved in writing by FRA's Associate Administrator for Railroad Safety and Chief Safety Officer. (**New Requirement**)

FRA estimates that approximately five (5) requests for approval of railroad operating rules providing an equivalent level of protection to that of working limits will be submitted to the FRA Associate Administrator for Safety/Chief Safety Officer under the above requirement. It is estimated that it will take approximately four (4) hours to complete each request for approval and send it to FRA. Total annual burden for this requirement is 20 hours.

Respondents Universe:	722 Railroads
Burden time per response:	4 hours
Frequency of Response:	On occasion
Annual Number of responses:	5 approval requests
Total Annual Burden	20 hours

Calculation: 5 approval requests x 4 hrs. = 20 hours

G. Exclusive Track Occupancy - Working Limits (214.321)

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

- Where authority for exclusive track occupancy is transmitted orally, the authority must be written as received by the roadway worker in charge and repeated to the issuing employee for verification.

- The roadway worker in charge of the working limits must maintain possession of the written or printed authority for exclusive track occupancy while the authority for the working limits is in effect. A data transmission of an authority displayed on an electronic screen may be used as a substitute for a written or printed document required under this paragraph. Electronic displays of authority must comply with the requirements of § 214.322.

- The train dispatcher or control operator in charge of the track must make a written or electronic record of all authorities issued to establish exclusive track occupancy.

- An authority shall specify a unique roadway work group number, an employee name, or a unique identifier. A railroad shall adopt procedures that require precise communication between trains and other on-track equipment and the roadway worker in charge or lone worker controlling the working limits in accordance with § 214.319. The procedures may permit communications to be made directly between a train or other on-track equipment and a roadway worker in charge or lone worker, or through a train dispatcher or control operator.

- The extent of working limits established through exclusive track occupancy shall be defined by one of the following physical features clearly identifiable to a locomotive engineer or other person operating a train or railroad equipment:

  * A flagman with instructions and capability to hold all trains and equipment clear of the working limits;

  * A fixed signal that displays an aspect indicating “Stop”;

  * A station shown in the time-table, and identified by name with a sign, beyond which train movement is prohibited by train movement authority or the provisions of a direct train control system.

  * A clearly identifiable milepost sign beyond which train movement is prohibited by train movement authority or the provisions of a direct train control system; or

  * A clearly identifiable physical location prescribed by the operating rules of the railroad that trains may not pass without proper authority.

- Movements of trains and roadway maintenance machines within working limits established through exclusive track occupancy shall be made only under the direction of the roadway worker in charge of the working limits. Such movements shall be restricted speed unless a higher authorized speed has been specifically authorized by the roadway worker in charge of the working limits.

- Working limits established by exclusive track occupancy authority may occur behind designated trains moving through the same limits in accordance with the following provisions:

  * The authority establishing working limits will only be considered to be in effect after it is confirmed by the roadway worker in charge or lone worker that the affected train(s) have passed the point to be occupied or fouled by:

** Visually identifying the affected trains(s), or

** Direct radio contact with a crew member of the affected train(s), or

** Receiving information about the affected train from the train dispatcher or control operator.

* When utilizing the provisions of paragraph (e)(1)(i) of this section, a railroad's operating rules shall include procedures to prohibit the affected train(s) from making a reverse movement into the limits being fouled or occupied.

* After the roadway worker in charge or lone worker has confirmed that the affected trains(s) have passed the point to be occupied or fouled, the roadway worker in charge shall record on the authority the time of passage and engine number(s) of the affected trains(s). If the confirmation is by direct communication with the train(s), or through confirmation by the train dispatcher or control operator, the roadway worker in charge shall record the time of such confirmation and the engine number(s) of the affected trains on the authority.

* A separate roadway work group afforded on-track safety by the roadway worker in charge of authority limits, and that is located away from the roadway worker in charge of authority limits, shall:

** Occupy or foul the track only after receiving permission from the roadway worker in charge to occupy the working limits after the roadway worker in charge has fulfilled the provisions of paragraph (e)(1) of this section, and

** Be accompanied by an employee qualified to the level of a roadway worker in charge who shall also have a copy of the authority and who shall independently execute the required communication requirements of paragraphs (e)(1) and (e)(3) of this section.

* Any subsequent train or on-track equipment movements within working limits after the passage of the affected train(s) shall be governed by paragraph (d) of this section.

According to FRA's roadway worker program specialist, railroads are already doing all this. It is part of their usual and customary procedure. Consequently, there is no burden associated with this requirement.

h. **<u>Exclusive Track Occupancy, Electronic Display</u>** (214.322)

(a) While it is in effect, all the contents of an authority electronically displayed shall be readily viewable by the roadway worker in charge that is using the authority to provide on-track safety for a roadway work group. (**New Requirements**)

(b) If the electronic display device malfunctions, fails, or cannot display an authority while it is in effect, the roadway worker in charge shall either obtain a written or printed copy of the authority in accordance with § 214.321 (except that on-track roadway maintenance machine movements and hi-rail movements must stop), or establish another form of on-track safety without delay. In the event that a written or printed copy of the authority cannot be obtained or another form of on-track safety cannot be established after failure of an electronic display device, the roadway worker in charge shall instruct all roadway workers to stop work and occupy a place of safety and conduct an on-track safety job briefing to determine the safe course of action with the roadway work group.

There are three (3) railroads that currently use electronically displayed authorities. FRA estimates that approximately 500 times a year the electronic display will malfunction, fail, or be unable display an authority. It is estimated that it will take approximately 10 minutes to receive either a written or printed copy of the authority. Total annual burden for this requirement is 83 hours.

Respondents Universe:	3 Class I Railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual Number of responses:	500 written authorities/printed authority copy
Total Annual Burden:	83 hours

Calculation: 500 written authorities/printed authority copies x 10 min. = 83 hours

Additionally, FRA estimates that approximately 100 briefings will take place under the above requirement. The average number of workers participating in these briefings is three (3). It is estimated that it will take approximately two (2) minutes per worker or a total of six (6) minutes to complete each briefing. Total annual burden for this requirement is 10 hours.

Respondents Universe:	722 Railroads
Burden time per response	6 minutes
Frequency of Response:	On occasion
Annual Number of responses:	100 briefings
Total Annual Burden:	10 hours

Calculation: 100 briefings x 6 min. = 10 hours

(c) All authorized users of an electronic display system shall be uniquely identified to support individual accountability. A user may be a person, a process, or some other system that accesses or attempts to access an electronic display system to perform tasks or process an authority.

(d) All authorized users of an electronic display system must be authenticated prior to being granted access to such system. The system shall ensure the confidentiality and integrity of all internally stored authentication data and protect it from access by unauthorized users. The authentication scheme shall utilize algorithms approved by the National Institute of Standards and Technology (NIST), or any similarly recognized and FRA approved standards body.
Railroads are already doing (c) and (d) above. It is part of their usual and customary procedure. Consequently, there is no burden associated with this requirement.

(e) The integrity of all data must be ensured during transmission/reception, processing, and storage. All new electronic display systems implemented on or after July 1, 2017, shall utilize a Message Authentication Code (MAC) to ensure that all data are error free. The MAC shall utilize algorithms approved by NIST, or any similarly recognized and FRA approved standards body. Systems implemented prior to July 1, 2017, may utilize a Cyclical Redundancy Code (CRC) to ensure that all data are error free provided:

(1) The collision rate for the CRC check utilized shall be less than or equal to 1 in 2^{32}. Systems implemented prior to July 1, 2017, that do not utilize a CRC with a collision rate less than or equal to 1 in 2^{32} must be retired or updated to utilize a MAC no later than July 1, 2018.

(2) MAC and CRC checks shall only be used to verify the accuracy of an electronic authority data message and shall not be used in an error correction reconstruction of the data. An authority must fail if the MAC or CRC checks do not match.

(f) Authorities transmitted to each electronic display device shall be retained in the device's non-volatile memory for not less than 72 hours.

(g) If any electronic display device used to obtain an authority is involved in an accident/incident that is required to be reported to FRA under Part 225 of this Chapter, the railroad or employer that was using the device at the time of the accident shall, to the extent possible, and to the extent consistent with the safety of life and property, preserve the data recorded by each such device for analysis by FRA. This preservation requirement permits the railroad or employer to extract and analyze such data, provided the original downloaded data file, or an unanalyzed exact copy of it, shall be retained in secure custody and shall not be utilized for analysis or any other purpose except by direction of FRA or the National Transportation Safety Board. This preservation

requirement shall expire one (1) year after the date of the accident unless FRA or the National Transportation Safety Board notifies the railroad in writing that the data are desired for analysis.

FRA estimates that this requirement will affect approximately three (3) railroads. FRA estimates that there will be approximately 25 accidents/incidents per year where data files records will be retained under the above requirement. It is estimated that it will take approximately two (2) hours to extract, analyze, and retain the data file record. Total annual burden for this requirement is 50 hours.

Respondents Universe:	3 Class I Railroads
Burden time per response	2 hours
Frequency of Response:	On occasion
Annual Number of responses:	25 data files records
Total Annual Burden:	50 hours

Calculation: 25 data files records x 2 hrs. = 50 hours

(h) New electronic display systems implemented after July 1, 2017, shall provide Level 3 assurance as defined by NIST Special Publication 800-63-2, Electronic Authentication Guideline, "Computer Security," August 2013. Systems implemented prior to July 1, 2017, shall provide Level 2 assurance. Systems implemented prior to July 1, 2017, that do not provide Level 2 or higher assurance must be retired, or updated to provide Level 2 assurance, no later than July 1, 2018. The incorporation by reference of this NIST Special Publication was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You may obtain a copy of the incorporated document from the National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899-8930. http://nvlpubs.nist.gov/nistpubs/SpecialPublications /NIST.SP.800-63-2.pdf. You may inspect a copy of the document at the Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue, SE, Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* (**New Requirement**)

FRA estimates that approximately three (3) requests for copies of the NIST publication will be made under the above requirement. It is estimated that it will take approximately 30 minutes to make each request and approximately two (2) minutes to provide the requested publication copies. Total annual burden for this requirement is two (2) hours.

Respondents Universe:	722 Railroads
Burden time per response:	30 minutes + 2 minutes

Frequency of Response:	On occasion
Annual Number of responses:	3 requests + 3 publication copies
Total Annual Burden	2 hours

Calculation: 3 requests x 30 min. + 3 publication copies x 2 min. = 2 hours

FRA estimates that approximately zero (0) requests to inspect copies of the NIST publication at FRA or NARA will be made under this part of the above requirement. Consequently, there is no burden associated with it.

Total annual burden for this requirement is 145 hours (83 + 10 + 50 + 2).

H. Foul Time Working Limit Procedures (214.323)

Working limits established on controlled track through the use of foul time procedures must comply with the following requirements:

(a) Foul time may be given orally or in writing by the train dispatcher or control operator only after that employee has withheld the authority of all trains or other on-track equipment to move into the working limits during the foul time period.

(b) Each roadway worker in charge to whom foul time is transmitted orally must repeat the track number or identifier, track limits and time limits of the foul time to the issuing employee for verification before the foul time becomes effective.

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

(d) The roadway worker in charge shall not permit the movement of trains or other on-track equipment into or within working limits protected by foul time.

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

I. Train Coordination (214.325)

Working limits established on controlled track by a roadway worker in charge through

the use of train coordination must comply with the following requirements: (**Revised Requirement**)

(a) Working limits established by train coordination must be within the segments of track or tracks upon which only one train holds exclusive track authority to move.

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

(1) The train is visible to the roadway worker who is establishing the working limits;

(2) The train is stopped;

(3) Further movements of the train will be made only as permitted by the roadway worker in charge of the working limits while the working limits remain in effect; and

(4) The crew of the train will not give up its exclusive authority until the working limits have been released to the train crew by the roadway worker in charge of the working limits.

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

Respondents:	50,000 Roadway Workers
Burden time per response:	15 seconds
Frequency of Response:	On occasion
Annual Number of responses:	36,500 communications
Total Annual Burden:	152 hours

Calculation: 36,500 communications x 15 sec. = 152 hours

J. Inaccessible Track (214.327)

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

- (1) A flagman with instructions and capability to hold all trains and equipment

clear of the working limits;

- (2) A switch or derail aligned to prevent access to the working limits and secured with an effective securing device by the roadway worker in charge of the working limits;

- (3) A discontinuity in the rail that precludes passage of trains or engines into the working limits;

- (4) Working limits on controlled track that connects directly with the inaccessible track, established by the roadway worker in charge of the working limits on the inaccessible track; or

- (5) A remotely controlled switch aligned to prevent access to the working limits and secured by the control operator of such remotely controlled switch by application of a locking or blocking device to the control of that switch, when:

(i) The control operator has secured the remotely controlled switch by applying a locking or blocking device to the control of the switch, and (ii) The control operator has notified the roadway worker who has established the working limits that the requested protection has been provided, and (iii) The control operator is not permitted to remove the locking or blocking device from the control of the switch until receiving permission to do so from the roadway worker who established the working limits.

- (6) A locomotive with or without cars placed to prevent access to the working limits at one or more points of entry to the working limits, provided the following conditions are met: (**New Provision**)

- (i) The roadway worker in charge who is responsible for establishing working limits communicates with a member of the crew assigned to the locomotive and determines that:

- (A) The locomotive is visible to the roadway worker in charge who is establishing the working limits, and

- (B) The locomotive is stopped.

- (ii) Further movements of the locomotive shall be made only as permitted by the roadway worker in charge controlling the working limits;

- (iii) The crew of the locomotive shall not leave the locomotive unattended or go off-duty unless communication occurs with the roadway worker in charge and an alternate means of on-track safety protection has been established by the roadway worker in charge; and

- (iv) Cars coupled to the locomotive on the same end and on the same track as the roadway workers shall be connected to the train line air brake and such system shall be charged with compressed air to initiate an emergency brake application in case of unintended uncoupling. Cars coupled to the locomotive on the same track on the opposite end of the roadway workers shall have sufficient braking capability to control their movement.

This requirement will affect approximately 10 railroads. FRA estimates that approximately 25 communications per day or 9,125 communications per year will occur under the above requirement. It is estimated that each communication will take approximately 10 minutes to complete. Total annual burden for this requirement is 1,521 hours.

Respondents:	10 Railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual Number of responses:	9,125 communications
Total Annual Burden:	1,521 hours

Calculation: 9,125 communications x 10 min. = 1,521 hours

(7) A railroad's procedure governing block register territory that prevents trains and other on-track equipment from occupying the track when the territory is under the control of a lone worker or roadway worker in charge. The roadway worker in charge or lone worker shall have the absolute right to render such block register territory inaccessible under the other provisions of paragraph (a) of this section.

Railroads already have such a procedure under their operating rules. It is a usual and customary practice for them. Consequently, there is no burden associated with the above requirement.

(8) Railroad operating rules that prohibit train or engine or other on-track equipment movements on a main track within yard limits or restricted limits until the train or engine receives notification of any working limits in effect and prohibit the train or engine or on-track equipment from entering working limits until permission is received by the roadway worker in charge. Such working limits shall be delineated with stop signs (flags), and where speeds are in excess of restricted speed and physical characteristics permit, also with advance signs (flags). (**New Provision/ Requirement**)

This new requirement will also affect approximately 10 railroads. FRA estimates that approximately 1,750 notifications per year will occur under the above requirement. It is estimated that each notification will take approximately 60 minutes to complete. Total annual burden for this requirement is 1,750 hours.

Respondents:	10 Railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual Number of responses:	1,750 notifications
Total Annual Burden:	1,750 hours

Calculation: 1,750 notifications x 60 min. = 1,750 hours

(b) Trains and roadway maintenance machines within working limits established by means of inaccessible track shall move only under the direction of the roadway worker in charge of the working limits, and shall move at restricted speed.

(c) No operable locomotives or other items of on-track equipment, except those present or moving under the direction of the roadway worker in charge of the working limits, shall be located within working limits established by means of inaccessible track. FRA estimates that this will occur approximately 50,000 times annually. It is estimated that it will take approximately 10 minutes per occurrence for the roadway worker in charge (RWIC) to provide the necessary notification/direction. Total annual burden for this requirement is 8,333 hours.

Respondent Universe:	722 Railroads
Burden time per responses:	10 minutes
Frequency of Response:	On occasion
Annual Number of responses:	50,000 notifications/directions by RWIC
Total Annual Burden:	8,333 hours

Calculation: 50,000 directions by RWIC x 10 min. = 8,333 hours

Total annual burden for this entire requirement is 11,604 hours (1,521 + 1,750 + 8,333).

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

Roadway workers in a roadway work group who foul any track outside of working limits shall be given warning of approaching trains by one or more watchmen/lookouts in accordance with the following provisions:

(a) Train approach warning shall be given in sufficient time to enable each roadway worker to move to and occupy a previously arranged place of safety not less than 15 seconds before a train moving at the maximum speed authorized on that track can pass the location of the roadway worker. The place of safety to be occupied upon the approach of a train may not be on a track, unless working limits are established on that track. (**Revised Provision**)

(b) Watchmen/lookouts assigned to provide train approach warning shall devote full attention to detecting the approach of trains and communicating a warning thereof, and shall not be assigned any other duties while functioning as watchmen/lookouts.

(c) The means used by a watchman/lookout to communicate a train approach warning shall be distinctive and shall clearly signify to all recipients of the warning that a train or other on-track equipment is approaching.

(d) Every roadway worker who depends upon train approach warning for on-track safety shall maintain a position that will enable him or her to receive a train approach warning communicated by a watchman/lookout at any time while on-track safety is provided by train approach warning.

(e) Watchmen/lookouts shall communicate train approach warnings by a means that does not require a warned employee to be looking in any particular direction at the time of the warning, and that can be detected by the warned employee regardless of noise or distraction of work.

FRA estimates that the communications described above will take place approximately 3,000 times per day for each of the 265 days each year that the nation's estimated 50,000 roadway workers are out on tracks. Thus, approximately 795,000 communications will occur between the watchman/lookout and the rest of the roadway work group. Additionally, it is estimated that approximately 79,500 communications in yards will take place between watchman/lookout and the roadway work group members under the above requirement. It is estimated that each track communication will take approximately 30 seconds to complete and that each yard communication will take approximately 10 seconds to complete. Total annual burden for this requirement is 6,846 hours.

Respondents:	722 Railroads
Burden time per response:	30 seconds + 10 seconds
Frequency of Response:	On occasion
Annual Number of responses:	795,000 communications + 79,500 communications
Total Annual Burden:	6,846 hours

Calculation: 795,000 communications x 30 sec. + 79,500 communications x 10 sec. = 6,846 hours

(f) Every roadway worker who is assigned the duties of a watchman/lookout shall first be trained, qualified and designated in writing by the employer to do so in accordance with the provisions of §214.349.

FRA estimates that approximately 26,250 written designations will be made under the above requirement. It is estimated that each written designations will take approximately 30 seconds to complete. Total annual burden for this requirement is 219 hours.

Respondents:	722 Railroads
Burden time per response:	30 seconds
Frequency of Response:	On occasion
Annual Number of responses:	26,250 written designations
Total Annual Burden:	219 hours

Calculation: 26,250 written designations x 30 sec. = 219 hours

Total annual burden for this requirement is 7,065 hours (6,846 + 219).

L. Definite Train Location Information (214.331)

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

(d) Definite train location information must only be used to establish on-track safety according to the following provisions: (1) Definite train location information shall be issued only by the one train dispatcher who is designated to authorize train movements over the track for which the information is provided. (2) A definite train location list must indicate all trains to be operated on the track for which the list is provided during the time for which the list is effective. (3) Trains not shown on the definite train location list must not be operated on the track for which the list is provided, during the time for which the list is effective, until each roadway worker to whom the list has been issued has been notified of the train movement, has acknowledged the notification to the train dispatcher, and has canceled the list. A list thus canceled will then be invalid for on-track safety. (4) Definite train location must not be used to establish on-track safety within the limits of a manual interlocking, or on track over which train movements are governed by a Traffic Control System or by a Manual Block System. (5) Roadway workers using definite train location for on-track safety must not foul a track within 10 minutes before the earliest time that a train is due to depart the last station at which time is shown in approach to the roadway worker's location nor until that train has passed the location of the roadway worker. (6) A railroad must not permit a train to depart a location designated in a definite train location list before the time shown therein. (7) Each roadway worker who uses definite train location to establish on-track safety must be qualified on the relevant physical characteristics of the territory for which the train location information is

provided.

(e) Each on track safety program that provides for the use of definite train location shall discontinue such use by June 12, 2017.

Previously, the only determinable burden from this section of the rule was for the establishment of a schedule for phase-out. This affected only two or three Class I railroads and the task can reasonably be performed in four to five hours per railroad. This burden was accounted for in the previous burden of developing on track safety programs. The final rule stipulates that definite train location must be discontinued one year after this revised final rule is published in the Federal Register. With this new requirement, there will no longer be any burden for any of the railroads.

M. Informational Line-Ups of Trains (214.333)

(a) A railroad is permitted to include informational line-ups of trains in its on-track safety program for use only on subdivisions of that railroad upon which such procedure was in effect on March 14, 1996.

(b) Each procedure for the use of informational line-ups of trains found in an on-track safety program shall include all provisions necessary to protect roadway workers using the procedure against being struck by trains or other on-track equipment.

(c) Each on track safety program that provides for the use of informational line-ups shall discontinue such use by June 12, 2017.

The burden for on-track safety programs is included above under that of § 214.305. There is no additional burden associated with this requirement.

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

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

The burden for this requirement is addressed in § 214.315, Supervision and Communication. Consequently, there is no additional burden associated with this requirement.

N. On-Track Safety Procedures for Certain Roadway Work Groups and Adjacent Tracks (214.336)

(a) Procedures; general. (1) Except as provided in paragraph (e) of this section, on-track safety is required for each adjacent controlled track when a roadway work group with at least one of the roadway workers on the ground is engaged in a common task with on-track, self-propelled equipment or coupled equipment on an occupied track. The required on-track safety must be established through § 214.319 (Working limits, generally) or § 214.329 (Train approach warning provided by watchmen/lookouts) and as more specifically described in this section.

(2) Special circumstances arising in territories with at least three tracks, if an occupied track is between two adjacent tracks, at least one of which is an adjacent controlled track. If an occupied track has two adjacent controlled tracks, and one of these adjacent controlled tracks has one or more train or other on-track equipment movements authorized or permitted at a speed of 25 mph or less, and the other adjacent controlled track has one or more concurrent train or other on-track equipment movements authorized or permitted at a speed over 25 mph, the more restrictive procedures in paragraph (b) of this section apply. (ii) If an occupied track has an adjacent controlled track on one side (Side X), and a non-controlled track whose track center is spaced 19 feet or less from the track center of the occupied track on the other side (Side Y), the affected roadway workers must treat the non-controlled track on Side Y as an adjacent controlled track for purposes of this section. (3) As used in this section, "adjacent controlled track" means a controlled track whose track center is spaced 19 feet or less from the track center of the occupied track. Note, however, that under the special circumstances specified in paragraph (a)(2)(ii) of this section, a non-controlled track whose track center is spaced 19 feet or less from the track center of the occupied track must be treated as an adjacent controlled track for purposes of this section. "Adjacent track" means a controlled or non-controlled track whose track center means is spaced less than 25 feet from the track center of the occupied track. "Inter-track barrier means a continuous barrier of a permanent or semi-permanent nature that spans the entire work area, that is at least four feet in height, and that is of sufficient strength to prevent a roadway worker from fouling the adjacent track.

Minor correction means one or more repairs of a minor nature, including, but not limited to, spiking, anchoring, hand tamping, and joint bolt replacement that is accomplished with hand tools or handheld pneumatic tools only. The term does not include welding, machine spiking, machine tamping, or any similarly distracting repair. Occupied track" means a track on which on-track, self-propelled equipment or coupled equipment is authorized or permitted to be located while engaged in a common task with a roadway work group with a least one of the roadway workers on the ground.

Any burden associated with § 214.319, and § 214.329 are included in those sections, respectively. Consequently, there is no additional burden under the above provision.

(b) Procedures for adjacent-controlled-track movements over 25 mph. If a train or other

on-track equipment is authorized to move on an adjacent controlled track at a speed greater than 25 mph, each roadway worker in the roadway work group that is affected by such movement must comply with the following procedures:

(1) Ceasing work and occupying a predetermined place of safety. Except for the work activities as described in paragraph (e) of this section, each affected roadway worker must, as described in Table 1 of this section, cease all on-ground work and equipment movement that is being performed on or between the rails of the occupied track or on one or both sides of the occupied track, and occupy a predetermined place of safety upon receiving either a watchman/lookout warning, or alternatively, a notification that the roadway worker in charge intends to permit one or more train or other on-track equipment movements through the working limits on the adjacent controlled track.

(2) Resuming work. (i) An affected roadway worker may resume on-ground work and equipment movement (on or between the rails of the occupied track on one or both sides of the occupied track as described in Table 1 of this section) only after the trailing-end of all trains or other on-track equipment moving on the adjacent controlled track (for which a warning or notification has been received in accordance with paragraph (b)(1) of this section) has passed and remains ahead of that roadway worker.

FRA estimates that approximately 10,000 notifications or watchmen lookout warnings will be made under the above requirement. It is estimated that it will take approximately 15 seconds to make each notification/watchman lookout warning. Total annual burden for this requirement is 42 hours.

Respondents Universe:	100 Railroads
Burden time per response:	15 seconds
Frequency of Response:	On occasion
Annual Number of responses:	10,000 notifications or watchmen lookout warnings
Total Annual Burden:	42 hours

Calculation: 10,000 notifications or watchmen lookout warnings x 15 sec. = 42 hours

(ii) If the train or other on-track equipment stops before its trailing-end has passed all of the affected roadway workers in the roadway work group, the work to be performed (on or between the rails of the occupied track or on one or both sides of the occupied track as described in Table 1 of this section) ahead of the trailing-end of the train or other on-track equipment on the adjacent controlled track may resume only – (A) If on-track safety through train approach warning (§ 214.329) has been established on the adjacent controlled track; or (B) After the roadway worker in charge has communicated with a member of the train crew or the on-track equipment operator and established that further movements of such train or other on-track equipment shall be made only as permitted by the roadway worker in charge.

FRA estimates that approximately 3,000 communications will take place under the above scenario. It is estimated that each communication will take approximately one (1) minute to make complete. Total annual burden for this requirement is 50 hours.

Respondents Universe:	100 Railroads
Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual Number of responses:	3,000 communications
Total Annual Burden:	50 hours

Calculation: 3,000 communications x 1 min. = 50 hours

(c) Procedures for adjacent-controlled-track movements 25 mph or less. If a train or other on-track equipment is authorized or permitted to move on an adjacent controlled track at a speed of 25 mph or less, each roadway worker in the roadway work group that is affected by such movement must comply with the procedures listed in paragraph (b) of this section, except that equipment movement on the rails of the occupied track and on-ground work performed exclusively between the rails (i.e., not breaking the plane of the rails) of the occupied track may continue, provided that no on-ground work is performed within the areas 25 feet in front or 25 feet behind any on-track, self-propelled equipment or coupled equipment permitted to move on the occupied track.

In keeping with the requirements listed in paragraph (b) of this section, FRA estimates that approximately 3,000 notifications or watchmen lookout warnings will be made under the above requirement. It is estimated that it will take approximately 15 seconds to make each notification/watchman lookout warning. Total annual burden for this requirement is 13 hours.

Respondents Universe:	100 Railroads
Burden time per response:	15 seconds
Frequency of Response:	On occasion
Annual Number of responses:	3,000 notifications or watchmen lookout warnings
Total Annual Burden:	13 hours

Calculation: 3,000 notifications/watchmen lookout warnings x 15 sec. = 13 hrs.

In keeping with the requirements listed in paragraph (b) of this section, FRA estimates that approximately 1,500 communications will take place under the above scenario. It is estimated that each communication will take approximately one (1) minute to make

complete. Total annual burden for this requirement is 25 hours.

Respondents Universe:	100 Railroads
Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual Number of responses:	1,500 communications
Total Annual Burden:	25 hours

Calculation: 1,500 communications x 1 min. = 25 hours

(e) Exceptions to the requirements in paragraphs (a), (b), and (c) for adjacent-controlled-track on-track safety. No on-track safety (other than that required by paragraph (f) (Procedures for components of roadway maintenance machines fouling an adjacent controlled track) or provided under paragraph (d) (Discretion of roadway worker in charge) of this section) is required by this section for an adjacent controlled track during the times that the roadway work group is exclusively performing one or more of the following work activities:

(1) On-ground work performed on a side of the occupied track meeting specified condition(s). A roadway work group with all of its on-ground roadway workers (other than those performing work in accordance with another exception in paragraph (e) of this section) performing work while exclusively positioned on a side of the occupied track as follows and as further specified in Table 1 of this section: (i) The side with no adjacent track**;** (ii) The side with one or more adjacent tracks, the closest of which has working limits on it and no movements permitted within such working limits by the roadway worker in charge; or (iii) The side with one or more adjacent tracks, provided that that it has an inter-track barrier between the occupied track and the closest adjacent track on that side.

(2) Maintenance or repairs performed alongside machines or equipment on the occupied track. One or more roadway workers performing maintenance or repairs alongside a roadway maintenance machine or coupled equipment, provided that such machine or equipment would effectively prevent the worker from fouling the adjacent controlled track on the other side of such equipment, and that such maintenance or repairs are performed while positioned on a side of the occupied track as described in paragraph (e)(1)(i), (e)(1)(ii), or (e)(1)(iii) and Table 1 of this section.

(3) Work activities involving certain equipment and purposes. One or more on-ground roadway workers engaged in a common task on an occupied track with on-track, self-propelled equipment or coupled equipment consisting exclusively of one or more of the types of equipment described in paragraphs (e)(3)(i) through (e)(3)(iii) of this section. If such a roadway work group ("excepted group") is authorized or permitted to operate on the same occupied track and within the working limits of a separate roadway work group

performing work that is subject to the requirements of this section ("non-excepted group") or vice versa (i.e., a non-excepted group is authorized or permitted to operate on the same occupied track and within the working limits of an excepted group), the groups must conduct an on-track safety job briefing to determine if adjacent-controlled-track on-track safety is necessary for the excepted group. Such determination shall be made by the roadway worker in charge of the working limits; however, if the groups are in such proximity where the ability of the roadway workers in the excepted group to hear or see approaching trains and other on-track equipment is impaired by background noise, lights, sight obstructions or any other physical conditions caused by the equipment, then this exception does not apply, and adjacent-controlled-track on-track safety must be provided to both groups. This exception otherwise applies to work activities involving one or more of the following types of equipment:

(i) A hi-rail vehicle (other than a catenary maintenance tower vehicle) being used for inspection or minor correction purposes, provided that such hi-rail vehicle is not coupled to one or more railroad cars. In accordance with § 214.315(a), where multiple hi-rail vehicles being used for inspection or minor correction are engaged in a common task, the on-track safety job briefing shall include discussion of the nature of the work to be performed to determine if adjacent-controlled-track on-track safety is necessary.

(ii) An automated inspection car being used for inspection or minor correction purposes.

(iii) A catenary maintenance tower car or vehicle, provided that all of the on-ground workers engaged in the common task (other than those performing work in accordance with another exception in paragraph (e) of this section) are positioned within the gage of the occupied track for the sole purpose of applying or removing grounds.

There are approximately 24,500 roadway workers and 10,500 signalmen/lone workers who will be affected by this new requirement. Each affected worker will undergo 327 daily briefings per year as noted in 214.15 (a total of 11,445,000 briefings). However, FRA believes that there will be 30 percent less annual daily briefings pertaining to this requirement (11,445,000 briefings x .70 = 8,011,500 briefings). Thus, there will be approximately 228.9 briefings per affected worker under this requirement (8,011,500 briefings divided by 35,000 workers). Further, FRA believes that many railroad operations – approximately 70% -- are already including this information in their job briefings, where pertinent. Consequently, FRA estimates that approximately 68.67 briefings per affected worker will take place each year (228.9 x .30). As a result, FRA estimated that approximately 2,403,450 on-track safety job briefings will occur under this new requirement (35,000 affected workers x 68.67). FRA estimates that it will take approximately 15 seconds to complete each briefing. Total annual burden for this requirement is 10,014 hours.

Respondents Universe: 100 Railroads

Burden time per response: .25 minute
Frequency of Response: On occasion
Annual Number of responses: 2,403,450 on-track safety job briefings
Total Annual Burden: 10,014 hours

Calculation: 2,403,450 on-track safety job briefings x .25 min. = 10,014 hours

Total annual burden for this entire requirement is 10,144 hours (42 + 50 + 13 + 25 + 10,014).

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

(a) A lone worker who fouls a track while performing routine inspection or minor correction may use individual train detection to establish on-track safety only where permitted by this section and the on-track safety program of the railroad.

(b) A lone worker retains an absolute right to use on-track safety procedures other than individual train detection if he or she deems it necessary, and to occupy a place of safety until such other form of on-track safety can be established.

The burden for on-track safety programs/procedures is included above under that of § 214.305. Consequently, there is no additional burden associated with this requirement.

(c) Individual train detection may be used to establish on-track safety only:

(1) By a lone worker who has been trained, qualified, and designated to do so by the employer in accordance with § 214.347 of this subpart;

(2) While performing routine inspection and minor correction work;

(3) On track outside the limits of a manual interlocking, a controlled point (except those consisting of signals only), or a remotely controlled hump yard facility.

(4) Where the lone worker is able to visually detect the approach of a train moving at the maximum speed authorized on that track, and move to a previously determined place of safety, not less than 15 seconds before the train would arrive at the location of the lone worker;

(5) Where no power-operated tools or roadway maintenance machines are in use within the hearing of the lone worker; and

(6) Where the ability of the lone worker to hear and see approaching trains and other on-track equipment is not impaired by background noise, lights, precipitation, fog, passing trains, or any other physical conditions.

(d) The place of safety to be occupied by a lone worker upon the approach of a train may not be on a track, unless working limits are established on that track.

(e) A lone worker using individual train detection for on-track safety while fouling a track may not occupy a position or engage in any activity that would interfere with that worker's ability to maintain a vigilant lookout for, and detect the approach of, a train moving in either direction as prescribed in this section.

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

This statement will only be prepared by lone workers who are not under protection by train approach warning or working limits. According to the requirements of this rule, this will primarily occur when a lone worker will be working outside a manual interlocking or remote hump yard facility, and not within hearing distance of any power tools. Results from an earlier BRS Survey determined that this is only 2.33 percent of the time. This figure has not changed. FRA estimates that, at any one time, only one-fifth or approximately 10,000 roadway workers will be working as lone workers. It is estimated that each of these workers, on average, will write a Statement of On-Track safety about four times a week. This amounts to a total of 2,080,000 statements (10,000 workers x 4 statements p/wk x 52 weeks) for the industry per year. It is estimated that it will take approximately 30 seconds to prepare this statement. Some railroads will provide lone workers with an additional chart that has the necessary distance, in accordance with the new adjacent track requirements, to clear the track for the different speed limits. It is expected that most railroads will also develop a one-page form that will make this task less burdensome. Total annual burden for this requirement is 17,333 hours.

Respondent Universe:	722 Railroads
Burden time per response:	30 seconds
Frequency of Response:	On occasion
Annual Number of responses:	2,080,000 statements
Total Annual Burden:	17,333 hours

Calculation: 2,080,000 statements x 30 sec. = 17,333 hours

Additionally, under the requirement under (c)(3) above, FRA estimates that an additional 200 Statement of On-Track safety statements will be completed each year. It is estimated that it will take approximately 30 seconds to complete each Statement of On-Track safety. Total annual burden for this requirement is two (2) hours.

Respondent Universe:	722 Railroads
Burden time per response:	30 seconds
Frequency of Response:	On occasion
Annual Number of responses:	200 statements
Total Annual Burden:	2 hours

Calculation: 200 statements x 30 sec. = 2 hours

Total annual burden for this requirement is 17,335 hours (17,333 + 2).

P. Audible Warning from Trains (214.339)

(a) Each railroad shall have in effect and comply with written procedures that prescribe effective requirements for audible warning by horn and/or bell for trains and locomotives approaching any roadway workers or roadway maintenance machines that are either on the track on which the movement is occurring, or about the track if the roadway workers or roadway maintenance machines are at risk of fouling the track. At a minimum, such written procedures shall address: (**Revised Requirement**)

(1) Initial horn warning,

(2) Subsequent warning(s), and
(3) Alternative warnings in areas where sounding the horn adversely affects roadway workers (e.g., in tunnels and terminals).

(b) Such audible warning shall not substitute for on-track safety procedures prescribed in this Part.

This requirement will affect approximately 44 railroads. Thus, FRA estimates that approximately 44 written procedures that prescribe effective requirements for audible warning by horn and/or bell for trains and locomotives approaching any roadway workers or roadway maintenance machines will be completed under the above requirement. It is estimated that it will take approximately 13 hours to complete each written procedure. Total annual burden for this requirement is 572 hours.

Respondents Universe:	44 Railroads
Burden time per response:	13 hours
Frequency of Response:	On occasion
Annual Number of responses:	44 written procedures
Total Annual Burden:	572 hours

Calculation: 44 written procedures x 13 hrs. = 572 hours

Q. TRAINING REQUIREMENTS

(1) Training and Qualification, General (214.343; 214.345)

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

- Each employer must provide to all roadway workers in its employ initial or recurrent training once every calendar year on the on-track safety rules and procedures that they are required to follow.

- Except as provided for in § 214.353, railroad employees other than roadway workers, who are associated with on-track safety procedures, and whose primary duties are concerned with the movement and protection of trains, shall be trained to perform their functions related to on-track safety through the training and qualification procedures prescribed by the operating railroad for the primary position of the employee, including maintenance of records and frequency of training.

- Each employer of roadway workers must maintain written or electronic records of each roadway worker's qualifications in effect. Each record must include the name of the employee, the type of qualification made, and the most recent date of qualification. These records must be kept available for inspection and photocopying by the Federal Railroad Administration during regular business hours.

* Consistent with § 214.343(b), the training for all roadway workers must include, as a minimum, the following:

*Recognition of railroad tracks and understanding of the space around them within which on-track safety is required;

*The functions and responsibilities of various persons involved with on-track safety procedures;

*Proper compliance with on-track safety instructions given by persons performing or responsible for on-track safety functions;

*Signals given by watchmen/lookouts, and the proper procedures upon receiving a train approach warning from a lookout;

*The hazards associated with working on or near railroad tracks, including review of on-track safety rules and procedures.

*Instruction on railroad safety rules adopted to comply with § 214.317(b) of this Subpart. (**New Requirement**)

(2) <u>Training and Qualification for Lone Workers</u> (214.347)

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

The training and qualification for lone works must include, as a minimum, consideration of the following factors:

- Detection of approaching trains and prompt movement to a place of safety upon their approach;

- Determination of the distance along the track at which trains must be visible in order to provide the prescribed warning time;

- Rules and procedures prescribed by the railroad for individual train detection, establishment of working limits, and definite train location; and

- On-track safety procedures to be used in the territory on which the employee is to be qualified and permitted to work alone.

- Alternative means to access to the information in a railroad's on-track safety manual when a lone worker's duties make it impracticable for the on-track safety manual to be readily available

- Initial and periodic (as specified by § 243.201 of this Chapter) qualification of a lone worker shall be evidenced by demonstrated proficiency.

(3) <u>Training and Qualification of Watchmen/Lookouts</u> (214.349)

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

- Detection and recognition of approaching trains;

- Effective warning of roadway workers of the approach of trains;

- Determination of the distance along the track at which trains must be visible in order to provide the prescribed warning time; and

- Rules and procedures of the railroad to be used for train approach warning.

(b) Initial and periodic (as specified by § 243.201 of this Chapter) qualification of a watchman/lookout shall be evidenced by demonstrated proficiency.

(4) Training and Qualification of Flagman (214.351)

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

(b) Initial and periodic (as specified by § 243.201 of this Chapter) qualification of a flagman shall be evidenced by demonstrated proficiency.

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

The training and qualification of each roadway worker in charge, or any other employee acting as a roadway worker in charge (e.g., a conductor or a brakeman), who provides for the on-track safety of roadway workers through establishment of working limits or the assignment and supervision of watchmen/lookouts or flagmen shall include, at a minimum:

- All the on-track safety training and qualification required of the roadway workers to be supervised and protected, including the railroad's procedures governing good faith challenges in §§ 214.311(b)-(c) and 214.313(d) of this Subpart (**Revised Requirement**);

- The content and application of the operating rules of the railroad pertaining to the establishment of working limits;

- The content and application of the rules of the railroad pertaining to the establishment or train approach warning; and

- The relevant physical characteristics of the territory of the railroad upon which the roadway worker is qualified.

- The procedures required to ensure that the roadway worker in charge of the on-track safety group(s) of roadway workers remains immediately accessible and available to all roadway workers being protected under the working limits or other provisions of on-track safety established by the roadway worker in charge. (**New Requirement**)

(b) Initial and periodic (as specified by § 243.201 of this Chapter) qualification of a roadway worker in charge shall be evidenced by demonstrated proficiency.

(6) <u>Training and Qualification of Each Roadway Worker in On-Track Safety for Operators of Roadway Maintenance Machines</u> (214.355)

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

- Procedures to prevent a person from being struck by the machine when the machine is in motion or operation;

- Procedures to prevent any part of the machine from being struck by a train or other equipment on another track;
- Procedures to provide for stopping the machine short of other machines or obstructions on the track; and

- Methods to determine safe operating procedures for each machine that the operator is expected to operate.

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

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

<u>Calculation</u>: 50,000 trained roadway workers x 4.5 hrs. = 225,000 hours

(b) Initial and periodic (as specified by § 243.201 of this Chapter) qualification of a roadway worker to operate roadway maintenance machines shall be evidenced by demonstrated proficiency.

Since this requirement does not go into effect until January 2018 for railroads with more than 400,000 employee work hours annually and not until January 2019 for railroads with less than employee work hours annually, there is no burden at this time for this requirement (b) above.

Additionally, FRA estimates that the new and revised requirements of the rule will necessitate additional training for approximately 810 trainmen (conductors/brakemen) who could act as the roadway worker in charge in certain situations. It is estimated that it will take approximately two (2) hours of extra training (besides their normal training) to meet the new/revised requirements. Total annual burden for this requirement is 1,620 hours.

Respondents:	810 Railroad Employees
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual Number of responses:	810 trained employees
Total Annual Burden:	1,620 hours

Calculation: 810 trained employees x 2 hrs. = 1,620 hours

Further, FRA estimates that approximately 35,000 roadway workers will be trained to follow the appropriate practices and procedures related to adjacent-track safety. It is estimated that this additional training will take approximately five (5) minutes per employee to complete. Total annual burden for this requirement is 2,917 hours.

Respondents:	35,000 Roadway Workers
Burden time per response:	5 minutes
Frequency of Response:	Annually
Annual Number of responses:	35,000 adjacent-track trained roadway workers
Total Annual Burden:	2,917 hours

Calculation: 35,000 roadway workers x 5 min. = 2,917 hours

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

requirement is 1,667 hours.

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

Calculation: 50,000 roadway workers x 2 min. = 1,667 hours

Total burden for this entire requirement is 231,204 hours (225,000 + 1,620 + 2,917 + 1,667).

The total burden for Subpart C is 859,878 hours (1,472 + 275 + 136 + 80 + 722 + 100 + 613 + 640 + 565,029 + 3,300 + 20 + 722 + 2 + 2,166 + 1,200 + 5,160 + 20 + 83 + 10 + 50 + 2 + 152 + 1,521 + 1,750 + 8,333 + 6,846 + 219 + 42 + 50 + 13 + 25 + 10,014 + 17,333 + 2 + 572 + 225,000 + 1,620 + 2,917 + 1,667).

SUBPART D

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

A. An employee operating an on-track roadway maintenance machine or hi-rail vehicle must inform the employer whenever the employee makes a good faith determination that the machine or vehicle does not comply with FRA regulations, or has a condition that inhibits its safe operation.

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

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

Calculation: 125 notifications/communications x 10 min. = 21 hours

B. Each employer must have in place and follow written procedures to assure prompt and equitable resolution of challenges resulting from good faith determinations made in

accordance with this section. The procedures must include specific steps to be taken by the employer to investigate each good faith challenge, as well as procedures to follow once the employer finds a challenged machine or vehicle does not comply with this subpart or is otherwise unsafe to operate. The procedures must also include the title and location of the employer's designated official.

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

Respondent Universe:	644 Railroads/200 Contractors
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	10 resolution procedures
Total Annual Burden:	20 hours

Calculation: 10 resolution procedures x 2 hrs. = 20 hours

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

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

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

This requirement covers both railroads and contractors. FRA estimates then that approximately 300 lists of new and designated on-track roadway maintenance machines of the types specified in paragraph (a) of this section will be kept by railroads and an additional 200 lists will be kept by contractor sunder the above requirement. It is estimated that it will take approximately one (1) hour to develop/compile each list. Total annual burden for this requirement is 500 hours.

Respondent Universe:	644 Railroads/200 Contractors
Burden time per response:	1 hour
Frequency of Response:	On occasion

Annual number of Responses:	500 lists
Total Annual Burden:	500 hours

Calculation: 500 lists x 1 hr. = 500 hours

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

Those existing roadway maintenance machines that are not already designated will become so when they are sold by a railroad to another railroad or contractor. FRA estimates that approximately 150 machines will become designated under these circumstances. It is estimated that it will take approximately five (5) minutes to designate each roadway maintenance machine. Total annual burden for this requirement is 13 hours.

Respondent Universe:	644 Railroads/200 Contractors
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	150 designations
Total Annual Burden:	13 hours

Calculation: 150 designations x 5 min. = 13 hours

Total annual burden for this entire requirement is 513 hours (500 + 13).

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

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

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

Respondent Universe:	644 Railroads/200 Contractors
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	1,000 stickers/stencils
Total Annual Burden:	83 hours

Calculation: 1,000 stickers/stencils x 5 min. = 83 hours

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

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

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

Respondent Universe:	644 Railroads200 Contractors
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	3,700 identified mechanisms
Total Annual Burden:	308 hours

Calculation: 3,700 identified mechanisms x 5 min. = 308 hours

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

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

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

Respondent Universe:	703 Railroads/200 Contractors
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	200 identified mechanisms
Total Annual Burden:	17 hours

Calculation: 200 identified mechanisms x 5 min. = 17 hours

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

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

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

Respondent Universe:	644 Railroads/200 Contractors
Burden time per response:	10 minutes + 20 minutes
Frequency of Response:	On occasion
Annual number of Responses:	500 requests + 500 responses
Total Annual Burden:	250 hours

Calculation: 500 requests x 10 min + 500 responses x 20 min. = 250 hours

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

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

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

Respondent Universe:	644 Railroads/200 Contractors
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	500 stencils/displays
Total Annual Burden:	42 hours

Calculation: 500 stencils/displays x 5 min. = 42 hours

§ 214.518 Safe and secure positions for riders.

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

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

Respondent Universe:	644 Railroads/200 Contractors
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	1,000 stencils/marks/notices
Total Annual Burden:	83 hours

Calculation: 1,000 stencils/marks/notices x 5 min. = 83 hours

§ 214.523 Hi-Rail Vehicles.

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

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

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

2,000 hours.

Respondent Universe:	644 Railroads/200 Contractors
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	2,000 inspection records
Total Annual Burden:	2,000 hours

Calculation: 2,000 inspection records x 60 min. = 2,000 hours

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

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

Respondent Universe:	644 Railroads/200 Contractors
Burden time per response:	10 minutes + 15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	500 tags + 500 reports
Total Annual Burden:	208 hours

Calculation: 500 tags x 10 min. + 500 reports x 15 min. = 208 hours

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

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

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

designated official.

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

Respondent Universe:	644 Railroads/200 Contractors
Burden time per response:	5 minutes + 15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	550 tags + 550 reports
Total Annual Burden:	184 hours

Calculation: 550 tags x 5 min. + 550 reports x 15 min. = 184 hours

§ 214.533 Schedule of Repairs Subject to Availability of Parts.

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

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

Respondent Universe:	644 Railroads/200 Contractors
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	250 records
Total Annual Burden:	63 hours

Calculation: 250 records x 15 min. = 63 hours

Total annual burden for Subpart D is 3,792 hours (21 + 20 + 500 + 13 + 83 + 308 + 17 + 250 + 42 + 83 + 2,000 + 208 + 184 + 63).

Total annual burden for the entire information collection (Form FRA 6180.119 + Subparts C + D) is 864,150 hours (480 + 859,878 + 3,792).

13. Estimate of total annual costs to respondents.

Listed below are the costs associated with the information collection requirements of Subpart C:

$300	-	Letters/documents to FRA (60 letters/documents@ $5.00 per document to cover postage, paper, and envelopes) (**Program Change**)
$750	-	Printing and other related expenses for required program manuals for 15 new start-up Class III railroads (@ $50 per manual) (**Adjustment**)
$ 200,000	-	Miscellaneous Costs
$201,050	-	Total Cost

14. Estimate of Cost to Federal Government.

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

15. Explanation of program changes and adjustments.

The total burden for this information collection has increased by **19,293 hours** from the last approved submission. The increase in burden is due to both **program changes** and to **adjustments.** Specifically, the requirements that reflect **program changes** are detailed in the following table:

TABLE FOR PROGRAM CHANGES

Part 214 Section Number	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	Burden Hours (This Submission)	Difference (plus/minus)
214.307 – RR On-Track Safety Program that comply with this Part and retained copies at System and Division headquarters (**Rev. Requirement)**	20 amended programs + 584 amended programs 20 hours/4 hrs. 5 new program 250 hours	722 new/revised programs + 851 copies 2 hours/2 minutes	2,736 hours + 1,250 hours	1,472 hours	-- 2,514 hours + 964 resp.
(Revised Requirement) -RR amended Program after FRA disapproval	0 programs 0 hours	34 programs 4 hours	0 hours	136 hours	+ 136 hours + 34 resp.
- RR written response to FRA in support of disapproved program (**New Requirement**)	0 written responses 0 hours	2 written responses 40 hours	0 hours	80 hours	+ 80 hours + 2 responses
214.309 – **New Requirements** Provisions by RR for Lone Worker to have access to Information in On-track Safety Manual	N/A	722 provisions 1 hour	N/A	722 hours	+ 722 hours + 722 resp.
-- Publication by RR of Bulletins reflecting changes in On-track Safety Manual	N/A	100 bulletins 1 hour	N/A	100 hours	+ 100 hours + 100 resp.
214.315/335 – **New Requirement** - Information on Accessibility of Roadway Worker in Charge (RWIC) and Alternative Procedures in Event	N/A	594,000 briefings (59,400 work gang briefings and 10 employees per work gang) 20 seconds	N/A	3,300 hours	+ 3,300 hours + 594,000 resp

RWIC is No Longer Accessible to Work Gang					
214.317- **New Requirements** - On-Track Procedures for Snow Removal -- On-Track Procedures for Weed Removal -Roadway worker in charge (RWIC) designation of alternative place of safety other than tunnel niche or clearing bay	N/A N/A N/A	20 procedures 1 hour 722 procedures 1 hour 25 designations	N/A N/A N/A	20 hours 722 hours 2 hours	+ 20 hours + 20 responses + 722 hours + 722 resp. + 2 hours + 25 responses
214.318 - **New Requirement** - Railroad development of rules in accordance with Subpart B of Part 218 in lieu of the requirements of this Subpart to perform duties incidental to those of inspecting, testing, servicing, or repairing rolling equipment when those duties involve fouling a track or potential to foul a track protected by blue signal	0 rules 0 hours	722 rules 3 hours	0 hours	2,166 hours	+ 2,166 hours + 722 resp.
214.319(b)(1) **– New Requirements** – Class I RRs evaluation of its on-track safety program and identification of appropriate method to provide redundant protections for roadway work groups (b)(2) –Implementing redundant protections – safety briefings - RR written request to FRA requesting	N/A N/A N/A	47 on-track safety program evaluations and identification of redundant protections 8 hours 77,394 briefings 4 minutes 5 requests 60 minutes	N/A N/A N/A	1,568 hours 5,160 hours 5 hours	+ 1,568 hours + 47 responses + 5,160 hours + 77,394 resp. + 5 hours + 5 responses

exemption from requirements of section 214.319(b) for ea. Track segment governed by PTC					
214.320 – **New Requirement** - RR request for approval of RR operating rules providing equivalent level of protection to that of working limits	N/A	5 requests 4 hours	0 hours	20 hours	+ 20 hours + 5 responses
214.322- **New Requirements** - Exclusive Track Occupancy, Electronic Display – Written Authorities/ Printed Authority Copy if Electronic Display Fails or Malfunctions	N/A	500 written authorities 10 minutes	N/A	83 hours	+ 83 hours + 500 resp.
-- On-Track Safety Briefings in Event Written Authority/ Printed Copy cannot be Obtained	N/A	100 briefings 6 minutes	N/A	10 hours	+ 10 hours + 100 resp.
-- Data File Records Relating to Electronic Display Device in Part 225 Reportable Accident/Incident	N/A	25 data file records 2 hours	N/A	50 hours	+ 50 hours + 25 resp.
- Requests for copies of NIST Assurance publication for railroads using electronic display system	N/A	3 requests + 3 copies 30 minutes + 2 minutes	N/A	2 hours	+ 2 hours + 6 responses

214.327 – **New Requirements** - Inaccessible track – working limits established by locomotive with or w/o cars to prevent access – parley/ communication by RWIC w/locomotive crew member	N/A	9,125 parleys/ communications 10 minutes	N/A	1,521 hours	+ 1,521 hours + 9,125 resp.
-- Notification to train/engine crew on any working limits in effect prohibiting train movement until RWIC gives permission to enter working limits	N/A	1,750 notifications 60 minutes	N/A	292 hours	+ 1750 hours + 1,750 resp.
214.339 – **Revised Requirement** -Written procedures that prescribe effective requirements for audible warning by horn and/or bell for trains approaching roadway workers	N/A	44 written procedures 13 hours	N/A	572 hours	+ 572 hours + 44 responses
214.3343/345/347/ 349/351/353/355 – Training of trainmen (conductors and brakemen) to act as RWIC and training of station platform work coordinators **New Requirement**	N/A	810 trained workers 2 hours	N/A	1,620 hours	+ 1,620 hours + 810 resp.

Total *increases* in burden from above **program changes** then amount to *17,095 hours*, and total *increases* in responses from above **program changes** amount to *687,122*.

TABLE FOR ADJUSTMENTS

Part 214 Sec	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	Burden Hours (This Submission)	Difference (plus/minus)

Form FRA F 6180.119 – Railroad Workplace Violation Report	150 forms 4 hours	120 forms 4 hours	600 hours	480 hours	- 120 hours - 30 responses
214.307 - RR Notification to FRA not less than one month before program takes effect	0 Notices 0 minutes	825 notices 20 minutes	0 hours	287 hours	+ 275 hours + 825 resp.
214.311 - On-track safety program with written procedures to resolve good faith challenges – **New Railroads**	0 programs 0 minutes	50 programs 30 minutes + 24 hours	0 hours	613 hours	+ 613 hours + 50 responses
214.313 – Good Faith Challenges	80 challenges 4 hours	80 challenges 8 hours	320 hours	640 hours	+ 320 hours 0 responses
214.321 – Exclusive Track Occupancy – Written Authorities	700,739written authorities 1 minute	0 authorities (usual and customary procedure)	11,679 hours	0 hours	- 11,679 hours - 700,739 resp.
214.329 –Train Approach Warning Provided by Watchmen/Lookouts: Communications on track and in yards	0 parleys 0 seconds	795,000 parleys + 79,500 parleys 30 seconds + 10 seconds	0 hours	6,846 hours	+ 6,846 hours +874,500 resp.
-- Written Designation of Watchmen/Lookouts	0 seconds	26,250 designation 30 seconds	0 hours	219 hours	+ 219 hours + 26,250 resp.
214.336 – On-track safety briefings	1,030,050 safety briefings .25 minute	2,403,450 safety briefings .25 minute	4,292 hours	10,014 hours	+ 5,722 hours + 1,373,400 responses
214.337 — Statement of On-Track Safety Using Individual Train Detection on Track Outside Manual Interlocking, a Controlled Point, or Remotely Controlled Hump Yard Facility	0 statements 0 seconds	200 statements 30 seconds	0 hours	2 hours	+ 2 hours + 200 resp.

Total *increases* in burden from above **adjustments** then amount to *2,198 hours*, and total *increases* in responses from above **adjustments** amount to *1,574,456.*

Currently, the OMB inventory for this collection of information shows a burden total of 845,230 hours, while this revised submission reflects a total burden of 864,523 hours. Hence, there is a total burden increase of *19,293 hours*.

The cost to respondents has decreased by $2,799,804 from the last submission (from $3,000,854 to $201,050). The change in cost is the result of two **adjustments** that FRA has made in this submission. FRA listed training costs of $2,800,000 in the last submission and also listed 225,000 burden hours for training 50,000 roadway workers. OMB requires only burden hours or burden costs – not both – be listed in a Supporting Justification for any information collection requirement. Thus, FRA double counted that cost (in both hours and dollars). FRA has removed that dollar cost amount to correct the double counting mistake and only counts hours here. Also, FRA incorrectly counted $604 for notification letters that were not a part of this collection. FRA eliminated that cost. There was also a third **adjustment** reflecting the increase in cost for program manuals for start-up railroads (from 5 railroads to 15 railroads). The cost increased by $500 (from $250 to $750).

Finally, there is one program change reflecting the cost for 60 operating rules documents to be sent to FRA for approval pertaining to an equivalent level of protection for roadway maintenance machines on non-controlled track. This increased the cost by $ 300.

16. Publication of results of data collection.

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

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

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

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

The collection of information provides that roadway workers will be well-trained and, therefore, well-qualified for their respective crafts (whether watchmen/lookouts, flagmen, lone workers, roadway machine operators, etc.). Without this rule and corresponding information collection, roadway workers would not receive the initial and recurring training (once every year) now required. Consequently, they would not be as knowledgeable with railroad operating procedures and safety practices nor would they be

as familiar with overall conditions in today's railroad environment. Also, if this collection were not conducted, there would not be the clear delineation of employers' responsibilities for providing on-track safety as well as employees' corresponding rights and responsibilities. Roadway workers might then unnecessarily or inadvertently place themselves in hazardous situations.

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

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

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

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