

**FEDERAL RAILROAD ADMINISTRATION
ALCOHOL AND DRUG REGULATIONS (49 CFR 219)
SUPPORTING JUSTIFICATION
RIN No. 2130-AC10; OMB No. 2130-0526**

Summary

- This information collection submission is a revision to the previously approved collection approved by OMB on July 22, 2012, and which expires on July 31, 2015.
- FRA is publishing a Final Rule in the **Federal Register** titled Control of Alcohol and Drug Use: Coverage of Maintenance of Way Employees and Retrospective Regulatory Review-Based (RRR) Amendments on June 10, 2016. See 81 FR 37894.
- The total number of burden **hours requested** for this submission is **22,672 hours**.
- The total number of burden **hours previously approved** for this information collection is **31,797 hours**.
- The change in burden from the last approved submission amounts to a decrease of **9,125 hours**.
- Total **program changes** decreased the burden by **15,286 hours** and increased responses by **610,847** (*see the answer to question 15 below for details*).
- Total **adjustments** amount to/increased the burden by **6,161 hours** and increased responses by **118,743** (*see the answer to question 15 below for details*).
- Total number of **responses requested** for this submission is **863,408 responses**.
- Total number of **responses previously approved** for this information collection is **133,818 responses**. Total number of **responses** has increased by **729,590**.
- ****The answer to question number 12 below itemizes the hourly burden associated with each requirement of this final rule (see pp. 20-96).**

1. **Circumstances that make collection of the information necessary.**

FRA has regulated the use of alcohol and drugs by certain railroad employees since 1985, when it issued a final rule establishing alcohol and drug use control regulations under 49 CFR Part 219 (Part 219). See 50 FR 31508, Aug. 2, 1985. The rule contained certain prohibitions on the use and possession of alcohol and drugs by covered employees, who were defined as employees who had been assigned to perform covered service subject to

the Hours of Service Act (45 U.S.C. 61-64b).¹ See *id.* at 31569. The rule also contained requirements for post-accident toxicological (PAT) testing, discretionary reasonable cause and reasonable suspicion testing, co-worker and voluntary referral policies, pre-employment drug testing, and reporting. See *id.* at 31508. In 1988, FRA amended part 219 to require random drug testing of covered employees. See 53 FR 47102, Nov. 21, 1988. In 1994, FRA again amended part 219 to require random alcohol testing and reasonable suspicion testing, in conformance with the requirements of the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act) (reasonable cause testing remained discretionary). See 59 FR 7448, Feb. 15, 1994. FRA has not fundamentally revised part 219 since 1994.²

The Omnibus Act required the Department of Transportation (DOT or Department) to establish Federal workplace testing procedures for transportation employees. The Department's Procedures for Transportation Workplace Drug and Alcohol Testing Program are contained in 49 CFR part 40 (part 40), which is published by the DOT Office of the Secretary (OST). Only the DOT Office of Drug and Alcohol Policy and Compliance (ODAPC) and the DOT Office of General Counsel (OGC) are authorized to interpret Part 40 requirements. See 49 CFR 40.5.³ Part 40 testing requirements and procedures apply to any drug or alcohol test required by DOT agency regulations, except for FRA's PAT testing and certain testing conducted pursuant to DOT-mandated peer prevention programs (including FRA's peer prevention program currently required by subpart E of part 219). See § 219.701. FRA's PAT testing program pre-dates the enactment of the Omnibus Act, which specifically exempts the program from part 40. See § 40.1(c).

In response to Congress' mandate in the RSIA, FRA is expanding the scope of part 219 to cover employees who perform MOW activities. As used in this final rule, the term "employee" includes employees, volunteers, and probationary employees of railroads and contractors (defined to include subcontractors) to railroads. In addition, because MOW employees are not subject to the Hours of Service (HOS) laws, FRA is introducing a new term-of-art – "regulated service" – that would encompass both covered service and MOW activities. Performance of regulated service would make an individual a "regulated employee" subject to part 219, regardless of whether the individual is employed by a railroad or a contractor to a railroad. This expansion of Part 219 would both comply with the RSIA mandate and respond in part to NTSB Recommendation R-08-07 (Apr. 10, 2008), available at http://www.nts.gov/doclib/reletters/2008/R08_05_07.pdf. In

¹ The hours of service (HOS) laws are currently found at 49 U.S.C. Ch. 211.

² In 2004, FRA expanded the scope of part 219 to cover foreign railroad foreign-based employees who perform train or dispatching service in the United States. See 69 FR 19270, Apr. 12, 2004. In 2013, FRA added routine tests for certain non-controlled substances to its PAT testing program. See 78 FR 14217, Mar. 5, 2013.

³ Unless otherwise specified, all references to CFR sections and parts in this document refer to Title 49 of the CFR.

Recommendation R-08-07, the NTSB advised FRA to expand its alcohol and drug regulations to all railroad employees and contractors who perform FRA safety-sensitive functions as defined by §§ 209.301 and 209.303 (the regulations setting forth the purpose, scope and coverage of FRA's procedures for disqualifying individuals from performing certain safety-sensitive functions).

FRA is also amending Part 219 in response to NTSB Recommendation R-01-17, available at http://www.nts.gov/doclib/reclatters/2001/R01_17.pdf. Recommendation R-01-17 advised FRA to limit the current blanket exception for PAT testing after highway-rail grade crossing accidents to allow PAT testing when an accident was likely due to human factors or involved a regulated employee fatality.

This final rule also includes amendments based on a retrospective review of Part 219, which FRA has been implementing for more than 25 years. These amendments, which reflect practical lessons FRA has learned, are necessary to update and simplify the regulation's requirements.

Currently, Part 219 applies only to covered employees, defined in § 219.5 as individuals who perform covered service subject to the HOS laws at 49 U.S.C. 21103, 21104, or 21105. In Section 412 of the RSIA (Section 412), Congress directed the Secretary to "revise the regulations prescribed under section 20140 of title 49, United States Code, to cover all employees of railroad carriers and contractors or subcontractors to railroad carriers who perform maintenance-of-way activities." The Secretary has delegated this responsibility to the FRA Administrator. See 49 CFR 1.89(b); see also 49 U.S.C. 103(g).

The term "employee," as used in this final rule, includes employees, contractors, subcontractors, volunteers, and probationary employees. Accordingly, the term "MOW employee" includes any individual performing MOW activities for a railroad, whether employed directly by the railroad, employed by a contractor or subcontractor to the railroad, or a volunteer for the railroad. MOW employees are at a high safety risk because they work along railroad track and roadbed and may suffer injury or death as a result of being struck by trains or other on-track or fouling equipment. Additionally, MOW employees directly affect the safety of railroad operations because they work on or near railroad tracks, operate on-track or fouling equipment, and assist in directing trains through work areas. The purpose of expanding Part 219 to include MOW employees is to improve safety by reducing the rate of alcohol and drug use among the MOW employee population.

On January 9, 2007, a southbound Massachusetts Bay Transit Administration (MBTA) passenger train, operated by the Massachusetts Bay Commuter Railroad (MBCR), struck a track maintenance vehicle that was on the track near Woburn, Massachusetts. See NTSB, RAILROAD ACCIDENT REPORT: COLLISION OF MASSACHUSETTS BAY TRANSPORTATION AUTHORITY TRAIN 322 AND TRACK MAINTENANCE EQUIPMENT NEAR WOBURN, MASSACHUSETTS, NTSB/RAR-08/01, PB2008-916301, Mar. 18, 2008, at 1,

available at <http://www.nts.gov/doclib/reports/2008/RAR0801.pdf> (“WOBURN REPORT”). At the time of the collision, six MBCR MOW employees were replacing crossties and were working on or near the track maintenance vehicle. The train rounded a curve at 62 mph and struck the track maintenance vehicle. The MOW workers had only about 15 seconds warning before the collision. Id. at 17. Two of the MBCR employees, a track foreman and a track worker/welder, were killed, and two were seriously injured. The NTSB investigated the collision and determined that one of its probable causes was the failure of the MOW crew to apply a shunting device that would have provided redundant signal protection for their track segment.⁴ An MBCR rule required the crew to have a shunting device at the end of the work area every time a track was taken out of service for maintenance. The track foreman in charge of the MOW crew, however, had not complied with this rule. Id. at vi and 17.

While the MOW employees involved in the MBTA accident were not covered employees, § 219.203(a)(4)(ii) requires PAT testing on the remains of any railroad employee fatally injured in a train accident or incident. The PAT testing results for the fatally injured foreman involved in the MBTA accident showed that that he had likely used marijuana within three hours of his death. The NTSB concluded that the foreman’s performance would likely have been measurably impaired at the time of the accident by his recent use of marijuana. The NTSB also concluded that the foreman’s positive drug test result was “not an isolated incident among MBCR maintenance-of-way employees.” Id. at 19. Between December 2003 and January 2007, the MBCR had four fatalities, one critical injury, and one potentially serious incident involving MOW employees. Id. Seven MOW employees were tested for drugs and/or alcohol as a result of these incidents. Id. (Four fatally injured employees were tested under FRA authority, and three surviving employees were tested under MBCR’s company authority. Id.) Of the seven MOW employees tested, four had positive results, and one employee submitted a specimen that was a negative dilute which may have masked a positive. Id. The NTSB found that this high rate of positive test results was symptomatic of a substance abuse problem among MBCR MOW employees. Id.

As part of its investigation of this accident, the NTSB reviewed industry-wide PAT testing data for accidents involving MOW employee fatalities. Over the 10-year period ending January 9, 2007, FRA PAT testing of 26 MOW fatalities resulted in five (5) positive test results, a positive rate of 19.23%. Id. at 19. In contrast, the overall PAT testing positive rate for covered employees was only 6.56%. Id. The NTSB concluded that these results showed greater alcohol and drug use among MOW employees than among covered employees subject to Part 219. Id. Thus, the NTSB determined that alcohol and drug use by MOW employees in the railroad industry was a safety concern. Id. at vi and 17.

The NTSB noted that FRA data indicate that MOW employees are about three times more likely to have positive test results than covered employees (19.23% positive for

⁴ The NTSB also found that a probable cause of the accident was the failure of the train dispatcher to maintain blocking that provided signal protection for the track segment occupied by the MOW crew. See id. at vi.

MOW employees vs. 6.56% positive for covered employees). See WOBURN REPORT at 20. Attributing this difference “to the deterrent value of the FRA’s random testing program to which covered employees are subject but maintenance-of-way employees are not,” the NTSB recommended that FRA revise its definition of covered employee to include all railroad employees and contractors who perform FRA safety-sensitive functions, as defined by §§ 209.301 and 209.303. See NTSB Recommendation R-08-07.

Section 209.303 lists the safety-sensitive functions that an individual may be disqualified from performing if he or she has been found unfit to do so after committing a FRA safety violation. See § 209.301. If FRA expanded the scope of Part 219 to cover the safety-sensitive functions listed in § 209.303, it would include not only covered employees, as currently defined, but all railroad employees and contractor employees (including managers and supervisors) who: (1) inspect, install, repair, or maintain track and roadbed; (2) inspect, repair, or maintain locomotives, passenger cars, and freight cars; (3) conduct training and testing of employees when required to do so by the FRA’s safety regulations; (4) perform service subject to the Transportation of Hazardous Materials Law (Hazmat Law);⁵ (5) supervise and otherwise direct the performance of the safety-sensitive functions; or (6) are in a position to direct the commission of violations of any FRA safety regulation. FRA does not currently believe that it is necessary to expand part 219 beyond railroad employees (including contractors, subcontractors, volunteers and probationary employees) who perform covered service and/or MOW activities for a railroad.

In response to the mandate contained in Section 412 and NTSB Recommendation R-08-07, FRA is expanding part 219 to include employees who perform MOW activities, as defined in proposed § 219.5. FRA’s definition of MOW activities includes the following: (1) the inspection, repair, or maintenance of track, roadbed, or electric traction systems; (2) the operation of on-track or fouling equipment utilized for the inspection, repair, or maintenance of track, roadbed, or electric traction systems; (3) the performance of flagman or watchman/lookout duties; (4) the obtaining of on-track authority and/or permission for the performance of activities described by the proposed definition; or

⁵ The Transportation of Hazardous Materials Laws are located at 49 U.S.C. ch. 51. Under 49 U.S.C. 5103, the Secretary is directed to prescribe regulations for the “safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.” These regulations apply to a person who performs a broad range of activities, including testing a “packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce” and “certif[ying] compliance with any requirements under this chapter.” Such activities generally are not related to what would be considered railroad MOW activities.

The Secretary delegated the authority to issue these regulations to the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the resulting regulations are found at 49 CFR subtitle B, Ch. 1. The broad extent of these regulations go far beyond what would be an appropriate scope for FRA’s alcohol and drug regulations.

(5) the granting of on-track authority and/or permission for operation over a segment of track while workers are performing activities described by the proposed definition.

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

FRA will use the new information collected under this final rule to ensure that railroads comply with all part 219 requirements that now will cover maintenance-of-way (MOW) employees. Specifically, FRA will use the information collected to ensure that MOW employees are subject to random alcohol and drug testing.

FRA uses and will use the information collected to ensure that railroads establish required alcohol and drug prevention programs and to confirm that railroad employees who perform regulated service comply with Federal regulations prohibiting the use of alcohol and drugs while on duty. Also, FRA uses and will use the information collected to ensure that independent contractors and any other entities that perform regulated service for a railroad also comply with the requirements of this rule regarding its employees who perform regulated service. FRA reviews and will review the required documentation to verify that the responsibility for compliance is clearly spelled out in the contract (or other document) between the railroad and the independent/other entity.

FRA uses and will use information collected to ensure that railroads devise adequate programs so that supervisors of regulated employees receive essential alcohol and drug training. Specifically, they must be trained in the signs and symptoms of alcohol and drug influence, intoxication, and misuse. At a minimum, training programs must provide information concerning the acute behavioral and apparent psychological effects of alcohol and the major drug groups on the controlled substances list. The program must also provide training on the qualifying criteria for post-accident testing (contained in Subpart C of 49 CFR Part 219), and the role of the supervisor in post-accident collections (described in Subpart C and Appendix C of 49 CFR Part 219).

FRA reviews and will review the information collected to confirm that railroads provide educational materials to employees which explain the requirements of 49 CFR Part 219 and the railroad's policies and procedures with respect to meeting those requirements. Railroads must ensure that a copy of these materials is distributed to each covered employee prior to the start of alcohol testing under the railroad's alcohol misuse prevention program and to each person who is subsequently hired or transferred to a covered position. FRA also reviews and will review the collected information to confirm that railroads provide written notice to representatives of employee organizations of the availability of this information.

The information collection provisions contained in the pre-employment screening requirement and the authorization for detection screening of in-service employees are intended primarily to assure a sense of fairness and accuracy for protection of both the railroads and the employees in the implementation of these provisions. The basic

information – evidence of unauthorized use of drugs – will be used to help prevent accidents by screening personnel (now new MOW employees as well) who perform safety-sensitive functions. The ancillary information would be used by the railroad, the employee, or the prospective employee and FRA.

FRA reviews and will review post-accident toxicological testing reports/records to examine whether or not good faith determinations have been made regarding any decision by a person other than the responding railroad representative on whether an accident/incident qualifies for testing. FRA examines these reports to ensure they include the facts reported by the responding railroad representative, the basis upon which the testing was made, and the person making the decision. Also, to encourage and ensure compliance with this rule, FRA reviews and will review records of tests not promptly administered under Subpart C to monitor the reasons the test was not properly administered. Administering prompt tests is essential to having and maintaining an effective alcohol/drug prevention program, and provides critical data for FRA, railroads, and other Federal agencies in the investigation of an accident/incident.

FRA reviews and will review random selection records of alcohol/drug testing procedures practiced by railroads to ensure that the testing process is fair, and made by a method employing objective, neutral criteria such that each covered employee has a substantially equal statistical chance of being selected within the specified time frame. Railroads are required to retain breath alcohol testing records and urine drug testing records for stipulated time periods. These records provide FRA with an invaluable resource for reviewing railroads drug and alcohol programs and procedures and ensuring compliance with Federal regulations, and serve as a vital tool for FRA, the NTSB, and others in the investigation of accidents/incidents that may be drug or alcohol related.

FRA reviews and will review laboratory records relating to required documentation of all aspects of the alcohol and drug testing process to ensure that these laboratories are following necessary protocols and procedures, and to ensure that the results sent to railroads' Medical Review Officers (MRO) are accurate, objective, and fair since the careers and livelihoods of railroad employees are at stake. Laboratory data must include a personnel file on analysts, supervisors, directors, and all individuals authorized to have access to specimens; chain-of-custody documents; quality assurance and control records; procedure manuals; all test data on tests conducted under Subpart H; reports (including calibration curves and any calculations used in determining test results); reports; performance records on performance testing; performance on certification inspections; and hard copies of computer-generated data. These records are essential for FRA, the railroads, and the courts in making a determination concerning any specimen that is under legal challenge.

Overall, the information collected under this amended rule serves as a critical compliance tool, and FRA uses the information to promote and enhance railroad safety, and reduce

the number and severity of railroad accidents/incidents, particularly those related to the misuse of alcohol and drugs by regulated railroad employees who occupy safety-sensitive positions. FRA believes the Part 219 inclusion of MOW employees will save lives.

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

Over the years, FRA has strongly supported and highly encouraged the use of advanced automated technology, particularly electronic recordkeeping, to reduce burden on railroads and other entities (wherever possible) that submit or retain information required by the agency. It should be noted that, even though there are many sections of the final rule that require written documentation, there are other parts of the rule – such as sections 219.613, 219.623, and 219.901 – that specify or require the electronic option. In all, approximately 521,261 responses of the estimated 863,408 requested responses in this submission may be submitted or kept by railroads electronically, if they so choose. Thus, approximately 60 % of responses may be kept electronically under the final rule.

4. Efforts to identify duplication.

The source of the information collection requirements is unique for each separate occurrence and, therefore, there is no known duplication of this material. Although other Federal agencies may utilize the information collected in the event of an accident/incident for their investigation (e.g., NTSB), FRA is the sole Federal agency requiring the collection of this information from the railroads.

The information submitted or collected for recordkeeping purposes is unique, and no other existing effort can be used or modified for these purposes.

The data collected is not available from any other source.

5. Efforts to minimize the burden on small businesses.

The “universe” of the entities considered in this analysis generally includes only those small entities that can reasonably expect to be directly regulated by this final action. The types of small entities potentially affected by this final rule are: (1) small railroads; (2) small contractors that engage in MOW operations; and (3) small contractors that provide HOS services (such as dispatching, signal, and train and engine services).

“Small entity” is defined in 5 U.S.C. 601(3) as having the same meaning as “small business concern” under Section 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 operation. The U.S. Small Business Administration (SBA) stipulates in its size standards that the largest a railroad business firm that is “for profit”

may be and still be classified as a “small entity” is 1,500 employees for “Line Haul Operating Railroads” and 500 employees for “Switching and Terminal Establishments.” Additionally, 5 U.S.C. 601(5) defines as “small entities” governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

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 STB’s revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1-1. FRA is using this definition for this rulemaking.

An estimated 1,095 entities will be affected by the rule. FRA estimates that there are approximately 400 MOW contractor companies and 695 small railroads on the general system. FRA estimates that 86 percent of employees that will be regulated under this rule work for these 74 railroads and contractors. Most railroads must comply with all provisions of part 219. However, FRA has a “small railroad” definition associated with part 219 that limits compliance requirements for railroads with 15 Hours of Service (HOS) employees or less and no joint operations to reduce burden on the smallest of railroads.

There are approximately 695 small railroads (as defined by revenue size). Class II and Class III railroads do not report to the STB, and although the number of Class II railroads is known, the precise number of Class III railroads is difficult to ascertain due to conflicting definitions, conglomerates, and even seasonal operations. Potentially, all small railroads could be impacted by this final regulation. Part 219 has a small railroad exception for all railroads with 15 or fewer covered employees, except when these railroads have joint operations with another railroad, therefore increasing risk. Thus, a railroad with such characteristics shall be called a “partially excepted small railroad” in this analysis, and is a subsection of the “small entities” as defined by the STB and FRA, addressed above. Currently, there are 288 partially excepted small railroads and, as FRA is not amending to the substantive criteria of classification, there should be no change in the number of partially excepted small railroads associated with the final rule.

All commuter railroad operations in the United States are part of larger governmental entities whose jurisdictions exceed 50,000 in population.

All railroads must comply with all or limited subparts of part 219. For partially excepted small railroads, per FRA’s definition, the significant burden involves the costs of adding

MOW employees to the existing testing programs, and adding reasonable suspicion and pre-employment drug testing (which they have not needed to comply with). A significant portion of the MOW industry consists of contractors. FRA has determined that risk lies as heavily with contractors as with railroad employees, so contractors and subcontractors will be subject to the same provisions of part 219 as the railroads for which they do contract work. Whether contractors must comply with all or part of the provisions of part 219 will depend on the size of the largest railroad (assumed to have the largest risk) for which the contractor works.

FRA discussed with industry representatives how to ascertain the number of contractors that will be involved with this rulemaking. FRA is aware that some railroads hire contractors to conduct some or all of the MOW worker functions on their railroads. Generally, the costs for the burdens associated with this rulemaking will get passed on from the contractor to the pertinent railroad. FRA has determined that there are approximately 400 MOW-related contractor companies who will be covered by this final rule. Of those, 370 are considered to be a “small entity.” FRA has sought estimates of the number of contractors that may be fully compliant and how many may be partially exempted, depending on the size of the largest railroad for which they work. FRA expects that some HOS small contractors will be impacted based upon the compliance requirements for part 219 small railroads to now include reasonable suspicion testing and pre-employment drug testing. This burden is estimated to be minimal, as reasonable suspicion tests occur extremely infrequently on small railroads (average less than one time per year for all small railroads), and pre-employment drug tests, the least costly of all tests, will only be required for new employees.

No other small businesses (non-railroad related) are expected to be negatively impacted significantly by this rulemaking. Conversely, this final regulation will bring business to consortiums, collectors, testing labs, and other companies involved in the drug and alcohol program business.

Expanding the program to cover MOW employees will only have a small effect in terms of testing burden for railroads, based upon the cost of pre-employment drug testing for new employees and the testing of MOW employees. FRA estimates that 90 percent of small railroads already conduct pre-employment drug testing under their own company authority. Many of these contractors have employees with commercial drivers’ licenses (CDLs), and, therefore, fall under the drug and alcohol program requirements of the Federal Motor Carrier Safety Administration (FMCSA). Therefore, an estimated 40 percent of MOW contracted employees already participate in a DOT drug and alcohol testing program. Furthermore, FRA estimates that as many as 50-75 percent of all MOW contractor companies have some form of a drug and alcohol testing program, and that around 25 percent of these companies currently complete random testing (the most burdensome type of testing).

Consortia are companies that provide testing, random selection, collection, policy development, and training services to help employers stay compliant. Consortia alleviate

much of the administrative burden of a testing program and negotiate volume discounts on behalf of their clients. It is likely that all part 219 small railroads already have a compliant testing program for employees that have been covered under the regulation. It should also be noted that approximately 125 of the small railroads that will be impacted are subsidiaries of large short line holding companies with resources comparable to larger railroads. Additionally, many small railroads are members of the American Shortline and Regional Railroad Association (ASLRRA), which was consulted throughout the development of this regulation. ASLRRA has helped create a consortium for its members in the past, and FRA will work to ensure that small entities, as well as large, have the ability to adhere to the regulation as easily as possible. The consortium market will be affected in a positive manner due to new business from this rulemaking.

Previously, FRA sampled small railroads and found that revenue averaged approximately \$4.7 million (not discounted) in 2006. One percent of that average annual revenue per small railroad is \$47,000. FRA realizes that some railroads will have lower revenue than \$4.7 million. However, FRA estimates that small railroads will not have any additional expenses over the next ten years to comply with the new requirements in this final regulation. Based on this, FRA concludes that the expected burden of this final rule will not have a significant impact on the competitive position of small entities, or on the small entity segment of the railroad industry as a whole.

FRA did receive comments concerning the initial regulatory flexibility analysis in the public comment process. The final rule addresses these concerns by continuing FRA's longstanding approach of counting only a railroad's covered employees for purposes of determining whether the railroad qualifies for the small railroad exception (the railroad also cannot participate in any joint operations) because FRA believes this is the best measure of the risks posed by the railroad's operations. FRA received no objections to this proposal and adopted in its final rule.

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. FRA invited all interested parties to submit data and information regarding the potential economic impact that will result from adoption of the proposals in the NPRM.

Also, it should be noted that this Part does **not** apply to the following:

- (1) Railroads that operate only on track inside an installation that is not part of the general railroad system of transportation (i.e., plant railroads, as defined in § 219.5);
- (2) Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation, as defined in § 219.5; or
- (3) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

The small railroad exception in § 219.3(b)(2) has provided, in part, that a railroad with 15 or fewer covered employees that does not engage in joint operations with another railroad is not subject to the requirements for reasonable suspicion or reasonable cause testing (both previously found in Subpart D), identification of troubled employees (previously Subpart E), pre-employment drug testing (Subpart F), or random testing (Subpart G).

FRA is modifying the small railroad exception so that small railroads are no longer excepted from the reasonable suspicion testing requirements of Subpart D. Subpart D requires a railroad to conduct Federal reasonable suspicion testing whenever one or more trained supervisors reasonably suspects that an employee has violated an FRA prohibition against the use of alcohol or drugs. See § 219.300(a). FRA's decision not to authorize small railroads to conduct FRA-authority reasonable cause testing (moved to Subpart E of this rule) remains unchanged, however.

FRA is also amending the small railroad exception so that small railroads are no longer excepted from Subpart F. As is already required for larger railroads, a small railroad must conduct a pre-employment drug test and obtain a negative result before allowing an individual to perform regulated service for the first time. See § 219.501(a). As with larger railroads, this requirement applies only to those regulated employees hired by a small railroad after the effective date of this final rule, because all regulated employees hired before the effective date of this rule are exempted from pre-employment drug testing. Subparts E and G of Part 219 do not apply to small railroads and a small railroad may not perform the Federal alcohol and drug testing authorized by these Subparts.

6. Impact of less frequent collection of information.

If this collection of information were not conducted, or conducted less frequently, rail safety in the U.S. might be seriously jeopardized. Specifically, if railroads did not have effective alcohol and drug misuse prevention programs and if these programs were not carefully monitored, regulated railroad employees working in safety-sensitive positions might abuse alcohol and drugs while on-duty, or just prior to coming on-duty. This could lead to increased numbers of – and perhaps more severe – accident/incidents where train crews, MOW employees, other railroad employees, passengers, and innocent bystanders are injured or killed. Particularly in the case of a catastrophic accident or an accident involving the release of radioactive or other hazardous materials, the number of casualties and harm to the environment and surrounding communities could be great.

Without the required alcohol and drug training programs, supervisors would not be able to spot employees under the influence of alcohol or drugs and would not be able to immediately remove them from service. Consequently, the risk of additional rail accident/incidents – with their corresponding injuries and death – would increase substantially.

Without this collection of information, FRA would have no way of determining whether or not laboratories, which conduct alcohol and drug testing, are following proper protocols and procedures, and thus would have no way of determining whether positive results affecting the career and livelihood of railroad employees were done fairly and accurately. Without this information, FRA would be unable to have confidence in laboratory results and so too would railroads, which rely on these laboratories to conduct an effective drug and alcohol prevention program. Without the required laboratory records, railroad employees would be denied a critical resource to mount a legal challenge for a positive test that was false, improperly or inaccurately processed, or invalid on medical/other grounds.

Without this collection of information, railroad employees, and members of the public-at-large would be exposed to preventable dangers, and would suffer as first-line casualties. Also, the collection of information is extremely helpful to FRA in determining whether or not railroads properly penalized an employee for a drug/alcohol infraction, and is an invaluable resource to FRA, railroads, and other Federal agencies in determining accident causation, or factors which contributed to an accident/incident.

Overall, this collection of information promotes and enhances FRA's comprehensive rail safety program and contributes significantly to achieving both FRA's mission and DOT's mission, which is to provide safe transportation to the public. FRA believes that the Part 219 addition of MOW employees under this final rule will save lives.

To be effective, a safety program requires timely information. Collection of this information less frequently would render the information obsolete and meaningless, and would impair FRA's and railroads safety programs. If future experience indicates a lesser frequency is warranted, the agency would carefully review this Part of its regulatory safety program and make necessary revisions accordingly.

7. Special circumstances.

Under section § 219.901(b), each railroad must maintain the following records for a minimum of five years:

- (1) A summary record or the individual files of each regulated employee's test results;
- (2) A copy of the annual report summarizing the results of its alcohol and drug misuse prevention program (if required to submit the report under § 219.800(a)).

Under (b)(1) above, FRA permits railroads to maintain either a summary record or an individual file of each regulated employees alcohol/drug test results for five years. Previously, FRA had allowed only summary records, but smaller railroads may find it easier to maintain individual files rather than summary records.

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

8. Compliance with 5 CFR 1320.8.

On July 28, 2014, in response to a Congressional mandate (see sec. 412 of the RSIA (Public Law 110-432, October 16, 2008)) and NTSB recommendation R-08-07, FRA published a Notice of Proposed Rulemaking (NPRM), which proposed to expand the scope of Part 219 to cover MOW employees. See 79 FR 43830. FRA also proposed to modify its post-accident toxicology (PAT) testing criteria and to replace its subpart E programs addressing troubled employees with a peer support program in new Subpart K. The NPRM also proposed to adopt longstanding program guidance and to clarify and restructure Part 219 to make its requirements easier to understand and implement.

On September 15, 2014, in a jointly filed petition, the American Public Transportation Association (APTA), American Short Line and Regional Railroad Association (ASLRRA), Association of American Railroads (AAR), and National Railroad Construction and Maintenance Association, Inc. (NRCMA) requested a 60 day extension of the NPRM's comment period, which had been scheduled to close on September 26, 2014. FRA agreed to this request, and published a notice allowing commenters until November 25, 2014, to submit comments. (September 25, 2014, 79 FR 57495)

FRA received 16 comments during this extended comment period, including an AAR/ASLRRA (hereinafter referred to as the "Associations") joint submission, as well as comments from APTA, the NRCMA, the NTSB, SMART (the American Train Dispatchers Association, Brotherhood of Locomotive Engineers and Trainmen, Brotherhood of Maintenance of Way Employees Division, International Brotherhood of Electrical Workers; and Sheet Metal, Air, Rail and Transportation), Twin Cities & Western Railroad Company (TC&W), Drug Abuse Program Administrators Administration Worldwide (SAPAA), Pacific Southwest Railway Museum (PSRM), SApList.com, and Southeastern Pennsylvania Transportation Authority (SEPTA). Six individuals also submitted comments. (FRA notes that SMART had requested a public hearing in its November 28, 2014 comment; however, the deadline for filing such a request was 30 days after the publication of the NPRM, or August 27, 2014.). Commenters addressed a range of issues.

One issue was the effective date of the final rule. FRA received only one comment concerning the rule's effective date. The Associations requested that the final rule become effective two years after its publication, to allow for the implementation of new testing policies and procedures, and for the creation of random testing pools for MOW employees. FRA notes, however, that many MOW employees are already subject to drug and alcohol testing under Federal authority, company authority, or both. For example, any MOW employee whose duties require the holding of a Commercial

Driver's License (CDL) is subject to Federal Motor Carrier Safety Administration (FMCSA) testing requirements. MOW employees may also be subject to testing under company authority, often in a "look-alike" (a company testing program that mirrors FRA standards and procedures) program. This familiarity with drug and alcohol programs will facilitate the implementation of Part 219 requirements for MOW employees.

Moreover, railroads have thirty years of experience implementing Part 219 requirements for their covered service employees; while employers who are newly subject to Part 219, such as contractors who provide MOW service to railroads, have service agents (e.g., random testing consortia and third party administrators) readily available to facilitate adoption and compliance with this part. Given the experience and resources railroads and contractors have to draw on, FRA believes a one year implementation window is reasonable for the requirements in this rule.

Another issue pertained to MOW employees and the small railroad exception. Since the inception of its alcohol and drug program in 1985, FRA has counted the number of covered employees a railroad has (including covered service contractors and volunteers) as one factor in determining the railroad's risk of alcohol and drug-related accidents. See 50 FR 31529, Aug. 2, 1985. Historically, a small railroad, defined by FRA as one that has 15 or fewer covered employees and no joint operations with other railroads, has proven less likely to have a drug and alcohol-related accident than a larger railroad. Therefore, FRA has always required a larger railroad (defined as one that has 16 or more covered employees or is engaged in joint operations) to implement all of Part 219, while § 219.3 previously excepted a small railroad from the requirements of Subpart D (reasonable suspicion and reasonable cause testing), Subpart E (previously identification of troubled employees), Subpart F (pre-employment testing), and Subpart G (random alcohol and drug testing); these exceptions lessened Part 219's regulatory burden on small railroads.

As proposed, FRA is continuing its longstanding approach of counting only a railroad's covered employees for purposes of determining whether the railroad qualifies for the small railroad exception (the railroad also cannot participate in any joint operations) because FRA believes this is the best measure of the risks posed by the railroad's operations. FRA received no objections to this proposal.

With respect to a contractor who performs MOW activities for a railroad, FRA is amending § 219.3 to apply Part 219 to an MOW contractor to the same extent as it applies to the railroad for which the MOW contractor performs regulated service. As proposed, a contractor's level of Part 219 compliance will be determined by the size of the railroad for which it is performing regulated service, regardless of the size of the contractor itself. New language in the small railroad exception states that a contractor who performs MOW activities exclusively for small railroads that are excepted from full compliance with Part 219 will also be excepted from full compliance. For example, an MOW contractor with five employees who perform regulated service for a large railroad

must implement a full Part 219 program if the railroad for which it performs regulated service must do so, while an MOW contractor with 20 employees does not have to implement a full Part 219 program if it performs regulated service for a small railroad that is excepted from full compliance with Part 219.

FRA recognizes that an MOW contractor may perform regulated service for multiple railroads, some of which may not be required to comply fully with Part 219. To simplify application, FRA is adding new language to the small railroad exception requiring an MOW contractor who performs regulated service for multiple railroads to implement a full Part 219 program if the contractor performs regulated service for at least one large railroad fully subject to Part 219. If an MOW contractor performs regulated service for at least one large railroad, it must incorporate all of its regulated employees into a full Part 219 program, even if only some of these employees perform regulated service for large railroads, regardless of whether or not a particular employee is currently performing regulated service for a large or a small railroad. This approach allows an MOW contractor to flexibly allocate its employees between small and large railroads. To ensure that it does not encourage the hiring of MOW contractors in lieu of MOW employees, FRA is excluding both contractor employees who perform MOW activities and railroad employees who perform MOW activities, for purposes of the employee count to determine whether a railroad qualifies as a small railroad. Labor supported FRA's decision.

Another comment addressed the issue of railroad and contractor responsibility with Part 219 and certification of compliance. FRA is adopting its proposal to hold both a railroad and its contractor(s) responsible for ensuring that any contractor employees who perform regulated service for the railroad are in compliance with Part 219. In their comments, the Associations objected that the RSIA mandated that Part 219 cover contractors who perform regulated service, but did not make railroads responsible for ensuring that compliance, and that a contractor who performs regulated service for more than one railroad would be required to comply with the drug and alcohol training requirements of multiple railroads. The TC&W commented that FRA should audit the drug and alcohol compliance of contractors who perform regulated service.

FRA notes that making a railroad responsible for its contractor's compliance, and making a contractor who performs regulated service responsible for its own compliance are not new requirements, because existing § 219.9 makes every person – including a railroad, an independent contractor and an employee of an independent contractor – who violates or causes a violation of a Part 219 requirement subject to a civil penalty. To facilitate Part 219 implementation for railroads and contractors, FRA has developed two sets of model drug and alcohol plans (including testing plans): a set for an entity subject to all of Part 219 and another for an entity that qualifies for the small railroad exception. Both sets are currently available at FRA's website: <http://www.fra.dot.gov/Page/P0345>. FRA had proposed an alternative two-pronged approach, which would require a contractor to provide a railroad with: (1) written certification that all of its regulated

employees are in compliance with Part 219, and (2) a summary of its Part 219 data at least every six months.

The NRCMA commented that it was unnecessary to require certification of compliance with Part 219, noting that railroad contracts routinely require a contractor to certify compliance with all relevant Federal, state, and local laws and regulations. The NRCMA also objected to providing summary data, commenting that this was both unnecessary and an undue administrative burden. FRA agrees, and has decided not to adopt these proposed requirements.

An additional issue drawing comments related to “Rule G” observations. In its guidance, FRA required a railroad’s supervisors to make and record each quarter a total number of “Rule G” observations equivalent, at a minimum, to the railroad’s total number of covered employees. Each Rule G observation should be made sufficiently close to an employee to enable the supervisor to determine whether the employee was displaying signs and symptoms of impairment requiring a reasonable suspicion test.

In the NPRM, FRA requested comment on whether § 219.105 should adopt this guidance by requiring a specific number of Rule G observations; FRA was particularly interested in the safety benefits versus the costs and paperwork burdens of such a requirement. In response, the Associations commented that FRA’s requirement for each supervisor to be trained in signs and symptoms of drug and alcohol abuse already ensured that railroad supervisors were automatically aware of what to look for when observing an employee’s demeanor and behavior. Therefore, according to the Associations, requiring a specific number of what were essentially constant supervisory observations to be systematically recorded would be a paperwork exercise that added nothing to safety.

Because reasonable suspicion and reasonable cause testing share the same check box on DOT’s drug and alcohol chain of custody forms, FRA’s MIS data do not distinguish between tests conducted under mandatory reasonable suspicion authority and tests conducted under discretionary reasonable cause. While there is no direct correlation showing that Rule G observations increase or result in reasonable suspicion tests, FRA believes that each year’s consistently low total of reasonable suspicion tests indicates the continuing need to focus supervisory attention on the use and importance of reasonable suspicion testing as deterrence. To make Rule G observations both more meaningful and less burdensome, new paragraph (d) adopts FRA’s previous guidance requirements but (1) decreases the minimum annual number of observations supervisors must make and record from four to two times a railroad’s total number of covered employees, and (2) requires each observation to be sufficiently up close and personal to determine if a covered employee is displaying signs and symptoms indicative of a violation of the prohibitions in this part. The latter requirement is intended to ensure that supervisory observations are of individuals rather than collective sweeps of multiple employees. An issue drawing comment concerned events which require post-accident toxicological testing and the property damage threshold for major train accidents. As proposed, FRA is

increasing the property damage threshold for major train accidents from \$1,000,000 to \$1,500,000 to account for inflation since January 1, 1995, when FRA last raised the damages threshold for major train accidents from \$500,000 to \$1,000,000. AAR noted in its comment supporting this amendment that reducing the number of events qualifying as major train accidents correspondingly reduces the number of employees subject to PAT testing, which reduces such railroad costs as lost opportunities and wages.

Another issue generating comment related to railroads obtaining the cooperation of the testing medical facility. In the NPRM, FRA had proposed replacing 1-800-424-8801 with 1-800-424-8802 as the contact number for the National Response Center (NRC). A railroad must contact the NRC when a treating medical facility refuses to collect blood specimens because an employee is unable to provide consent.

A commenter suggested that FRA instead replace both 1-800-424-8801 and 1-800-424-8802 with 1-800-424-0201, a toll-free phone number specific to FRA. As the commenter noted, listing 1-800-424-0201 as the contact number for the NRC would make this part consistent with §§ 229.17, 230.22 and 234.7 of this chapter (respectively, Locomotive Safety Standards, Steam Locomotive Inspection and Maintenance Standards, and Grade Crossing Safety). FRA agrees, and is listing 1-800-424-0201 as its sole NRC contact number, in § 229.203(g), and in §§ 219.207(b) and 219.209(a)(1) of this part.

The issue of FRA's proposed peer support programs also garnered comments. For a variety of reasons, commenters found FRA's proposal to replace its self-referral, co-worker report, and alternative policy requirements with peer support program requirements, to be both confusing and ill-advised. NCRMA and SMART (collectively referred to as "Labor," unless a comment was submitted by only one labor organization), in particular, raised objections and called for clarifications. As Labor noted, the concept of a voluntary peer referral program arose from "Operation Redblock," a private rail industry initiative to address alcohol abuse. Labor expressed deep misgivings, both that FRA's proposed peer support programs could harm these existing railroad programs, and that FRA's proposal to audit each program would invade individual privacy and undermine employee trust in the program. Labor also criticized FRA's proposal to allow an EAP counselor to function as an alternative to a trained drug and alcohol counselor, because an EAP counselor rarely has specific expertise in abuse and addiction issues. (Typically, an EAP program addresses a broad range of issues, such as marital or financial problems.) Similarly, Labor objected to using peer counselors, noting that a peer is usually a volunteer who provides empathy and advice based on his or her own drug and alcohol problems, without a counseling or medical degree.

The Associations suggested that FRA use the term "peer prevention" instead of "peer support" to emphasize that these programs should be proactive in nature. The Associations also warned that FRA should audit and release aggregate program data only, because an employee could be discouraged from self-referring if the employee knew that his or her individual data would be subject to FRA examination. Like Labor, the

Associations noted that a peer support group is usually composed of selected peers and volunteers rather than medical professionals. The Associations, therefore, supported allowing an employee who self-refers to have the option of receiving counseling and treatment from a Drug Abuse Counselor (DAC). Overall, the Associations found FRA's proposed subpart K flawed and redundant of the voluntary referral provisions already in § 219.403.

After consideration, FRA agrees that its proposal to mandate the establishment of peer support programs was unnecessary, since privately run railroad programs and FRA's own Subpart E policies have both proven effective in identifying and helping employees with drug and alcohol abuse issues. FRA also agrees that its proposed peer support programs could interfere with, or possibly even be detrimental to, existing railroad self-referral programs. Therefore, instead of requiring the adoption of peer prevention programs, FRA is revising and moving its voluntary referral, co-worker report, and alternative policy requirements from Subpart E (which has been revised to address reasonable cause testing) to new Subpart K.

Finally, the issue of the rule effective date generated one comment. The Associations requested that the final rule become effective two years after its publication, to allow for the implementation of new testing policies and procedures, and for the creation of random testing pools for MOW employees. FRA notes, however, that many MOW employees are already subject to drug and alcohol testing under Federal authority, company authority, or both. For example, any MOW employee whose duties require the holding of a Commercial Driver's License (CDL) is subject to Federal Motor Carrier Safety Administration (FMCSA) testing requirements. MOW employees may also be subject to testing under company authority, often in a "look-alike" (a company testing program that mirrors FRA standards and procedures) program. FRA believes that this familiarity with drug and alcohol programs will facilitate the implementation of Part 219 requirements for MOW employees.

Moreover, railroads have 30 years of experience implementing Part 219 requirements for their covered service employees, while employers who are newly subject to Part 219, such as contractors who provide MOW service to railroads, have service agents (e.g., random testing consortia and third party administrators) readily available to facilitate adoption and compliance with this Part. Given the experience and resources railroads and contractors have to draw on, FRA believes a one-year implementation window is reasonable for the requirements in this 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 regulation.

10. Assurance of confidentiality.

No assurances of confidentiality have been provided to affected respondents. FRA maintains a set of accident investigation files. FRA will not maintain a system of records that will permit the identification of records by an individual name. FRA does hold in confidence information concerning medically authorized use of controlled substances, pursuant to 5 U.S.C. 55 2 (b)(6), except where the information is deemed material to determination of accident causation. The random testing programs for alcohol and drugs require that results of random tests and related medical information be held in confidence, except as necessary to effect discipline and/or referral for rehabilitation.

11. Justification for any questions of a sensitive nature.

These requirements have nothing to do with sensitive matters such as sexual behavior and attitudes, religious beliefs, and other matters commonly considered private.

12. Estimate of burden hours for information collected.

Note: Respondent universe affected by this final rule is comprised of 722 railroads (on the general system of rail transportation) and 400 Maintenance-of-Way (MOW) contractors. Additionally, the number of employees affected by this final rule is 142,000; 32,000 of these 142,000 employees are MOW employees/contractors.

Recognition of a foreign railroad's workplace testing program (219.4)

(a) *General.* A foreign railroad may petition the FRA Associate Administrator for Safety for recognition of a workplace testing program promulgated under the laws of its home country as a compatible alternative to the return-to-service requirements in Subpart B of this Part and the requirements of Subparts E, F, and G of this Part with respect to its employees whose primary reporting point is outside the United States but who enter the United States to perform train or dispatching service and with respect to its final applicants for, or its employees seeking to transfer for the first time to, duties involving such service.

(1) To be so considered, the petition must document that the foreign railroad's workplace testing program contains equivalents to Subparts B, F, G, and K of this Part: **(Revised Requirement)**

(i) Pre-employment drug testing;

(ii) A policy dealing with co-worker and self-reporting of alcohol and drug abuse problems;

(iii) Random drug and alcohol testing;

(iv) Return-to-duty testing; and

(v) Testing procedures and safeguards reasonably comparable in effectiveness to all applicable provisions of the United States Department of Transportation Procedures for Workplace Drug and Alcohol Testing Programs (part 40 of this title).

(2) In approving a program under this section, the FRA Associate Administrator for Safety may impose conditions deemed necessary.

FRA estimates that this it will receive approximately two (2) petitions with the necessary documentation form foreign railroads under the above requirement. It is estimated that it will take approximately 40 hours to complete each petition. Total annual burden for this requirement is 80 hours.

Respondent Universe:

2 railroads

Burden time per response: 40 hours

Frequency of Response: On occasion

Annual number of Responses: 2 petitions

Annual Burden: 80 hours

Calculation: 2 petitions x 40 hrs. = 80 hours

(b)(1) Alternate Programs. Upon FRA's recognition of a foreign railroad's workplace alcohol and drug use program as compatible with the return-to-service requirements in Subpart B and the requirements of Subparts F, G, and K of this Part, the foreign railroad must comply with either the specified provisions of § 219.4 Part 219 or with the standards of its recognized program, and any imposed conditions, with respect to its employees whose primary reporting point is outside the United States and who perform train or dispatching service in the United States. The foreign railroad must also, with respect to its final applicants for, or its employees seeking to transfer for the first time to, duties involving such train or dispatching service in the United States, comply with either subpart F of this Part or the standards of its recognized program.

(2) The foreign railroad must comply with Subparts A (general), B (prohibitions, other than the return-to-service provisions in § 219.104(d)), C (post-accident toxicological testing), D (reasonable suspicion testing), I (annual report requirements), and J (recordkeeping requirements) of this Part. Drug or alcohol testing required by these subparts (except for post-accident toxicological testing required by Subpart C) must be conducted in compliance with all applicable provisions of the DOT Procedures for Workplace Drug and Alcohol Testing Programs (Part 40 of this title).

Any burden associated with this requirement is already included under OMB No. 2130-0555 and DOT's Part 40 information collection (OMB No. 2105-0529). Consequently, there is no additional burden associated with the above requirement.

Waivers (219.7)

A person subject to a requirement of this part may petition the Federal Railroad Administration (FRA) for a waiver of compliance with such requirement. Each petition for waiver under this section must be filed in a manner and contain the information required by Part 211 of this chapter. A petition for waiver of the Part 40 prohibition against stand down of an employee before the Medical Review Officer (MRO) has completed the verification must also comply with § 40.21 of this title.

It is estimated that FRA will receive approximately four (4) waivers a year where a person has asked for relief from these requirements. FRA estimates that it will take approximately two (2) hours to prepare a letter and submit it to FRA. Total annual burden for this requirement is eight (8) hours.

Respondent Universe:

142,000
employees

Burden time per response:

2 hours

Frequency of Response:

On occasion

Annual number of Responses:

4 waiver letters

Annual Burden:

8 hours

Calculation: 4 waiver letters x 2 hrs. = 8 hours

Responsibility for compliance [219.9(b)(1) and (c)]

Joint operations.

(b)(1) In the case of joint operations, primary responsibility for compliance with Subparts C, D, and E of this Part rests with the host railroad, and all affected employees must be responsive to direction from the host railroad that is consistent with this Part. However, nothing in this paragraph restricts railroads engaged in joint operations from appropriately assigning responsibility for compliance with this Part amongst themselves through a joint operating agreement or other binding contract. FRA reserves the right to bring an enforcement action for noncompliance with this Part against the host railroad, the employing railroad, or both. **(Revised Requirement)**

FRA estimates that approximately 525 joint operating agreements/contracts assigning responsibility for compliance with this Part amongst themselves will be completed by railroads under the above requirement. It is estimated that it will take approximately 30 minutes to complete each joint operating agreement. Total annual burden for this requirement is 263 hours.

Respondent Universe:

722 railroads
+ 400 MOW
contractors

Burden time per response:

30 minutes

Frequency of Response:

On occasion

Annual number of Responses:

525 joint operating agreement/contracts

Annual Burden:

263 hours

Calculation:

525 joint operating agreements x 30 min. =
263 hours

Responsibility for compliance [219.9(b)(2)]

Where an employee of a railroad engaged in joint operations is required to participate in breath or body fluid testing under Subpart C, D, or E of this Part and is subsequently subject to adverse action alleged to have arisen out of the required test (or alleged refusal thereof), necessary witnesses and documents available to the other railroad engaged in the joint operations must be made available to the employee and his or her employing railroad on a reasonable basis. **(Revised Requirement)**

FRA estimated that this will occur two (2) times annually. It is estimated that it will take approximately one (1) hour to furnish the necessary documents to the employee. Total annual burden for this requirement is two (2) hours.

Respondent Universe:

722 railroads
+ 400 MOW
contractors

Burden time per response: 1 hour

Frequency of Response: On occasion

Annual number of Responses: 2 requests/documents

Annual Burden: 2 hours

Calculation: 2 requests x 1 hr. = 2 hours

Contractor responsibility for compliance [219.9(c)]

As provided by paragraph (a), any independent contractor or other entity that performs regulated service for a railroad, or any other services under this Part or Part 40 of this Title, has the same responsibilities as a railroad under this Part with respect to its employees who perform regulated service or other service required by this Part or Part 40 of this Title for the railroad. The entity's responsibility for compliance with this Part may be fulfilled either directly by that entity or by the railroad treating the entity's regulated employees as if they were the railroad's own employees for purposes of this Part. The responsibility for compliance must be clearly spelled out in the contract between the railroad and the other entity or in another document. In the absence of a clear delineation of responsibility, FRA may hold the railroad and the other entity jointly and severally liable for compliance. **(Revised Requirement)**

FRA estimated that 10 contracts/documents will be drawn up by railroad and independent contractors delineating responsibility as specified in this section. It is estimated that it will take approximately two (2) hours to compose the necessary documents. Total annual burden for this requirement is 20 hours.

Respondent Universe:

722 railroads
+ 400 MOW
contractors

Burden time per response: 2 hours

Frequency of Response: On occasion

Annual number of Responses: 10 contracts/documents

Annual Burden: 20 hours

Calculation: 20 contracts/documents x 2 hrs. = 20 hours

General conditions for chemical tests [219.11(d)]

Any person required to participate in body fluid testing under Subpart C of this Part (post-accident toxicological testing) shall, if requested by a representative of the railroad or the medical facility, evidence consent to the taking of specimens, their release for toxicological analysis under pertinent provisions of this Part, and release of the test results to the railroad's Medical Review Officer by promptly executing a consent form, if required by the medical facility. A regulated employee is not required to execute any document or clause waiving rights that the employee would otherwise have against the railroad, and any such waiver is void. The employee may not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others. Any consent provided consistent with this section may be construed to extend only to those actions specified in this section.

FRA estimated that approximately 30 consent forms will be completed under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each form. Total annual burden for this requirement is one (1) hour.

Respondent Universe:

722 railroads
+ 400 MOW
contractors

Burden time per response: 2 minutes

Frequency of Response: On occasion

Annual number of Responses: 30 consent forms

Annual Burden: 1 hour

Calculation: 30 consent forms x 2 min. = 1 hour

General conditions for chemical tests [219.11(e)(1)]

- I. (e)(1) A regulated employee who is notified of selection for testing under this Part must cease to perform his or her assigned duties and proceed to the testing site either immediately or as soon as possible without adversely affecting safety. **(Revised Requirement)**

FRA estimates that approximately 9,508 employees will receive notifications regarding selection for testing under the above requirement. It is estimated that it will take approximately five (5) seconds to complete each notification. Total annual burden for this requirement is 13 hours.

Respondent Universe:		142,000 railroad employees
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Burden time per response:	5 seconds	
Frequency of Response:		On occasion

Annual number of Responses:	9,508 notifications	
Annual Burden:		13 hours

Calculation: 9,508 notifications x 5 sec. = 13 hours

Training - Alcohol and Drug [219.11(g)]

Each supervisor responsible for regulated employees (except a working supervisor who is a co-worker as defined in § 219.5) must be trained in the signs and symptoms of alcohol and drug influence, intoxication, and misuse consistent with a program of instruction to be made available for inspection upon demand by FRA. Such a program shall, at a minimum, provide information concerning the acute behavioral and apparent physiological effects of alcohol, the major drug groups on the controlled substances list, and other impairing drugs. The program must also provide training on the qualifying criteria for post-accident toxicological testing contained in Subpart C of this Part, and the role of the supervisor in post-accident collections described in Subpart C and Appendix C of this Part. **(Revised Requirement)**

1. FRA estimates that approximately 722 railroads will need to modify their existing programs to meet the above requirement. It is estimated that it will take approximately one (1) hour to complete each program modification. Total annual burden for this requirement is 722 hours.

Respondent Universe:		722 railroads
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Burden time per response:	1 hour	
Frequency of Response:		One-time

Annual number of Responses:	722 modified programs	
Annual Burden:		722 hours

Calculation: 722 modified programs x 1 hrs. = 722 hours

Additional, FRA estimates that five (5) new railroads will come into existence annually and need to develop the required program of instruction. It is estimated that it will take each railroad approximately three (3) hours to develop its program, and file a copy at the railroad's division or system headquarters. Total annual burden for this requirement is 15 hours.

Respondent Universe:

5
railroads

Burden time per response:

3 hours

Frequency of Response:

Annually

Annual number of Responses: 5 programs

Annual Burden: 15 hours

Calculation: 5 programs x 3 hrs. = 15 hours

2. FRA estimates that approximately one (1) supervisor for each 13 of the estimated 32,000 MOW employees or a total of 2,462 supervisory employees will be trained under the above requirement. It is estimated that training will take approximately three (3) hours to train each MOW supervisor. Total annual burden for this requirement is 7,386 hours.

Respondent Universe: 722 railroads + 400
MOW contractors

Burden time per response:

3 hours

Frequency of Response:		One-time
Annual number of Responses:	2,462 supervisory trained employees	
Annual Burden:		7,386 hours

Calculation: 2,462 sup. trained employees x 3 hrs. = 7,386 hours

(h) Nothing in this Subpart restricts any discretion available to the railroad to request or require that an employee cooperate in additional breath or body fluid testing. However, no such testing may be performed on urine or blood specimens provided under this Part. For purposes of this paragraph, all urine from a void constitutes a single specimen.

FRA estimates that there will be zero (0) requests by railroads for additional testing. Consequently, there is no burden associated with this requirement.

Total annual burden for this entire requirement is 8,137 hours (1 + 13 + 722 + 15 + 7,386).

§ 219.12 Hours-of-service laws implications (New Requirements)

(a) A railroad is not excused from performing alcohol or drug testing under Subpart C (post-accident toxicological testing) and Subpart D (reasonable suspicion testing) of this Part because the performance of such testing would violate the hours-of-service laws at 49 U.S.C. Ch. 211. If a railroad establishes that a violation of the hours-of-service laws is caused solely because it was required to conduct post-accident toxicological testing or reasonable suspicion testing, FRA will not take enforcement action for the violation if the railroad used reasonable due diligence in completing the collection and otherwise completed it within the time limitations of § 219.203(d) (for post-accident toxicological testing) or § 219.305 (for reasonable suspicion testing), although the railroad must still report any excess service to FRA.

(b) A railroad may perform alcohol or drug testing authorized under Subpart E (reasonable cause testing) of this Part even if the performance of such testing would violate the hours-of-service laws at 49 U.S.C. Ch. 211. If a railroad establishes that a violation of the hours-of-service laws is caused solely by its decision to conduct authorized reasonable cause testing, FRA will not take enforcement action for the violation if the railroad used reasonable due diligence in completing the collection and otherwise completed it within the time limitations of § 219.407, although the railroad must still report any excess service to FRA.

The burden for reports of excess service is already included that of the Hours of Service Regulations information collection (OMB No. 2130-0005; under section 228.19). Consequently, there is no additional burden associated with this requirement.

(c) A railroad must schedule random alcohol and drug tests under subpart G of this Part so that sufficient time is provided to complete the test within a covered employee's hours-of-service limitations under 49 U.S.C. Ch. 211. However, if a direct observation collection is required during a random test per the requirements of Part 40 of this title, then the random test must be completed regardless of the hours-of-service law limitations, although the railroad must still report any excess service to FRA. A railroad may not place a regulated employee on-duty for the sole purpose of conducting a random alcohol or drug test under Subpart G of this part.

The burden for the requirements under DOT's Part 40 is included under OMB No. 2105-0529. The burden for reports of excess service is included that of the Hours of Service Regulations information collection (OMB No. 2130-0005; under section 228.19). Consequently, there is no additional burden associated with these requirements.

(d) A railroad must schedule follow-up tests under § 219.104 so that sufficient time is provided to complete a test within a covered employee's hours-of-service limitations under 49 U.S.C. Ch. 211. If a railroad is having a difficult time scheduling the required number of follow-up tests because a covered employee's work schedule is unpredictable, there is no prohibition against the railroad placing an employee (who is subject to being called to perform regulated service) on duty for the purpose of conducting the follow-up tests; except that an employee may be placed on duty for a follow-up alcohol test only if he or she is required to completely abstain from alcohol by a return-to-duty agreement, as provided by § 40.303(b) of this Title. A railroad must maintain documentation establishing the need to place the employee on duty for purpose of conducting the follow-up test and provide this documentation for review upon request of a FRA representative.

FRA estimates that this will happen approximately five times a year and thus five (5) documents establishing the need to place employees on duty for the purpose of follow-up test will be completed by railroads under the above requirement. It is estimated that it will take approximately 30 minutes to complete each document. Total annual burden for this requirement is three (3) hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response: 30 minutes

Frequency of Response: On occasion

Annual number of Responses: 5 documents

Annual Burden:

3 hours

Calculation: 5 documents x 30 min. = 3 hours

Total annual burden for this entire requirement is three (3) hours.

Railroad Policies: Notice of Breath or Body Fluid Test to Employee [219.23a]

(a) Whenever a breath or body fluid test is required of an employee under this Part, the railroad (either through a railroad employee or a designated agent, such as a contracted collector) must provide clear and unequivocal written notice to the employee that the test is being required under FRA regulations and is being conducted under Federal authority. The railroad must also provide the employee clear and unequivocal written notice of the type of test that is required (e.g., reasonable suspicion, reasonable cause, random selection, follow-up, etc.). These notice requirements are satisfied if:

(1) For all FRA testing except mandatory post-accident toxicological testing under Subpart C of this Part, a railroad uses the mandated DOT alcohol or drug testing form, circles or checks off the box corresponding to the type of test, and shows this form to the employee before testing begins; or

(2) For mandatory post-accident toxicological testing under Subpart C of this Part, a railroad uses the approved FRA form and shows this form to the employee before testing begins.

The Chain of Custody and Control Form (CCF) covers this requirement. The burden for the Chain of Custody and Control Form is covered in a separate information collection submitted by the Department of Health and Human Services (DHHS). Consequently, there is no additional burden associated with this requirement.

Notice of Educational Material available to Employees [(219.23(c), (d), and (e))]

(c) Each railroad must develop and publish educational materials, specifically designed for regulated employees that clearly explain the requirements of this Part, as well as the railroad's policies and procedures with respect to meeting those requirements. The railroad must ensure that a copy of these materials is distributed to each regulated employee hired for or transferred to a position that requires alcohol and drug testing under this Part. (This requirement does not apply to an applicant for a regulated service position who either refuses to provide a specimen for pre-employment testing or who has a pre-employment test with a result indicating a violation of the alcohol or drug prohibitions of this Part.) A railroad may satisfy this requirement by either—

(1)(i) Continually posting the materials in a location that is easily visible to all regulated employees going on duty at their designated reporting place and, if applicable, providing

a copy of the materials to any employee labor organization representing a class or craft of regulated employees of the railroad;

(ii) Providing a copy of the materials in some other manner that will ensure that regulated employees can find and access these materials explaining the critical aspects of the program (e.g., by posting the materials on a company website that is accessible to all regulated employees); or

(2) For a minimum of three years after **[INSERT DATE 365 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, also ensuring that a hard copy of these materials is provided to each maintenance-of-way employee.

(d) Required content. The materials to be made available to employees under paragraph (c) of this section must, at a minimum, include clear and detailed discussion of the following: (1) The position title, name, and means of contacting the person(s) designated by the railroad to answer employee questions about the materials; (2) The specific classes or crafts of employees who are subject to the provisions of this Part, such as engineers, conductors, MOW employees, signal maintainers, or train dispatchers; (3) Sufficient information about the regulated service functions those employees perform to make clear that the period of the work day the regulated employee is required to be in compliance with the alcohol prohibitions of this Part is that period when the employee is on duty and is required to perform or is available to perform regulated service; (4) Specific information concerning regulated employee conduct that is prohibited under Subpart B of this Part (e.g., the minimum requirements of §§ 219.101, 219.102, and 219.103); (5) The requirement that a railroad utilizing the reasonable cause testing authority provided by Subpart E of this Part must give prior notice to regulated employees of the circumstances under which they will be subject to reasonable cause testing; (6) The circumstances under which a regulated employee will be tested under this Part; (7) The procedures used to test for the presence of alcohol and controlled substances, protect the regulated employee and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee; (8) The requirement that a regulated employee submit to alcohol and drug tests administered in accordance with this Part; (9) An explanation of what constitutes a refusal to submit to an alcohol or drug test and the attendant consequences; (10) The consequences for a regulated employee found to have violated Subpart B of this Part, including the requirement that the employee be removed immediately from regulated service, and the responsive action requirements of § 219.104; (11) The consequences for a regulated employee who has a Federal alcohol test indicating an alcohol concentration of .02 or greater but less than .04; and (12) Information concerning the effects of alcohol and drug misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol or drug problem (the employee's or a coworker's); and available methods of evaluating and resolving problems associated with the misuse of alcohol and drugs, and the names, addresses, and telephone numbers of DACs and counseling and treatment programs.

(e) Optional provisions. The materials supplied to employees may also include information on additional railroad policies with respect to the use or possession of alcohol and drugs, including any consequences for an employee found to have a specific alcohol concentration, that are based on the railroad's authority independent of this Part. Any such additional policies or consequences must be clearly and obviously described as being based on the railroad's independent company authority.

FRA will actually develop the required educational materials that regulated railroads and contractors will use to fulfill this requirement. However, these entities will modify/revise the FRA document to meet their own needs. It is estimated that it will take approximately one (1) hour to modify/revise the FRA educational materials and publish them. Total annual burden for this requirement is 1,098 hours. **(Not a new requirement)**

Respondent Universe:	1,098 railroads/contractors (722 RRs + 400 MOW contractors)	
Burden time per response:	1 hour	
Frequency of Response:		One-time
Annual number of Responses:	1,098 modified/revise educational documents	
Annual Burden:	1,098 hours	
<u>Calculation:</u>	1,098 modified/revise educational material documents x 1 hr. = 1,098 hours	

Further, FRA estimates that approximately 142,000 copies of the educational materials documents will be provided to regulated employees under the above requirement. It is estimated that it will take approximately two (2) minutes to copy the document and give it to each employee. Total annual burden for this requirement is 4,733 hours.

Respondent Universe:		142,000 railroad employees
Burden time per response:	2 minutes	
Frequency of Response:		One-time
Annual number of Responses:	142,000 copies of educational material documents	
Annual Burden:	4,733 hours	

Calculation: 142,000 copies of educational material documents x 2 min. =
4,733 hours

Note: The requirement to provide educational materials to employee organizations/ representatives of employee organizations has already been fulfilled. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is 5,831 hours (1,098 + 4,733).

§ 219.25 Previous employer drug and alcohol checks.

(a) As required by § 219.701(a) and (b), a railroad must conduct drug or alcohol testing conducted under this Part in compliance with Part 40 of this Title (except for post-accident toxicological testing under Subpart C of this Part). A railroad must, therefore, comply with § 40.25 by checking the alcohol and drug testing record of any direct regulated employee (a regulated employee who is not employed by a contractor to the railroad) it intends to use for regulated service before the employee performs such service for the first time. A railroad is not required to check the alcohol and drug testing record of contractor employees performing regulated service on its behalf (the alcohol and drug testing record of those contractor employees must be checked by their direct employers).

The burden for this requirement is included under that of the information collection associated with DOT's Part 40 (OMB No. 2105-0529). Consequently, there is no additional burden associated with this requirement.

(b) When determining whether a person may become or remain certified as a locomotive engineer or a conductor, a railroad must comply with the requirements in § 240.119(c) (for engineers) or § 242.115(e) (for conductors) of this Chapter regarding the consideration of Federal alcohol and drug violations that occurred within a period of 60 consecutive months prior to the review of the person's records.

The burden for this requirement is included under that of the information collection associated with FRA's Part 240 (OMB No. 2130-0533) and FRA's Part 242 (OMB No. 2130-0596). Consequently, there is no additional burden associated with this requirement.

Subpart B - Prohibitions

Federal Prohibitions

FRA currently has received approval (**OMB No. 2130-0035**) for collection of data pursuant to its "Railroad Operating Rules" program (49 CFR 217). Included in these provisions is a section covering modifications to current rules. All railroads currently

have a prohibition on alcohol/drug use in some form. Some of the railroads will require minor amendments to make their rule consistent with the Federal rule. This item is accomplished in accordance with presently approved rule modification procedures, and will entail no additional burden on the railroads.

Responsive Action:

Removal from regulated service [219.104, 219.107]

A. (a) Removal from regulated service. (1) If a railroad determines that a regulated employee has violated § 219.101 or § 219.102, or the alcohol or controlled substances misuse rule of another DOT agency, the railroad must immediately remove the employee from regulated service and the procedures described in paragraphs (b) through (d) of this section apply.

(2) If a regulated employee refuses to provide a breath or body fluid specimen or specimens when required to by the railroad under a provision of this Part, a railroad must immediately remove the regulated employee from regulated service, and the procedures described in paragraphs (b) through (d) of this section apply. This provision also applies to Federal reasonable cause testing under Subpart E of this Part (if the railroad has elected to conduct this testing under Federal authority).

(b) Notice. Before or upon removing a regulated employee from regulated service under this section, a railroad must provide written notice to the employee of the reason for this action. A railroad may provide a regulated employee with an initial verbal notice so long as it provides a follow-up written notice to the employee as soon as possible. In addition to the reason for the employee's withdrawal from regulated service, the written notice must also inform the regulated employee that he may not perform any DOT safety-sensitive duties until he completes the return-to-duty process of Part 40. **(Revised Requirement)**

FRA estimates that there will be approximately 500 instances annually where an employee has violated § 219.201 or § 219.202, and first an initial verbal notice and then a follow-up written notice will be provided to the employee under the above requirement. A form letter has been developed by railroads for this purpose. It is estimated that it will take approximately 30 seconds to complete each initial verbal notice and approximately two (2) minutes to complete each follow-up written notice/letter to the employee. Total annual burden for this requirement is 21 hours.

Respondent Universe: 722 railroads/400 MOW Contractors

Burden time per response: 30 seconds + 2 minutes

Frequency of Response: On
occasion

Annual number of Responses: 500 verbal notices + 500 follow-up
written notices/letters

Annual Burden: 21 hours

Calculation: 500 verbal notices x 30 sec. + 500 follow-up written
notices/letters x 2 min. = 21 hours

- B. (c) Hearing procedures. (1) Except as provided in paragraph (e)(5) of this section, if a regulated employee denies that a test result or other information is valid evidence of a § 219.201 or § 219.202 violation, the regulated employee may demand and must be provided an opportunity for a prompt post-suspension hearing before a presiding officer other than the charging official. This hearing may be consolidated with any disciplinary hearing arising from the same accident or incident (or conduct directly related thereto), but the presiding officer must make separate findings as to compliance with §§ 219.101 and 219.102. (2) The hearing must be convened within the period specified in the applicable collective bargaining agreement. In the absence of an agreement provision, the regulated employee may demand that the hearing be convened within 10 calendar days of the employee's suspension or, in the case of a regulated employee who is unavailable due to injury, illness, or other sufficient cause, within 10 days of the date the regulated employee becomes available for the hearing. (3) A post-suspension proceeding conforming to the requirements of an applicable collective bargaining agreement, together with the provisions for adjustment of disputes under Section 3 of the Railway Labor Act (49 U.S.C. 153), satisfies the procedural requirements of this paragraph (c). (4) With respect to a removal or other adverse action taken as a consequence of a positive test result or refusal in a test authorized or required by this Part, nothing in this Part may be deemed to abridge any procedural rights or remedies consistent with this Part that are available to a regulated employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law. (5) Nothing in this part restricts the discretion of a railroad to treat a regulated employee's denial of prohibited alcohol or drug use as a waiver of any privilege the regulated employee would otherwise enjoy to have such prohibited alcohol or drug use treated as a non-disciplinary matter or to have discipline held in abeyance.

FRA estimates that 50 employees will request hearings, which will then be held by railroads under the above requirement. It is estimated that it will take approximately two (2) minutes to request a hearing. Further, it is estimated that four people will participate in each hearing and that each hearing will take approximately one (1) hour to complete (50 hearings x 4 people x 1 hr.). Total annual burden for this requirement is 202 hours.

Respondent Universe:	722 railroads + 400 MOW contractors
Burden time per response:	2 minutes + 4 hours
Frequency of Response:	On occasion
Annual number of Responses:	50 requests + 50 hearings
Annual Burden:	202 hours

Calculation: 50 requests x 2 min. + 50 hearings x 4 hrs. = 202 hours

- C. (d) A railroad must comply with the requirements for Substance Abuse Professional evaluations, the return-to-duty process, and follow-up testing contained in Part 40 of this Title.

The burden for this requirement is included under that of the information collection associated with DOT's Part 40 (OMB No. 2105-0529). Consequently, there is no additional burden associated with this requirement.

(e)(4) Applicability. This section does not apply to an applicant who declines to be subject to pre-employment testing and withdraws the application for employment before the test begins. The determination of when a drug or alcohol test begins will be made according to the provisions found in Subparts E and L of Part 40 of this Title. **(Revised Requirement)**

FRA estimated that approximately 60 applicants will decline pre-employment testing and withdraw their application for employment under the above requirement. It is estimated that it will take approximately two (2) minutes to communicate this information to the railroad. Total annual burden for this requirement is two (2) hours.

Respondent Universe:	722 railroads + 400 MOW contractors
Burden time per response:	2 minutes
Frequency of Response:	On occasion

Annual number of Responses: 60 communications
Annual Burden: 2 hours

Calculation: 60 communications x 2 min. = 2 hours

Total annual burden for this entire requirement is 225 hours (21 + 202 + 2).

§ 219.105 Railroad's duty to prevent violations.

- I. (a) A railroad may not, with actual knowledge, permit a regulated employee to go or remain on duty in regulated service in violation of the prohibitions of §§ 219.101 or 219.102. As used in this section, the actual knowledge imputed to the railroad is limited to that of a railroad management employee (such as a supervisor deemed an "officer," whether or not such person is a corporate officer) or a supervisory employee in the offending regulated employee's chain of command. A railroad management or supervisory employee has actual knowledge of a violation when he or she:

(1) Personally observes a regulated employee use or possess alcohol or use drugs in violation of this Subpart. It is not sufficient for actual knowledge if the supervisory or management employee merely observes the signs and symptoms of alcohol or drug use that require a reasonable suspicion test under § 219.301;

(2) Receives information regarding a violation of this Subpart from a previous employer of a regulated employee, in response to a background information request required by § 40.25 of this Title; or

The burden for this requirement is included under that of the information collection associated with DOT's Part 40 (OMB No. 2105-0529). Consequently, there is no additional burden associated with this requirement.

- II. (3) Receives a regulated employee's admission of prohibited alcohol possession or prohibited alcohol or drug use.

The burden for this requirement is included under that of the information collection associated with DOT's Part 40 (OMB No. 2105-0529). Consequently, there is no additional burden associated with this requirement.

- III. (c) A railroad's alcohol and/or drug use education, prevention, identification, intervention, and rehabilitation programs and policies must be designed and implemented in such a way that they do not circumvent or otherwise undermine the requirements, standards, and policies of this Part. Upon FRA's request, a railroad must make available for FRA review all documents, data, or other records related to such programs and policies. **(New Requirement)**

FRA estimates that it will request such document approximately two (2) times annually and thus two (2) documents will be provided to FRA under the above requirement. It is estimated that it will take approximately five (5) minutes for the railroad to provide the necessary document to FRA. Total annual burden for this requirement is .17 hour.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

5
minutes

Frequency of Response:

On
occasion

Annual number of Responses:

2 document copies

Annual Burden:

.17 hour

Calculation:

2 document copies x 5 min. = .17
hour

(d) Each year, a railroad’s supervisors must conduct and record a number of “Rule G” employee observations at a minimum equal to twice the railroad’s total number of regulated employees. Each “Rule G” observation must be made sufficiently close to an individual regulated employee to determine whether the employee is displaying signs and symptoms indicative of a violation of the prohibitions of this Part. **(New Requirement)**

FRA estimates that railroad supervisors will conduct and record approximately 280,000 “Rule G” employee observations annually under the above requirement. It is estimated that it will take approximately two (2) seconds to conduct each observation and approximately two (2) seconds to record it. Total annual burden for this requirement is 311 hours.

Respondent Universe:

		722 railroads
Burden time per response:		2 seconds + 2 seconds
Frequency of Response:		On occasion
Annual number of Responses:	280,000 “Rule G” employee observations + 280,000 observation records	
Annual Burden:		311 hours

Calculation: 280,000 “Rule G” employee observations x 2 sec. +
280,000 observation records x 2 sec. = 311 hours

Total annual burden for this entire requirement is 311 hours (.17 + 311).

§ 219.107 Consequences of refusal.

(a) A regulated employee who refuses to provide a breath or a body fluid specimen or specimens when required to by the railroad under a provision of this Part must be withdrawn from regulated service for a period of nine (9) months. Per the requirements of Part 40 of this Title, a regulated employee who provides an adulterated or substituted specimen is deemed to have refused to provide the required specimen and must be withdrawn from regulated service in accordance with this section.

The burden for this requirement is included under that of the information collection associated with DOT’s Part 40 (OMB No. 2105-0529). Consequently, there is no additional burden associated with this requirement.

(b) Notice. Prior to or upon withdrawing a regulated employee from regulated service under this section, a railroad must provide written notice to the employee of the reason for this action, and the procedures described in § 219.104(c) apply. A railroad may provide a regulated employee with an initial verbal notice so long as it provides a follow-up written notice as soon as possible.

The burden for this requirement is included under that § 219.104(b) above.

Consequently, there is no additional burden associated with this requirement.

Subpart C - Post-Accident Toxicological Testing

Good faith determinations [219.201(c)]

Upon specific request made to the railroad by the FRA Associate Administrator for Safety (or the Associate Administrator's delegate), the railroad must provide a report describing any decision by a person other than the responding railroad representative with respect to whether an accident/incident qualifies for testing. This report must be affirmed by the decision maker, and provided to FRA within 72 hours of the request. The report must include the facts reported by the responding railroad representative, the basis upon which the testing decision was made, and the person making the decision.

FRA estimates that this will occur two (2) times annually. It is estimated that it will take 30 minutes to prepare the report, affirm it, and submit it to FRA. Total annual burden for this requirement is one (1) hour.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

30
minute
s

Frequency of Response:

On occasion

Annual number of Responses: 2 reports

Annual Burden: 1 hour

Calculation: 2 reports x 30 min. = 1 hour

Responsibilities of railroads and employees. [219.203/207]

A. (a)(3) Major train accidents. (i) For an accident or incident meeting the criteria of a Major Train Accident in § 219.201(a)(1) --

(i) All assigned crew members of all trains or other on-track equipment involved in the qualifying event must be subjected to post-accident toxicological testing, regardless of fault.

(ii) Other surviving regulated employees who are not assigned crew members of an involved train or other on-track equipment (e.g., a dispatcher or a signal maintainer) must be tested if a railroad representative can immediately determine, on the basis of specific information, that the employee may have had a role in the cause or severity of the accident/incident. In making this determination, the railroad representative must consider any such information that is immediately available at the time the qualifying event determination is made under § 219.201. *[Note: The burden for post-accident toxicological testing is included under the submission for DOT's Part 40 (OMB No. 2105-0529). Consequently, there is no additional burden associated with this part of the requirement.]*

Based on the \$1.5 million property damage threshold, FRA estimates that there will be approximately 80 major train accidents each year caused by human factors (HF). As a result, railroad employees involved in these accidents will have to complete Form FRA F 6180.73. It is estimated that an average of three employees will be tested per accident/event and have to complete the required form. It is estimated that it will take approximately 10 minutes to complete each of the 240 FRA 6180.73 forms (80 accidents events x 3 employees/forms per accident). Total annual burden for this requirement is 40 hours.

Respondent Universe:

142,000 RR
employees

Burden time per response:

10
minute
s

Frequency of Response:

On occasion

Annual number of Responses: 240 forms
Annual Burden: 40 hours

Calculation: 240 forms x 10 min. = 40 hours

Additionally, FRA estimates that railroad representatives will make approximately 80 determinations, based on specific information, to test other regulated employees who are not assigned crew members of an involved train or other on-track equipment (e.g., a dispatcher or a signal maintainer) who may have had a role in the cause or severity of the accident/incident under the above requirement. It is estimated that it will take approximately 15 minutes/hours to make each determination (including obtaining the specific information that forms the basis of the determination). Total annual burden for this requirement is 20 hours. **(Revised Requirement)**

Respondent Universe:

722
railroads

Burden time per response: 15
minutes

Frequency of Response: On
occasion

Annual number of Responses: 80 determinations
Annual Burden: 20 hours

Calculation: 80 determinations x 15 min. = 20 hours

- B. (a)(6) Exception. For a qualifying impact accident, passenger train accident, fatal train incident, or human-factor highway-rail grade crossing accident/incident under § 219.201(a)(2) through 219.201(a)(5), a surviving crewmember or other regulated employee must be excluded from testing if the railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause or severity of the accident/incident. In making this determination, the railroad representative must consider any information that is immediately available at the time the qualifying event determination is made under § 219.201. **(New Requirement)**

(i) This exception is not available for assigned crew members of all involved trains if the qualifying event also meets the criteria for a major train accident under § 219.201(a)(1) (e.g., this exception is not available for an Impact Accident that also qualifies as a major train accident because it results in damage to railroad property of \$1,500,000 or more).

(ii) This exception is not available for any on-duty employee who is fatally-injured in a qualifying event.

FRA estimates that approximately 50 determinations, based on specific information, will be made by a railroad representative excluding testing of a surviving crewmember or other regulated employee involved in qualifying accident/incident under the above requirement. It is estimated that it will take approximately five (5) minutes to make each determination. Total annual burden for this requirement is four (4) hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

5
minutes

Frequency of Response:

On
occasion

Annual number of Responses:

50 determinations

Annual Burden:

4 hours

Calculation:

50 determinations x 5 min. = 4 hours

- C. (d)(1) Timely specimen collection. (1) A railroad must make every reasonable effort to assure that specimens are provided as soon as possible after the accident or incident, preferably within four hours. Specimens not collected within four hours after a qualifying accident or incident must be collected as soon thereafter as practicable. If a specimen is not collected within four hours of a qualifying event, the railroad must immediately notify the FRA Drug and Alcohol Program Manager at 202-493-6313 and provide detailed information regarding the failure (either verbally or via a voicemail). The railroad must also submit a concise, written narrative report of the reasons for such a delay to the FRA Drug and Alcohol Program Manager, 1200 New Jersey Ave., SE,

Washington, DC 20590. The report must be submitted within 30 days after the expiration of the month during which the accident or incident occurred. This report may also be submitted via e-mail to an email address provided by the FRA Drug and Alcohol Program Manager. **(Revised Requirement)**

FRA estimates that approximately 80 telephone notifications and 80 narrative reports will be completed under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each telephone notification and approximately 30 minutes to complete each narrative report. Total annual burden for this requirement is 43 hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

2 minutes + 30 minutes

Frequency of Response:

On occasion

Annual number of Responses:

80 notifications + 80 reports

Annual Burden:

43 hours

Calculation:

80 notifications x 2 min. + 80 reports x 30 min. = 43 hours

(d)(3) If a passenger train is in proper condition to continue to the next station or its destination after an accident or incident, the railroad must consider the safety and convenience of passengers in determining whether the crew should be made immediately available for post-accident toxicological testing. A relief crew must be called to relieve the train crew as soon as possible. **(Current Requirement)**

FRA estimates that railroads will make 25 approximately determinations regarding whether the crew should be made immediately available for post-accident toxicological testing after an accident/incident under the above requirement. It is estimated that it will take approximately 10 minutes/hours to make each determination. Total annual burden for this requirement is four (4) hours.

Respondent Universe:

722
railroads

Burden time per response: 10 minutes

Frequency of Response: On occasion

Annual number of Responses: 25 determinations
Annual Burden: 4 hours

Calculation: 25 determinations x 10 min. = 4 hours

Further, FRA estimates that railroads will make approximately 25 train relief calls as soon as possible under the above requirement. It is estimated that it will take approximately five (5) minutes to make each call. Total annual burden for this requirement is two (2) hours.

Respondent Universe:

722
railroads

Burden time per response: 5 minutes

Frequency of Response: On occasion

Annual number of Responses: 25 train relief calls
Annual Burden: 2 hours

Calculation: 25 train relief calls x 5 min. = 2 hours

D. (e)(2) Recall of employees for testing. A railroad must immediately recall and place on duty a regulated employee for post-accident drug testing, if—

(i) The employee could not be retained in duty status because the employee went off duty under normal railroad procedures before being contacted by a railroad supervisor and

instructed to remain on duty pending completion of the required determinations (e.g., in the case of a dispatcher or signal maintainer remote from the scene of an accident who was unaware of the occurrence at the time he or she went off duty);

(ii) The railroad's preliminary investigation (contemporaneous with the determination required by § 219.201) indicates a clear probability that the employee played a role in the cause or severity of the accident/incident.

(3) If the criteria in subparagraphs (e)(2) of this section are met, a regulated employee must be recalled for post-accident drug testing regardless of whether the qualifying event happened or did not happen during the employee's tour of duty. However, an employee may not be recalled for testing if more than 24 hours have passed since the qualifying event. An employee who has been recalled must be placed on duty for the purpose of accomplishing the required post-accident drug testing.

(4) Urine and blood specimens must be collected from an employee who is recalled for testing in accordance with this section. If the employee left railroad property before being recalled, however, the specimens must be tested for drugs only. A railroad is prohibited from requiring a recalled employee to provide breath specimens for alcohol testing, unless the regulated employee has remained on railroad property since the time of the qualifying event and the railroad has a company policy completely prohibiting the use of alcohol on railroad property.

(5) A railroad must document its attempts to contact an employee subject to the recall provisions of this section. If a railroad is unable, as a result of the non-cooperation of an employee or for any other reason, to obtain a specimen(s) from an employee subject to mandatory recall within the 24 hour period after a qualifying event and to submit specimen(s) to FRA as required by this Subpart, the railroad must contact FRA and prepare a concise narrative report according to the requirements of paragraph (d)(1) of this section. The report must also document the railroad's good faith attempts to contact and recall the employee.

FRA estimates that approximately four (4) telephone calls and four (4) concise narrative reports will be completed showing railroads attempts to contact an employee subject to the recall provisions of under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each call and approximately 30 minutes to complete each report. Total annual burden for this requirement is two (2) hours. **(New Requirement)**

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response: 2 minutes + 30 minutes
 Frequency of Response: On occasion

Annual number of Responses: 4 calls + 4 reports
 Annual Burden: 2 hours

Calculation: 4 calls x 2 min. + 4 reports x 30 min. = 2 hours

- E. (g) Obtaining cooperation of facility. (1) In seeking the cooperation of a medical facility in obtaining a specimen under this Subpart, a railroad must, as necessary, make specific reference to the requirements of this Subpart and the instructions in FRA’s post-accident toxicological shipping kit. **(New Requirement)**

FRA estimates that approximately 80 references to Part 219 requirements and FRA’s post-accident toxicological kit will be made to medical facilities under the above requirement. It is estimated that it will take approximately 15 minutes to complete each reference. Total annual burden for this requirement is 20 hours.

Respondent Universe: 722
 railroads/400
 MOW
 Contractors

Burden time per response: 15 minutes
 Frequency of Response: On occasion

Annual number of Responses: 80 references
 Annual Burden: 20 hours

Calculation: 100 references x 15 min. = 20 hours

(g)(2) If an injured employee is unconscious or otherwise unable to evidence consent to the procedure and the treating medical facility declines to obtain blood and/or urine specimens after having been informed of the requirements of this Subpart, the railroad must immediately notify the duty officer at the National Response Center (NRC) at (800) 424-8802, stating the employee's name, the name and location of the medical facility, the name of the appropriate decisional authority at the medical facility, and the telephone number at which that person can be reached. FRA will then take appropriate measures to assist in obtaining the required specimens.

FRA estimates that notification telephone calls will be made in about two (2) occurrences a year. It is estimated that each notification phone call will take 10 minutes. Total annual burden for this requirement is .33 hour.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

10
minute
s

Frequency of Response:

On occasion

Annual number of Responses: 2 notification telephone calls
Annual Burden: .33 hour

Calculation: 2 notification telephone calls x 10 min. = .33 hour

Total annual burden for this entire requirement is 109 hours (40 + 4 + 43 + 2 + 20 + .33).

Specimen Collection and Handling [219.205]

A. Basic information concerning the accident/incident and any treatment administered after the accident/incident is necessary to process specimens, analyze the significance of laboratory findings, and notify railroads and employees of test results. Accordingly, the railroad representative must complete the information required by Form FRA 6180.73 (revised) for shipping with the specimens. Each employee subject to testing must cooperate in completion of the required information on Form FRA F 6180.74 (revised) for inclusion in the shipping kit and processing of the specimens. The railroad representative must ask an appropriate representative of the medical facility to complete the remaining portion of the information on each Form FRA F 6180.74. A Form 6180.73 must be forwarded in the shipping kit with each group of specimens. A Form 6180.74 must be forwarded in the shipping kit for each employee who provides specimens. A

Form 6180.73 and either a Form 6180.74 or a Form 6180.75 (for fatalities) are included in the shipping kit.

The Post-Accident Testing Blood/Urine Custody and Control Form (FRA F 6180.74) is utilized for maintaining control and accountability from point of collection to final disposition of specimen and offers a high degree of assurance that the specimen provided is the specimen received by the laboratory and identified to that employee. Some of the information to be contained on the chain-of-custody form is: preprinted specimen identification number, employee's Social Security or employee identification number, temperature of urine specimen, date of collection, name of collector(s), employee data (name, address, names of employing railroad and home terminal); and three certification statements. The form contains space for entering the date, purpose of change, name of person who released the specimen and the name of the person who received the specimen for each transfer of possession of the specimen. At the back of the form are labels which would be physically overlapped on the specimen bottle/tubes to provide integral identification and protection for the specimen.

Of the 80 accidents projected by FRA where toxicological tests will be required, it is estimated that an average of three (3) crew members per event will be required to provide blood or urine samples for a total of 240 tests annually. FRA estimates that it will take approximately 15 minutes for the employee to provide the specimens, initial off on the labels on the specimen bottle/tubes, complete the necessary data on Form FRA F 6180.74, and arrange for shipment of the specimens to the drug testing laboratory by the collection site person. Total annual burden for this requirement is 60 hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

15
minutes

Frequency of Response:

On
occasion

Annual number of Responses: 240 forms (FRA F 6180.74)
Annual Burden: 60 hours

Calculation: 240 forms x 15 min. = 60 hours

Additionally, FRA requests that approximately 80 requests will be made by railroad representatives to an appropriate representative of the medical facility to complete the remaining portion of the information on each Form FRA F 6180.74. It is estimated that it will take approximately two (2) minutes to complete each phone request. Total annual burden for this requirement is three (3) hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response: 2
minutes

Frequency of Response: On
occasion

Annual number of Responses: 80 phone requests
Annual Burden: 3 hours

Calculation: 80 phone requests x 2 min. = 3 hours

In order to process the samples, analyze the significance of laboratory findings, and notify the railroads and employees of these results, it is necessary to obtain basic information concerning the accident/incident and any treatment administered after the accident/incident. Accordingly, the railroad representative must complete the information required by Form FRA F 6180.73 (revised), entitled "Accident Information Required for Post-Accident Toxicological Testing."

FRA estimates that Form FRA F 6180.73 would be prepared covering 80 accidents/incidents per year. FRA estimates that it will take about 10 minutes for the

railroad to complete Form FRA F 6180.73. Total annual burden for this requirement is 13 hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

10
minutes

Frequency of Response:

On
occasion

Annual number of Responses: 80 forms

Annual Burden: 13 hours

Calculation: 80 forms x 10 min. = 13 hours

B. Shipping kits. (c)(2) Standard shipping kits may be ordered directly from the laboratory designated in Appendix B to this Part by first requesting an order form from FRA's Drug and Alcohol Program Manager at 202-493-6313. In addition to the standard kit for surviving employees, FRA also has distributed a post-mortem shipping kit to Class I, II, and commuter railroads. The post-mortem kit may not be ordered by other railroads. If a smaller railroad has a qualifying event involving a fatality to an on-duty employee, the railroad should advise the NRC at 1-800-424-8802 of the need for a post-mortem kit, and FRA will send one overnight to the medical examiner's office or assist the railroad in obtaining one from a nearby railroad. **(Revised Requirement)**

FRA estimates that approximately five (5) telephone requests to FRA's Drug and Alcohol Program Manager for standard shipping kits will be made under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each request. Total annual burden for this requirement is .17 hour.

Respondent Universe:

722
railroads/400

MOW
Contractors

Burden time per response: 2 minutes
Frequency of Response: On occasion

Annual number of Responses: 5 requests
Annual Burden: .17 hour

Calculation: 5 requests x 2 min. =.17 hour

Additionally, FRA estimates that approximately one (1) telephone call to NRC requesting a post-mortem kit will be made by small railroads under the above requirement. It is estimated that it will take approximately two (2) to complete each telephone call. Total annual burden for this requirement is .0333 hour.

Respondent Universe: 722
railroads/400
MOW
Contractors

Burden time per response: 2 minutes
Frequency of Response: On occasion

Annual number of Responses: 1 telephone call
Annual Burden: .0333 hour

Calculation: 1 telephone call x 2 min. =.0333 hour

- C. (d) Shipment. Specimens must be shipped as soon as possible by pre-paid air express (or other means adequate to ensure delivery within 24 hours from time of shipment) to the laboratory designated in Appendix B to this Part. However, if delivery cannot be ensured within 24 hours due to a suspension in air express delivery services, the specimens must be held in a secure refrigerator until delivery can be accomplished. In no circumstances may specimens be held for more than 72 hours. Where express courier pickup is available, the railroad must ask the medical facility to transfer the sealed toxicology kit directly to the express courier for transportation. If courier pickup is not available at the medical facility where the specimens are collected or if for any other reason a prompt transfer by the medical facility cannot be assured, the railroad must promptly transport the sealed shipping kit holding the specimens to the most expeditious point of shipment via air express. The railroad must maintain and document secure chain of custody of the

kit(s) from release by the medical facility to its delivery for transportation, as described in Appendix C to this Part. **(Current Requirement)**

FRA estimates that approximately 40 phone requests will be made by railroads to the medical facility to transfer the sealed toxicology kit directly to the express courier for transportation under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each request. Total annual burden for this requirement is one (1) hour.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response: 2 minutes

Frequency of Response: On occasion

Annual number of Responses: 40 phone requests

Annual Burden: 1 hour

Calculation: 40 phone requests x 2 min. = 1 hour

Additionally, FRA estimates that railroads will keep approximately 40 chain of custody (of the kits) documents under the above requirement. It is estimated that it will take approximately two (2) minutes/hours to complete and maintain each chain of custody document. Total annual burden for this requirement is one (1) hour.

Respondent Universe:

722
railroads

Burden time per response: 2 minutes

Frequency of Response: On occasion

Annual number of Responses: 40 chain of custody documents
 Annual Burden: 1 hour

Calculation: 40 chain of custody documents x 2 min. = 1 hour

- D. (e) Specimen security. After a specimen kit or transportation box has been sealed, no entity other than the laboratory designated in Appendix B to this Part may open it. If the railroad or medical facility discovers an error with either the specimens or the chain of custody form after the kit or transportation box has been sealed, the railroad or medical facility must make a contemporaneous written record of that error and send it to the laboratory, preferably with the transportation box. **(New Requirement)**

FRA estimates that this will happen approximately 20 times a year and thus approximately 20 contemporaneous written records will be made by the railroad/medical facility and sent to the laboratory under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each written record. Total annual burden for this requirement is one (1) hour.

Respondent Universe:

722
 railroads/400
 MOW
 Contractors

Burden time per response: 2 minutes

Frequency of Response: On occasion

Annual number of Responses: 20 written records

Annual Burden: 1 hour

Calculation: 20 written records x 2 min. = 1 hour

Total annual burden for the entire requirement is 78 hours (60 + 3 + 13 + .17 + .0333 + 1 + 1).

FRA Access to Breath Test Results [CFR 219.206]

Documentation of breath test results must be made available to FRA consistent with the requirements of this subpart, and the technical specifications set forth in Appendix C to

this part.

Breath tests are authorized, but are not a Federal requirement. Therefore, railroads do not have to do this. Over the past four years, no breath tests have been done. Consequently, there is no burden associated with this requirement.

Reports of Tests and Refusals [219.209(a)]

A railroad that has experienced one or more events for which samples were obtained must provide prompt telephonic notification summarizing such events. Notification must immediately be provided to the duty officer at the National Response Center (NRC) at (800) 424-8802 and to the Office of Safety, FRA, at (202) 493-6313. Each telephonic report must contain: (i) Name of the railroad; (ii) Name, title, and telephone number of the person making the report; (iii) Time, date, and location of the accident/incident; (iv) Brief summary of the circumstances of the accident/incident, including basis for testing (e.g., Impact Accident with a reportable injury); and (v) Number of employees tested.

FRA estimates that 40 telephonic reports will be made under this requirement. It is estimated that it will take 2 minutes to make each call. Total annual burden for this requirement is one (1) hour.

Respondent Universe:

722
railroads/
400
MOW
Contractors

Burden time per response:

2
minutes

Frequency of Response:

On
occasion

Annual number of Responses:

40 telephonic reports

Annual Burden:

1 hour

Calculation: 40 reports x 2 min. = 1 hour

Narrative Response - refusal to provide a sample [219.209(b)]

If a railroad is unable, as a result of non-cooperation of an employee or for any other reason, to obtain a specimen and provide it to FRA as required by this Subpart, the railroad must immediately notify the FRA Drug and Alcohol Program Manager at 202-493-6313 and provide detailed information regarding the failure (either verbally or via a voicemail). The railroad must also provide a concise narrative written report of the reason for such failure and, if appropriate, any action taken in response to the cause of such failure. This report must be appended to the report of the accident/incident required to be submitted under Part 225 of this chapter and must also be mailed to the FRA Drug and Alcohol Program Manager at 1200 New Jersey Avenue, SE, Washington, DC 20590.

There have been zero (0) instances of non-cooperation. Therefore, there is no burden involved for this requirement. If there were a burden, it would be cleared under the paperwork package submitted for the reporting and recordkeeping requirements under 49 CFR 225, OMB approval # 2130-0500.

Records - Tests not promptly administered [219.209(c)]

If a test required by this section is not administered within four (4) hours following the accident or incident, the railroad must prepare and maintain on file a record stating the reasons the test was not promptly administered. Records must be submitted to FRA upon request of the Associate Administrator for Safety.

FRA estimates that this will occur approximately 40 times annually. It is estimated that it will take approximately 30 minutes to prepare the record and file it. Total annual burden for this requirement is 20 hours.

Respondent Universe:

722 railroads

Burden time per response:

30
minute
s

Frequency of Response: On occasion

Annual number of Responses: 40 records

Annual Burden: 20 hours

Calculation: 40 records x 30 min. = 20 hours

Analysis and follow-up - MRO [219.211(b) & (c)]

- A. (b) Results of post-accident toxicological testing under this Subpart are reported to the railroad's Medical Review Officer (MRO) and the employee. Unless publicly disclosed by FRA or the National Transportation Safety Board, the MRO and the railroad must treat the test results and any information concerning medical use or administration of drugs provided under this Subpart in the same confidential manner as if subject to Subpart H of this Part, except that an MRO may report medical information gathered in the verification process (as provided for by § 40.327) only when he or she determines, in his or her reasonable medical judgment, that the information is likely to result in the employee being determined to be medically unqualified under an applicable DOT agency regulation. This paragraph shall not be construed to permit medical disqualification under the railroad's authority of an employee based upon a laboratory report indicating the presence of a controlled substance prior to completion of the MRO's review. An employer is prohibited from temporarily removing an employee from the performance of regulated service based only on a report from the laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

FRA estimates that five (5) reports of post-accident toxicological testing results will be made to both railroad MROs and employees (a total of 10 reports) under the above requirement. It is estimated that it will take 15 minutes to complete and send each report. Total annual burden for this requirement is three (3) hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

15
minutes

Frequency of Response: On occasion

Annual number of Responses: 10 reports
Annual Burden: 3 hours

Calculation: 10 reports x 15 min. = 3 hours

(c) With respect to a surviving employee, a test reported as positive for alcohol or a controlled substance by the designated laboratory must be reviewed by the railroad's Medical Review Officer with respect to any claim of use or administration of medications (consistent with § 219.103) that could account for the laboratory findings. The Medical Review Officer must promptly report the results of each review to the Associate Administrator for Railroad Safety, FRA, 1200 New Jersey Avenue, SE, Washington, D.C., 20590. Such report must be in writing and must reference the employing railroad, accident/incident date, and location, and the envelope must be marked **“ADMINISTRATIVELY CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER.”** The report must state whether the MRO reported the test result to the employing railroad as positive or negative and the basis of any determination that analytes detected by the laboratory derived from authorized use (including a statement of the compound prescribed, dosage/frequency, and any restrictions imposed by the authorized medical practitioner). Unless specifically requested by FRA in writing, the Medical Review Officer may not disclose to FRA the underlying physical condition for which any medication was authorized or administered. The FRA is not bound by the railroad Medical Review Officer's determination, but that determination will be considered by FRA in relation to the accident/incident investigation and with respect to any enforcement action under consideration.

FRA estimates that approximately 10 reports of positive drug tests will be sent each year to FRA by MROs under the above requirement. It is estimated that it will take approximately 15 minutes for the railroad MRO to prepare the report and send it to FRA. Total annual burden for this requirement is three (3) hours.

Respondent Universe: 722
railroads/400
MOW
Contractors

Burden time per response:

15
minute
s

Frequency of Response:

On occasion

Annual number of Responses: 10 reports

Annual Burden: 3 hours

Calculation: 10 reports x 15 min. = 3 hours

Total annual burden for this entire requirement is six (6) hours (3 + 3).

E-Mail or Written response from employees to FRA regarding results of the toxicological analysis [219.211(e)]

An employee may respond in writing to the results of the test prior to the preparation of any final investigation report concerning the accident or incident. An employee wishing to respond may do so by email or letter addressed to the Drug and Alcohol Program Manager, Office of Railroad Safety, FRA, 1200 New Jersey Avenue, S.E., Washington, DC 20590 within 45 days of receipt of the test results. Any such submission must refer to the accident date, railroad and location, must state the position occupied by the employee on the date of the accident/incident, and must identify any information contained therein that the employee requests be withheld from public disclosure on grounds of personal privacy (but the decision whether to honor such request will be made by FRA on the basis of controlling law).

Even though about five tests will be positive every year, the test results have never been challenged (at least not over the past 15 years). Consequently, FRA believes zero (0) written responses will be made by railroad employees. There is then no burden associated with this requirement.

Recordkeeping - Post-accident toxicology Tests [219.211(h)]

Except as provided in § 219.201 (with respect to non-qualifying events), each specimen (including each split specimen) provided under this subpart is retained for not less than three months following the date of the accident or incident (two years from the date of the accident or incident in the case of a specimen testing positive for alcohol or a controlled substance). Post-mortem specimens may be made available to the National

Transportation Safety Board (on request).

Laboratories keep these records as part of their contract with FRA. Consequently, there is no burden associated with this requirement.

Employee's request for a retest of split blood and urine samples [219.211(i)]

An employee (donor) may, within 60 days of the date of the toxicology report, request that his or her split specimen be tested by the designated laboratory or by another laboratory certified by Health and Human Services under that Department's Guidelines for Federal Workplace Drug Testing Programs that has available an appropriate, validated assay for the fluid and compound declared positive. Since some analytes may deteriorate during storage, detected levels of the compound shall, as technically appropriate, be reported and considered corroborative of the original test result. Any request for a retest must be in writing, specifying the railroad, accident date and location, be signed by the employee/donor, be addressed to the FRA Associate Administrator for Safety, and be designated “**ADMINISTRATIVELY CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER.**”

FRA estimates that it will receive zero (0) letters requesting that a sample be retested. Consequently, there is no burden associated with this requirement.

Notice of Disqualification [219.213(a) & (b)]

An employee, who refuses to cooperate in providing breath, blood or urine specimens following an accident or incident specified in this subpart must be withdrawn from covered service, and must be deemed disqualified for covered service for a period of nine (9) months in accordance with the conditions specified in § 219.207. Prior to or upon withdrawing the employee from covered service under this section, the railroad must provide notice to the employee of the reason for this action and an opportunity for hearing before a presiding officer other than the charging official. The employee is entitled to the procedural protection set out in § 219.104(d).

FRA believes that there will be zero (0) employees who refuse to cooperate in providing blood or urine samples following an accident or incident. Historically, this has never happened and so there will be no notices sent to employees. Consequently, there is no burden associated with this requirement.

Subpart D - Testing for Cause

A railroad may, under the conditions specified in this subpart, require any covered employee, as a condition of employment in covered service, to cooperate in breath or body fluid testing, or both, to determine compliance with §§ 219.101 and 219.102 or a railroad rule implementing the requirements of §§ 219.101 and 219.102. This authority is

limited to testing after observations or events that occur during duty hours (including any period of overtime or emergency service). The provisions of this subpart apply only when, and to the extent that, the test in question is conducted in reliance upon the authority conferred by this section. Section 219.23 prescribes the notice to an employee that is required when an employee is required to provide a breath or body fluid specimen under this part. A railroad may not require an employee to be tested under the authority of this subpart unless reasonable cause, as defined in this section, exists with respect to that employee. The following paperwork requirements are associated with this Subpart.

Reasonable Cause for Breath Alcohol Tests [219. 301]

(a) Each railroad must require a regulated employee to submit to a breath alcohol test when the railroad has reasonable suspicion to believe that the regulated employee has violated any prohibition of Subpart B of this Part concerning use of alcohol. The railroad's determination that reasonable suspicion exists to require the regulated employee to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. A Federal reasonable suspicion alcohol test is not required to confirm the on-duty possession of alcohol.

(b) Each railroad must require a regulated employee to submit to a drug test when the railroad has reasonable suspicion to believe that the regulated employee has violated the prohibitions of Subpart B of this Part concerning use of controlled substances. The railroad's determination that reasonable suspicion exists to require the regulated employee to undergo a drug test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. Such observations may include indications of the chronic and withdrawal effects of drugs.

(c) Reasonable suspicion observations made under this section must comply with the requirements of § 219.303.

(d) As provided by § 219.11(b)(2), in any case where an employee is suffering a substantiated medical emergency and is subject to alcohol or drug testing under this Subpart, necessary medical treatment must be accorded priority over provision of the breath or body fluid specimens. However, when the employee's condition is stabilized, reasonable suspicion testing must be completed if within the eight-hour limit provided for in § 219.305.

The procedures for conducting and documenting breath alcohol testing and drug testing are governed by DOT's regulation on Procedures for Transportation Workplace Drug

and Alcohol Testing Programs (49 CFR Part 40) and FRA's regulation 49 CFR 219 Subpart H. All paperwork associated with alcohol breath tests under this Subpart has been combined with Subparts B, F, and G under the section for Subpart H below.

Reasonable cause for Urine Tests [219.300, 301, 302]

A railroad must require a covered employee to submit to a urine drug test when the railroad has reasonable suspicion to believe that – (1) the employee has violated the prohibitions of Subpart B of this part concerning controlled substances. The railroad's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. Such observations may include indications of the chronic and withdrawal effects of drugs. With respect to a drug test, the required observations must be made by two supervisors, at least one of whom is trained in accordance with § 219.11(g); (2) the employee has been involved in an accident or incident reportable to FRA and a supervisory employee of the railroad has a reasonable belief, based on specific, articulable facts, that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident; or (3) the employee has been directly involved in one of the following operating rule violations or errors: (i) Noncompliance with a train order, track warrant, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves – (A) Occupancy of a block or other segment of track to which entry was not authorized; (B) Failure to clear a track to permit opposing or following movement to pass; (C) Moving across a railroad crossing at grade without authorization; or (D) Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required); (ii) Failure to protect a train as required by a rule consistent with § 218.37 of this chapter (including failure to protect a train that is fouling an adjacent track, where required by the railroad's rules); (iii) Operation of a train at a speed that exceeds the maximum authorized speed by at least ten (10) miles per hour or by fifty percent (50%) of such maximum authorized speed, whichever is less; (iv) Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch; (v) Failure to apply or stop short of derail as required; (vi) Failure to secure a hand brake or failure to secure sufficient hand brakes, as required; (vii) Entering a crossover before both switches are lined for movement; or (viii) In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.

Testing under this Subpart may only be conducted promptly following the observations or events upon which the testing decision is based, consistent with the need to protect life and property.

The procedures for the documentation of urine collection are governed by DOT's regulation on Procedures for Transportation Workplace Drug and Alcohol Testing

Programs (49 CFR Part 40) and FRA's regulation 49 CFR 219 Subpart H. All paperwork associated with urine collection under this subpart has been combined with Subparts B, F, and G under the section for Subpart H below.

§ 219.303 Reasonable suspicion observations. (New Requirements)

(a) With respect to an alcohol test, the required observations must be made by a responsible railroad supervisor (defined by § 219.5) trained in accordance with § 219.11(g). The supervisor who makes the determination that reasonable suspicion exists may not conduct the reasonable suspicion testing on that regulated employee.

(b) With respect to a drug test, the required observations must be made by two responsible railroad supervisors (defined by § 219.5), at least one of whom must be both on site and trained in accordance with § 219.11(g). If one of the supervisors is off-site, the on-site supervisor must communicate with the off-site supervisor, as necessary, to provide him/her with the information needed to make the required observation. This communication may be performed via telephone, but not via radio or any other form of electronic communication.

FRA estimates that this will occur approximately 50 times a year and thus approximately 50 phone communications will be made by the on-site railroad supervisor with the off-site supervisor, as necessary, to provide him or her with the necessary information under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each telephone communication. Total annual burden for this requirement is two (2) hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response: 2 minutes

Frequency of Response: On occasion

Annual number of Responses: 50 telephone communications

Annual Burden: 2 hours

Calculation: 50 telephone communications x 2 min. = 2 hours

(c) This Subpart does not authorize holding any employee out of service pending receipt of toxicological analysis for reasonable suspicion testing, nor does it restrict a railroad

from taking such action based on the employee's underlying conduct, provided it is consistent with the railroad's policy and taken under the railroad's own authority.-

(d) The railroad must maintain written documentation that specifically describes the observed signs and symptoms upon which determination that reasonable suspicion exists is based. This documentation must be completed promptly by the trained supervisor.

FRA estimates that approximately 30 written documents that specifically describe the observed signs and symptoms upon which the determination that reasonable suspicion exists is based will be completed under the above requirement. It is estimated that it will take approximately five (5) minutes/hours to complete each written document. Total annual burden for this requirement is three (3) hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response: 5 minutes

Frequency of Response: On occasion

Annual number of Responses: 30 written documents

Annual Burden: 3 hours

Calculation: 30 written documents x 5 min. = 3 hours

Total annual burden for this entire requirement is five (5) hours (2 + 3).

§ 219.305 Prompt specimen collection; time limitations. (New Requirements)

(a) Consistent with the need to protect life and property, testing under this Subpart must be conducted promptly following the observations upon which the testing decision is based.

(b) If a test required by this Subpart is not administered within two hours following a determination made under this section, the railroad must prepare and maintain on file a record stating the reasons the test was not administered within that time period. If an alcohol or drug test required by this Subpart is not administered within eight hours of the determination made under this Subpart, the railroad must cease attempts to administer the test and must record the reasons for not administering the test. The eight-hour requirement is satisfied if the individual has been delivered to the collection site (where the collector is present) and the request has been made to commence collection of the

specimens within that period. The records required by this section must be submitted to FRA upon request of the FRA Drug and Alcohol Program Manager.

FRA estimates that approximately 30 records stating the reasons the required test was not administered within the stipulated time period will be completed under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each record. Total annual burden for this requirement is one (1) hour.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response: 2 minutes

Frequency of Response: On occasion

Annual number of Responses: 30 records

Annual Burden: 1 hour

Calculation: 30 records x 2 min. = 1 hour

Subpart E – Reasonable Cause Testing

§ 219.401 Authorization for reasonable cause testing. (Revised Requirement)

(a) Each railroad may, at its own discretion, elect to conduct Federal reasonable cause testing authorized by this Subpart. If a railroad chooses to do so, the railroad must use only Federal authority for all reasonable cause testing that meets the criteria of § 219.403. In addition, the railroad must notify its regulated employees of its decision to use Federal reasonable cause testing authority in the employee educational policy required by § 219.23(e)(5). The railroad must also provide written notification of its decision to FRA's Drug and Alcohol Program Manager, 1200 New Jersey Ave., SE, Washington, DC, 20590.

FRA estimates that it will receive approximately 50 notifications from railroads of their decision to conduct Federal reasonable cause testing authorized by this Subpart under the above requirement. It is estimated that it will take approximately 15 minutes to complete each notification. Total annual burden for this requirement is 13 hours.

Respondent Universe:

722
railroads/400

MOW
Contractors

Burden time per response: 15 minutes
Frequency of Response: On occasion
Annual number of Responses: 50 notifications
Annual Burden: 13 hours

Calculation: 50 notifications x 15 min. = 13 hours

§ 219.403 Requirements for reasonable cause testing.

A railroad's decision process regarding whether reasonable cause testing is authorized must be completed before the reasonable cause testing is performed and documented according to the requirements of § 219.405. The circumstances listed in § 219.403(a) and § 219.403(b) constitute reasonable cause for the administration of alcohol and/or drug tests under the authority of this Subpart.

The burden for this requirement is included under that of § 219.405. Consequently, there is no additional burden associated with this requirement.

§ 219.405 Documentation requirements. (Revised Requirement)

(a) Each railroad must maintain written documentation that specifically describes the basis for each reasonable cause test it performs under Federal authority. This documentation must be completed promptly by the responsible railroad supervisor; although it does not need to be completed before reasonable cause testing is conducted.

FRA estimates that approximately 50 reasonable cause tests will be performed and thus 50 documents for each reasonable cause test it performs will be completed each year under the above requirement. It is estimated that it will take approximately 15 minutes/hours to complete each document. Total annual burden for this requirement is 13 hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response: 15 minutes

Frequency of Response: On occasion

Annual number of Responses: 50 documents

Annual Burden: 13 hours

Calculation: 50 documents x 15min. = 13 hours

(b) For a rule violation, the documentation must include the type of rule violation and the involvement of each tested regulated employee. For a train accident or train incident reportable under Part 225 of this Chapter, a railroad must describe either the amount of railroad property damage or the reportable casualty and the basis for the supervisor's belief that the employee's acts or omissions contributed to the occurrence or severity of the train accident or train incident.

FRA estimates that approximately 20 documents for each reasonable cause test it performs related to a rule violation will be completed each year under the above requirement. It is estimated that it will take approximately 15 minutes to complete each document. Total annual burden for this requirement is five (5) hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response: 15 minutes

Frequency of Response: On occasion

Annual number of Responses: 20 documents

Annual Burden: 5 hours

Calculation: 20 documents x 15 min. = 5 hours

Total annual burden for this requirement is 18 hours (13 + 5).

§ 219.407 Prompt specimen collection; time limitations. (Revised Requirement)

(a) Consistent with the need to protect life and property, testing under this Subpart must be conducted promptly following the observations upon which the testing decision is based.

(b) If a test conducted pursuant to the authority of this Subpart is not administered within two hours following the observations upon which the testing decision is based, the railroad must prepare and maintain on file a record stating the reasons the test was not

conducted within that time period. If an alcohol or drug test authorized by this Subpart is not administered within eight hours of the event under this Subpart, the railroad must cease attempts to administer the test and must record the reasons for not administering the test. The eight-hour time period begins at the time a responsible railroad supervisor receives notice of the train accident, train incident, or rule violation. The eight-hour requirement is satisfied if the individual has been delivered to the collection site (where the collector is present) and the request has been made to commence collection of specimen(s) within that period. The records required by this section must be submitted to FRA upon request of the FRA Drug and Alcohol Program Manager. FRA estimates that approximately 15 records will be completed each year under the above requirement. It is estimated that it will take approximately 15 minutes to complete each record. Total annual burden for this requirement is four (4) hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response: 15 minutes

Frequency of Response: On occasion

Annual number of Responses: 15 records

Annual Burden: 4 hours

Calculation: 15 records x 15 min. = 4 hours

Subpart F - Pre-employment Tests

§ 219.501 Pre-employment drug testing.

(a) Before an individual performs regulated service the first time for a railroad, the railroad must ensure that the individual undergoes testing for drugs in accordance with the regulations of a DOT agency. No railroad may allow a direct employee (a railroad employee who is not employed by a contractor to the railroad) to perform regulated service, unless that railroad has conducted a DOT pre-employment test for drugs on that individual with a result that did not indicate the misuse of a controlled substance. This requirement applies both to a final applicant for direct employment and to a direct employee seeking to transfer for the first time from non-regulated service to duties involving regulated service. A regulated employee must have a negative DOT pre-employment drug test for each railroad for which he or she performs regulated service as the result of a direct employment relationship.

(b) Each railroad must ensure that each employee of a contractor who performs regulated service on the railroad’s behalf has a negative DOT pre-employment drug test on file with his or her employer. The railroad must also maintain documentation indicating that it had verified that the contractor employee had a negative DOT pre-employment drug test on file with his or her direct employer. A contractor employee who performs regulated service for more than one railroad does not need to have a DOT pre-employment drug test for each railroad for which he or she provides service. **(Revised Requirement)**

FRA estimates that approximately 1,200 documents verifying the railroad’s contractor employees have a negative DOT pre-employment drug test will be completed each year under the above requirement. It is estimated that it will take approximately 15 minutes to complete each pre-employment drug test and approximately five (5) minutes to complete each document. Total annual burden for this requirement is 400 hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:	15 minutes + 5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	1,200 tests + 1,200 documents
Annual Burden:	400 hours

Calculation: 1,200 tests x 15 min. + 1,200 documents x 5 min. = 400 hours

Pre-Employment Alcohol Testing [219.502]

(a) A railroad may, but is not required to, conduct pre-employment alcohol testing under this part. If a railroad chooses to conduct pre-employment alcohol testing, the railroad must comply with the following requirements:

- (1) The railroad must conduct a pre-employment alcohol test before the first performance of regulated service by an employee, regardless of whether he or she is a new employee or a first-time transfer to a position involving the performance of regulated service.
- (2) The railroad must treat all employees performing regulated service the same for the purpose of pre-employment alcohol testing (i.e., a railroad must not test some regulated employees and not others.)

(3) It must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.

(4) It must conduct all pre-employment alcohol tests using the alcohol testing procedures of part 40 of this title.

(5) If a regulated employee's Federal pre-employment test indicates an alcohol concentration of 0.04 or greater, a railroad may not allow him or her to begin performing regulated service until he or she has completed the Federal return-to-duty process under § 219.104(d).

The burden for this requirement is covered under a separate information collection regarding DOT's regulation on Procedures for Transportation Workplace and Alcohol Testing Programs (49 CFR Part 40; OMB No. 2105-0529). Consequently, there is no additional burden associated with this requirement.

Notification; records [219.503]

Each railroad must provide for medical review of drug test results according to the requirements of Part 40 of this Title, as provided in Subpart H of this Part. The railroad must also notify the applicant in writing of the results of any Federal drug and/or alcohol test that is a positive, adulteration, substitution, or refusal in the same manner as provided for employees in Part 40 of this title and Subpart H of this Part. Records must be maintained confidentially and be retained in the same manner as required under Subpart J of this Part for employee test records, except that such records need not reflect the identity of an applicant who withdrew an application to perform regulated service before the commencement of the testing process.

The burden for this requirement is covered under a separate information collection regarding DOT's regulation on Procedures for Transportation Workplace and Alcohol Testing Programs (49 CFR Part 40; OMB No. 2105-0529). Consequently, there is no additional burden associated with this requirement.

Subpart G - Random Alcohol and Drug Testing Programs

§ 219.603 General requirements for random testing programs.

- I. (a) To the extent possible, each railroad must ensure that its FRA random testing program is designed and implemented so that each employee performing regulated service on its behalf should reasonably anticipate that he or she may be called for a random test without advance warning at any time while on-duty and subject to performing regulated service.

(b) Prohibited selection bias. A random testing program may not have a selection bias or an appearance of selection bias, or appear to provide an opportunity for a regulated employee to avoid complying with this section.

*The burden for this requirement is included under that of § 219.605 below.
Consequently, there is no additional burden associated with this requirement.*

(c) Plans. As required by §§ 219.603-219.609, each railroad must submit for FRA approval a random testing plan meeting the requirements of this Subpart. The plan must address all regulated employees, as defined in § 219.5.

*The burden for this requirement is included under that of § 219.605 below.
Consequently, there is no additional burden associated with this requirement.*

(d) Pools. Each regulated railroad must construct and maintain random testing pools in accordance with § 219.611.

*The burden for this requirement is included under that of § 219.611 below.
Consequently, there is no additional burden associated with this requirement.*

II. (j) Records. Each railroad must maintain records required by this Subpart in accordance with § 219.623.

*The burden for this requirement is included under that of § 219.623 below.
Consequently, there is no additional burden associated with this requirement.*

§ 219.605 Submission and approval of random testing plans. (Formerly § 219.601)

(a) Plan submission. (1) Each railroad must submit for review and approval a random testing plan meeting the requirements of § 219.607 and § 219.609 to the FRA Drug and Alcohol Program Manager, 1200 New Jersey Ave., SE, Washington, DC 20590. A railroad commencing start-up operations must submit its plan no later than 30 days before its date of commencing operations. A railroad that must comply with Subpart G because it no longer qualifies for the small railroad exception under § 219.3 (due to a change in operations or its number of covered employees) must submit its plan no later than 30 days after it becomes subject to the requirements of this Subpart. A railroad may not implement a Federal random testing plan or any substantive amendment to that plan prior to FRA approval. **(Revised Requirement)**

FRA estimates that approximately 200 existing railroads will submit random testing programs/plans to FRA. It is estimated that it will take each railroad approximately one (1) hour to develop its plan and submit it to FRA. Total annual burden for this requirement is 200.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

1 hour

Frequency of Response:

One-
time

Annual number of Responses: 200 programs/plans

Annual Burden: 200 hours

Calculation: 200 programs x 1 hr. = 200 hours

Additionally, FRA estimates that approximately five (5) new railroads annually will submit random alcohol testing programs/plans to FRA. It is estimated that it will take each railroad approximately one (1) hour to develop its plan and submit it to FRA. Total annual burden for this requirement is five (5) hours.

Respondent Universe:

5
railroads

Burden time per response:

1 hour

Frequency of Response: One-time

Annual number of Responses: 5 programs/plans
Annual Burden: 5 hours

Calculation: 5 programs x 1 hr. = 5 hours

(2) A railroad may submit separate random testing plans for each category of regulated employees (as defined in § 219.5), combine all categories into a single plan, or amend its current FRA-approved plan to add additional categories of regulated employees, as defined by this Part. **(New Requirement)**

FRA estimates that approximately 20 amendments will be filed each year. It is estimated that it will take each railroad approximately one (1) hour to amend its program and file the required notice with FRA. Total annual burden for this requirement is 20 hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response: 1 hour

Frequency of Response: On occasion

Annual number of Responses: 20 amendments
Annual Burden: 20 hours

Calculation: 20 amendments x 1 hr. = 20 hours

(b) Plan approval notification. FRA will notify a railroad in writing whether its plan is approved. If the plan is not approved because it does not meet the requirements of this Subpart, FRA will inform the railroad of its non-approval, with specific explanations of any required revisions. The railroad must resubmit its plan with the required revisions

within 30 days of the date of FRA's written notice. Failure to resubmit the plan with the necessary revisions will be considered a failure to submit a plan under this Part.

FRA estimates that approximately 21 plans will be disapproved each year by FRA because they do not meet the requirements of this Subpart and thus approximately 21 plans will need to be resubmitted to FRA under the above requirement. It is estimated that it will take each railroad approximately 15 minutes to amend its plan with the required revisions and resubmit it to FRA. Total annual burden for this requirement is five (5) hours.

Respondent Universe:

722
railroads/
400 MOW
Contractors

Burden time per response:

15
minutes

Frequency of Response:

On
occasion

Annual number of Responses: 21 resubmitted plans
Annual Burden: 5 hours

Calculation: 21 resubmitted plans x 15 min. = 5 hours

(c) Plan implementation. Each railroad must implement its random testing plan no later than 30 days from the date of FRA approval.

(d) Plan amendments. (1) Each railroad must submit to FRA a substantive amendment to an approved plan at least 30 days before its intended effective date. A railroad may not implement any substantive amendment before FRA approval.

The burden for this requirement is already included above under that of § 219.605(a)(2). Consequently, there is no additional burden associated with this requirement.

(2) Each railroad must provide a non-substantive amendment to an approved plan (such as the replacement or addition of service providers) to the FRA Drug and Alcohol Program Manager in writing (by letter or email) before its effective date. However, FRA pre-approval is not required. **(New Requirement)**

FRA estimates that approximately 50 non-substantive amendments will be completed and sent each year to the FRA Drug and Alcohol Program Manager in writing (by letter or email) before their effective date under the above requirement. It is estimated that it will take approximately 10 minutes to complete each non-substantive amendment and send it to FRA. Total annual burden for this requirement is eight (8) hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

10
minutes

Frequency of Response:

On
occasion

Annual number of Responses: 50 non-substantive amendments
Annual Burden: 8 hours

Calculation: 50 non-substantive amendments x 10 min. = 8 hours

(e) Previously approved plans. A railroad is not required to resubmit a random testing plan that FRA had approved before June 12, 2017, unless the railroad must amend the plan to comply with the requirements of this Subpart. A railroad must submit new plans, combined plans, or amended plans incorporating new categories of regulated employees (i.e., maintenance-of-way employees) for FRA approval at least 30 days before June 12, 2017. **(New Requirement)**

The burden for the first part of this requirement is already included under that of § 219.605(b) above. Consequently, there is no additional burden associated with this

requirement.

FRA estimates that approximately 20 new, combined, or amended random testing plans incorporating new categories of regulated employees (i.e. maintenance-of-way employees) will be submitted to FRA under the above requirement. It is estimated that it will take each railroad approximately 15 minutes to complete its new, combined, or amended random testing plan and submit it to FRA. Total annual burden for this requirement is five (5) hours.

Respondent Universe:

722
railroads/
400 MOW
Contractors

Burden time per response:

15
minutes

Frequency of Response:

One-time

Annual number of Responses: 20 new/combined/amended random testing plans

Annual Burden: 5 hours

Calculation: 20 new/combined/amended random testing plans

x 15 min. = 5 hours

Total annual burden for the entire requirement is 243 hours (200 + 5 + 20 + 5 + 8 + 5).

§ 219.607 Requirements for random testing plans.

(a) General. A random testing plan that a railroad submits under this subpart must address and comply with the requirements of this Subpart. The railroad must also

comply with these requirements in implementing the plan. **(Revised Requirements)**

(b) Model random testing plan. A railroad (or a contractor or service agent requested to submit a Part 219-compliant random testing plan to a railroad for submission as a part of the railroad's random testing plan) may complete, modify if necessary, and submit a plan based on the FRA model random testing plan that can be downloaded from FRA's Drug and Alcohol Program website.

(c) Specific plan requirements. Random testing plans must contain the following items of information, each of which must be contained in a separate, clearly identified section:

(1) Total number of covered employees, including covered service contractor employees and volunteers;

(2) Total number of maintenance-of-way employees, including maintenance-of-way contractor employees and volunteers;

(3) Names of any contractors who perform regulated service for the railroad, with contact information;

(4) Method used to ensure that any regulated service contractor employees and volunteers are subject to the requirements of this Subpart, as required by § 219.609;

(5) Name, address, and contact information for the railroad's Designated Employer Representative (DER) and any alternates (if applicable);

(6) Name, address, and contact information for any service providers, including the railroad's Medical Review Officers (MROs), Substance Abuse and Mental Health Services Administration (SAMHSA) certified drug testing laboratory(ies), Drug and Alcohol Counselors (DACs), Substance Abuse Professionals (SAPs), and C/TPA or collection site management companies. Individual collection sites do not have to be identified;

(7) Number of random testing pools and the proposed general pool entry assignments for each pool. If using a C/TPA, a railroad must identify whether its regulated employees are combined into one pool, contained in separate pools, or combined in a larger pool with other FRA and/or other DOT agency regulated employees.

(8) Target random testing rates;

(9) Method used to make random selections, including a detailed description of the computer program or random number table selection process employed;

(10) Selection unit(s) for each random pool (e.g., employee name or ID number, job assignment, train symbol) and whether the individual selection unit(s) will be selected for

drugs, alcohol, or both;

(11) If a railroad makes alternate selections, under what limited circumstances these alternate selections will be tested (see § 219.613);

(12) Frequency of random selections (e.g., monthly);

(13) Designated testing window. A designated testing window extends from the beginning to the end of the designated testing period established in the railroad's FRA-approved random plan (see § 219.603), after which time any individual selections for that designated testing window that have not been collected are no longer active (valid); and

(14) Description of how the railroad will notify a regulated employee that he or she has been selected for random testing.

FRA estimates that approximately 50 requests by railroads to a contractor or service agent to submit a part 219-compliant random testing plan on behalf of that railroad will be made under the above requirement. It is estimated that each request will take approximately 15 minutes to complete. Total annual burden for this requirement is 13 hours.

Respondent Universe:

722
railroads/
400
MOW
Contractors

Burden time per response:

15
minutes

Frequency of Response:

On
occasion

Annual number of Responses: 50 requests

Annual Burden: 13 hours

Calculation: 50 requests x 15 min. = 13 hours

Additionally, FRA estimates that approximately 50 random testing plans will be completed by a railroad (or a contractor or service agent) based on the FRA model random testing under the above requirement. It is estimated that each random testing plan will take approximately one (1) hour to complete each request. Total annual burden for this requirement is 50 hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

1 hour

Frequency of Response:

On
occasion

Annual number of Responses: 50 random testing plans

Annual Burden: 50 hours

Calculation: 50 requests x 1 hr. = 50 hours

Total annual burden for this requirement is 63 hours (13 + 50).

§ 219.608 Administrator's determination of random alcohol testing rate

Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random alcohol testing must be 25 percent of covered employees.

The Administrator's decision to increase or decrease the minimum annual percentage rate for random alcohol testing is based on the violation rate for the entire industry. All

information used for the determination is drawn from the alcohol Management Information System (MIS) reports required by this Part. In order to ensure reliability of data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate.

The burden for this requirement is covered in a separate submission under 49 CFR Part 40 by the Department of Transportation (OMB No. 2105-0529). Consequently, there is no burden associated with this requirement.

§ 219.609 Inclusion of contractor employees and volunteers in random testing plans (New/Revised Requirements)

- I. (a) Each railroad's random testing plan must demonstrate that all of its regulated service contractor employees and volunteers are subject to random testing that meets the requirements of this Subpart. A railroad can demonstrate that its regulated service contractor employees and volunteers are in compliance with this Subpart by either:

(1) Directly including regulated service contractor employees and volunteers in its own random testing plan and ensuring that they are tested according to that plan; or

FRA estimates that approximately 15 random testing plans will be completed to directly include the railroad's regulated service contractor employees and volunteers to ensure that they are tested according to that plan under the above requirement. It is estimated that it will take approximately 10 minutes to complete each such random testing plan and send the required document to FRA. Total annual burden for this requirement is three (3) hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

10
minutes

Frequency of Response: On occasion

Annual number of Responses: 15 random testing plans
Annual Burden: 3 hours

Calculation: 15 random testing plans x 10 min. = 3 hours

II. (2) Indicating in its random testing plan that its regulated service contractor employees and volunteers are part of a random testing program, compliant with the requirements of this Subpart, e.g., conducted by a contractor or C/TPA (“non-railroad random testing program”). If a railroad chooses this option, the railroad must append to its own random testing plan one or more addenda describing the method it will use to ensure that the non-railroad random testing program is testing its regulated service contractor employees and volunteers according to the requirements of this Subpart. A railroad may comply with this requirement by appending the non-railroad random testing program or a detailed description of the program and how it complies with this Subpart.

(b) Each railroad’s random testing plan(s) and any addenda must contain sufficient detail to fully document that the railroad is meeting the requirements of this Subpart for all personnel performing regulated service on its behalf.

FRA estimates that this will happen in approximately 15 instances each year and thus approximately 15 addenda will be appended either the non-railroad random testing program or a detailed description of the program and how it complies with this Subpart) to the railroads own random testing program under the above requirement. It is estimated that each request will take approximately 10 minutes to complete the addenda and send the required documents to FRA. Total annual burden for this requirement is three (3) hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

10
minute
s

Frequency of Response:

On
occasion

Annual number of Responses: 15 addenda to railroads' own random testing program

Annual Burden: 3 hours

Calculation: 15 addenda to railroads' own random testing program

x 10 min. = 3 hours

- III. (d) FRA does not pre-approve contractor or service agent random testing plans, but may accept them as part of its approval process of a railroad's plan.

The burden for amendments is already included under that of § 219.609(a)(1) and (a)(2) above. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is six (6) hours (3 + 3).

§ 219.611 Random alcohol and drug testing pools. (New Requirements)

- I. (a) **General.** Each railroad must ensure that its random testing pools include all regulated employees who perform regulated service on its behalf, except that a railroad's random testing pools do not have to include regulated employees who are part of a non-railroad random testing program that is compliant with the requirements of this Subpart and that has been accepted by the railroad.

(b) **Pool entries.** Each railroad must clearly indicate who will be tested when a specific pool entry is selected.

(1) Pool entries may be employee names or identification numbers, train symbols, or specific job assignments, although all the entries in a single pool must be of generally consistent sizes and types.

(2) Pool entries may not be constructed in a manner that permits a field manager or field supervisor to have discretion over which employee is to be tested when an entry is selected.

(3) Pool entries must be constructed and maintained so that all regulated employees have an equal chance of being selected for random testing for each selection draw.

The burden for indicating who will be tested when a specific pool is selected is included in the burden for random testing plans above under § 219.607 and § 219.609. Consequently, there is no additional burden associated with this requirement.

- II. (e) Frequency of regulated service. (1) A railroad may not place a person in a random testing pool for any selection period in which he or she is not expected to perform regulated service. (2) A railroad employee who performs regulated service on average less than once a quarter is a de minimis safety concern for random testing purposes, and does not have to be in a random testing program. A railroad that chooses to random test de minimis employees must place them in a separate random testing pool from employees who perform regulated service on a regular basis (e.g., engineers, conductors, dispatchers, and signal maintainers). (3) A railroad must make a good faith effort when determining the frequency of an employee's performance of regulated service and must evaluate an employee's likelihood of performing regulated service in each upcoming selection period.

FRA estimates that approximately 25,000 good faith determinations and 25,000 evaluations of an employee's likelihood of performing regulated service in each upcoming selection period will be completed by railroads under the above requirement. It is estimated that it will take approximately .5 minute to complete each good faith determination and approximately .5 minute to complete each evaluation. Total annual burden for this requirement is 417 hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

.5
minute

+ .5
minute

Frequency of Response:

On
occasion

Annual number of Responses: 25,000 good faith determinations +
25,000 evaluations

Annual Burden: 417 hours

Calculation: 25,000 good faith determinations x .5 min. + 25,000
evaluations x .5 min. = 417 hours

- III. (f) Pool maintenance. Pool entries must be updated at least monthly, regardless of how often selections are made, and a railroad must ensure that each random testing pool is complete and does not contain outdated or inappropriate entries.

FRA estimates that pool entries will be updated monthly for each of the 722 railroads and 400 MOW contractors and thus approximately 13,176 random testing pools will be updated each year (1,098 RR/contractor pools x 12 mos.) under the above requirement. It is estimated that it will take approximately five (5) minutes to complete each such random testing pool update. Total annual burden for this requirement is 1,098 hours.

Respondent Universe:

722
railroads/
400
MOW
Contractors

Burden time per response:

5
minutes

Frequency of Response:

On

occasion

Annual number of Responses: 13,176 random testing pool updates
Annual Burden: 1,098 hours

Calculation: 13,176 random testing pool updates x 5 min. = 1,098 hours

- IV. (g) Multiple random testing pools. A railroad may maintain more than one random testing pool if it can demonstrate that its random testing program is not adversely impacted by the number and types of pools or the construction of pool entries, and that selections from each pool will meet the requirements of this Subpart.

FRA estimates that approximately eight (8) railroads will maintain more than one random testing pool and thus 96 documents (8 RR random testing pools x 12 mos.) will be completed by railroads to demonstrate that their random testing program is not adversely impacted by the number and types of pools or the construction of pool entries, and that selections from each pool will meet the requirements of this Subpart. It is estimated that it will take approximately five (5) minutes to complete each demonstration document. Total annual burden for this requirement is eight (8) hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

5
minutes

Frequency of Response:

On
occasion

Annual number of Responses: 96 demonstration documents

Annual Burden:

8 hours

Calculation: 96 demonstration documents x 5 min. = 8 hours

Total annual burden for this requirement is 1,523 hours (417 + 1,098 + 8).

§ 219.613 Random testing selections. (New Requirements)

I. (a) General. Each railroad must ensure that each regulated employee has an equal chance of being selected for random testing whenever selections are made. A railroad may not increase or decrease an employee's chance of being selected by weighting an entry or pool.

(b) Method of selection. (1) Each railroad must use a selection method that is acceptable to FRA and meets the requirements of this subpart, such as a computer selection program, proper use of a random number table, or an alternative method which FRA has approved as part of the railroad's random testing plan.

(2) A selection method must be free of bias or apparent bias and employ objective, neutral criteria to ensure that every regulated employee has an equal statistical chance of being selected within a specified time frame. The selection method may not utilize subjective factors that permit a railroad to manipulate or control selections in an effort to either target or protect any employee, job, or operational unit from testing.

(3) The randomness of a selection method must be verifiable, and, as required by § 219.623, any records necessary to document the randomness of a selection must be retained for not less than two years from the date the designated testing window for that selection expired.

The burden for randomness selection records is included below under § 219.623. Consequently, there is no additional burden associated with this requirement.

II. (e) Discarded selection draws. A selection draw must identify who will be subject to random testing. A railroad cannot discard a selection draw without an acceptable explanation (e.g., the selection was drawn from an incomplete or inaccurate pool). A railroad must document and retain records for all discarded selection draws, including the specific reason the selection draw was not used, as required by § 219.623.

FRA estimates that this will be done approximately twice a year for each of the railroads and 400 MOW contractors. Thus, 2,196 identifications (1,098 railroads/ contractors x 2) of the total number of eligible employees for random testing during each testing period will be made under the above requirement. It is estimated that it will take approximately two (2) minutes to complete the identification of random testing eligible employees. Total annual burden for this requirement is 73 hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

2
minutes

Frequency of Response:

On
occasion

Annual number of Responses: 2,196 identifications

Annual Burden: 73 hours

Calculation: 2,196 identifications x 2 min. = 73 hours .

Additionally, FRA estimates that approximately 10 explanations of discarded selection draws will be completed by railroads under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each discarded selection draw explanation. Total annual burden for this requirement is .33 hour.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

2
minute
s

Frequency of Response: On
occasion

Annual number of Responses: 10 discarded selection draw
explanations/records
Annual Burden: .33 hour

Calculation: 10 discarded selection draw explanations/records x 2 min.
= .33 hour

- III. (g) Selection snapshots. Each railroad must capture and maintain an electronic or hard copy snapshot of each random testing pool at the time it makes a testing selection. A railroad must not re-create pool entries from records after the time of the original selection. The railroad must maintain this snapshot for a period of two years, as required by subpart J of this part.

FRA estimates that approximately 13,176 random testing pool snapshots (electronic or hard copy) will be made by railroads under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each random testing pool snapshot. Total annual burden for this requirement is 439 hours.

Respondent Universe:

722
railroa
ds/400
MOW
Contra
ctors

Burden time per response:

2
minute
s

Frequency of Response: On occasion

Annual number of Responses: 13,176 random testing pool snapshots

Annual Burden: 439 hours

Calculation: 13,176 random testing pool snapshots x 2 min. = 439 hrs.

Total annual burden for this entire requirement is 512 hours (73 + .33 + 439).

§ 219.615 Random testing collections. (New Requirements)

I. (e) Notification requirements.

(1) A railroad may not notify a regulated employee that he or she has been selected for random testing only during the duty tour in which the collection is to be conducted, and only so far in advance as is reasonably necessary to ensure the employee's presence at the scheduled collection time and place.

(2) A railroad must make collections as soon as possible. Each collection must begin within two hours after the railroad has notified the employee of his or her selection for random testing, unless the railroad has an acceptable reason for the delay. A railroad should monitor each employee after notification and, whenever possible, arrange for the employee to be immediately escorted by supervisory or management personnel to the collection location.

(3) A railroad must inform an employee that he or she has been selected for random testing at the time the employee is notified. Completion of the Federal Drug Testing Custody and Control Form (CCF) or the DOT Alcohol Testing Form (ATF) indicating the basis of the test satisfies this requirement, so long as the employee has been shown and directed to sign the CCF or ATF as required by §§ 40.73 and 40.241 of this title.

The notification burden is encompassed in the completion of the Federal Drug Testing Custody and Control Form (CCF/the DOT Alcohol Testing Form (ATF). The CCF form burden is included in the associated the Health and Human Services (HHS) information collection while the DOT ATF form is included in the information collection associated with DOT's Part 40 (OMB No. 2101-0529). Consequently, there is no additional burden associated with this requirement.

- II. (f) Incomplete collections. A railroad must use due diligence to ensure that a random testing collection is completed for each selected pool entry, unless it has an acceptable explanation for not conducting the collection. All reasons for incomplete collections must be fully documented and are subject to inspection by FRA upon request.

FRA estimates that each year there will be approximately 2,000 instances where a random collection is incomplete/not conducted and thus 2,000 explanations documenting why the collection was incomplete/not conducted. It is estimated that it will take approximately half-a-minute (.5 minute) to complete each incomplete testing document. Total annual burden for this requirement is 17 hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

.5
minute

Frequency of Response:

On
occasion

Annual number of Responses: 2,000 incomplete testing documents
Annual Burden: 17 hours

Calculation: 2,000 incomplete testing documents x .5 min. = 17 hours

- III. (g) Hours-of-service limitations.

(1) Except as provided by paragraph (g)(2) of this section, a railroad must immediately terminate the collection and may not reschedule it if the collection is not completed within a covered employee's hours-of-service limitations,.

(2) If a random collection requires a direct observation collection under § 40.67 of this title, the directly observed collection must immediately proceed until completed. A railroad must submit an excess service report, as required by Part 228 of this Chapter, if completion of the directly observed collection causes the covered employee to exceed his or her hours-of-service limitations.

The burden for § 40.67 is included under OMB No. 2105-0529. The burden for Excess Service Reports is already included under § 228.19 of the Hours of Service Information Collection (OMB No. 2130-0005). Consequently, there is no additional burden associated with these requirements.

Total annual burden for this entire requirement is 17 hours.

§ 219.617 Participation in random alcohol and drug testing. (New Requirements)

(a) Railroad responsibility.

(3) A railroad may excuse an employee who has been notified of or her selection for random testing only if the employee can substantiate that a medical emergency involving the employee or an immediate family member (e.g. birth, death, or medical emergency) supersedes the requirement to complete the test. A medical emergency is defined in this Part as an acute medical condition requiring immediate emergency care. To be eligible for exclusion from random testing, the employee must provide verifiable documentation of the emergency situation from a credible outside professional within a reasonable period of time (e.g., a doctor, dentist, hospital, law enforcement officer, or school authority). A railroad may not test an employee who has been excused from testing under the same random selection.

FRA estimates that each year there will be approximately five (5) instances where an employee selected for random testing has a medical emergency. Thus, approximately five (5) medical emergency documents/verifications will be completed by employees and railroads, respectively. It is estimated that it will take approximately 60 minutes to complete each employee medical document/railroad verification. Total annual burden for this requirement is five (5) hours.

Respondent Universe: 722 railroads/400 MOW Contractors

Burden time per response:

1 hour

Frequency of Response:

On
occasion

Annual number of Responses: 5 employee medical emergency documents/railroad verifications
Annual Burden: 5 hours

Calculation: 5 employee medical emergency documents/railroad verifications x 1 hr. = 5 hours

(b) Employee responsibility. (1) A regulated employee subject to the random testing requirements of this Subpart must cooperate with the selection and testing process, and must proceed to the testing site upon notification that he or she has been selected for random testing.

(2) A regulated employee must fully cooperate and comply with the urine drug collection and/or breath alcohol testing procedure required by Subpart H of this Part, and provide the required specimen(s), and must, upon request, complete the required paperwork and certifications.

As noted previously, the notification burden is encompassed in the completion of the Federal Drug Testing Custody and Control Form (CCF/the DOT Alcohol Testing Form (ATF), which are included in the associated HHS information collection and the information collection associated with DOT's Part 40 (OMB No. 2105-0529), respectively. The burden for the employee completing the required paperwork and certifications is also included in DOT's Part 40 Information Collection (OMB No. 2105-0529). Consequently, there is no additional burden associated with this part of the requirement.

Total annual burden for this entire requirement is five (5) hours.

§ 219.619 Positive alcohol and drug test results and refusals; procedures (New Requirement)

Section 219.104 contains the procedures for administrative handling by the railroad or contractor in the event a urine specimen provided under this Subpart is reported as a verified positive by the Medical Review Officer, a breath alcohol specimen is reported at 0.04 or greater by the Breath Alcohol Technician, or a refusal to test has occurred. The responsive action required in § 219.104 is not stayed pending the result of the testing of a split urine specimen or a challenge to any part of the testing process or procedure.

FRA estimates that approximately 88 reports by Medical Review Officers/Breath Alcohol Technicians of a verified positive test/ breath alcohol specimen at .04 or greater/employee refusal to test will be completed each year under the above requirement. It is estimated that it will take approximately five (5) minutes to complete each report. Total annual burden for this requirement is seven (7) hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

5
minutes

Frequency of Response:

On
occasion

Annual number of Responses: 88 reports

Annual Burden: 7 hours

Calculation: 88 reports x 5 min. = 7 hours

Additionally, FRA estimates that zero (0) challenges to the alcohol/drug testing process or procedure will be made by employees under the above requirement. Consequently, there is no additional burden associated with this part of the requirement.

Total annual burden for this entire requirement is seven (7) hours.

§ 219.621 Use of service agents (New Requirement)

A railroad may not use a service agent to notify regulated employees that they have been selected for random testing. A regulated employee who has been selected for random testing must otherwise be notified of the selection by his or her employer. A service agent may also not perform any role that § 40.355 of this Title specifically reserves to an employer, which, for purposes of this subpart, is defined as a railroad or a contractor performing railroad-accepted testing.

As noted above, the notification burden is encompassed in the completion of the Federal

Drug Testing Custody and Control Form (CCF/the DOT Alcohol Testing Form (ATF), which are included in the associated HHS information collection and the information collection associated with DOT's Part 40 (OMB No. 2105-0529), respectively. The burden for the employee completing the required paperwork and certifications is also included in DOT's Part 40 Information Collection. Consequently, there is no additional burden associated with this part of the requirement.

§ 219.623 Records.

(a) As provided by § 219.901, each railroad is required to maintain records related to random testing for a minimum of two years.

(b) Contractors and service agents performing random testing responsibilities under this Subpart must provide records required by this Subpart whenever requested by the contracting railroad or by FRA. A railroad remains responsible for maintaining records demonstrating that it is in compliance with the requirements of this Subpart.

FRA estimates that approximately 40,000 testing events will occur each year and thus 40,000 random testing records will be completed each year by railroads/contractors/service agents service under the above requirement. It is estimated that it will take approximately one (1) minute to maintain each record. Total annual burden for this requirement is 667 hours.

Respondent Universe:

722
railroads/
400
MOW
Contractors

Burden time per response:

1
minute

Frequency of Response:

On
occasion

Annual number of Responses: 40,000 random testing records
Annual Burden: 667 hours

Calculation: 40,000 random testing records x 1 min. = 667 hours

§ 219.625 FRA Administrator's determination of random alcohol and drug testing rates.

(a) Notice. Each year, the FRA Administrator publishes a Federal Register notice announcing the minimum annual random alcohol and drug testing rates which take effect on January 1 of the following calendar year. These rates are based on the railroad industry's random testing violation rates for the preceding two consecutive calendar years, which are determined using annual railroad alcohol and drug program data required to be submitted to the FRA's Management Information System (MIS) under § 219.800.

The burden for MIS data obtained under § 219.800 is included under the information collection associated with DOT's Part 40. Consequently, there is no additional burden associated with this requirement.

(b) Information. Data from MIS reports provide the information used for this determination. In order to ensure reliability of the data, the Administrator may consider the quality and completeness of the reported data, obtain additional information or reports from railroads, or make appropriate modifications in calculating the industry positive rate.

The burden for MIS data obtained under § 219.800 is included under the information collection associated with DOT's Part 40 (OMB No. 2105-0529). Consequently, there is no additional burden associated with this requirement.

Subpart H - Drug and Alcohol Testing Procedures

A. Drug Testing Procedures

Specimen Security, Chain of Custody, and Transportation of Specimens to Laboratory
[219.701(a) & (b)]

Drug testing required or authorized by subparts B, D, E, F, G, and K of this Part must be conducted in compliance with all applicable provisions of the Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing Programs (Part 40 of this Title).

Alcohol testing required or authorized by subparts B, D, E, F, G, and K of this Part must be conducted in compliance with all applicable provisions of the Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing

Programs (Part 40 of this Title)

These procedures are designed to be reasonably simple while providing for redundant verification of identity and avoiding unnecessary disclosure of the name of the person tested. The following documents or procedures would be used in this process.

-Chain of Custody Form - This form is utilized for maintaining control and accountability from point of collection to final disposition of the primary and split specimen and offers a high degree of assurance that the specimen provided is the specimen received by the laboratory and identified to that employee. Some of the information to be contained on the chain-of-custody form is: preprinted specimen identification number, employee's Social Security or employee identification number, type of test conducted, temperature of specimen, date of collection, collection site and telephone number, employee data (name, duty location, job title, date of birth); and three certification statements (one to be completed by the employee, one by the collection site person, and one by the laboratory performing the test). The form shall also contain space for entering the date, purpose of change, name of person who released the specimen and the name of the person who received the specimen for each transfer of possession of the specimen.

-The second document would be the labels and seals on the primary and split specimen bottles, which would be physically overlapped to provide integral identification and protection for the specimen. After collection, the employee would initial the labels or seals on the primary and split bottles to affirm that the specimen is the one provided. The labels would also contain a unique identifying number identical to that appearing on the urine chain-of-custody and control form. Use of the identifying number in lieu of the name avoids disclosure of the donor's identity to employees of the laboratory.

-The third process is shipping the primary and split urine specimens to the drug testing laboratory. Collection site personnel are required to initial the tape sealing the container and ensure that the chain-of-custody form for the primary and split specimens are enclosed in the container.

These requirements are covered under DOT's Part 49 CFR Part 40 Information Collection (OMB No. 2130-0529). The requirement for the Chain of Custody and Control Form (CCF) is covered under the Department of Health and Human Services Information Collection for the CCF. Consequently, there is no additional burden associated with these requirements.

Subpart I - Annual Report

Reporting alcohol misuse prevention program results in a management information system [219.800]

(a) Each railroad that has a total of 400,000 or more employee hours (including hours worked by all employees of the railroad, regardless of occupation, not only while in the United States but also while outside the United States) must submit to FRA by March 15 of each year a report covering the previous calendar year (January 1-December 31), summarizing the results of its alcohol misuse prevention program. As used in this paragraph, the term "employees of the railroad" includes individuals who perform service for the railroad, including not only individuals who receive direct monetary compensation from the railroad for performing a service for the railroad, but also such individuals as employees of a contractor to the railroad who perform a service for the railroad.

(b) As a railroad, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at § 40.25 and appendix H to part 40). You may also use the electronic version of the MIS form provided by the DOT. For information on where to submit MIS forms and for the electronic version of the form, see: <http://www.fra.dot.gov/eLib/details/L02639>. The Administrator may designate means (e.g., electronic program transmitted via the Internet), other than hard-copy, for MIS form submission to FRA.

(c) Each railroad shall ensure the accuracy and timeliness of each report submitted.

(d) As a railroad, if you have a regulated employee who performs multi-DOT agency functions (e.g., an employee drives a commercial motor vehicle and performs switchman duties for you), count the employee only on the MIS report for the DOT agency under which he or she is random tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Railroads may have to explain the testing data for these employees in the event of a DOT agency inspection or audit.

(Revised Requirement)

(e) A service agent (e.g., a consortium/third party administrator) may prepare the MIS report on behalf of a railroad. However, a railroad official (e.g., a designated employee representative) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

The requirements for alcohol and drug have been combined. Since the burden for these requirements is already covered under DOT's 49 CFR Part 40 Information Collection, there is no additional burden associated with these requirements.

(f) A railroad required to submit an MIS report under this section must submit separate reports for covered employees and MOW employees. **(New Requirement)**

The requirements for alcohol and drug have been combined. Since the burden for these requirements relating to covered employees is already covered under DOT's 49 CFR Part 40 Information Collection and since the burden for MIS requirements is also covered under DOT's Part 49 CFR Part 40 Information Collection (OMB No. 2130-0529), there is no additional burden associated with these requirements.

Subpart J - Recordkeeping Requirements

I. Retention of alcohol testing records [219.901]

(a) General. (1) In addition to the records Part 40 of this title requires keeping, a railroad must also maintain alcohol and drug misuse prevention program records in a secure location with controlled access under this section's requirements.

(2) A railroad must maintain for two years, rather than one year, the records to which § 40.333(a)(4) of this title applies (i.e., records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02). A railroad may maintain legible and accessible scanned or electronic copies of these records for the second year.
(Revised Requirement)

(b) Records maintained for a minimum of five years. Each railroad must maintain the following records for a minimum of five years:

(1) A summary record or the individual files of each regulated employee's test results; and

(2) A copy of the annual report summarizing the results of its alcohol and drug misuse prevention program (if required to submit the report under § 219.801(a)).

(c) Records maintained for a minimum of two years. Each railroad must maintain the following records for a minimum of two years:

(1) Records related to the collection process:

(i) Collection logbooks, if used.

(ii) Documents relating to the random selection process, including the railroad's approved random testing plan and FRA's approval letter for that plan;

(iii) Documents generated in connection with decisions to administer Federal reasonable suspicion or reasonable cause alcohol or drug tests.

(iv) Documents generated in connection with decisions on post-accident testing; and

(v) Documents verifying the existence of a medical explanation for the inability of a regulated employee to provide an adequate specimen.

(2) Records related to test results:

(i) The railroad's copy of the alcohol test form, including the results of the test.

(ii) The railroad's copy of the drug test custody and control form, including the results of the test.

(iii) Documents related to any regulated employee's refusal to submit to an alcohol or drug test required under this Part; and

(iv) Documents a regulated employee presented to dispute the result of an alcohol or drug test administered under this part;

(3) Records related to other violations of this Part.

(4) Records related to employee training:

(i) Materials on alcohol and drug abuse awareness, including a copy of the railroad's policy on alcohol and drug abuse.

(ii) Documentation of compliance with the requirements of § 219.23.

(iii) Documentation of training (including attendance records and training materials) the railroad provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for reasonable suspicion or post-accident alcohol and drug testing.

(iv) Documentation of training (including attendance records and training materials) the railroad provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for reasonable suspicion or post-accident alcohol and drug testing.

The burden for this requirement would normally be included under the information collection associated with DOT's Part 40. However, the final rule mandates that the required records be kept for two years by FRA rather than the one year under Part 40. As noted in the regulatory impact analysis accompanying this rule, FRA estimates then that approximately 16,960 records for MOW employees will be kept under the above requirement. It is estimated that it will take approximately five (5) minutes to create/maintain each record. Total annual burden for this requirement is 1,413 hours.

Respondent Universe:

722
railro
ds/400
MOW
Contra
ctors

Burden time per response:

5
minute
s

Frequency of Response:

On
occasion

Annual number of Responses: 16,960 MOW records

Annual Burden: 1,413 hours

Calculation: 16,960 MOW records x 5 min. = 1,413 hours

II. Access to facilities and records [219.903] (**Revised Requirement**)

(a) Release of regulated employee information contained in records required to be maintained under § 219.901 must be in accordance with Part 40 of this Title and with this section. (For purposes of this section only, urine drug testing records are considered equivalent to breath alcohol testing records.)

(b) Each railroad must grant access to all facilities used to comply with this Part to the Secretary of Transportation, United States Department of Transportation, or any DOT agency with regulatory authority over the railroad or any of its regulated employees.

(c) Each railroad must make available copies of all results for its drug and alcohol testing programs conducted under this Part and any other information pertaining to the railroad's alcohol and drug misuse prevention program, when requested by the Secretary of Transportation or any DOT agency with regulatory authority over the railroad or regulated employee.

The burden for this requirement is not a separate one, but rather on that is included in the burden for all the other requirements of this collection of information and that of DOT's Part 40 Information Collection. Consequently, there is no additional burden associated with this requirement.

§ 219.1001 Referral Program Conditions. (**New/Revised Requirements**)

(a) The purpose of this Subpart is to help prevent the adverse effects of drug and alcohol abuse in connection with regulated employees.

(b) A railroad must adopt, publish, and implement the following:

(1) Self-referral program. A program designed to encourage and facilitate the identification of a regulated employee who abuses drugs or alcohol by providing the employee the opportunity to obtain counseling or treatment before the employee's drug or alcohol abuse manifests itself in a detected violation of this part; and

(2) Co-worker referral program. A program designed to encourage co-worker participation in preventing violations of this Part.

(c) A railroad may adopt, publish, and implement the following:

(1) Non-peer referral program. A program designed to encourage non-peer participation in preventing violations of this Part; and

(2) Alternate program(s). An alternate program or programs that meets the specific requirements of § 219.1003 or complying with § 219.1007. *(Note: The burden for this requirement is included below under that of § 219.1007. Consequently, there is no additional burden associated with it).*

FRA estimates that approximately 40 referral programs will be adopted, published, and implemented under the above requirement. It is estimated that it will take approximately three (3) hours to develop each referral program. Total annual burden for this requirement is 120 hours.

Respondent Universe:

722
railroads/400
MOW
Contractors

Burden time per response:

3 hours

Frequency of Response:

On
occasion

Annual number of Responses: 40 referral programs
Annual Burden: 120 hours

Calculation: 40 referral programs x 3 hrs. = 120 hrs.

Additionally, FRA estimates that approximately five (5) new railroads will commence operations each year and thus five (5) referral programs will be adopted, published, and implemented under the above requirement. It is estimated that it will take approximately three (3) to develop each peer referral and support program. Total annual burden for this requirement is 15 hours.

Respondent Universe:

722
railroads/
400
MOW
Contractors

Burden time per response:

3 hours

Frequency of Response:

On
occasion

Annual number of Responses: 5 referral programs
Annual Burden: 15 hours

Calculation: 5 referral programs x 3 hrs. = 15 hours

FRA estimates that approximately 602 railroads will receive one report a year that an employee is unsafe to work with or appeared to be in violation of this rule or the railroad's alcohol and drug rules. Each report will take approximately five (5) minutes to complete. Total an annual burden for this requirement is 50 hours.

Respondent Universe:

722 railroads

Burden time per response: 5 minutes

Frequency of Response: On occasion

Annual number of Responses: 602 reports
Annual Burden: 50 hours

Calculation: 602 reports x 5 min. = 50 hours

Total annual burden for this requirement is 185 hours (120 + 15 + 50).

§ 219.1003 Referral program conditions. (New Requirements)

(a) General. A referral program must specify the allowances, conditions, and procedures under which a self-referral, co-worker referral, and, if adopted, a non-peer referral, can occur, as follows:

The burden for this requirement is included above under § 219.1001. Consequently, there is no additional burden associated with this requirement.

(1) For a self-referral, a railroad must identify one or more designated DAC contacts (including telephone number and email (if available)) and any expectations regarding when the referral is allowed to take place (such as during non-duty hours or while the employee is unimpaired, or both, as § 219.1005 permits);

FRA estimates that railroads will identify 40 new DAC contacts and provide their referral expectations under the above requirement. It is estimated that it will take approximately 20 minutes to identify the DAC contacts/referral expectations. Total annual burden for this requirement is 13 hours.

Respondent Universe:

722
railroads

Burden time per response: 20 minutes

Frequency of Response: On occasion

Annual number of Responses: 40 DAC contacts/RR expectations
Annual Burden: 13 hours

Calculation: 40 DAC contacts/RR expectations x 20 min. = 13 hours

Additionally, FRA estimates that approximately 602 self-referrals will be made by railroad employees under the above requirement. It is estimated that it will take approximately 10 seconds to make each self-referral. Total annual burden for this requirement is two (2) hours.

Respondent Universe:

142,000 RR
Employees

Burden time per response: 10 seconds

Frequency of Response: On occasion

Annual number of Responses: 602 self-referrals
Annual Burden: 2 hours

Calculation: 602 self-referrals x 10 sec. = 2 hours

(2) For a co-worker referral, a railroad may accept a referral under this Subpart only if it alleges that the regulated employee was apparently unsafe to work with or in violation of this Part or the railroad's drug and alcohol abuse rules. The employee must waive investigation of the rule charge and must contact the DAC within a reasonable period of time;

FRA estimates that 602 employees will be referred for treatment under this program.

FRA estimates that it will take approximately 20 minutes for an EAP, DAC, or SAP Counselor to conduct an interview, and another 10 minutes to prepare an evaluation report. Total annual burden for this requirement is 301 hours.

Respondent Universe:		722 railroads + 400 MOW Contractors
Burden time per response:		30 minutes
Frequency of Response:		On occasion
Annual number of Responses:	602 reports	
Annual Burden:		301 hours

Calculation: 602 reports x 30 min. = 301 hours

FRA estimates that zero (0) employees will waive investigation under the above requirement. Consequently, there is no additional burden associated with this requirement.

(3) For a non-peer referral, a railroad may remove a regulated employee from service only if a railroad representative confirms that the employee is unsafe to work with or in violation of this Part or the railroad's drug and alcohol abuse rules. The employee must waive investigation of the rule charge and must contact the DAC within a reasonable period of time.

For non-peer referrals, FRA estimates that each year approximately three (3) regulated employees will be removed from service after confirmation by railroad a representative that the employee is unsafe to work with or is in violation of this part or the railroad's drug and alcohol abuse rules. It is estimated that it will take approximately four (4) hours to complete each removal confirmation. Total annual burden for this requirement is 12 hours.

Respondent Universe:

722
railroads

Burden time per response: 4 hours

Frequency of Response:

Annually

Annual number of Responses: 3 RR removal confirmations

Annual Burden: 12 hours

Calculation: 3 RR removal confirmations x 4 hrs. = 12 hours

Further, FRA estimates estimated that approximately three (3) regulated employees will waive investigation of the rule charge and contact the DAC within a reasonable period of time under the above two requirements. It is estimated that it will take approximately three (3) to complete each employer waiver and approximately 20 minutes to complete each DAC contact. Total annual burden for this requirement is 10 hours.

Respondent Universe:

722
railroads

Burden time per response: 3 hours
+ 20 minutes

Frequency of Response: On
occasion

Annual number of Responses: 3 employee waivers + 3 employee
DAC contacts

Annual Burden: 10 hours

Calculation: 3 employee waivers x 3 hrs. + 3 employee DAC contacts x
20 min. = 10 hours

(b) Employment maintained. A regulated employee who is affected by a drug or alcohol abuse problem may maintain an employment relationship with the railroad if:

(1) The employee seeks assistance through the railroad’s voluntary referral program for his or her drug or alcohol abuse problem or a co-worker or a non-peer refers the employee for such assistance; and

(2) The employee successfully completes the education, counseling, or treatment program specified by a DAC under this Subpart.

(c) Employment action. If a regulated employee does not choose to seek assistance through a referral program, or fails to cooperate with a DAC’s recommended program, the disposition of the employee’s relationship with the railroad is subject to normal employment action.

(d) Qualified DAC Evaluation. (1) A DAC acceptable to the railroad must evaluate a regulated employee entering a self-referral, co-worker referral, or non-peer referral program;

(2) The DAC must meet any applicable state standards and comply with this Subpart.

(3) The DAC must determine the appropriate level of care (education, counseling, and/or treatment) necessary to resolve any identified drug or alcohol abuse problems.

FRA estimates that approximately 602 regulated employee evaluations will be conducted by DACs each year under the above requirement. It is estimated that it will take approximately two (2) hours to complete each evaluation. Total annual burden for this requirement is 1,204 hours.

Respondent Universe:

722
railroads

Burden time per response:

2 hours

Frequency of Response:

Annually

Annual number of Responses:

602 regulated employee evaluations

Annual Burden:

1,204 hours

Calculation: 602 regulated employee evaluations x 2 hrs. = 1,204 hours

(e) Removal from regulated service. A referral program must stipulate that a regulated employee a DAC has evaluated as having an active drug abuse disorder may not perform regulated service until the DAC can report that safety is no longer affected.
(Note: The burden for referral programs is included under § 219.1001 above. Consequently, there is no additional burden associated with this requirement.)

(f) Confidentiality maintained. Except as provided under paragraph (l) of this section, the railroad must treat a regulated employee's referral and subsequent handling (including evaluation, education, counseling, and/or treatment) as confidential. Only personnel who administer the railroad referral program may have access to the identities of the individuals in these programs.

(g) Leave of absence. A railroad must grant a regulated employee a leave of absence recommended by the DAC to complete a primary education, counseling, or treatment program and to establish control over the employee's alcohol or drug abuse problem.

FRA estimates estimated that approximately 602 DAC recommendations for a regulated employee leave of absence will be made under the above requirement. It is estimated that it will take approximately 60 minutes to complete each recommendation. Total annual burden for this requirement is 602 hours.

Respondent Universe:

722
railroads

Burden time per response:

60
minutes

Frequency of Response:

On
occasion

Annual number of Responses:

602 DAC leave of absence
recommendations

Annual Burden:

602 hours

Calculation: 602 DAC leave of absence recommendations x 60 min. =
602 hours

(h) Return to regulated service. (1) Except as §§ 219.1001(d)(4) and 219.1005 may provide, a railroad must return an regulated employee to regulated service upon the DAC's recommendation that the employee has established control over his or her drug or alcohol abuse problem, has a low risk to return to drug or alcohol abuse, and has complied with any recommended return-to-service requirements.

(2) The DAC determines the appropriate number and frequency of required follow-up tests. The railroad determines the dates of testing.

(3) The railroad may condition an employee's return to regulated service on successful completion of a return-to-service medical evaluation.

(4) A railroad must return an employee to regulated service within five working days of the DAC's notification to the railroad that the employee is fit to return to regulated service, unless the employee has a disqualifying medical condition. (i.e., the employee is at a low risk to return to drug or alcohol abuse).

FRA estimates estimated that approximately 602 return to regulated service notifications/recommendations will be completed by DACs under the above two requirements. It is estimated that it will take approximately 10 minutes to complete each notification. Total annual burden for this requirement is 100 hours.

Respondent Universe:

722
railroads

Burden time per response:

10
minutes

Frequency of Response:

On
occasion

Annual number of Responses:

602 DAC return to regulated service
notifications/ recommendations

Annual Burden:

100 hours

Calculation: 602 DAC return to regulated service notifications/
recommendations x 10 min. = 100 hours

(i) Rehabilitation plan. No person—whether an employing railroad, managed care provider, service agent, or any person other than the DAC who conducted the initial evaluation—may change in any way DAC’s evaluation or recommendation for assistance. The DAC who made the initial evaluation may modify the employee’s initial evaluation and follow-up recommendations based on new or additional information.

FRA estimates that approximately 60 modified employee evaluations will be made by DACs each year under the above requirement. It is estimated that it will take approximately 10 minutes/hours to complete each evaluation. Total annual burden for this requirement is 10 hours.

Respondent Universe:

722
railroads

Burden time per response:

10
minutes

Frequency of Response:

Annually

Annual number of Responses: 60 modified regulated employee evaluations

Annual Burden: 10 hours

Calculation: 60 modified employee evaluations x 10 min. = 10 hours

(j) Locomotive engineers and conductors. Consistent with §§ 240.119(e) and 242.115(g) of this chapter, for a certified locomotive engineer, certified conductor, or a candidate for engineer or conductor certification, the referral program must state that confidentiality is waived (to the extent the railroad receives from a DAC official notice of the active drug abuse disorder and suspends or revokes the certification, as appropriate) if the employee at any time refuses to cooperate in a recommended course of counseling or treatment.

The burden for referral programs is included above under § 219.1001. Consequently, there is no additional burden associated with this requirement.

(k) Contacting a DAC. If an employee does not contact a DAC within a railroad's specified time limits, the railroad may begin an investigation to assess the employee's cooperation and compliance with its referral program.

The burden for employees contacting a DAC is included above under § 219.1003(a)(3). Consequently, there is no additional burden associated with this requirement.

(l) Time requirements for DAC evaluations. Once a regulated employee has contacted the designated DAC, the DAC's evaluation must be completed within 10 working days. If the employee needs more than one evaluation, the evaluations must be completed within 20 working days.

The burden for employees contacting a DAC is included above under § 219.1003(a)(3). Consequently, there is no additional burden associated with this requirement.

The burden for employees evaluations included above under § 219.1003(d). Consequently, there is no additional burden associated with this requirement.

The burden for modified (or a second) employees evaluations included above under § 219.1003(i). Consequently, there is no additional burden associated with this requirement.

(m) Time limitations on follow-up treatment, care, or testing. Any follow-up treatment, care, or testing established under a referral program must not exceed 24 months beyond an regulated employee's initial removal from regulated service, unless the regulated employee's entry into the program involved a substantiated part 219 violation.

The burden for referral programs is included above under § 219.1001. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is 2,254 hours (13 + 2 + 301 + 12 + 10 + 1,204 + 602 + 100 + 10).

§ 219.1005 Optional provisions. (New Requirement)

A railroad's referral program may include any of the following provisions at the option of the railroad and with the approval of the labor organization(s) affected:

(a) The program may provide that the rule of confidentiality is waived if:

(1) The regulated employee at any time refuses to cooperate in a DAC's recommended course of education, counseling, or treatment; or

(2) The railroad determines, after investigation, that the regulated employee has been involved in a drug- or alcohol-related disciplinary offense growing out of subsequent conduct.

(b) The program may require successful completion of a return-to-service medical examination as a further condition of reinstatement in regulated service.

(c) The program may provide that it does not apply to a regulated employee whom the railroad has previously assisted under a program substantially consistent with this section.

(d) The program may provide that, in order to invoke its benefits, the regulated employee must report to the railroad's designated contact either:

(i) During non-duty hours (i.e., at a time when the regulated employee is off duty); or

(ii) While unimpaired and otherwise in compliance with the railroad's drug alcohol and rules consistent with this Subpart.

FRA estimates that approximately 10 referral programs with labor organizations approvals will include the optional provisions outlined under the above requirement. It is estimated that it will take approximately 20 hours to develop each such peer support program and obtain each labor organization approval of these programs. Total annual burden for this requirement is 200 hours.

Respondent Universe: 722 railroads/400 MOW Contractors

Burden time per response:

20
hours

Frequency of Response:

On
occasion

Annual number of Responses:

10 referral programs/labor
organization approvals of programs

Annual Burden:

200 hours

Calculation: 10 referral/labor organization approvals of programs x 20
hrs. = 200 hours

§ 219.1007 Alternate programs.

(a) Instead of the referral programs required under § 219.1001, a railroad is permitted to develop, publish, and implement alternate programs that meet the standards established in § 219.1001. Such programs must have the written concurrence of the recognized representatives of the regulated employees. Nothing in this subpart restricts a railroad or labor organization from adopting, publishing, and implementing programs that afford more favorable conditions to regulated employees troubled by drug or alcohol abuse problems, consistent with a railroad's responsibility to prevent violations of §§ 219.101, 219.102, and 219.103.

(b) The concurrence of the recognized representatives of the regulated employees in an alternate program may be evidenced by a collective bargaining agreement or any other document describing the class or craft of employees to which the alternate program applies. The agreement or other document must make express reference to this Subpart and to the intention of the railroad and employee representatives that the alternate program applies in lieu of the program required by this Subpart.

The burden for referral programs is included above under § 219.1001. Consequently, there is no additional burden associated with this requirement.

(c) The railroad must file the agreement or other document described in paragraph (b) of this section along with the requested alternate program it submits for approval with the FRA Drug and Alcohol Program Manager. FRA will base its approval on whether the alternative program meets the § 219.1001 objectives. The alternative program does not have to include each § 219.1001 component, but must meet the general standards and intent of § 219.1001. If a railroad amends or revokes an approved alternate policy, the railroad must file a notice with FRA of such amendment or revocation at least 30 days before the effective date of such action.

FRA estimates that approximately 10 alternate referral programs with the necessary labor organization concurrences will be filed with the FRA Drug and Alcohol Program Manager under the above requirement. It is estimated that it will take approximately one (1) hour to complete/file each document with FRA. Total annual burden for this requirement is 10 hours.

Respondent Universe:

722
railroads/400
MOW
Contra

		ctors
Burden time per response:		1 hour
Frequency of Response:		On occasion
Annual number of Responses:	10 alternate referral program documents with necessary labor organization concurrences (records)	
Annual Burden:		10 hours
<u>Calculation:</u>	10 alternate referral program documents x 1 hr. =	
	10 hours	

Additionally, FRA estimates that approximately one (1) notice of amendment or revocation of an approved alternate policy will be filed with FRA under the above requirement. It is estimated that it will take approximately one (1) hour to file such notice. Total annual burden for this requirement is one (1) hour.

Respondent Universe:		722 railroads/400 MOW Contractors
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Burden time per response:		1 hour
Frequency of Response:		On occasion

Annual number of Responses: 1 notice of amendment/revocation of
an approved alternate
policy/program
Annual Burden: 1 hour

Calculation: 1 notice of amendment/revocation x 1hr. = 1 hour

Total annual burden for this entire requirement is 11 hours (10 + 1).

APPENDIX C

Exhibit C-2—Instructions for Collection of Post Mortem Specimens: Employee Killed in a Railroad Accident/Incident (Form FRA F 6180.75)

To the Medical Examiner, Coroner, or Pathologist:

- a. In compliance with Federal safety regulations (49 CFR Part [219](#)), a railroad representative has requested that you obtain specimens for toxicology from the remains of a railroad employee who was killed in a railroad accident or incident. The deceased consented to the taking of such specimens, as a matter of Federal law, by performing service on the railroad (49 CFR [219.11\(f\)](#)).
- b. Your assistance is requested in carrying out this program of testing, which is important to the protection of the public safety and the safety of those who work on the railroads.

A. Materials:

The railroad will provide you a post-accident shipping box that contains necessary supplies. If the box is not immediately available, please proceed using supplies available to you that are suitable for forensic toxicology.

B. Specimens requested, in order of preference:

- a. Blood—20 milliliters or more. Preferred sites: intact femoral vein or artery or peripheral vessels (up to 10 ml, as available) and intact heart (20 ml). Deposit blood in gray-stopper tubes individually by site and shake to mix specimen and preservative.

Note:

If uncontaminated blood is not available, bloody fluid or clots from body cavity may be useful for qualitative purposes; but do not label as blood. Please indicate source and identity of specimen on label of tube.

- b. Urine—as much as 100 milliliters, if available. Deposit into plastic bottles provided.
- c. Vitreous fluid—all available, deposited into smallest available tube (e.g., 3 ml) with 1% sodium fluoride, or gray-stopper tube (provided). Shake to mix specimen and preservative.
- d. If available at autopsy, organs—50 to 100 grams each of two or more of the following in order preference, as available: liver, bile, brain, kidney, spleen, and/or lung. Specimens should be individually deposited into zip-lock bags or other clean, single use containers suitable for forensic specimens.
- e. If vitreous or urine is not available, please provide—
 - 1. Spinal fluid—all available, in 8 ml container (if available) with sodium fluoride or in gray-stopper tube; or, if spinal fluid cannot be obtained,
 - 2. Gastric content—up to 100 milliliters, as available, into plastic bottle.

C. Specimen collection:

- a. Sampling at time of autopsy is preferred so that percutaneous needle puncturing is not necessary. However, if autopsy will not be conducted or is delayed, please proceed with sampling.
- b. Blood specimens should be taken by sterile syringe and deposited directly into evacuated tube, if possible, to avoid contamination of specimen or dissipation of volatiles (ethyl alcohol).

Note:

If only cavity fluid is available, please open cavity to collect specimen. Note condition of cavity.

- c. Please use smallest tubes available to accommodate available quantity of fluid specimen (with 1% sodium fluoride).

D. Specimen identification, sealing:

- a. As each specimen is collected, seal each blood tube and each urine bottle using the respective blood tube or urine bottle using the identifier labels from the set provided with the Post-Accident Testing Blood/Urine Custody and Control Form (49 CFR part [219](#)) (Form FRA F 6180.74 (revised)). Make sure the unique identification number on the labels match the pre-printed number on the Control Form. Please label other specimens

with name and specimen set identification numbers. You may use labels and seals from any of the extra forms, but annotate them accordingly.

b. Annotate each label with specimen description and source (as appropriate) (e.g., blood, femoral vein).

c. Please provide copy of any written documentation regarding condition of body and/or sampling procedure that is available at the time specimens are shipped.

E. Handling:

a. If specimens cannot be shipped immediately as provided below, specimens other than blood may be immediately frozen. Blood specimens should be refrigerated, but not frozen.

b. All specimens and documentation should be secured from unauthorized access pending delivery for transportation.

F. Information:

a. If the railroad has not already done so, please place the name of the subject at the top of the Control Form (STEP 1). You are requested to complete STEP 2 of the form, annotating it by writing the word "FATALITY," listing the specimens provided, providing any further information under "Remarks" or at the bottom of the form. If it is necessary to transfer custody of the specimens from the person taking the specimens prior to preparing the box for shipment, please use the blocks provided in STEP 5 to document transfer of custody.

b. The railroad representative will also provide Accident Information Required for Post-Accident Toxicological Testing (49 CFR part [219](#)), Form FRA 6180.73 (revised). Both forms should be placed in the shipping box when completed; but you may retain the designated medical facility copy of each form for your records.

G. Packing the shipping box:

a. Place urine bottles and blood tubes in the sponge liner in the individual kit, close the biohazard bag zipper, close the kit and apply the kit custody seal to the kit. You may use additional kits for each tissue specimen, being careful to identify specimen by tissue, name of deceased, and specimen set identification number. Apply kit security seals to individual kits and initial across all seals. Place all forms in the zip-lock bag and seal securely.

b. Place the bag in the shipping box. Do not put forms in with the specimens. Seal the shipping box with the seal provided and initial and date across the seal.

c. Affix the mailing label to the outside of the box.

H. Shipping the box:

a. The railroad must arrange to have the box shipped overnight air express or (if express service is unavailable) by air freight, prepaid, to FRA's designated laboratory. When possible, but without incurring delay, deliver the sealed shipping box directly to the express courier or the air freight representative.

b. If courier pickup is not immediately available at your facility, the railroad is required to transport the sealed shipping box to the nearest point of shipment via air express, air freight or equivalent means.

c. *If the railroad receives the sealed shipping box to arrange shipment*, please record under "Supplemental Information" on the Control Form, the name of the railroad official taking custody.

I. Other:

FRA requests that the person taking the specimens annotate the Control Form under "Supplemental Information" if additional toxicological analysis will be undertaken with respect to the fatality. FRA reports are available to the coroner or medical examiner on request.

FRA is revising Form FRA F 6180.75. This form is part of the shipping kit that is sent to medical examiners, coroners, or pathologists after a rail accident/incident where there is a fatality. FRA estimates that there are approximately 10 fatalities per year where Form FRA F 6180.75 would be filled-out. It is estimated that it takes approximately 20 minutes to do the necessary lab work and complete each form. Total annual burden for this requirement is three (3) hours.

Respondent Universe:	722 railroads/400 MOW Contractors
Burden time per response:	20 minutes
Frequency of Response:	On occasion
Annual number of Responses:	10 forms
Annual Burden:	3 hours

Calculation: 10 forms x 20 min. = 3 hours

Total annual burden for this requirement is three (3) hours.

Total annual burden for this entire information collection is 22,672 hours.

13. Estimate of total annual costs to respondents.

Respondent Costs

As noted in the regulatory evaluation accompanying this final rule, there are additional costs to respondents other than the ones reflected in the responses to question 12 above. The costs for the Custody and Control Forms (CCFs) are the responsibility of the Department of Health and Human Services (DHHS). Railroads bear the cost of shipping kits for post-accident toxicological (PAT) tests. This cost amounts to \$25 per box. The cost of each test is \$300. FRA estimates (8) additional qualifying events per year and thus eight (8) additional PAT tests due to the inclusion of MOW employees (one MOW employee tested per event), the cost for conducting the tests and shipping specimens from the new MOW employee tests is estimated to be \$2,600 per year. For the estimated annual 21 impact accident and grade crossing events, the cost of conducting the tests and shipping the boxes is estimated to be \$6,825 per year (21 test/kits x \$325). The total cost for shipping is **\$9,425**.

Regarding reasonable suspicion tests, FRA estimates that there will be approximately 30 tests per year, on average. With the regulation now covering MOW employees, FRA estimates that six (6) more reasonable suspicion tests will be conducted each year. The average cost of a reasonable suspicion alcohol or drug test for a railroad, generally completed by a third party contractor, is \$300. The annual cost then for this testing is **\$10,800**.

Also, after the effective date of the final rule, all newly hired MOW employees would be required to undergo a pre-employment drug test (resulting in a negative result) prior to performing MOW activities for the railroad. FRA estimates this number to be approximately half of the estimated 32,000 MOW employees. Additionally, FRA estimates that the turnover rate of MOW employees to be approximately four (4) percent. An in-clinic pre-employment drug test is estimated to cost \$40. Therefore, pre-employment drug testing for MOW employees would result in an estimated cost of **\$25,600** per year [calculation = 32,000 MOW employees x .5 MOW employees who do not fall under company authority or FMCSA testing x .04 turnover x \$40 = \$25,600.] Finally, there are the costs for random alcohol and drug testing of MOW employees under this proposed rule. The estimated cost of an onsite random drug and alcohol combination test is \$160. The estimated cost for an onsite random drug test is \$140. FRA estimates that the cost for random drug and alcohol tests at the minimum required levels for MOW employees would be **\$1,440,000** per year (for the first five years). [Calculation = 32,000 MOW employees x .6 not already being tested x .25 tested for

drugs and alcohol x \$160 per combo test = \$768,000; 32,000 MOW employees x .6 not already being tested x .25 tested for drugs x \$140 per drug test = \$672,000; \$768,000 + \$672,000 = \$1,440,000].

TOTAL RESPONDENT COST = \$1,485,825 (\$9,425 + \$10,800 + \$25,600) + \$1,440,000)

14. Estimate of Cost to Federal Government.

As noted in its previous submission, FRA’s Alcohol and Drug Program Manager will monitor compliance with the requirements of Part 219. FRA estimates that it will take approximately one (1) man-year annually to monitor the program. Multiplying 2,080 hours times the estimated \$100 per hour (includes 75 percent overhead) would equal \$208,000 in labor cost annually.

\$208,000	Labor	
5,000	Contract - Key punching of data	
150	Postage	
500	Miscellaneous	
\$213,650	TOTAL	

15. Explanation of program changes and adjustments.

The burden for this collection of information has decreased by 9,125 hours from the last submission. The decrease in burden is due both to **program changes** and **adjustments**. The following table depicts the **program changes**:

TABLE FOR PROGRAM CHANGES

Part 219 Sec./ Form Number	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	Burden Hours (This Submission)	Difference (plus/minus)
219.9 – Joint Operating Agreement	0 agreements 0 hours	525 agreements 30 minutes	0 hours	263 hours	+ 263 hours + 525 resp.

between Railroads Assigning Compliance Responsibility with this Part Amongst Themselves (Revised Requirement)					
219.11(e) – Testing Notification to Regulated Employee (Rev. Requirement)	0 notifications 0 seconds	9,508 notifications 5 seconds	0 hours	13 hours	+ 13 hours + 9,508 resp.
219.11(g) – (Rev. Requirement) -RR Program that provides Training to Regulated employees Supervisors and info. on criteria for PAT Testing contained in Part 219 Subpar C & Appendix C - Training of Regulated Employees Supervisors in signs/symptoms of Alcohol/Drug Influence	0 modified programs 0 hours 50 supervisor training classes 3 hours	722 modified programs 1 hours 2,462 trained supervisors 3 hours	0 hours 150 hours	722 hours 7,386 hours	+ 722 hours + 722 resp. + 7,236 hours + 2,412 resp.
219.12 – RR Documentation on need to place employee on duty for follow-up tests (New Requirement)	0 documents 0 hours	5 documents 30 minutes	0 hours	3 hours	+ 3 hours + 5 responses
219.23(d) – Written notice to representative of employee organization on availability of educational materials –(Eliminated provision)	5 notices 1 hour	0 notices 0 hours	5 hours	0 hours	-- 5 hours -- 5 responses
219.104 – Notice to employee explaining reason for removal from regulated service – (Revised)	500 notices/ letters 2 minutes	500 verbal notices + 500 written notices /letters 30 seconds + 2 min.	17 hours	21 hours	+ 4 hours + 500 resp.

requirement) - Communications by applicant declining pre-employment testing/withdrawing application (Revised requirement)	0 notices/ communication 0 minutes	60 notices/ communications 2 minutes	0 hours	2 hours	+ 2 hours + 60 responses
219.105 – (New Requirements) – Document provided to FRA upon request concerning RR’s alcohol/drug use, education, prevention, intervention, rehab program/policies - Supervisor Rule G observations + records	0 document copies 0 minutes 0 observations 0 minutes + 0 records 0 minutes	2 document copies 5 minutes 280,000 looks/ observations 2 seconds + 280,000 records 2 seconds	0 hours 0 hours	.17 hours 311 hours	+ .17 hour + 2 responses + 311 hours + 560,000 resp
219.203 – Decision by RR representative to test non-crew member regulated employees based on specific information (Rev. Requirement) New Requirements -Determination by RR representative to exclude surviving crew members /other regulated employee from testing - Verbal notification & subsequent written report of failure to collect urine/blood specimens w/in 4 hrs. - Recall of employees for testing & narrative report completion - RR reference to Part 219 & FRA’s PAT kit in seeking facility cooperation	0 decisions 0 minutes 0 decisions 0 minutes 0 notifications 0 reports 0 minutes 0 calls 0 reports 0 minutes 0 references 0 minutes	80 decisions/ determinations 15 minutes 50 decisions/ determinations 6 minutes 80 notifications + 80 reports 2 min. + 30 min. 4 calls 4 reports 2 min. + 30 min. 80 references 15 minutes	0 hours 0 hours 0 hours 0 hours	20 hours 4 hours 43 hours 2 hours 20 hours	+ 20 hours + 80 responses + 4 hours + 50 responses + 43 hours + 160 resp. + 2 hours + 8 responses + 20 hours + 80 responses
219.205 – (New Requirements)					

-Request to FRA Alcohol/Drug Prog. Mgr. for order form for standard shipping kits	0 requests 0 minutes	5 requests 2 minutes	0 hours	.17 hour	+ .17 hour + 5 responses
- Request to FRA for post-mortem shipping kit	0 request 0 minutes	1 request 2 minutes	0 hours	.03333 hour	+ .03333 hour + 1 response
- RR/Medical facility record of Kit error	0 records 0 minutes	20 records 2 minutes	0 hours	1 hour	+ 1 hour + 20 responses
219.303 — (New Requirements) - Dialogue between onsite & offsite supervisor re: reasonable suspicion observation	0 phone conversations 0 minutes	50 phone conversations 2 minutes	0 hours	2 hours	+ 2 hours + 50 responses
- RR written documentation of observed signs for reasonable suspicion determination	0 documents 0 minutes	30 documents 5 minutes	0 hours	3 hours	+ 3 hours + 30 responses
219.305 – RR written record stating reason Part 219 testing was not promptly administered (New Requirement)	0 records 0 minutes	30 records 2 minutes	0 hours	1 hour	+ 1 hour + 30 responses
Rev. 219.401 – RR Notice to FRA to conduct Federal reasonable cause testing at its own discretion (New Requirement)	5 notifications 20 hours	50 notifications 15 minutes	100 hours	13 hours	-- 87 hours + 45 responses
<u>Current 219.401/03/05</u> Voluntary referral & co-worker report policies (Revised as 219.1001 b&c) – Existing Railroads	0 programs 0 hours	40 programs 3 hours	0 hours	120 hours	+ 120 hours + 40 responses
- New Railroads	0 programs 0 hours	5 programs 3 hours	0 hours	15 hours	+ 15 hours + 5 responses
-					
219.405 – (New Requirements) - RR documentation describing basis of ea. reasonable cause test under Federal	0 documents 0 minutes	50 documents 15 minutes	0 hours	13 hours	+ 13 hours + 50 responses

authority - RR documentation of rule/Part 225 violation for each reasonable cause test	0 documents 0 minutes	20 documents 15 minutes	0 hours	5 hours	+ 5 hours + 20 responses
219.407 – Record that specimen collection time limitation is exceeded (New Requirement)	0 records 0 minutes	15 records 15 minutes	0 hours	4 hours	+ 4 hours + 15 responses
219.501 – RR documentation of negative pre-employment drug test on file (New Requirement)	0 tests + 0 records 0 minutes	1,200 tests + 1,200 records 15 minutes + 5 minutes	0 hours	400 hours	+ 400 hours + 2,400 resp.
Current 219.601(b)(4) – Copies of RR written notice to each covered employee that he/she will be subject to random testing - Publication of RR written notice to each covered employee that he/she will be subject to random testing –New RRs	100 notices 30 seconds 5 notices 10 hours	0 notices 0 seconds 0 notices 0 hours	1 hour 50 hours	0 hours 0 hours	-- 1 hour -- 100 resp. -- 50 hours -- 5 responses
219.603/605 – Alcohol/Drug Random testing program/plans to FRA – existing RRs in current 219.601(b) (1) Rev. Requirements - Resubmitted Random Testing Plan Program after FRA Disapproval - Non-substantive amendment to an approved plan - New/combined/ amended random testing plan	5400 document /programs 4 hours 0 resubmitted programs 0 minutes 0 amendments 0 minutes 0 plans 0 minutes	200 programs/ plans 1 hour 21 resubmitted programs 15 minutes 50 amendments 10 minutes 20 plans 15 minutes	21,600 hours 0 hours 0 hours 0 hours	200 hours 5 hours 8 hours 5 hours	. --21,400 hours -- 5,200 resp. + 5 hours + 21 responses + 8 hours + 50 responses + 5 hours + 20 responses
Current Rule 219.607a – New RRs Random Alcohol	5 programs 8 hours	0 programs 0 hours	40 hours	0 hours	-- 40 hours -- 5 responses

Testing Programs -Amendment to Random Alcohol Testing Program – existing RRs (<i>Note: Drug/Alcohol Testing programs/plans are combined under proposed rule</i>)	20 amendments 1 hour	0 amendments 0 hours	20 hours	0 hours	-- 20 hours -- 20 responses
New Requirements) 219.607 – Request by RR to a contractor or service agent to submit a Part 219 random testing plan - Model random testing plans submitted to FRA by RR/contractor/service agent	N/A 0 plans 0 hours	50 requests 15 minutes 50 plans 1 hour	N/A 0 hours	13 hours 50 hours	+ 13 hours + 50 responses + 50 hours + 50 responses
219.609 – (New Requirements) - Inclusion of regulated service contractor employees /volunteers in RR random testing plan - - Addenda to RR random testing plan describing method used to test contractor/volunteer employees in non-random testing plan	0 plans 0 minutes 0 addenda 10 minutes	15 plans 15 minutes 15 addenda 10 minutes	0 hours 0 hours	4 hours 3 hours	+ 3 hours + 15 responses + 3 hours + 15 responses
219.611 – (New Requirements) – Random alcohol and drug test pools: good faith determinations and evaluations of employee likelihood of performing regulated service - Random testing pool updates - Documents on RR multiple random	N/A N/A N/A	25,000 judgments /determinations + 25,000 evaluations 30 seconds 13,176 updates 5 minutes 96 documents	N/A N/A N/A	417 hours 1,098 hours 8 hours	+ 417 hours + 50,000 resp. + 1,098 hours + 13,176 resp. + 8 hours + 96 responses

testing pools		5 minutes			
219.613 – (New Requirements) –RR Identification of total number of eligible employees for random testing -- RR records /explanation of discarded selection draws -- Electronic or hard copy of RR snapshot of each random testing pool	N/A N/A N/A	2,196 IDs 2 minutes 10 records/ explanations 2 minutes 13,176 snapshots 2 minutes	N/A N/A 0 hours	73 hours .33 hour 1,098 hours	+ 73 hours +2,196 resp. + .33 hour + 10 responses + 439 hours + 13,176 resp.
219.615 – Incomplete Random Testing Collections – Documentation (New Requirement)	N/A	2,000 documents 30 seconds	N/A	17 hours	+ 17 hours + 2,000 resp.
219.619 – Report by MRO of Verified Positive Test or by Breath Alcohol Technician of Breath Alcohol Specimen of 04 or Greater (New Requirement)	N/A	88 reports 5 minutes	N/A	7 hours	+ 7 hours + 88 responses
219.623 – Random Testing Records (New Requirement)	N/A	40,000 records 1 minute	N/A	667 hours	+ 667 hours + 40,000 resp.
219.901/903- (Revised Requirement) -- RR Alcohol and Drug Misuse Prevention & Other Records for MOW/Regulated Employees kept in secure location	100,500 record 5 minutes	16,960 records 5 minutes	8,375 hours	1,413 hours	-- 6,962 hours -- 83,540 resp.
219.1003 - (New/Rev Requirements) – RR Designation of DAC and expectations when self-referral is allowed -Referral for treatment/evaluation	N/A N/A	40 designation/ expectations 20 minutes 602 referrals/ evaluations	N/A N/A	13 hours 301 hours	+ 13 hours + 40 responses + 301 hours + 602 resp.

of regulated employee by co-worker as unsafe to work with or in violation of Part 219 - After non-peer referral, removal of employee from service and RR rep. confirmation that employee is unsafe to work with or is in violation of Part 219 or RR alcohol/drug rule - Regulated employee waiver of investigation on RR rule charge and contact of DAC w/in reasonable time period - DAC recommendation of leave of absence for regulated employee - DAC notification to RR that employee is fit to return to service - DAC modification of initial evaluation of regulated employee	N/A	30 minutes 3 removal confirmations 4 hours	N/A	12 hours	+ 12 hours + 3 responses
	N/A	3 waivers + 3 DAC contacts 3 hours + 20 min.	N/A	10 hours	+ 10 hours + 6 responses
	N/A	602 mentions/ recommendations 1 hour	N/A	602 hours	+ 602 hours + 602 resp.
	N/A	602 notices 10 minutes	N/A	100 hours	+ 100 hours + 602 resp.
	N/A	60 modified evaluations 10 minutes	N/A	10 hours	+ 10 hours + 60 responses
219.1005 –Referral Programs with labor organization approvals that include optional provisions (New Requirement)	0 referral programs 0 hours	10 referral programs 20 hours	0 hours	200 hours	+ 200 hours + 10 responses
219.1007- (New Requirements) - Filing of documents/records with FRA of Labor Concurrences for Alternate Peer Support Programs - Notice to FRA of Amendment or Revocation of FRA Approved Alternate	0 documents 0 hours	10 documents 1 hour	0 hours	10 hours	+ 10 hours + 10 responses
	0 notices/ amended peer support programs	1 notice/ amended peer support program	0 hours	1 hour	+ 1 hours + 1 response

Peer Support Program					
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Program changes above decreased the burden amount by 15,286 hours, and increased the number of responses by 610,847.

TABLE FOR ADJUSTMENTS

Part 219 Sec./ Form Number	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	Burden Hours (This Submission)	Difference (plus/minus)
219.4 – Petition for Recognition of a Foreign Railroads Workplace Testing Program	0 petitions 0 hours	2 petitions 40 hours	0 hours	80 hours	+ 80 hours + 2 responses
219.7 – Waiver Petitions	2 petitions 2 hours	4 petitions 2 hours	4 hours	8 hours	+ 4 hours + 2 responses
219.23- (e) Educational materials concerning the effects of alcohol/drug misuse on employees - Copies of Educational materials to employees	0 documents 0 hours 0 copies 0 hours	1,098 documents 1 hour 142,000 copies 2 minutes	0 hours 0 hours	1,098 hours 4,733 hours	+ 1,098 hours + 1,098 resp. + 4,733 hours +142,000 resp.
219.104/107 – Hearing requests	50 requests 2 minutes	50 requests + 50 hearings 2 minutes + 4 hrs.	2 hours	202 hours	+ 200 hours + 50 responses
219.203 – PAT testing after major train accidents & completion of Form FRA F 6180.73 - RR Notification to NRC of injured employee unconscious or otherwise unable to give consent to procedure - RR decision that pass train can	0 forms 0 hours 104 ph. calls 10 minutes 0 decisions/ determinations	240 forms 10 minutes 2 ph. calls 10 minutes 25 decisions/ determinations	0 hours 17 hours 0 hours	40 hours .33 hour 4 hours	+ 40 hours + 240 resp. -- 17 hours -- 102 resp. + 4 hours + 25 responses

continue to next stop or destination after train accident/incident -- RR call to train relief crew ASAP	0 minutes 0 calls 0 minutes	10 minutes 25 calls 5 minutes	0 hours	2 hours	+ 2 hours + 25 responses
219.205 – Completion of FRA F 6180.74 by train crew after accident - RR representative request to medical facility representative to complete remaining info. on Form FRA F 6180.74 - RR representative completion of Form FRA F 6180.73 - RR request to medical facility to transfer sealed toxicology kit - Chain of custody documents from medical facility to delivery for transportation	400 forms 15 minutes 0 ph. requests 0 minutes 100 forms 10 minutes 0 ph. requests 0 minutes 0 documents 0 minutes	240 forms 10 minutes 80 ph. requests 2 minutes 80 forms 10 minutes 40 ph. requests 2 minutes 40 documents 2 minutes	100 hours 0 hours 17 hours 0 hours 0 hours	60 hours 3 hours 13 hours 1 hour 1 hour	-- 40 hours -- 160 resp. + 3 hours + 80 responses -- 4 hours -- 20 responses + 1 hour + 40 responses + 1 hour + 40 responses
219.209 – Notice to NRC/FRA summarizing events of accident/incident where samples were obtained	80 ph. requests 2 minutes	40 ph. requests 2 minutes	3 hours	1 hour	-- 2 hours -- 40 responses
219.211– Results of PAT testing to RR MRO & employee - MRO report to FRA of positive test for alcohol/drugs of surviving employee	8 reports 15 minutes 0 reports 0 minutes	10 reports 15 minutes 10 reports 15 minutes	2 hours 0 hours	3 hours 3 hours	+ 1 hour + 2 responses + 3 hours + 10 responses

219.615 – Notice to employee of random testing (current 219.601(d)(1))	25,000 notices 1 minute	0 notices 0 minutes (burden included under HHS approved info. collection for CCF Form & under DOT OMB No. 2101-0529 for ATF Form)	417 hours	0 hours	-- 417 hours -- 25,000 resp.
219.617 – Employee Exclusion from Random alcohol/drug testing after providing verifiable evidence from credible outside professional (current 219.603 – documented medical emergency excusing employee from random testing)	20 documented excuses 15 minutes	5 documented excuses 60 minutes	5 hours	5 hours	0 hours -- 15 responses
219.901/903 – Summary reports/ records	200 reports 2 hours	0 reports 0 hours	400 hours	0 hours	-- 400 hours -- 200 resp.
219.1001 – Coworker reports (current 219.405(c)(1))	450 reports 5 minutes	602 reports 5 minutes	38 hours	50 hours	+ 12 hours + 152 resp.
219.1003 – Employee evaluation by qualified DAC after self-referral, co-worker referral, or non-peer referral (current 219.405(c)(4)) - Employee self-referral	700 reports/evaluations 30 minutes 0 self-referrals 0 minutes	602 evaluations 2 hours 602 self-referrals 10 seconds	350 hours 0 hours	1,204 hours 2 hours	+ 854 hours -- 98 responses + 2 hours + 602 resp.
Appendix C – Post-Mortem Testing: Form FRA F 6180.75	0 forms 0 minutes	10 forms 20 minutes	0 hours	3 hours	+ 3 hours + 10 responses

Adjustments above increased the burden amount by *6,161 hours*, and increased the number of responses by 118,743.

The current inventory shows a burden total of 31,797 hours, while the present submission exhibits a burden total of 22,672 hours. Hence, there is a burden decrease of **9,125 hours**.

Total cost to respondents under the final rule amounts to/has increased by **\$1,485,825** from the last submission. This is a **program change** entirely associated with the requirements of this final rule.

16. Publication of results of data collection.

The information concerning impairment in an accident setting, which is received pursuant to this program, will be published in a subset of data contained in FRA's annual Accident/Incident Bulletin. All of the remaining information obtained under this program is intended for use by the Office of Safety technical staff in its ongoing accident prevention activities or will be used by railroads in monitoring compliance by their employees with the prohibitions on alcohol and drug use.

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

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

18. Exception to certification statement.

No exceptions are taken at this time.

Meeting Department of Transportation (DOT) Strategic Goals

This information collection supports the top DOT strategic goal, namely transportation safety. Without this collection of information, rail safety in the U.S. would be seriously jeopardized. If railroads did not have effective alcohol and drug misuse prevention programs and if these programs were not carefully monitored, railroad employees working in safety-sensitive positions might abuse alcohol and drugs while on duty, or just prior to coming on duty. This could lead to a substantial increase in the number of accidents/incidents where serious injuries and even fatalities happen to both railroad

workers and the general public. In a worst case scenario of a locomotive engineer abusing drugs or alcohol, a catastrophic accident could occur where hundreds of passengers are killed and injured, or where there is great damage to the environment as well as extensive property damage. A catastrophic accident is a particular concern with the advent and increasing use of high-speed trains. Without the required alcohol and drug training programs, supervisors would not be able to spot employees who are abusing alcohol or drugs, and immediately remove them from service. Not spotting these employees increases the risk of accidents/incidents. The collection of information is designed to monitor railroad alcohol and drug misuse prevention programs to ensure that railroads educate their employees on the hazards of alcohol and drug abuse, and offer information on available treatment facilities. Also, the collection of information enhances rail safety by offering investigators records that might prove helpful in determining the cause of a rail accident which also might prove useful in preventing future accident/incidents. In sum, the collection of information serves as another means to make rail travel in the U.S. safe, and convenient by reducing the likelihood that safety-sensitive workers will abuse alcohol or drugs while they are working.

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.