

SUPPORTING JUSTIFICATION
Locomotive Cab Sanitation Standards
OMB No. 2130-0552

Summary of Submission

- This submission is a request for an extension without change of the last approval of this collection of information cleared by OMB on **July 2, 2014**, which expires on **July 31, 2017**. (*Note: The only item that has changed is the estimated number of railroads, which has increased from 725 to 755.*)
- FRA published the required 60-day **Federal Register** Notice on March 14, 2017. See 82 FR 13714. FRA received **no** comments in response to this notice.
- Total number of burden hours requested for this submission is **1,272 hours**.
- The total number of burden hours previously approved was **1,272 hours**.
- There are **no program** changes or **adjustments** at this time.
- Total number of responses requested for this submission is **113,256**.
- Total number of responses previously approved by OMB is **113,256**.
- ****The answer to question number 12 itemizes the hourly burden associated with each requirement of this rule (See pp. 7-10).**

1. Circumstances that make collection of the information necessary.

Background

In 1992, Congress enacted Section 10 of The Rail Safety Enforcement and Review Act (RSERA) (Public Law 102-365, September 3, 1992, codified at 49 U.S.C. 20103) in response to concerns raised by employee organizations, congressional members, and recommendations of the National Transportation Safety Board concerning working conditions in locomotive cabs. In this legislation, Congress included mandates concerning locomotive crashworthiness and cab working conditions. Section 10 of RSERA, entitled *Locomotive Crashworthiness and Working Conditions*, required FRA “to consider prescribing regulations to improve the safety and working conditions of locomotive cabs” throughout the railroad industry. In order to determine whether regulations would be necessary, Congress asked FRA to “assess the extent to which environmental, sanitary and other working conditions in locomotive cabs affect productivity, health, and the safe operation of locomotives.”

In response to Section 10 of RSERA, FRA studied a variety of working conditions in locomotive cabs including sanitation, noise, temperature, air quality, ergonomics, and vibration. In September 1996, FRA submitted its Locomotive Crashworthiness and Cab Working Conditions Report (“Report”) to Congress, which describes the results of these studies. The Report was discussed in detail in FRA’s Notice of Proposed Rulemaking (NPRM) on Locomotive Cab Sanitation Standards, which was published on January 2, 2001. (See 66 FR 136). For the Report, FRA surveyed in excess of 200 locomotives to assess cab sanitation facilities. FRA found a wide range of conditions, which varied due to weather, type of sanitation system in place, carrier maintenance and service programs, locomotive model, and economic status of the railroad. In addition, some locomotives were not equipped with sanitation facilities. FRA found dirty floors and toilet seats, missing toilet seats, poor ventilation, offensive odors, and lack of toilet paper. In very cold weather, some units tended to freeze and become inoperable. Of the cabs surveyed, approximately thirty percent were deficient in some manner related to the use of sanitation facilities.

The Report noted that employees and rail management play a role in the condition of sanitary facilities; poor sanitary conditions aboard locomotives are caused by inadequate maintenance and/or heavy use or misuse by operating crews. Nearly all railroads have programs in place to service toilet and washing units, although the program requirements vary from property to property depending on degree of use, toilet system in place, and weather conditions. In addition, FRA found that adherence to the servicing programs is uneven throughout the industry, and that poor servicing is often the primary cause of unsanitary sanitation facilities. The Report also explained that there is disparity in the legal treatment of locomotive cab sanitation among state and federal regulatory and enforcement bodies and that confusion exists among industry members concerning applicable standards and guidelines.

Following publication of the Report, FRA continued to receive employee complaints about the state of sanitation in locomotive cabs, and the health and safety risks associated with working in an unsanitary area. FRA also received complaints from employees of one railroad concerning the disposal method used in a particular sanitation system. By design, this system requires temporary storage of untreated waste in sealed waste containers, which gave rise to perceived health and safety concerns. There were also concerns about the expansion of this system as the railroad's territory increased, the increase of “power sharing” arrangements among the carriers, and the administrative difficulties that would arise in maintaining and mixing different systems. Finally, some State agencies expressed frustration with FRA concerning Federal pre-emption of certain state sanitation regulations, and the uneven treatment given locomotive sanitation by the state and federal courts.

In light of these concerns, FRA determined that cab sanitation must be revisited and addressed so that cab employees would have access to adequate sanitary facilities, as well

as to ensure uniform application of the law. Despite the considerable acrimony that had developed in the industry surrounding this issue, FRA remained convinced that it should be addressed cooperatively, with the assistance of the stakeholders who possess the knowledge and expertise to resolve the problem effectively. Consequently, on June 24, 1997, FRA presented the subject of locomotive cab working conditions, including sanitation, to the Railroad Safety Advisory Committee (RSAC).

RSAC was formed by FRA in March 1996 to provide a forum for consensual rulemaking and program development. RSAC consists of representatives from all the agency's major customer groups including railroads, labor organizations, suppliers, manufacturers, and other interested parties. FRA typically assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a working group that possesses the appropriate expertise and representation to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. If a working group comes to consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. If the working group is unable to reach consensus on recommendations for action, FRA will move ahead to resolve the issue through traditional rulemaking proceedings.

The Working Group reached consensus on a series of recommendations for a proposed sanitation standard, referred them to the full RSAC, and RSAC approved them December 7, 2000. On January 2, 2001, FRA published the NPRM (*see* 66 FR 136), which incorporated many of the Working Group's suggestions. FRA held a public hearing on April 2, 2001, to gather comments from interested parties, and then reconvened the Working Group on August 22, 2001. The Working Group considered all comments received, and again reached consensus on recommendations for a final standard. These were forwarded to the full RSAC, which voted by simple majority to forward the recommendations to FRA as the basis of a final sanitation standard.

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

The information collection is used by FRA to promote rail safety and the health of railroad workers by ensuring that all locomotive crew members have access to toilet/sanitary facilities – on as needed basis – which are functioning and hygienic. Specifically, railroads are prohibited from placing a locomotive with an unsanitary or defective toilet facility in the lead position. The collection of information requires railroads to clearly mark defective toilet facilities *as unavailable for use* when these locomotive units are placed in a trailing position or in switching, transfer train service. This information is used by locomotive crewmembers as a warning to avoid using a locomotive toilet facility which is defective, unsanitary, or both.

The information collected is used by FRA to ensure that railroads repair defective toilet facilities within the prescribed timeframe. In cases where railroads utilize a locomotive

equipped with a defective toilet facility in switching service or in transfer train service, they are required to repair the toilet facility within 10 calendar days of the date on which the toilet facility becomes defective. The collection of information requires railroads to report the date on which the toilet facility becomes defective on the daily inspection report. FRA uses the information on the daily inspection report, including required notations concerning sanitary facilities, to enforce compliance with agency safety regulations. Daily inspection report forms must be made available to FRA upon request.

In sum, this collection of information assists FRA in fostering a safer rail environment by improving railroad employee working conditions so that the health of locomotive crews is safeguarded. Having healthy, alert train crews prevents short staffing due to sickness, overwork, and the temptation to exceed *Hours of Duty* legal requirements. This, in turn, further promotes the safe operation of trains.

3. Extent of automated information collection.

Over the years, FRA has highly encouraged and strongly endorsed the use of advanced information technology to assist respondents and to reduce burden, wherever possible. FRA continues that policy in the language of this rule. In keeping with the Government Paperwork Elimination Act (GPEA), FRA has included language in this final rule providing an electronic option for the Daily Inspection reports/records required under § 229.21. Additionally, FRA has placed its Daily Inspection Report (FRA Form No. 2), as well as many of its other safety forms, on its Website so that railroads/other respondents can easily download them, if this format is more convenient for them.

It should be noted that this collection of information entails minimal burden requirements. Two information collection requirements involve clearly marking defective toilet facilities as *unavailable for use*. This can be done either with a tag or with tape, and does not readily lend itself to advanced information technology. A third information collection requirement involves marking the date a toilet facility became defective on the daily inspection report.

4. Efforts to identify duplication.

The collection of information pertains to railroad workplace safety, specifically to the necessity for and the maintenance of sanitary locomotive cab facilities. Similar data are not available from any other source.

This information to our knowledge is not duplicated anywhere.

5. Efforts to minimize the burden on small businesses.

This collection of information will have a slight, if any, impact on small businesses for two reasons. First, information collection requirements are a bare minimum, and so will

require little time (if applicable). Second, small railroads engaged in operations other than switching or transfer train service are provided an exemption from the requirement to have a functioning toilet in any lead locomotive, if the railroad provides ready access to facilities at frequent intervals. Thus, these railroads do not have to worry about marking defective toilet facilities or making notations on the daily inspection report. Tourist, scenic, historic and excursion railroad operations, which are not propelled by steam power and which operate on the general system, are also exempt from the proposed toilet facility requirement as long as affected employees have ready access to railroad provided facilities outside of the locomotive cab.

6. Impact of less frequent collection of information.

If this information were not collected or collected less frequently, the health of locomotive crew members might be adversely impacted. This, in turn, might lead to the unsafe operation and movement of trains due to situations where locomotive crews became short staffed and overworked because of members' illnesses. Specifically, failure to collect this information would expose locomotive crews to inadequate toilet and washing facilities which could jeopardize their health. Such exposure to unsanitary conditions in locomotive cabs could give rise to parasitic infestation, bacteriologic and viral diseases including an array of diarrheal and viral diseases such as amebiasis, giardiasis, shigellosis, salmonellosis, and hepatitis, and other health problems, including urinary track infections, incontinence, and kidney damage.

Members of locomotive crews who become sick might have their functioning impaired or spread their illness to other crew-members. Sick crew members could adversely affect the safe operation of trains by being away from their posts at critical points in a trip, or by imposing added burdens on over-worked replacements or partially staffed locomotive crews. The net result could very well be an increase in the number of accidents/incidents, and corresponding casualties to crew-members and passengers.

Also, failure to collect this information would eliminate a valuable oversight tool which can be used by FRA to ensure that railroad carriers fulfill their obligation regarding the necessary maintenance and repair of locomotive toilet facilities. The collection of information advances the health of train crew members and seeks to further enhance the safe operation and movement of trains. Thus, the collection of information indirectly assists FRA in achieving its top goal, namely greater rail safety.

7. Special circumstances.

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

8. **Compliance with 5 CFR 1320.8.**

In accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. §§ 3501-3520), and its implementing regulations, 5 CFR Part 1320, FRA published a notice in the Federal Register on March 14, 2017, (See 82 FR 13714) soliciting public comments on these information collection requirements. FRA received **no** comments in response to this notice.

Background

The Locomotive Cab Sanitation Standards rule is the result of a collaborative effort by the affected parties. FRA sought the views of a wide array of individuals and groups from all the agency's major customer groups. Prior to the formulation of the proposed rule, FRA created the Rail Safety Advisory Committee (RSAC) in March 1996. RSAC is comprised of 48 individual representatives drawn from 27 member organizations. The membership of RSAC is representative of those interested in railroad issues, including those of railroad owners, manufacturers, labor groups, state government groups, suppliers, public interest associations, and other interested parties. Its sponsor is the Federal Railroad Administrator who recommends specific issues for it to address. RSAC provides a forum for consensual rulemaking and program development.

When FRA presented the subject of locomotive cab working conditions to RSAC, the agency stated the purpose of the task as follows: to safeguard the health of locomotive crews and to promote the safe operation of trains. RSAC accepted this task, formed a Locomotive Cab Working Conditions Working Group ("Working Group"), and designated this assignment Task No. 97-2. As to sanitation, RSAC asked the Working Group to "research comparable workplace requirements in an effort to develop minimum acceptable regulations, guidelines, or standards as appropriate for the locomotive cab environment."

RSAC is authorized to establish smaller "working groups" to research and initially address the issues recommended by the Federal Railroad Administrator and accepted by the Committee to resolve. Among those who participated in the Locomotive Cab Conditions Working Group ("Working Group") and in the development of this rule were railroad carriers, labor organizations, suppliers, manufacturers, and other interested parties. In addition to several FRA employees, the Working Group consisted of representatives of the following organizations:

American Association of State Highway & Transportation Officials (AASHTO)
American Public Transportation Association (APTA)
American Short Line and Regional Railroad Association (ASLRRA)
Association of American Railroads (AAR)
Brotherhood of Locomotive Engineers (BLE)

Brotherhood of Maintenance of Way Employees (BMWE) (Non-voting Member)
International Brotherhood of Electrical Workers (IBEW)
National Railroad Passenger Corporation (Amtrak)
Railway Progress Institute (RPI)
Sheet Metal Workers' International Association
Transport Workers Union of America (TWU)
United Transportation Union. (UTU)

The Working Group met regularly over a period of nearly two years to discuss locomotive cab sanitation in the railroad industry. The discussion covered all aspects of sanitation facilities in the locomotive cab, including toilet systems, washing facilities, potable water, ventilation, lighting, trash disposal, provisions for toilet paper and bottled water, servicing, and unique operations or characteristics that might require specialized regulatory treatment.

The Working Group reached consensus on a series of recommendations for a proposed sanitation standard, referred them to the full RSAC, and RSAC approved them December 7, 2000. On January 2, 2001, FRA published the NPRM, which incorporated many of the Working Group's suggestions. FRA held a public hearing on April 2, 2001, to gather comments from interested parties, and then reconvened the Working Group on August 22, 2001. The Working Group considered all comments received, and again reached consensus on recommendations for a final standard. These recommendations were presented to the full RSAC on December 10, 2001. RSAC voted by simple majority to forward the recommendations to FRA as the basis for a final sanitation standard. The views of the various participants were essential in formulating this rule.

9. Payments or gifts to respondents.

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

10. Assurance of confidentiality.

No assurances of confidentiality were made by the Federal Railroad Administration (FRA). Information collected is not of a private nature.

11. Justification for any questions of a sensitive nature.

There are no questions, or data of a sensitive nature associated with this collection of information.

12. Estimate of burden hours for information collected.

- *Note: According to FRA's current data, the estimated number of railroads operating*

*in the United States is 755. Since the estimate of the number of railroads (from 725 to 755) is the only item that has changed in this submission, this information collection request is for an **extension** to the previous OMB approval.*

Sanitation - 229.21- Daily Inspection

(a.) Except for MU locomotives, each locomotive in use shall be inspected at least once during each calendar day. A written report of the inspection must be made. This report must contain the name of the carrier; the initials and number of the locomotive; the place, date, and time of the inspection; a description of the non-complying conditions disclosed by the inspection; and the signature of the employee making the inspection. Except as provided in §§ 229.9, 229.137, and 229.139, any conditions that constitute non-compliance with any requirement of this part shall be repaired before the locomotive is used. Except with respect to conditions that do not comply with §§ 229.137 or 229.139, a notation must be made on the report indicating the nature of the repairs that have been made. Repairs made for conditions that do not comply with § 229.137 or § 229.139 may be noted on the report, or in electronic form. The person making the repairs must sign the report. The report must be filed and retained for at least 92 days in the office of the carrier at the terminal at which the locomotive is cared for. A record must be maintained on each locomotive showing the place, date, and time of the previous inspection.

The burden for this requirement is included under OMB No. 2130-0004 and under sections 229.137 and 229.139 below.

(b.) Each MU locomotive in use must be inspected at least once during each calendar day and a written report of the inspection must be made. This report may be part of a single master report covering an entire group of MU's. If any non-complying conditions are found, a separate, individual report must be made containing the name of the carrier; the initials and number of the locomotive; the place, date, and time of the inspection; the non-complying conditions found; and the signature of the inspector. Except as provided in §§ 229.9, 229.137, and 229.139, any conditions that constitute non-compliance with any requirement of this part must be repaired before the locomotive is used. Except with respect to conditions that do not comply with §§ 229.137 or 229.139, a notation must be made on the report indicating the nature of the repairs that have been made. Repairs made for conditions that do not comply with § 229.137 or § 229.139 may be noted on the report, or in electronic form. A notation must be made on the report indicating the nature of the repairs that have been made. The person making the repairs must sign the report. The report must be filed in the office of the carrier at the place where the inspection is made or at one central location and retained for at least 92 days.

Each carrier must designate qualified persons to make the inspections required by this section.

The burden for this requirement is included under OMB No. 2130-0004 and under

§§ 229.137 and 229.139 below.

Sanitation - 229.137 (d)

Defective, unsanitary toilet facility; use in trailing position. If the railroad determines during the daily inspection required by § 229.21 that a locomotive toilet facility is defective or is unsanitary, or both, the railroad carrier may use the locomotive in trailing position. If the railroad places the locomotive in trailing position, the railroad shall not haul employees in the unit unless the sanitation compartment is made sanitary prior to occupancy. If the toilet facility is defective and the unit becomes occupied, the railroad must clearly mark the defective toilet facility as unavailable for use.

During an average week, FRA estimates that approximately 900 locomotives will have an inoperable or unsanitary toilet, or both. Some will be placed in trailing position and some will be used in switching, transfer train service. FRA estimates that approximately 25 percent or 225 of these locomotives per week (or 11,700 annually) will be placed in trailing position, and will be marked in a manner (with red tag or tape) that notifies locomotive crew members that this facility is unavailable for use. FRA calculates that it will take approximately 90 seconds to place each notice on the sanitation compartment. Total annual burden for this requirement is 293 hours.

Respondents Universe:	755 railroads
Burden time per response:	90 seconds
Frequency of Response:	On occasion
Annual Number of responses:	11,700 notices/tags
First Year Burden:	293 hours

Calculation: 11,700 notices/tags x 90 sec. = 293 hours

Sanitation - 229.137(e)

Defective, sanitary toilet facility; use in switching, transfer train service. If the railroad determines during the daily inspection required by § 229.21 that a locomotive toilet facility is defective, but sanitary, the railroad may use the locomotive in switching service, as set forth in paragraph (b)(1)(ii) of this section, or in transfer train service, as set forth in (b)(1)(iii) of this section for a period not to exceed 10 days. In this instance, the railroad must clearly mark the defective toilet as unavailable for use. After expiration of the 10-day period, the locomotive must be repaired or used in the trailing position.

As previously mentioned, FRA estimates that approximately 900 locomotives will have an inoperable or unsanitary toilet, or both during an average week. Some will be placed in trailing position, and some will be used in switching, transfer train service. FRA estimates that approximately 17 percent or 100 of these locomotives per week (or 7,956 annually) will be used in switching, transfer train service, and will be marked in a manner (with red tag or tape) that notifies locomotive crew members that this facility is

unavailable for use. FRA calculates that it will take approximately 90 seconds to place each notice on the sanitation compartment. Total annual burden for this requirement is 199 hours.

Respondents Universe:	755 railroads
Burden time per response:	90 seconds
Frequency of Response:	On occasion
Annual Number of responses:	7,956 notices/tags
First Year Burden:	199 hours

Calculation: 7,956 notices/tags x 90 sec. = 199 hours

Servicing - 229.139(d)

Where the railroad uses a locomotive pursuant to § 229.137(e) in switching or transfer service with a defective toilet facility, such use must not exceed 10 calendar days from the date on which the defective toilet became defective. The date on which the toilet facility becomes defective must be entered on the daily inspection report.

Again, the burden for daily inspection reports is covered under OMB No. 2130-0004.

FRA estimates that approximately 1,800 times a week (or 93,600 times annually) a defective toilet facility will be discovered and a notation will be made on the daily inspection report regarding the date the toilet became defective. (*Note: Two-thirds or 1,200 of the discovered defective toilet facilities will be fixed promptly.*) FRA estimates that it will take approximately 30 seconds to make the notation on the daily inspection report. Total annual burden for this requirement is 780 hours.

Respondents Universe:	755 railroads
Burden time per response:	30 seconds
Frequency of Response:	On occasion
Annual Number of responses:	93,600 notations
First Year Burden:	780 hours

Calculation: 93,600 notations x 30 sec. = 780 hours

Total annual burden for this entire information collection is 1,272 hours (293 + 199 + 780).

13. Estimate of total annual costs to respondents.

Respondents will incur costs for tags/tape. FRA estimates the cost for each tag at \$.75, or a total of \$23,400 for 31,200 tags.

\$14,742	-	Tags/Tape - 19,656 @ 75 cents per tag.
<hr/>	-	Total Cost
\$14,742		

14. Estimate of Cost to Federal Government.

FEDERAL COST

\$10,600	-	FRA Inspectors (200 hours @\$53 per hour)
<hr/>	-	Total Cost (Included 40% overhead costs)
\$10,600		

15. Explanation of program changes and adjustments.

FRA is requesting an extension without change to the last approved submission. The total burden requested for this collection of information is *1,272 hours* and the total number of *responses* requested is *113,256*. There is **no** change in the number of burden hours and burden responses previously approved for this information collection. Thus, there are **no program changes** or **adjustments** at this time.

The current inventory for this information shows a total burden of *1,272 hours*, while this present submission exhibits a burden total of *1,272 hours*. [*Note: As mentioned in the summary on page 1 of this document, the only item that has changed is the estimate for the total number of railroads (from 725 to 755)*].

There is **no change** in cost to respondents.

16. Publication of results of data collection.

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

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

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

18. Exception to certification statement.

No exceptions are taken at this time.

Meeting Department of Transportation (DOT) Strategic Goals

This information collection supports the top DOT strategic goal, namely transportation safety. By obtaining the required information, FRA can ensure that locomotive crews are not exposed to unhealthy and unsafe working conditions, in particular inadequate and unhygienic toilet and washing facilities. Such conditions would expose locomotive crew members to a host of potentially disease-causing organisms which could jeopardize their health. Exposure to unsanitary conditions in locomotive cabs could give rise to parasitic infestation, bacteriologic and viral diseases, including an array of diarrheal and viral diseases such as amebiasis, giardiasis, shigellosis, salmonellosis, and hepatitis, and other health problems such as urinary track infections, incontinence, and kidney damage. Members of locomotive crews who become sick might have their functioning impaired, or might spread their illness to other crew-members. Sick crew members could adversely affect the safe operation of trains by causing affected individuals to be away from their posts at critical points in a trip, or by imposing added burdens on partially staffed original locomotive crews or on their over-worked replacements. The net result might very well be an increase in the number of accidents/incidents, as well as corresponding casualties to crew-members and passengers.

This collection of information provides a valuable oversight tool which can be used by FRA to ensure that railroad carriers fulfill their obligation regarding the necessary maintenance and repair of locomotive toilet facilities. The collection of information advances the health of train crew members, and seeks to further enhance the safe operation and movement of trains. Thus, it indirectly assists FRA in achieving greater rail safety. This information collection then serves both the main DOT goal, and the main FRA goal.

In this information collection and indeed 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.