

SUPPORTING JUSTIFICATION
49 CFR Part 210
New Locomotive Certification
(Noise Compliance Regulations)
RIN 2130-AC69; OMB No. 2130-0527

Summary of Submission

- This submission is a request for a revision of the previous approval granted by OMB on **December 11, 2018**, which now expires on **October 31, 2019**.
- FRA is publishing a deregulatory final rule titled Railroad Noise Emission Compliance Regulations in the Federal Register on **April 15, 2019**. See 84 FR 15142.
- The total number of burden **hours requested** for this information collection submission is **2,237 hours**.
- The total number of burden **previously approved** for this information collection was **2,767 hours**.
- Total burden for this revised information collection shows a decrease of **530 hours**.
- A **program change** decreased the burden by **395 hours**.
- An **adjustment** decreased the burden by **135 hours**.
- Total number of responses **requested** for this information collection submission is **749**.
- Total number of responses **previously approved** for this information collection submission was **1,584**.
- Total burden for this revised information collection shows a decrease of **835 responses**
- A **program change** decreased the number of **responses** by **790**.
- An **adjustment** decreased the number of **responses** by **45**.
- ****The answer to question number 12 itemizes the hourly burden associated with each requirement of this rule (See pp. 6-8).**

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

Pursuant to the Noise Control Act of 1972 (86 Stat. 1234, Pub. L. 92-574), the Environmental Protection Agency (EPA) promulgated standards in 40 CFR part 201 to limit the noise emitted by railroad locomotives, cars, and other equipment. In consultation with EPA, FRA developed regulations in 49 CFR part 210 to ensure compliance with the noise emission standards. See 41 FR 49183, 49183-84 (Nov. 8, 1976).

Part 210 requires railroads to certify that locomotives built after December 31, 1979, comply with locomotive noise emission standards. Under § 210.27(d), railroads must attach a permanent badge or tag in the cab of the locomotive displaying the results of the certification test (including the method, date, and location of the test, and the sound level reading obtained during the test).

In 2014, the Association of American Railroads (AAR) requested FRA eliminate the requirement to display the certification of compliance with locomotive noise emission regulations in the locomotive, in its comments on a separate proposed rule concerning stenciling requirements for window glazing. AAR Comment, November 25, 2014, Docket No. FRA-2012-0103. AAR noted that when FRA added § 210.27(d) in 1983, few locomotives had been tested and certified to comply with the noise emission standards. AAR contended that instead of testing individual locomotives for compliance with the noise emission standards, railroads currently test locomotives by model. Locomotives are built to the manufacturer's written specifications and those written specifications detail the technical features of a locomotive's particular model, including its certification under § 210.27. Documentation of that testing is maintained by the railroads as a usual and customary practice, and may be consulted if FRA has a doubt about whether a locomotive has been tested for compliance with locomotive noise emission regulations.

FRA declined to eliminate the display requirement for noise certification at that time because it was beyond the scope of the window-glazing rulemaking. However, FRA said it would consider the merits of AAR's request and evaluate how to address the issue in the future. 81 FR 6775, 6778 (Feb. 9, 2016).

FRA continually reviews and revises its regulations to ensure the regulatory burden on the rail industry is not excessive, clarify the application of existing requirements and remove requirements no longer necessary, and keep pace with emerging technology, changing operational realities, and safety concerns. In addition, on January 30, 2017, the President issued Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs), which requires agencies to identify at least two existing regulations to repeal when they propose a new significant regulation. Because the badge or tag requirement is unnecessary for FRA enforcement of the noise testing requirements, FRA determined repealing § 210.27(d) would reduce the burden on the rail industry without adversely impacting FRA's ability to ensure compliance with locomotive noise emission

regulations. Accordingly, on July 16, 2018, FRA published a Notice of Proposed Rulemaking (NPRM) proposing to eliminate the requirement for locomotives to display a permanent badge or tag certifying compliance with noise emission standards.

Accordingly, in this final rule, FRA is eliminating the requirement that certain locomotives display a badge or tag to demonstrate the railroad has certified the locomotives comply with noise emission standards. This final rule reduces economic burdens on the rail industry by removing this badge or tag requirement.

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

This information collection submission is a revision resulting from a deregulatory action. FRA is eliminating the requirement that locomotives display a permanent badge or tag to demonstrate they have been certified to comply with noise emission standards. A badge is typically a metal plate installed inside the cab of the locomotive. Most railroads will benefit from this final rule because a badge had been required in all locomotives. Any railroad purchasing new locomotives will not be required to display a badge, therefore saving it money. Also, badges will no longer need to be replaced when locomotives are overhauled. Although railroads no longer need to display a badge or tag in the locomotive cab, the locomotives still need to be tested and certified to comply with the noise emission standards, as required under section 210.27(a) through (c).

This information then is not maintained for the purpose of information collection per se. This information is used to ensure that new locomotives comply with the provisions of this Part (210) and with the noise limits for locomotives and rail cars set by the Environmental Protection Agency (EPA) under the Noise Control Act of 1972. Specifically, the information collected is used by both FRA and railroads to confirm that new locomotives are tested and meet certain minimum noise standards so as to reduce the impact of rail operations on communities nationwide, as well as on any other properties receiving locomotives and rail cars.

If this information were not required, there would be no readily apparent assurance that the noise emissions from new locomotives were within the prescribed decibel criteria.

3. Extent of automated information collection.

Over the years, FRA has highly encouraged and strongly endorsed the use of advanced information technology, wherever possible, to reduce burden on respondents. The amount and type of information required by this collection does not require elaborate information processing. For the convenience of railroads and other agency respondents, FRA has installed all of its safety forms on the agency website so that users can easily download them. Thus, railroads can easily access Form FRA F 6180.49A to record necessary noise emission data.

It should be noted that the burden for this information collection is fairly minimal. Also, new technology has already been developed to reduce noise emissions of new locomotives by the use of exhaust silencers. As a result, there has been no additional rework burden because of failures caused by the certification requirement.

4. Efforts to identify duplication.

This information is not duplicated anywhere. FRA is the sole Federal agency requiring noise emission certification for new locomotives.

Similar data are not available for any other source.

5. Efforts to minimize the burden on small businesses.

The Regulatory Flexibility Act (RFA) (94 Stat. 1164, Pub. L. 96-354), as amended, and codified as amended at 5 U.S.C. 601–612, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking), require agency review of proposed and final rules to assess their impact on “small entities” for purposes of the RFA. An agency must prepare a regulatory flexibility analysis unless it determines and certifies a rule is not expected to have a significant economic impact on a substantial number of small entities. FRA has determined this final rule will not have a significant economic impact on a substantial number of small entities.

Federal agencies may adopt their own size standards for small entities, in consultation with the Small Business Administration and in conjunction with public comment. FRA published a final statement of agency policy that formally designates “small entities” or “small businesses” as being railroads, contractors, and hazardous materials shippers with the revenue 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 49 CFR part 209, Appendix C. FRA is using this definition for this rulemaking.

FRA estimates there are 704 Class III railroads, most of which will be affected by this final rule. Most Class III railroads do not purchase new locomotives; rather, they purchase used locomotives from Class I and Class II railroads. Therefore, any badges required will have already been installed by the larger railroad. If a small railroad did purchase a new locomotive, however, they will save money because the badge will no longer be required. Small railroads will benefit since they will not need to replace badges as they age or when locomotives are overhauled. Therefore, any impact on small railroads by this final regulation will likely be small and entirely beneficial.

Pursuant to the RFA, 5 U.S.C. 601(b), the FRA Administrator hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

6. Impact of less frequent collection of information.

If this information were not collected or collected less frequently, communities around the nation might suffer from excessive locomotive and rail car noise and the deleterious effects on health and quality of life that such noise brings. Specifically, without this collection of information, the quality of life of the American people – today and in the future – will be harmed because certain minimum noise levels for new locomotives were not met. Minimum noise levels help preserve the residential character of communities throughout the nation. Among other things, highly desirable residential communities are valued for their quiet and natural environmental beauty (trees, parks, etc.). Excessively loud noise, especially from locomotives, can reduce the desirability and livability in communities exposed to constant train traffic. Most severely affected are those homes closest to railroad tracks. Excessive locomotive noise cannot only shatter the serenity of these residents, but also adversely affect their health. Requiring new locomotives to be certified as meeting certain minimum standards can aid in reducing – if not eliminating – harmful noise levels.

Also, without this collection of information, railroads would be unable to confirm that new locomotives, which they have purchased or are about to purchase, are tested and meet certain minimum noise standards. Moreover, without this collection of information, there would be no way to detect and correct noise defects in new locomotives before these trains pass through communities nationwide. Finally, without this collection of information, there would be no way that the Environmental Protection Agency (EPA) or the Federal Railroad Administration (FRA) could monitor whether or not new locomotives comply with existing laws and regulations concerning noise. The collection of information then provides a necessary and important monitoring tool for both FRA and the EPA.

7. Special circumstances.

All information collection requirements are in compliance with this section.

8. Compliance with 5 CFR 1320.8.

On July 16, 2018, FRA published a Notice of Proposed Rulemaking (NPRM) titled Railroad Noise Emission Compliance Regulations proposing to eliminate the requirement for locomotives to display a permanent badge or tag certifying compliance with noise emission standards. See 83 FR 32826.

The NPRM solicited written comments from the public under the Administrative Procedure Act (5 U.S.C. 553). By the close of the comment period on September 14, 2018, FRA received one comment, a joint comment from Association of American Railroads AAR) and the American Short Line and Regional Railroad Association (ASLRRRA).

In their joint comment, AAR and ASLRRA stated railroads have been advocating for the removal of the certification display requirement since 2011. AAR and ASLRRA explained the certification display requirement is no longer necessary because the overwhelming majority of locomotives have already been tested by the manufacturer on a model-by-model basis. Accordingly, AAR and ASLRRA supported the NPRM's proposal to eliminate the certification display requirement.

FRA received no public comments conveying a need to change the scope or substance of the proposed rule. Therefore, in this final rule, FRA eliminates the requirement for locomotives to display a permanent badge or tag certifying compliance with noise emission standards.

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.

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

11. Justification for any questions of a sensitive nature.

This information collection does not contain any questions of a personal or sensitive nature.

12. Estimate of burden hours for information collected.

According to the latest agency data, there are approximately four (4) manufacturers that produce locomotives now operating in the United States.

Per OMB's request, FRA is including the annual dollar cost equivalent of the requested burden hours below. FRA derives this estimate from the 2018 AAR publication Railroad Facts (p. 57), and uses the average annual wages for each employee group as follows: For Executives, Officials, and Staff Assistants, this cost amounts to \$116 per hour. For Professional/Administrative staff, this cost amounts to \$77 per hour. These cost estimates include 75% overhead.

Per the final rule regulatory impact analysis, FRA is using an hourly wage rate of \$54.01 for Maintenance of Equipment and Stores employees based on Surface Transportation Bureau (STB) data. This is a straight time rate.

§ 210.11 - Waivers

Any person may petition the Administrator for a waiver of compliance with any requirement in this Part. A waiver of compliance with any requirement prescribed in the Standards may not be granted under this provision. Each petition for a waiver under this section must be filed in the manner and contain information required in 49 CFR Part 211.

Over the past three (3) years, FRA has received zero (0) petitions for waivers under this provision. Consequently, there is no burden associated with this requirement.

§ 210.27 - New locomotive certification - requests

A railroad shall not operate a locomotive built after December 31, 1979, unless the locomotive has been certified to be in compliance with the Standards.

There are approximately four (4) manufacturers of locomotives. It is estimated that each could receive one (1) request per year for certification information from the railroads and/or FRA. It is further estimated that it will take the locomotive manufacturers approximately 30 minutes to send the required information. Total annual burden for this requirement is two (2) hours.

Respondent Universe:

4
locomotive
manufacturers

Burden time per response: 30 minutes

Frequency of Response:	On occasion
Annual number of Responses:	4 requests
Annual Burden:	2 hours
Annual Cost:	\$154 (\$77 x 2 hrs.)

Calculation: 4 request x 30 min. = 2 hours

§ 210.27(d) - New locomotive certification

Each new locomotive certified under this section must be identified by a permanent badge or tag attached in the cab of the locomotive near the location of the inspection form

FRA F 6180.49A. The badge or tag must state: (1) Whether a load cell or passby test was used; (2) The date and location of the test; and (3) The A-weighted sound level readings in decibels obtained during the passby test, or the readings obtained at idle throttle setting and maximum throttle setting during a load cell test.

*As part of its deregulatory efforts, FRA is **rescinding** this provision in this final rule. Consequently, there is no additional burden associated with it.*

§ 210.31 - Operation standards (stationary locomotives at 30 meters)

- A. The following data determined by any locomotive noise emission test conducted after December 31, 1976, must be recorded in the “Remarks” section on the reverse side of Form FRA F 6180.49A: (1) Location of test; (2) Type of test; (3) Date of test; and (4) The A-weighted sound level readings in decibels obtained during the passby test, or the readings obtained at idle throttle setting and maximum throttle setting during a load cell test.

Again, there are four (4) locomotive manufacturers. FRA estimates that there will be approximately 745 measurements per year. It is estimated that it will take approximately three (3) hours to conduct the required measurements, and record necessary information. Total annual burden for this requirement is 2,235 hours

Respondent Universe:

4
locomotive
manufacturers

Burden time per response: 3 hours

Frequency of Response:	On occasion
Annual number of Responses:	745 recorded measurements
Annual Burden:	2,235 hours
Annual Cost:	\$120,891 (\$54.09 x 2,235 hrs.)

Calculation: 745 recorded measurements x 3 hrs. = 2,235 hours

- B. The last entry recorded on Form FRA F 6180.49A as required in paragraph (b) of this section must be transcribed to a new Form FRA F 6180.49a when it is posted in the locomotive cab.

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

Total annual burden for this entire requirement is **2,235 hours**.

Total annual burden for this entire information collection is **2,237 hours** (2 + 2,235), and the total dollar equivalent cost amounts to **\$121,045**.

13. Estimate of total annual costs to respondents.

Based on its regulatory impact analysis (RIA) accompanying this final rule, FRA estimates there will be no cost burden to railroads/locomotive manufacturers associated with this final rule. The elimination of the requirement to install a badge in locomotives will save most railroads both the labor to install the badge, and the cost of the badge itself. Over a 20-year period, FRA finds **\$1,859,500** in cost savings will accrue through the elimination of this requirement, or a cost savings of **\$92,975** per year. FRA previously estimated a cost to railroads/manufacturers of \$24 per year. Consequently, the annual cost savings to railroads/manufacturers amounts to **\$92,951** over the next three years.

FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of this rule.

14. Estimate of Cost to Federal Government.

There is no cost to the Federal Government in connection with the certification of noise emissions or with this deregulatory action.

15. Explanation of program changes and adjustments.

The burden for this revised information collection has decreased by **530 hours** and **835 responses**. The change in burden is due to both **program changes** and **adjustments**, which are depicted in the two tables below.

TABLE OF PROGRAM CHANGES

49 CFR Part 228	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	Burden Hours (This Submission)	Difference (plus/minus)
210.27(d) -New	790 badges	0 badges	395 hours	0 hours	- 395 hours

Locomotive Certification – Identification of Certified Locomotive by Badge Plate (Rescinded Provision)	30 minutes	0 minutes			- 790 responses
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The **one program change** above decreased the burden by 395 hours and decreased the number of **responses** by **790**.

TABLE OF ADJUSTMENTS

49 CFR Part 228	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	Burden Hours (This Submission)	Difference (plus/minus)
210.31 – Recorded Measurements of Locomotive Noise Emission Test	790 forms/ records 3 hours	745 forms/ records 3 hours	2,370 hours	2,235 hours	- 135 hours - 45 responses

The **one adjustment** above decreased the burden by **135 hours** and decreased the number of **responses** by **45**

The current OMB inventory for this information collection shows a total burden of **2,767 hours** and **1,584 responses**, while the present submission reflects a total burden of **2,237 hours** and **749 responses**. Hence, there is a burden decrease of **530 hours** and **835 responses**.

Since FRA is effecting a **program change** by eliminating the requirement that certain locomotives display a badge or tag under section 210.27(d) in this final rule, the cost to respondents of \$24 previously accounted for in the last approved submission has now been reduced to zero (\$0).

*(Note: According to the regulatory impact analysis accompanying this final rule, there is actually a substantial cost savings to railroads. Over a 20-year period, railroads will experience a total of **\$1,859,500** in cost savings through the elimination of the badge requirement under section 210.27(d), or an annual cost savings of **\$92,975**).*

16. Publication of results of data collection.

There are no plans for publication involving these information collection requirements.

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 DOT strategic goal of human and natural environment. Specifically, it enhances the quality of life of the American people, today and in the future, by ensuring that new locomotives meet certain minimum noise levels. This helps preserve the residential character of communities throughout the nation. Among other things, highly desirable residential communities are valued for their quiet and natural environmental beauty (trees, parks, etc.). Excessively loud noise, especially from locomotives, can reduce the desirability and livability in communities exposed to constant train traffic. Most severely affected are those homes closest to railroad tracks. Excessive locomotive noise can not only shatter the serenity of these residents, but can also adversely affect their health. Requiring new locomotives to be certified as meeting certain minimum standards can aid in reducing – if not eliminating – toxic noise levels.

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

