

PASSENGER TRAIN EMERGENCY SYSTEMS
49 CFR PART 238
SUPPORTING JUSTIFICATION

1. EXPLAIN THE CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY. IDENTIFY ANY LEGAL OR ADMINISTRATIVE REQUIREMENTS THAT NECESSITATE THE COLLECTION. ATTACH A COPY OF THE APPROPRIATE SECTION OF EACH STATUTE AND REGULATION MANDATING OR AUTHORIZING THE COLLECTION OF INFORMATION.

In September of 1994, the Secretary of Transportation convened a meeting of representatives from all sectors of the rail industry with the goal of enhancing rail safety. As one of the initiatives arising from this Rail Safety Summit, the Secretary announced that DOT would begin developing safety standards for rail passenger equipment over a five-year period. In November of 1994, Congress adopted the Secretary's schedule for implementing rail passenger equipment safety regulations and included it in the Federal Railroad Safety Authorization Act of 1994 (the Act), Pub. L. No. 103-440, 108 Stat. 4619, 4623-4624 (November 2, 1994). Congress also authorized the Secretary to consult with various organizations involved in passenger train operations for purposes of prescribing and amending these regulations, as well as issuing orders pursuant to them. Section 215 of the Act is codified at 49 U.S.C. 20133. The Secretary of Transportation delegated these rulemaking responsibilities to the Federal Railroad Administrator, see 49 CFR 1.49(m).

On April 23, 2002, a BNSF freight train collided head on with a standing Metrolink passenger train near Placentia, CA, resulting in two fatalities and numerous injuries on the Metrolink train. Though not a contributing factor to the fatalities or injuries, the force of the collision blocked the rear end door and also blocked the rear stairway linking the upper and lower seating levels to the seating area on the intermediate level at the rear of the Metrolink cab car. Although passengers in that intermediate level seating area did exit through an emergency window, no windows on the intermediate level had been designated for rescue access, and consequently no instructions for emergency responders to gain access to the intermediate level through a window had been posted. Concerned with the extent of Federal requirements relating to rescuing passengers from the intermediate level of a multi-level passenger car, the NTSB issued Safety Recommendation R-03-21 to FRA on November 6, 2003. Safety Recommendation R-03-21 provides in full as follows:

Revise the language of 49 Code of Federal Regulations 238.113(a)(1) to reflect that appropriate exterior instructional signage describing the emergency removal procedure be required at emergency windows on all levels of a multiple-level passenger railcar.

In a February 20, 2004, letter to the National Transportation Safety Board (NTSB), FRA noted that its existing regulations do require that windows intended for emergency responder access on every level of a multi-level passenger car be clearly marked and that clear and understandable instructions for their removal be posted at or near the windows on the car's exterior. See 49 CFR 223.9(d)(2). FRA also sent a letter to passenger railroads to make this clear in the event there was any confusion about these requirements. Nevertheless, the NTSB's recommendation highlighted the fact that several related concerns were not specifically addressed in FRA's regulations. One of these concerns was specifying minimum numbers and locations of windows intended for emergency responder access to passenger cars, as 49 CFR 223.9(d)(2) addresses only marking and instruction requirements and does not provide any express requirement that any such rescue access windows exist. A second prominent issue concerned specifying minimum numbers and locations of emergency window exits on any level of a multi-level passenger car – not just main levels, as provided in 49 CFR 238.113(a)(1).

FRA informed the NTSB that it was reviewing and considering the necessity of making amendments to its safety standards for passenger trains through the RSAC process and that these and other passenger safety issues would be presented to the Working Group and the Task Force for their consideration. Therefore, FRA asked that the NTSB classify Safety Recommendation R-03-21 as "Open–Acceptable Response," pending the results of this effort. By letter dated June 2, 2004, the NTSB formally classified the recommendation as FRA requested.

The Task Force reviewed the NTSB's recommendation and the related issues FRA presented to it and agreed to address emergency window exits and rescue access windows on a broad basis, with the goal that windows for emergency egress and rescue access would be available on every level of a passenger car in the event that a stairway or interior door is compromised and access to the primary means of exit (doors) is blocked. To this end, the Task Force agreed to develop requirements for emergency window exits on non-main levels of multi-level passenger cars, and rescue access windows on all levels of these cars, thus addressing requirements for every seating level of a passenger car.

There is also a need for emergency communication systems. Traditionally, conductors and assistant conductors have been relied upon to relay information to passengers in both normal and emergency situations through face-to-face communication or by use of the PA system. However, with smaller crew sizes, passengers may not be able to communicate to the crew a medical emergency, report a fire on board the train, or provide notification of other safety issues as quickly as may be necessary. For instance, a passenger in the last car of a train needing to report an emergency situation could potentially have to walk the entire length of the train to communicate with the conductor (assuming the crew is composed of an engineer and only one conductor). Further, if the conductor became incapacitated, passengers would need to communicate directly with the engineer.

FRA also notes that the NTSB accident investigation report of the February 9, 1996 collision near Secaucus, N.J., that involved two New Jersey Transit Rail Operations (NJTR) trains and resulted in three fatalities and numerous injuries, touches on the importance of emergency communications to prevent panic and further injuries. According to the NTSB report of the accident investigation,

[a]lthough the train crews said that they went from car to car instructing passengers to remain seated, passengers said that they were not told about the severity of the situation and were concerned about a possible fire or being struck by an oncoming train. They therefore left the train and wandered around the tracks waiting for guidance, potentially posing a greater hazard because of the leaking fuel from train 1107.

No crewmember used the public address system to communicate with passengers. By using the public address system, all passengers would have received the same message in less time than it would have taken the NJT employees to walk from car to car.

The report also stated that

[i]nformation about the possibility of a fire or a collision with an oncoming train could have been provided to passengers over the public address system to address their concerns and prevent them from leaving the train. The Safety Board concludes that the lack of public announcements addressing the passengers' concerns caused them to act independently, evacuate the train, and wander along the tracks, thus potentially contributing to the dangerous conditions at the collision site. NTSB/RAR-97/01, at p. 27.

In 1998, APTA recognized the importance of emergency communications when it issued APTA SS-PS-001-98, "Standard for Passenger Railroad Emergency Communications," noting that the establishment and execution of communications among train crews, operations control personnel and train passengers are of the utmost importance under normal circumstances. According to the APTA standard, during emergency situations such communications take on added importance in the task of assuring the safety of all involved.

While the Passenger Equipment Safety Standards issued in 1999 by FRA contain requirements for two-way emergency communication systems for Tier II passenger equipment (trains operating at speeds exceeding 125 mph, but not exceeding 150 mph), there are no requirements that Tier I passenger cars be equipped with any emergency communication system.

FRA notes that, while there are many possible ways for an emergency situation to arise on a passenger train, an emergency system may be useful in many situations, regardless

of the origin of the emergency. In this regard, emergency communication systems provide the added benefit of conveying information about security threats and handling security concerns. According to the Transportation Security Administration (TSA), terrorists have considered attacks on subways and trains in the United States, and TSA has found that passenger railroads and subways in this country are particularly high-consequence targets in terms of potential loss of life and economic disruption. The Department of Homeland Security (DHS), including TSA, as well as DOT's FRA and Federal Transit Administration (FTA) have been actively engaged in responding to the threat of terrorism to our Nation's rail system. Numerous initiatives have been undertaken to secure the nation's rail system. Consistent with this response, the ability of passengers to timely report suspicious items and suspicious activity onboard passenger trains to appropriate personnel increases the likelihood of detecting a terrorist attack and thwarting it, or at least disrupting it and minimizing its consequences. This would also be facilitated by the ability of the train crew to timely communicate emergency information and instructions to passengers in response to a security threat.

FRA also notes that emergency system requirements for such features as emergency window exits and emergency lighting, which were not specifically developed to address security threats, may play a critical role in minimizing the consequences of a terrorist attack on board a passenger train. The safety and security functions that passenger train emergency systems may serve make them vital, and further enhancements and additions to emergency systems should be explored both to minimize the risk of a terrorist attack to passenger trains, to reduce the death, injuries, and other consequences of such an attack if it occurs, and to promote passenger train safety overall.

2. INDICATE HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED. EXCEPT FOR A NEW COLLECTION, INDICATE THE ACTUAL USE THE AGENCY HAS MADE OF THE INFORMATION RECEIVED FROM THE CURRENT COLLECTION.

This is a new collection of information. The proposed collection of information will be used FRA, railroad employees, rescue workers, and the public. Emergency responders will use the information to be able to quickly find and understand how to operate passenger cars emergency windows, doors, and roof hatches. The information stipulated in this collection is essential for them to be able to do their job successfully and save lives.

The proposed collection of information will also be used by train passengers to:

- (1) recognize and immediately report potential emergencies to crewmembers;
- (2) recognize hazards;
- (3) recognize and know how and when to operate appropriate emergency-related features and equipment, such as fire extinguishers, train doors, and emergency exits; and
- (4) recognize the potential special needs of fellow passengers during an emergency, such as children, the elderly, and disabled persons; and
- (5) know how to quickly and safely evacuate the train in the event of an emergency such as a

collision, derailment, explosion, fire, or some other unanticipated occurrence. Luminescent or lighted emergency exit markings will be used by passengers and emergency responders to determine where the closest and most accessible emergency exit route is located as well as how to operate the emergency exit mechanisms.

Windows and doors intended for emergency access by emergency responders for extrication of passengers will be marked with retroreflective material, so that the emergency responders can easily distinguish them from the less accessible doors and windows. Shining flashlights or other portable lighting on the marking or symbol selected by the railroad will make such symbols distinguishable in conditions of poor visibility. Records of the inspection, maintenance, and repairs concerning emergency window and door exits, and operational efficiency tests will be used by FRA inspectors to make sure the railroads are in compliance with the regulations.

3. **DESCRIBE WHETHER, AND TO WHAT EXTENT, THE COLLECTION OF INFORMATION INVOLVES THE USE OF AUTOMATED, ELECTRONIC, MECHANICAL, OR OTHER TECHNOLOGICAL COLLECTION TECHNIQUES OR OTHER FORMS OF INFORMATION TECHNOLOGY, E.G. PERMITTING ELECTRONIC SUBMISSION OF RESPONSES, AND THE BASIS FOR THE DECISION FOR ADOPTING THIS MEANS OF COLLECTION. ALSO DESCRIBE ANY CONSIDERATION OF USING INFORMATION TECHNOLOGY TO REDUCE BURDEN.**

FRA highly encourages and strongly endorses the use of advance information technology, wherever possible, to reduce burden on respondents. FRA realizes that requiring railroads to retain records of the operational (efficiency) tests and inspection, maintenance, and repair of emergency window and door exits in paper form would impose additional administrative and storage costs, and that computer storage of these documents would also enable railroads to immediately update any amendments to their operational testing and emergency window exit testing programs. Therefore, FRA has authorized railroads to retain their operation (efficiency) test records and their inspection, maintenance, and repair of emergency window and door exits by electronic record keeping, subject to the conditions set forth in the final rule.

It should be noted that the burden for this proposed collection of information is very minimal.

4. **DESCRIBE EFFORTS TO IDENTIFY DUPLICATION. SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSES DESCRIBED IN ITEM 2 ABOVE.**

One of the information collection requirements contained in this rule is a duplicate of one of the information collection requirements contained in FRA's Emergency Order 20.

This duplicative requirement is for the marking of emergency windows and doors. This paperwork package will only address and account for any additional burden hours that might be associated with this requirement.

5. IF THE COLLECTION OF INFORMATION IMPACTS SMALL BUSINESSES OR OTHER SMALL ENTITIES (ITEM 5 OF OMB FORM 83-I), DESCRIBE ANY METHODS USED TO MINIMIZE BURDEN.

The proposed rule will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act. FRA has stated in the Regulatory Impact Analysis accompanying this proposed rule that it will not have a significant impact on small entities.

Again, it should be noted that the burden for this collection is very minimal.

6. DESCRIBE THE CONSEQUENCE TO FEDERAL PROGRAM OR POLICY ACTIVITIES IF THE COLLECTION IS NOT CONDUCTED OR IS CONDUCTED LESS FREQUENTLY, AS WELL AS ANY TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN.

If this information were not collected or collected less frequently, railroad safety might be seriously jeopardized. Specifically, without this collection of information, the traveling public and train crews might suffer more serious injuries and possibly death if they could not quickly determine how to safely and quickly evacuate a train after an accident/incident occurred. If single-level and multi-level passenger cars, including sleeping cars, did not have the prescribed minimum of emergency window exits with legible and understandable operating instructions and if they were not readily accessible, clearly marked and well-maintained, railroad passengers might not know how and where to exit a passenger car in the event of an emergency such as a collision, derailment, fire, explosion, and other unexpected occurrences. Any delay in quickly exiting such a passenger car could potentially cause numerous injuries and fatalities to the American traveling public.

Also, without this proposed rule and associated collection of information, passenger cars might not have a sufficient number of clearly marked access windows for rescue workers to evacuate passengers in the event of a train emergency. In the event of an emergency, rescue workers must be able to find these passenger car access windows quickly and must be able to figure out how to open them once they do find them. Rescue workers need to be able to find where these rescue access windows are located on both single-level and multi-level passenger cars by means of clearly marked signs/placard that have understandable instructions and that are posted at or near each rescue access window in retroreflective material. Delays caused by being unable to find or quickly open access windows on the part of rescue workers could result in serious injury and death to substantial numbers of railroad passengers.

Without a means of emergency communication such as the prescribed intercom system that must be installed within new Tier I and all Tier II passenger cars, railroad passengers and train crews would not be able to talk to one another in the event of a train emergency. This could lead a lack of awareness on the part of the train crew in the event of serious problem or emergency and a corresponding lack of direction from the train crew to passengers on the proper actions they should take to ensure their safety. Passengers might panic or take the wrong action(s) if they were unable to receive instructions from the professional train crew members. Passengers need to know when and how they must quickly evacuate a passenger car, or when and what other type of action they must take to ensure their well-being. Train crews must have the capability to communicate urgent and necessary information to them quickly and clearly.

As with emergency access windows, so too must emergency roof access be provided by means of a hatch or structural weak point in the roof that is a clearly marked so it can be found and operated by rescue personnel in the event of an emergency. It is imperative that each emergency roof access location be conspicuously marked with retroreflective material of contrasting color and that legible and understandable instructions be posted at or near each location. In the event of an emergency that prevents passengers from quickly exiting a car through the access windows, the ability of rescue workers to open the roof access quickly and easily might be the difference between life and death for train passengers.

Finally, without the requirements in §§ 238.303, 238.305, and 238.307 relating to the exterior and interior calendar day mechanical inspections and periodic mechanical inspection, which call for the replacement and recording of all rescue access-related exterior markings, signage, and instructions that are not conspicuous, legible, or both and the repair and notification to the train crew of non-complying conditions regarding all end doors and side doors and a fully functioning public address and intercom system, there might be greater injuries and loss of life for railroad passengers because essential equipment such as doors, windows, and roof hatches did not operate properly and because instructions were not clear concerning how to quickly and safely evacuate the train. Without the required records in § 238.303, FRA would have no way of ensuring that non-complying conditions are promptly corrected, as well as no way to enforce compliance.

In sum, these proposed collection of information aids FRA in its primary mission, which is to promote and enhance rail safety throughout the United States.

7. EXPLAIN ANY SPECIAL CIRCUMSTANCES THAT WOULD CAUSE AN INFORMATION COLLECTION TO BE CONDUCTED IN A MANNER:

-REQUIRING RESPONDENTS TO REPORT INFORMATION TO THE AGENCY MORE OFTEN THAN QUARTERLY;

-REQUIRING RESPONDENTS TO PREPARE A WRITTEN RESPONSE TO A COLLECTION OF INFORMATION IN FEWER THAN 30 DAYS AFTER RECEIPT OF IT;

-REQUIRING RESPONDENTS TO SUBMIT MORE THAN AN ORIGINAL AND TWO COPIES OF ANY DOCUMENT;

-REQUIRING RESPONDENTS TO RETAIN RECORDS, OTHER THAN HEALTH, MEDICAL, GOVERNMENT CONTRACT, GRANT-IN-AID, OR TAX RECORDS FOR MORE THAN THREE YEARS;

-IN CONNECTION WITH A STATISTICAL SURVEY, THAT IS NOT DESIGNED TO PRODUCE VALID AND RELIABLE RESULTS THAT CAN BE GENERALIZED TO THE UNIVERSE OF STUDY;

-REQUIRING THE USE OF A STATISTICAL DATA CLASSIFICATION THAT HAS NOT BEEN REVIEWED AND APPROVED BY OMB;

-THAT INCLUDES A PLEDGE OF CONFIDENTIALITY THAT IS NOT SUPPORTED BY AUTHORITY ESTABLISHED IN STATUE OR REGULATION, THAT IS NOT SUPPORTED BY DISCLOSURE AND DATA SECURITY POLICIES THAT ARE CONSISTENT WITH THE PLEDGE, OR WHICH UNNECESSARILY IMPEDES SHARING OF DATA WITH OTHER AGENCIES FOR COMPATIBLE CONFIDENTIAL USE; OR

-REQUIRING RESPONDENTS TO SUBMIT PROPRIETARY TRADE SECRET, OR OTHER CONFIDENTIAL INFORMATION UNLESS THE AGENCY CAN DEMONSTRATE THAT IT HAS INSTITUTED PROCEDURES TO PROTECT THE INFORMATION'S CONFIDENTIALITY TO THE EXTENT PERMITTED BY LAW.

Proposed information collection requirements are in compliance with this section.

- 8. IF APPLICABLE, PROVIDE A COPY AND IDENTIFY THE DATE AND PAGE NUMBER OF PUBLICATION IN THE FEDERAL REGISTER OF THE AGENCY'S NOTICE, REQUIRED BY 5 CFR 1320.8(d), SOLICITING COMMENTS ON THE INFORMATION COLLECTION PRIOR TO SUBMISSION TO OMB. SUMMARIZE PUBLIC COMMENTS RECEIVED IN RESPONSE TO THAT NOTICE AND DESCRIBE ACTIONS TAKEN BY THE AGENCY IN RESPONSE TO THOSE COMMENTS. SPECIFICALLY ADDRESS COMMENTS RECEIVED ON COST AND HOUR BURDEN.**

DESCRIBE EFFORTS TO CONSULT WITH PERSONS OUTSIDE THE AGENCY TO OBTAIN THEIR VIEWS ON THE AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, THE CLARITY OF INSTRUCTIONS AND RECORD KEEPING, DISCLOSURE, OR REPORTING FORMAT (IF ANY), AND ON THE DATA ELEMENTS TO BE RECORDED, DISCLOSED, OR REPORTED.

CONSULTATION WITH REPRESENTATIVES OF THOSE FROM WHOM INFORMATION IS TO BE OBTAINED OR THOSE WHO MUST COMPILE RECORDS SHOULD OCCUR AT LEAST ONCE EVERY 3 YEARS--EVEN IF THE COLLECTION OF INFORMATION ACTIVITY IS THE SAME AS IN PRIOR PERIODS. THERE MAY BE CIRCUMSTANCES THAT MAY PRECLUDE CONSULTATION IN A SPECIFIC SITUATION. THESE CIRCUMSTANCES SHOULD BE EXPLAINED.

The NPRM on passenger train emergency systems is being published in the Federal Register on August 24, 2006 (*See 71 FR 50276*).

Background

On June 17, 1996, FRA published an advance notice of proposed rulemaking (ANPRM) concerning the establishment of comprehensive safety standards for railroad passenger equipment. See 61 FR 30672. The ANPRM provided background information on the need for such standards, offered preliminary ideas on approaching passenger safety issues, and presented questions on various passenger safety topics. Following consideration of comments received on the ANPRM and advice from FRA's Passenger Equipment Safety Standards Working Group, FRA published an NPRM on September 23, 1997, to establish comprehensive safety standards for railroad passenger equipment. See 62 FR 49728. In addition to requesting written comment on the NPRM, FRA also solicited oral comment at a public hearing held on November 21, 1997. FRA considered the comments received on the NPRM and prepared a final rule establishing comprehensive safety standards for passenger equipment, which was published on May 12, 1999. See 64 FR 25540.

After publication of the final rule, interested parties filed petitions seeking FRA's reconsideration of some of the requirements contained in the final rule. These petitions generally related to the following subject areas: structural design; fire safety; training; inspection, testing, and maintenance; and movement of defective equipment. On July 3, 2000, FRA issued a response to the petitions for reconsideration relating to the inspection, testing, and maintenance of passenger equipment, the movement of defective passenger equipment, and other miscellaneous provisions related to mechanical issues contained in the final rule. See 65 FR 41284. On April 23, 2002, FRA responded to all remaining issues raised in the petitions for reconsideration, with the exception of those

relating to fire safety. See 67 FR 19970. Finally, on June 25, 2002, FRA completed its response to the petitions for reconsideration by publishing a response to the petitions for reconsideration concerning the fire safety portion of the rule. See 67 FR 42892. The product of this rulemaking was codified primarily at 49 CFR part 238 and secondarily at 49 CFR parts 216, 223, 229, 231, and 232.

Meanwhile, another rulemaking to develop rules on passenger train emergency preparedness produced a final rule codified at 49 CFR part 239. See 63 FR 24629; May 4, 1998. The rule addresses passenger train emergencies of various kinds, including security situations, and requires the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains. The emergency preparedness plans must include elements such as communication, employee training and qualification, joint operations, tunnel safety, liaison with emergency responders, on-board emergency equipment, and passenger safety information. The rule requires each affected railroad to instruct its employees on the applicable provisions of its plan, and the plan adopted by each railroad is subject to formal review and approval by FRA. The rule also requires each railroad operating passenger train service to conduct emergency simulations to determine its capability to execute the emergency preparedness plan under the variety of emergency scenarios that could reasonably be expected to occur. In addition, among the rule's other requirements, the rule provides that (i) all emergency window exits and all windows intended for rescue access by emergency responders be marked and that instructions be provided for their use (see 49 CFR 223.9(d)); and (ii) all door exits intended for egress be lighted or marked, all door exits intended for rescue access by emergency responders be marked, and that instructions be provided for the use of both (see 49 CFR 239.107(a)).

Although FRA had completed the rulemaking, FRA had identified various issues for possible future rulemaking, including those to be addressed following the completion of additional research and the gathering of additional operating experience. FRA and interested industry members also began identifying other issues related to the new passenger equipment safety standards and the passenger train emergency preparedness regulations. FRA decided to address these issues with the assistance of FRA's Railroad Safety Advisory Committee.

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

American Association of Private Railroad Car Owners (AARPCO);
American Association of State Highway & Transportation Officials (AASHTO);
American Public Transportation Association (APTA);
American Short Line and Regional Railroad Association (ASLRRRA);

American Train Dispatchers Association (ATDA);
 Association of American Railroads (AAR);
 Association of Railway Museums (ARM);
 Association of State Rail Safety Managers (ASRSM);
 Brotherhood of Locomotive Engineers and Trainmen (BLET);
 Brotherhood of Maintenance of Way Employees Division (BMWED);
 Brotherhood of Railroad Signalmen (BRS);
 Federal Transit Administration (FTA)*;
 High Speed Ground Transportation Association (HSGTA);
 International Association of Machinists and Aerospace Workers;
 International Brotherhood of Electrical Workers (IBEW);
 Labor Council for Latin American Advancement (LCLAA)*;
 League of Railway Industry Women*;
 National Association of Railroad Passengers (NARP);
 National Association of Railway Business Women*;
 National Conference of Firemen & Oilers;
 National Railroad Construction and Maintenance Association;
 National Railroad Passenger Corporation (Amtrak);
 National Transportation Safety Board (NTSB)*;
 Railway Supply Institute (RSI);
 Safe Travel America (STA);
 Secretaria de Comunicaciones y Transporte*;
 Sheet Metal Workers International Association (SMWIA);
 Tourist Railway Association Inc.;
 Transport Canada*
 Transport Workers Union of America (TWU);
 Transportation Communications International Union/BRC (TCIU/BRC); and
 United Transportation Union (UTU).
 *Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent

judgment on whether the recommended rule achieves the agency’s regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. If the working group or RSAC is unable to reach consensus on recommendations for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

On May 20, 2003, FRA presented, and RSAC accepted, the task of reviewing existing passenger equipment safety needs and programs and recommending consideration of specific actions that could be useful in advancing the safety of rail passenger service. The RSAC established the Passenger Safety Working Group (Working Group) to handle this task and develop recommendations for the full RSAC to consider. Besides representatives of FRA, members of the Working Group included the following:

- ! Association of American Railroads (AAR) (including members from BNSF, CSX & UP)
- ! American Association of Private Railroad Car Owners (AAPRCO)
- ! American Association of State Highway & Transportation Officials (AASHTO)
- ! Amtrak;
- ! American Public Transportation Association (APTA) (including members from LIRR,
- ! Metro-North Railroad (MNR), Northeast Illinois Regional Commuter Railroad Corporation (Metra), Southeastern Pennsylvania Transportation Authority (SEPTA), Southern California Regional Rail Authority (Metrolink), Saint Gobian Sully NA, LDK Engineering, and Herzog Transit Services, Incorporated;

- ! Brotherhood of Locomotive Engineers and Trainmen (BLET)
- ! Brotherhood of Railroad Signalmen (BRS)
- ! Federal Transit Administration (FTA)
- ! High Speed Ground Transportation Association (HSGTA)
- ! International Brotherhood of Electrical Workers (IBEW)
- ! National Association of Railroad Passengers (NARP)
- ! Railway Supply Institute (RSI)
- ! SMWIA;
- ! Safe Travel America (STA)
- ! Transportation Communications International Union (TCIU/BRC)
- ! Transport Workers Union of America (TWU)
- ! United Transportation Union (UTU)

Staff from DOT’s John A. Volpe National Transportation Systems Center (Volpe Center) attended all of the meetings and contributed to the technical discussions. In addition, staff from the NTSB met with the Working Group when possible. The Working Group met on

the following dates at the following locations:

- ! September 9-10, 2003, in Washington, DC;
- ! November 6, 2003, in Philadelphia, PA;
- ! May 11, 2004, in Schaumburg, IL;
- ! October 26-27, 2004 in Linthicum/Baltimore, MD;
- ! March 9-10, 2005, in Ft. Lauderdale, FL; and
- ! September 7, 2005 in Chicago, IL

At the meetings in Ft. Lauderdale and Chicago, FRA met with representatives of Tri-County Commuter Rail and Metra, respectively, and toured their passenger equipment. The visits, which included demonstrations of emergency system features, were open to all members of the Working Group, and FRA believes they have added to the collective understanding of the Group in identifying and addressing passenger train emergency system issues.

Due to the variety of issues involved, at its November 2003 meeting the Working Group established four smaller task forces, with specific expertise, to develop recommendations on those issues within each group's particular area of expertise. Members of the task forces include various representatives from the respective organizations that were part of the larger Working Group. One of these task forces was assigned the job of identifying and developing issues and recommendations specifically related to the inspection, testing, and operation of passenger equipment as well as concerns related to the attachment of safety appliances on passenger equipment, and helped to develop an NPRM on these topics that was published on December 8, 2005. See 70 FR 73069. Another of these task forces, the Emergency Preparedness Task Force (Task Force), was established to identify issues and develop recommendations related to emergency systems, procedures, and equipment. Specifically, the Task Force was charged with evaluating APTA's standards for emergency systems for their incorporation by reference as Federal standards and requirements. These APTA standards are aimed at promoting the ability of passenger car occupants to reach, identify, and operate emergency exits under various conditions. The Task Force was also given the responsibility of addressing a number of other emergency system issues and to recommend any research necessary to facilitate their resolution. In addition to FRA, members of the Task Force included the following:

- ! Amtrak;
- ! APTA (including members from Bombardier, Ellcon National, Interfleet, Jacobs Civil Engineering, Jessup Manufacturing Company, Kawasaki Rail Car, Inc., LDK Engineering, LIRR, LTK, Luminator, Maryland Transit Administration, Massachusetts Bay Commuter Rail Corporation (MBCR), Metrolink, MNR, Northern Indiana Commuter Transit District (NICTD), SEPTA, San Diego Northern Commuter Railroad (Coaster), Permalight, PO's Ability USA, Inc., Prolink Transit Design Group (TDG), Transit Safety Management (TSM), Translite, and STV Inc.)

- ! Brotherhood of Locomotive Engineers and Trainmen (BLET)
- ! California Department of Transportation (Caltrans);
- ! National Association of Railroad Passengers (NARP)
- ! Railway Supply Institute (RSI) (including Globe Transportation Graphics)
- ! United Transportation Union (UTU)

While not voting members of the Task Force, representatives from the NTSB and from the Transportation Security Administration (TSA) of the U.S. Department of Homeland Security (DHS) attended certain of the meetings and contributed to the discussions of the Task Force. In addition, staff from the Volpe Center attended all of the meetings and contributed to the technical discussions through their comments and presentations and by setting up various lighting, marking, and signage demonstrations. The Task Force met on the following dates at the following locations:

- ! February 25-26, 2004, in Los Angeles, CA;
- ! April 14-15, 2004, in Cambridge, MA;
- ! July 7-8, 2004, in Washington, DC;
- ! September 13-14, 2004, in New York, NY;
- ! December 1-2, 2004, in San Diego, CA;
- ! February 16-17, 2005, in Philadelphia, PA;
- ! April 19-20, 2005, in Cambridge, MA;
- ! August 2-3, 2005, in Cambridge, MA; and
- ! December 13-14, 2005, in Baltimore, MD

At the meetings in Los Angeles, Cambridge, Washington, New York, San Diego, and Philadelphia, FRA met with representatives of Metrolink, MBCR, Amtrak, LIRR, Coaster, and SEPTA, respectively, and toured their passenger equipment. The visits were open to all members of the Task Force and included demonstration of emergency system features.

The Working Group reached full consensus on all the regulatory provisions contained in this proposal at its meetings in March and September 2005. After the March 2005 meeting, the Working Group presented its recommendations to the full RSAC for concurrence at its meeting in May 2005. All of the members of the full RSAC in attendance at its May 2005 meeting accepted the regulatory recommendations submitted by the Working Group. Thus, the Working Group's recommendations became the full RSAC's recommendations to FRA in this matter. In October 2005, the full RSAC also recommended that FRA adopt a further recommendation from the Working Group at its September 2005 meeting: that FRA grant additional time for compliance with the proposal on rescue access windows. After reviewing the full RSAC's recommendations, FRA agreed that the recommendations provided a sound basis for a proposed rule and adopted the recommendations with generally minor changes for purposes of clarity and formatting in the Federal Register.

9. EXPLAIN ANY DECISION TO PROVIDE A PAYMENT OR GIFT TO RESPONDENTS, OTHER THAN ENUMERATION OF CONTRACTORS OR GRANTEES.

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

10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS AND THE BASIS FOR THE ASSURANCE IN STATUTE, REGULATION, OR AGENCY POLICY.

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

11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE, SUCH AS SEXUAL BEHAVIOR AND ATTITUDES, RELIGIOUS BELIEFS, AND OTHER MATTERS THAT ARE COMMONLY CONSIDERED PRIVATE. THIS JUSTIFICATION SHOULD INCLUDE THE REASONS WHY THE AGENCY CONSIDERS THE QUESTIONS NECESSARY, THE SPECIFIC USES TO BE MADE OF THE INFORMATION, THE EXPLANATION TO BE GIVEN TO PERSONS FROM WHOM THE INFORMATION IS REQUESTED, AND ANY STEPS TO BE TAKEN TO OBTAIN THEIR CONSENT.

No information of this nature is collected.

12. PROVIDE ESTIMATES OF THE HOUR BURDEN OF THE COLLECTION OF INFORMATION. THE STATEMENT SHOULD:

-INDICATE THE NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, ANNUAL HOUR BURDEN, AND AN EXPLANATION OF HOW THE BURDEN WAS ESTIMATED. UNLESS DIRECTED TO DO SO, AGENCIES SHOULD NOT CONDUCT SPECIAL SURVEYS TO OBTAIN INFORMATION ON WHICH TO BASE HOUR BURDEN ESTIMATES. CONSULTATION WITH A SAMPLE (FEWER THAN 10) OF POTENTIAL RESPONDENTS IS DESIRABLE. IF THE HOUR BURDEN ON RESPONDENTS IS EXPECTED TO VARY WIDELY BECAUSE OF DIFFERENCES IN ACTIVITY, SIZE, OR COMPLEXITY, SHOW THE RANGE OF ESTIMATED HOUR BURDEN, AND EXPLAIN THE REASONS FOR THE VARIANCE. GENERALLY, ESTIMATES SHOULD NOT INCLUDE BURDEN HOUR FOR CUSTOMARY AND USUAL BUSINESS PRACTICES

-IF THIS REQUEST FOR APPROVAL COVERS MORE THAN ONE FORM, PROVIDE SEPARATE HOUR BURDEN ESTIMATES FOR EACH FORM AND AGGREGATE THE HOUR BURDENS IN ITEMS 13 OF OMB FORM 83-I.

-PROVIDE ESTIMATES OF ANNUALIZED COST TO RESPONDENTS FOR THE HOUR BURDENS FOR COLLECTIONS OF INFORMATION, IDENTIFYING AND USING APPROPRIATE WAGE RATE CATEGORIES. THE COST OF CONTRACTING OUT OR PAYING OUTSIDE PARTIES FOR INFORMATION COLLECTION ACTIVITIES SHOULD NOT BE INCLUDED HERE. INSTEAD, THIS COST SHOULD BE INCLUDED IN ITEM 14.

Based on the American Association of Railroads (AAR) 2004 publication Railroad Facts, FRA has used the following labor rates for railroad average hourly wages in its cost calculations: \$40 per hour for maintenance of equipment and stores workers. These rates incorporate an overhead cost of 60%.

§ 238.17 - Movement of passenger equipment with other than power brake defects.

(b) Limitations on movement of passenger equipment containing defects found at time of calendar day inspection. Except as provided in §§ 238.303(e)(15), (e)(17) and (e)(18), 238.305(c) and (d), and 238.307(c)(1), passenger equipment containing a condition not in conformity with this part at the time of its calendar day inspection may be moved from that location for repair if all of the following conditions are satisfied: (1) If the condition involves a running gear defect, the defective equipment is not used in passenger service and is moved in a non-revenue train; (2) If the condition involves a non-running gear defect, the defective equipment may be used in passenger service in a revenue train provided that a qualified maintenance person determines that it is safe to do so, and if so, the car is locked out and empty, and all movement restrictions are observed except that the car may be occupied by a member of the train crew or a railroad employee to the extent necessary to safely operate the train; (3) The requirements of paragraphs (c)(3) and (c)(4) of this section are met; and the (4) The special requirements of paragraph (e) of this section, if applicable, are met.

(c) Limitations on movement of passenger equipment that develops defects en route. Except as provided in §§ 238.303(e)(15), (e)(17) and (e)(18), 238.305(c), 238.307(c)(1), and 238.503(f), passenger equipment that develops en route to its destination, after its calendar day inspection is performed and before its next calendar day mechanical inspection is performed, any condition not in compliance with this part, other than a power brake defect, may be moved only if the railroad complies with all of the following requirements or, if applicable, the special requirements in paragraph (e) of this section:

(1) Prior to movement of equipment with a potential running gear defect, a

qualified maintenance person must determine if it is safe to move the equipment in passenger service and, if so, the maximum speed and other restrictions necessary for safely conducting the movement. If appropriate, these determinations may be made based on a description of the defective condition by a crewmember. If the determinations required by this paragraph are made by an off-site qualified maintenance person based on a description of the defective equipment by on-site personnel, then a qualified maintenance person must perform a physical inspection of the defective equipment, at the first location possible, to verify the description of the defect provided by the on-site personnel.

(2) Prior to movement of equipment with a non-running gear defect, a qualified person or a qualified maintenance person must determine if it is safe to move the equipment in passenger service and, if so, the maximum speed and other restrictions necessary for safely conducting the movement. If appropriate, these determinations may be made based upon a description of the defective condition provided by the on-site personnel.

(3) Prior to movement of any defective equipment, the qualified person or qualified maintenance person must notify the crewmember in charge of the movement of the defective equipment, who in turn must inform all other crew members of the presence of the defective condition(s) and the maximum speed and other restrictions determined under paragraph (c)(1) or (c)(2) of this section. The movement must be made in conformance with such restrictions.

(4) The railroad must maintain a record of all defects reported and their subsequent repair in the defect tracking system required in § 238.19. In addition, prior to movement of the defective equipment, a tag or card placed on both sides of the defective equipment, or an automated tracking system, must record the following information about the defective equipment:

- (i) The reporting mark and car or locomotive number;
- (ii) The name of the inspecting railroad;
- (iii) The name of the inspector, inspection location, and date;
- (iv) The nature of each defect;
- (v) Movement restrictions and safety restrictions, if any;
- (vi) The destination of the equipment where it will be repaired; and
- (vii) The signature, if possible, as well as the job title and location of the person making the determination required by this section.

(5) *Automated tracking system.* Automated tracking systems used to meet the tagging requirements contained in paragraph (c)(4) of this section may be reviewed and monitored by FRA at anytime to ensure the integrity of the system. FRA's Associate Administrator for Safety may prohibit or revoke a railroad's ability to utilize an automated tracking system in lieu of tagging if FRA finds that the automated tracking system is not properly secure; is inaccessible to FRA or a railroad's employees, or fails to adequately track or monitor the movement of defective equipment. Such a determination will be made in writing and will state the basis for such action.

The paperwork burden for § 238.17 requirements is covered under OMB No. 2130-0544. The paperwork burden for §§ 238.303(e)(15), (e)(17) and (e)(18) are covered below.

§ 238.113 - Emergency window exits

(a) Number and location. Except as provided in paragraph (a)(3) of this section, the following requirements apply on or after **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN FEDERAL REGISTER]**.

(1) Single-level passenger cars. Each single-level passenger car shall have a minimum of four emergency window exits. At least one emergency window exit shall be located in each side of each end (half) of the car, in a staggered configuration where practical.

(2) Multi-level passenger cars - main levels. Each main level in a multi-level passenger car is subject to the same requirements specified for single-level passenger cars in paragraph (a)(1) of this section.

(3) Multi-level passenger cars - other levels (auxiliary seating areas). (i) Except as provided below, on or after **[INSERT DATE 18 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]** any level other than a main level used for passenger seating in a multi-level passenger car, such as an intermediate level, must have a minimum of two emergency window exits in each seating area. The emergency window exits must be accessible to passengers in the seating area without requiring movement through an interior door or to another level of the car. At least one emergency window exit must be located in each side of the seating area. An emergency window exit may be located within an exterior side door in the passenger compartment if it is not practical to place the window exit in the side of the seating area.

(ii) Only one emergency window exit is required in a seating area in a passenger compartment if:

(A) It is not practical to place an emergency window exit in a side of the passenger compartment due to the need to provide accessible accommodations under the Americans with Disabilities Act of 1990; (B) There are no more than four (4) seats in the seating area; and (C) A suitable, alternate arrangement for emergency egress is provided.

(iii) For passenger cars ordered prior to **[INSERT DATE 14 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]**, and placed in service prior to **[INSERT DATE 38 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]**, only one emergency window exit is required in a seating area in a passenger compartment if it is not practicable to place a window exit in a side of the passenger compartment (due to the presence of such structures as a bathroom, electrical locker, or kitchen) and there are no more than eight (8) seats in the seating area.

(4) Cars with sleeping compartments or similar private compartments. (a) Each level of a passenger car with a sleeping compartment or a similar private compartment intended to be occupied by passengers or train crewmembers shall have at least one emergency window exit in each such compartment. For purposes of this paragraph (a)(4), a bathroom, kitchen, or locomotive cab is not considered a “compartment.”

(b) Ease of operability. On or after November 8, 1999, each emergency window exit shall be designed to permit rapid and easy removal from the inside of the car during an emergency situation without requiring the use of a tool or other implement.

(c) Dimensions. Each emergency window exit in a passenger car, including a sleeping car, ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, shall have an unobstructed opening with minimum dimensions of 26 inches horizontally by 24 inches vertically. An emergency window exit located within an exterior side door, in accordance with the requirements of paragraph (a)(3)(i) of this section, may have an unobstructed opening with minimum dimensions of 24 inches horizontally by 26 inches vertically. A seat back is not an obstruction if it can be moved away from the window opening without requiring the use of a tool or other implement.

(d) Marking and instructions. Each emergency window exit must be conspicuously and legibly marked with luminescent material on the inside of each car to facilitate passenger egress. Legible and understandable operating instructions, including instructions for removing the window, must be posted at or near each such window exit. If window removal may be hindered by the presence of a seat back, headrest, luggage rack, or other fixture, the instructions must state the method for allowing rapid and easy removal of the window, taking into account the fixture(s), and this portion of the instructions may be in written or pictorial format.

FRA estimates that approximately 143 passenger cars each year will be affected by the above requirements. FRA estimates that 45 of these cars will have two windows per car and will have pull handles that will take approximately one (1) hour to mark. FRA also

estimates that 90 of these cars will have four windows per car, and will take approximately 90 minutes to mark. Additionally, FRA estimates that eight cars (8) will have four windows per car and will need to have pull handles installed and marked, and that this will take approximately two (2) hours to complete. Thus, a total of approximately 482 windows will be needed to be marked as stipulated above. Total annual burden for this requirement is 694 hours.

Respondent Universe:

22 railroads

Burden time per response:

60
minute
s/90
minute
s/120
minute
s

Frequency of Response:

Annually

Annual number of Responses:	482 window markings
Annual Burden:	694 hours
Annual Cost:	\$27,760

Calculation: 482 window markings x see above = 694 hours
694 hrs. x \$40 = \$27,760

§ 238.114 - Rescue access windows

(a) Number and location. Except as provided in paragraph (a)(1)(ii) of this section, the following requirements apply on or after **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]**—

(1) Single-level passenger cars. Except as provided in paragraph (a)(1) and in paragraphs (a)(1)(i), (a)(1) (ii), and (a)(5) of this section, each single-level passenger car must have a minimum of two rescue access windows. At least one rescue access window must be located in each side of the car entirely within 15 feet of the car’s centerline, or entirely within 7 ½ feet of the centerline if the car does not exceed 45 feet in length. If the seating level is obstructed by an interior door or otherwise partitioned into separate or auxiliary seating areas, each separate seating area must have a minimum of one rescue access

window in each side of the seating area, located as near to the center of the car as practical.

(i) For a single-level passenger car ordered prior to **[INSERT DATE 14 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]**, and placed in service prior to **[INSERT DATE 38 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]**, rescue access windows may be located farther than the above prescribed distances from the car's centerline, or located within exterior side doors, or both, if at least one rescue access window is located within each side of each end (half) of the same passenger compartment.

(ii) For a single-level passenger car ordered prior to September 8, 2000, and placed in service prior to September 9, 2002, the requirements of paragraph (a)(1) apply on or after **[INSERT DATE 18 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]** if the car has at least two exterior side doors (or door leaves), each with a manual override device, and such doors (or door leaves) are located one on each side of the car, in opposite ends (halves) of the car (i.e., in diagonally opposite quadrants). The manual override device must be:

(A) Capable of releasing the door (or door leaf) to permit it to be opened without power from outside the car;

(B) Located adjacent to the door (or door leaf) which it controls; and

(C) Designed and maintained so that a person may access the override device from outside the car without requiring the use of a tool or other implement.

(2) Multi-level passenger cars - main levels. Each main level in a multi-level passenger car is subject to the same requirements specified for single-level passenger cars in paragraph (a)(1) of this section, with the exception of paragraph (a)(1)(ii), which is not applicable.

(3) Multi-level passenger cars - other levels (auxiliary seating areas)

(i) Except as provided below, any other level than a main level used for passenger seating in a multi-level passenger car, such as an intermediate level, must have a minimum of two rescue access windows in each seating area. The rescue access windows must permit emergency responders to gain access to passengers in the seating area without requiring movement through an interior door or to another level of the car. At least one rescue access window must be located in each side of the seating area. A rescue access window may be located within an exterior side door in the passenger compartment if it is not practical to place the access window in the side of the seating area.

(ii) Only one rescue access window is required in a seating area in a passenger compartment if:

(A) It is not practical to place a rescue access window in a side of the passenger compartment due to the need to provide accessible accommodations under the Americans with Disabilities Act of 1990;

(B) There are no more than four (4) seats in the seating area; and

(C) A suitable, alternate arrangement for rescue access is provided.

(iii) For passenger cars ordered prior to **[INSERT DATE INSERT DATE 14 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]**, and placed in service prior to **[INSERT DATE 38 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]**, only one rescue access window is required in a seating area in a passenger compartment if it is not practicable to place an access window in a side of the passenger compartment (due to the presence of such structures as a bathroom, electrical locker, or kitchen) and there are no more than eight (8) seats in the seating area.

(4) Cars with sleeping compartments or similar private compartments. Each level of a passenger car with a sleeping compartment or a similar private compartment intended to be occupied by a passenger or train crewmember must have a minimum of one rescue access window in each such compartment. For purposes of this paragraph, a bathroom, kitchen, or locomotive cab is not considered a “compartment.”

(5) Dual-function windows. If, on any level of a passenger car, the emergency window exits installed to meet the minimum requirements of § 238.113 of this part are also intended to function as rescue access windows, the minimum requirements for the number and location of rescue access windows in paragraphs (a)(1) through (a)(4) of this section are also met for that level.

(b) Ease of operability. On or after **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]**, each rescue access window must be capable of being removed without undue delay by an emergency responder using either: (1) A provided external mechanism; or (2) Tools or implements that are commonly available to the responder in a passenger train emergency.

(c) Dimensions. Each rescue access window in a passenger car, including a sleeping car, ordered on or after **[INSERT DATE 14 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]**, or placed in service for the first time on or after **[INSERT DATE 38 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]**, shall have an unobstructed opening with minimum dimensions of 26 inches horizontally by 24 inches vertically. A rescue access window located within an exterior side door, in accordance with the requirements of paragraph (a)(3)(i) of this section, may have an unobstructed opening with minimum dimensions of 24 inches

horizontally by 26 inches vertically. A seat back is not an obstruction if it can be moved away from the window opening without requiring the use of a tool or other implement.

(d) Marking and instructions. Each rescue access window must be marked with retro-reflective material. A unique and easily recognizable symbol or other conspicuous marking must also be used to identify each such window. Legible and understandable window-access instructions, including instructions for removing the window, must be posted at or near each rescue access window.

FRA estimates that 482 passenger cars, having two windows per car, will be affected by the above requirements and, as a result, approximately 964 windows will be needed to be marked as stipulated above. It is estimated that it will take car manufacturers/railroads approximately 45 minutes to properly mark each window. Total annual burden for this requirement is 723 hours.

Respondent Universe:

22 railroads

Burden time per response:

45
minute
s

Frequency of Response:

Annually

Annual number of Responses: 964 access window markings

Annual Burden: 723 hours

Annual Cost: \$0 (Included in RIA)

Calculation: 964 access window markings x 45 min. = 723 hours
\$0 (Included in RIA)

§ 238.117 - Emergency Communications.

Intercom system

New Tier I and all Tier II passenger cars. Each Tier I passenger car ordered on or after **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]**, or placed in service for the first time on or after **[INSERT DATE 26 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]**, and all Tier II passenger cars must be equipped with an intercom system that provides a means for passengers and crewmembers to communicate with each other in an emergency situation. Except as further specified, at least one intercom that is accessible to passengers without requiring the use of a tool or other implement shall be located in each end (half) of each car. If any passenger car does not exceed 45 feet in length, or if a Tier II passenger car was ordered prior to May 12, 1999, only one such intercom is required. The intercom system may be part of the same system as the PA system.

Marking and instructions. The following requirements to apply to each Tier I passenger car on or after **[INSERT DATE 26 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER]** and to all Tier II passenger cars: (i) The location of each intercom intended for passenger use must be clearly marked with luminescent material; and (ii) Legible and understandable operating instructions must be posted at or near each such intercom.

FRA estimates that approximately 58 passenger cars, having two locations per car, will need to be marked each year by the above requirements. It is estimated that it will railroad personnel approximately five (5) minutes to properly mark each intercom location. Total annual burden for this requirement is 10 hours.

Respondent Universe:

22 railroads

Burden time per response:

5
minute
s

Frequency of Response:

Annually

Annual number of Responses:

116 marked intercom locations

Annual Burden:

10 hours

Annual Cost:

\$400

Calculation: 116 marked intercom locations x 5 min. = 10 hours
10 hrs. x \$40 = \$400

§ 238.118 - Emergency roof access

Except as provided in § 238.441–

(a) Number and dimensions. Each passenger car ordered on or after [INSERT DATE 14 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], or placed in service for the first time on or after [INSERT DATE 38 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], must have a minimum of two emergency roof access locations, each with a minimum opening of 26 inches longitudinally (*i.e.*, parallel to the longitudinal axis of the car) by 24 inches laterally.

(b) Means of access. Emergency roof access must be provided by means of a hatch, or a clearly marked structural weak point in the roof for access by properly equipped emergency response personnel.

(c) Location. Emergency roof access locations must be situated as practical so that when a car is on its side: (1) One emergency access location is wholly within each half of the roof as divided top from bottom; and (2) One emergency access location is wholly within each half of the roof as divided left from right.

(d) Obstructions. The ceiling space below each emergency roof access location must be free from wire, cabling, conduit, and piping. This space must also be free of any rigid secondary structure (*e.g.*, a diffuser or diffuser support, lighting back fixture, mounted PA equipment, luggage rack) where practicable. If emergency roof access is provided by means of a hatch, it must be possible to push interior panels or liners out of their retention devices and into the interior of the vehicle after removing the hatch. If emergency roof access is provided by means of a structural weak point, it must be permissible to cut through interior panels, liners, or other non-rigid secondary structures after making the cutout hole in the roof, provided any such additional cutting necessary to access the interior of the vehicle permits a minimum opening of the dimensions specified in paragraph (a) to be maintained.

(e) Marking and instructions. Each emergency roof access location must be clearly marked with retro-reflective material of contrasting color. As further specified, legible and understandable instructions must be posted at or near each such location. If emergency roof access is provided by means of a structural weak point: (1) The retro-reflective material must conspicuously mark the line along which the roof skin shall be cut; and (2) A sign plate with a retro-reflective border must also state:
CAUTION - DO NOT USE FLAME CUTTING DEVICES.

**CAUTION - WARN PASSENGERS BEFORE CUTTING.
 CUT ALONG DASHED LINE TO GAIN ACCESS.
 ROOF CONSTRUCTION – [STATE RELEVANT DETAILS]**

FRA estimates that approximately 117 passenger cars that have two emergency access locations per car will be affected each year by the above requirements. Thus, 234 emergency roof access locations will need to be marked. It is estimated that it will railroad personnel approximately 30 minutes to properly mark each emergency roof access location. Total annual burden for this requirement is 117 hours.

Respondent Universe: 22 railroads

Burden time per response: 30 minutes

Frequency of Response: Annually

Annual number of Responses: 234 marked emergency roof access locations
 Annual Burden: 117 hours
 Annual Cost: \$4,680

Calculation: 234 marked emergency roof access locations x 30 min. = 117 hours
 117 hrs. x \$40 = \$4,680

§ 238.303 - Exterior calendar day mechanical inspection of passenger equipment

(e) As part of the exterior calendar day mechanical inspection, the railroad must verify conformity with the following conditions, and nonconformity with any such condition renders the passenger car or unpowered vehicle used in a passenger train defective whenever discovered in service.

(18) All rescue-access related exterior markings, signage, and instructions required by § 238.114 and § 239.107(a) of this chapter must be in place and, as applicable, conspicuous, legible, or both.

(i) Except as provided in paragraphs (e)(18)(ii) and (iii) of this section, passenger equipment that has any required rescue-access related exterior marking, signage, or instructions that is missing, illegible, or inconspicuous may remain in passenger service until no later than the equipment's fourth exterior calendar day mechanical inspection or next periodic mechanical inspection required under § 238.307, whichever occurs first, after the non-complying condition is discovered, where it shall be repaired or removed from service.

FRA estimates that approximately 150 passenger cars will be affected by the above requirement each year and that each car will have approximately one (1) location where markings/signage/instructions that are missing, illegible, or inconspicuous will be need to be replaced under the above requirement. It is estimated that it will take railroads approximately 20 minutes to properly replace each required marking/sign/instructions. Total annual burden for this requirement is 50 hours.

Respondent Universe:

22 railroads

Burden time per response:

20
minute
s

Frequency of Response:

Annually

Annual number of Responses:	150 replacement required markings
Annual Burden:	50 hours
Annual Cost:	\$2,000

Calculation: 150 replacement required markings x 20 min. = 50 hours
50 hrs. x \$40 = \$2,000

(ii) A passenger car having more than 50 percent of the windows on a side of a level of the car designated and properly marked for rescue access that has any required rescue access-related exterior marking, signage, or instructions that is missing, illegible, or inconspicuous on any of the other windows on that side and level of the car may remain

in passenger service until no later than the car's next periodic mechanical inspection required under § 238.307, where it shall be repaired or removed from service.

The burden for this requirement is included under that of § 238.303(i) above. Consequently, there is no additional burden associated with this requirement.

(iii) A passenger car that is a sleeping car that has more than two consecutive windows with any required rescue access-related exterior marking, signage, or instruction at or near their locations that is missing, illegible, or inconspicuous may remain in passenger service until no later than the car's next periodic mechanical inspection required under § 238.307, where it shall be repaired or removed from service.

The burden for this requirement is included under that of § 238.303(i) above. Consequently, there is no additional burden associated with this requirement.

(iv) A record shall be maintained of any non-complying marking, signage, or instruction described in paragraphs (e)(18)(i) through (iii) of this section that contains the date and time that the defective condition was first discovered. This record must be retained until all necessary repairs are completed.

Based on the above, FRA estimates that 150 non-compliance records will be kept annually under the above requirement. It is estimated that it will take approximately two (2) minutes to record and maintain each record. Total annual burden for this requirement is five (5) hours.

Respondent Universe: 22 railroads
Burden time per response:

2
minute
s

Frequency of Response: Annually

Annual number of Responses: 150 non-compliance records
Annual Burden: 5 hours
Annual Cost: \$200

Calculation: 150 non-compliance records x 2 min. = 5 hours
5 hrs. x \$40 = \$200

Total annual burden for this entire requirement is 55 hours (50 + 5).

§ 238.305 - Interior calendar day mechanical inspection of passenger cars.

(c) As part of the interior calendar day interior mechanical inspection, the railroad must verify conformity with the following conditions, and nonconformity with any such condition renders the car defective whenever discovered in service, except as provided in paragraphs (c)(5) through (c)(12), and paragraph (d) of this section.

(10) All end doors and side doors operate safely and as intended. A non-complying car may continue in passenger service pursuant to paragraph (d) of this section if at least one operative and accessible door is available on each side of the car; the train crew is provided written notification of the non-complying condition; and a notice is prominently displayed directly on the defective door indicating that the door is defective.

FRA estimates that approximately 260 passenger cars per year will be affected by the above requirement and that each car will have approximately one (1) non-complying condition. Consequently, it is estimated that 260 written notifications and 260 notices will be completed. It is estimated that each written notification and each notice will take approximately one (1) minute to complete. Total annual burden for this requirement is nine (9) hours.

Respondent Universe:

22 railroads

Burden time per response:

1
minute

Frequency of Response:

Annually

Annual number of Responses: 260 written notifications + 260 notices

Annual Burden: 9 hours

Annual Cost: \$360

Calculation: 260 written notifications x 1 min. + 260 notices x 1 min. = 9 hours
9 hrs. x \$40 = \$360

(12) On passenger cars so equipped, public address and intercom systems must be operative and function as intended. A passenger car with an inoperative or non-functioning public address or intercom system may remain in passenger service until no later than the car's fourth interior calendar day mechanical inspection or next periodic mechanical inspection required under § 238.307, whichever occurs first, or for a passenger car used in long-distance intercity train service until the eighth interior calendar day mechanical inspection or next periodic mechanical inspection required under § 238.307, whichever occurs first, after the non-complying condition is discovered, where it must be repaired or removed from service; provided, the train crew is given written notification of the non-complying condition, and all of the requirements contained in paragraph (d)(3) of this section are met.

FRA estimates that approximately 300 passenger cars having a non-complying condition will be found each year under the above requirement and, as a result, approximately 260 written notifications will be provided to train crews about the non-complying condition. It is estimated that it will take approximately one (1) minute to complete each written notification. Total annual burden for this requirement is five (5) hours.

Respondent Universe:

22 railroads

Burden time per response:

1
minute

Frequency of Response:

Annually

Annual number of Responses:

300 written notifications

Annual Burden:

5 hours

Annual Cost:

\$200

Calculation: 300 written notifications x 1 min. = 5 hours
5 hrs. x \$40 = \$200

Total annual burden for this entire requirement is 14 hours (9 + 5).

§ 238.307 - Periodic mechanical inspection of passenger cars and unpowered vehicles used in passenger trains.

(c) The periodic mechanical inspection must specifically include the following interior and exterior mechanical components, which must be inspected not less frequently than every 184 days. At a minimum, this inspection shall determine that:

* * * * *

(5) With regard to the following emergency systems:

(i) Emergency lighting systems required under § 238.115 are in place and operational; and

(ii) [Reserved]

(iii) Emergency roof access markings and instructions required under § 238.118 (e) are in place and, as applicable, conspicuous, or legible, or both.

FRA estimates that approximately 260 passenger cars will be affected by the above requirement each year and that each car will have approximately one (1) location where markings/signage/instructions that are missing, illegible, or inconspicuous will be need to be replaced under the above requirement. It is estimated that it will take railroads approximately 20 minutes to properly replace each required marking/sign/instructions. Total annual burden for this requirement is 87 hours.

Respondent Universe:

22 railroads

Burden time per response:

20
minute
s

Frequency of Response:

Annually

Annual number of Responses: 260 replacement required markings

Annual Burden: 87 hours

Annual Cost: \$3,480

Calculation: 260 replacement required markings x 20 min. = 87 hours
87 hrs. x \$40 = \$3,480

§ 238.441 - Emergency roof access

Each passenger car ordered prior to [INSERT DATE 14 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER] and placed in service for the first time prior to [INSERT DATE 38 MONTHS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], and each power car must have a minimum of one roof hatch emergency access location with a minimum opening of 26 inches by 24 inches or at least one structural weak point in the roof having a minimum opening of the same dimensions to provide access for properly equipped emergency response personnel. Each emergency roof access location must be conspicuously marked, and legible and understandable operating instructions must be posted at or near each such location.

FRA believes that railroads will not be increasing their fleet of passenger cars. Also, the burden for this requirement is already included under that of § 238.118 (e) above. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire information collection submission is 1,700 hours.

13. PROVIDE AN ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS OR RECORD KEEPERS RESULTING FROM THE COLLECTION OF INFORMATION. (DO NOT INCLUDE THE COSTS OF ANY HOUR BURDEN SHOWN IN ITEMS 12 AND 14).

-THE COST ESTIMATES SHOULD BE SPLIT INTO TWO COMPONENTS: (A) A TOTAL CAPITAL AND START-UP COST COMPONENT (ANNUALIZED OVER IT EXPECTED USEFUL LIFE); AND (B) A TOTAL OPERATION AND MAINTENANCE AND PURCHASE OF SERVICES COMPONENT. THE ESTIMATES SHOULD TAKE INTO ACCOUNT COSTS ASSOCIATED WITH GENERATING, MAINTAINING, AND DISCLOSING OR PROVIDING THE INFORMATION. INCLUDE DESCRIPTIONS OF METHODS USED TO ESTIMATE MAJOR COSTS FACTORS INCLUDING SYSTEM AND TECHNOLOGY ACQUISITION, EXPECTED USEFUL LIFE OF CAPITAL EQUIPMENT, THE DISCOUNT RATE(S), AND THE TIME PERIOD OVER WHICH COSTS WILL BE INCURRED. CAPITAL AND START-UP COSTS INCLUDE, AMONG OTHER ITEMS, PREPARATIONS FOR COLLECTING INFORMATION SUCH AS PURCHASING COMPUTERS AND SOFTWARE; MONITORING, SAMPLING, DRILLING AND TESTING EQUIPMENT; AND RECORD STORAGE FACILITIES.

-IF COST ESTIMATES ARE EXPECTED TO VARY WIDELY, AGENCIES SHOULD PRESENT RANGES OF COST BURDENS AND

EXPLAIN THE REASONS FOR THE VARIANCE. THE COST OF PURCHASING OR CONTRACTING OUT INFORMATION COLLECTION SERVICES SHOULD BE A PART OF THIS COST BURDEN ESTIMATE. IN DEVELOPING COST BURDEN ESTIMATES, AGENCIES MAY CONSULT WITH A SAMPLE OF RESPONDENTS (FEWER THAN 10), UTILIZE THE 60-DAY PRE-OMB SUBMISSION PUBLIC COMMENT PROCESS AND USE EXISTING ECONOMIC OR REGULATORY IMPACT ANALYSIS ASSOCIATED WITH THE RULEMAKING CONTAINING THE INFORMATION COLLECTION, AS APPROPRIATE.

-GENERALLY, ESTIMATES SHOULD NOT INCLUDE PURCHASES OF EQUIPMENT OR SERVICES, OR PORTIONS THEREOF, MADE (1) PRIOR TO OCTOBER 1, 1995, (2) TO ACHIEVE REGULATORY COMPLIANCE WITH REQUIREMENTS NOT ASSOCIATED WITH THE INFORMATION COLLECTION, (3) FOR REASONS OTHER THAN TO PROVIDE INFORMATION OR KEEP RECORDS FOR THE GOVERNMENT, OR (4) AS PART OF CUSTOMARY AND USUAL BUSINESS OR PRIVATE PRACTICES.

There are no additional costs besides those listed in question number 12 above.

- 14. PROVIDE ESTIMATES OF ANNUALIZED COST TO THE FEDERAL GOVERNMENT. ALSO, PROVIDE A DESCRIPTION OF THE METHOD USED TO ESTIMATE COSTS, WHICH SHOULD INCLUDE QUANTIFICATION OF HOURS, OPERATIONAL EXPENSES SUCH AS EQUIPMENT, OVERHEAD, PRINTING, AND SUPPORT STAFF, AND ANY OTHER EXPENSE THAT WOULD NOT HAVE BEEN INCURRED WITHOUT THIS COLLECTION OF INFORMATION. AGENCIES ALSO MAY AGGREGATE COST ESTIMATES FROM ITEMS 12, 13, AND 14 IN A SINGLE TABLE.**

Since the information collection requirements associated with this Notice of Proposed Rulemaking (NPRM) do not entail any reporting and only extremely minimal recordkeeping, there is no additional cost to the Federal Government (FRA) beyond the normal salaries that it pays its inspectors to do their jobs.

- 15. EXPLAIN THE REASONS FOR ANY PROGRAM CHANGES OR ADJUSTMENTS REPORTED IN ITEMS 13 OR 14 OF THE OMB FORM 83-I.**

These are new information collection requirements. Therefore, there are no program changes or adjustments at this time

- 16. FOR COLLECTIONS OF INFORMATION WHOSE RESULTS WILL BE**

PUBLISHED, OUTLINE PLANS FOR TABULATION, AND PUBLICATION. ADDRESS ANY COMPLEX ANALYTICAL TECHNIQUES THAT WILL BE USED. PROVIDE THE TIME SCHEDULE FOR THE ENTIRE PROJECT, INCLUDING BEGINNING AND ENDING DATES OF THE COLLECTION OF INFORMATION, COMPLETION OF REPORT, PUBLICATION DATES, AND OTHER ACTIONS.

FRA plans no publication of this information.

- 17. IF SEEKING APPROVAL TO NOT DISPLAY THE EXPIRATION DATE FOR OMB APPROVAL OF THE INFORMATION COLLECTION, EXPLAIN THE REASONS THAT DISPLAY WOULD BE INAPPROPRIATE.**

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

- 18. EXPLAIN EACH EXCEPTION TO THE CERTIFICATION STATEMENT IDENTIFIED IN ITEM 19, "CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS," OF OMB FORM 83-I.**

No exceptions are taken at this time.

Meeting Department of Transportation (DOT) Strategic Goals

This information collection supports DOT main strategic goals, safety. Without this collection of information, the traveling public and train crews might suffer more serious injuries and possibly death if they could not quickly determine how to safely and quickly evacuate a train after an accident/incident occurred. If single-level and multi-level passenger cars, including sleeping cars, did not have the prescribed minimum of emergency window exits with legible and understandable operating instructions and if they were not readily accessible, clearly marked and well-maintained, railroad passengers might not know how and where to exit a passenger car in the event of an emergency such as a collision, derailment, fire, explosion, and other unexpected occurrences. Any delay in quickly exiting such a passenger car could potentially cause numerous injuries and fatalities to the American traveling public.

Also, without this proposed rule and associated collection of information, passenger cars might not have a sufficient number of clearly marked access windows for rescue workers to evacuate passengers in the event of a train emergency. In the event of an emergency, rescue workers must be able to find these passenger car access windows quickly and must be able to figure out how to open them once they do find them. Rescue workers need to be able to find where these rescue access windows are located on both single-level and multi-level passenger cars by means of clearly marked signs/placard that have understandable instructions and that are posted at or near each rescue access window in

retroreflective material. Delays caused by being unable to find or quickly open access windows on the part of rescue workers could result in serious injury and death to substantial numbers of railroad passengers.

Without a means of emergency communication such as the prescribed intercom system that must be installed within new Tier I and all Tier II passenger cars, railroad passengers and train crews would not be able to talk to one another in the event of a train emergency. This could lead a lack of awareness on the part of the train crew in the event of serious problem or emergency and a corresponding lack of direction from the train crew to passengers on the proper actions they should take to ensure their safety. Passengers might panic or take the wrong action(s) if they were unable to receive instructions from the professional train crew members. Passengers need to know when and how they must quickly evacuate a passenger car, or when and what other type of action they must take to ensure their well-being. Train crews must have the capability to communicate urgent and necessary information to them quickly and clearly.

As with emergency access windows, so too must emergency roof access be provided by means of a hatch or structural weak point in the roof that is a clearly marked so it can be found and operated by rescue personnel in the event of an emergency. It is imperative that each emergency roof access location be conspicuously marked with retroreflective material of contrasting color and that legible and understandable instructions be posted at or near each location. In the event of an emergency that prevents passengers from quickly exiting a car through the access windows, the ability of rescue workers to open the roof access quickly and easily might be the difference between life and death for train passengers.

Finally, without the requirements in §§ 238.303, 238.305, and 238.307 relating to the exterior and interior calendar day mechanical inspections and periodic mechanical inspection, which call for the replacement and recording of all rescue access-related exterior markings, signage, and instructions that are not conspicuous, legible, or both and the repair and notification to the train crew of non-complying conditions regarding all end doors and side doors and a fully functioning public address and intercom system, there might be greater injuries and loss of life for railroad passengers because essential equipment such as doors, windows, and roof hatches did not operate properly and because instructions were not clear concerning how to quickly and safely evacuate the train. Without the required records in § 238.303, FRA would have no way of ensuring that non-complying conditions are promptly corrected, as well as no way to enforce compliance.

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

