

**SUPPORTING JUSTIFICATION
RAILROAD OPERATING RULES (49 CFR 217) (49 CFR 218)**

- 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.**

FRA has grown steadily concerned over the past few years as the frequency of human factor caused accidents have increased, and FRA has simultaneously observed a substantial increase in non-compliance with those railroad operating rules that cause or contribute to these types of accidents. A tabulation of accident data shows that accidents caused by mishandling of equipment, switches, and derails rose from 370 to 640 from the years 1997 to 2004 – an increase of 42 percent. The causes most identified by the railroads upon which these accidents occurred were (1) switch improperly lined and (2) shoving movement, absence of employee on, at or ahead of movement. These two issues alone account for over 60 percent of all accidents caused annually by employees mishandling of equipment, switches, and derails.

Four other causes saw steady increases from 133 to 213 during the years 1997 to 2004 – a cumulative increase of 37 percent; these causes are (1) shoving movement, failure to control, (2) switch previously run through, (3) cars left foul, and (4) derail, failure to apply or remove. Two additional causes of accidents, (1) switch not latched or locked and (2) car(s) shoved out and left out of clear, were the cited cause of only 10 accidents in 1997 and 40 accidents in 2004.

While the accident data show significant increases, the data collected by FRA during inspections suggests that the number of accidents could easily increase at an even greater rate. A tabulation of data from FRA inspections shows that non-compliance related to mishandling of equipment, switches, and derails rose from 319 to 2,954 during the years 2000 to 2004 – an increase of nine times. The descriptions of non-compliance most identified were: (1) employee failed to observe switch points for obstruction before throwing switch; (2) employee failed to ensure all switches involved with a movement were properly lined; (3) employee failed to ensure switches were latched or locked, (4) employee failed to ensure switches were properly lined before movement began; and (5) employee left equipment fouling adjacent track.

Several other related issues of non-compliance also saw substantial increases, although the overall number of incidents found by FRA were lower than the top five. These additional issues of non-compliance are described as (1) employee left derail improperly lined (on or off), (2) shoving movement, absence of employee on, at, or ahead of

movement, (3) employee failed to ensure train or engine was stopped in the clear, (4) employee failed to ensure switches were properly lined after being used, (5) employee failed to reapply hasp before making move over switch (if equipped), (6) employee failed to relock the switch after use, and (7) one or more employees failed to position themselves so that they could constantly look in the direction of movement.

The non-compliance data also clearly mark the wide-spread use of remote control operations following the publication of FRA's guidance in Safety Advisory 2001-1 [66 FR 10340 (Feb. 14, 2001)] because three human factor non-compliance descriptions were added in 2002 to describe causes specific to these operations. In 2004, FRA assigned non-compliance codes to identify certain activities specifically related to remote control operations: (1) employee operated equipment while out of operator's range of vision; (2) employee failed to provide point protection, locomotive leading; and (3) employee failed to provide point protection, car leading. During that year, FRA inspectors recorded 29 instances of non-compliance with those codes. Through June, 2005, FRA inspectors recorded 41 instances of non-compliance with those codes.

Although the increasing number of human factor caused accidents impacted the railroad industry and its employees, a catastrophic accident that occurred at Graniteville, South Carolina, on January 6, 2005, catapulted the issue into the national spotlight. As the National Transportation Safety Board (NTSB) described in its report NTSB/RAR-05/04, PB2005-916304 (Nov. 29, 2005), that accident occurred when Norfolk Southern Railway Company (NS) freight train 192, while traveling in non-signaled territory at about 47 miles per hour, encountered an improperly lined switch that diverted the train from the main track onto an industry track, where it struck an unoccupied, parked train (NS train P22). The collision derailed both locomotives and 16 of the 42 freight cars of train 192, as well as the locomotive and one of the two cars of train P22. Among the derailed cars from train 192 were three tank cars containing chlorine, one of which was breached, releasing chlorine gas. The train engineer and eight other people died as a result of chlorine gas inhalation. About 554 people complaining of respiratory difficulties were taken to local hospitals. Of these, 75 were admitted for treatment. Because of the chlorine release, about 5,400 people within a one-mile radius of the derailment site were evacuated for several days. Total property damages exceeded \$6.9 million, and total monetized damages have been estimated as high as \$125 million. NTSB determined that the probable cause of the January 6, 2005, Graniteville collision was the failure of the crew of NS train P22 to return a main track switch to the normal position after the crew completed work at an industry track.

The crew's failure violated railroad operating rules but did not violate any Federal requirement. NS Operating Rule 104, in effect at the time, placed primary responsibility with the employee handling the switch and other crewmembers were secondarily responsible if they were in place to observe the switch's position. NTSB/RAR-05/04 at 8. In addition, NTSB concluded that NS rules required a job briefing which "would likely have included a discussion of the switches and specifically who was responsible

for ensuring that they were properly positioned [and that] [h]ad such a briefing taken place, the relining of the switch might not have been overlooked.” *Id.* at 44. FRA concurs that the lack of intra-crew communication was particularly significant at the time the crew was preparing to leave the site regarding the switch’s position. *Id.* at 8-9.

Four days after the Graniteville accident [and coincidentally, two days after a similar accident at Bieber, California with serious, but not catastrophic consequences], FRA responded by issuing Safety Advisory 2005-01, Position of Switches in Non-Signaled Territory. 70 FR 2455 (Jan. 10, 2005). The issuance of a safety advisory is an opportunity for the agency to inform the industry and the general public regarding a safety issue, to articulate agency policy, and to make recommendations. FRA explained in the Safety Advisory that “[a] review of FRA’s accident/incident data shows that, overall, the safety of rail transportation continues to improve. However, FRA has particular concern that recent accidents on Class I railroads in non-signaled territory were caused, or apparently caused, by the failure of railroad employees to return manual (hand-operated) main track switches to their normal position, i.e., lined for the main track, after use. As a result, rather than continuing their intended movement on the main track, trains approaching these switches in a facing-point direction were unexpectedly diverted from the main track onto the diverging route, and consequently derailed.”

Safety Advisory 2005-1 strongly urged all railroads to immediately adopt and comply with five recommendations that were intended to strengthen, clarify, and re-emphasize railroad operating rules for which compliance would ensure that all main track switches are returned to their normal position after use. The recommendations emphasized communication both with the dispatcher and other crewmembers. There was a recommendation that crewmembers complete and sign a railroad-created Switch Position Awareness Form (SPAF); proper completion of a SPAF was expected to trigger specific communication relevant to critical elements of the tasks to be performed. Additional training and oversight were also recommended.

Safety Advisory 2005-1 did not have the long term effect that FRA hoped it would. The Safety Advisory was intended to allow the industry itself a chance to clamp down on the frequency and severity of one subset of human factor accidents, i.e., those accidents involving hand-operated switches in non-signaled territory. FRA credits the Safety Advisory with contributing to a nearly six-month respite from this type of accident, from January 12 through July 6, 2005; but, following this respite, there was a sharp increase in serious accidents.

Although FRA sought to reduce this type of accident through the lasting process of a rulemaking solution, three serious accidents over a 28-day period were the catalyst for FRA issuing an emergency order. *Emergency Order No. 24 (EO 24); Docket No. FRA-2005-22796, Notice 1, 70 FR 61496, 61498 (Oct. 24, 2005)*. Overall, the three accidents cited in EO 24 resulted in fatal injuries to one railroad employee, non-fatal injuries to eight additional railroad employees, an evacuation of civilians, and railroad property

damage of approximately two million dollars. Furthermore, each of these accidents could have been worse, as each had the potential for additional deaths, injuries, property damage or environmental damage. Two of the accidents could have involved catastrophic releases of hazardous materials as these materials were present in at least one of the train consists that collided.

FRA is authorized to issue emergency orders where an unsafe condition or practice "causes an emergency situation involving a hazard of death or personal injury." 49 U.S.C. 20104. These orders may immediately impose "restrictions and prohibitions . . . that may be necessary to abate the situation." *Id.* The issuance of EO 24 was "intended to accomplish what the Safety Advisory could not: Implement safety practices that will abate the emergency until FRA can complete rulemaking." 70 FR at 61498.

EO 24 illuminated the problems associated with mishandling of hand-operated switches in non-signaled territory. Human factors were the leading cause of train accidents, accounting for 38 percent of the total in 2005. FRA recognizes that significant train accidents continue to occur, and the train accident rate has not shown substantive improvement in recent years. Several months after the Graniteville accident, an action plan was published. FRA acknowledged in the plan that "recent train accidents have highlighted specific issues that need prompt government and industry attention." FRA's plan takes aim at reducing human factor accidents because, in recent years, most of the serious events involving train collisions or derailments resulting in release of hazardous materials, or harm to rail passengers, have been caused by human factor or track causes.

FRA's analysis of train accident data has revealed that a small number of particular kinds of human errors are accounting for an inordinate number of human factor accidents. For example, the eight human factor causes involving mishandling equipment, switches, and derails that FRA is addressing in the proposed rule accounted for nearly 48 percent of all human factor accidents in 2004; these eight causes resulted in accidents causing over \$113 million in damages to property and equipment from 2001-2005. These eight causes can be grouped into three basic areas of railroad operations. They include operating switches and derails, leaving equipment out to foul, and the failure to protect shoving or pushing movements. In addition, two other human factor causes are catch-all general causes that may include some accidents involving handling equipment, operating switches/derails, and other general causes that account for an additional two-and-a-half percent of all human factor accidents in 2004.

Of the 118 available human factor causes that are tracked, the leading cause of human factor accidents was improperly lined switches, which alone accounted for more than 16 percent of human factor accidents in 2004. The next two leading causes were shoving cars without a person on the front of the movement to monitor conditions ahead, i.e., lack of point protection, and shoving cars with point protection but still resulting in a failure to control the movement; these two shoving related causes together accounted for 17.6 percent of human factor accidents in 2004. The other causes account for less than five

percent each of the total number of accident causes; these causes involve leaving cars in a position that fouls an adjacent track, operating over a switch previously run through, a failure to apply or remove a derail, a failure to latch or lock a switch, and a failure to determine before shoving that the track is clear ahead of the movement. The two catch-all general causes that might be cited when a railroad believes one or more related causes may apply, or is unsure of the exact cause, are: (1) other general switching rules, and (2) other train operation/human factors.

The proposed rule – and associated collection of information – suggests a two pronged approach. One, by proposing that a railroad revise its program of operational tests and inspections, FRA would require greater oversight of railroad testing officers to ensure that they are qualified to perform their duties and are focusing their tests to reduce accidents. Two, by proposing that each railroad’s operating rules meet certain minimum standards for handling of equipment, switches and derails, especially during shoving movements, FRA would be taking aim at a narrow set of railroad operating rules whose violations have caused 51 percent of all human factor caused accidents on class I track from 2002-2005.

The Federal Railroad Safety Act of 1970, as codified at 49 U.S.C. 20103, provides that “[t]he Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.” The Secretary’s responsibility under this provision and the balance of the railroad safety laws have been delegated to the Federal Railroad Administrator. See 49 CFR 1.49(m).

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.

The information collection associated with this NPRM will be used by FRA to enhance safety and drive down the number and severity of accidents/incidents and corresponding injuries, fatalities, and property damage caused by human factors in the daily operation of the nation’s railroads. The information collected is presently used by FRA to monitor and enforce its safety regulations. In particular, FRA reviews the filed copies of the code of operating rules, timetables, and timetable special instructions submitted by Class I, Class II, the National Railroad Passenger Corporation (Amtrak), and railroads providing commuter service in metropolitan or suburban areas to ensure that these railroads have developed safe operating rules and practices before commencing operations. Additionally, FRA reviews amendments to the code of operating rules, new timetables, and new timetable special instructions submitted by Class I, Class II, and railroads providing commuter service in metropolitan or suburban areas to attest that changes contemplated by these railroads are safe, necessary, and accord with Federal laws and regulations. FRA reserves the right to inspect Class III railroads’ code of operating rules,

new timetables, and new timetable special instructions, as well any amendments thereto, at their system headquarters to ensure that they have developed safe operating rules, and practices that conform to Federal laws and regulations.

Under § 217.9, railroad officers must be qualified on the railroad's operational rules in accordance with § 217.11 of this part; must be qualified on the operational testing program requirements and procedures relevant to the testing the officer will conduct; and must receive appropriate field training, as necessary to achieve proficiency, on each operational test that the officer is authorized to conduct. This information will be used by railroads and FRA to ensure that all railroad testing officers on a particular railroad are properly qualified. Thus, a railroad testing officer who is trained and knowledgeable in the railroad's operating rules will be able to conduct competent tests and inspections, and will understand how the tests they conduct fit into the railroad's testing program. As a consequence, it will be more difficult for railroad testing officers to accept inconsistency in the application of operating rules. Operating rules that are more closely adhered to will provide increased levels of safety.

Additionally, under § 217.9, written records documenting the qualifications of each railroad testing officer must be retained at its system headquarters and at the division headquarters for each division where the officer is assigned and made available to representatives of FRA for inspection and copying during normal business hours. Each railroad to which this Part applies must also keep a record of the date, time, place, and result of each operational test and inspection that was performed in accordance with its program. Each record must also specify the officer administering the test and inspection and each employee tested under this section. Railroads use this information to monitor the proficiency of their employees and to obtain greater compliance with their operating rules. FRA uses these records to ensure and enforce compliance with this regulation, and analyzes records of these tests to determine the extent these tests and inspections conform to the railroads written program of operational tests and inspections.

Under § 217.9, each railroad to which this part applies, except for a railroad with less than 400,000 total employee work hours annually and except for a railroad subject to paragraph (e)(2) of this section, must conduct periodic reviews and analysis as provided in this paragraph and must retain, at each division headquarters, where applicable, and at its system headquarters, one copy of the required monthly, quarterly, and six-month reviews of operational tests and inspections. Based on these reviews, officers designated by the railroads will use this information to make adjustments to the implementation of the railroads' operating rules inspection and testing program to ensure that the overall direction of the program is sound. Railroads will also use this information to redirect their testing officers in order to appropriately respond to any instances of non-compliance, including accidents/incidents. Finally, under this section, railroads with more than 400,000 man-hours per year must retain annual written summaries on operational tests and inspections for three years. FRA reviews these summaries to ensure compliance with Federal safety regulations, and utilizes them during accident/incident

investigations to determine the cause(s) of such events.

Under § 217.11 and § 218.95, each railroad to which this part applies must periodically instruct each affected employee on the meaning and application of the railroad's operating rules in accordance with a written program retained at its systems headquarters and at the division headquarters for each division where the employee is instructed. The railroads use this information to ensure that their employees are qualified and that they understand their duties and responsibilities vis-a-vis the railroad's current operating rules/any changes to their current operating rules. FRA inspectors examine the written program of new railroads' operating rules and amendments to existing railroads' operating rules to verify that their rules conform to Federal safety laws and regulations. In particular, under § 218.95 (a)(1) and (a)(2), FRA inspectors will review the railroads' written program to ensure that they include instruction for employees on the consequences of non-compliance, namely that FRA can take enforcement action through civil penalties or disqualification from safety sensitive service, and that the written program addresses the need to qualify employees on all aspects of the technology the employee will be utilizing when complying with the operating rules required by this subpart.

Also, under § 218.95, affected railroads must retain written records documenting the instruction, examination, and training of each employee at their system headquarters and at the division headquarters for each division where the employee is assigned, and must make these records available to representatives of FRA for inspection and copying during normal business hours. FRA inspectors will review these records to ensure that railroad employees are qualified/re-qualified for the duties that they are performing. In the event of an accident/incident, FRA can quickly ascertain whether an unqualified employee performed safety-sensitive work. Moreover, these written records provide an invaluable resource to FRA and other safety investigators in determining the cause(s) of an accident/incident as well in devising corrective measures to prevent future such occurrences.

Further, § 218.95 states that upon review of the program of instruction, training, and examination required by this section, the Associate Administrator for Safety may, for cause stated, disapprove the program. Notification of such disapproval must be made in writing and specify the basis for the disapproval decision. If the Associate Administrator disapproves the program, the railroad must be provided an opportunity of not less than 30 days to respond and to provide written and/or oral submissions in support of the program. FRA (the Associate Administrator for Safety) will review a railroad's response to the notice of disapproval of its program to determine whether it is safe and in the public interest to rescind the disapproval decision or whether the railroad must amend its program to include requirements specified by the Associate Administrator. Upon affirming the disapproval decision, FRA (the Associate Administrator for Safety) will review the railroad's amended program of instruction, training, and examination to ensure that it meets agency requirements.

Under § 218.97, each employer is responsible for the training and compliance by its employees with the requirements of this subpart. Each employer must adopt and implement written procedures which guarantee each employee the right to challenge in good faith as to whether the procedures that will be applied to accomplish a specific task comply with the requirements of this subpart or any operating rule relied upon to fulfill the requirements of this subpart. Each employer's written procedures must provide for prompt and equitable resolution of challenges made in accordance with this part. Also, a copy of the written procedures must be provided to each affected employee and made available for inspection and copying by representatives of FRA during normal business hours. Information under this requirement will be used by railroad officials and railroad employees to improve understanding of procedures and to enhance dialogue and clear communication between railroad officials and their employees in safely carrying out orders related to operating rules. The good faith challenge procedures that are clearly spelled out – and that employees can readily carry with them (along with their operating rules book) as ready references – will provide railroad employees an opportunity to question an order that may not comply with the railroads' own operating rules or that may be potentially unsafe, and will provide a means for all parties to promptly resolve any question so that an order can be effectively and safely carried out by the tasked party.

Under § 218.99, rolling equipment must not be shoved or pushed until the locomotive engineer has participated in a job briefing by the employee who will direct the move. This employee must also describe, as part of the job briefing, the means of communication to be used and how protection will be provided. This information will be used to facilitate better communication between train employees and other employees who are directing shoving or pushing movements. In particular, employees will know clearly the method of communication to be used in such movements, whether radio, hand signals, or pitch and catch. Such briefings are designed to ensure that employees working together understand the task they intend to perform and know exactly what role is expected of them and their colleagues. Thus, through such proper job briefings, safety is likely to be enhanced since clear communication may prevent some mishaps and contain others from exacerbating an already bad situation.

Also, under § 218.99, when rolling equipment is shoved or pushed, point protection must be provided by a crewmember or other qualified employee visually determining, for the duration of the shoving or pushing movement, that the track is clear either within the range of vision or for the complete distance the equipment is to be pushed or shoved; and giving signals or instructions necessary to control the movement. The information will be used to ensure that a crewmember or other qualified employee visually determines, for the duration of the shoving or pushing movement, that the track is clear, and provides essential signals or instructions to control the movement. Thus, if the employee providing the visual determination can only see part of the way down the track to be shoved or pushed, the employee will only be permitted to initiate movement for the distance that the employee can directly and continuously observe. Greater employee

accountability and improved communication are intended to reduce the number of shoving or pushing accidents that occur each year.

Under § 218.101, each railroad must have in effect an operating rule which establishes minimum requirements for preventing equipment from fouling connecting tracks unsafely, and each railroad must implement procedures that will enable employees to identify when the equipment is fouling. Additionally, each railroad officer, supervisor, and employee must uphold and comply with the rule. The information will be used by railroads to delineate the steps their employees must follow to avoid fouling connecting tracks unsafely, and will be used by railroad employees to better understand and perform their duties in a more effective and safe manner. The mandated operating rule and adherence to it by railroad employees will serve to reduce the likelihood of accidents, particularly collisions that result from equipment fouling connecting tracks.

Finally, under § 218.103, railroads will be required to adopt operating rules which meet the minimum requirements set forth in this section concerning switches and derails. In particular, railroads will be required to adopt operating rules which include a requirement that employees operating or verifying the position of a switch or derail be qualified on the railroad's operating rules related to the operation, and a requirement that employees operating switches conduct job briefings before and after operating switches. The information will be used by railroads to highlight the importance of properly handling switches and derails, and to ensure that those employees performing such operations are fully qualified and knowledgeable regarding the tasks they are called on to perform. Job briefings will be used by railroad supervisors and employees to focus greater attention on properly setting and then reversing operating switches in order to keep track safe for trains and other railroad equipment and to eliminate accidents/incidents similar to the ones which necessitated FRA Emergency Order No. 24.

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 strongly endorses and highly encourages the use of advanced information technology, wherever possible, to reduce burden. Accordingly, FRA has authorized each railroad to which this Part applies the option of retaining the information prescribed in § 217.9 (d) and § 217.9 (f) by means of by electronic recordkeeping. This includes the written program of operational tests and inspections as well as the records of the date, time, place, and result of individual operational tests and inspections performed in accordance with the railroad's operating rules program. This also includes the annual

summary on operational tests and inspections. Furthermore, FRA has authorized each railroad to which this Part applies the option of retaining by electronic recordkeeping its program for the periodic instruction of its operating rules (§217.11), provided the stipulated requirements in § 217.9(e)(1) through (e)(5) are met.

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.

This rulemaking [and associated information collection] is intended to supplant the need for Emergency Order 24 [and its associated information collection (OMB No. 2130-0568)], which requires special handling, instruction, and testing of railroad operating rules pertaining to hand-operated main track switches in non-signaled territory.

Once approval is obtained for this proposed collection of information, FRA will submit the appropriate form (OMB 83-D) to discontinue the clearance under OMB No. 2130-0568 to avoid duplication.

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.

Small railroads were consulted frequently during the RSAC Working Group deliberations relating to this proposed rule, and a subgroup addressing their needs was formed, met, and contributed to FRA's understanding of their concerns. The single greatest concern of small railroads was that the Switch Position Awareness Form (SPAF) required by FRA's Emergency Order (E.O) No. 24 was unduly burdensome. FRA has eliminated the requirement for a SPAF in this proposed rule, which is intended to replace E.O. 24. Additionally, while FRA proposes amending § 217.9 to require railroads to focus programs of operational tests and inspections on those operating rules that cause or are likely to cause the most accidents/incidents, it is excepting small railroads with less than 400,000 employee work hours annually from the required monthly and quarterly reviews to further reduce burden on small (Class III) railroads.

It should be noted that, in the economic analysis accompanying this NPRM, FRA has certified that this proposal will not have significant economic impact on a substantial number of small entities (railroads).

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 in the United States would be seriously jeopardized. Specifically, without this collection of information, FRA would have no way of knowing whether each affected railroad's code of operating rules, timetables, and timetable special instructions and subsequent amendments thereto conform to Federal safety laws and regulations. Unapproved operating rules, timetables, and timetable special instructions could have disastrous results. Without this collection of information, FRA would not know whether railroads conducted the required operational tests and inspections, and would not know whether these tests and inspections conform to the railroads' operating rules. Deprived of this information, FRA would not know whether railroads are engaging in unsafe practices. This could lead to higher rates of rail accidents/incidents with accompanying injuries – and possibly fatalities – to train crews and other railroad workers as well as to the general public.

Without the required written records documenting the qualifications of each railroad testing officer, FRA would have no way to verify whether railroad testing officers are qualified on the railroad's operating rules in accordance with §217.11 of this part, whether they are qualified on the operational testing program requirements and procedures relevant to the testing they will conduct, and whether they have received appropriate field training/retraining to achieve proficiency on each operational test that they are authorized to conduct. Railroad testing officers not properly qualified would lack the fundamental knowledge to perform adequate tests and inspections, thereby increasing the likelihood that railroad operating employees would inconsistently apply or violate the railroad's operating rules. The result would be a greater number of human factor errors and more human-factor related accident/incidents and corresponding casualties.

Without the required periodic reviews of tests (six-month, quarterly, and monthly), FRA would have no way to ensure that affected railroads are conducting tests and inspections directed at the causes of human factor train accidents and employee casualties. Such structured tests or observations permit railroads to find employees who are in need of additional training or who may benefit from a reminder that it is not acceptable to take shortcuts that violate operating rules. Additional training of railroad employees and greater adherence to operating rules will enhance safety.

Without the annual written summaries on operational tests and inspections required of railroads with more than 400,000 man-hours per year, FRA would lose a valuable resource necessary to monitor large railroads compliance with Federal safety laws and regulations. These annual written summaries are also extremely helpful to FRA and other investigatory agencies when searching for the cause(s) of accidents/incidents.

Without the required program of instruction on operating rules for employees and corresponding records, FRA would not know whether the various classes of railroad

employees whose activities are governed by the railroad's operating rules are instructed periodically in these rules and are qualified to perform the tasks that they are assigned. Without this training, railroad employees might engage in unsafe practices that could result in more human factor-related accidents/incidents causing injuries, perhaps fatalities, to themselves, co-workers, and the general public. By careful monitoring of the information collected, FRA can take swift corrective action when safety in railroad operations begins to deteriorate.

Without the required good faith challenge procedures, railroad employees might be unsure how to comply with the requirements of this subpart or any operating rule relied upon to fulfill the requirements of this subpart. This could lead to employees taking greater risks or unsafe actions that lead to an accident/incident. The good faith challenges foster better communication through dialogue between employees and railroad officials. An employee who believes that a railroad officer has given the employee an order that does not comply with the railroad's own operating rules, or the operating rules required by this subpart, may initiate a good faith challenge. Good faith challenges will serve to resolve operational procedure questions and thus increase compliance with the railroad's own operating rules and with Federal regulations, thereby reducing the number of human factor errors by railroad employees and enhancing overall safety.

Without the required job briefings for shoving or pushing rolling equipment, railroad employees might not understand or be clear on the task given to them and exactly what role is expected of them and their colleagues. The required job briefings will cover the means of communication used to relay information (whether by radio, hand signals, or pitch and catch), and how protection will be provided. By fostering better communication through job briefings and by requiring a visual determination be made and proper signals or instructions given by a crewmember or other qualified employee, train crews can be assured that the track is clear when making shoving or pushing movements. This will greatly reduce the likelihood of an accident/incident occurring.

Finally, without the requirement that railroads have in effect an operating rule that establishes minimum requirements for preventing equipment from fouling connecting tracks and an operating rule regarding hand-operating switches and derails, railroad employees might not be as highly focused in fulfilling their responsibilities and in complying with the railroad's operating rules so that equipment is not left fouling a track and so that hand-operated switches and derails are left properly lined before leaving a work site.

In sum, this collection of information enhances accountability and responsibility on the part of railroad employees. It aims to reduce the number of human factor errors and accidents/incidents (and corresponding casualties) which result from such errors. This collection of information furthers FRA's primary mission, which is to promote and enhance rail safety throughout this country.

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.

Class I railroads, Class II railroads, the National Railroad Passenger Corporation, and commuter railroads do not regularly file their operating rules, and any subsequent amendments thereto with FRA. However, each railroad must file one copy of its operating rules with FRA, and any amendment to its operating rules must also be filed with FRA within 30 days after it is issued. FRA believes that 30 day requirement is not

unreasonable, given the paramount importance of maintaining safe train operations. All other information collection requirements contained in this rule 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 RECORDKEEPING, 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 railroad operating rules is being published in the Federal Register on October 12, 2006 (*See 71 FR 60372*). FRA is soliciting comment in the NPRM from the public, the railroad community, and other interested parties. FRA will respond to these comments in the final rule and in the information collection submission associated with the final rule.

Background

On April 14, 2005, FRA held a Human Factors Workshop which convened members of RSAC for the purpose of developing a task statement to be presented at the next Railroad Safety Advisory Committee (RSAC) meeting. FRA explained that current regulations do not address compliance with the relevant operating rules that cause the preponderance of human factor accidents. The agency expressed a desire to standardize and adopt these rules as Federal requirements with greater accountability being the goal. It was also raised that training and qualification programs should be included as part of the task because employee compliance is certainly directly related to how well employees are

instructed and tested. FRA suggested that one area of consideration was to improve on its regulations (49 CFR part 217), which require each railroad to instruct its employees on the meaning and application of its code of operating rules and to periodically test its employees to determine their level of compliance. Many participants expressed a preference for non-regulatory action.

FRA established RSAC in March 1996. RSAC 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 (ASLRRA);
American Train Dispatchers Association (ATDA);
Association of American Railroads (AAR);
Association of Railway Museums (ARM);
Association of State Rail Safety Managers (ASRSM);
Brotherhood of Locomotive Engineers and Trainmen (BLET);
Brotherhood of Maintenance of Way Employees Division (BMWED);
Brotherhood of Railroad Signalmen (BRS);
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 18, 2005, the RSAC accepted a task statement and agreed to establish the Railroad Operating Rules Working Group whose overall purpose was to recommend to the full committee how to reduce the number of human factor caused train accidents/incidents and related employee injuries. The working group held eight two-day conferences, one per month from July 2005 through February 2006. The vast majority of the time at these meetings involved review of an FRA document suggesting language that could form the basis of proposed regulatory text. This exercise was extremely beneficial as participants were able to fully strengthen the proposal.

FRA clearly benefited from the enthusiastic participation of the working group in dissecting railroad operating rules and practices; unfortunately, the RSAC participants were unable to reach a consensus for making formal recommendations. Typically, FRA gives great deference to RSAC's recommendations when proposing a rule, although the agency is certainly not bound to adopt such recommendations. Here, where RSAC was unable to make formal recommendations, FRA is, of course, not bound by its proposal within the RSAC working group process. However, FRA has sought to carry forward the elements of the discussion draft that had benefited from thoughtful comment by Working Group members. FRA developed a greater appreciation for the nuances of each of the railroad operating rules and practices discussed; and, armed with that additional insight, the agency has put forth a reasonable proposed rulemaking that reflects real world railroading.

9. EXPLAIN ANY DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS, OTHER THAN REMUNERATION 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.

Under the Freedom of Information Act, the agency is required to make information collected in compliance with the regulations available to those requesting the documents. FRA does not actively solicit or encourage such requests.

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

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.

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

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.

Note: Based on the 2005 edition of the Association of American Railroads (AAR) publication titled Railroad Facts, FRA has used the following labor rate for railroad hourly wages in its cost calculations: \$70 per hour for railroad executives/officials; \$40 per hour for professional/administrative employees; \$42 for transportation employees (other than train and engine); and \$50 for train and engine employees. Wage rates are burdened 40% to include fringe benefits and overhead.

Part 217.7 - Operating Rules; Filing and Recordkeeping

(a.) On or before December 21, 1994, each Class I railroad, Class II railroad, the National Railroad Passenger Corporation, and each railroad providing commuter service in a metropolitan or suburban area that is in operation on November 21, 1994, must file with the Federal Railroad Administrator, Washington, D.C. 20590, one copy of its code of operating rules, timetables, and timetable special instructions and each subsequent amendment to its code of operating rules, timetables, and timetable special instructions which were in effect on November 21, 1994. Each Class I railroad, each Class II railroad, and each railroad providing commuter service in a metropolitan or suburban area that commences operations after November 21, 1994, must file with the Administrator one copy of its code of operating rules, timetables, and timetable special instructions before it commences operations.

The requirement to file rules, timetables and timetable special instructions applies only to any railroad that qualifies as a Class I railroad or Class II railroad, or any new commuter railroad that is formed. FRA estimates that approximately one (1) railroad per year will fall into one of the specified categories. This is a one-time submission. It is estimated that it will take approximately one (1) hour to complete the required task. Total annual burden for this requirement is one (1) hour.

Respondent Universe:	1 new railroad
Burden time per response:	1 hour
Frequency of Response:	One-time
Annual number of Responses:	1 submission
Annual Burden:	1 hour
Annual Cost:	\$40

Calculation: 1 submission x 1 hr. = 1 hour
1 hr. x \$40 = \$40

(b.) After November 21, 1994, each Class I railroad, each Class II railroad, the National Railroad Passenger Corporation, and each railroad providing commuter service in a metropolitan or suburban area must file each new amendment to its code of operating rules, each new timetable, and each new timetable special instruction with the Federal Railroad Administrator within 30 days after it is issued.

Respondent universe is approximately 55 railroads. It is estimated that each railroad will issue approximately three (3) amendments per year (165 amendments total). It is estimated that each amendment will take approximately 20 minutes to complete. Total annual burden for this requirement is 55 hours.

Respondent Universe:	55 railroads
Burden time per response:	20 minutes
Frequency of Response:	On occasion
Annual number of Responses:	165 amendments
Annual Burden:	55 hours
Annual Cost:	\$2,200

Calculation: 165 amendments x 20 min. = 55 hours
55 hrs. x \$40 = \$2,200

(c.)(i) On or after November 21, 1994, each Class III railroad and any other railroad subject to this Part but not subject to paragraphs (a) and (b) of this section must keep one copy of its current code of operating rules, timetables, and timetable special instructions, and one copy of each subsequent amendment to its code of operating rules, each new timetable, and each new timetable special instruction at its system headquarters, and must make such records available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.

The burden of the first part of this requirement applies only to new railroads that are formed annually. FRA is assuming that all Class III railroads in existence today already keep copies of their current code of operating rules, timetables, and timetable special instructions, and any subsequent amendments thereto at their system headquarters. FRA

estimates that approximately 20 Class III railroads will be formed each year. It is estimated that it will take each railroad approximately .92 hour to perform the required task. Total annual burden for this requirement is 18 hours.

Respondent Universe:	20 new railroads
Burden time per response:	.92 hour
Frequency of Response:	On occasion
Annual number of Responses:	20 submissions
Annual Burden:	18 hours
Annual Cost:	\$720

Calculation: 20 submissions x .92 hr. = 18 hours
 18 hrs. x \$40 = \$720

(ii) There are an additional 632 Class III railroads subject to the second part of the above requirement. It is estimated that each railroad will issue approximately three (3) amendments each year (1,896 amendments total). It is further estimated that each amendment will take approximately 15 minutes to complete. Total annual burden for this requirement is 474 hours.

Respondent Universe:	632 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	1,896 amendments
Annual Burden:	474 hours
Annual Cost:	\$18,960

Calculation: 1,896 amendments x 15 min. = 474 hours
 474 hrs. x \$40 = \$18,960

Total annual burden for this entire requirement is 548 hours (1 + 55 + 18 + 474).

Part 217.9 - Program of Operational Tests and Inspections; Recordkeeping

(a.) Requirement to conduct operational tests and inspections. Each railroad to which this part applies must periodically conduct operational tests and inspections to determine the extent of compliance with its code of operating rules, timetables, and timetable special instructions, specifically including test and inspections sufficient to verify compliance with the requirements of subpart F of part 218 of this chapter, in accordance with a written program retained at its system headquarters and at the division headquarters for each division where the tests are conducted.

The burden for this requirement is included under that of § 217.9(d) below. Consequently, there is no additional burden associated with this requirement.

(b.) Railroad and railroad testing officer responsibilities. (1) Each railroad officer who conducts operational tests and inspections must: (i) Be qualified on the railroad’s operational rules in accordance with § 217.11 of this part; and (ii) Be qualified on the operational testing program requirements and procedures relevant to the testing the officer will conduct; (iii) Receive appropriate field training, as necessary to achieve proficiency, on each operational test that the officer is authorized to conduct.

FRA estimates that approximately 4,732 railroad officers will receive field training/qualify on the operational tests that he/she is authorized to conduct under the above requirement. It is estimated that each field training session will take approximately eight (8) hours to conduct. Total annual burden for these requirements is 37,856 hours.
(New requirement)

Respondent Universe:	687 railroads
Burden time per response:	8 hours
Frequency of Response:	On occasion
Annual number of Responses:	4,732 field training/qualification sessions
Annual Burden:	37,856 hours
Annual Cost:	\$1,892,800

Calculation: 4,732 field training/qualification sessions x 8 hrs. = 37,856 hours
 37,856 hrs. x 50 = \$1,892,800

(iv) Conduct operational tests in accordance with the railroad’s program of operational tests and inspections. **(New requirement)**

The burden for this requirement is also included under that of § 217.9(d) below. Consequently, there is no additional burden associated with this requirement.

(2) Written records documenting qualification of each railroad testing officer must be retained at its system headquarters and at the division headquarters for each division where the officer is assigned and made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.
(New requirement)

FRA estimates that approximately 4,732 records of railroad testing officers will be kept under the above requirement. It is estimated that it will take approximately two (2) minutes to conduct the exam and complete the record for each railroad testing officer. Total annual burden for these requirements is 158 hours.

Respondent Universe:	687 railroads
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Burden time per response:	2 minutes
Frequency of Response:	On occasion
Annual number of Responses:	4,732 records
Annual Burden:	158 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 4,732 x 2 min. = 158 hours
\$0 (Cost included in RIA)

(c.) Written program of operational tests and inspections. Beginning thirty (30) days before commencing operations, each railroad to which this Part applies must retain one copy of its current program for periodic performance of the operational tests and inspections required by paragraph (a) of this section and one copy of each subsequent amendment to such program. These records must be retained at the system headquarters of the railroad and at the division headquarters for each division where the tests are conducted for three calendar years after the end of the calendar year to which they relate. These records must be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.

The program must: (1) Provide for operational testing and inspection under the various operating conditions on the railroad with particular emphasis on those operating rules that cause or are likely to cause the most accidents or incidents, such as those accidents or incidents identified in the quarterly reviews, six month reviews, and the annual summaries as required under paragraphs (e) and (f) of this section, as applicable. The railroad's program must specifically provide for a minimum number of tests per year that cover the requirements of part 218, subpart F of this chapter; (2) Describe each type of operational test and inspection adopted, including the means and procedures used to carry it out; (3) State the purpose of each type of operational test and inspection; (4) State, according to operating divisions where applicable, the frequency with which each type of operational test and inspection is conducted; (5) Designate an officer, or officers for each railroad with division headquarters, by name or job title, who shall be responsible for ensuring that the program of operational tests and inspections is properly implemented on both a division and system-wide basis or, for officers responsible for a division, on a divisional basis. The designated officer's responsibility will include, but not be limited to, ensuring that the railroad's testing officers are directing their efforts in an appropriate manner to reduce accidents/incidents and that all required reviews and summaries are completed. (6) Begin within 30 days of the date of commencing operations; and (7) Include a schedule for making the program fully operative within 210 days after it begins.

(i) Existing railroads already comply with this requirement. FRA estimates that approximately 20 Class III railroads will commence operations each year. It is estimated that it will take approximately 9.92 hours to prepare the written program and file copies

with the system and division headquarters (as required). Total annual burden for this requirement is 198 hours.

Respondent Universe:	20 new railroads
Burden time per response:	9.92 hours
Frequency of Response:	On occasion
Annual number of Responses:	20 programs
Annual Burden:	198 hours
Annual Cost:	\$7,920

Calculation: 20 programs x 9.92 hrs. = 198 hours
198 hrs. x \$40 = \$7,920

(ii) Railroads must retain one copy of each amendment to their operational test and inspection programs at their division headquarters and system headquarters. Respondent universe is 55 railroads. FRA estimates that each railroad will issue approximately three (3) amendments per year (a total 165 amendments annually). FRA estimates that it will take approximately 1.92 hours to complete this task. Total annual burden for this requirement is 317 hours.

Respondent Universe:	55 railroads
Burden time per response:	1.92 hours
Frequency of Response:	On occasion
Annual number of Responses:	165 amendments
Annual Burden:	317 hours
Annual Cost:	\$12,680

Calculation: 165 amendments x 1.92 hrs. = 317 hours
317 hrs. x \$40 = \$12,680

(d.) Records of individual tests and inspections. Each railroad to which this Part applies must keep a record of the date, time, place, and result of each operational test and inspection that was performed in accordance with its program. Each record must specify the officer administering the test and inspection and each employee tested. These records must be retained at the system headquarters of the railroad and at the division headquarters for each division where the tests are conducted for one calendar year after the end of the calendar year to which they relate. These records must be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.

Respondent universe is 687 railroads. FRA estimates that railroads subject to this requirement will perform a total of approximately 9,180,000 tests per year. (FRA's estimate breaks down as follows: FRA believes Class I railroads will perform approximately 7,800,000 tests a year; Class II railroads will perform approximately 1,000,000 tests a year; commuter railroads will perform approximately 320,000 tests a

year; and the remaining 600 railroads or Class IIIs will perform approximately 60,000 tests a year.) It is estimated that each test and corresponding record will take approximately five (5) minutes to complete. Total annual burden for this requirement is 765,000 hours.

Respondent Universe:	687 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	9,180,000 records
Annual Burden:	765,000 hours
Annual Cost:	\$38,250,000

Calculation: 9,180,000 records x 5 min. = 765,000 hours
 765,000 hrs. x \$50 = \$38,250,000

(e.) Reviews of tests and inspections and adjustments to the program of operational tests. Reviews by railroads other than passenger railroads. Each railroad to which this Part applies, except for a railroad with less than 400,000 total employee work hours annually and except for a railroad subject to paragraph (e)(2) of this section, must conduct periodic reviews and analysis as provided in this paragraph and must retain, at each division headquarters, where applicable, and at its system headquarters, one copy of the following reviews. **(New requirements)**

(i) *Monthly review.* The designated officer for each division headquarters, or system headquarters, if no division headquarters exists, must conduct a written monthly review of the operational testing data for the division or system to determine compliance by the railroad testing officers with the railroad’s program of operational tests and inspections required by paragraph (c) of this section. At a minimum, this monthly review shall include the name of each railroad testing officer, the number of tests and inspections conducted by each officer, and whether the officer conducted the minimum number of each type of test or inspection required by the railroad’s program. Monthly reviews shall be completed no later than 15 days after the month has ended.

FRA estimates that approximately 444 written monthly reviews will be conducted under the above requirement. It is estimated that it will take approximately two (2) hours to complete each monthly review. Total annual burden for this requirement is 888 hours.

Respondent Universe:	687 railroads
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	444 written monthly reviews
Annual Burden:	888 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 444 written monthly reviews x 2 hrs. = 888 hours
\$0 (Cost included in RIA)

Also, regarding designation of officers by railroads, FRA estimates that approximately 4,732 designations will be made under the above requirement. It is estimated that it will take approximately five (5) seconds to complete each designation. Total annual burden for this requirement is seven (7) hours.

Respondent Universe:	687 railroads
Burden time per response:	5 seconds
Frequency of Response:	On occasion
Annual number of Responses:	4,732 designations
Annual Burden:	7 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 4,732 designations x 5 sec. = 7 hours
\$0 (Cost included in RIA)

(ii) *Quarterly review.* The designated officer of each division headquarters, or system headquarters, if no division headquarters exists, must conduct a written quarterly review of the accident/incident data, the results of prior operational tests and inspections, and other pertinent safety data for that division or system to identify the relevant operating rules related to those accidents/incidents that occurred during the quarter. Based upon the results of that review, the designated officer shall make any necessary adjustments to the tests and inspections required of railroad officers for the subsequent period(s). Quarterly reviews and adjustments must be completed no later than 30 days after the quarter has ended.

FRA estimates that approximately 37 written quarterly reviews will be conducted under the above requirement. It is estimated that it will take approximately one (1) hour to complete each written quarterly review. Total annual burden for this requirement is 37 hours.

Respondent Universe:	687 railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	37 written quarterly reviews
Annual Burden:	37 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 37 written quarterly reviews x 1 hr. = 37 hours
\$0 (Cost included in RIA)

(iii) *Six month review.* The designated officer of each system headquarters office responsible for development and administration of the program of operational tests must conduct a review of the program of operational tests and inspections on a six month basis to ensure that it is being utilized as intended, that the monthly and quarterly review provided for in this paragraph have been properly completed, that appropriate adjustments have been made to the distribution of tests and inspections required, and that the railroad testing officers are appropriately directing their efforts. Six month reviews must be completed no later than 30 days after the review period has ended.

FRA estimates that approximately 37 designations will be made and approximately 74 semi-annual reviews will be conducted under the above requirement. It is estimated that it will take approximately five (5) seconds to make the required designations and approximately one (1) hour to complete each written semi-annual review. Total annual burden for this requirement is 74 hours.

Respondent Universe:	687 railroads
Burden time per response:	5 seconds + 1 hour
Frequency of Response:	On occasion
Annual number of Responses:	37 designations + 74 six month reviews
Annual Burden:	74 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 37 designations x 5 sec. + 74 six month reviews x 1 hr. =
74 hours
\$0 (Cost included in RIA)

(2) *Reviews by passenger railroads.* Not less than once every six months, the designated officers of the National Railroad Passenger Corporation and of each railroad providing commuter service in a metropolitan or suburban area must conduct periodic reviews and analyses as provided in this paragraph and must retain, at each division headquarters, where applicable, and at its system headquarters, one copy of the reviews. Each such review must be completed within 30 days of the close of the period. (**New requirements**)

- (i) The designated officer of each division headquarters, or system headquarters, if no division headquarters exists, must conduct a written review of the operational testing data for the division or system to determine compliance by the railroad testing officers with its program of operational tests and inspections required by paragraph (c) of this section. At a minimum, this review must include the name of each railroad testing officer, the number of tests and inspections conducted by each officer, and whether the officer conducted the minimum number of each type

of test or inspection required by the railroad's program.

- (ii) The designated officer of each division headquarters, or system headquarters, if no division headquarters exists, must conduct a written review of accident/incident data, the results of prior operational tests and inspections, and other pertinent safety data for the division or system to identify the relevant operating rules related to those accidents/incidents that occurred during the period. Based upon the results of that review, the designated officer shall make any necessary adjustments to the tests and inspections required of railroad officers for the subsequent period(s).
- (iii) The designated officer of each system headquarters office responsible for development and administration of the program of operational tests must conduct a review of the program of operational tests and inspections to ensure that it is being utilized as intended, that the other reviews provided for in this paragraph have been properly completed, that appropriate adjustments have been made to the distribution of tests and inspections required, and that the railroad testing officers are appropriately directing their efforts.

FRA estimates that approximately 20 designations will be made and approximately 34 six month reviews will be conducted under the above requirement. It is estimated that it will take approximately five (5) seconds to make the required designations and approximately one (1) hour to complete each written six-month review. Total annual burden for this requirement is 34 hours.

Respondent Universe:	Amtrak + 12 railroads
Burden time per response:	5 seconds + 1 hour
Frequency of Response:	On occasion
Annual number of Responses:	20 designations + 34 written six month reviews
Annual Burden:	34 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 20 designations x 5 sec. + 34 six month reviews x 1 hr. =
34 hours
\$0 (Cost included in RIA)

(3) *Records retention.* The records of periodic reviews required in paragraphs (e)(1) and (e)(2) of this section must be retained for a period of one year after the end of the calendar year to which they relate and must be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours. All written records of reviews may be stored electronically. (**New requirement**)

FRA estimates that approximately 589 records of periodic reviews will be retained under the above requirement. It is estimated that it will take approximately one (1) minute to keep each quarterly plan and each written review record. Total annual burden for this requirement is 10 hours.

Respondent Universe:	687 railroads
Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual number of Responses:	589 review records
Annual Burden:	10 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 589 review records x 1 min. = 10 hours
\$0 (Cost included in RIA)

(f) *Annual summary on operational tests and inspections.* Before March 1 of each calendar year, each railroad to which this part applies, except for a railroad with less than 400,000 total employee work hours annually, must retain, at each of its division headquarters and at the system headquarters of the railroad, one copy of a written summary of the following with respect to its previous calendar year activities: The number, type, and result of each operational test and inspection, stated according to operating divisions where applicable, that was conducted as required by paragraphs (a) and (c) of this section. These records must be retained for three calendar years after the end of the calendar year to which they relate, and must be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.

(g) *Electronic recordkeeping.* Each railroad to which this Part applies is authorized to retain by electronic recordkeeping the information prescribed in this section, provided that all of the following conditions are met: (1) The railroad adequately limits and controls accessibility to such information retained in its electronic database system and identifies those individuals who have such access; (2) The railroad has a terminal at the system headquarters and at each division headquarters; (3) Each such terminal has a computer (i.e., monitor, central processing unit, and keyboard) and either a facsimile machine or a printer connected to the computer to retrieve and produce information in a usable format for immediate review by FRA representatives; (4) The railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of the electronically kept records; and (5) The railroad provides representatives of the Federal Railroad Administration with immediate access to these records for inspection and copying during normal business hours and provides printouts of such records upon request.

FRA estimates that approximately 37 summary records will be kept each year under the above requirement. It is estimated that it will take approximately 61 minutes to complete each summary and corresponding record. Total annual burden of this requirement is 38 hours.

Respondent Universe:	687 railroads
Burden time per response:	61 minutes
Frequency of Response:	Annually
Annual number of Responses:	37 summary records
Annual Burden:	38 hours
Annual Cost:	\$1,520

Calculation: 37 summary records x 61 min. = 38 hours
 38 hrs. x \$40 = \$1,520

(h) It shall be unlawful for any railroad to knowingly or any individual to willfully:
 (1) Make, cause to be made, or participate in the making of a false entry on the record(s) required by this section; or (2) Otherwise falsify such records through material misstatement, omission, or mutilation.

FRA estimated that there will be zero (0) records falsified through material misstatement, omission, or mutilation under the above requirement. Consequently, there is no additional burden associated with this provision.

(i) Upon review of the program of operational tests and inspections required by this section, the Associate Administrator for Safety may, for cause stated, disapprove the program. Notification of such disapproval shall be made in writing and specify the basis for the disapproval decision. If the Associate Administrator for Safety disapproves the program, the railroad shall be provided an opportunity of not less than 30 days to respond and to provide written or oral submissions, or both, in support of the program. The Associate Administrator for Safety shall render a final decision in writing and the railroad shall be provided not less than 30 days to amend the program in accordance with the Associate Administrator for Safety’s decision. **(New requirement)**

FRA estimates that approximately 20 programs will be disapproved by the Associate Administrator under the above requirement. As a result, railroads will submit 20 written supporting documents defending their programs. It is estimated that it will take each railroad approximately 60 minutes to complete its supporting documents. Total annual burden of this requirement is 20 hours.

Respondent Universe:	687 railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion

Annual number of Responses:	20 supporting documents
Annual Burden:	20 hours
Annual Cost:	\$1,400

Calculation: 20 supporting documents x 60 min. = 20 hours
20 hrs. x \$70 = \$1,400

Additionally, FRA estimates that approximately 20 programs will need to be amended under the above requirement. It is estimated that it will take each railroad approximately 30 minutes to amend its program and submit the revised documents. Total annual burden of this requirement is 10 hours.

Respondent Universe:	687 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	20 amended program documents
Annual Burden:	10 hours
Annual Cost:	\$700

Calculation: 20 amended program documents x 30 min. = 10 hours
10 hrs. x \$70 = \$700

Total annual burden for this entire requirement is 804,647 hours (37,856 + 158 + 198 + 317 + 765,000 + 888 + 7 + 37 + 74 + 34 + 10 + 38 + 20 + 10).

Part 217.11 - Program of Instruction on Operating Rules; Recordkeeping; Electronic Recordkeeping

(a.) To ensure that each railroad employee whose activities are governed by the railroad’s operating rules understands those rules, each railroad to which this Part applies must periodically instruct each such employee on the meaning and application of the railroad’s operating rules in accordance with a written program retained at its system headquarters and at the division headquarters for each division where the employee is instructed.

Each railroad is required to file one copy of its current program for periodic instruction of its employees. The system headquarters must retain one copy of all these records while the division headquarters for each division where the employees are instructed must retain one copy of all portions of these records that the division applies and enforces. (Note: Existing railroads already comply with this requirement.)

FRA estimates that approximately 130,000 railroad employees will receive periodic instruction under the above requirement. It is estimated that it will take approximately eight (8) hours to instruct each employee on the meaning and application of the railroad’s

operating rules in accordance with its written program. Total annual burden for this requirement is 1,040,000 hours.

Respondent Universe:	687railroads
Burden time per response:	8 hours
Frequency of Response:	On occasion
Annual number of Responses:	130,000 instructed employees
Annual Burden:	1,040,000 hours
Annual Cost:	\$52,000,000

Calculation: 1,040,000 instructed employees x 8 hrs. = 1,040,000 hours
 1,040,000 hrs. x \$50 = \$52,000,000

New Railroads

FRA estimates that approximately 20 railroads will commence operations each year and will be required to retain one copy of their programs at their division and/or system headquarters. It is estimated that it will take each railroad approximately eight (8) hours to develop an operating rules instruction program. Total annual burden for this requirement is 160 hours.

Respondent Universe:	20 new railroads
Burden time per response:	8 hours
Frequency of Response:	On occasion
Annual number of Responses:	20 programs
Annual Burden:	160 hours
Annual Cost:	\$6,400

Calculation: 20 programs x 8 hrs. = 160 hours
 160 hrs. x \$40 = \$6,400

(b.) On or after November 21, 1994, or 30 days before commencing operations, whichever is later, each railroad to which this Part applies must retain one copy of its current program for the periodic instruction of its employees as required by paragraph (a) of this section and one copy of each subsequent amendment to that program. The system headquarters of the railroad must retain one copy of all these records; the division headquarters for each division where the employees are instructed must retain one copy of all portions of these records that the division applies and enforces. These records must be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours. This program must: (1) Describe the means and procedures used for instruction of the various classes of affected employees; (2) State the frequency of instruction and the basis for determining that frequency; (3) Include a schedule for completing the initial instruction of employees who

are already employed when the program begins; (4) Begin within 30 days after November 21, 1994, or the date of commencing operations, whichever is later; and (5) Provide for initial instruction of each employee hired after the program begins.

Each railroad to which this Part applies is authorized to retain by electronic recordkeeping its program for periodic instruction of its employees on operating rules, provided that the requirements stated in §217.9(e)(1) through (5) of this Part are satisfied.

The burden for the current program for the periodic instruction of employees is provided in (a) above. Additionally, each railroad must retain one copy of each amendment to its operating rules instruction program at its division and/or system headquarters. FRA estimates that Class I and Class II railroads will issue a total of approximately 160 amendments each year, and that Class III railroads will issue approximately 60 amendments each year (a total of 220). It is estimated that it will take approximately .92 hour to prepare an amendment and retain one copy of the amendment at each division and/or system headquarters. Total annual burden for this requirement is 202 hours.

Respondent Universe:	687 railroads
Burden time per response:	.92 hour
Frequency of Response:	On occasion
Annual number of Responses:	220 amendments
Annual Burden:	202 hours
Annual Cost:	\$8,080

Calculation: 220 amendments x .92 hr. = 202 hours
202 hrs. x \$40 = \$8,080

Total annual burden for this entire requirement is 1,040,362 hours (1,040,000 + 160 + 202).

Part 218.95 - Instruction, Training, and Examination

(a.) *Program* Effective [DATE 90 DAYS FOLLOWING THE EFFECTIVE DATE OF THE FINAL RULE], each railroad must maintain a written program of instruction, training, and examination of employees for compliance with operating rules implementing the requirements of this subpart to the extent these requirements are pertinent to the employee's duties. If all requirements of this subpart are satisfied, a railroad may consolidate any portion of the instruction, training or examination required by this subpart with the program of instruction required under § 217.11 of this chapter. **(New requirements)**

(1) The written program of instruction, training, and examination shall specifically address the requirements of this subpart, as well as consequences of non-compliance.

(2) The written program of instruction, training, and examination shall include training in any technology (and related procedures) employed to accomplish work subject to the particular requirements, actions required by the employee to enable and use the system, means to detect malfunctioning of equipment or deviations from proper procedures, actions to be taken when malfunctions or deviations are detected, and information needed to prevent unintentional interference with the proper functioning of such technology.

The burden for this requirement is already included under that of § 217.11 above. Consequently, there is no additional burden associated with this provision.

(3) *Implementation schedule for employees, generally.* Each employee performing duties subject to the requirements in this subpart shall be initially instructed, trained, and examined prior to [DATE 12 MONTHS FROM PUBLICATION DATE OF THE FINAL RULE], and employees required to be instructed, trained, and examined thereafter or hired during the 12 month period following [publication date of final rule] shall be instructed, trained, and examined before performing duties subject to the requirements in this subpart.

The burden for this requirement is already included under that of § 217.11 above. Consequently, there is no additional burden associated with this provision.

(4) After [DATE 12 MONTHS AFTER PUBLICATION DATE OF FINAL RULE], no employee shall perform work requiring compliance with the operating rules implementing the requirements of this subpart unless instructed, trained, and examined on these rules within the previous three years.

The burden for this requirement is already included under that of § 217.11 above. Consequently, there is no additional burden associated with this provision.

(5) The records of instruction, examination, and training required by this section shall document qualification of employees under this subpart. Written records documenting instruction, training, and examination of each employee required by this subpart must be retained at its system headquarters and at the division headquarters for each division where the employee is assigned and made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours. (**New requirement**)

Because the required instruction, examination, and training takes place every other year or every three years in some cases, FRA estimates that approximately 98,000 records will be kept under the above requirement. It is estimated that it will take approximately five (5) minutes to complete each record. Total annual burden for this requirement is 8,167 hours.

Respondent Universe:	687 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	98,000 employee records
Annual Burden:	8,167 hours
Annual Cost:	\$326,680

Calculation: 98,000 employee records x 5 min. = 8,167 hours
8,167 hrs. x \$40 = \$326,680

(c) Upon review of the program of instruction, training, and examination required by this section, the Associate Administrator for Safety may, for cause stated, disapprove the program. Notification of such disapproval shall be made in writing and specify the basis for the disapproval decision. If the Associate Administrator for Safety disapproves the program, the railroad shall be provided an opportunity of not less than 30 days to respond and to provide written or oral submissions, or both, in support of the program. The Associate Administrator for Safety shall render a final decision in writing and the railroad shall be provided not less than 30 days to amend the program in accordance with the Associate Administrator for Safety's decision. **(New requirement)**

FRA estimates that approximately 50 written/oral responses will be submitted to the agency under the above requirement. It is estimated that it will take approximately one (1) hour to complete each response. Total annual burden for this requirement is 50 hours.

Respondent Universe:	687 railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	50 written/oral submissions
Annual Burden:	50 hours
Annual Cost:	\$2,000

Calculation: 50 written/oral responses x 1 hr. = 50 hours
50 hrs. x \$40 = \$2,000

Additionally, FRA estimates that the Associate Administrator will disapprove 20 of these written/oral submissions and, as a result, approximately 20 programs will be amended under the above requirement. It is estimated that it will take each railroad approximately 30 minutes to amend its program and submit the revised document to FRA. Total annual burden for this requirement is 10 hours.

Respondent Universe:	687 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion

Annual number of Responses:	20 amended program documents
Annual Burden:	10 hours
Annual Cost:	\$700

Calculation: 20 amended program documents x 30 min. = 10 hours
 10 hrs. x \$70 = \$700

Total annual burden for this entire requirement is 8,227 hours (8,167 + 50 + 10).
Part 218.97 - Good Faith Challenge Procedures

(a) *General Procedures.* Each employer is responsible for the training of and compliance by its employees with the requirements of this subpart. (1) Each employer shall adopt and implement written procedures which guarantee each employee the right to challenge in good faith whether the procedures that will be used to accomplish a specific task comply with the requirements of this subpart or any operating rule relied upon to fulfill the requirements of this subpart. Each employer’s written procedures shall provide for prompt and equitable resolution of challenges made in accordance with this subpart. (2) The written procedures required by this section shall indicate that the good faith challenge described in paragraph (a)(1) of this section is not intended to abridge any rights or remedies available to the employee under 49 U.S.C. 20109 or a collective bargaining agreement. **(New requirements)**

FRA estimates that approximately 687 written procedures will be developed and implemented by railroads under the above requirement. It is estimated that it will take each railroad approximately two (2) hours to develop the required written procedures. Total annual burden for this requirement is 1,374 hours.

Respondent Universe:	687 railroads
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	687 written procedures
Annual Burden:	1,374 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 687 written procedures x 2 hrs. = 1,374 hours
 \$0 (Cost included in RIA)

(3) Each affected employee shall be instructed on the written procedures required by this paragraph as part of the training prescribed by § 217.11 of this chapter.

The burden for this requirement is already included under that of § 217.11 above. Consequently, there is no additional burden associated with this provision.

(4)(i) A copy of the written procedures shall be provided to each affected employee and made available for inspection and copying by representatives of the Federal Railroad Administration during normal business hours. **(New requirement)**

FRA estimates that approximately 130,000 affected employees will receive a copy of the written procedures under the above requirement. It is estimated that it will take approximately five (5) minute to make each copy and another one (1) minute to distribute it to each employee. Total annual burden for this requirement is 13,000 hours.

Respondent Universe:	687 railroads
Burden time per response:	6 minutes
Frequency of Response:	On occasion
Annual number of Responses:	130,000 written procedures copies
Annual Burden:	13,000 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 130,000 written procedures copies x 6 min. = 13,000 hours
\$0 (Cost included in RIA)

(ii) The employer shall provide a copy of any amendments to its written procedures to each affected employee prior to its effective date. **(New requirement)**

FRA estimates that approximately 130,000 affected employees will receive a copy of written procedures amendments under the above requirement. It is estimated that it will take approximately two (2) minutes to make each copy and another one (1) minute to distribute it to each employee. Total annual burden for this requirement is 6,500 hours.

Respondent Universe:	687 railroads
Burden time per response:	3 minutes
Frequency of Response:	On occasion
Annual number of Responses:	130,000 written procedures amendment copies
Annual Burden:	6,500 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 130,000 written procedures amendment copies x 3 min. =
6,500 hours
\$0 (Cost included in RIA)

(b) The written procedures shall: (1) Grant each employee the right to challenge any directive which, based on the employee's good faith determination, would cause the

employee to violate any requirement of this subpart or any operating rule relied upon to fulfill the requirements of this subpart; (2) Provide that an employee making a good faith challenge shall not be discharged or in any way discriminated against for making the challenge; (3) Provide that no work is to be performed with respect to the challenged task until the challenge is resolved. **(New requirement)**

FRA estimates that approximately 15 good faith challenges will be made by railroad employees under the above requirement. It is estimated that it will take approximately 10 minutes to make a good faith challenge. Total annual burden for this requirement is three (3) hours.

Respondent Universe:	130,000 railroad employees
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	15 good faith challenges
Annual Burden:	3 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 15 good faith challenges x 10 min. = 3 hours
\$0 (Cost included in RIA)

A challenge may be resolved by: (i) a railroad or employer officer's acceptance of the employee's request; (ii) an employee's acceptance of the directive; (iii) an employee's agreement to a compromise solution acceptable to the person issuing the directive; or (iv) a direct order to proceed with the work, as initially ordered. Such direct order must be entered only in accordance with prior and subsequent procedures set forth in paragraph (c) of this section.

Based on the above numbers, FRA estimates that approximately 15 challenges will be resolved by one of the above listed methods. It is estimated that it will take approximately five (5) minutes for each type of resolution. Total annual burden for this requirement is one (1) hour.

Respondent Universe:	687 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	15 challenge responses
Annual Burden:	1 hour
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 15 challenge responses x 5 min. = 1 hour
\$0 (Cost included in RIA)

(c) *Direct order to proceed procedures.* The written procedures, prior appeal and subsequent procedures must: (1) Provide for immediate review by at least one officer of the railroad or employer prior to execution of a direct order. The review must not be conducted by the person issuing the challenged directive, or his or her subordinate. The railroad or employer officer providing this immediate review shall have the same options for resolving the challenge as the initial officer, except that the reviewing officer's decision shall not be subject to further immediate review, unless provided for in a railroad's written procedures. **(New requirement)**

FRA estimates that approximately five (5) immediate reviews will be conducted by an officer of the railroad in response to a good faith challenge under the above requirement. It is estimated that it will take approximately 15 minutes to conduct each review. Total annual burden for this requirement is one (1) hour.

Respondent Universe:	687 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	5 immediate reviews
Annual Burden:	1 hour
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 5 immediate reviews x 15 min. = 1 hour
\$0 (Cost included in RIA)

(2) Provide that the employee be afforded an opportunity to document electronically or in writing any protest to the direct order before the tour of duty is complete. The employee must be afforded the opportunity to retain a copy of the protest. **(New requirement)**

FRA estimates that approximately 10 protests will be made under the above requirement. It is estimated that each protest will take approximately 15 minutes to complete electronically or in writing. Total annual burden for this requirement is three (3) hours.

Respondent Universe:	687 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	10 electronic/written protests
Annual Burden:	3 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 10 electronic/written protests x 15 min. = 3 hours
\$0 (Cost included in RIA)

Additionally, FRA estimates that approximately 20 copies of protests will be made under the above requirement. It is estimated that each protest copy will take approximately one (1) minute to complete electronically or in writing. Total annual burden for this requirement is .33 hour.

Respondent Universe:	687 railroads
Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual number of Responses:	20 protest copies
Annual Burden:	.33 hour
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 20 protest copies x 1 min. = .33 hour
\$0 (Cost included in RIA)

(3) Provide that the employee be orally advised that completing the work as ordered will not subject the employee to penalties or consequences for non-compliance under this subpart.

FRA estimates that approximately five (5) advisories will be made to railroad employees under the above requirement. It is estimated that it will take approximately one (1) minute to provide each advisory. Total annual burden for this requirement is .08 hour.

Respondent Universe:	687 railroads
Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual number of Responses:	5 advisories
Annual Burden:	.08 hour
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 5 advisories x 1 min. = .08 hour
\$0 (Cost included in RIA)

(4) Provide that the employee has a right to further review by a designated railroad or employer officer, within a specified period following completion of the duty tour, for the purpose of verifying the proper application of the regulation, law, procedure or rule in question. Upon request by the employee, the verification decision shall be made in writing to the employee. **(New requirement)**

FRA estimates that approximately three (3) further reviews will take place by a designated railroad or employer officer under the above requirement. It is estimated that each further review will take approximately 15 minutes to complete. Total annual burden for this requirement is one (1) hour.

Respondent Universe:	687 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	3 further reviews
Annual Burden:	1 hour
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 3 further reviews x 15 min. = 1 hour
 \$0 (Cost included in RIA)

Total annual burden for this entire requirement is 20,883 hours (1,374 + 13,000 + 6,500 + 3 + 1 + 1 + 3 + .33 + .08 + 1).

Part 218.99 - Shoving or Pushing Movements

(a) Each railroad shall have in effect an operating rule which complies with the requirements of paragraphs (b) through (d) of this section, and each railroad officer, supervisor, and employee shall uphold and comply with that rule. **(New requirement)**

FRA estimates that all 687 railroads will modify their operating rule to comply with the requirements contained in paragraphs (b) and (c) of this. It is estimated that it will take approximately one (1) hour to complete such a modification. Total annual burden for this requirement is 687 hours.

Respondent Universe:	687 railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	687 operating rule modifications
Annual Burden:	687 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 687 operating rule modifications x 1 hr. = 687 hours
 \$0 (Cost included in RIA)

(b) General movement requirements. (1) *Job briefings.* Rolling equipment shall not be shoved or pushed until the locomotive engineer has participated in a job briefing by the employee who will direct the move, who shall describe as part of the job briefing the

means of communication to be used and how protection will be provided. (**New requirement**)

FRA estimates that approximately 60,000 job briefings will be completed under the above requirement. It is estimated that each briefing will be a verbal communication and will take approximately one (1) minute to complete. Total annual burden for this requirement is 1,000 hours.

	Respondent Universe:
	100,000
	Railroad Employees
Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual number of Responses:	60,000 job briefings
Annual Burden:	1,000 hours
Annual Cost:	\$50,000

Calculation: 60,000 job briefings x 1 min. = 1,000 hours
 1,000 hrs. x \$50 = \$50,000

(2) *Point Protection.* When rolling equipment is shoved or pushed, point protection must be provided by a crewmember or other qualified employee: (i) Visually determining, for the duration of the shoving or pushing movement, that the track is clear either within the range of vision or for the complete distance the equipment is to be shoved or pushed. The determination that the track is clear may be made with the aid of monitored cameras or other technological means, provided that it and the procedures for use provide an equivalent level of protection to that of a direct visual determination by an employee properly positioned to make the observation; and (ii) Giving signals or instructions necessary to control the movement. (**New requirement**)

FRA estimates that approximately 87,600,000 shoving or pushing movements will be made each year requiring point protection and thus 87,600,000 determinations and 87,600,000 signals/instructions will be made/given under the above requirement. It is estimated that each determination and each signal or instruction will take approximately one (1) minute to complete. Total annual burden for this requirement is 2,920,000 hours.

Respondent Universe:	100,000 Railroad employees
Burden time per response:	1 minute + 1 minute
Frequency of Response:	On occasion
Annual number of Responses:	87,600,000 determinations + 87,600,000 point protection signals or instructions
Annual Burden:	2,920,000 hours

Annual Cost: \$122,640,000

Calculation: 87,600,000 determinations x 1 min. + 87,600,000 point protection signals or instructions x 1 min. = 2,920,000 hours
2,920,000 hrs. x \$42 = \$122,640,000

(b) *Remote control movement requirements.* All remote control movements are considered shoving or pushing movements, except when the remote control operator controlling the movement is riding the leading end of the locomotive in a position to visually determine conditions in the direction of the movement. In addition to the other requirements of this section, when initiating a remote control shoving or pushing movement: (1) The remote control operator shall visually determine the direction the equipment moves; or (2) A member of that crew shall visually determine the direction the equipment moves and confirm the direction with the remote control operator. If no confirmation is received, the movement shall be immediately stopped. **(New requirement)**

FRA estimates that there will be approximately 876,000 remote control movements and 876,000 corresponding verbal confirmations made under the above requirement. It is estimated that it will take approximately one (1) minute to complete each verbal confirmation. Total annual burden for this requirement is 14,600 hours.

Respondent Universe:	100,000 Railroad employees
Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual number of Responses:	876,000 verbal confirmations
Annual Burden:	14,600 hours
Annual Cost:	\$613,200

Calculation: 876,000 verbal confirmations x 1 min. = 14,600 hours
14,600 hrs. x \$42 = \$613,200

(d) *Remote control zone, exception to point protection requirement.* When a remote control zone is activated, point protection, as prescribed in paragraph (b)(2) of this section, is not required under the following conditions: (1) The remote control movement is operated from a controlling locomotive on the leading end in the direction of movement, i.e., the movement occurs on the pull-out end; (2) The track is clear for the movement as determined by the remote control crewmembers or crewmembers from a relieved remote control crew who have transferred the remote control zone directly to the relieving crew; and (3) The remote control zone is not jointly occupied and has not been jointly occupied since the last determination that the track is clear. **(New requirement)**

FRA estimates that approximately 876,000 determinations will be made that the track is clear under the above requirement. It is estimated that it will take approximately one (1) minute to make each determination. Total annual burden for this requirement is 14,600 hours.

Respondent Universe:	100,000 Railroad employees
Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual number of Responses:	876,000 determinations
Annual Burden:	14,600 hours
Annual Cost:	\$613,200

Calculation: 876,000 determinations x 1 min. = 14,600 hours
 14,600 hrs. x \$42 = \$613,200

(e) *Operational exceptions.* A railroad may adopt operating rules other than those required by paragraphs (b) through (d) of this section in the following circumstances: **(New requirement)**

(1) Push-pull operations when operated from the leading end in the direction of movement, i.e., push mode;

(2) Shoving or pushing operations with manned helper locomotives or distributed power locomotives when operated from the leading end in the direction of the movement;

(3) During the performance of roadway maintenance activity under the direct control of a roadway worker performing work in accordance with railroad operating rules specific to roadway workers; or

(4) When the leading end of a shoving movement is on a main track or controlled siding, under the following conditions:

(i) The train dispatcher gives permission to make the movement and verifies that:

(A) Another movement or work authority is not in effect within the same or overlapping limits unless conflicting movements are protected; and

(B) A main track is not removed from service by a work authority within the same or overlapping limits;

FRA estimates that approximately 30,000 dispatcher permitted movements with the necessary verifications will be made under the above requirement. It is estimated that it will take approximately one (1) minute for the dispatcher to complete the verifications and give permission for movement. Total annual burden for this requirement is 500

hours.

Respondent Universe:	6,000 Railroad dispatchers
Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual number of Responses:	30,000 disp. permitted movements
Annual Burden:	500 hours
Annual Cost:	\$21,000

Calculation: 30,000 dispatcher permitted movements x 1 min. = 500
hours
500 hrs. x \$42 = \$21,000

- (ii) Movement is limited to the train's authority;
- (iii) Movement shall not be made into or within yard limits, restricted limits, drawbridges, or work authority limits;
- (iv) Movement shall not enter or foul a highway-rail grade crossing or pedestrian crossing except when:
 - (A) Crossing gates are in the fully lowered position; or
 - (B) A designated and qualified employee is stationed at the crossing and has the ability to communicate with trains; or

Railroads already have designated employees of theirs who perform this function as part of their normal routine duties. Consequently, there is no additional burden involved with this requirement.

- (C) At crossings equipped only with flashing lights or passive warning devices, when it is clearly seen that no traffic is approaching or stopped at the crossing and the leading end of the movement over the crossing does not exceed 15 miles per hour; and
- (v) Movement shall not be made into or within interlocking limits or controlled point limits unless the following conditions are met:
 - (A) The signal governing movement is more favorable than restricting aspect;
 - (B) Each signal governing movement into and through interlocking limits or controlled point limits shall be continuously observed by a member of that crew;

(C) The crewmember is in a position to determine that the train's movement has occupied the circuit controlling that signal as evidence by that signal assuming its most restrictive aspect; and

(D) Movement does not exceed the train's length.

Crewmembers already perform this function as part of their normal routine duties. Consequently, there is no additional burden involved with this requirement.

Total annual burden for this entire requirement is 2,951,387 hours (687 + 1,000 + 2,920,000 + 14,600 + 14,600 + 500).

Part 218.101 - Leaving Equipment in the Clear

(a) Each railroad shall have in effect an operating rule which complies with the requirements of paragraphs (b) and (c) of this section and each railroad officer, supervisor, and employee shall uphold and comply with that rule. **(New requirements)**

(b) Equipment shall not be left where it will foul a connecting track unless: (1) The equipment is standing on a main track or siding and the main track or siding switch that the equipment is fouling is lined for the main track or siding on which the equipment is standing; or (2) The equipment is standing on a yard or industry switching lead track and the yard or industry track switch that the equipment is fouling is lined for the yard or industry switching lead track on which the equipment is standing.

(c) Each railroad must implement procedures that enable employees to identify clearance points and a means to identify locations where clearance points will not permit a person to safely ride on the side of a car.

FRA estimates that all 687 railroads will develop procedures that comply with the requirements contained in paragraphs (b) and (c) of this section. It is estimated that it will take each railroad approximately 30 minutes to develop such procedures and amend its operating rule. Total annual burden for this requirement is 344 hours.

Respondent Universe:	687 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	687 amended operating rules
Annual Burden:	344 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 687 amended operating rules x 30 min. = 344 hours

\$0 (Cost included in RIA)

Part 218.103 - Hand-operated Switches and Derails

(a) Each railroad shall have in effect an operating rule which complies with the requirements set forth in this section and each railroad officer, supervisor, and employee shall uphold and comply with that rule. **(New requirements)**

(b) *General.* Employees operating or verifying the position of a hand-operated switch or derail must: (1) Be qualified on the railroad's operating rules relating to their operation; (2) Be individually responsible for the position of the switch or derail in use; (3) Visually ensure that switches and derails are properly lined for the intended use; (4) Visually ensure that points fit properly and the target, if so equipped, corresponds with the switch's position; (5) Ensure that the switch is latched or secured by placing the lock or hook, if so equipped, in the hasp before making movements in either direction over the switch; (6) After locking, hooking or latching a switch or derail that is so equipped, test the lock, hook or latch to ensure it is secured; (7) Ensure that the switches are not operated while the equipment is standing or moving over a switch; and (8) Ensure that when not in use, switches are locked, hooked or latched if so equipped.

FRA estimates that all 687 railroads will modify/amend their operating rule in effect to comply with the requirements contained in paragraphs (a) and (b) of this section. It is estimated that it will take approximately one (1) hour for each railroad to modify/amend its operating rule. Total annual burden for this requirement is 687 hours.

Respondent Universe:	687 railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	687 modified operating rules
Annual Burden:	687 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 687 modified operating rules x 1 hrs. = 687 hours
\$0 (Cost included in RIA)

(c) *Hand-operated Main track switches.* (1) The normal position of a main track switch shall be designated by the railroad in writing and the switch shall be lined and locked in that position when not in use except when: (i) The train dispatcher directs otherwise with respect to the position of a hand-operated main track switch and the necessary protection is provided; or (ii) The hand-operated switch is left in the charge of a crewmember of another train, a switchtender, or a roadway worker in charge. **(New requirement)**

Railroads already designate in writing the normal position of main track switches. This

is a usual and customary procedure. Consequently, there is no additional burden associated with this requirement.

(2) *Releasing Authority Limits.* In non-signaled territory, before a train or engine service employee releases the limits of a main track authority and a hand-operated switch is used to clear the main track, and, prior to departing the train’s location, the following conditions are required: (i) The employee releasing the limits, after conducting a job briefing in accordance with paragraph (i)(3)(i) of this section, shall report to the train dispatcher that the hand-operated main track switch has been restored to its normal position and locked, unless the train dispatcher directs that the hand-operated main track switch be left lined and locked in the reverse position and the necessary protection is provided; (ii) If the report of the switch position is correct, the train dispatcher shall repeat the reported switch position information to the employee releasing the limits and ask whether that correct; and (iii) The employee releasing the limits shall then confirm to the train dispatcher that this information is correct. **(New requirement)**

The only extra requirement here is for the train dispatcher since railroad employees (usually the conductor or engineer) normally reports the switch position as a routine part of the railroad’s operating rules. FRA estimates that approximately 60,000 switches a year will be affected by the above requirement. Thus, dispatchers will make 60,000 acknowledgments (before clearing the limits of an authority) and railroad employees will make 60,000 confirmations a year in response. It is estimated that each acknowledgment will take approximately 30 seconds to complete and each confirmation by the employee will take approximately five (5) seconds. Total annual burden for this requirement is 583 hours.

	Respondent Universe:
	6,000
	Dispatchers
Burden time per response:	30 seconds + 5 seconds
Frequency of Response:	On occasion
Annual number of Responses:	60,000 acknowledgments + 60,000 verbal confirmations
Annual Burden:	583 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 60,000 acknowledgments x 30 sec. + 60,000 verbal confirmations x 5 sec. = 583 hours
\$0 (Cost included in RIA)

(d) *Job briefings.* Minimum requirements necessary for an adequate job briefing must be specified. **(New requirement)**

Class I and II railroads already do this. Consequently, only Class III railroads are affected by this requirement. FRA estimates that all 632 Class III railroads will modify its operating rules to meet the above requirement. It is estimated that it will take each railroad approximately one (1) hour to modify its operating rule. Total annual burden for this requirement is 632 hours.

Respondent Universe:	632 railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	632 modified operating rules
Annual Burden:	632 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 632 modified operating rules x 1 hr. = 632 hours
\$0 (Cost included in RIA)

(2) Job briefings must be conducted by employees operating hand-operated switches before work is begun, each time a work plan is changed, and at completion of the work. **(New requirement)**

FRA estimates that approximately 1,125,000 job briefings will be conducted annually under the above requirement. It is estimated that each job briefing will take approximately one (1) minute to complete. Total annual burden for this requirement is 18,750 hours.

Respondent Universe:	687 railroads
Burden time per response:	1 minute
Frequency of Response:	Annually
Annual number of Responses:	1,125,000 job briefings
Annual Burden:	18,750 hours
Annual Cost:	\$787,500

Calculation: 1,125,000 job briefings x 1 min. = 18,750 hours
18,750 hrs. x \$42 = \$787,500

(3) *Additional job briefing requirements for hand-operated main track switches.*

(i) Before a train or a train crew leaves the location where any hand-operated main track switch was operated, all crewmembers must have verbal communication to confirm the position of the switch.

FRA estimates that all 687 railroads are affected by the above requirement and that approximately 60,000 job briefings will take place among crewmembers annually under the above requirement. It is estimated that each job briefing will take approximately one (1) minute to complete. Total annual burden for this requirement is 1,000 hours.

Respondent Universe:	687 railroads
Burden time per response:	1 minute
Frequency of Response:	Annually
Annual number of Responses:	60,000 job briefings
Annual Burden:	1,000 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 60,000 job briefings x 1 min. = 1,000 hours
 \$0 (Cost included in RIA)

(ii) In the case of exclusive track occupancy authority established under § 214.321, foul time under § 214.323, or train coordination under § 214.325, when a roadway worker qualified to operate hand-operated main track switches is granted permission by the roadway worker-in-charge to occupy or otherwise use the limits of the exclusive track occupancy, such employee receiving permission to occupy the working limits must report the position of any such switches operated upon expiration of the authority limits to the roadway worker-in-charge or to a designated intermediary employee who shall convey the switch position to the roadway worker-in-charge. **(New requirement)**

FRA estimates that approximately 687 railroads are affected by the above requirement and that approximately 100,000 employee reports and 100,000 switch position information conveyances will be made annually under the above requirement. It is estimated that each report and each information conveyance will take approximately one (1) minute to complete. Total annual burden for this requirement is 3,334 hours.

Respondent Universe:	687 railroads
Burden time per response:	1 minute
Frequency of Response:	Annually
Annual number of Responses:	100,000 employee reports + 100,000 switch position conveyances
Annual Burden:	3,334 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 100,000 employee reports x 1 min. + 100,000 switch position conveyances x 1 min. = 3,334 hours
 \$0 (Cost included in RIA)

Total annual burden for this entire requirement is 24,986 hours (687 + 583 + 632 + 18,750 + 1,000 + 3,334).

Part 220.21(b) - Railroad Operating Rules; Radio Communications; Recordkeeping

Thirty days before commencing to use radio communications in connection with railroad operations, each railroad must retain one copy of its current operating rules with respect to radio communications at the locations prescribed in paragraphs (b)(1) and (b)(2) of this section. Each amendment to these operating rules must be filed at such locations within 90 days after it is issued. These records must be made available to representatives of the Federal Railroad Administration for inspection and photocopying during normal business hours.

(1) Each Class I railroad, each Class II railroad, each railroad providing intercity rail passenger service, and each railroad providing commuter service in a metropolitan or suburban area must retain such rules at each of its division headquarters and at its system headquarters; and (2) Each Class III railroad and any other railroad subject to this Part, but not subject to paragraph (b)(1) of this section, must retain such rules at the system headquarters of the railroad.

Railroads then are required to retain one copy of their current operating rules with respect to radio communications and one copy of each subsequent amendment thereto. All Class I railroads, Class II railroads, the National Railroad Passenger Corporation (Amtrak), and railroads providing commuter service in a metropolitan or suburban area must retain their radio rules at their division headquarters and system headquarters. All Class III railroads must retain their radio rules at their system headquarters.

Railroads usually prepare their radio rules in conjunction with their operating rules as required by 49 CFR § 217.7. Section 220.21(b), however, does not require Class I railroads, Class II railroads, the National Railroad Passenger Corporation (Amtrak), and railroads providing commuter service in a metropolitan or suburban area to file their radio rules with FRA. Instead, these railroads must retain their radio rules at their system headquarters and division headquarters. (Class III railroads need only retain their radio rules at their system headquarters.) Therefore, FRA believes that the radio rules requirements will not impose any additional burden on the railroad industry than what is already required under 49 CFR § 217.7.

The total annual burden for the entire information collection is 4,851,384 hours.

- 13. PROVIDE AN ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS OR RECORDKEEPERS 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 to the railroads outside of the burden hour costs mentioned above under Item 12.

- 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.

Approximately, 40 man-hours are spent annually reviewing the reports and an additional 15 hours in processing the respondents' submissions. This excludes time spent doing routine compliance and enforcement activities. Multiplying 40 hours times the estimated \$59 per hour (includes 40% overhead) equals \$2,360 which is the cost of reviewing the reports. An additional \$750 is spent annually for processing the reports [\$50 a hour (includes 40% overhead)]. Total annual cost to the Federal government is \$3,110.

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

The burden for this collection of information has increased by 4,084,896 hours. The increase is due both to adjustments and program changes to previous estimates for several requirements. Specifically, the following requirements reflect adjustments:

(1.) Under § 217.11, FRA did not previously account for the requirement that stipulates railroad employees must be periodically instructed on the meaning and application of the railroad's operating rules in accordance with the railroad's written program. This *increased* the burden by *1,040,000 hours* (from zero (0) hours to 1,040,000 hours).

(2.) Under § 217.9(f), FRA revised (decreased) its estimate of the number of summary records kept by railroads (from 55 to 37). FRA also increased the burden time per response by one (1) minute. The changed estimate *decreased* the burden by *17 hours* (from 55 hours to 38 hours).

(3.) Under § 217.11(a), FRA revised (decreased) its estimate of the number of new railroads commencing operations each year that are required to retain a copy of the written program of its operating rules from 21 to 20. This *decreased* the burden by *eight (8) hours* (from 168 hours to 160 hours).

Overall, adjustments *increased* the burden by *1,039,975 hours*.

The following requirements reflect program changes:

(1.) Under § 217.9(b), the proposed rule includes a new requirement that railroad officers must receive field training/be qualified on the operational tests that he/she is authorized to conduct. This change *increased* the burden by *37,856 hours*.

(21.) Under § 217.9(b)(2), the proposed rule requires written records documenting the qualification of each railroad testing officer. This change *increased* the burden by *158 hours*

(3.) Under § 217.9(e), the proposed rule requires the designated officers of all affected freight railroads to conduct periodic reviews (six months, quarterly, and monthly) of tests and inspections. This change *increased* the burden by *1,006 hours*.

(4.) Under § 217.9(e)(2) and § 217.9(e)(3), the proposed rule requires the designated officers of Amtrak and affected commuter railroads to conduct periodic reviews of tests and inspections, and maintain records of these reviews. This change *increased* the burden by *44 hours*.

(5.) Under § 217.9(i), the proposed rule provides affected railroads whose program of operational tests and inspections has been disapproved by the FRA Associate Administrator for Safety the opportunity to respond to the disapproval with written/oral submissions, and to amend their program if their response proves unsatisfactory. This change *increased* the burden by *30 hours*.

(6.) The proposed rule adds a new section in § 218.95 pertaining to a written program of instruction, training, and examination of employees for compliance with operating rules implementing the requirements of this subpart. These new requirements *increased* the burden by *8,227 hours*.

(7.) The proposed rule adds a new section in § 218.97 pertaining to railroads including good faith challenges procedures in their operating rules which guarantee each railroad employee the right to challenge in good faith whether the procedures that will be applied to accomplish a specific task comply with the requirements of this subpart. Employees must also receive a copy of the written procedures. These new requirements *increased* the burden by *20,883 hours*.

(8.) The proposed rule adds a new section in § 218.99 pertaining shoving/pushing movements and having in effect an operating rule that deals with these type of movements which must be upheld by railroad officers, supervisors, and employees. Rolling equipment can not be shoved or pushed until the locomotive engineer has participated in a job briefing by the employee who will direct the move. Also, there are provisions regarding point protection, remote control movements, and operational exceptions. These new requirements *increased* the burden by *2,951,387 hours*. (*Note: The requirement pertaining to shoving/pushing movements involving point protection determining the track is clear and giving signals/instructions by crewmembers/other qualified employees alone increased the burden by 2,920,000 hours.*)

(9.) The proposed rule adds a new section in § 218.101 regarding leaving equipment in the clear. These new requirements *increased* the burden by *344 hours*.

(10.) Finally, the proposed rule adds a new section in § 218.103 pertaining to hand-operated switches and derails. These new requirements *increased* the burden by *24,986*

hours.

Overall, program changes *increased* the burden by 3,044,921 hours.

The current inventory shows a burden total of 766,488 hours, while the present submission reflects a burden total of 4,851,384 hours. Hence, there is a total burden increase of 4,084,896 hours.

There is no change in cost to respondents from the previous submission.

- 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.**

There is no tabulation or publication of responses. This information is used by specialists in the Office of Safety to determine the level of safety of each railroad's operations. Persons outside FRA's Office of Safety use the material for research and development purposes.

- 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 the top DOT strategic goal, namely transportation safety. Without this collection of information, rail safety throughout the U.S. might be seriously hindered. Specifically, the number of accidents/incidents and the severity of injuries might increase because railroads' code of operating rules, timetables, and timetable special instructions did not conform to Federal safety laws and regulations. Also, the number of accidents/incidents and the severity of injuries might increase because railroad employees were not familiar with the railroad's current operating rules, timetables, and timetable special instructions, and consequently engaged in unsafe practices.

The collection of information promotes safety by providing FRA an opportunity to review and monitor railroads operating rules and any amendments thereto to ensure full compliance with Federal laws and regulations. The collection of information promotes safety by providing FRA oversight to ensure that railroads conduct the required operational tests and inspections. Moreover, the collection of information promotes safety by ensuring that railroad workers are properly trained concerning the railroad's current operating rules, timetables, and timetable special instructions. Periodic training reduces the likelihood that workers will not understand current operating rules or engage in unsafe practices.

The collection of information, notably the written summaries on operational tests and inspections required of railroads with more than 400,000 man-hours per year, further enhances rail safety by providing a valuable resource that FRA and other investigating agencies can use in determining the cause(s) of accidents/incidents. These records provide valuable information such as the number, type, and result of each operational test and inspection that was conducted (as required under § 217.9(a)). By accurately determining the cause(s) of accidents/incidents, FRA and the railroad industry can take measures to reduce the likelihood of similar events occurring in the future.

In summary, this collection of information enhances railroad safety by providing an additional layer of protection through the agency's close monitoring and full awareness of the railroads' current operating rules and practices. It furthers DOT's goal of promoting the public health and safety by working toward the elimination of transportation-related deaths, injuries, and property damage.

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