

**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.**

In response to four petitions for reconsideration of its Railroad Operating Rules Final Rule, FRA has added certain amendments that generally clarify the requirements currently contained in the final rule or that allow for greater flexibility in complying with this rule. This revised submission addresses the additional paperwork requirements (and accompanying burden) that have been included under § 218.99 (e)(5), and requests a three-year extension of the recent OMB approval.

Background

FRA has grown steadily concerned over the past few years as the frequency of human factor caused accidents have increased. When these accidents are reported, the reporting railroad is required to cite the cause(s) of the accident. In the case of a human factor caused accident, an employee (or employees) is typically associated with a failure to abide by one or more railroad operating rules. Over the past few years, FRA inspectors have simultaneously observed a substantial increase in non-compliance with those railroad operating rules that cause or contribute to these types of accidents.

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 greatest cause of these accidents as identified by the railroads were (1) switch improperly lined and (2) absence of an employee on, at or ahead of a shoving movement. These two issues alone account for over 60 percent of all accidents caused annually by employees mishandling of equipment, switches, and derails.

A grouping of four other causes saw steady increases from 133 per year in 1997 to 213 per year in 2004 – a cumulative increase of 37 percent; these causes are (1) failure to control a shoving movement, (2) switch previously run through, (3) cars left foul, and (4) failure to apply or remove a derail. 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. FRA inspection data show that non-compliance related to mishandling of equipment, switches, and derails rose from 319 to 2,954 per year from 2000 to 2004 – a nine-fold increase. The most common areas of human non-compliance 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 areas of non-compliance are: (1) employee left derail improperly lined (on or off), (2) absence of employee on, at, or ahead of shoving 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.

Some non-compliance data apply particularly to human factor mistakes noted during inspections of operations involving remote control operations. FRA assigned non-compliance codes to identify the following problems specifically associated with these 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. In 2004, FRA inspectors recorded 29 instances of non-compliance with the railroad's operating rules underlying the three codes. In 2005, the number of instances of non-compliance with those same codes recorded by FRA inspectors increased to 92.

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. The total monetized damages were much higher than that, with one estimate as high as \$125 million. NTSB determined that the probable cause of the 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 regarding the switch's position 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., usually 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 so as to 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. FRA recommended 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.

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)*. The three accidents cited in EO 24 resulted in fatal injuries to one railroad employee, non-fatal injuries to eight 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 harm. 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.* EO 24 illuminated the problems associated with mishandling of hand-operated switches in non-signaled territory.

Prior to the Graniteville accident, FRA had developed and implemented procedures to focus agency resources on critical railroad safety issues. Such procedures were appropriate even though the industry's overall safety record had improved over the last decade and most safety trends were moving in the right direction. 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." Action Plan at 1 (published on FRA's website at <http://www.fra.dot.gov>).

In the plan, FRA introduced its basic principles to address critical railroad safety issues. One basic principle is that FRA's safety program is increasingly guided by careful analysis of accident, inspection, and other safety data. Another basic principle is that FRA attempts to direct both its regulatory and compliance efforts toward those areas involving the highest safety risks. The plan is intended to be proactive in that it will target the most frequent, highest risk causes of accidents.

FRA identified "reducing human factors accidents" as one of the major areas in which the agency planned initiatives. In fact, the plan discusses this issue first because it constitutes the largest category of train accidents, accounting for 38 percent of all train accidents over the first five years of this decade, and human factor accidents were growing in

number at the time the action plan was implemented. Furthermore, 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 the release of hazardous materials, or harm to rail passengers, have been caused by human factors or track problems.

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 this final rule accounted for nearly 48 percent of all human factor accidents in 2004; these eight causes, which resulted in accidents causing over \$113 million in damages to property and equipment from 2001-2005, can be grouped into three basic areas of railroad operations. They include: (1) operating switches and derails; (2) leaving equipment out to foul; and (3) 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. Thus, this final rule is geared to address approximately half of all human factor caused accidents on all classes of track.

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 remaining five causes addressed in this final rule account for nearly 14 percent 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 final 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).

FRA is not specifically required by statute to issue a regulation on the subjects covered by this final rule. However, FRA believes that establishing greater accountability for implementation of sound operating rules is necessary for safety. FRA initiated and finalized this rulemaking because it has recognized that human factor train accidents comprise the largest single category of train accident causes and because existing regulations have proven inadequate to achieve a significant further reduction in their numbers or severity. Moreover, the current situation in the railroad industry, which is characterized by strong market demand, extensive hiring of new employees, and rapid attrition of older employees now becoming eligible for retirement, demands a more substantial framework of regulations to help ensure that operational necessity will not overwhelm systems of safeguards relied upon to maintain good discipline.

The theme of this final rule is accountability. It embodies both a broad strategy intended to promote better administration of railroad programs and a highly targeted strategy designed to improve compliance with railroad operating rules addressing three critical areas. Within this framework, FRA has taken responsibility to set out certain requirements heretofore left to private action. FRA will be monitoring compliance with those requirements through appropriate inspections and audits, and when necessary will be assessing appropriate civil penalties to assure compliance. Railroad management will be held accountable for putting in place appropriate rules, instructions, and programs of operational tests. Railroad supervisors will be held accountable for doing their part to administer operational tests and establish appropriate expectations with respect to rules compliance. Railroad employees will be held accountable for complying with specified operating rules, and will have a right of challenge should they be instructed to take actions that, in good faith, they believe would violate those rules. It is intended that this framework of accountability promote good discipline, prevent train accidents, and reduce serious injuries to railroad employees.

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 new information collected under § 218.99(e)(5)(iii) will be used by railroads and their employees to provide a reliable means of determining track occupancy prior to commencing a shoving or pushing movement. Requiring that written procedures be

adopted and complied with is a way to create a uniform method of leaving a car or cut of cars on a departure track safely, thus permitting the yardmaster or next crew entering to know that the entire length of a particular departure track is not clear. FRA will also use this information when it conducts inspections of these departure yards to review these procedures to ensure that any particular procedure, or lack thereof, does not create an undue safety risk and that the departure yard operation utilizing the shove light system is managed in a safe manner.

The new information collected under § 218.99(e)(5)(iv) requires that the departure track be designated in writing. This is an important requirement because it is an exception to providing point protection. It will be used by railroad employees so that they know specifically on which tracks the exception applies. FRA is promulgating this requirement even though we are unaware of shove light systems being installed on other than designated departure tracks. The requirement in this paragraph is intended to prevent a railroad from installing shove lights on yard tracks that are not departure tracks and attempting to circumvent the point protection requirements under paragraph (b)(3) of this section.

The information collected from this final rule's requirements 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, under § 217.9, 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.

Section 217.9 of this rule stipulates that 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 and is 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.

Further, 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 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 railroad's 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/will be 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.

Also, under § 218.97(d), FRA has added new recordkeeping and retention requirements. Specifically, a copy of the written procedures required by this section must be retained at the railroad's system headquarters and at each division headquarters, and must be made available to representatives of FRA for inspection and copying during normal business hours. FRA will review railroads copies of written procedures to ensure that railroads are fully adopting, implementing, and complying with the requirements of this regulation, particularly the critical requirement relating to good faith challenges by railroad employees. Good faith challenges are intended to provide a forum that will allow railroad officials to listen to employees concerns regarding an operational order and to reconsider the validity of the order, thereby both improving the lines of communication among railroad employees and increasing adherence to the railroad's operating rules. Overall, railroad safety ought to be thereby enhanced. Under § 218.97(d)(2), a copy of any record of a good faith challenge verification decision, made in compliance with § 218.97(c)(4), must be retained at the railroad's system headquarters and at the division headquarters to which the employee was working when the challenge was initiated. Such record copies must be made available to FRA for inspection and copying during normal business hours. FRA will review these records again to ensure regulatory compliance and also to resolve any questions/disputes relating to a good faith challenge.

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 and will be used 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.

Under §§§ 218.103, 238.105, and 238.107, railroads will be required to adopt operating rules which meet the minimum requirements set forth in these sections concerning hand-operated switches, including cross-over switches. Railroads must specify minimum requirements necessary for an adequate job briefing. Further, employees operating or verifying the position of a hand-operated switch must: (1) Conduct job briefings, before work is begun, each time a work plan is changed, and at completion of the work; (2) Be qualified on the railroad's operating rules relating to the operation of the switch; (3) Be individually responsible for the position of the switch in use; (4) Visually determine that switches are properly lined for the intended use; (5) Visually determine that points fit properly and the target, if so equipped, corresponds with the switch's position; (6) Before making movements in either direction over the switch, ensure the switch is secured from unintentional movement of the switch points; (7) Ensure that a switch is not operated while rolling and on-track maintenance-of-way equipment is standing or moving over the switch; and (8) Ensure that when not in use, each switch is locked, hooked or latched, if so equipped. There are also additional requirements for hand-operated main track switches. The information required under these sections will be used by FRA to ensure railroads highlight the importance of properly handling switches and to ensure that those employees performing such operations are fully qualified and knowledgeable regarding the tasks they will be called on to perform. Frequent 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. It is essential that rail employees know what is expected of them before they start working, that they know what is expected to happen if the work plan changes after work is initiated but before the work is completed, and that they understand the importance of confirming whether all the work was completed and according to the operating rules.

Finally, under § 218.109, employees operating or verifying the position of a fixed derail must: (1) Conduct job briefings, before work is begun, each time a work plan is changed, and at completion of the work; (2) Be qualified on the railroad's operating rules relating to the operation of the derail;(3) Be individually responsible for the position of the derail in use; (4) Determine that the target, if so equipped, corresponds with the derail's position; (5) Determine that the derail is secured by: (i) placing the throw lever in the latch stand, if so equipped; (ii) placing the lock or hook in the hasp, if so equipped; and (iii) testing such latches, locks or hooks; and (6) Ensure that when not in use, derails are locked, hooked, or latched if so equipped. The information will be used by FRA to ensure that railroads emphasize to their employees the importance of properly handling fixed derails, particularly that employees operating or verifying the position of a fixed derail ensure that derails are locked, hooked, or latched if so equipped when not in use. The information will be used by railroad employees to facilitate clear communication in working with this type of equipment and to effectively carry out job tasks associated with fixed derails so as to promote error free operations. Thus, all the enumerated requirements serve the goal of reducing the number of rail accidents/incidents and corresponding injuries that occur each year.

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. 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 under § 217.11, provided the stipulated requirements in § 217.9(e)(1) through (e)(5) are met. Also, the records of instruction,

examination, and training required under (new) § 218.95(a)(5) can be retained electronically, as long as they are kept in accordance with §§ 217.9(g) and 217.111(c) instruction. Finally, under § 218.97(c)(2), railroad employees have the option of documenting electronically or in writing any protest to a direct order, and under § 218.97(d)(2), copies of records regarding good faith challenge verification decisions may be stored electronically if they are kept in accordance with the electronic recordkeeping standards set forth in § 217.9(g)(1) through (g)(5) of this chapter. Thus, approximately 43 percent of total responses may be kept electronically by railroads and their employees.

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 – will supplant Emergency Order 24 and its associated information collection (**OMB No. 2130-0568**), which required special handling, instruction, and testing of railroad operating rules pertaining to hand-operated main track switches in non-signaled territory.

Once OMB approval is obtained for this collection of information and upon this new rule's effective date, FRA will submit the appropriate form (OMB 83-D) to discontinue the clearance under **OMB No. 2130-0568** in order to avoid duplication and minimize burden.

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 rule, and a subgroup addressing their needs was formed, met, and contributed to FRA's understanding of their concerns. The impact on small entities was considered throughout the development of this rule. 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 eliminated the requirement for a SPAF in this final rule, which is replacing E.O. 24 upon its effective date.

The biggest costs of this final rule will be related to the publication of the changed language, and management of the operating rules programs. The rule will have even less impact on small entities, as they are excused from most of the burdens which regulate management of their operating rules testing programs. Additionally, while FRA amends § 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 quarterly and six-month reviews to further reduce burden on small (Class III) railroads.

It should be noted that, in the economic analysis accompanying this final rule, FRA has certified that this rule 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 (quarterly, and six-month), 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.

Without the new requirements under § 218.99(e)(5)(iii) and (e)(5)(iv), there might be a greater number of accident/incidents and corresponding injuries and possibly fatalities to

railroad employees because they did not reliably know whether or not a track was occupied prior to commencing a shoving or pushing movement and did not know whether or not a track was designated for such movements..

Finally, without the requirement that railroads have in effect an operating rule that establishes minimum requirements for leaving equipment in the clear in order to prevent equipment from fouling connecting tracks and an operating rule regarding hand-operating switches, cross-over switches, and derails, railroad employees might not be as highly focused in fulfilling their responsibilities in making sure that hand-operated switches and derails are left properly lined before leaving a work site. Without such careful attention to detail and to properly operating such equipment, there could be increased numbers of preventable accident/incidents.

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 with corresponding casualties that result from such errors. This collection of information furthers FRA's primary mission, which is to promote and enhance rail safety throughout the nation.

7. **EXPLAIN ANY SPECIAL CIRCUMSTANCES THAT WOULD CAUSE AN INFORMATION COLLECTION TO BE CONDUCTED IN A MANNER:**
- **EQUIRING RESPONDENTS TO REPORT INFORMATION TO THE AGENCY MORE OFTEN THAN QUARTERLY;**
 - **EQUIRING RESPONDENTS TO PREPARE A WRITTEN RESPONSE TO A COLLECTION OF INFORMATION IN FEWER THAN 30 DAYS AFTER RECEIPT OF IT;**
 - **EQUIRING RESPONDENTS TO SUBMIT MORE THAN AN ORIGINAL AND TWO COPIES OF ANY DOCUMENT;**
 - **EQUIRING RESPONDENTS TO RETAIN RECORDS, OTHER THAN HEALTH, MEDICAL, GOVERNMENT CONTRACT, GRANT-IN-AID, OR TAX RECORDS FOR MORE THAN THREE YEARS;**
 - **N CONNECTION WITH A STATISTICAL SURVEY, THAT IS NOT DESIGNED TO PRODUCE VALID AND RELIABLE RESULTS THAT CAN BE GENERALIZED TO THE UNIVERSE OF STUDY;**
 - **EQUIRING 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 the 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.

FRA is publishing its response to Petitions for Reconsideration in the Federal Register on June 16, 2008. (See 73 FR 33888). In all, there were four petitions seeking FRA's reconsideration of the rule's requirements. In its response to these petitions, FRA eliminated certain regulatory requirements and added two additional paperwork requirements in order to provide greater flexibility to the railroads in complying with the final rule.

Background

On May 18, 2005, the FRA's Railroad Safety Advisory Committee (RSAC) accepted a task statement and agreed to establish the Railroad Operating Rules Working Group (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. After consideration of the Working Group's recommendations, FRA published a Notice of Proposed Rulemaking (NPRM) on October 12, 2006 to establish greater accountability on the part of railroad management for administration of railroad programs of operational tests and inspections, and greater accountability on the part of railroad supervisors and employees for compliance with those railroad operating rules that are responsible for approximately half of the train accidents related to human factors. See 71 FR 60372. FRA received written comment on the NPRM as well as advice from its Working Group in preparing a final rule, which was published on February 13, 2008. See 73 FR 8442.

Following publication of the final rule, parties filed petitions seeking FRA's reconsideration of the rule's requirements. These petitions principally related to the following subject areas: the implementation dates; shove lights; the need for individual liability and enforcement; good faith challenge procedures; the point protection technology standard for remote control locomotive operations; and FRA's rulemaking authority.

In its petition, the Association of American Railroad (AAR) requested reconsideration of FRA's decision to exclude shove lights as an acceptable technological alternative to visually protecting the point pursuant to the requirements in 49 CFR 218.99(b)(3)(i) unless either: (1) the track is completely circuited to indicate occupancy; or, (2) a visual determination is made that the track is clear to the beginning of the circuited section of the track. 73 FR 8478. AAR makes two arguments in support of permitting shove lights and radio signal arrangements. One argument is that there is no evidence that the use of shove lights has caused accidents or injuries despite having been used for over thirty years. A second argument is that a prohibition on shove lights and radio arrangements creates an increased risk of injuries and thus does not justify the prohibition. AAR attributes the potential for an increase in injuries to the risks employees would need to

take to visually determine the departure track is clear.

A joint response to AAR's petition was filed by the presidents of six labor organizations (Joint Labor Petition): the American Train Dispatchers Association (ATDA); the Brotherhood of Locomotive Engineers and Trainmen, a division of the Rail Conference of the International Brotherhood of Teamsters (BLET); the Brotherhood of Maintenance of Way Employees Division of the Rail Conference of the International Brotherhood of Teamsters (BMWED); the Brotherhood of Railway Carmen Division of the Transportation Communications International Union (BRC); the Brotherhood of Railroad Signalmen (BRS); and the United Transportation Union (UTU). These labor organizations represent over 140,000 railroad workers engaged in train and engine service, train dispatching operations, equipment inspection, maintenance and repair, roadway worker activities, and signal construction, maintenance and repair. The Transportation Trades Department, AFL-CIO (TTD) filed a separate comment in support of the Joint Labor Petition.

The Joint Labor Petition opposes AAR's request for reconsideration of the shove light exception. This opposition is based on the fact that the track, unless completely circuited, will not be determined to be clear. The Joint Labor Petition points out that the final rule permits technology to substitute for a direct visual determination and thus one option is for a railroad to add additional indicator circuits. FRA notes that the Joint Labor Petition did not respond to AAR's assertions that there is no evidence that the use of shove lights has caused accidents or injuries despite having been used for over thirty years and that a prohibition on shove lights and radio arrangements creates an increased risk of injuries that does not justify the prohibition. The Joint Labor Petition argues that AAR seeks to institutionalize a practice that is dangerous and will lead to an increase in accidents, incidents, and injuries, but the response does not elaborate on this conclusion.

In response to AAR's petition, and after considering the Joint Labor Petition's comments, FRA has decided to grant AAR's petition for reconsideration in part and deny it in part. FRA agrees to add an operational exception under § 218.99(e)(5) for shoving or pushing movements made in the direction of the circuited end of a designated departure track equipped with a shove light system under certain specified conditions. Many railroads with existing shove light systems should find that few changes, if any, will be necessary to comply with the requirements for the exception in new paragraph (e)(5).

After publication of the final rule, FRA received feedback that some railroads were disappointed with FRA's position on shove lights. As the issue did not initiate much discussion during the Working Group meetings, FRA had not compiled much information on it. In anticipation that a petition for reconsideration on the shove light issue might be filed, FRA conducted a review of shove light systems utilized by the major railroads.

Between February 25 and March 21, 2008, FRA reviewed procedures and observed operations on departure tracks with shove light systems throughout the country. FRA

surveyed the major railroads to find out where shove lights were used and received information that five of the seven major railroads used shove light systems at thirty-four major classification yards in seventeen states. FRA confirmed through inspections that the railroads did not utilize shove light systems at any other major yard. The thirty-four yards contained a total of 356 departure tracks equipped with shove lights. Only seven of the thirty-four yards were found to provide point protection by having the departure tracks entirely circuited or by using cameras to determine that the track is clear. Thus, FRA focused its attention on whether the remaining twenty-seven yards that did not already meet FRA's new requirement for point protection under § 218.99(b)(3) were safe operations nonetheless.

At all twenty-seven yards, non-visual procedures were in place that provided yardmasters with a high degree of confidence with respect to the status of any of the departure tracks. One procedure common to all twenty-seven yards included a "turn-over" report, i.e., a job briefing, given verbally from one yardmaster to the next, based on the information logged on a written turn-over sheet. In addition to the turnover report, at many yards, the yardmaster had access to a computer generated inventory allowing the yardmaster to monitor each car from the moment it arrived onto the receiving yard tracks. Many of these yardmasters were also able to track by computer the movements of each car through the yard complex. Some yardmasters also received information about each transfer job that brought cars from the classification yard to the departure yard. At some yards, railroads instituted standard instructions that required any car cut-off a departing train to be left on the circuited section of the track on which it was to be placed. Thus, if a car was left on the circuited section of track, a person observing the shove light would know that some equipment was left there and would be required to take appropriate action to determine what was left on the departure track prior to initiating a shoving or pushing movement. Meanwhile, other yards maintained similar instructions that any car to be cut-off a departing train must be left as close as possible to the end of the track opposite the circuited end of the departure track without fouling another track. This instruction permitted the person directing the movement to readily observe that the track was not clear and to take appropriate action to protect the shoving or pushing movement.

The descriptions of these different non-visual procedures is not intended to be an exhaustive list of all the types of procedures that have been or could be implemented. FRA is describing these types of procedures because our recent review suggests that having these types of procedures help establish a reliable means of determining track occupancy. As each departure yard may have its own set of safety concerns and already established procedures, FRA is not requiring that all railroads adopt a particular set of non-visual procedures. However, as these types of procedures contribute to the overall safety record of departure tracks utilizing shove lights, the final rule contains a requirement that the types of procedures which provide for a reliable means of determining track occupancy prior to commencing a shoving or pushing movement must be adopted in writing so that yardmasters and other employees can fully understand the operation. See § 218.99(e)(5)(iii).

In its petition, AAR also requests that FRA reconsider the need for any good faith challenge regulation. See 49 CFR 218.97. According to AAR, employees have statutory protection under 49 U.S.C. 20109 against retaliation for refusing to comply with a directive to violate a Federal regulation and thus it is puzzling why FRA is promulgating a regulation which has the potential to interfere significantly with railroad operations. In addition, AAR objects to a good faith challenge regulation because the final rule did not adequately create a record for suspecting that employees have been, or will be, asked to engage in tasks that violate Federal regulations or these types of railroad operating rules. The Joint Labor Petition and TTD's comment disagreed with AAR's position on this issue.

FRA disagrees with AAR and finds that there is a need for the good faith challenge regulation. The driving force for much of the final rule was the data showing significant increases in human factor caused accidents, and the high number of violations FRA found when it conducted inspections and investigations related to certain human factor cause codes. Prior to the effective date of the final rule, each railroad maintained similar operating rules governing the safe operation of shoving or pushing movements, leaving cars out to foul, and handling switches and fixed derails; meanwhile, over the first five years of this decade, human factor caused accidents accounted for 38 percent of all train accidents, and, in 2004, violations of the operating rules required in 49 CFR part 218, subpart F accounted for nearly 48 percent of all human factor accidents. Considering the mandatory nature of these railroad operating rules, it seems that there has been a high disregard for them either intentionally or unintentionally. Although we agree that FRA did not cite to specific examples of intentional non-compliance with railroad operating rules, FRA is aware of the pressure to occasionally shortcut an operating rule in order to maintain or increase production. FRA's awareness is derived from inspections and investigations, as well as shared experiences from FRA personnel who have previously worked for one or more railroads. The good faith challenge procedures are intended to empower employees who choose to abide by the railroad's operating rules but are either intentionally or unintentionally given a non-complying directive. The procedures are necessary to ensure that employees may challenge potentially non-complying directives immediately while the statutory protections in 49 U.S.C. 20109 primarily protect an employee from retaliation for refusing to comply with non-complying directives. Thus, the good faith challenge regulation has a different purpose than the statutory protections.

In the alternative, AAR's petition for reconsideration requests that FRA amend the good faith challenge procedures required by 49 CFR 218.97 so that they more closely resemble the roadway worker good faith challenge provisions. AAR states that FRA has departed from past precedent by issuing good faith challenge procedures that are different from those required for roadway workers. In AAR's view, the roadway worker regulations are clear and easily implemented, while the procedures in § 218.97 are complex and could result in delaying railroad operations. For example, AAR states that there may be situations when a supervisor and employee cannot resolve a challenge, and a suitable

railroad officer is not available to provide for immediate review under paragraph (d)(1). (It appears that AAR might also be asking FRA to reconsider or make an exception to the immediate review required in paragraph (d)(1) for any railroad regardless of size). The Joint Labor Petition disagreed with AAR's position on this issue.

FRA acknowledges that when it first began discussing this issue with the RSAC Working Group, FRA suggested that good faith challenge procedures similar to those promulgated for roadway workers might be appropriate. Discussions within the Working Group, especially with members representing labor organizations, revealed that roadway workers generally share a more cooperative working relationship with their supervisors than operating employees do with yardmasters, trainmasters and their other railroad officer supervisors. A supervisor of roadway workers is likely to be out at the work site and may share in the danger if the work gang is not adequately protected because the group failed to comply with a rule. A railroad officer supervising operating employees will likely not be at risk of injury to himself/herself through the issuance of a non-complying order but may be putting the operating employees executing the order, or other employees in the vicinity of the operation, in peril. For these reasons, a different approach, permitting a good faith challenge, is necessary.

With regard to the request that FRA should eliminate the requirement for immediate review under § 218.97(d)(1), FRA is denying the request. Any railroad with 400,000 or more total employee work hours annually should employ at least one railroad officer who can be on call in case a challenge requires immediate review. Each railroad should consider whether to address in its program the issues of who can be contacted and what protocol should be followed if the person issuing the challenged directive has difficulty finding an officer suitable for immediate review. FRA suggests that AAR ask its members to voluntarily keep track of problems associated with implementing the good faith challenge procedures so that it can be raised as a future task for the RSAC or in a future petition for rulemaking.

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 2006 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: \$73 per hour for railroad executives/officials; \$43 per hour for professional/administrative employees; \$44 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:	\$43

Calculation: 1 submission x 1 hr. = 1 hour
1 hr. x \$43 = \$43

(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:	\$2,365

Calculation: 165 amendments x 20 min. = 55 hours
 55 hrs. x \$43 = \$2,365

(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:	\$774

Calculation: 20 submissions x .92 hr. = 18 hours
 18 hrs. x \$43 = \$774

(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:	\$20,382

Calculation: 1,896 amendments x 15 min. = 474 hours
 474 hrs. x \$43 = \$20,382

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 as required by paragraph (c) of this section.

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 (railroad testing officer) 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 and inspection program requirements and procedures relevant to the testing and inspections the officer will conduct; (iii) Receive appropriate field training, as necessary to achieve proficiency, on each operational test or inspection that the officer is authorized to conduct. (*Note: The requirements of this paragraph are applicable beginning January 1, 2009.*)

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.

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 and inspections in accordance with the railroad’s program of operational tests and inspections.

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 the railroad’s system headquarters and at the division headquarters for each division where the officer is assigned and must be made available to representatives of FRA for inspection and copying during normal business hours.

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
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 records x 2 min. = 158 hours
\$0 (Cost included in RIA)

(c.) Written program of operational tests and inspections. Every railroad must have a written program of operational tests and inspections in effect. New railroads must have such a program within 30 days of commencing rail operations. The program must:
(1) Provide for operational testing and inspection under the various operating conditions on the railroad. As of January 1, 2009, the program must address with particular emphasis 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), as applicable; (2) Require a minimum number of tests and inspections per year covering the requirements of part 218, subpart F of this chapter; (3) Describe each type of operational test and inspection required, including the means and procedures used to carry it out; (4) State the purpose of each type of operational test and inspection; (5) State, according to operating divisions where applicable, the frequency with which each type of operational test and inspection is conducted; (6) As of January 1, 2009, identify the officer(s) by name, job title, and, division or system, who shall be responsible for ensuring that the program of operational tests and inspections is properly implemented. The responsibilities of such officers shall 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. A railroad with divisions shall identify at least one officer at the system headquarters who is responsible for overseeing the entire program and the implementation by each division. (7) Include a schedule for making the program fully operative within 210 days after it begins.

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:	\$8,514

Calculation: 20 programs x 9.92 hrs. = 198 hours
 198 hrs. x \$43 = \$8,514

(d.) Records. 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 and at each division headquarters where the tests and inspections 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 FRA 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

(2) Each railroad shall 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 shall be retained at the system headquarters and at each division headquarters where the tests and inspections are conducted for three calendar years after the end of the calendar year to which they relate. These records shall be made available to representatives of the FRA for inspection and copying during normal business hours.

As stipulated above, 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:	\$13,631

Calculation: 165 amendments x 1.92 hrs. = 317 hours
317 hrs. x \$43 = \$13,631

(e.) Reviews of tests and inspections and adjustments to the program of operational tests. This paragraph (e) shall apply to each Class I railroad and the National Railroad Passenger Corporation effective April 1, 2009 and to all other railroads subject to this paragraph effective July 1, 2009.

Reviews by railroads other than passenger railroads. Each railroad to which this Part applies 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, provided however that this requirement does not apply to either a railroad with less than 400,000 total employee work hours annually or a passenger railroad subject to paragraph (e)(2) of this section.

(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. The review must also 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. 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 148 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 148 hours.

Respondent Universe:	687 railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	148 written quarterly reviews
Annual Burden:	148 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 148 written quarterly reviews x 1 hr. = 148 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 and

inspections 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 quarterly 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. Six month reviews must be completed no later than 60 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.

- (i) The designated officer(s) must conduct a written review of: (i) the operational testing and inspection data for each division, if any, or the 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) accident/incident data, the results of prior operational tests and inspections, and other pertinent safety data for each division, if any, or the 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); and

(iii) implementation of the program of operational tests and inspections from a system perspective, 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 + 19 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 mo. rev. x 1 hr. = 34 hrs.
\$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.

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:	37 railroads
Burden time per response:	61 minutes
Frequency of Response:	Annually
Annual number of Responses:	37 summary records
Annual Burden:	38 hours

Annual Cost: \$1,634

Calculation: 37 summary records x 61 min. = 38 hours
38 hrs. x \$43 = \$1,634

(h) 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, (1) the railroad has 35 days from the date of the written notification of such disapproval to: (i) amend its program and submit it to the Associate Administrator for Safety for approval; or (ii) provide a written response in support of the program to the Associate Administrator for Safety, who informs the railroad of FRA's final decision in writing; and (2) a failure to submit the program with the necessary revisions to the Associate Administrator for Safety in accordance with this paragraph will be considered a failure to implement a program under this part.

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:	\$1,460

Calculation: 20 supporting documents x 60 min. = 20 hours
20 hrs. x \$73 = \$1,460

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: \$730

Calculation: 20 amended program documents x 30 min. = 10 hours
10 hrs. x \$73 = \$730

Total annual burden for this entire requirement is 803,863 hours (37,856 + 158 + 198 + 317 + 765,000 + 148 + 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:	687 railroads
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:	\$6,880

Calculation: 20 programs x 8 hrs. = 160 hours
 160 hrs. x \$43 = \$6,880

(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(g)(1) through (g)(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:	\$8,686

Calculation: 220 amendments x .92 hr. = 202 hours
202 hrs. x \$43 = \$8,686

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 January 1, 2009, 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. An employee who successfully completes all instruction, training, and examination required by this written program shall be considered qualified.

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

(2) The written program of instruction, training, and examination must include procedures addressing how the railroad qualifies employees in any technology necessary to accomplish work subject to the requirements of this subpart. Such procedures shall include, but are not limited to, those which explain: (i) the purpose for using the technology; (ii) how an employee will be expected to use the technology; (iii) how to detect malfunctioning equipment or deviations from proper procedures; (iv) how to respond when equipment malfunctions or deviations from proper procedures are detected; and (v) how to prevent unintentional interference with the proper functioning of the 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 must be initially qualified prior to July 1, 2009.

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 July 1, 2009, no employee shall perform work requiring compliance with the operating rules implementing the requirements of this subpart unless qualified 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 successful completion of instruction, examination, and training required by this section must document qualification of employees under this subpart. Written records documenting successful completion of 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 for three calendar years after the end of the calendar year to which they relate and made available to representatives of the FRA for inspection and copying during normal business hours. Each railroad to which this Part applies is authorized to retain a program, or any records maintained to prove compliance with such program, by electronic recordkeeping in accordance with §§ 217.9(g) and 217.11(c) of this chapter.

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:	\$351,181

Calculation: 98,000 employee records x 5 min. = 8,167 hours
8,167 hrs. x \$43 = \$351,181

(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, (1) the railroad has 35 days from the date of the written notification of such disapproval to: (i) amend its program and submit it to the Associate Administrator for Safety for approval; or (ii) provide a written response in support of the program to the

Associate Administrator for Safety, who informs the railroad of FRA’s final decision in writing; and (2) a failure to submit the program with the necessary revisions to the Associate Administrator for Safety in accordance with this paragraph will be considered a failure to implement a program under this Part.

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:	\$2,150

Calculation: 50 written/oral responses x 1 hr. = 50 hours
 50 hrs. x \$43 = \$2,150

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:	\$730

Calculation: 20 amended program documents x 30 min. = 10 hours
 10 hrs. x \$73 = \$730

Total annual burden for this entire requirement is 8,227 hours (8,167 + 50 + 10).

Part 218.97 - Good Faith Challenge Procedures

(a) *Employee Responsibility.* An employee must inform the railroad or employer whenever the employee makes a good faith determination that the employee has been directed to either take actions that would violate FRA regulations regarding the handling of equipment, switches, and fixed derails as required by this subpart, or to take actions that would violate the railroad’s operating rules implementing the requirements of this subpart.

The burden for this requirement is included under that of § 218.97 (c) below. Consequently, there is no additional burden associated with this requirement.

(b) *General Procedures.* Each railroad or employer is responsible for the training of and compliance by its employees with the requirements of this subpart. (1) Each railroad or 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 railroad or 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 must indicate that the good faith challenge described in paragraph (b)(1) is not intended to abridge any rights or remedies available to the employee under a collective bargaining agreement, or any Federal law, including, but not limited to, 29 U.S.C. 651 *et seq.*, 6 U.S.C. 1142 or 49 U.S.C. 20109.

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) A copy of the written procedures must be provided to each affected employee and made available for inspection and copying by representatives of the Federal Railroad Administration (FRA) during normal business hours.

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) minutes to make each copy and another (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)

Copies of Amendments to Written Procedures

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)

(c) 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 the railroad or employer shall not require the challenging employee to comply with the directive until the challenge resulting from the good faith determination is resolved; (3) provide that the railroad or employer may require the challenging employee to perform tasks unrelated to the challenge until the challenge is resolved; (4) provide that the railroad or employer may direct an employee, other than the challenging employee, to perform the challenged task

prior to the challenge being resolved as long as this other employee is informed of the challenge and does not also make a good faith determination that the challenged task would violate FRA regulations regarding the handling of equipment, switches, and fixed derails as required in this subpart, or a railroad’s operating rules implementing the requirements of this subpart.

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:	98,000 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)

(5) Provide that 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) as further determined under paragraph (d) of this 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)

(d) In the event that the challenge cannot be resolved because the person issuing the directive determines the employee’s challenge has not been made in good faith or there is no reasonable alternative to the direct order, the written procedures must: (1) provide for immediate review by at least one officer of the railroad or employer, except for each railroad with less than 400,000 total employee work hours annually. This immediate review must: (1) not be conducted by the person issuing the challenged directive, or that person’s subordinate; and (ii) provide that a challenge may be resolved by using the same options available for resolving the challenge as the initial officer as well as the option described in paragraph (d)(2), except that the reviewing officer’s decision shall not be subject to further review, unless provided for in the railroad’s or employer’s written procedures.

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 if the officer making the railroad’s or employer’s final decision concludes that the challenged directive would not cause the employee to violate any requirement of this subpart or the railroad’s or employer’s operating rule relied upon to fulfill the requirements of this subpart and directs the employee to perform the challenged directive, the officer shall further explain to the employee that Federal law may protect the employee from retaliation if the employee refuses to do the work and if the employee’s refusal is a lawful, good faith act.

FRA estimates that the officer will further explain, in five (5) out of the 15 good faith challenges mentioned above, to the employee that Federal law may protect the employee from retaliation if the employee refuses to do the work and if the employee’s refusal is a lawful, good faith act. It is estimated that it will take approximately one (1) minute to convey this information. 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 explanations
Annual Burden:	.08 hour
Annual Cost:	\$4

Calculation: 5 explanations x 1 min. = .08 hour
.08 hr. x \$44 = \$4

(3) Provide that the employee be afforded an opportunity to document electronically or in writing any protest to the railroad’s or employer’s final decision before the tour of duty is complete. The employee must be afforded the opportunity to retain a copy of the protest.

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 10 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 .17 hour.

Respondent Universe:	687 railroads
Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual number of Responses:	10 protest copies
Annual Burden:	.17 hour
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 10 protest copies x 1 min. = .17 hour
\$0 (Cost included in RIA)

(4) Provide that the employee, upon written request, has a right to further review by a designated railroad or employer officer, within 30 days after the expiration of the month

during which the challenge occurred, for the purpose of verifying the proper application of the regulation, law, procedure or rule in question.

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)

The verification decision shall be made in writing to the employee.

FRA estimates that approximately 10 requests will be made by railroad employees to have the verification decision in writing. It is that it will take approximately 10 minutes to make the request and complete the written verification decision. Total annual burden for this requirement is two (2) hours.

Respondent Universe:	687 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	10 requested written verification decisions
Annual Burden:	2 hours
Annual Cost:	\$88

Calculation: 10 requested written verification decisions x 10 min. = 2 hours (rounded off)
2 hrs. x \$44 = \$88

(e) *Recordkeeping and record retention.* (1) A copy of the written procedures required by this section must be retained at the employer or railroad's system headquarters and at each division headquarters, and made available to representatives of the FRA for inspection and copying during normal business hours.

FRA estimates that approximately 760 copies of written procedures will be retained at the

railroad’s system headquarters and at each division headquarters under the above requirement. It is estimated that it will take approximately five (5) minutes to complete each copy. Total annual burden for this requirement is 63 hours.

Respondent Universe:	687 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	760 copies of written procedures
Annual Burden:	63 hours
Annual Cost:	\$2,709

Calculation: 760 copies written procedures x 5 min. = 63 hours
 63 hrs. x \$43 = \$2,709

(2) A copy of any written good faith challenge verification decision, made in accordance with paragraph (d)(4), must be retained at the employer or railroad’s system headquarters and at the division headquarters to which the employee was working when the challenge was initiated, and made available to representatives of the FRA for inspection and copying during normal business hours for at least one calendar year after expiration of the year during which the decision was issued.

Each employer or railroad to which this subpart applies is authorized to retain by electronic recordkeeping the information prescribed in this subpart in accordance with the electronic recordkeeping standards set forth in § 217.9(g)(1) through (5) of this chapter.

FRA estimates that approximately 20 copies of good faith challenge verifications will be retained at the railroad’s system headquarters and at each division headquarters under the above requirement. It is estimated that it will take approximately five (5) minutes to complete each copy. Total annual burden for this requirement is two (2) hours.

Respondent Universe:	687 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	20 verification decision copies
Annual Burden:	2 hours
Annual Cost:	\$86

Calculation: 20 verification decision copies x 5 min. = 2 hours
 2 hrs. x \$43 = \$86

Total annual burden for this entire requirement is 20,950 hours (1,374 + 13,000 + 6,500 + 3 + 1 + 1 + .08 + 3 + .33 + 1 + 2 + 63 + 2).

Part 218.99 - Shoving or Pushing Movements

(a) Each railroad must adopt and comply with an operating rule which complies with the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of an operating rule which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

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)

(2) The following requirements for shoving or pushing movements do not apply to rolling equipment intentionally shoved or pushed to permit the rolling equipment to roll without power attached, i.e., free rolling equipment, during switching activities known as kicking, humping, or dropping cars.

(b) General movement requirements. (1) *Job briefing.* Rolling equipment shall not be shoved or pushed until the locomotive engineer participating in the move has been briefed by the employee who will direct the move. The job briefing must include the means of communication to be used between the locomotive engineer and the employee directing the move and how point protection will be provided. (2) *No unrelated tasks.* During the shoving or pushing movement, the employee directing the movement shall not engage in any task unrelated to the oversight of the shoving or pushing movement

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

(3) *Point Protection.* When rolling equipment or a lite locomotive consist is shoved or pushed, point protection must be provided by a crewmember or other qualified employee by: (i) visually determining that the track is clear. 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 a crewmember or other qualified employee properly positioned to make the observation as prescribed in this section and appendix D to this Part; and (ii) giving signals or instructions necessary to control the movement.

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:	\$128,480,000

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 \$44 = \$128,480,000

(c) *Additional requirements for remote control movements.* 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 leading locomotive in a position to visually determine conditions in the direction of the movement. In addition to the other requirements of this section, (1) when initiating a remote control shoving or pushing movement: (i) the remote control operator shall

visually determine the direction the equipment moves; or (ii) a member of the 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 must be immediately stopped; and (2) if technology is relied upon, whether primarily or as a safeguard, to provide pull-out protection by preventing the movement from exceeding the limits of a remote control zone, the technology shall be demonstrated (i) to be failsafe; or (ii) to provide suitable redundancy to prevent unsafe failure.

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:	\$642,400

Calculation: 876,000 verbal confirmations x 1 min. = 14,600 hours
 14,600 hrs. x \$44 = \$642,400

(d) *Remote control zone, exception to track is clear requirements.* After an initial track is clear determination has been made in an activated remote control zone, it is not necessary to make a new determination prior to each subsequent shoving or pushing movement provided that: (1) The controlling locomotive of the remote control movement is on the leading end in the direction of movement, i.e., the movement occurs on the pull-out end; (2) The remote control zone is not jointly occupied; and (3) The initial determination was made by a crewmember of either: (i) The remote control crew; (ii) A relieved remote control crew who has transferred the remote control zone directly to the relieving crew; or (iii) The last jointly occupying crew who directly communicates, i.e., not through a third party, to a remote control crewmember that the remote control zone is no longer jointly occupied and meets the requirements for track is clear.

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:	\$642,400

Calculation: 876,000 determinations x 1 min. = 14,600 hours
14,600 hrs. x \$44 = \$642,400

(e) *Operational exceptions.* A railroad does not need to comply with paragraphs (b) through (d) in the following circumstances:

- (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 assisting a train when the train is being 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 signaled siding, under the following conditions:
 - (i) The train dispatcher gives authority or 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 authorized or 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 dispatcher authorized or permitted movements
Annual Burden:	500 hours
Annual Cost:	\$22,000

Calculation: 30,000 dispatcher permitted movements x 1 min. = 500 hours
500 hrs. x \$44 = \$22,000

(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 public 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 who is in a position to determine that the train's movement has occupied the circuit controlling that signal as evidenced by that signal assuming its most restrictive aspect; and

(C) 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.

(5) Shoving or pushing movements made in the direction of the circuited end of a designated departure track equipped with a shove light system, if all of the following conditions are met: (i) The shove light system is demonstrated to be failsafe; (ii) The shove light system is arranged to display a less favorable aspect when the circuited section of the track is occupied; (iii) Written procedures are adopted and complied with that provide for a reliable means of determining track occupancy prior to commencing a shoving or pushing movement. **(New Requirement)**

FRA estimates that approximately 41 written procedures will be adopted by railroads (Class Is) under the above requirement. It is estimated that it will take approximately 30 minutes to complete each written procedure by each railroad. Total annual burden for this requirement is 21 hours.

Respondent Universe:	687 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	41 written procedures
Annual Burden:	21 hours
Annual Cost:	\$903

Calculation: 41 written procedures x 30 min. = 21 hours
21 hrs. x \$43 = \$903

(iv) The track is designated in writing; (v) The track is under the exclusive and continuous control of a yardmaster or other qualified employee; (vi) The train crewmember or other qualified employee directing the shoving or pushing movement complies with the general movement requirements contained in paragraphs (b)(1) and (b)(2) of this section; (vii) All remote control shoving or pushing movements comply with the requirements contained in paragraph (c)(1) of this section; and (viii) The shove light system is continuously illuminated when the circuited section of the track is unoccupied. **(New Requirement)**

FRA estimates that approximately 41 locations of track will be designated in writing, most likely in a bulletin or timetable special instructions, under the above requirement. It is estimated that it will take approximately 30 minutes to designate each track location. Total annual burden for this requirement is 21 hours.

Respondent Universe:	687 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	41 designated track locations

Annual Burden:	21 hours
Annual Cost:	\$903

Calculation: 41 designated track locations x 30 min. = 21 hours
 21 hrs. x \$43 = \$903

Total annual burden for this entire requirement is 2,951,429 hours (687 + 1,000 + 2,920,000 + 14,600 + 14,600 + 500 + 21 + 21).

Part 218.101 - Leaving Rolling and On-Track Maintenance-of-Way Equipment in the Clear

(a) Each railroad must adopt and comply with an operating rule which complies with the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of an operating rule which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(b) Rolling and on-track maintenance-of-way equipment shall not be left where it will foul a connecting track unless: (1) The equipment is standing on a main track and a siding track switch that the equipment is fouling is lined for the main track on which the equipment is standing; or (2) The equipment is standing on a siding and a main track switch that the equipment is fouling is lined for the siding on which the equipment is standing; or (3) The equipment is standing on a yard switching lead track, and the yard track switch that the equipment is fouling is lined for the yard switching lead track on which the equipment is standing; or (4) The equipment is on an industry track beyond the clearance point of the switch leading to the industry.

(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, including cross-over switches.

(a)(1) Each railroad must adopt and comply with an operating rule which complies with the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of an operating rule which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section. **(New requirement)**

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:	60 minutes
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 60 min. = 687 hours
\$0 (Cost included in RIA)

(2) Each railroad must specify minimum requirements necessary for an adequate job briefing.

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 30 minutes to modify its operating rule. Total annual burden for this requirement is 316 hours.

Respondent Universe:	632 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	632 modified operating rules
Annual Burden:	316 hours
Annual Cost:	\$0 (Cost included in RIA)

Calculation: 687 modified operating rules x 30 min. = 316 hours
\$0 (Cost included in RIA)

(b) *General.* Employees operating or verifying the position of a hand-operated switch must: (1) Conduct job briefings, before work is begun, each time a work plan is changed, and at completion of the work; (2) Be qualified on the railroad's operating rules relating to the operation of the switch; (3) Be individually responsible for the position of the switch in use; (4) Visually determine that switches are properly lined for the intended route and that no equipment is fouling the switches; (5) Visually determine that the points fit properly and the target, if so equipped, corresponds with the switch's position; (6) After operating a switch and before making movements in either direction over the switch, ensure that the switch is secured from unintentional movement of the switch points; (7) Ensure that a switch is not operated while rolling and on-track maintenance-of-way equipment is fouling the switch, or standing or moving over the switch; and (8) After operating a switch, ensure that when not in use, each switch is locked, hooked or latched, if so equipped.

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:	\$825,000

Calculation: 1,125,000 job briefings x 1 min. = 18,750 hours
18,750 hrs. x \$44 = \$825,000

(c) Rolling and on-track maintenance-of-way equipment shall not foul a track until all hand-operated switches connected with the movement are properly lined, or in the case of hand-operated switches designed and permitted to be trailed through, until the intended route is seen to be clear or the train has been granted movement authority. When a conflicting movement is approaching a hand-operated switch, the track shall not be fouled or the switch operated. (d) When rolling and on-track maintenance-of-way equipment has entered a track, the hand-operated switch to that track shall not be lined away from the track until the equipment has passed the clearance point of the track.

This is the usual and customary practice. Consequently, there is no additional burden involved with this requirement.

Total annual burden for this entire requirement is 19,753 hours (687 + 316 + 18,750).

218.105 Additional operational requirements for hand-operated main track switches.

(a) Each railroad must adopt and comply with an operating rule which complies with the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of an operating rule which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

The burden for this requirement is included under that of § 218.103(a) above. Consequently, there is no additional burden associated with this provision.

(b) *Designating switch position.* The normal position of a hand-operated main track switch must be designated by the railroad in writing and the switch must be lined and locked in that position when not in use except when: (1) The train dispatcher directs otherwise with respect to the position of a hand-operated main track switch and the necessary protection is provided; or (2) The hand-operated switch is left in the charge of a crewmember of another train, a switchtender, or a roadway worker in charge.

The normal position of a hand-operated main track switch is designated by the railroad in writing in its operating rules, and the rest of the requirement is the usual and customary practice. Consequently, there is no additional burden associated with this requirement.

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

(1) 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)

(2) 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 shall 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.

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)

(c) *Releasing Authority Limits.* In non-signaled territory, before an 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 switch's location, the following conditions are required: (1) the employee releasing the limits, after conducting a job briefing in accordance with this subpart, must 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; (2) if the report of the switch position is correct, the train dispatcher must repeat the reported switch position information to the employee releasing the limits and ask whether that is correct; and (3) the employee releasing the limits must then confirm to the train dispatcher that this information is correct.

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)

Total annual burden for this entire requirement is 4,917 hours (1,000 + 3,334 + 583).

218.107 Additional operational requirements for hand-operated crossover switches.

Each railroad must adopt and comply with an operating rule which complies with the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of an operating rule which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

The burden for this requirement is included under that of § 218.103(a) above. Consequently, there is no additional burden associated with this provision.

218.109 Hand-operated fixed derails.

- A. (a) (1) Each railroad must adopt and comply with an operating rule which complies with the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of an operating rule which complies with the requirements of this section, that person shall be

considered to have violated the requirements of this section. (2) Each railroad shall specify minimum requirements necessary for an adequate job briefing.

The burden for this requirement is included under that of § 218.103(a) above. Consequently, there is no additional burden associated with this provision.

- B. Employees operating or verifying the position of a fixed derail must: (1) Conduct job briefings, before work is begun, each time a work plan is changed, and at completion of the work; (2) Be qualified on the railroad's operating rules relating to the operation of the derail; (3) Be individually responsible for the position of the derail in use; (4) Determine that the target, if so equipped, corresponds with the derail's position; (5) Determine that the derail is secured by: (i) placing the throw lever in the latch stand, if so equipped; (ii) placing the lock or hook in the hasp, if so equipped; and (iii) testing such latches, locks or hooks; and (6) Ensure that when not in use, derails are locked, hooked, or latched if so equipped.

FRA estimates that approximately 562,500 job briefings will take place among crewmembers annually under the above requirement. It is estimated that each job briefing will take approximately 30 seconds to complete. Total annual burden for this requirement is 4,688 hours.

Respondent Universe:	687 railroads
Burden time per response:	30 seconds
Frequency of Response:	Annually
Annual number of Responses:	562,500 job briefings
Annual Burden:	4,688 hours
Annual Cost:	\$234,400

Calculation: 562,500 job briefings x 30 sec. = 4,688 hours
4,688 hrs. x \$50 = \$234,400

Total annual burden for this entire requirements is 4,688 hours.

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 30 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 4,855,397 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 42 hours. The increase in burden is due to two **program changes**. Specifically, the following requirements reflect program changes:

(1.) Under § 218.99(e)(5)(iii), FRA added a requirement concerning written procedures. This change *increased* the burden by *21 hours*.

(2.) Under § 218.99(e)(5)(iii), FRA added a requirement concerning designating track in writing. This change also *increased* the burden by *21 hours*.

The current inventory exhibits a burden total of 4,855,355 hours, while the present submission reflects a burden total of 4,855,397 hours. Hence, there is a total burden increase of *42 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.