

## **ROADWAY WORKER PROTECTION 49 CFR 214**

- 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.**

The Roadway Worker Protection (RWP) Rule requires each railroad that operates rolling equipment on track that is part of the general railroad system of transportation to “adopt and implement a program that will afford on-track safety to all roadway workers whose duties are performed on that railroad.” See 49 CFR 214.3, 214.303(a). “On-track safety” is defined as “a state of freedom from the danger of being struck by a moving railroad train or other railroad equipment, provided by operating and safety rules that govern track occupancy by personnel, trains, and on-track equipment.” See § 214.7. The roadway workers that must be afforded on-track safety are any employees of a railroad, or of a contractor to a railroad, whose duties include “inspection, construction, maintenance or repair of railroad tracks, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts.” See § 214.7, “Roadway worker.”

In the twelve years since the RWP Rule went into effect on January 15, 1997, there have been nine roadway worker fatalities on an adjacent track. Seven of those fatalities have occurred on a controlled track that was adjacent to the track on which a roadway work group, with at least one of the roadway workers on the ground, was engaged in a common task with an on-track roadway maintenance machine or coupled equipment. Of the seven fatalities that occurred under the described circumstances and which the proposed rule seeks to address, three occurred during the period after the effective date of the rule and before the publication Safety Advisory 2004-01 on May 3, 2004. See 69 FR 24220. FRA issued this safety advisory to recommend certain safety practices, to review existing requirements for the protection of roadway workers from traffic on adjacent tracks, and to heighten awareness to prevent roadway workers from inadvertently fouling a track when on-track safety is not provided. See id.

The safety advisory explained the requirements of the RWP Rule, including the requirement to provide adjacent track on-track safety for large-scale maintenance or construction in § 214.335(c), are only minimum standards. The advisory emphasized that railroads and contractors are free to prescribe additional or more stringent standards consistent with the rule. See id. at 24222 and § 214.301(b). FRA recommended that

railroads and contractors to railroads develop and implement basic risk assessment procedures for use by roadway workers to determine the likelihood that a roadway worker or equipment would foul an adjacent track prior to initiating work activities, regardless of whether those activities were “large-scale” or “small-scale.” The advisory provided examples of relevant factors to consider in making such an assessment. These factors included whether the work could be conducted by individuals positioned between the rails of a track on which on-track safety has been established, as opposed to being on the field side of such a track toward an adjacent track; whether there was a structure between the tracks to prevent intrusion (such as a fence between the tracks at a passenger train station and the tall beam of a through-plate girder bridge); the track-center distance, to ensure that the adjacent track would not be fouled if a worker were to inadvertently trip and fall; the nature of the work (inspection or repair); the sight distances; and the speed of trains on the adjacent track. *See* 69 FR 24222. FRA further noted that, upon completion of the on-site risk assessment, the on-track safety briefing required by § 214.315(a) would be the ideal instrument to implement preventive safety measures concerning adjacent tracks. *See id.*

It appears that the salutary effects of the Safety Advisory, which produced a period of 16 months with no fatalities, were not long-lasting, as four fatalities have since occurred on an adjacent track where a roadway work group, with at least one of the roadway workers on the ground, was engaged in a common task with on-track roadway maintenance machine or coupled equipment on an occupied track. In the four-year period prior to May of 2004 (May 1, 2000 - April 30, 2004), there had been one adjacent-track fatality known to have occurred under the circumstances described above, for a rate of .25 per year. In the four-year period since (May 1, 2004 – April 30, 2008), there were four adjacent-track fatalities, for a rate of one per year, which is four times the rate of the previous four-year period.

The following is a brief summary of the results of FRA’s investigations of the four most recent incidents that resulted in these unfortunate fatalities:

- **October 5, 2005:** A roadway surfacing gang tamper operator, with 28 years of service, was walking up to the front of the tamper to put away the light buggies as his surfacing gang, having just completed its work, was getting ready to travel to clear the number two main track. The operator was walking east on the side of the tamper between the two main tracks when he was struck by a westbound train on the adjacent track. The track centers were spaced approximately 13 feet apart, and the train was traveling at an estimated speed of 40 miles per hour (mph).
- **March 12, 2007:** A surfacing gang was occupying the number one main track in a double-main territory. The surfacing gang foreman (the roadway worker in charge), who earlier had notified the other members of the gang of pending movement on the adjacent track, was standing in the gage of the same adjacent

track when he was struck by a train. It remains unclear why he was fouling the adjacent track at the time of the incident. The track centers were spaced approximately 13 feet, 6 inches apart, and the maximum authorized speed on the adjacent track was 50 mph. The foreman was the only roadway worker on the ground at the time of the incident.

- **February 10, 2008:** A train struck a roadway worker inside an interlocking on a triple-main track territory. The worker was part of a gang that consisted of approximately 10 workers that were engaged in the repair of a crossover on the middle main track with a tamper. Foul time was being used as adjacent-track on-track protection, but this protection was removed by the roadway worker in charge, who gave permission to the dispatcher to permit a train to operate on the adjacent track through the roadway work group working limits. As the train entered the interlocking on a limited clear signal indication for a crossover move past the work area, one of the roadway workers attempted to cross the track in front of the train and was struck. The track centers were spaced approximately 13 feet apart, and the maximum authorized speed for the train on the adjacent track was 45 mph.
- **March 27, 2008:** A surfacing gang was working on double-main track territory. The surfacing gang foreman was standing in the foul of the adjacent track while his surfacing crew worked on the number two main track (the occupied track). A train operating on the adjacent track struck the foreman. No on-track safety was in effect on the adjacent track involved at the time of the incident. The track centers were spaced approximately 14 feet, 7 inches apart, and the maximum authorized speed on the adjacent track was 70 mph. The foreman was the only roadway worker on the ground at the time of the incident.

The recent increase in roadway worker fatalities that have occurred on adjacent track (*i.e.*, defined under the existing rule as any track within 25 feet of the centerline of the track to which the roadway work was assigned to perform one or more roadway worker duties) has caused considerable concern at FRA and throughout the industry, even prompting the filing of a joint petition for emergency order under 49 U.S.C. 20104 on April 11, 2008. See 49 C.F.R. Part 214, Subpart C (“Roadway Worker Protection” Rule).

It is important to note some of the common circumstances that occurred in all nine fatalities that have occurred since the RWP rule went into effect, since these circumstances were considered by FRA in its decision to issue this Notice of Proposed Rulemaking (NPRM). The first common circumstance is the type of track. All nine of the fatalities occurred on “controlled” track, rather than “non-controlled” track. Second, all nine of the fatalities occurred on an adjacent track that was quite closely-spaced to the track that the roadway work group was occupying. Six of the adjacent tracks had track centers that were spaced approximately 14 feet or less from the respective track centers of

the tracks that the roadway work groups were occupying, and all nine of the adjacent tracks were spaced 15 feet or less from the track centers of the respective occupied tracks. The third common circumstance of the nine fatalities on the adjacent track is the time of year. Four of the fatalities occurred during the first quarter (January-March), none of the fatalities occurred in the second and third quarters of the year (April-June and July-September, respectively, and the other five fatalities occurred during the fourth quarter (October-December).

FRA is proposing to amend its regulations on Railroad Workplace Safety to require that railroads adopt specified on-track safety procedures to ensure that certain roadway work groups are protected from the movement of trains or other on-track equipment on “adjacent controlled track” (defined in this NPRM as “any controlled track whose track center is 19 feet or less from the track center of the occupied track”) and that railroads, contractors to railroads, and roadway workers comply with these procedures.

The proposed amendments to the Roadway Worker Protection Rule are based on the consensus language developed through the Roadway Worker Protection (RWP) Working Group of FRA’s Railroad Safety Advisory Committee (RSAC), which is comprised of various representatives of the groups that are affected by this rule (including railroad management, railroad labor organizations, and contractors). Because incidents involving adjacent controlled tracks appear to present clear evidence of significant risk that is not effectively addressed by the current regulation, FRA has concluded that moving forward with this proposal in advance of other proposals contained in the RSAC consensus is necessary and appropriate. *[Note: While the consensus language relating to adjacent track issues that was developed through the RSAC was originally intended to be published as part of a larger NPRM, FRA has decided to propose these adjacent-track-related provisions in this separate NPRM so that an appropriate provision will be in effect in a more timely fashion than if the provision were one of many in the larger rulemaking that would need to undergo internal review and approval and public notice and comment. The remaining provisions not related to adjacent track will be proposed in a separate NPRM at a later date, as part of the larger RWP rulemaking.]*

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 Administration. See 49 CFR .149(m).

#### Background: Roadway Workers Protection

In 1990, the Brotherhood of Maintenance of Way Employees (BMWE) petitioned the Federal Railroad Administration (FRA) to amend its track safety standards. Issues

relating to the hazards of roadway workers were part of this petition.

In September 1992, the Rail Safety Enforcement and Review Act, Pub. L. No. 102-365, 106 Stat. 972, formally required FRA to review its track safety standards and revise them based on information derived from that review. FRA issued an Advanced Notice of Proposed Rulemaking (ANPRM) on November 16, 1992 (*see* 57 FR 54038), announcing the opening of a proceeding to amend the Federal Track Safety Standards. Workshops were held in conjunction with this effort to solicit the views of the railroad industry and representatives of railroad employees on the need for substantive change in the track regulations. A workshop held on March 31, 1993, in Washington, D.C., specifically addressed the protection of employees from the hazards of moving trains and equipment. The subject of injury and death to roadway workers was of such great concern that FRA received petitions for emergency orders and requests for rulemaking from both the BMW and the Brotherhood of Railroad Signalmen (BRS). FRA did not grant the petitions for emergency orders, but instead initiated a separate proceeding to consider regulations to eliminate hazards faced by these employees. FRA removed this issue from the track standards docket, FRA Docket No. RST-90-1, and formed a new docket, FRA Docket No. RSOR 13, specifically to address hazards to roadway workers to expedite the effective resolution of this issue.

FRA convened a Safety Summit Meeting on June 3, 1994, with affected railroad industry, contractor, and labor representatives. This meeting considered certain aspects of FRA accident data involving roadway workers. The meeting also facilitated a discussion of various short-term and long-term actions that could be taken by FRA and the industry to prevent injuries and deaths among roadway workers. One long-range alternative suggested by FRA was to use the negotiated rulemaking process to allow input from both railroad management and labor to develop standards addressing risks faced by roadway workers. The agency determined that this was an appropriate subject for a negotiated rulemaking and initiated this process.

FRA issued an NPRM on March 14, 1996, which amended FRA's Railroad Workplace Safety regulations (49 CFR Part 214) by adding definitions to Subpart A, and by adding a new Subpart C, Roadway Worker Protection. The NPRM required that each railroad devise and adopt a program of on-track safety to provide employees working along the railroad with protection from the hazards of being struck by a train or other on-track equipment. The NPRM also required a railroad's on-track safety program to include an on-track safety manual; a clear delineation of employers' responsibilities for providing on-track safety, as well as employees' related rights and responsibilities; well defined procedures for communication and protection; and annual on-track safety training. Further, the NPRM required that programs adopted by each railroad must be reviewed and approved by FRA.

FRA published a final rule for roadway worker protection on December 16, 1996 (*see 61 FR 65959*). The final rule affirmed safety standards for railroad employees (and contractors) working on or near railroad tracks established earlier in the NPRM. The regulation was a successful result of the negotiated rulemaking process, and was achieved by a consensual agreement between FRA, railroad management, and railroad labor. The rule became effective January 15, 1997.

**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 required under § 214.315(a)(3) regarding disclosure of additional information during daily on-track job briefings will be used by railroads and their roadway worker employees to maintain and enhance safety when working on tracks by ensuring that information is conveyed about any tracks adjacent to the track to be fouled, on-track safety for such tracks, if required by this subpart, and identification of any roadway maintenance machines that will foul such tracks.

The new information required under § 214.336 will be used by roadway work groups to ensure that it members are fully aware of adjacent track on-track safety procedures, know when they must stop work and occupy a predetermined place of safety, and are properly notified in sufficient time to move to places of safety when a train or other on-track equipment is authorized to move on adjacent track at various legal speeds.

The new information required under § 214.336 spells out precise procedures and practices that the roadway worker in charge and roadway work groups must follow for track movements by trains or other on-track equipment operating at speeds both above and below 25 miles per hour. The required on-track safety must be established through working limits or train approach warning provided by watchmen/lookout warnings and by notifications and communications prescribed in this section. Thus, all affected roadway workers must be notified before working limits are released for the operation of trains. Working limits must not be released until all affected roadway workers have either left the track or have been afforded on-track safety through train approach warning in accordance with § 214.329.

The new information required under § 214.336 enables roadway work groups to know when it is safe to resume work. Thus, a component of a roadway work group may resume on-ground work and movement of any roadway maintenance machine or couple equipment on or fouling an occupied track only after the trailing-end of the all trains or other on-track equipment moving on the adjacent controlled (for which a notification or warning has been received) has passed and remains ahead of that component of the roadway work group. If the train or other on-track equipment stops before its trailing-end

has passed all of the roadway workers in the roadway work group, the work to be performed on or fouling the occupied track ahead of the trailing-end of the train or other on-track equipment on the adjacent controlled track may resume only if on-track safety through train approach warning (in accordance with § 214.329) has been established on the adjacent controlled track; or after the roadway worker in charge has communicated with the train engineer or equipment operator and established that further movements of the train or other on-track equipment shall be made only as permitted by the roadway worker in charge.

Under § 214.303 and § 214.307, the information collected is used by FRA to ensure that each railroad adopts and implements the required on-track safety program that will afford on-track safety to all roadway worker whose duties are performed on that railroad. Each such program – and any amendments to that program – must provide for the level of safety specified in this subpart. Each on-track safety program adopted to comply with this part must include procedures to be used by each railroad for monitoring for effectiveness and compliance with the program. When railroads determine that it is necessary to revise their on-track safety program, FRA reviews these program amendments to determine that the required level of safety is maintained.

The information collected under §§ 214.343/345/347/349/353/355 is used to ensure that all roadway workers receive necessary training and are well-qualified for their positions. Railroad management must train – on an initial and recurring basis – roadway workers about on-track safety rules, practices, and procedures. Such training thereby enables roadway workers to be aware of and avoid inherent hazards and reduce risks associated with working on or near tracks with moving trains or other on-track equipment. Through ongoing training programs, railroad management has the ability to do its part to lessen the likelihood, number, and severity of accidents/incidents and corresponding casualties to roadway workers.

Further, under §§ 214.343/345/347/349/353/355, FRA uses the required written records regarding roadway worker qualifications to assist its investigators after an accident or incident resulting in roadway worker casualties. These records are required to contain the type of qualification attained by each roadway worker and the most recent date of qualification. By examining these and other records, FRA can determine whether or not appropriate personnel followed the required on-track safety procedures. Together with railroad management, FRA can then take corrective action, if necessary. The lack of this information would make the rail environment much more dangerous for roadway workers and impede FRA in its goal of reducing roadway worker injuries and deaths.

Under § 214.503, the information collected is used by railroad workers to improve safety and prevent accidents and casualties caused by the operation of on-track roadway maintenance machines and hi-rail vehicles. Employees operating on-track roadway maintenance machines are required to notify their employer whenever they make a good

faith determination that the machines do not comply with FRA regulations. For their part, employers must have in place and follow written procedures to assure prompt and equitable resolution of these challenges resulting from the good faith determination made by employees. The employer can not require an employee challenging the fitness of a machine to operate the machine until the challenge has been resolved. By calling the employer's attention to problems with roadway maintenance machines, roadway workers can ensure that safety deficiencies and other defects are immediately addressed. Under the rule, employers are generally allowed up to seven days to repair a roadway maintenance machine found to be non-compliant.

Under § 214.505, employers are required to maintain a list of new and designated roadway maintenance machines that are equipped with enclosed cabs with operative heating systems, operative air conditioning systems, and operative positive pressurized ventilation systems. The list determines employer responsibilities related to environmental control and protection systems for new and existing on-track roadway maintenance machines with enclosed cabs. New on-track roadway maintenance machines and existing on-track roadway maintenance machines specifically designated by the employer (of the types identified in paragraphs (a)(1) through (a)(5) of this section or functionally equivalent thereto) must be capable of protecting employees in the cabs of the machines from exposure to air contaminants, in accordance with 29 CFR 1910.1000. Included among the machines specified in paragraphs (a)(1) through (a)(5) of this section are the following: ballast regulators, tampers, mechanical brooms, rotary scarifiers, undercutters, or the functional equipment of any of these. The designation is irrevocable, and the designated existing roadway maintenance machine remains subject to the above protection requirement until the machine is retired or sold. If the ventilation system on a new on-track roadway maintenance machine or existing on-track roadway maintenance machine identified in paragraphs (a)(1) through (a)(5) of this section (or functional equivalent thereto) becomes incapable of protecting an employee in the cab of the machine from exposure to air contaminants in accordance with 29 CFR 1910.1000, personal respiratory equipment must be provided for each such employee until the machine is repaired in accordance with § 214.531. The list must be kept current, and made available to FRA and other Federal and State agencies upon request. FRA and other Federal and State inspectors use these rosters to determine which agency has responsibility for inspection and enforcement (compliance) of respiratory safety regulations for each roadway machine in order to assure railroad workers' health and safety are protected.

The information is also used to help protect the health and safety of railroad workers in other ways. Under § 214.511, audible warning devices are required on new on-track roadway maintenance machines. The triggering mechanism for this audible warning device must be clearly identifiable and within easy reach of the machine operator. Additionally, each existing on-track maintenance machine must be equipped with a permanent or audible warning device that produces a sound loud enough to be heard by

roadway workers and other machine operators within the immediate work area. Again, the triggering mechanism for the audible warning device must be clearly identifiable and within easy reach of the machine operator. Thus, in critical situations, roadway workers will readily know where the triggering mechanism is located and will be able to sound the warning device before a potential accident/incident occurs and a fellow roadway worker is injured or possibly killed.

The information collected under § 214.515 serves to further enhance roadway workers' safety because their employers are now required to evaluate the feasibility of providing an overhead cover for existing on-track roadway maintenance machines, if requested in writing by the operator assigned to operate that machine or by the operator's designated representative. The employer must provide a written response for each request within 60 days. When the employer finds the addition of an overhead cover is not feasible, the response must include an explanation of the reasoning used by the employer to reach that conclusion. Many older on-track roadway maintenance machines were not designed with overhead covers. Covers or canopies provide important benefits to machine operators, most notably by shielding them from overhead sunlight and from severe weather such as sleet, snow, hail, and rain. Because of these provisions and corresponding information collection requirements, employers are not able to deny roadway workers equipment that will protect their health and safety, unless they have a legitimate reason. Being protected from blinding sun or exposure to inclement weather enhances employee safety by serving to reduce the number of accidents/incidents and corresponding casualties that typically accompany caused by weather related factors.

Under § 214.517 and § 214.518, each existing on-track roadway maintenance machines must have stenciling or documentation on the machine identifying the light weight of the machine clearly displayed on it, and also the location of safe and secure positions for the machine operator and roadway workers to be transported on the machine. Thus, the displayed light weight identifies the machines's proper category and provides essential information to crane operators in the event the machine is lifted on to or loaded off a flat bed truck or rail car for movement from one work site to another. If roadway workers are not permitted on the machine, the prohibition must be noted by the stenciling or documentation on the machine. In both cases, such additional clear markings serve to reduce the likelihood of accidents/incidents and potentially serious injuries to machine operators and other roadway workers, as well to mitigate lost productivity to employers that such serious injuries bring.

Under § 214.523, the operator of a high-rail vehicle must check the vehicle for compliance with this subpart, prior to using the vehicle at the start of the operator's work shift. Non-complying conditions that can not be immediately repaired must be tagged and dated in a manner determined by the employer and reported to the designated official. This tagging requirement then serves to alert roadway workers to potential hazards and further enhance railroad safety by reducing the likelihood of

accidents/incidents involving hi-rail vehicles.

FRA also uses the information collected under § 214.523. Specifically, FRA uses the records required regarding mandatory hi-rail vehicle annual safety inspections to ensure that the safety critical components of these vehicles are adequately maintained and, if necessary, promptly repaired or replaced. In particular, tram, wheel wear and gage measurements must be checked at least annually and adjusted, as warranted, to provide for continued safe operation of these vehicles. Thus, FRA uses these hi-rail inspection records to verify compliance with this subpart.

Finally, FRA inspectors of all five rail safety disciplines use the violation report form (FRA F 6180.119) to cite any violations of the Part 214 regulations and to recommend civil penalties for serious infractions.

**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.**

In keeping with the requirements of the Paperwork Reduction Act (PRA) and the Government Paperwork Elimination Act (GPEA), FRA has strongly supported and highly encouraged the use of advanced information technology, including electronic recordkeeping, to reduce burden on respondents, wherever possible, for many years. In reference to the requirements involving Subpart D, FRA has explicitly provided railroads the option of maintaining the required records electronically. For example, under § 214.505, railroads are required to maintain a roster of machinery that falls under FRA's jurisdiction for purposes of this regulation. The roster may be maintained on paper or electronically, but it must be accessible and available to FRA, OSHA, and other Federal, as well as State, agencies so that inspectors may determine which agency has responsibility for inspection of which machines and for enforcement of respiratory safety regulations relating to each roadway maintenance machine. Also, under § 214.523, compliance records pertaining to hi-rail vehicle annual safety inspections may be kept electronically. The employer must maintain the record of the last inspection of each vehicle until the next inspection is performed. Additionally, under § 214.533, roadway maintenance machine or new hi-rail vehicle records pertaining to compliance with the schedule of repairs may be kept electronically.

Although most of the burden associated with the rest of this Part is administered verbally in the form of a daily safety briefing and is not conducive to use of the advanced

information technology available today, FRA has provided the option of using advanced information technology, wherever possible. For example, railroads are given the authority to use computers for the recording of training examinations. They may also use an interactive training course to train the roadway workers on the hazards and risks involved while working on or around tracks caused by moving trains and other on-track equipment. Moreover, the train dispatcher or control operator in charge of the track may record by electronic means all authorities issued to establish exclusive track occupancy. Each employer may also use electronic recordkeeping to maintain the required records of each roadway worker's current qualification.

Railroads are always looking for ways to improve their operations and presently have in development technology such as Positive Train Separation (PTS) and personnel warning devices. Once these new technologies are tested and implemented, they may further reduce or eliminate some of the hazards and, therefore, risks for roadway workers, and concomitantly also reduce the paperwork burden by making unnecessary some of the requirements imposed by this rule.

Finally, Form FRA F 6180.119 is used within FRA's Railroad Inspection System for the Personal Computer (RISPIC system) by agency and state safety inspectors. As a result, the top one-third of the form is automatically filled-in or auto-populated once the inspector fills out the inspection report (Form FRA F 6180.96). This serves to reduce the time necessary to complete the entire form. Also, as a result of this form being in the RISPIC system, it can be easily updated by the safety inspector and can be quickly transmitted to FRA regional office specialists if further action is warranted.

*It should be pointed out that it is up to the railroads to decide the timing and extent of their use of advanced information technology for reporting and recordkeeping purposes.*

**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.**

To our knowledge, this information is not duplicated anywhere. Similar data is not available from any other source.

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

The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its "size standards" that a "for profit" railroad business firm may not have more than 1,500 employees for "Line-Haul Operating Railroads" and

500 employees for “Switching and Terminal Establishments” to be considered a “small entity.” “Small entity” is defined in 5 U.S.C. 601 as a small business that is independently owned and operated and is not dominant in its field of operation. SBA’s “size standards” may be altered by federal agencies upon consultation with SBA and in conjunction with public comment.

Pursuant to that authority, FRA has published a final policy that classifies “small entities” as, *inter alia*, being railroads that meet the line haulage revenue requirements of a Class III railroad. See 49 CFR 209, Appendix C. Currently, the revenue requirements are 20 million inflation-adjusted dollars or less in annual operating revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. The \$20 million limit is based on the Surface Transportation Board’s (STB) threshold of a Class III carrier, which is adjusted for inflation by applying the railroad revenue deflator adjustment. The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity.

There are approximately 695 small railroads. Potentially, all small railroads could be impacted by this proposed regulation. However, because of certain characteristics that these railroads typically have, there should not be any impact on a majority of them. Most only have single track operations. Some small railroads, such as the tourist and historic railroads, operate across the lines of other railroads which would bear the burden or impact of the proposed rule’s requirements. Finally, other small railroads, if they do not have a single track, typically have operations that are light enough such that the railroads have generally performed the pertinent trackside work with the track and right-of-way taken out of service, or conducted the work during hours that the track is not used. Furthermore, FRA is not aware of any commuter railroads that qualify as small entities. This is likely because all commuter railroad operations in the United States are part of larger governmental entities whose jurisdictions exceed 50,000 in population.

FRA is uncertain as to how many contractors would be affected by this proposed rule. FRA is aware that some railroads hire contractors to conduct some of the functions of roadway workers on their railroads. However, most of the costs associated with the burdens from this rulemaking would ultimately get passed on to the pertinent railroad. Most likely, the contracts would be written to reflect that, and the contractor would bear no additional burden for the proposed requirements.

The impact from this regulation are primarily a result of the proposed requirements for roadway work groups to be provided on-track safety when working on a track within close proximity of an adjacent track that is controlled. Since small railroads either do not have any adjacent track or conduct track work on the occupied track with an adjacent track when the adjacent track is out of service, there is no impact for small railroads. The Analysis of Impact on Small Entities (AISE) developed in connection with this Notice of Proposed Rulemaking (NPRM) concludes that this rule -- and accompanying collection

of information -- will not have a significant economic impact on a substantial number of small entities.

FRA further concludes that this rule will not have a noticeable impact on the *competitive position* of those small entities that are impacted, or on the small entity segment of the industry as a whole.

**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 collection were not conducted or if this collection were conducted less frequently, the risk of injury or death to those working on or about railway tracks would be much greater. Without the new information required to be conveyed to roadway worker groups under § 214.315(a)(3) in the daily on-track safety briefing, it is highly likely that more roadway workers will sustain serious injuries or be killed because they did not have necessary information about any tracks adjacent to the track to be fouled, on-track safety for such tracks (if required by this subpart), and identification of roadway maintenance machines that will foul such tracks.

Without the new requirements stipulated under § 214.336, the rail environment would be much more dangerous and deadly than it presently is. Without these requirements, roadway workers would not know the precise procedures and practices that they must follow for track movements by trains or other on-track equipment operating at speeds both above and below 25 miles per hour. Without the specified watchmen/lookout warnings, notifications, and communications, affected roadway workers would not know when they must stop work and occupy a predetermined place of safety. Also, without this information, roadway workers might not be properly notified in sufficient time to move to places of safety when a train or other on-track equipment is authorized to move on adjacent track at various legal speeds. Consequently, there would likely be a greater number of serious injuries and fatalities to members of these roadway worker groups.

If roadway workers could not challenge the fitness of on-track roadway machines and hi-rail vehicles and if employers were not required to have in place and follow written procedures to assure prompt and equitable resolution of these challenges, these workers might be forced to operate machines with safety defects. This could lead to greater numbers of accidents/incidents and corresponding increases in roadway worker casualties, resulting in lost productivity to the employer.

Without the requirement that employers maintain a list of new and designated roadway maintenance machines that are enclosed with cabs with operative heating systems, operative air conditioning systems, and operative ventilation systems, FRA and other

Federal and State inspectors would not be able to use these rosters to determine which agency has the responsibility for inspection and enforcement of respiratory safety regulations for each roadway machine. The roster is intended to eliminate the possibility that certain machines would be inspected by two Federal agencies while other machines go uninspected altogether. If this were to occur, the health of roadway workers would suffer as a consequence, and also avoidable accident/incidents might take place because a machine was not inspected. Furthermore, without the provision that the triggering mechanism of audible warning devices required on new on-track roadway maintenance machines be clearly identifiable and within easy reach of the machine operator, more railway workers might be injured or killed because they did not know where the mechanism was in a critical situation and were not able to sound it in time.

Without the requirement that employers will now have to evaluate the feasibility of providing an overhead cover for existing on-track roadway maintenance machines if requested in writing by the operator assigned to a particular machine or by the operator's representative, the safety and health of railroad workers would be at increased risk. Employers are now required to provide a written response within 60 days, and have to include an explanation of the reasoning used if it is determined that an overhead cover is not feasible. Unless employers have a valid reason, they can not deny roadway workers essential equipment. Covers or canopies provide protection from blinding sun and from inclement weather, such as rain, sleet, hail, and snow, and thus serve to improve roadway worker visibility. Overhead covers then could make all the difference in preventing accidents/incidents and the often accompanying injuries experienced by roadway workers.

More accidents/incidents and corresponding casualties might ensue if records were not required to be kept regarding hi-rail vehicle annual safety inspections. In particular, safety-critical components might not be checked at least once annually and adjusted, if necessary. Without this type of oversight, employers might not be as conscientious to check tram, wheel wear, and gage measurements, and FRA would have no way to verify compliance with this subpart. As a result of this information collection, each non-complying condition not immediately repaired following an inspection must be tagged and reported to the employer's designated official, which further protects roadway workers. Non-complying conditions that were left uncorrected could lead to severe consequences, including damaged/unusable machinery, lost productivity, and lost time on-the-job, affecting both railroads and their employees.

Without this collection of information, roadway workers would be less well-trained and, therefore, less well-qualified for their respective crafts (whether watchmen/lookouts, flagmen, lone workers, roadway machine operators, etc.). They would not receive the initial and recurring training (once every year) now required under this rule. Consequently, they would not be as knowledgeable of railroad operating procedures and safety practices, nor would they be as familiar with overall conditions in today's railroad

environment. Furthermore, if this collection were not conducted (or conducted less frequently), there would not be the clear delineation of employers' responsibilities for providing on-track safety and employees' corresponding rights and responsibilities. Roadway workers might then unnecessarily or inadvertently place themselves in hazardous situations.

Additionally, without this collection of information, there would not be the well-defined procedures for communication and protection now required of roadway workers. As a result, there would likely be greater confusion around railroad tracks and greater uncertainty regarding the correct use of railroad equipment. More roadway worker injuries and fatalities would inevitably follow. FRA data tend to support this conclusion. FRA data indicate a continuing downward trend in roadway worker injuries and fatalities. For example, there were 3,107 injuries to maintenance of equipment and stores employees in 2000, while there were 2,024 to this same class of employees in 2007. FRA's objective is to continue and facilitate this downward trend.

As a result of this information collection, each employer must maintain written or electronic records of each roadway worker's current qualifications, and make these records available to FRA for inspection and copying upon request. Also, roadway workers who provide on-track safety for roadway work groups are required to take a recorded examination as part of the qualification process. These and other required records are very valuable in assisting investigators after an injury or fatality involving a roadway worker or group of roadway workers. Furthermore, should a potential violation or dispute of roadway worker rights and responsibilities occur, FRA can consider all the available evidence, including written records, in making its determination. Without this collection of information, all the required records would be unavailable to FRA.

Finally, without Form FRA F 6180.119, FRA would not have a mechanism to cite serious individual or corporate violations of Part 214 that it could use to recommend civil penalties. Such a mechanism – recommending civil penalties – has a deterrent effect and helps prevent similar violations from occurring, thereby improving overall rail workplace safety for roadway workers and other rail employees who perform their various jobs each and every day in a very dangerous work environment.

In summary, the net result of not collecting this information or collecting it less frequently would be to permit a more dangerous rail environment for roadway workers, as well as a more costly operational environment for rail employers because of lost productivity due to roadway workers killed or injured on the job. Moreover, FRA would be denied another important tool to promote and indeed enhance rail safety. This information collection then is essential, and assists FRA in carrying out and accomplishing its core agency mission and that of the DOT as well.

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

- **REQUIRING RESPONDENTS TO REPORT INFORMATION TO THE AGENCY MORE OFTEN THAN QUARTERLY;**
- **REQUIRING RESPONDENTS TO PREPARE A WRITTEN RESPONSE TO A COLLECTION OF INFORMATION IN FEWER THAN 30 DAYS AFTER RECEIPT OF IT;**
- **REQUIRING RESPONDENTS TO SUBMIT MORE THAN AN ORIGINAL AND TWO COPIES OF ANY DOCUMENT;**
- **REQUIRING RESPONDENTS TO RETAIN RECORDS, OTHER THAN HEALTH, MEDICAL, GOVERNMENT CONTRACT, GRANT-IN-AID, OR TAX RECORDS FOR MORE THAN THREE YEARS;**
- **IN CONNECTION WITH A STATISTICAL SURVEY, THAT IS NOT DESIGNED TO PRODUCE VALID AND RELIABLE RESULTS THAT CAN BE GENERALIZED TO THE UNIVERSE OF STUDY;**
- **REQUIRING THE USE OF A STATISTICAL DATA CLASSIFICATION THAT HAS NOT BEEN REVIEWED AND APPROVED BY OMB;**
- **THAT INCLUDES A PLEDGE OF CONFIDENTIALITY THAT IS NOT SUPPORTED BY AUTHORITY ESTABLISHED IN STATUE OR REGULATION, THAT IS NOT SUPPORTED BY DISCLOSURE AND DATA SECURITY POLICIES THAT ARE CONSISTENT WITH THE PLEDGE, OR WHICH UNNECESSARILY IMPEDES SHARING OF DATA WITH OTHER AGENCIES FOR COMPATIBLE CONFIDENTIAL USE; OR**
- **REQUIRING RESPONDENTS TO SUBMIT PROPRIETARY TRADE SECRET, OR OTHER CONFIDENTIAL INFORMATION UNLESS THE AGENCY CAN DEMONSTRATE THAT IT HAS INSTITUTED PROCEDURES TO PROTECT THE INFORMATION'S CONFIDENTIALITY TO THE EXTENT PERMITTED BY LAW.**

All 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 this Notice of Proposed Rulemaking (NPRM) in the Federal Register on November 25, 2009 (See 74 FR 61633) in order to solicit public comments on the proposed rule and its associated information collection requirements and burden estimates. FRA will respond to any comments received in response to the NPRM in the final rule and its associated information collection submission.

### Background

On April 11, 2008, the Brotherhood of Maintenance of Way Employees Division (BMWED) and the Brotherhood of Railroad Signalmen (BRS) filed a joint petition requesting that FRA issue an emergency order under 49 U.S.C. 20104(a) requiring adjacent track protection for roadway work groups. The petition noted that similar requests, which were filed on October 7, 2005, November 7, 2003, and December 21, 1999, were denied by FRA. The petitioners expressed their belief that, under the existing provisions of the rule, roadway workers will continue to suffer preventable serious injuries and death. The petitioners asserted that FRA should require railroads and their contractors to establish on-track safety on adjacent track (“adjacent track on-track safety”) for a wider range of work activities. In FRA’s January 5, 2006, denial of the October 2005 petition, FRA noted that the Railroad Safety Advisory Committee (RSAC or Committee) working group tasked to review and revise the RWP rule (RWP Working Group) was “committed to presenting comprehensive draft language . . . that would more closely tailor the solution to the problem.” And while the RWP Working Group did in

fact draft this language, and both the Working Group and the full RSAC were able to reach consensus on such language, BMWED and BRS were concerned that the language, which has not been published as an NPRM, would not become a final rule for a considerable period of time, leaving the possibility for further preventable fatalities. BMWED and BRS urged FRA to issue an emergency order that would adopt the consensus language of the RWP RSAC.

On April 18, 2008, the American Train Dispatchers Association (ATDA) filed a letter in support of the BMWED and BRS joint petition. In the letter, ATDA agreed that preventable injuries and deaths continue to occur because of a lack of positive regulation mandating adjacent track on-track safety and urged FRA to issue an emergency order based upon RSAC-approved and consensus-based replacement language for section 214.235(c), as indicated in the joint petition.

As an emergency order does not require prior notice to the affected party or an opportunity to be heard prior to issuance of the order, Congress declared that such an order may be invoked only where an unsafe condition or practice “causes an emergency situation involving a hazard of death or personal injury.” *See* 49 U.S.C. 20104. By letter dated June 4, 2008, FRA denied the joint petition for the emergency order, noting that the increased rate of adjacent-track-related fatalities cited in the joint petition makes a strong case for regulatory action, but does not constitute an emergency situation “that has developed suddenly and unexpectedly in which the danger is immediate.” To address this concern, FRA decided to issue a separate NPRM with an abbreviated comment period.

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

- American Association of Private Railroad Car Owners (AARPCO)
- American Association of State Highway & Transportation Officials (AASHTO)
- American Chemistry Council
- American Petroleum Institute
- American Public Transportation Association (APTA)
- American Short Line and Regional Railroad Association (ASLRRA)
- American Train Dispatchers Association (ATDA)
- Association of American Railroads (AAR)
- Association of Railway Museums (ARM)
- Association of State Rail Safety Managers (ASRSM)
- Brotherhood of Locomotive Engineers and Trainmen (BLET)
- Brotherhood of Maintenance of Way Employees Division (BMWED)

Brotherhood of Railroad Signalmen (BRS)  
Chlorine Institute  
Federal Transit Administration (FTA)\*  
Fertilizer Institute  
High Speed Ground Transportation Association (HSGTA)  
Institute of Makers of Explosives  
International Association of Machinists and Aerospace Workers  
International Brotherhood of Electrical Workers (IBEW)  
Labor Council for Latin American Advancement (LCLAA)  
League of Railway Industry Women (LRIW)\*  
National Association of Railroad Passengers (NARP)  
National Association of Railway Business Women (NARBW)\*

National Conference of Firemen & Oilers  
National Railroad Construction and Maintenance Association (NRC)  
National Railroad Passenger Corporation (Amtrak)  
National Transportation Safety Board (NTSB)\*  
Railway Supply Institute (RSI)  
Safe Travel America (STA)  
Secretaria de Comunicaciones y Transportes\*  
Sheet Metal Workers International Association (SMWIA)  
Tourist Railway Association, Inc.  
Transport Canada\*  
Transport Workers Union of America (TWU)  
Transportation Communications International Union/BRC (TCIU/BRC)  
Transportation Security Administration (TSA)\*  
United Transportation Union  
\* Indicates associate, non-voting membership

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

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

On January 26, 2005, the RSAC formed the RWP Working Group ("Working Group") to consider specific actions to advance the on-track safety of employees of covered railroads and their contractors engaged in maintenance-of-way activities throughout the general system of railroad transportation, including clarification of existing requirements. The assigned task was to review the existing rule, technical bulletins, and a safety advisory dealing with on-track safety. The Working Group was to consider the implications and, as appropriate, consider enhancements to the existing rule. The Working Group would report to the RSAC any specific actions identified as appropriate, and would report planned activity to the full Committee at each scheduled Committee meeting, including milestones for completion of projects and progress toward completion.

The Working Group is comprised of members from the following organizations:

- American Public Transportation Association (APTA)
- The American Short Line and Regional Railroad Association (ASLRRA)
- American Train Dispatchers Association (ATDA)
- Association of American Railroads (AAR) [including members from BNSF Railway Company (BNSF), Canadian National Railway Company (CN), Canadian Pacific Railway, Ltd. (CP), Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSXT), Kansas City Southern (KCS), Norfolk Southern Corporation (NS), and Union Pacific Railroad Company (UP)]
- Belt Railroad of Chicago
- Brotherhood of Locomotive Engineers and Trainmen (BLET)
- Brotherhood of Maintenance of Way Employees Division (BMWED)
- Brotherhood of Railroad Signalmen (BRS)
- Federal Railroad Administration (FRA)
- Indiana Harbor Belt Railroad (IHB)
- Long Island Railroad (LIRR)
- Metro-North Commuter Railroad (Metro-North)
- Montana Rail Link
- National Railroad Construction and Maintenance Association (NRC)
- Northeast Illinois Regional Railroad Corporation (Metra)
- Rail America, Inc.
- Southeastern Pennsylvania Transportation Authority (SEPTA)

Union Pacific Railroad Company (UP)  
United Transportation Union (UTU)  
Western New York and Pennsylvania Railroad (WNY&P)

The Working Group held 12 multi-day meetings. The group worked diligently, and was able to reach consensus on 32 separate items. One of the consensus items dealt specifically with the adjacent track on-track safety, which is the basis for this NPRM.

**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 rulemaking.

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

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.**

No sensitive information is requested.

**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 latest FRA data, respondent universe affected by this regulation is estimated at 644 railroads. The total number of roadway workers is estimated to be approximately 50,000. This includes employees of railroad and contractors to railroads.*

*The burden hour estimates for the information collection requirements listed below have been updated, where appropriate and necessary, based on the proposed new requirements and the latest information available to FRA.*

**Form FRA F 6180. 119 - Part 214 Railroad Workplace Safety Violation Report Form**

As part of their responsibilities, FRA Federal and State inspectors enforce compliance with Part 214. In order to do this, they obtain information from the railroads and railroad workers. Violations of workplace safety are reported on the above form. FRA estimates that approximately 150 of these forms will be completed each year by FRA inspectors. It is estimated that it will take approximately four (4) hours to complete each violation report form. Total annual burden for this requirement is 600 hours.

Respondents Universe:	350 Safety Inspectors
Burden time per response:	4 hours
Frequency of Response:	On occasion
Annual Number of responses:	150 report forms
First Year Burden:	600 hours

**Calculation:** 150 report forms x 4 hours = 600 hrs.

## SUBPART C

### **A. RAILROAD ON-TRACK SAFETY PROGRAMS**

(1) **Railroad on-track Safety Programs** (214.303)

Each railroad to which this Part applies must adopt and implement a program that will afford on-track safety to all roadway workers whose duties are performed on that railroad. Each such program must provide for the levels of protection specified in this Subpart.

Each on-track safety program adopted to comply with this Part must include procedures to be used by each railroad for monitoring effectiveness of and compliance with the program.

(2) **On-track Safety Program Documents** (214.309)

Rules and operating procedures governing track occupancy and protection must be maintained together in one manual and be readily available to all roadway workers. Each roadway worker responsible for the on-track safety of others, and each lone worker must be provided with and must maintain a copy of the program document.

(3) **Roadway Maintenance Machines** (214.341)

- Each employer must include in its on-track safety program specific provisions for the safety of roadway workers who operate or work near roadway maintenance machines. Those provisions must address:
- Training and qualification of operators of roadway maintenance machines.
- Establishment and issuance of safety procedures both for general application and for specific types of machines.
- Communication between machine operators and roadway workers assigned to work near or on roadway maintenance machines.
- Spacing between machines to prevent collisions.
- Space between machines and roadway workers to prevent personal injury.

- Maximum working and travel speeds for machines dependent upon weather, visibility, and stopping capabilities.
- Instructions for the safe operation of each roadway machine shall be provided and maintained with each machine large enough to carry the instruction document.
- No roadway worker shall operate a roadway maintenance machine without having been trained in accordance with § 214.355.
- No roadway worker shall operate a roadway maintenance machine without having complete knowledge of the safety instructions applicable to that machine.
- No employer shall assign roadway workers to work near roadway machines unless the roadway worker has been informed of the safety procedures applicable to persons working near the roadway machines and has acknowledged full understanding.
- Components of roadway maintenance machines must be kept clear of trains passing on adjacent tracks. Where operating conditions permit roadway maintenance machines to be less than four feet from the rail of an adjacent track, the on-track safety program of the railroad must include the procedural instructions necessary to provide adequate clearance between the machine and passing trains.

(4) **Notification to FRA for Review and Approval of Individual On-track Safety Programs** (214.307)

Each railroad must notify, in writing, the Associate Administrator for Safety, Federal Railroad Administration, 1200 New Jersey Avenue, S.E., 3<sup>rd</sup> Fl., Washington, D.C. 20590, not less than one month before its on-track safety program becomes effective. The notification must include the effective date of the program, the address of the office at which the program documents are available for review and photocopying by representatives of the Federal Railroad Administrator, and the name, title, address, and telephone number of the primary person to be contacted with regard to review of the program. This notification procedure shall also apply to subsequent changes to a railroad's on-track safety program.

(5) **Written Procedure for Resolution of Challenges Made to On-Track Safety Procedures** (214.311)

Each employer must have in place a written procedure to achieve prompt and equitable resolution of challenges made in accordance with §§ 214.311(b) and 214.313(d)). These procedures will be written and become part of the on-track safety program.

*Any burden associated with the above information collection requirements has been included in the earlier one-time burden associated with the development of the roadway worker safety program, or is included in the burden below which accounts for amendments to the original on-track safety program .*

Since railroads have already established on-track safety programs under this rule, they will submit amendments to FRA whenever it is necessary to revise their on-track safety programs. FRA estimates that the approximately 20 programs (one-third of the approximately 60 programs adopted originally) will be amended annually under the above requirement (§ 214.303). This figure includes all Class I railroads, and some of the Class II and Class III railroads. FRA estimates that the remainder of the Class II and Class III railroads (584) will also amend their on-track safety programs.

FRA estimates that it will take approximately 20 hours per program for each of the 20 railroads mentioned above to complete their amendments, and to prepare and mail their notification letter to FRA. It is also estimated that it will take approximately four (4) hours per program for the remaining Class II and Class III railroads to complete their amendments, and to prepare and mail their notification letter to FRA. Total annual burden for this requirement is 2,736 hours.

Respondents Universe:	60 Railroads
Burden time per response:	20 hours/4 hours
Frequency of Response:	On occasion
Annual Number of responses:	20 prog. amend./584 prog. amend.
First Year Burden:	2,736 hours

**Calculation:** 20 amend. x 20 hrs + 584 amend.x 4 hours = 2,736 hrs.

### **Subsequent Years**

FRA estimates that approximately five (5) new railroads will come into existence each year. These railroads will be classified as Class III. It is assumed that these railroads will most likely adopt one of the blanket programs. If the new railroads adopt one of the blanket programs, there will be no burden involved. However, if each new railroad decides to prepare its own safety program, it is estimated that it will take approximately 250 hours per program. Total annual burden for this requirement is 1,250 hours.

Respondents Universe:	5 Railroads
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Burden time per response:	250 hours
Frequency of Response:	One-time
Annual Number of responses:	5 safety programs
Subsequent Year Burden:	1,250 hours

**Calculation:** 5 safety programs x 250 hrs. = 1,250 hours

**B. Responsibility of Individual Roadway Workers (214.313)**

Each roadway worker may refuse any directive to violate an on-track safety rule, and must inform the employer in accordance with § 214.311 whenever the roadway worker makes a good faith determination that on-track safety provisions to be applied at the job location do not comply with the rules of the operating railroad.

It is estimated that written records will be kept of these challenges approximately 80 times each year. It is estimated that approximately 20 railroads will be challenged four (4) times a year under this requirement. Based on the complexity of each individual challenge, the burden could vary from 15 minutes to 16 hours per occurrence. FRA estimates that an overall industry average for this information collection requirement would be four (4) hours for each challenge. Total annual burden for this requirement is 320 hours.

Respondents Universe:	20 Railroads
Burden time per response	4 hours per challenge
Frequency of Response:	On occasion
Annual Number of responses:	80 challenges
Annual Burden:	320 hours

**Calculation:** 80 challenges x 4 hrs. per challenge = 320 hours

**C. Supervision and Communication (214.315; 214.335)**

(a) When an employer assigns a duty to a roadway worker that calls for that employee to foul a track, the employer must provide the employee with an on-track safety job briefing that, at a minimum, includes the following:

- (1) Information on the means by which on-track safety is to be provided for each track identified to be fouled;
- (2) Instruction on each on-track safety procedure to be followed;
- (3) Information about any adjacent tracks, on-track safety for such tracks, if required by this subpart or deemed necessary by the roadway worker in charge, and identification of

any roadway maintenance machines that will foul such tracks; and **(New Requirement)**

(4) A discussion of the nature of the work to be performed and the characteristics of the work location to ensure compliance with this subpart.

(b) A job briefing for on-track safety shall be deemed complete only after the roadway worker has acknowledged understanding of the on-track safety procedures and instructions presented.

(c) Every roadway work group whose duties include fouling a track must have one roadway worker designated by the employer to provide on-track safety for all members of the group. The designated person must be qualified under the rules of the railroad that conducts train operations on those tracks to provide the protection necessary for on-track safety of each individual in the group. The responsible person may be designated generally, or specifically for a particular work situation.

(d) Before any member of a roadway work group fouls a track, the designated person providing on-track safety for the group under the preceding paragraph must inform each roadway worker of the on-track safety procedures to be used and followed during the performance of the work at that time and location. Each roadway worker must again be so informed at any time the on-track safety procedures change during the work period. Such information must be given to all roadway workers affected before the change is effective, except in cases of emergency. Any roadway workers who, because of an emergency, cannot be notified in advance must be immediately warned to leave the fouling space and must not return to the fouling space until on-track safety is re-established.

(e) Each lone worker must communicate at the beginning of each duty period with a supervisor or another designated employee to receive a job briefing and to advise of his or her planned itinerary, and the procedures that he or she intends to use for on-track safety. When communication channels are disabled, the job briefing must be conducted as soon as possible after the beginning of the work period when communications are restored.

As noted above, there are approximately 50,000 roadway workers industry-wide, including employees of railroads and contractors for railroads. Job briefings are a usual and customary procedure on most railroads today. From the survey data, FRA has determined that roadway workers have on average 327 job briefings each per year. For 50,000 employees, a total then of 16,350,000 briefings would occur annually.

The data provided in the responses from the AAR Survey show that the average job briefing is 12.3 minutes. It also shows that the average additional minutes that will be

required by the rule will be 4.75 minutes. FRA believes this average is too high. This is common practice. FRA has determined that a more accurate estimate would be an additional two (2) minutes per job briefing.

Approximately 30 percent of the 50,000 roadway workers will not be impacted by adjacent track standards for various reasons. For example, such workers may work on territories with only single track or areas of with only non-controlled track, typically much smaller regional railroads. Of the 35,000 roadway workers then who may work on adjacent track, approximately 30 percent will generally not be impacted by the proposed revisions. Such workers would include signalmen, lone workers, and others who may be assigned to gangs, but generally do not work around on-track roadway maintenance machines or coupled equipment. Thus, FRA estimates that approximately 24,500 roadway workers will be affected by the new requirement in paragraph (a)(3) of this section concerning information communicated to roadway workers about adjacent track on-track safety.

Of the 24,500 roadway workers affected by the new requirement in paragraph (a)(3), the proposed change in the on-track safety procedures for adjacent tracks will cause an increase in time spent on some of the 16,350,000 annual briefings. FRA believes that many railroad operations are already including this information in their job briefings, where pertinent. Consequently, approximately 70 percent of these 8,011,500 briefings (24,500 workers x 327 daily briefings) either do not require discussion of any adjacent-track issues or any such issues are already being noted in job briefings today by very prudent and/or safety-conscious railroads. Thus, approximately 2,403,450 briefings (8,011,500 x .30) will relate to adjacent-track on-track issues and will take an additional half-minute to complete. The burden then for this new part of the above requirement is 20,029 hours. Total annual burden for the entire requirement is 565,029 hours. *(It should be noted that this is not an information collection per se but a verbal communication between supervisors and employees. There is no actual paperwork kept, information gathered/collected, or reporting required in reference to this provision. The additional time calculation for the new adjacent track requirement is calculated below.)*

Respondents Universe:	50,000 Roadway Workers
Burden time per response:	2 minutes ea. briefing + .5 min. ea. briefing
Frequency of Response:	On occasion
Annual Number of responses:	16,350,000 regular briefings (327 x 50,000)
Annual Burden:	565,029 hours

**Calculation:** 16,350,000 regular briefings x 2 min. = 545,000 hours  
 2,403,450 adjacent track on-track safety briefings x .5 min. =  
**20,029 hours (New Requirement Burden)**  
 545,000 hours + 20,029 hours = 565,029 hours

**D. Working Limits** (214.319)

All affected roadway workers must be notified before working limits are released for the operation of trains. Working limits must not be released until all affected roadway workers have either left the track or have been afforded on-track safety through train approach warning in accordance with § 214.329 of this subpart.

*This requirement corresponds with current practice in the railroad industry, and is not considered an additional requirement of this regulation. The notification will be given verbally in nearly all cases. Since this a usual and customary procedure, there is no additional burden associated with this provision.*

**E. Exclusive Track Occupancy - Working Limits** (214.321)

An authority for exclusive track occupancy given to the roadway worker in charge of the working limits must be transmitted on a written or printed document directly, by relay through a designated employee, in a data transmission, or by oral communication, to the roadway worker by the train dispatcher or control operator in charge of the track.

- Where authority for exclusive track occupancy is transmitted orally, the authority must be written as received by the roadway worker in charge and repeated to the issuing employee for verification.
- The roadway worker in charge of the working limits must maintain possession of the written or printed authority for exclusive track occupancy while the authority for the working limits is in effect.
- The train dispatcher or control operator in charge of the track must make a written or electronic record of all authorities issued to establish exclusive track occupancy.

The rule requires that the authority must be in writing. This procedure is nearly universal throughout the railroad industry today. However, the employee working in the field does not always record the authority in writing if provided a written authority. FRA estimates that approximately 700,739 additional authorities annually will now need to be recorded by the roadway workers. It is estimated that it will take approximately one (1) minute to record and repeat each authority. This breaks down to 30 seconds for the roadway worker and 30 seconds for the dispatcher. Total annual burden for this requirement is 11,679 hours.

Respondents:

8,583

	employees/roadway workers
Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual Number of responses:	700,739 written authorities
Annual Burden:	11,679 hours

**Calculation:** 700,739 written authorities x 1 min. = 11,679 hours

**F. Foul Time Working Limit Procedures (214.323)**

Working limits established on controlled track through the use of foul time procedures must comply with the following requirements:

- (a) Foul time may be given orally or in writing by the train dispatcher or control operator only after that employee has withheld the authority of all trains to move into the working limits during the foul time period.
- (b) Each roadway worker to whom foul time is transmitted orally must repeat the track number, track limits and time limits of the foul time to the issuing employee for verification before the foul time becomes effective.
- (c) The train dispatcher or control operator must not permit the movement of trains or other on-track equipment onto the working limits protected by foul time until the roadway worker who obtained the foul time has reported clear of the track.

*This requirement corresponds with current practice in the railroad industry, and is not considered an additional requirement of this regulation. The notification will be given verbally in nearly all cases. Since this is the usual and customary procedure, there is no additional burden associated with this provision.*

**G. Train Coordination (214.325)**

Working limits established by a roadway worker through the use of train coordination must comply with the following requirements:

- (a) Working limits established by train coordination must be within the segments of track or tracks upon which only one train holds exclusive track authority to move.
- (b) The roadway worker who establishes working limits by train coordination must communicate with a member of the crew of the train holding the exclusive authority to move, and must determine that:
  - (1) The train is visible to the roadway worker who is establishing the working limits;

- (2) The train is stopped;
- (3) Further movements of the train will be made only as permitted by the roadway worker in charge of the working limits while the working limits remain in effect; and
- (4) The crew of the train will not give up its exclusive authority until the working limits have been released to the train crew by the roadway worker in charge of the working limits.

FRA estimates that approximately 100 communications per day (36,500 annually) involving train coordination will be made by roadway workers under this requirement. It is estimated that it will take approximately 15 seconds to make each communication. Total annual burden for this requirement is 152 hours.

Respondents:	50,000 Roadway
	Workers
Burden time per response:	15 seconds
Frequency of Response:	On occasion
Annual Number of responses:	36,500 communications
Annual Burden:	152 hours

**Calculation:** 36,500 communications x 15 sec. = 152 hours

#### **H. Inaccessible Track (214.327)**

Working limits on non-controlled track must be established by rendering the track within working limits physically inaccessible to trains at each possible point of entry by one of the following features:

- A flagman with instructions and capability to hold all trains and equipment clear of the working limits;
- A switch or derail aligned to prevent access to the working limits and secured with an effective securing device by the roadway worker in charge of the working limits;
- A discontinuity in the rail that precludes passage of trains or engines into the working limits;
- Working limits on controlled track that connects directly with the inaccessible track, established by the roadway worker in charge of the working limits on the inaccessible track; or

- A remotely controlled switch aligned to prevent access to the working limits and secured by the control operator of such remotely controlled switch by application of a locking or blocking device to the control of that switch, when:
- The control operator has secured the remotely controlled switch by applying a locking or blocking device to the control of the switch, and
- The control operator has notified the roadway worker who has established the working limits that the requested protection has been provided, and
- The control operator is not permitted to remove the locking or blocking device from the control of the switch until receiving permission to do so from the roadway worker who established the working limits.
- Trains and roadway maintenance machines within working limits established by means of inaccessible track shall move only under the direction of the roadway worker in charge of the working limits, and shall move at restricted speed.
- No operable locomotives or other items of on-track equipment, except those present or moving under the direction of the roadway worker in charge of the working limits, shall be located within working limits established by means of inaccessible track.

FRA estimates that this will occur approximately 50,000 times annually. It is estimated that it will take approximately 10 minutes per occurrence. Total annual burden for this requirement is 8,333 hours.

Respondent Universe:	718 Railroads
Burden time per responses:	10 minutes
Frequency of Response:	On occasion
Annual Number of responses:	50,000 occurrences
Annual Burden:	8,333 hours

**Calculation:** 50,000 occurrences x 10 min. = 8,333 hours

#### **I. Train Approach Warning Provided by Watchmen/Lookouts** (214.329)

Roadway workers in a roadway work group who foul any track outside of working limits must be given warning of approaching trains and engines by one or more watchmen/lookouts in accordance with the provisions of this section.

Every roadway worker who is assigned the duties of a watchman/lookout must first be trained, qualified, and designated in writing by the employer in accordance with the

provisions of § 214.349.

*FRA believes that all of the 50,000 roadway workers have already been trained and designated in writing as watchmen and/or lookouts. Consequently, there is no burden associated with this requirement.*

**J. Definite Train Location Information** (214.331)

A roadway worker may establish on-track safety by using definite train location information only where permitted by and in accordance with the provisions stipulated in paragraphs (a), (b), and (c) of this section and with the provisions listed in this section. (d) Definite train location information must only be used to establish on-track safety according to the following provisions: (1) Definite train location information shall be issued only by the one train dispatcher who is designated to authorize train movements over the track for which the information is provided. (2) A definite train location list must indicate all trains to be operated on the track for which the list is provided during the time for which the list is effective. (3) Trains not shown on the definite train location list must not be operated on the track for which the list is provided, during the time for which the list is effective, until each roadway worker to whom the list has been issued has been notified of the train movement, has acknowledged the notification to the train dispatcher, and has canceled the list. A list thus canceled will then be invalid for on-track safety. (4) Definite train location must not be used to establish on-track safety within the limits of a manual interlocking, or on track over which train movements are governed by a Traffic Control System or by a Manual Block System. (5) Roadway workers using definite train location for on-track safety must not foul a track within 10 minutes before the earliest time that a train is due to depart the last station at which time is shown in approach to the roadway worker's location nor until that train has passed the location of the roadway worker. (6) A railroad must not permit a train to depart a location designated in a definite train location list before the time shown therein. (7) Each roadway worker who uses definite train location to establish on-track safety must be qualified on the relevant physical characteristics of the territory for which the train location information is provided.

*The only determinable burden from this section of the rule would be for the establishment of a schedule for phase-out. This is only for two or three Class I railroads and the task can reasonably be performed in four to five hours per railroad. This burden is accounted for in the previous burden of developing on track safety programs or, if revised, is accounted for in the burden for amendments to on-track safety programs listed above.*

*For the new Class III railroads that enter the market each year, the burden will be very minimal. This is because most small railroads will have low enough traffic volume that they should be able to work around the limitations and restrictions of the definite train location information system. Therefore, no burden is calculated for subsequent years.*

**K. On-Track Safety Procedures for Roadway Work Groups (214.335)**

No roadway worker who is a member of a roadway work group shall foul a track without having been informed by the roadway worker responsible for the on-track safety of the roadway work group that on-track safety is provided.

*The burden for this requirement is addressed in § 214.315, Supervision and Communication.*

**K. Adjacent Controlled Track On-Track Safety Procedures for Certain Roadway Work Groups (214.336) (New Requirements)**

(a) Procedures; general. (1) Except as provided in paragraph (e) of this section, on-track safety is required for each adjacent controlled track when a roadway work group with at least one of the roadway workers on the ground is engaged in a common task with on-track roadway maintenance machine or coupled equipment on an occupied track. The required on-track safety must be established through working limits (§ 214.319) or train approach warning provided by watchmen/lookouts (§ 214.329) and as more specifically described in this section. (2) If an occupied track has two adjacent controlled tracks, and one of these adjacent controlled tracks has one or more adjacent-controlled-track movements authorized at 25 mph or less, and the other adjacent controlled track has one or more concurrent adjacent-controlled-track movements authorized at over 25 mph, the more restrictive procedures in paragraph (b) of this section apply. (3) As used in this section, “adjacent controlled track” means a controlled track whose track center is spaced 19 feet or less from the track center of the occupied track. “Adjacent tracks” means two or more tracks with track centers spaced less than 25 feet apart. “Clear side” means the field side of the occupied track that either has no adjacent track on that side or has an adjacent track or tracks on that side and working limits have been established in accordance with this subpart on the closest adjacent track on that side and there are no movements authorized through the working limits by the roadway worker in charge on that adjacent track. “Occupied track” means the track on which a roadway maintenance machine or coupled equipment is located while engaged in a common task with a roadway work group.

*Any burden associated with § 214.319, and § 214.329 are included in those sections, respectively. Consequently, there is no additional burden under the above provision.*

(b) Procedures for adjacent-track movements over 25 mph. Except as provided in paragraph (e) of this section, if a train or other on-track equipment is authorized to move on an adjacent controlled track at a speed greater than 25 mph, each roadway

work group to which this section applies must comply with the following procedures:

(1) Ceasing work and occupying a place of safety. Each roadway worker in the roadway work group must cease any on-ground work and movement of any roadway maintenance machine or coupled equipment in the fouling space of the occupied track and the adjacent controlled track, and occupy a predetermined place of safety upon receiving –

- (i) Notification. A notification in accordance with § 214.319(c) indicating that the roadway worker in charge intends to authorize one or more train or other on-track equipment movements through the working limits on the adjacent controlled track, if adjacent-controlled-track on-track safety has been established through working limits alone; or
- (ii) Warning. A watchman/lookout warning, if on-track safety through train approach warning (§ 214.329) has been established on the adjacent controlled track either as the sole method of on-track safety or in addition to working limits.

(2) Resuming work. (i) A component of a roadway work group may resume on-ground work and movement of any roadway maintenance machine or coupled equipment on or fouling the occupied track only after the trailing-end of all trains or other on-track equipment moving on the adjacent controlled track (for which a notification or warning has been received in accordance with paragraph (b)(1) of this section) has passed and remains ahead of that component of the roadway work group.

FRA estimates that approximately 10,000 notifications or watchmen lookout warnings will be made under the above requirement. It is estimated that it will take approximately 15 seconds to make each notification/watchman lookout warning. Total annual burden for this requirement is 42 hours.

Respondents Universe:	100 Railroads
Burden time per response:	15 seconds
Frequency of Response:	On occasion
Annual Number of responses:	10,000 notifications or watchmen lookout warnings
First Year Burden:	42 hours

**Calculation:** 10,000 notifications or watchmen lookout warnings x 15 sec. = 42 hours

(ii) If the train or other on-track equipment stops before its trailing-end has passed all of the roadway workers in the roadway work group, the work to be performed on or fouling the occupied track ahead of the trailing-end of the train or other on-track equipment on

the adjacent controlled track may resume only – (A) If on-track safety through train approach warning (§ 214.329) has been established on the adjacent controlled track; or (B) After the roadway worker in charge has communicated with the train engineer or equipment operator and established that further movements of such train or other on-track equipment shall be made only as permitted by the roadway worker in charge.

FRA estimates that approximately 3,000 communications will take place under the above scenario. It is estimated that each communication will take approximately one (1) minute to make complete. Total annual burden for this requirement is 50 hours.

Respondents Universe:	100 Railroads
Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual Number of responses:	3,000 communications
First Year Burden:	50 hours

**Calculation:** 3,000 communications x 1 min. = 50 hours

(c) Procedures for adjacent-track movements 25 mph or less. If a train or other on-track equipment is authorized to move on an adjacent controlled track at a speed of 25 mph or less, each roadway work group to which this section applies must comply with the procedures listed in paragraph (b) of this section, except that work that is performed exclusively while positioned on or between the rails of the occupied track or to the clear side may continue, provided that any on-ground work is performed more than 25 feet in front or behind any roadway maintenance machine on or fouling the occupied track during such adjacent-controlled-track movement.

In keeping with the requirements listed in paragraph (b) of this section, FRA estimates that approximately 3,000 notifications or watchmen lookout warnings will be made under the above requirement. It is estimated that it will take approximately 15 seconds to make each notification/watchman lookout warning. Total annual burden for this requirement is 13 hours.

Respondents Universe:	100 Railroads
Burden time per response:	15 seconds
Frequency of Response:	On occasion
Annual Number of responses:	3,000 notifications or watchmen lookout warnings
First Year Burden:	13 hours

**Calculation:** 3,000 notifications or watchmen lookout warnings x 15 sec. = 13 hours

In keeping with the requirements listed in paragraph (b) of this section, FRA estimates that approximately 1,500 communications will take place under the above scenario. It is estimated that each communication will take approximately one (1) minute to make complete. Total annual burden for this requirement is 25 hours.

Respondents Universe:	100 Railroads
Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual Number of responses:	1,500 communications
First Year Burden:	25 hours

**Calculation:** 1,500 communications x 1 min. = 25 hours

Total annual burden for this entire requirement is 130 hours (42 + 50 + 13 + 25).

#### **L. On-track Safety Procedures for Lone Workers** (214.337)

A lone worker who uses individual train detection to establish on-track safety must first complete a written Statement of On-Track Safety. The Statement must designate the limits of the track for which it is prepared and the date and time for which it is valid. The statement must show the maximum authorized speed of trains within the limits for which it is prepared, and the sight distance that provides the required warning of approaching trains. The lone worker using individual train detection to establish on-track safety must produce the Statement of On-Track Safety when requested by a representative of the Federal Railroad Administrator.

This statement will only be prepared by lone workers who are not under protection by train approach warning or working limits. According to the requirements of this rule, this will primarily occur when a lone worker will be working outside a manual interlocking or remote hump yard facility, and not within hearing distance of any power tools. Results from an earlier BRS Survey determined that this is only 2.33 percent of the time. This figure has not changed. FRA estimates that, at any one time, only one-fifth or approximately 10,000 roadway workers will be working as lone workers. It is estimated that each of these workers, on average, will write a Statement of On-Track safety about four times a week. This amounts to a total of 2,080,000 statements (10,000 workers x 4 statements p/wk x 52 weeks) for the industry per year. It is estimated that it will take approximately 30 seconds to prepare this statement. Some railroads will provide lone workers with an additional chart that has the necessary distance, in accordance with the new adjacent track requirements, to clear the track for the different speed limits. It is expected that most railroads will also develop a one-page form that will make this task less burdensome. Total annual burden for this requirement is 17,333 hours.

Respondent Universe:	718 Railroads
Burden time per response:	30 seconds

Frequency of Response:	On occasion
Annual Number of responses:	2,080,000 statements
Annual Burden:	17,333 hours

**Calculation:** 2,080,000 statements x 30 sec. = 17,333 hours

## **M. TRAINING REQUIREMENTS**

### **(1) Training and Qualification (214.343; 214.345)**

- No employer shall assign an employee to perform the duties of a roadway worker, and no employee shall accept such assignment, unless that employee has received training in the on-track safety program procedures associated with the assignment to be performed, and that employee has demonstrated the ability to fulfill the responsibilities for on-track safety that are required of an individual roadway worker performing that assignment.
- Each employer must provide to all roadway workers in its employ initial or recurrent training once every calendar year on the on-track safety rules and procedures that they are required to follow.
- Railroad employees other than roadway workers, who are associated with on-track safety procedures, and whose primary duties are concerned with the movement and protection of trains, must be trained to perform their functions related to on-track safety through the training and qualification procedures prescribed by the operating railroad for the primary position of the employee, including maintenance of records and frequency of training.
- Each employer of roadway workers must maintain written or electronic records of each roadway worker's qualifications in effect. Each record must include the name of the employee, the type of qualification made, and the most recent date of qualification. These records must be kept available for inspection and photocopying by the Federal Railroad Administration during regular business hours.
- The training for all roadway workers must include, as a minimum, the following:
  - Recognition of railroad tracks and understanding of the space around them within which on-track safety is required;
  - The functions and responsibilities of various persons involved with on-

track safety procedures;

- Proper compliance with on-track safety instructions given by persons performing or responsible for on-track safety functions;
- Signals given by watchmen/lookouts, and the proper procedures upon receiving a train approach warning from a lookout;
- The hazards associated with working on or near railroad tracks, including review of on-track safety rules and procedures.

**(2) Training and Qualification for Lone Workers (214.347)**

Each lone worker must be trained and qualified by the employer to establish on-track safety in accordance with the requirements of this section, and must be authorized to do so by the railroad that conducts train operations on those tracks.

The training and qualification for lone works must include, as a minimum, consideration of the following factors:

- Detection of approaching trains and prompt movement to a place of safety upon their approach;
- Determination of the distance along the track at which trains must be visible in order to provide the prescribed warning time;
- Rules and procedures prescribed by the railroad for individual train detection, establishment of working limits, and definite train location; and
- On-track safety procedures to be used in the territory on which the employee is to be qualified and permitted to work alone.

Initial and periodic qualification of a lone worker must be evidenced by demonstrated proficiency.

**(3) Training and Qualification of Watchmen/Lookouts (214.349)**

The training and qualification for roadway workers assigned the duties of watchmen/lookouts must include, as a minimum, consideration of the following factors:

- Detection and recognition of approaching trains;

- Effective warning of roadway workers of the approach of trains;
- Determination of the distance along the track at which trains must be visible in order to provide the prescribed warning time; and
- Rules and procedures of the railroad to be used for train approach warning.

Initial and periodic qualification of a watchman/lookout must be evidenced by demonstrated proficiency.

**(4) Training and Qualification of Flagman (214.351)**

The training and qualification for roadway workers assigned the duties of flagmen must include, as a minimum, the content and application of the operating rules of the railroad pertaining to giving proper stop signals to trains and holding trains clear of working limits.

Initial and periodic qualification of a flagman must be evidenced by demonstrated proficiency.

**(5) Training and Qualification of Roadway Workers Who Provide On-track Safety For Roadway Work Groups (214.353)**

The training and qualification of roadway workers who provide for the on-track safety of groups of roadway workers through establishment of working limits or the assignment and supervision of watchmen/lookouts or flagmen must include, as a minimum:

- All the on-track safety training and qualification required of the roadway workers to be supervised and protected;
- The content and application of the operating rules of the railroad pertaining to the establishment of working limits;
- The content and application of the rules of the railroad pertaining to the establishment or train approach warning; and
- The relevant physical characteristics of the territory of the railroad upon which the roadway worker is qualified.
- Initial and periodic qualification of a roadway worker to provide on-track safety for groups must be evidenced by a recorded examination.

**(6) Training and Qualification For Operators of Roadway Maintenance Machines (214.355)**

The training and qualification of roadway workers who operate roadway maintenance machines must include, as a minimum:

- Procedures to prevent a person from being struck by the machine when the machine is in motion or operation;
- Procedures to prevent any part of the machine from being struck by a train or other equipment on another track;
- Procedures to provide for stopping the machine short of other machines or obstructions on the track; and
- Methods to determine safe operating procedures for each machine that the operator is expected to operate.

Initial and periodic qualification of a roadway worker to operate roadway maintenance machines must be evidenced by demonstrated proficiency.

FRA estimates that approximately 50,000 roadway workers will be trained annually. It is estimated that it will take approximately 4.5 hours to train each employee every year under the above requirements. Total annual burden for this requirement is 225,000 hours. (Note: The above requirements related to training are not new.)

Respondents:	50,000
	Roadway Workers
Burden time per response:	4.5 hours
Frequency of Response:	On occasion
Annual Number of responses:	50,000 trained employees
Annual Burden:	225,000 hours

**Calculation:** 50,000 trained roadway workers x 4.5 hrs. = 225,000 hours

Further, FRA stipulates that any additional training that will be provided as a result of this rule will be incorporated into the annual industry practices training. However, not all roadway workers will work on adjacent-track work gangs. FRA estimates that approximately 35,000 roadway workers will be trained to follow the appropriate practices and procedures related to adjacent-track safety. It is estimated that this additional training will take approximately five (5) minutes per employee to complete. Total annual burden for this requirement is 2,917 hours.

Respondents:		35,000
	Roadway Workers	
Burden time per response:	5 minutes	
Frequency of Response:	Annually	
Annual Number of responses:	35,000 adjacent-track trained roadway workers	
Annual Burden:		2,917 hours

**Calculation:** 35,000 roadway workers x 5 min. = 2,917 hours

Additionally, FRA estimates that it will take approximately two (2) minutes per employee to keep a written or electronic record of their qualifications. Total annual burden for this requirement is 1,667 hours. (*Note: The above requirement regarding recordkeeping is not new.*)

Respondents:		50,000
	Roadway Workers	
Burden time per response:	2 minutes	
Frequency of Response:	On occasion	
Annual Number of responses:	50,000 records	
Annual Burden:		1,667 hours

**Calculation:** 50,000 roadway workers x 2 min. = 1,667 hours

Total burden for this entire requirement is 229,584 hours (225,000 + 2,917 + 1,667).

The total burden for Subpart C is 836,546 hours (2,736 + 1,250 + 320 + 565,029 + 11,679 + 152 + 8,333 + 42 + 50 + 13 + 25 + 17,333 + 225,000 + 2,917 + 1,667).

## SUBPART D

### § 214.503 Good Faith Challenges; Procedures For Notification and Resolution.

- A. An employee operating an on-track roadway maintenance machine or hi-rail vehicle must inform the employer whenever the employee makes a good faith determination that the machine or vehicle does not comply with FRA regulations or has a condition that inhibits its safe operation.

FRA estimates that approximately 125 notifications/communications will be made each year by employees to employers under this requirement. It is estimated that it will take approximately 10 minutes to make each notification/communication to the employer. Total annual burden for this requirement is 21 hours.

Respondent Universe:	50,000 Roadway
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	Workers
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	125 notifications/communications
Annual Burden:	21 hours

**Calculation:** 125 notifications/communications x 10 min. = 21 hours

- B. Each employer must have in place and follow written procedures to assure prompt and equitable resolution of challenges resulting from good faith determinations made in accordance with this section. The procedures must include specific steps to be taken by the employer to investigate each good faith challenge, as well as procedures to follow once the employer finds a challenged machine or vehicle does not comply with this subpart or is otherwise unsafe to operate. The procedures must also include the title and location of the employer's designated official.

FRA estimates that approximately 10 new railroads will commence operations each year and thus 10 resolution procedures will be developed each year under the above requirement. It is estimated that it will take approximately two (2) hours to develop each resolution procedure. Total annual burden for this requirement is 20 hours.

Respondent Universe:	644 Railroads
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	10 resolution procedures
Annual Burden:	20 hours

**Calculation:** 10 resolution procedures x 2 hrs. = 20 hours

Total annual burden for this requirement is 41 hours (21 + 20).

**§ 214.505 Required Environmental Control and Protection Systems For New On-Track Roadway Maintenance Machines with Enclosed Cabs.**

- A. An employer must maintain a list of new and designated existing on-track roadway maintenance machines of the types listed in paragraph (a)(1) through (a)(5) of this section, or functionally equivalent thereto. The list must be kept current and made available to the Federal Railroad Administration and other Federal and State agencies upon request.

FRA estimates that approximately 10 lists of new and designated on-track roadway maintenance machines of the types specified in paragraph (a) of this section will be kept by railroads under this requirement. It is estimated that it will take approximately one (1) hour to develop/compile each list. Total annual burden for this requirement is 10 hours.

Respondent Universe:	644 Railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	10 lists
Annual Burden:	10 hours

**Calculation:** 10 lists x 1 hrs. = 10 hours

- B. An existing roadway maintenance machine of the types listed in paragraphs (a)(1) through (a)(5) of this section, or functionally equivalent thereto, becomes “designated” when the employer adds the machine to the list required in paragraph(c) of this section. The designation is irrevocable, and the designated existing roadway maintenance machine remains subject to paragraph (b) of this section until it is retired or sold.

*FRA estimates that there will be zero (0) roadway maintenance machines that will become “designated” under the above requirement. Consequently, there is no burden associated with this requirement.*

Total annual burden for this entire requirement is 10 hours (10 + 0).

**§ 214.507 Required Safety Equipment for New On-Track Roadway Maintenance Machines.**

Each new on-track roadway maintenance machine must have its as-built light weight displayed in a conspicuous location on the machine.

FRA estimates that approximately 1,000 new on-track roadway maintenance machines are built each year. It is estimated that it will take approximately five (5) minutes to display a sticker or stencil on each machine indicating its as-built light weight in a conspicuous location. Total annual burden is approximately 83 hours.

Respondent Universe:	644 Railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	1,000 stickers/stencils
Annual Burden:	83 hours

**Calculation:** 1,000 stickers/stencils x 5 min. = 83 hours

**§ 214.511 Required Audible Warning Devices for New On-Track Roadway Maintenance Machines.**

Each new on-track roadway maintenance machine must be equipped with: (1) A horn or audible warning device that produces a sound loud enough to be heard by roadway workers and other machine operators within the immediate work area. The triggering mechanism for the device must be clearly identifiable and within easy reach of the machine operator; and (2) An automatic change-of-direction alarm which provides an audible signal that is at least three seconds long and is distinguishable from the surrounding noise. Change of direction alarms may be interrupted by the machine operator when operating the machine in the work mode if the function of the machine would result in a constant, or almost constant, sounding of the device. In any action brought by FRA to enforce the change-of-direction alarm requirement, the employer shall have the burden of proving that use of the change-of-direction alarm in a particular work function would cause constant, or almost constant, sounding of the device.

FRA estimates that approximately 3,700 roadway maintenance machines will be affected, requiring that triggering mechanisms for these new machines be made clearly identifiable and within easy reach of the machine operator. It is estimated that it will take approximately five (5) minutes to identify each triggering mechanism. Total annual burden for this requirement is 308 hours.

Respondent Universe:	44 Railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	3,700 identified mechanisms
Annual Burden:	308 hours

**Calculation:** 3,700 identified mechanisms x 5 min. = 308 hours

**§ 214.513 Retrofitting of Existing On-Track Roadway Maintenance Machines; General.**

By March 28, 2005, each existing on-track roadway maintenance machine must be equipped with a permanent or portable horn or other audible warning device that produces a sound loud enough to be heard by roadway workers and other machine operators within the immediate work area. The triggering mechanism for the device must be clearly identifiable and within easy reach of the machine operator.

FRA estimates that approximately 200 existing on-track roadway machines will have the required audible warning device and will have the triggering mechanism clearly identified and within easy reach of the machine operator. It is estimated that it will take approximately five (5) minutes to identify the triggering mechanism of each device on the on-track roadway machine. Total annual burden for this requirement is 17 hours.

Respondent Universe:	703 Railroads
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Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	200 identified mechanisms
Annual Burden:	17 hours

**Calculation:** 200 identified mechanisms x 5 min. = 17 hours

**§ 214.515 Overhead Covers For Existing On-Track Roadway Maintenance Machines.**

For those existing on-track roadway maintenance machines that are not already equipped with overhead covers for the operator’s position, the employer shall evaluate the feasibility of providing an overhead cover on such a machine if requested in writing by the operator assigned to operate that machine or by the operator's designated representative. The employer shall provide the operator a written response for each request within 60 days. When the employer finds the addition of an overhead cover is not feasible, the response must include an explanation of the reasoning used by the employer to reach that conclusion.

FRA estimates that approximately 500 written requests for an overhead cover for an existing on-track roadway machines will be made by machine operators or their designated representatives. It is estimated that each written request by operators or their representatives will take approximately 10 minutes to complete. Further, it is estimated that there will be 500 written responses by employers within the required 60 days to these requests (including explanations when overhead covers are not feasible), and that each response will take approximately 20 minutes to complete. Total annual burden for this entire requirement is 250 hours.

Respondent Universe:	644 Railroads
Burden time per response:	10 minutes + 20 minutes
Frequency of Response:	On occasion
Annual number of Responses:	500 requests + 500 responses
Annual Burden:	250 hours

**Calculation:** 500 requests x 10 min + 500 responses x 20 min. = 250 hours

**§ 214.517 Retrofitting of Existing On-Track Roadway Maintenance Machines Manufactured On or After January 1, 1991.**

In addition to meeting the requirements of §214.513, after March 28, 2005, each existing on-track roadway maintenance machine manufactured on or after January 1, 1991, must have the following: (1) A change-of-direction alarm or rearview mirror or other rearward

viewing device, if either device is feasible, given the machine's design, and if either device adds operational safety value, given the machine's function. In any action brought by FRA to enforce this requirement, the employer shall have the burden of proving that neither device is feasible or adds operational safety value, or both, given the machine's design or work function; (2) An operative heater, when the machine is operated at an ambient temperature less than 50 degrees Fahrenheit and is equipped with, or has been equipped with, a heater installed by the manufacturer or the railroad; (3) The light weight of the machine stenciled, or otherwise clearly displayed, on the machine if the light weight is known; (4) Reflective material, or a reflective device, or operable brake lights; (5) Safety glass when its glass is normally replaced, except that replacement glass that is specifically intended for on-track roadway maintenance machines and is in the employer's inventory as of September 26, 2003, may be utilized until exhausted; (6) A turntable restraint device, on machines equipped with a turntable, to prevent undesired lowering, or a warning light indicating that the turntable is not in the normal travel position.

FRA estimates that approximately 500 existing on-track roadway machines will have the lightweight of the machine stenciled, or otherwise clearly displayed, if the light weight is known. It is estimated that it will take approximately five (5) minutes to stencil or clearly mark each existing on-track roadway machine. Total annual burden for this requirement is 42 hours.

Respondent Universe:	644 Railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	500 stencils/displays
Annual Burden:	42 hours

**Calculation:** 500 stencils/displays x 5 min. = 42 hours

**§ 214.518 Safe and secure positions for riders.**

On or after March 1, 2004, a roadway worker, other than the machine operator, is prohibited from riding on any on-track roadway maintenance machine unless a safe and secure position for each roadway worker on the machine is clearly identified by stenciling, marking, or other written notice.

FRA estimates that approximately 1,000 existing on-track roadway maintenance machines will have stenciling, marking, or other documentation (written notice) on the machine identifying the location of safe and secure positions for roadway workers to be transported on the machine. It is estimated that it will take approximately five (5) minutes to stencil/mark/document each machine with the required information. Total annual burden for this requirement is 83 hours.

Respondent Universe:	644 Railroads
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Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	1,000 stencils/marks/notices
Annual Burden:	83 hours

**Calculation:** 1,000 stencils/marks/notices x 5 min. = 83 hours

**§ 214.523 Hi-Rail Vehicles.**

- A. The hi-rail gear of all hi-rail vehicles must be inspected for safety at least annually and with no more than 14 months between inspections. Tram, wheel wear and gage must be measured and, if necessary, adjusted to allow the vehicle to be safely operated.

Each employer must keep records pertaining to compliance with paragraph (a) of this section. Records may be kept on forms provided by the employer or by electronic means. The employer must retain the record of each inspection until the next required inspection is performed. The records must be available for inspection and copying during normal business hours by representatives of FRA and States participating under Part 212 of this chapter. The records may be kept on the hi-rail vehicle or at a location designated by the employer.

FRA estimates that approximately 2,000 hi-rail vehicles will have safety critical components inspected at least annually, if not more often. It is estimated that it will take approximately 60 minutes to complete each hi-rail vehicle safety inspection and record the results, either electronically or in writing. Total annual burden for this requirement is 2,000 hours.

Respondent Universe:	644 Railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	2,000 inspection records
Annual Burden:	2,000 hours

**Calculation:** 2,000 inspection records x 60 min. = 2,000 hours

- B. The operator of the hi-rail vehicle must check the vehicle for compliance with this subpart, prior to using the vehicle at the start of the operator's work shift. A non-complying condition that cannot be repaired immediately must be tagged and dated in a manner prescribed by the employer and reported to the designated official. Non-complying automatic change-of-direction alarms, back-up alarms, and 360-degree intermittent warning lights or beacons must be repaired or replaced as soon as practicable within seven calendar days.

FRA estimates that approximately 500 non-complying conditions that cannot be repaired immediately will be tagged and dated in a manner prescribed by the employer and reported to the designated official. It is estimated that it will take approximately 10 minutes to complete each tag and an additional 15 minutes to complete each report to the designated official. Total annual burden for this requirement is 208 hours.

Respondent Universe:	644 Railroads
Burden time per response:	10 minutes + 15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	500 tags + 500 reports
Annual Burden:	208 hours

**Calculation:** 500 tags x 10 min. + 500 reports x 15 min. = 208 hours

Total annual burden for this requirement is 2,208 hours (2,000 + 208).

**§ 214.527 On-Track Roadway Maintenance Machines; Inspection For Compliance and Schedule For Repairs.**

The operator of an on-track roadway maintenance machine must check the machine components for compliance with this subpart, prior to using the machine at the start of the operator's work shift. Any non-complying condition that cannot be repaired immediately must be tagged and dated in a manner prescribed by the employer and reported to the designated official.

FRA estimates that approximately 550 non-complying conditions relating to on-track roadway maintenance machines that cannot be repaired immediately will be tagged and dated in a manner prescribed by the employer and reported to the designated official. It is estimated that it will take the operator approximately five (5) minutes to check the machine components for compliance with this subpart and complete the tag. Further, it is estimated that it will take an additional 15 minutes to complete each report to the designated official. Total annual burden for this requirement is 184 hours.

Respondent Universe:	644 Railroads
Burden time per response:	5 minutes + 15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	550 tags + 550 reports
Annual Burden:	184 hours

**Calculation:** 550 tags x 5 min. + 550 reports x 15 min. = 184 hours

**§ 214.533 Schedule of Repairs Subject to Availability of Parts.**

(a) The employer must order a part necessary to repair a non-complying condition on an

on-track roadway maintenance machine or a hi-rail vehicle by the end of the next business day following the report of the defect. (b) When the employer cannot repair as required by § 214.531 because of the temporary unavailability of a necessary part, the employer must repair the on-track roadway maintenance machine or hi-rail vehicle within seven calendar days after receiving the necessary part. The employer may continue to use the on-track roadway maintenance machine or hi-rail vehicle with a non-complying condition until receiving the necessary part(s) for repair, subject to the requirements of § 214.503. However, if a non-complying condition is not repaired within 30 days following the report of the defect, the employer must remove the on-track roadway maintenance machine or hi-rail vehicle from on-track service until it is brought into compliance with this subpart. (c) If the employer fails to order a part necessary to repair the reported non-complying condition, or if it fails to install an available part within the required seven calendar days, the on-track roadway maintenance machine or hi-rail vehicle must be removed from on-track service until brought into compliance with this subpart. (d) Each employer must maintain records pertaining to compliance with this section. Records may be kept on forms provided by the employer or by electronic means. The employer must retain each record for at least one year, and the records must be available for inspection and copying during normal business hours by representatives of FRA and States participating under Part 212 of this chapter. The records may be kept on the on-track roadway maintenance machine or hi-rail vehicle or at a location designated by the employer.

FRA estimates that approximately 250 records will be kept, either electronically or on paper, in order to comply with the requirements of this section. It is estimated that it will take approximately 15 minutes to complete each record. Total annual burden for this requirement is 63 hours.

Respondent Universe:	644 Railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	250 records
Annual Burden:	63 hours

**Calculation:** 250 records x 15 min. = 63 hours

Total annual burden for Subpart D is 3,289 hours (21 + 20 + 10 + 83 + 308 + 17 + 250 + 42 + 83 + 2,000 + 208 + 184 + 63).

Total annual burden for the entire information collection (Form FRA 6180.119 + Subparts C + D) is 840,435 hours (600 + 836,546 + 3,289).

**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.**

Listed below are the costs associated with the information collection requirements of Subpart C:

\$604	-	Notification letter to FRA (604 letters@ \$1 per letter to cover postage, paper, and envelopes).
\$250	-	Printing and other related expenses for required program manuals for five (5) new start-up Class III railroads (@ \$50 per manual).
\$2,800,000	-	Training costs (2 hours per employee - 50,000 roadway workers)
\$ 200,000	-	Miscellaneous Costs
\$3,000,854	-	Total Cost

- 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.**

Except for some minimal training costs for FRA safety inspectors who will have to monitor silica dust exposure inside the cabs of roadway maintenance machines and hi-rail vehicles under the new Subpart D, FRA estimates no additional costs.

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

The total burden for this information collection has increased by 23,077 hours from the last submission. The increase in burden is due to three **program changes** and to one **adjustment**. Specifically, the following requirements reflect **program changes** and corresponding burden *increases*:

(1.) Under § 214.315(a)(3), the proposed rule stipulates that information must be provided about tracks adjacent to the track to be fouled, on-track safety for such tracks, if required by this subpart, and identification of any roadway maintenance machines that will foul such tracks during the daily job briefing. This new requirement *increased* the burden by *20,029 hours* (from *545,000 hours* to *565,029 hours*).

(2.) Under § 214.336, the proposed rule requires that adjacent controlled on-track safety

procedures must be communicated to roadway work group employees. This new requirement *increased* the burden by 130 hours (from zero (0) hours to 130 hours).

(3.) Under the training requirements stipulated in §§ 214.343–214.355, the proposed rule requires training in adjacent controlled on-track safety procedures for roadway workers assigned duties in such areas. FRA estimated that approximately 35,000 roadway workers would be affected and that it would take an additional five (5) minutes to train these workers in the necessary safety procedures. This new requirement *increased* the burden by 2,917 hours.

Total *increases* from **program changes** then amount to 23,076 hours.

As mentioned, there was also one **adjustment**, which also *increased* the burden. It is as follows:

(1.) Under § 214.505, FRA revised the number of lists of new and designated on-track roadway maintenance machine types (from nine (9) to 10). This change in estimate *increased* the burden by one (1) hour (from nine (9) hours to 10 hours).

Total *increases* from **adjustments** then amount to one (1) hour.

Currently, the OMB inventory for this collection of information shows a burden total of 817,358 hours, while this revised submission reflects a total burden of 840,435 hours. Hence, there is a total burden increase of 23,077 hours.

There is no change in cost to respondents since the last 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.**

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

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

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

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

No exceptions are taken at this time.

Meeting Department of Transportation (DOT) Strategic Goals

This information collection supports the main DOT strategic goal, namely transportation safety. Without this collection of information, rail safety throughout the U.S. might be seriously hindered. Specifically, if roadway workers could not challenge the fitness of on-track roadway machines and hi-rail vehicles and if employers were not required to have in place and follow written procedures to assure prompt and equitable resolution of these challenges, these workers might be forced to operate machines with safety and other defects. This could lead to greater numbers of accidents/incidents and corresponding increases in the number of roadway worker casualties.

Without the provision that the triggering mechanism of audible warning devices required on new on-track roadway maintenance machines be clearly identifiable and within easy reach of the machine operator, more railway workers might be injured or killed because they did not know where the mechanism was in a critical situation and were not able to sound it in time. Additionally, without the requirement that employers will now have to evaluate the feasibility of providing an overhead cover for existing on-track roadway maintenance machines if requested in writing by the operator assigned to a particular machine or by the operator's representative, the safety and health of railroad workers would be at increased risk. Employers will now be required to provide a written response within 60 days, and will have to include an explanation of the reasoning used if it is determined that an overhead cover is not feasible. Unless employers have a valid reason, they will not be able to deny roadway workers essential equipment. Covers or canopies provide protection from blinding sun and from inclement weather such as rain and snow. Overhead covers then could make all the difference in preventing accidents/incidents and the injuries to roadway workers which often ensue.

This information collection advances rail safety by requiring that records be kept regarding hi-rail vehicle annual safety inspections. In particular, these records allow FRA to verify that safety-critical components are checked once a year and adjusted, if

necessary. Without this type of oversight, employers might not be as conscientious to check tram, wheel wear, and gage measurements. FRA would have no way to verify compliance with this new subpart. Non-complying conditions that were left uncorrected could lead to severe consequences for both railroads and their employees.

The collection of information provides that roadway workers will be well-trained and, therefore, well-qualified for their respective crafts (whether watchmen/lookouts, flagmen, lone workers, roadway machine operators, etc.). Without this rule and corresponding information collection, roadway workers would not receive the initial and recurring training (once every year) now required. Consequently, they would not be as knowledgeable with railroad operating procedures and safety practices nor would they be as familiar with overall conditions in today's railroad environment. Also, if this collection were not conducted, there would not be the clear delineation of employers' responsibilities for providing on-track safety as well as employees' corresponding rights and responsibilities. Roadway workers might then unnecessarily or inadvertently place themselves in hazardous situations.

Furthermore, without this collection of information, there would not be the well-defined procedures for communication and protection now required of roadway workers. As a result, there would likely be greater confusion around railroad tracks and greater uncertainty regarding the correct use of railroad equipment. More roadway worker injuries and fatalities would inevitably follow. FRA data tend to support this conclusion. FRA data indicate a continuing downward trend in roadway worker injuries and fatalities. For example, there were 3,107 injuries to maintenance of equipment and stores employees in 1994, while there were 2,024 to this same class of employees in 1998. FRA's objective is to continue and facilitate this downward trend.

As a result of this collection, each employer must maintain written or electronic records of each roadway worker's current qualifications, and make these records available to FRA for inspection and copying upon request. Also, roadway workers who provide on-track safety for roadway work groups are required to take a recorded examination as part of the qualification process. These and other required records are very valuable in investigations after an injury or fatality involving a roadway worker or group of roadway workers. Furthermore, should a potential violation of roadway worker rights and responsibilities occur, FRA can consider all the available evidence by parties in the case, including written records maintained now required by this collection, in making its determination. Without this collection, FRA would not have available this valuable resource.

In summary, this collection of information enhances railroad safety by providing another tool through which FRA can monitor a crucial area of railroad operations nationwide. It furthers DOT's goal of promoting the public health and safety by working toward the elimination of transportation-related accidents and corresponding deaths,

injuries, particularly to roadway workers, 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.