

SUPPORTING JUSTIFICATION
Special Notice for Repairs
49 CFR Part 216

Summary of Submission

- This submission is a request for a three-year extension without change of the previous approval granted by OMB on August 10, 2007.
- The total number of burden hours requested for this submission is **10 hours**.
- Total number of responses is **32**.
- ******The answer to question **number 12** itemizes the hourly burden associated with each requirement of this rule (See pp. 5-9).

1. Circumstances that make collection of the information necessary.

Background

The legal authority is contained in the Locomotive Inspection Act (45 U.S.C. 22-34). Section 29 of 45 U.S.C. (Locomotive Inspection Act) provides in part ". . . Whenever any district inspector shall, in the performance of his duty, find any locomotive boiler or apparatus pertaining thereto not conforming to the requirements of the law or the rules and regulations established and approved as herein before stated, he shall notify the carrier in writing that the locomotive is not in serviceable condition, and thereafter such boiler shall not be used until in serviceable condition: Provided, that a carrier, when notified by an inspector in writing that a locomotive boiler is not in serviceable condition, because of defects set out and described in said notice, may within five days after receiving said notice appeal"

The Special Notice for Repairs has been used sparingly as a device to remove locomotives from service when they were found immediately unsafe for service. The use of this device has proven such a good deterrent to the use of unsafe equipment that it motivated FRA, subsequent to the 1970 Railroad Safety Act, to utilize its provisions in the areas of track and freight cars.

On March 31, 1975, FRA published a Notice of Proposed Rulemaking (NPRM) requesting comments on a suggested new Part 216 (See 40 FR 14336). The final rule was published on May 6, 1976, (See 41 FR 18657); as amended at 41 FR 43153, September 30, 1976.

The carrier knowing that an FRA or state inspector has the authority to immediately order

the cessation or use of unsafe equipment, reduce the authorized operating speed on a section of track, or recommend track be removed from service has influenced the carrier to maintain their facilities in better condition. Also, this report has to be signed by the carriers' top officers - negating covering up unsafe conditions by subordinates. The specific sections describing the reporting requirements are found in:

- 216.11 - Special notice for repairs - railroad freight cars
- 216.13 - Special notice for repairs - locomotive
- 216.14 - Special notice for repairs - passenger equipment
- 216.15 - Special notice for repairs - track class
- 216.17- Appeals
- 216.25 - Emergency Order - track

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

The information collected is used by FRA to monitor and enforce railroad compliance with Federal rail safety regulations. Specifically, the Special Notice for Repairs is used by Federal Motive, Power, and Equipment inspectors and by State Equipment inspectors to remove locomotives, freight cars or passenger equipment that are not in conformity with Parts 215, 229, 230 or 238, or any such equipment that contain defects from service until they can be restored to serviceable condition.

Additionally, the Special Notice for Repairs is used by Federal and State inspectors to reduce the maximum authorized speed on a section of track until repairs can be made. When an FRA Track Inspector or a State Track Inspector determines that track does not comply with the requirements for the class at which the track is being operated, as defined in the Track Safety Standards, he notifies the railroad in writing that the track is being lowered in class and that operations over that track must comply with the speed limitations prescribed in Part 213 of this chapter. The notice describes the conditions requiring the track to be lowered in class, specifies the exact location of the affected track segment, and states the highest class and corresponding maximum speeds at which trains may be operated over that track. After receipt of such notice, the speeds at which trains operate over that track must not exceed the stated permissible speeds until such time as the track conforms to applicable standards for a higher class. Thus, the railroad is fully apprised by written notice that an inspector has recommended to the appropriate FRA Regional Administrator or to the FRA Administrator that a specified segment of track has restricted train movement or that a given section of track be removed altogether from service as not safe to use at any speed.

FRA uses the information collected to verify that needed repairs are made to the cited equipment or track since the railroad, in response to the Special Notice for Repair, is required to inform the appropriate FRA Regional Administrator in writing when the cited equipment is returned to service or when the non-compliant track can be safely used.

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

FRA highly encourages and strongly endorses the use of advanced information technology, wherever possible, to reduce burden. In order to assist railroads and other respondents and to reduce the burden imposed on them, FRA has placed all its safety forms on the agency Website for easy downloading. Furthermore, in keeping with the Paperwork Reduction Act (PRA) of 1995 and the Government Paperwork Elimination Act (GPEA) of 1998, FRA is working to make electronic reporting more widely available to railroads and other respondents.

It should be noted that the information collection requirements associated with this rule and the resulting burden are already extremely minimal.

4. Efforts to identify duplication.

To our knowledge, this information is not duplicated anywhere.

Similar data is not available from any other source.

5. Efforts to minimize the burden on small businesses.

The few times this information is collected from small railroads is when their equipment or track is found unsafe and FRA or state inspectors need to resort to issuing a Special Notice for Repairs in order to correct the condition.

As previously stated, the burden on all railroads for this information collection is already extremely minimal.

6. Impact of less frequent collection of information.

If the information were not collected or collected less frequently, rail safety might be seriously jeopardized. Specifically, without this collection of information, FRA could not be assured that railroad freight cars, locomotives, passenger equipment, and track meet applicable safety standards and are in serviceable/safe condition. If necessary repairs were not made and if FRA had no record that these repairs were indeed completed, there might ensue greater numbers of unnecessary and avoidable accidents/incidents and corresponding casualties to train crews, railroad workers, and the traveling public. In particular, locomotives that were not repaired or track that was not restored to serviceable condition could lead to train collisions or derailments. Greater property damage and damage to the environment might also result if FRA had no means to ensure that railroads took necessary and appropriate safety measures. FRA's issuance of Emergency Orders when deemed necessary, as well as other agency actions, demonstrate that FRA is dedicated to taking swift corrective action when safety in railroad operations appears to be deteriorating. It should be noted that the frequency of use of Special Notices for Repairs depends upon the carriers' insistence upon using unsafe equipment or track.

In sum, this collection of information aids FRA's comprehensive safety program and serves to promote safe rail travel and the safe operation of trains for both the traveling public and railroad workers. Thus, it helps FRA to fulfill its primary mission.

7. **Special circumstances.**

This is not a routine submission that must be regularly submitted to FRA. The requirement must be performed only after the carrier has permitted unsafe equipment or track to continue in service.

All information collection requirements are in compliance with this section.

8. **Compliance with 5 CFR 1320.8.**

In accordance with the Paperwork Reduction Act of 1995, Pub.L. No.104-13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. §§ 3501-3520), and its implementing regulations, 5 CFR 1320, FRA published a notice in the Federal Register on May 4, 2010, soliciting public comments on these information collection requirements and associated burden. See 75 FR 23839. FRA received no comments in response to this notice.

Background

This is a statutory requirement (45 U.S.C. Section 29) for locomotives. A Notice of Proposed Rulemaking (NPRM) was submitted on March 31, 1975, (see 40 FR 14336) and written comments were requested concerning the use of the Special Notices for Repair Form.

Persons outside the agency were consulted prior to the Final Rule on May 6, 1976, (See 49 FR 18657), as amended (See 41 FRA 43153, September 30, 1976).

9. **Payments or gifts to respondents.**

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

10. **Assurance of confidentiality.**

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

11. **Justification for any questions of a sensitive nature.**

No sensitive information is requested.

12. **Estimate of burden hours for information collected.**

Note: Based on the latest agency data, the total number of railroads operating in the United States is 728.

§ 216.11 - Special Notice For Repairs - Railroad Freight Cars

When an FRA Motive Power and Equipment Inspector or a State Equipment Inspector determines that a railroad freight car is not in conformity with the requirements of the FRA Freight Car Safety Standards set forth in part 215 of this chapter and that it is unsafe for further service, he notifies the railroad in writing that the car is not in serviceable condition. The Special Notice sets out and describes the defects that cause the car to be in unserviceable condition. After receipt of the Special Notice, the railroad shall remove the car from the service until it is restored to serviceable condition. The car may not be deemed to be in serviceable condition until it complies with all applicable requirements of part 215 of this chapter.

The railroad shall notify the FRA Regional Administrator in writing when the equipment is returned to service, specifying the repairs completed.

§ 216.13 - Special Notice For Repairs - Locomotive

When an FRA Motive Power and Equipment Inspector or a State Equipment Inspector determines that a locomotive is not safe to operate in the service to which it is put, whether by reason of non-conformity with the FRA Railroad Locomotive Safety Standards set forth in part 229 of this chapter or the FRA Railroad Locomotive Inspection Regulations set forth in part 230 of this chapter or by reason of any other condition rendering the locomotive unsafe, he or she will notify the railroad in writing that the locomotive is not in serviceable condition. After receipt of the Special Notice, the railroad shall remove the locomotive from service until it is restored to serviceable condition. The locomotive may not be deemed to be in serviceable condition until it complies with all applicable requirements of parts 229 and 230 of this chapter and until all additional deficiencies identified in the Special Notice have been corrected.

The carrier shall notify the FRA Regional Administrator in writing when the locomotive is returned to service, specifying the repairs completed. The carrier officer or employee directly responsible for the repairs shall subscribe this writing under oath.

FRA estimates that approximately 20 Special Notices for Repairs will be issued annually under the above two requirements. It is estimated that it will take approximately 15 minutes for the railroads to complete the required form/letter and return it to FRA indicating that the necessary repairs have been completed to the applicable freight cars or locomotives. Total annual burden for these two requirements is five (5) hours.

Respondent Universe:

728 railroads

Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	20 forms/letters
Annual Burden:	5 hours

Calculation: 20 forms/letters x 15 min. = 5 hours

§ 216.14 - Special Notice For Repairs - Passenger Equipment

When an FRA Motive Power and Equipment Inspector or a State Equipment Inspector determines that railroad passenger equipment is not in conformity with one or more of the requirements of the FRA Passenger Equipment Safety Standards set forth in part 238 of this chapter and that it is unsafe for further service, he or she will issue a written Special Notice to the railroad that the equipment is not in serviceable condition. The Special Notice describes the defect or defects that cause the equipment to be in unserviceable condition. After receipt of the Special Notice, the railroad shall remove the equipment from service until it is restored to serviceable condition. The equipment may not be deemed to be in serviceable condition until it complies with all applicable requirements of part 238 of this chapter.

The railroad shall notify in writing the FRA Regional Administrator for the FRA region in which the Special Notice was issued when the equipment is returned to service, specifying the repairs completed.

The burden for this requirement is included under OMB No. 2130-0544.

§ 216.15 - Special Notice For Repairs - Track Class

When an FRA Track Inspector or a State Track Inspector determines that track does not comply with the requirements for the class at which the track is being operated, as defined in the Track Safety Standards (49 CFR part 213), he notifies the railroad in writing that the track is being lowered in class and that operations over that track must comply with the speed limitations prescribed in part 213 of this chapter. The notice describes the conditions requiring the track to be lowered in class, specifies the exact location of the affected track segment, and states the highest class and corresponding maximum speeds at which trains may be operated over that track. After receipt of such notice, the speeds at which trains operate over that track shall not exceed the stated permissible speeds, until such time as the track conforms to applicable standards for a higher class.

The railroad shall notify the FRA Regional Administrator in writing when the track is restored to a condition permitting operations at speeds authorized for a higher class, specifying the repairs completed.

FRA estimates that approximately 10 Special Notices for Repairs will be issued annually

under the above requirement. It is estimated that it will take approximately 15 minutes for the railroads to complete the required form/letter and return it to FRA indicating that the necessary repairs have been completed to the applicable track segments. Total annual burden for this requirement is approximately three (3) hours.

Respondent Universe:	728 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	10 forms/letters
Annual Burden:	3 hours
Annual Cost:	\$129

Calculation: 10 forms/letters x 15 min. = 3 hours

§ 216.17 - Appeals

- A. Upon receipt of a Special Notice prescribed in §§ 216.11, 216.13, 216.14, or 236.15, a railroad may appeal the decision of the Inspector to the FRA Regional Administrator for the region in which the notice was given. The appeal shall be made by letter or telegram. The FRA Regional Administrator assigns an inspector, other than the inspector from whose decision the appeal is being taken, to re-inspect the railroad freight car, locomotive, railroad passenger equipment, or track. The re-inspection will be made immediately. If upon re-inspection, the railroad freight car, locomotive, or passenger equipment is found to be in serviceable condition, or the track is found to comply with the requirements for the class at which it was previously operated by the railroad, the FRA Regional Administrator or his or her agent will immediately notify the railroad, whereupon the restrictions of the Special Notice cease to be effective. If on re-inspection the decision of the original inspector is sustained, the FRA Regional Administrator notifies the railroad that the appeal has been denied.

FRA estimates zero (0) appeal requests will be received by FRA Regional Administrators under the above requirement. Consequently, there is no burden associated with this requirement.

- B. A railroad whose appeal to the FRA Regional Administrator for Railroad Safety has been denied may, within thirty (30) days from the denial, appeal to the Administrator. After affording an opportunity for an informal hearing, the Administrator may affirm, set aside, or modify, in whole or in part, the action of the FRA Regional Administrator.

FRA estimates that zero (0) appeal requests will be received by the FRA Administrator, and that there will be zero (0) informal hearings. Consequently, there is no burden associated with this requirement.

216.21 - Notice of Track Conditions

(a) When an FRA Track Inspector or State Track Inspector finds track conditions which may require the issuance of an Emergency Order removing the track from service under section 203, Public Law No. 91-458, 84 Stat. 972 (45 U.S.C. 432), the Inspector may issue a notice to the railroad owning the track. The notice sets out and describes the conditions found by the Inspector and specifies the location of defects on the affected track segment. The Inspector provides a copy to the FRA Regional Track Engineer and the FRA Regional Administrator.

(b) In the event the railroad immediately commences repairs on the affected track and so advises the FRA Regional Track Engineer, the Regional Track Engineer assigns an Inspector to re-inspect the track immediately on the completion of repairs. If upon re-inspection the Inspector determines that necessary repairs have been completed, he withdraws the Notice of Track Conditions.

FRA estimates that approximately one (1) notice of track conditions will be issued annually and that, correspondingly, it will receive one (1) letter from the affected railroad advising it that track repairs have commenced. It is estimated that it will take approximately one (1) hour for the railroad to prepare and forward its letter to FRA. Total annual burden for this requirement is one (1) hour.

Respondent Universe:	728 railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	1 letter
Annual Burden:	1 hour

Calculation: 1 letter x 1 hr. = 1 hour

216.25 - Issuance and Review of Emergency Order

Upon recommendation of the FRA Regional Administrator, the Administrator may issue an Emergency Order removing from service track identified in the notice issued under § 216.21.

As specified in section 203, Public Law No. 91 - 458, 84 Stat. 972 (45 U.S.C. 432), opportunity for review of the Emergency Order is provided in accordance with Section 554 of Title 5 of the United States Code (U.S.C.). Petitions for such review must be submitted in writing to the Office of Chief Counsel, Federal Railroad Administration, Washington, D.C. 20590.

FRA estimates that approximately one (1) Emergency Order will be issued annually and that, correspondingly, it will receive either one (1) letter petitioning for review or one (1) letter stating the track has been repaired. It is estimated that it will take approximately

one (1) hour for the railroads to prepare and forward a response to FRA, typically stating the track has been repaired. Total annual burden for this requirement is one (1) hour.

Respondent Universe:	728 railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	1 letter
Annual Burden:	1 hour

Calculation: 1 letter x 1 hr. = 1 hour

Upon receipt of a petition, FRA will immediately contact the petitioner and make the necessary arrangements for a conference to be held at the earliest date acceptable to the petitioner. At this conference, the petitioner will be afforded an opportunity to submit facts, arguments, and proposals for modification or withdrawal of the Emergency Order. If the controversy is not resolved at this conference and a hearing is desired, the petitioner must submit a written request for a hearing within fifteen (15) days after the conference. The hearing will commence within fourteen (14) calendar days of receipt of the request and will be conducted in accordance with Sections 556 and 575, Title 5, U.S.C.

FRA believes that it will receive zero (0) requests for a hearing, since railroads will most likely repair the affected track and send a letter stating the necessary repairs have been made. Consequently, there is no burden associated with this requirement.

Total annual burden for entire information collection is 10 hours.

13. Estimate of total annual costs to respondents.

There is no additional cost to the respondents outside of the burden hours accounted for under Item 12 above.

14. Estimate of Cost to Federal Government.

FRA employees perform routine inspections of freight cars, locomotives, and track, and issues Special Notice of Repairs as part of their normal duties. Besides their salaries, there is no extra cost associated with these activities.

Additionally, now that FRA has placed all its Safety Forms on its Website, there is virtually no cost to the Federal Government for publishing, and storing paper forms. For those railroads which do not have access to the Internet, FRA would simply mail out copies of the required form. Only minimal mailing costs then would be incurred by the Federal Government.

15. Explanation of program changes and adjustments.

As mentioned on the first page in the submission summary, this is a request without change of a currently approved information collection. Thus, there are no program changes or adjustments at this time.

There is also no change in costs to respondents.

16. Publication of results of data collection.

FRA plans no tabulation, or publication of responses.

17. Approval for not displaying the expiration date for OMB approval.

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

18. Exception to certification statement.

No exceptions are taken at this time.

This information collection supports the top DOT strategic goal, namely transportation safety. Without this collection of information, railroad safety nationwide might be seriously endangered. In particular, there might be a greater number of accidents/incidents (e.g., collisions and derailments) with corresponding injuries, deaths, and property damage because railroad freight cars, locomotives, passenger equipment, and track did not meet applicable safety standards and thus were not in serviceable condition. The Special Notice for Repairs is a very effective device that provides railroads written notice that an inspector has recommended to the appropriate FRA Regional Administrator or to the FRA Administrator that specified freight cars or a specified locomotive is not in serviceable condition or in need of repairs, or that a specified segment of track should have restricted train movement or that a given section of track should be removed altogether from service, as not safe to use at any speed. FRA is dedicated to taking swift corrective action when safety in railroad operations appears to be deteriorating. The carrier's submission, which is carefully reviewed by FRA, ensures that the proper repairs have been made so the equipment or track can be safely used. Thus, this information collection furthers both the top DOT strategic goal and FRA's primary mission of transportation/rail safety.

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