

**FEDERAL RAILROAD ADMINISTRATION  
ALCOHOL AND DRUG REGULATIONS (49 CFR 219)  
SUPPORTING JUSTIFICATION  
OMB No. 2130-0526**

Summary of Submission

- This submission is a request for an **extension without change** of the previous approval granted by OMB on September 28, 2010, while FRA works on revising its Alcohol and Drug Rule to include railroad Maintenance of Way Employees. FRA expects to publish a Notice of Proposed Rulemaking within the next several months.
- The total number of burden hours requested for this submission is **31,797**.
- Total number of responses is **133,818**.
- **\*\***The answer to question **number 12** itemizes the hourly burden associated with each requirement associated with this rule (See pp. 13-47).

1. **Circumstances that make collection of the information necessary.**

Background

The causes for most railroad accidents generally fall into the broad categories of defective track, defective equipment, and human factors. Employing the authority to regulate in all areas of rail safety provided in October 1970 by Congressional enactment of the Federal Railroad Safety Act of 1970, the Federal Railroad Administration (FRA) adopted regulations addressing all areas of railroad safety. In recent years, FRA has increasingly focused on the human factors area and, after compiling data on human factor-caused accidents, concluded that alcohol and drug use by railroad operating employees is a continuing and serious problem threatening employees, rail passengers, and the communities through which trains operate. In 1975, it was decided to work on the problem cooperatively with railroad labor and management. As part of the cooperative effort, FRA sponsored the "Railroad Employee Assistance Project" (REAP) in an attempt to quantify the extent of the problem. While the project was underway, FRA promoted the implementation of Employee Assistance Programs (EAPs).

However, all efforts to control the alcohol problem, and the newer problem of drug use failed to end the loss of life and property damage associated with alcohol and drug-impaired employees. On June 30, 1983, FRA issued an ANPRM concerning the control of alcohol and drug use in railroad operations. The notice described the problem, offered options for action, and established public hearings in Atlanta, Georgia; Kansas City, Missouri; Sacramento, California; and Washington, D.C. Testimony was provided by the

NTSB, railroad labor organizations, railroad management, and other interested parties. All of the knowledgeable parties acknowledged the problem's existence. Options presented for action included testing of employees, increased supervision, licensing of employees, a Federal prohibition, and better EAP programs.

FRA's review of the responses to the ANPRM led to the identification of six regulatory proposals, and an NPRM was published on June 12, 1984. Provisions of the NPRM included a Federal prohibition, post-accident testing, pre-employment drug screens, reasonable cause testing authority, establishment of identification/treatment policies, and improved reporting.

Public hearings were held in Denver, Colorado; Chicago, Illinois; New Orleans, Louisiana; and Washington, D.C. In addition, FRA convened a technical conference on post-accident testing in Arlington, Virginia. Testimony was provided by non-industry sources, national labor organizations, union organizations below the national level, individual employees, national railroad associations, railroads, and other interested parties.

On February 10, 1986, FRA's final rule on Control of Alcohol and Drug Use in Railroad Operations (49 CFR Part 219) became effective. (*See 51 FR 3973*; January 31, 1986.) The program was designed for maximum effectiveness and minimum burden on the industry. The regulatory program set forth a clear prohibition against the use of alcohol or drugs; provided for post-accident toxicological testing after major accidents; authorized the railroads to perform breath and urine testing based on reasonable cause; established a mechanism to screen new employees for the presence of drugs or alcohol; provided the basis to correct clear under-reporting of alcohol/drug related accidents by industry; and provided for peer intervention and rehabilitation.

Even as FRA worked to implement and refine this program, it became apparent that the regulatory program had been more effective in limiting alcohol use than drug use, and that the drug use problem affecting railroad safety was a more significant problem than previously documented. Tests conducted on post-accident samples in 1987 showed a positive rate of 5.1 percent, affirming that drug use was still a persistent problem that continued to threaten the safety of railroad operations. Although some of the use detected undoubtedly stemmed from off-duty periods, the levels detected – in many cases – suggested the likelihood that use was reasonably contemporaneous with the accident/incident. The National Transportation Safety Board concluded that the accident which occurred in Chase, Maryland, on January 4, 1987, was caused by impairment of the Conrail engineer by marijuana. The engineer and front brakeman of the Conrail movement acknowledged smoking marijuana immediately prior to the accident. Sixteen persons were killed, and 174 were injured in that accident, which illustrates the catastrophic consequences that can occur when railroad employees responsible for passengers or hazardous materials are under the influence of drugs.

On November 21, 1988, FRA published in the Federal Register (53 FR 47102) its final rule on Random Drug Testing. The rule prohibits use of controlled substances without medical authorization by certain safety-sensitive railroad employees; requires random drug testing of those employees; and amends existing regulations regarding control of alcohol and drug use in railroad operations to provide further safeguards with respect to body fluid tests for controlled substances. These measures are intended to facilitate the control of drug use in railroad operations and thereby prevent accidents, injuries, and property damage.

On December 27, 1989, FRA published in the Federal Register (54 FR 53238) a final rule making amendments to its regulations on Control of Alcohol and Drug Use in Railroad Operations and related provisions of other rules. These amendments were necessary to make improvements in the regulatory program in light of experience and prior public comment, to correct and clarify certain provisions, and to conform the original provisions of the alcohol/drug rule to the amendments issued with the random testing rule in November of 1988. The final rule also conforms FRA's 1985 drug testing provisions for pre-employment and reasonable cause to the Transportation Workplace Drug Testing Procedures (adapted "HHS Guidelines"); adds passenger train accidents with injuries to the categories for which post-accident testing is required; upgrades post-accident toxicology procedures to parallel the Transportation Workplace Drug Testing Procedures, while retaining full blood and urine analysis for alcohol and drugs in support of the accident investigation function; and extends hearing, return-to-service testing, and follow-up testing requirements to all cases where alcohol/drug use is detected through FRA-mandated or authorized testing (previously adopted for random testing only).

On November 27, 1989, the General Accounting Office (GAO) published a report on the status of the programs promulgated by the DOT regulations. A primary recommendation in the GAO report was that "the Secretary of Transportation adopt evaluation criteria and provide the administrations with guidance on the types of program information they should be getting from employers to evaluate program success." DOT's Office of Drug Enforcement and Program Compliance, therefore, developed a comprehensive plan for a Management Information System (MIS) to obtain and analyze employer drug program data. This plan identifies standard data elements critical to the review and management of the operating administrations' drug programs.

On December 15, 1992, FRA issued an NPRM (57 FR 59608) proposing to amend and expand current annual reporting requirements for data concerning control of alcohol and drug abuse in railroad operations. FRA's proposed annual report form not only included format and data elements for inclusion in a Department-wide management information system designed to determine the effectiveness of anti-drug programs on the transportation industries, but also included several sets of data that are important and unique to FRA and the railroad industry. Also, the NPRM eliminated the current reporting requirements under 49 CFR 217.13(d), and established a new reporting requirement under Subpart I of 49 CFR 219 which would include the DOT MIS elements

and mode-specific refinements, reflecting industry practice and FRA and railroad programs already in place.

On December 23, 1993, FRA published in the Federal Register its final rule replacing its current annual reporting requirements with DOT's standardized management information system (MIS) to collect alcohol and drug testing information from railroads.

The Omnibus Transportation Employee Testing Act of 1991 – enacted October 28, 1991– directed significant changes in the Department of Transportation's substance abuse related programs for most transportation industries that DOT regulates. The Act required some changes in the Department's existing drug testing procedural rule. The most important of these changes was a requirement for using the "split sample" approach to testing in the programs covered by the Act, which Congress believed would provide an additional safeguard for employees. The act also required the DOT to establish alcohol testing programs for the aviation, railroad, motor carrier, and transit industries. The Department of Transportation's drug testing procedures – 49 CFR Part 40 – have governed drug testing under all operating administration drug testing rules. The Department's final rule extends the same organization to alcohol testing for the five modes affected.

On February 15, 1994, FRA published in the Federal Register its final rule amending and expanding its current alcohol/drug testing requirements which accomplished the following: (i) Included pre-employment and random alcohol testing for safety-sensitive employees; (ii) Changed its existing regulations regarding control of alcohol and drug use in railroad operations by incorporating new procedures and safeguards with respect to breath and body fluid testing for alcohol; (iii) Made reasonable suspicion testing mandatory for both alcohol and drugs, and spelled out split sample testing requirements; and (iv) Made other additional changes. The final rule conforms FRA's regulations on control of alcohol and drug use in railroad operations to the requirements of the Omnibus Transportation Employee Testing Act of 1991, and also reflects experience derived from program administration.

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

FRA uses the information collected to ensure that railroads establish required alcohol and drug prevention programs and to confirm that railroad employees who perform covered service comply with Federal regulations prohibiting the use of alcohol and drugs while on duty. FRA also uses the information collected to ensure that independent contractors and any other entities that perform covered service for a railroad also comply with the requirements of this rule regarding its employees who perform covered service. FRA reviews the required documentation to verify that the responsibility for compliance is clearly spelled out in the contract (or other document) between the railroad and the independent/other entity.

FRA uses the information collected to ensure that railroads devise adequate programs so that supervisors of covered employees receive essential alcohol and drug training. Specifically, they must be trained in the signs and symptoms of alcohol and drug influence, intoxication, and misuse. At a minimum, training programs must provide information concerning the acute behavioral and apparent psychological effects of alcohol and the major drug groups on the controlled substances list. The program must also provide training on the qualifying criteria for post-accident testing (contained in Subpart C of 49 CFR Part 219), and the role of the supervisor in post-accident collections (described in Subpart C and Appendix C of 49 CFR Part 219).

FRA reviews the information collected to confirm that railroads provide educational materials to employees which explain the requirements of 49 CFR Part 219 and the railroad's policies and procedures with respect to meeting those requirements. Railroads must ensure that a copy of these materials is distributed to each covered employee prior to the start of alcohol testing under the railroad's alcohol misuse prevention program and to each person who is subsequently hired or transferred to a covered position. FRA also reviews the collected information to confirm that railroads provide written notice to representatives of employee organizations of the availability of this information.

The information collection provisions contained in the pre-employment screening requirement and the authorization for detection screening of in-service employees are intended primarily to assure a sense of fairness and accuracy for protection of both the railroads and the employees in the implementation of these provisions. The basic information – evidence of unauthorized use of drugs – will be used to help prevent accidents by screening personnel who perform safety-sensitive functions. The ancillary information would be used by the railroad, the employee, or the prospective employee and FRA.

FRA reviews post-accident toxicological testing reports/records to examine whether or not good faith determinations have been made regarding any decision by a person other than the responding railroad representative on whether an accident/incident qualifies for testing. FRA examines these reports to ensure they include the facts reported by the responding railroad representative, the basis upon which the testing was made, and the person making the decision. Also, to encourage and ensure compliance with this rule, FRA reviews records of tests not promptly administered under Subpart C to monitor the reasons the test was not properly administered. Administering prompt tests is essential to having and maintaining an effective alcohol/drug prevention program, and provides critical data for FRA, railroads, and other Federal agencies in the investigation of an accident/incident.

FRA reviews random selection records of alcohol/drug testing procedures practiced by railroads to ensure that the testing process is fair, and made by a method employing objective, neutral criteria such that each covered employee has a substantially equal statistical chance of being selected within the specified time frame.

Railroads are required to retain breath alcohol testing records and urine drug testing records for stipulated time periods. These records provide FRA with an invaluable resource for reviewing railroads drug and alcohol programs and procedures and ensuring compliance with Federal regulations, and serve as a vital tool for FRA, the NTSB, and others in the investigation of accidents/incidents that may be drug or alcohol related.

FRA reviews laboratory records relating to required documentation of all aspects of the alcohol and drug testing process to ensure that these laboratories are following necessary protocols and procedures, and to ensure that the results sent to railroads' Medical Review Officers (MRO) are accurate, objective, and fair since the careers and livelihoods of railroad employees are at stake. Laboratory data must include a personnel file on analysts, supervisors, directors, and all individuals authorized to have access to specimens; chain-of-custody documents; quality assurance and control records; procedure manuals; all test data on tests conducted under Subpart H; reports (including calibration curves and any calculations used in determining test results); reports; performance records on performance testing; performance on certification inspections; and hard copies of computer-generated data. These records are essential for FRA, the railroads, and the courts in making a determination concerning any specimen that is under legal challenge.

Overall, the information collected under this rule serves as a critical compliance tool, and FRA uses the information to promote and enhance railroad safety, and reduce the number and severity of railroad accidents/incidents, particularly those related to the misuse of alcohol and drugs by covered railroad employees who occupy safety-sensitive positions.

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

Over the years, FRA has strongly supported and highly encouraged the use of advanced automated technology, particularly electronic recordkeeping, to reduce burden on railroads and other entities that submit or retain information required by the agency. However, with the exception of the MIS reports, the types of information collected – either for reporting or recordkeeping purposes – are not conducive to electronic collection techniques. Nevertheless, FRA has no objection if test results are transmitted from the laboratories to a railroad's Medical Review Officer (MRO) by various electronic means (e.g., teleprinters, facsimile, or computer).

**4. Efforts to identify duplication.**

The source of the information collection requirements is unique for each separate occurrence and, therefore, there is no known duplication of this material. Although other Federal agencies may utilize the information collected in the event of an accident/incident for their investigation (e.g., NTSB), FRA is the sole Federal agency requiring the collection of this information from the railroads.

The information submitted or collected for recordkeeping purposes is unique, and no other existing effort can be used or modified for these purposes.

The data collected is not available from any other source.

5. **Efforts to minimize the burden on small businesses.**

The regulation only applies to railroads and, accordingly, has no direct impact on small units of governments, business, or other organizations. Nearly all of the accidents that would require toxicological testing and improved reporting occur on the large railroads. FRA exempts small railroads (i.e., employers with 15 or fewer covered employees that do not engage in joint operations) from subparts D, E, F and G. Although they are exempt from mandatory reasonable suspicion testing, small railroads must enforce the prohibitions contained in § 219.101 and 219.102 (presumably through the industry's longstanding Rule G and their own for cause testing programs). Additionally, even though small railroads are exempted from the employee assistance requirements of Subpart E, they must provide information on substance abuse services to their covered employees, as required by § 219.23. Small railroads can use the short form for random plans. FRA has also exempted small railroads from the recordkeeping requirements contained in subpart J.

Besides the measures mentioned above to reduce burden on small entities (i.e., railroads), FRA's final rule published on February 15, 1994, exempts railroads with 15 or fewer employees from the alcohol testing program and exempts railroads with less than 400,000 man-hours annually from the annual report requirements.

6. **Impact of less frequent collection of information.**

If this collection of information were not conducted, or conducted less frequently, rail safety in the U.S. might be seriously jeopardized. Specifically, if railroads did not have effective alcohol and drug misuse prevention programs and if these programs were not carefully monitored, railroad employees working in safety-sensitive positions might abuse alcohol and drugs while on-duty, or just prior to coming on-duty. This could lead to increased numbers of – and perhaps more severe – accident/incidents where train crews, other railroad employees, passengers, and innocent bystanders are injured or killed. Particularly in the case of a catastrophic accident or an accident involving the release of radioactive or other hazardous materials, the number of casualties and harm to the environment and surrounding communities could be great.

Without the required alcohol and drug training programs, supervisors would not be able to spot employees under the influence of alcohol or drugs and would not be able to immediately remove them from service. Consequently, the risk of additional rail accident/incidents – with their corresponding injuries and death – would increase substantially.

Without this collection of information, FRA would have no way of determining whether or not laboratories, which conduct alcohol and drug testing, are following proper protocols and procedures, and thus would have no way of determining whether positive results affecting the career and livelihood of railroad employees were done fairly and accurately. Without this information, FRA would be unable to have confidence in laboratory results and so too would railroads, which rely on these laboratories to conduct an effective drug and alcohol prevention program. Without the required laboratory records, railroad employees would be denied a critical resource to mount a legal challenge for a positive test that was false, improperly or inaccurately processed, or invalid on medical/other grounds.

Without this collection of information, railroad employees, and members of the public-at-large would be exposed to preventable dangers, and would suffer as first-line casualties. Also, the collection of information is extremely helpful to FRA in determining whether or not railroads properly penalized an employee for a drug/alcohol infraction, and is an invaluable resource to FRA, railroads, and other Federal agencies in determining accident causation, or factors which contributed to an accident/incident.

Overall, this collection of information promotes and enhances FRA's comprehensive rail safety program and contributes significantly to achieving both FRA's mission and DOT's mission, which is to provide safe transportation to the public.

To be effective, a safety program requires timely information. Collection of this information less frequently would render the information obsolete and meaningless, and would impair FRA's and railroads safety programs. If future experience indicates a lesser frequency is warranted, the agency would carefully review this part of its regulatory safety program and make necessary revisions accordingly.

**7. Special circumstances.**

All reporting and recordkeeping requirements are within these guidelines.

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

As required by the Paperwork Reduction Act of 1995, FRA published a notice in the Federal Register on November 17, 2011, soliciting comment on this particular information collection. *See 76 FR 71432.* FRA received no comments either from the public or respondents regarding the activities involved in this information collection, or on the agency hour burden or cost estimates contained in the Notice.

Background

FRA has been engaged in a continuing dialogue with railroads, their trade associations, employees, railroad labor groups, NTSB, and State agencies for several years.



In June 1984, FRA published a Notice of Proposed Rulemaking (NPRM) describing the issues and the available options and held public hearings across the country to obtain the views of all interested parties.

Most of the parties who addressed the matter supported improvement in FRA's accident database and indicated no problems with the augmentation of the existing accident/incident reporting system. The use of post accident toxicological testing as one aspect of that improvement effort was supported by many organizations. Railroads, while supportive of the concept, prefer discretion be given to them so as to permit selective implementation.

Pre-employment screening was not actively opposed because most railroads conduct pre-employment physicals that include urine specimens, and the additional testing could easily be incorporated into present practices. Detection testing of employees was perceived as necessary by the industry and others. All parties recognized the benefit of employee assistance policies, although disagreement existed on the effectiveness of some of the existing programs.

As a result of public input, FRA eliminated a proposed requirement that all employees sign a consent to be tested form, an annual report of pre-employment drug screen tests, and other items that were contained in the original NPRM on the current program.

In response to the Random Drug Testing NPRM, FRA received comments from seventy-six persons, including written submissions and oral testimony at five public hearings. All commenters supported the goal of a drug-free railroad environment. In general terms, the use of random testing as a means of achieving this goal received broad support from rail operators and members of the drug and alcohol testing industry. Labor organizations, however, opposed the imposition of mandatory random drug testing. The only objection to the paperwork requirements was by the CSX railroad officials who objected to the retention of all raw data concerning urine specimens for five years. FRA took this into consideration when writing its final rule and made the retention period two years for a positive test.

In issuing the random testing rule and associated amendments, FRA indicated that further rulemaking would be required to conform the existing provisions of the alcohol/drug regulations to the new requirements. Accordingly, on September 27, 1989, FRA published in the Federal Register an NPRM (54 FR 39646). A public hearing on the NPRM was convened in Washington, D.C., on October 17, 1989. Comments were received from most of the major labor organizations through the Railway Labor Executives Association and individual letter submissions. Both the Association of American Railroads (AAR) and the American Short Line Railroad Association (ASLRA) filed comments on behalf of their members. Five freight railroads, three commuter railroads, Amtrak, the National Transportation Safety Board (NTSB), and the College of American Pathologists (CAP) also submitted comments, as did representatives of three

companies that provide medical review services.

Comments received addressing the paperwork requirements of the NPRM were as follows:

-Some objection was expressed by railroad representatives on the basis of regulatory burden and possible difficulty in providing forms of notice of testing to employees. This provision had originally been proposed by the rail labor organizations and apparently continues to have their support.

Language in the NPRM was adopted with an amendment. The amendment clarifies the fact that the Chain of Custody and Control Form may be used as the form of notice, if properly annotated. DOT's Transportation Workplace Drug Testing procedures provide sufficient flexibility to allow the addition of pre-printed check-offs of this information. Alternately, the block for "reason for test" can be hand-annotated with appropriate language (e.g., "FRA reasonable suspicion"). As a third alternative, the railroad may use a separate form of notice.

FRA believes this notice requirement is critical to achieving disciplined and responsible use of Federally-authorized or mandated testing authority. A breath or body fluid test under the rule is a Fourth Amendment search burdened by appropriate conditions and safeguards. Confusion of such a search with a privately conceived and administered test may lead to significant adverse consequences, including future problems with respect to obtaining employee cooperation. Experience has taught that railroad supervisors sometimes confuse railroad and Federal testing programs and occasionally act under color of Federal law without observing the required safeguards. Requiring this notice will help to increase supervisor awareness of the sensitivity of the procedure; will foster clear decision-making by requiring appropriate focus on the criteria for testing; and will clearly alert employees to the rights and remedies attendant to the test.

-FRA proposed to revise procedures for blood and urine specimen collection by adopting a new Appendix C to the regulation. The proposed amendment emphasized shipment by the medical facility, where reasonably possible, and documentation of any necessary handling of the sealed specimen container by railroad representatives. Railroad commenters believed that the proposed revision, providing for shipment by the medical facility "whenever possible," would place the burden for action on health care providers who have little incentive to provide for prompt shipment and who are not subject to FRA jurisdiction. Railroads also objected to the requirement that handling of the sealed toxicology kit be separately documented. Addressing language that FRA had not proposed to change, the railroads objected to the existing requirement that samples be transported to the "nearest" point of shipment, stating that in many cases this would not be the fastest or most efficient approach (e.g., because the

nearest express courier office was closed at the time).

The procedures for specimen collection were adopted with minor changes reflecting the pattern set by amendments made to 49 CFR Part 40. The final rule clarifies the respective obligations of the railroad and medical facility with respect to prompt shipment of the kit, providing a more flexible framework for action while still encouraging direct transfer from the medical facility to an express courier where significant delay will not ensue. Documentation of the railroad's handling of the kit was retained since this is a matter of some sensitivity with respect to employee confidence in the system and is likely to be put at issue at a later time. The format of the documentation is left to the railroad (normally a one paragraph written statement that the supervisor accepted the kit from a designated person at the medical facility and had it in his/her personal possession and control until delivery to the express courier on the same date, at a specified location, would suffice). It is intended that the documentation remain with the railroad for purpose of a subsequent disciplinary proceeding, as well as for the purpose of inspection and copying by FRA, if necessary.

-The proposed rule provided that FRA would report tests results to the employee and the employer's MRO. This provision is derived from 219.711(c), which became effective on January 16, 1990. Through paragraph (c), FRA proposed to require that the railroad's Medical Review Officer (MRO) review the test result for employment-related purposes and also require that information concerning claimed medical use be communicated back to FRA on a confidential basis. Railroads opposed review by the railroad's MRO as burdensome and particularly objected to the requirement that a report of the review be submitted to FRA. One railroad objected to FRA's reporting the laboratory result directly to the employee since it was believed the employee might be given an opportunity to procure a back-dated prescription.

FRA believes that its attempted explanation of the purpose of review by the railroad's MRO was not successful and that commenting railroads misunderstood the purpose of this proposal. In most cases, it would not be possible for FRA's medical review consultant to verify that a substance was, in fact, legitimately administered or prescribed. Further, approaching the issue in that manner would delay reporting of all results for that accident. Therefore, the railroad's MRO will be asked to verify whether the employee used the drug under medical authorization (consistent with § 219.103) and to report the results of that review to FRA. The MRO would also report any subsequent claim of medical use and the results of that review. The laboratory report will be used to identify those few instances where the railroad's MRO is asked to respond, and the MRO will also need to be on guard to report to FRA any extraordinary case where subsequently offered explanations render an analytically positive result "negative." In the past, FRA has worked with railroad medical officers on issues of this kind. They have

been most cooperative, and employee rights have been protected. The final rule merely formalized this process and was revised to clearly limit the number of occasions that would require a report back to FRA.

-FRA reduced the retention time for negative samples from six months to three months, and increased the retention time for positive samples from one year to two years. Apparently believing that this requirement would burden laboratories at large, CAP objected to the retention time of two years for positive. Obviously, FRA compensates its contract laboratory for long-term storage of specimens. The provision was adopted as proposed.

#### FRA's final rule dated February 15, 1994

At public hearings held in Washington, D.C., Chicago, and San Francisco, FRA heard testimony from over 20 parties, including the major industry trade associations (the American Association of Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA)) and labor organizations (the Brotherhood of Locomotive Engineers and Trainmen (BLET), the Brotherhood of Railroad Signalmen (BRS), and the Railway Labor Executives' Association (RELA)). FRA also received oral or written comment from the American Public Transit Association (APTA), the Transportation Trade Department of the AFL-CIO, the National Transportation Safety Board (NTSB), individual freight and commuter railroads, service providers, and state and local governments, among others.

FRA reconsidered its proposals in light of the comments received at these hearings or in writing. Among other modifications, the final rule added greater flexibility for mandatory reasonable suspicion and other components of for cause testing under FRA authority.

#### **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.**

No assurances of confidentiality have been provided to affected respondents. FRA maintains a set of accident investigation files. FRA will not maintain a system of records that will permit the identification of records by an individual name. FRA does hold in confidence information concerning medically authorized use of controlled substances, pursuant to 5 U.S.C. 55 2 (b)(6), except where the information is deemed material to determination of accident causation. The random testing programs for alcohol and drugs require that results of random tests and related medical information be held in confidence, except as necessary to effect discipline and/or referral for rehabilitation.

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

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

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

*Note: All of the burden hour estimates for the information collection requirements listed below have been carefully reviewed, and either are unchanged, covered under an earlier provision because the requirements of the alcohol and drug parts were combined (e.g., MIS requirements), covered by DOT under Part 40's Information Collection burden, or have been eliminated because a one-time requirement has been fulfilled.*

Waivers (219.7)

A person subject to a requirement of this part may petition the Federal Railroad Administration (FRA) for a waiver of compliance with such requirement. Each petition for waiver under this section must be filed in a manner and contain the information required by Part 211 of this chapter. A petition for waiver of the Part 40 prohibition against stand down of an employee before the Medical Review Officer (MRO) has completed the verification must also comply with § 40.21 of this title.

Waiver requests for employees performing train or dispatching service on new or expanded cross-border operations. A foreign railroad seeking a waiver from subparts E, F, and G of this part for its employees performing train or dispatching service on a new cross-border operation that proceeds more than 10 route miles into the United States, or a formerly excepted cross-border operation that expands beyond the 10 mile limited haul exception in paragraph (d) of this section, must file a petition not later than 90 days before commencing the subject operation. FRA will attempt to decide on such petitions within 90 days. If no action is taken on the petition within 90 days, the petition remains pending for decision and the cross-border crew assignments on the operation covered by the petition will be subject to subparts E, F, and G until FRA grants the petition, should the petitioner commence the proposed operation.

It is estimated that FRA will receive two (2) waivers a year where a person has asked for relief from these requirements. FRA estimates that it will take two (2) hours to prepare a letter and submit it to FRA. Total annual burden for this requirement is four (4) hours.

Respondent Universe:

100,00  
0  
employ

ees

Burden time per response:

2 hours

Frequency of Response:

On occasion

Annual number of Responses: 2 letters

Annual Burden: 4 hours

**Calculation:** 2 letters x 2 hrs. = 4 hours

Responsibility for compliance [219.9(b)(2)]

Where an employee of one railroad is required to participate in breath or body fluid testing under Subpart C or D of this part and is subsequently subject to adverse action alleged to have arisen out of the required test (or alleged refusal thereof), necessary witnesses and documents available to the other railroad must be made available to the employee on a reasonable basis.

FRA estimated that this will occur two (2) times annually. It is estimated that it will take approximately one (1) hour to furnish the necessary documents to the employee. Total annual burden for this requirement is two (2) hours.

Respondent Universe:

450 railroads

Burden time per response: 1 hour

Frequency of Response: On occasion

Annual number of Responses: 2 requests

Annual Burden: 2 hrs.

**Calculation:** 2 requests x 1 hr. = 2 hours

Responsibility for compliance [219.9(c)]

Any independent contractor or other entity that performs covered service for a railroad has the same responsibilities as a railroad under this part, with respect to its employees who perform covered service. The entity’s responsibility for compliance with this part may be fulfilled either directly by that entity or by the railroad’s treating the entity’s employees who perform covered service as if they were its own employees for purposes of this part. The responsibility for compliance must be clearly spelled out in the contract between the railroad and the other entity or in another document. In the absence of such clear delineation of responsibility, FRA will hold the railroad and the other entity jointly and severally liable for compliance.

FRA estimated that 10 contracts/documents will be drawn up by railroad and independent contractors delineating responsibility as specified in this section. It is estimated that it will take approximately two (2) hours to compose the necessary documents. Total annual burden for this requirement is 20 hours.

Respondent Universe:	450 railroads
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Burden time per response:	2 hours
Frequency of Response:	On occasion

Annual number of Responses:	10 contracts/documents
Annual Burden:	20 hours

**Calculation:** 20 contracts/documents x 2 hrs. = 20 hours

**General conditions for chemical tests** [219.11(d)]

Any employee who performs covered service for a railroad is deemed to have consented to testing as required in subparts B, C, D, and G of this part; and consent is implied by performance of such service. Each such employee must participate in such testing, as required under the conditions set forth in this part by a representative of the railroad.

An employee required to participate in body fluid testing under subpart C of this part (post-accident toxicological testing) or testing subject to subpart H of this part shall, if requested by the representative of the railroad or the medical facility (including, under subpart H of this part, a non-medical contract collector), evidence consent to taking of specimens, their release for toxicological analysis under pertinent provisions of this part, and release of the test results to the railroad’s Medical Review Officer by promptly executing a consent form, if required by the medical facility. The employee is not required to execute any document or clause waiving rights that the employee would otherwise have against the employer, and any such waiver is void. The employee may

not be required to waive liability with respect to negligence on the part of any person participating in the collection, handling or analysis of the specimen or to indemnify any person for the negligence of others. Any consent provided consistent with this section may be construed to extend only to those actions specified in this section.

FRA estimated that approximately 30 consent forms will be completed under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each form. Total annual burden for this requirement is one (1) hour.

Respondent Universe: 450 railroads

Burden time per response: 2 minutes  
Frequency of Response: On occasion

Annual number of Responses: 30 consent forms  
Annual Burden: 1 hour

**Calculation:** 30 consent forms x 2 min. = 1 hour

Training - Alcohol and Drug [219.11(g)]

Each supervisor responsible for covered employees (except a working supervisor within the definition of co-worker under this part) must be trained in the signs and symptoms of alcohol and drug influence, intoxication and misuse consistent with a program of instruction to be made available for inspection upon demand by FRA. Such a program shall, at a minimum, provide information concerning the acute behavioral and apparent physiological effects of alcohol and the major drug groups on the controlled substances list. The program must also provide training on the qualifying criteria for post-accident testing contained in subpart C of this part, and the role of the supervisor in post-accident collections described in subpart C and Appendix C of this part. The duration of such training may not be less than three (3) hours.

1. Respondent universe is five (5) new railroads annually. It is estimated that it will take each railroad approximately three (3) hours to develop its program, and file a copy at the railroad's division or system headquarters. Total annual burden for this requirement is 15 hours.

Respondent Universe:



railroads

Burden time per response: 3 hours

Frequency of Response:

Annually

Annual number of Responses: 5 programs  
Annual Burden: 15 hours

**Calculation:** 5 programs x 3 hrs. = 15 hours

2. FRA estimates that approximately 1,100 employees will be trained under this requirement. Training must last at least three (3) hours. FRA estimates approximately 50 training classes will have to be held to meet this requirement. Total annual burden for this requirement is 150 hours.

Respondent Universe:

50 railroads

Burden time per response: 3 hours

Frequency of Response:

On occasion

Annual number of Responses: 50 training classes  
Annual Burden: 150 hours

**Calculation:** 50 training classes x 3 hrs. = 150 hours

Total annual burden for this entire requirement is 165 hours (150 + 15).

Railroad Policies: Notice of Breath or Body Fluid Test to Employee [219.23a&b]

Whenever a breath or body fluid test is required of an employee under this part, the railroad shall provide clear and unequivocal written notice to the employee that the tests is being required under Federal Railroad Administration (FRA) regulations. Use of the mandated DOT form for urine drug testing or breath analysis satisfies the requirements of this paragraph (a)

*The Chain of Custody and Control Form (CCF) covers this requirement. The burden for the Chain of Custody and Control Form is covered in a separate information collection submitted by the Department of Health and Human Services (DHHS). Consequently, there is no additional burden associated with this requirement.*

Whenever a breath or body fluid test is required of an employee under this part, the railroad must provide clear, unequivocal written notice of the basis or bases upon which the test is required (e.g., reasonable suspicion, violation of a specified operating/safety rule enumerated in Subpart D, random selection, follow-up, etc.). Completion of the DOT alcohol or drug testing form indicating the basis of the test (prior to providing a copy to the employee) satisfies the requirement of this paragraph (b). Use of the DOT form for non-Federal tests is prohibited.

*The Chain of Custody and Control Form (CCF) covers this requirement. The burden for the Chain of Custody and Control Form is covered in a separate information collection submitted by the Department of Health and Human Services (DHHS). Consequently, there is no additional burden associated with this requirement.*

Notice of Educational Material available to Employees [(219.23(d))]

Each railroad must provide educational materials that explain the requirements of this part, and the railroad's policies and procedures with respect to meeting those requirements. The railroad must ensure that a copy of these materials is distributed to each covered employee prior to the start of alcohol testing under the railroad's alcohol misuse prevention program and to each person subsequently hired for or transferred to a covered position. Each railroad must also provide written notice to representatives of employee organizations of the availability of this information.

The materials to be made available to employees must include detailed discussion of at least the following: (1) The identity of the person designated by the railroad to answer employee questions about the materials; (2) The classes or crafts of employees who are subject to the provisions of this part; (3) Sufficient information about the safety-sensitive functions performed by those employees to make clear that the period of the work day the

covered employee is required to be in compliance with this part is that period when the employee is on duty and is required to perform or is available to perform covered service; (4) Specific information concerning employee conduct that is prohibited under Subpart B of this part; (5) In the case of a railroad utilizing the accident/incident and rule violation reasonable cause testing authority provided by this part, prior notice (which may be combined with the notice required by §§219.601 (d)(1) and 219.607 (d)(1)) to covered employees of the circumstances under which they will be subject to testing; (6) The circumstances under which a covered employee will be tested under this part; (7) The procedures that will be used to test for the presence of alcohol and controlled substances, protect the employee and the integrity of the testing processes, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee; (8) The requirement that a covered employee submit to alcohol and drug tests administered in accordance with this part; (9) An explanation of what constitutes a refusal to submit to an alcohol or drug test and the attendant consequences; (10) The consequences for covered employees found to have violated Subpart B of this part, including the requirement that the employee be removed immediately from covered service, and the procedures under § 219.104; (11) The consequences for covered employees found to have an alcohol concentration of .02 or greater but less than .04; and (12) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a coworker's); and available methods of evaluating and resolving problems associated with the misuse of alcohol, including utilization of the procedures set forth in Subpart E of this part and the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

The materials supplied to employees may also include information on additional railroad policies with respect to the use or possession of alcohol and drugs, including any consequences for an employee found to have a specific alcohol concentration, that are based on the railroad's authority independent of this Part. Any such additional policies or consequences must be clearly and obviously described as being on independent authority.

1. Preparation of letter and distribution of materials.

*This is a one-time requirement which has been fulfilled. Consequently, there is no burden associated with this requirement.*

2. Written notice to representatives of employee organizations.

All covered employees are represented by four (4) employee organizations. It is estimated that it will take approximately one (1) hour to prepare the notice and forward copies to the employee organizations. This is a one-time requirement. FRA estimates approximately five (5) new railroads will be formed annually that will meet the requirements of these regulations. Total annual burden is five (5) hours.

Respondent Universe:

5  
railroads

Burden time per response:

1 hour

Frequency of Response:

One-  
time

Annual number of Responses: 5 notices

Annual Burden: 5 hours

**Calculation:** 5 notices x 1 hr. = hours

Total annual burden for the entire requirement is five (5) hours.

### **Subpart B - Prohibitions**

#### **Federal Prohibitions**

FRA currently has received approval (**OMB No. 2130-0035**) for collection of data pursuant to its "Railroad Operating Rules" program (49 CFR 217). Included in these provisions is a section covering modifications to current rules. All railroads currently have a prohibition on alcohol/drug use in some form. Some of the railroads will require minor amendments to make their rule consistent with the Federal rule. This item is accomplished in accordance with presently approved rule modification procedures, and will entail no additional burden on the railroads.

#### **Removal from covered service [219.104, 219.107]**

- A. If the railroad determines that an employee has violated § 219.101 (Alcohol and Drug use Prohibited) or § 219.102 (Prohibition on Abuse of Control Substances), or the alcohol or controlled substances misuse rule of another DOT agency, the railroad must immediately remove the employee from covered service, and the procedures described in paragraphs

(b) through (d) of this section apply.

Prior to or upon withdrawing the employee from covered service, the railroad must provide a notice to the employee explaining the reason for this action.

FRA estimates that there will be approximately 500 instances annually where an employee has violated § 219.201 or § 219.202, and a notice will need to be provided under the above requirement. A form letter has been developed by railroads for this purpose. It is estimated that it will take approximately two minutes to address and give the letter to the employee. Total annual burden for this requirement is 17 hours. (*Note: The paperwork burden for Subpart G, Random Drug Testing Program, is contained under that section below.*)

Respondent Universe:

450  
railroads

Burden time per response:

2  
minutes

Frequency of Response:

On  
occasion

Annual number of Responses: 500 letters

Annual Burden: 17 hours

**Calculation:** 500 letters x 2 min. = 17 hours

- B. *Hearing procedures.* (1) If the employee denies that the test result is valid evidence of alcohol or drug use prohibited by this subpart, the employee may demand and must be provided an opportunity for a prompt post-suspension hearing before a presiding officer other than the charging official. This hearing may be consolidated with any disciplinary hearing arising from the same accident or incident (or conduct directly related thereto), but the presiding officer must make separate findings as to compliance with §§ 219.101 and 219.102. (2) The hearing must be convened within the period specified in the applicable collective bargaining agreement. In the absence of an agreement provision,

the employee may demand that the hearing be convened within 10 calendar days of the suspension or, in the case of an employee who is unavailable due to injury, illness, or other sufficient cause, within 10 days of the date the employee becomes available for hearing. (3) A post-suspension proceeding conforming to the requirements of an applicable collective bargaining agreement, together with the provisions for adjustment of disputes under sec. 3 of the Railway Labor Act (49 U.S.C. 153), satisfies the procedural requirements of this paragraph (c).

FRA estimates that 50 employees will request hearings, which will then be held by railroads under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each request. Total annual burden for this requirement is two (2) hours.

Respondent Universe:

450  
railroads

Burden time per response:

2  
minutes

Frequency of Response:

On  
occasion

Annual number of Responses: 50 requests

Annual Burden: 2 hours

**Calculation:** 50 requests x 2 min. = 2 hours

Total annual burden for this entire requirement is 19 hours (17 + 2).

### **Subpart C - Post-Accident Toxicological Testing**

Good faith determinations [219.201(c)]

Upon specific request made to the railroad by the FRA Associate Administrator for Safety (or the Associate Administrator's delegate), the railroad must provide a report

describing any decision by a person other than the responding railroad representative with respect to whether an accident/incident qualifies for testing. This report must be affirmed by the decision maker, and provided to FRA within 72 hours of the request. The report must include the facts reported by the responding railroad representative, the basis upon which the testing decision was made, and the person making the decision.

FRA estimates that this will occur two (2) times annually. It is estimated that it will take 30 minutes to prepare the report and submit it to FRA. Total annual burden for this requirement is one (1) hour.

Respondent Universe:

450 railroads

Burden time per response:

30  
minute  
s

Frequency of Response:

On occasion

Annual number of Responses: 2 reports

Annual Burden: 1 hour

**Calculation:** 2 reports x 30 min. = 1 hour

Notifications by Telephone to FRA. [219.203/207]

- A. If an injured employee is unconscious or otherwise unable to evidence consent to the procedure and the treating medical facility declines to obtain blood specimens after having been acquainted with the requirements of this subpart, the railroad must immediately notify the duty officer at the National Response Center (NRC) at (800) 424-8801 or (800) 424-8802, stating the employee's name, the medical facility, its location, the name of the appropriate decisional authority at the medical facility, and the telephone number at which that person can be reached. FRA will then take appropriate measures to assist in obtaining the required specimen.
- B. *Fatality.* In the case of an employee fatality in an accident or incident described in § 219.201, body fluid and/or tissue specimens must be obtained from the remains of the

employee for toxicological testing. To ensure that specimens are timely collected, the railroad must immediately notify the appropriate local authority (such as a coroner or medical examiner) of the fatality and the requirements of this subpart, making available the shipping kit and requesting the local authority to assist in obtaining the necessary body fluid or tissue specimens. The railroad must also seek the assistance of the custodian of the remains, if a person other than the local authority.

If the local authority or custodian of the remains declines to cooperate in obtaining the necessary specimens, the railroad must immediately notify the duty officer at the National Response Center (NRC) at (800) 424-8801 or (800) 424-8802 by providing the following information: (1) Date and location of the accident or incident; (2) Railroad; (3) Name of the deceased; (4) Name and telephone number of custodian of the remains; and (5) Name and telephone number of local authority contacted.

Number of respondents is approximately 450 railroads. FRA estimates that telephone calls will be required in about 100 occurrences a year where samples are obtained and in about 1 percent (4) of the 400 projected annual tests where a problem existed in obtaining the sample. It is estimated that each phone call will take 10 minutes. Total annual burden for this requirement is 17 hours.

Respondent Universe:

450 railroads

Burden time per response:

10  
minute  
s

Frequency of Response:

On occasion

Annual number of Responses:

104 telephone calls

Annual Burden:

17 hours

**Calculation:** 104 telephone calls x 10 min. = 17 hours



## Specimen Collection and Handling [219.205]

- a. In order to process specimens, analyze the significance of laboratory findings, and notify the railroads and employees of test results, it is necessary to obtain basic information concerning the accident/incident and any treatment administered after the accident/incident. Accordingly, the railroad representative must complete the information required by Form FRA 6180.73 (revised) for shipping with the specimens. Each employee subject to testing must cooperate in completion of the required information on Form FRA F 6180.74 (revised) for inclusion in the shipping kit and processing of the specimens. The railroad representative must request an appropriate representative of the medical facility to complete the remaining portion of the information on each Form FRA F 6180.74. One Form FRA F 6180.73 must be forwarded in the shipping kit with each group of specimens. One Form FRA F 6180.74 must be forwarded in the shipping kit for each employee who provides specimens. Forms FRA F 6180.73 and FRA F 6180.74 may be ordered from the laboratory specified in Appendix B to this part; the forms are also provided to railroads free of charge in the shipping kit.

The Post-Accident Testing Blood/Urine Custody and Control Form (FRA F 6180.74) is utilized for maintaining control and accountability from point of collection to final disposition of specimen and offers a high degree of assurance that the specimen provided is the specimen received by the laboratory and identified to that employee. Some of the information to be contained on the chain-of-custody form is: preprinted specimen identification number, employee's Social Security or employee identification number, temperature of urine specimen, date of collection, name of collector(s), employee data (name, address, names of employing railroad and home terminal); and three certification statements. The form contains space for entering the date, purpose of change, name of person who released the specimen and the name of the person who received the specimen for each transfer of possession of the specimen. At the back of the form are labels which would be physically overlapped on the specimen bottle/tubes to provide integral identification and protection for the specimen.

Of the 100 accidents projected by FRA where toxicological tests will be required, it is estimated that four (4) crew members per event will be required to provide blood or urine samples for a total of 400 tests annually. FRA estimates that it will take approximately 15 minutes for the employee to provide the specimens, initial off on the labels on the specimen bottle/tubes, complete the necessary data on the chain-of-custody form, and arrange for shipment of the specimens to the drug testing laboratory by the collection site person. Total annual burden for this requirement is 100 hours.

Respondent Universe:

450  
railroa  
25

ds

Burden time per response: 15 minutes

Frequency of Response: On occasion

Annual number of Responses: 400 forms  
Annual Burden: 100 hours

**Calculation:** 400 forms x 15 min. = 100 hours

- b. In order to process the samples, analyze the significance of laboratory findings, and notify the railroads and employees of these results, it is necessary to obtain basic information concerning the accident/incident and any treatment administered after the accident/incident. Accordingly, the railroad representative must complete the information required by Form FRA F 6180.73 (revised), entitled "Accident Information Required for Post-Accident Toxicological Testing."

FRA estimates that Form FRA F 6180.73 would be prepared covering 100 accidents/incidents per year. FRA estimates that it will take about 10 minutes for the railroad to complete Form FRA F 6180.73. Total annual burden for this requirement is 17 hours.

Respondent Universe:

450 railroads

Burden time per response: 10 minutes

Frequency of Response: On

occasion

Annual number of Responses: 100 forms  
Annual Burden: 17 hours

**Calculation:** 100 forms x 10 min. = 17 hours

Total annual burden for the entire requirement is 117 hours (100 +17).

#### FRA Access to Breath Test Results [CFR 219.206]

Documentation of breath test results must be made available to FRA consistent with the requirements of this subpart, and the technical specifications set forth in Appendix C to this part.

*Breath tests are authorized, but are not a Federal requirement. Therefore, railroads do not have to do this. Over the past four years, no breath tests have been done. Consequently, there is no burden associated with this requirement.*

#### Reports of Tests and Refusals [219.209(a)]

A railroad that has experienced one or more events for which samples were obtained must provide prompt telephonic notification summarizing such events. Notification must immediately be provided to the duty officer at the National Response Center (NRC) at (800) 424-8802 and to the Office of Safety, FRA, at (202) 493-6313. Each telephonic report must contain: (i) Name of the railroad; (ii) Name, title, and telephone number of the person making the report; (iii) Time, date, and location of the accident/incident; (iv) Brief summary of the circumstances of the accident/incident, including basis for testing; and (v) Number, names, and occupations of employees tested.

FRA estimates that 80 telephonic reports will be received under this requirement. It is estimated that it will take 2 minutes to make each call. Total annual burden for this requirement is three (3) hours.

Respondent Universe:

450  
railroads

Burden time per response: 2 minutes

Frequency of Response: On occasion

Annual number of Responses: 80 telephonic reports  
Annual Burden: 3 hours

**Calculation:** 80 reports x 2 min. = 3 hours

Narrative Response - refusal to provide a sample [219.209(b)]

If the railroad is unable, as a result of non-cooperation of an employee or for any other reason, to obtain a specimen and cause it to be provided to FRA as required by this subpart, the railroad must make a concise narrative report of the reason for such failure and, if appropriate, any action taken in response to the cause of such failure. This report must be appended to the report of the accident/incident required to be submitted under Part 225 of this chapter.

*There have been no instances of non-cooperation. Therefore, there is no burden involved for this requirement. If there were a burden, it would be cleared under the paperwork package submitted for the reporting and recordkeeping requirements under 49 CFR 225. (OMB approval # 2130-0500)*

**Records - Tests not promptly administered [219.209(c)]**

If a test required by this section is not administered within four (4) hours following the accident or incident, the railroad must prepare and maintain on file a record stating the reasons the test was not promptly administered. Records must be submitted to FRA upon request of the Associate Administrator for Safety.

FRA estimates that this will occur approximately 40 times annually. It is estimated that it will take approximately 30 minutes to prepare the record and file it. Total annual burden for this requirement is 20 hours.

Respondent Universe: 450 railroads

Burden time per response:

30  
minute  
s

Frequency of Response:

On occasion

Annual number of Responses: 40 records

Annual Burden: 20 hours

**Calculation:** 40 records x 30 min. = 20 hours

Analysis and follow-up - MRO [219.211(b) & (c)]

Results of post-accident toxicological testing under this subpart are reported to the railroad's Medical Review Officer (MRO) and the employee. The MRO and the railroad must treat the test results and any information concerning medical use or administration of drugs provided under this subpart in the same confidential manner as if subject to subpart H of this part, except where publicly disclosed by FRA or the National Transportation Safety Board.

With respect to a surviving employee, a test reported as positive for alcohol or a controlled substance by the designated laboratory must be reviewed by the railroad's Medical Review Officer with respect to any claim of use or administration of medications (consistent with § 219.103) that could account for the laboratory findings. The Medical Review Officer must promptly report the results of each review to the Associate Administrator for Safety, FRA, Washington, D.C., 20590. Such report must be in writing and must reference the employing railroad, accident/incident date, and location, and the envelope must be marked "**ADMINISTRATIVELY CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER.**" The report must state whether the MRO reported the test result to the employing railroad as positive or negative and the basis of any determination that analytes detected by the laboratory derived from authorized use (including a statement of the compound prescribed, dosage/frequency, and any restrictions imposed by the authorized medical practitioner). Unless specifically requested by FRA in writing, the Medical Review Officer must not disclose to FRA the underlying physical condition for which any medication was authorized or administered.

Approximately eight (8) reports will be prepared annually by MROs. It is estimated that it will take approximately 15 minutes to prepare the report and forward it to FRA. Total annual burden for this requirement is two (2) hours.

Respondent Universe:

450 railroads

Burden time per response:

15  
minute  
s

Frequency of Response:

On occasion

Annual number of Responses: 8 reports

Annual Burden: 2 hours

**Calculation:** 8 reports x 15 min. = 2 hours

Written response from employees to FRA regarding results of the toxicological analysis [219.211(e)]

An employee may respond in writing to the results of the test prior to the preparation of any final investigation report concerning the accident or incident. An employee wishing to respond must do so by letter addressed to the Alcohol/Drug Program Manager, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590, within 45 days of receipt of the test results. Any such submission must refer to the accident date, railroad and location, must state the position occupied by the employee on the date of the accident/incident, and must identify any information contained therein that the employee requests be withheld from public disclosure on grounds of personal privacy (but the decision whether to honor such request will be made by FRA on the basis of controlling law).

*Even though two to four tests will be positive, the test results have never been challenged (at least over the past 15 years). Consequently, there is no burden associated with this requirement.*

Recordkeeping - Post-accident toxicology Tests [219.211(h)]

Except as provided in § 219.201 (with respect to non-qualifying events), each specimen (including each split specimen) provided under this subpart is retained for not less than three months following the date of the accident or incident (two years from the date of the accident or incident in the case of a specimen testing positive for alcohol or a controlled substance). Post-mortem specimens may be made available to the National Transportation Safety Board (on request).

*Laboratories keep these records as part of their contract with FRA. Consequently, there is no burden associated with this requirement.*

Employee's request for a retest of split blood and urine samples [219.211(i)]

An employee (donor) may, within 60 days of the date of the toxicology report, request that his or her split specimen be tested by the designated laboratory or by another laboratory certified by Health and Human Services under that Department's Guidelines for Federal Workplace Drug Testing Programs that has available an appropriate, validated assay for the fluid and compound declared positive. Since some analytes may deteriorate during storage, detected levels of the compound shall, as technically appropriate, be reported and considered corroborative of the original test result. Any request for a retest must be in writing, specifying the railroad, accident date and location, be signed by the employee/donor, be addressed to the FRA Associate Administrator for Safety, and be designated “**ADMINISTRATIVELY CONFIDENTIAL: ATTENTION ALCOHOL/DRUG PROGRAM MANAGER.**”

*FRA estimates that it will receive zero (0) letters requesting that a sample be retested. Consequently, there is no burden associated with this requirement.*

Notice of Disqualification [219.213(a) & (b)]

An employee, who refuses to cooperate in providing breath, blood or urine specimens following an accident or incident specified in this subpart must be withdrawn from covered service, and must be deemed disqualified for covered service for a period of nine (9) months in accordance with the conditions specified in § 219.207. Prior to or upon withdrawing the employee from covered service under this section, the railroad must provide notice to the employee of the reason for this action and an opportunity for hearing before a presiding officer other than the charging official. The employee is entitled to the procedural protection set out in § 219.104(d).

*FRA believes that there will be zero (0) employees who refuse to cooperate in providing blood or urine samples following an accident or incident. Historically, this has never happened and so there will be no notices sent to employees. Consequently, there is no burden associated with this requirement.*

### **Subpart D - Testing for Cause**

A railroad may, under the conditions specified in this subpart, require any covered employee, as a condition of employment in covered service, to cooperate in breath or body fluid testing, or both, to determine compliance with §§ 219.101 and 219.102 or a railroad rule implementing the requirements of §§ 219.101 and 219.102. This authority is limited to testing after observations or events that occur during duty hours (including any period of overtime or emergency service). The provisions of this subpart apply only when, and to the extent that, the test in question is conducted in reliance upon the authority conferred by this section. Section 219.23 prescribes the notice to an employee that is required when an employee is required to provide a breath or body fluid specimen under this part. A railroad may not require an employee to be tested under the authority of this subpart unless reasonable cause, as defined in this section, exists with respect to that employee. The following paperwork requirements are associated with this Subpart.

#### **Reasonable Cause for Breath Alcohol Tests [219.300; 301; 302]**

A railroad must require a covered employee to submit to a breath alcohol test when the railroad has reasonable suspicion to believe that – (1) the employee has violated any prohibition of subpart B of this part concerning use of alcohol. The railroad's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. With respect to an alcohol test, the required observations must be made by a supervisor trained in accordance with § 219.11(g). The supervisor who makes the determination that reasonable suspicion exists may not conduct testing on that employee; (2) the employee has been involved in an accident or incident reportable to FRA under Part 225 and a supervisory employee of the railroad has a reasonable belief, based on specific, articulable facts, that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident; (3) the employee has been directly involved in one of the following operating rule violations or errors: (i) Noncompliance with a train order, track warrant, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves – (A) Occupancy of a block or other segment of track to which entry was not authorized; (B) Failure to clear a track to permit opposing or following movement to pass; (C) Moving across a railroad crossing at grade without authorization; or (D) Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required); (ii) Failure to protect a train as required by a rule consistent with § 218.37 of this chapter (including failure to protect a train that is fouling an adjacent track, where required by the railroad's rules); (iii) Operation of a train at a speed that exceeds the maximum authorized speed by at least ten (10) miles per hour or by fifty percent (50%) of such maximum authorized speed, whichever is less; (iv) Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch; (v) Failure to apply or stop short of derail as required; (vi) Failure to



secure a hand brake or failure to secure sufficient hand brakes, as required; (vii) Entering a crossover before both switches are lined for movement; or (viii) In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.

Testing under this subpart may only be conducted promptly following the observations or events upon which the testing decision is based, consistent with the need to protect life and property.

*The procedures for conducting and documenting breath alcohol testing are governed by DOT's regulation on Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40) and FRA's regulation 49 CFR 219 Subpart H. All paperwork associated with alcohol breath tests under this Subpart has been combined with Subparts B, F, and G under the section for Subpart H below.*

#### Reasonable cause for Urine Tests [219.300, 301, 302]

A railroad must require a covered employee to submit to a urine drug test when the railroad has reasonable suspicion to believe that – (1) the employee has violated the prohibitions of Subpart B of this part concerning controlled substances. The railroad's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. Such observations may include indications of the chronic and withdrawal effects of drugs. With respect to a drug test, the required observations must be made by two supervisors, at least one of whom is trained in accordance with § 219.11(g); (2) the employee has been involved in an accident or incident reportable to FRA and a supervisory employee of the railroad has a reasonable belief, based on specific, articulable facts, that the employee's acts or omissions contributed to the occurrence or severity of the accident or incident; or (3) the employee has been directly involved in one of the following operating rule violations or errors: (i) Noncompliance with a train order, track warrant, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves – (A) Occupancy of a block or other segment of track to which entry was not authorized; (B) Failure to clear a track to permit opposing or following movement to pass; (C) Moving across a railroad crossing at grade without authorization; or (D) Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required); (ii) Failure to protect a train as required by a rule consistent with § 218.37 of this chapter (including failure to protect a train that is fouling an adjacent track, where required by the railroad's rules); (iii) Operation of a train at a speed that exceeds the maximum authorized speed by at least ten (10) miles per hour or by fifty percent (50%) of such maximum authorized speed, whichever is less; (iv) Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch; (v) Failure to apply or stop short of derail as required; (vi) Failure to secure a

hand brake or failure to secure sufficient hand brakes, as required; (vii) Entering a crossover before both switches are lined for movement; or (viii) In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.

Testing under this subpart may only be conducted promptly following the observations or events upon which the testing decision is based, consistent with the need to protect life and property.

*The procedures for the documentation of urine collection are governed by DOT's regulation on Procedures for Transportation Workplace Drug and Alcohol Testing Programs (49 CFR Part 40) and FRA's regulation 49 CFR 219 Subpart H. All paperwork associated with urine collection under this subpart has been combined with Subparts B, F, and G under the section for Subpart H below.*

**Mandatory Reasonable Suspicion Testing; Records - Tests not promptly administered** [219.300(d)]

If a test required by this section is not administered within two hours following the determination under this section, the railroad must prepare and maintain on file a record stating the reasons the test was not properly administered. If a test required by this section is not administered within eight hours of the determination under this section, the railroad must cease attempts to administer an alcohol test and must state in the record the reasons for not administering the test. Records must be submitted to FRA upon request of the FRA Administrator.

*The burden for this requirement is covered under a separate information collection regarding DOT's regulation on Procedures for Transportation Workplace and Alcohol Testing Programs (49 CFR Part 40). Consequently, there is no additional burden associated with this requirement.*

**Subpart E - Identification of Troubled Employees**

**Voluntary referral and Co-worker report Policies** [219.401/403/405]

Each railroad must adopt, publish, and implement – (1) A policy designed to encourage and facilitate the identification of those covered employees who abuse alcohol or drugs as a part of a treatable condition and to ensure that such employees are provided the opportunity to obtain counseling or treatment before those problems manifest themselves in detected violations of this part (hereafter "voluntary referral policy"); and (2) A policy designed to foster employee participation in preventing violations of this subpart and encourage co-worker participation in the direct enforcement of this part (hereafter "co-worker report policy"). A railroad may comply with this subpart by adopting, publishing and implementing policies meeting the specific requirements of §§

219.403 and 219.405 or by complying with § 219.407. If a railroad complies with this part by adopting, publishing and implementing policies consistent with §§ 219.403 and 219.405, the railroad must make such policies, and publications announcing such policies, available for inspection and copying by FRA.

*Voluntary Referral - Required provisions.* A voluntary referral policy must include the following provisions: (1) A covered employee who is affected by an alcohol or drug use problem may maintain an employment relationship with the railroad if, before the employee is charged with conduct deemed by the railroad sufficient to warrant dismissal, the employee seeks assistance through the railroad for the employee's alcohol or drug use problem or is referred for such assistance by another employee or by a representative of the employee's collective bargaining unit. The railroad must specify whether, and under what circumstances, its policy provides for the acceptance of referrals from other sources, including (at the option of the railroad) supervisory employees. (2) Except as may be provided under paragraph (c) of this section, the railroad treats the referral and subsequent handling, including counseling and treatment, as confidential. (3) The railroad will, to the extent necessary for treatment and rehabilitation, grant the employee a leave of absence from the railroad for the period necessary to complete primary treatment and establish control over the employee's alcohol or drug problem. The policy must allow a leave of absence of not less than 45 days, if necessary for the purpose of meeting initial treatment needs. (4) Except as may be provided under paragraph (c)(2) of this section, the employee will be returned to service on the recommendation of the substance abuse professional. Approval to return to service may not be unreasonably withheld. (5) With respect to a certified locomotive engineer or a candidate for certification, the railroad must meet the requirements of § 240.119(e) of this chapter.

This section (§ 219.405) prescribes minimum standards for co-worker report policies. Nothing in this section restricts a railroad from adopting, publishing, and implementing a policy that affords more favorable conditions to employees troubled by alcohol or drug abuse problems, consistent with the railroad's responsibility to prevent violations of §§ 219.101 and 219.102.

A co-worker report policy must provide that a covered employee may maintain an employment relationship with the railroad following an alleged first offense under this part or the railroad's alcohol and drug rules, subject to the conditions and procedures contained in this section.

The requirement that each railroad must make voluntary referral and co-worker report policies – and publications announcing such policies – available for inspection and copying by FRA is only called for once. It was completed by all railroads who adopted this policy during the first year of the program. All railroads with 15 or fewer Hours of Service employees that do not engage in joint operations are exempt from these provisions.

FRA estimates that approximately five (5) railroads a year would hire additional employees and lose their exemption, or that a new railroad would be formed that hired 15 or more covered employees. It is estimated that it would require approximately 20 hours to develop and publish the required policies. Total annual burden for this requirement is 100 hours.

Respondent Universe: 5 railroads

Burden time per response: 20 hours

Frequency of Response: On occasion

Annual number of Responses: 5 policies  
Annual Burden: 100 hours

**Calculation:** 5 policies x 20 hrs. = 100 hours

Report by a Co-worker [219.405(c)(1)]

Under the co-worker report policy, the alleged violation must come to the attention of the railroad as a result of a report by a co-worker that the employee was apparently unsafe to work with or was, or appeared to be, in violation of this part or the railroad's alcohol and drug rules.

FRA estimates that approximately 450 railroads have a co-worker report policy in place on their railroads. It is estimated that these railroads will receive a total of approximately 450 reports a year that an employee is unsafe to work with or appeared to be in violation of this rule or the railroad's alcohol and drug rules. Each report will take approximately five (5) minutes. Total an annual burden for this requirement is 38 hours.

Respondent Universe: 450 railroads

Burden time per response: 5 minutes

Frequency of Response: On occasion

Annual number of Responses: 450 reports

Annual Burden: 38 hours

**Calculation:** 450 reports x 5 min. = 38 hours

#### Alternate Policies [219.407]

In lieu of a policy under § 219.403 (voluntary referral) or § 219.405 (co-worker report), or both, a railroad may adopt, publish and implement, with respect to a particular class or craft of covered employees, an alternate policy or policies having as their purpose the prevention of alcohol or drug use in railroad operations, if such policy or policies have the written concurrence of the recognized representatives of such employees.

The written concurrence of recognized employee representatives in an alternate policy may be evidenced by a collective bargaining agreement or any other document describing the class or craft of employees to which the alternate policy applies. The agreement or other document must make express reference to this part and to the intention of the railroad and employee representatives that the alternate policy applies in lieu of the policy required by § 219.403, § 219.405, or both.

The railroad must file the agreement or other document described in paragraph (b) of this section with the Associate Administrator for Safety, FRA. If the alternate policy is amended or revoked, the railroad must file a notice of such amendment or revocation at least 30 days prior to the effective date of such action.

This section does not excuse a railroad from adopting, publishing, and implementing the policies required by §§ 219.403 and 219.405 with respect to any group of covered employees not within the coverage of an appropriate alternate policy.

*FRA estimates that no railroad will publish alternate policies in lieu of voluntary referral and/or co-worker report policies. Therefore, no copies of the agreement will need to be filed with FRA. Consequently, there is no burden associated with this requirement.*

#### Substance Abuse Professional (SAP) Counselor Evaluation [219.403; 219.405]

Railroads must make available the services of an Substance Abuse Professional (SAP) Counselor to help employees who are experiencing alcohol, substance abuse, or other personal problems that may ultimately affect their performance on the job.

The substance abuse professional must schedule necessary interviews with the employee, and must complete an evaluation within 10 calendar days of the date on which the

employee contacts the professional with a request for evaluation under the policy, unless it becomes necessary to refer the employee for further evaluation. In each case, all necessary evaluations must be completed within 20 days of the date on which the employee contacts the professional.

FRA estimates that 700 employees will be referred for treatment under this program. FRA estimates that it will take approximately 20 minutes for an SAP Counselor to conduct an interview, and another 10 minutes to prepare an evaluation report. Total annual burden for this requirement is 350 hours.

Respondent Universe: 450 railroads

Burden time per response: 30 minutes

Frequency of Response: On occasion

Annual number of Responses: 700 reports  
Annual Burden: 350 hours

**Calculation:** 700 reports x 30 min. = 350 hours

### **Subpart F - Pre-employment Tests**

Prior to the first time a covered employee performs covered service for a railroad, the employee must undergo testing for drugs. No railroad may allow a covered employee to perform covered service, unless the employee has been administered a test for drugs with a result that did not indicate the misuse of controlled substances. This requirement applies to final applicants for employment and to employees seeking to transfer for the first time from non-covered service to duties involving covered service.

As used in subpart H of this part with respect to a test required under this subpart, the term covered employee includes an applicant for pre-employment testing only. In the case of an applicant who declines to be tested and withdraws the application for employment, no record may be maintained of the declination.

A railroad may, but is not required to, conduct pre-employment alcohol testing under this part. If a railroad chooses to conduct pre-employment alcohol testing, the railroad must comply with the following requirements: (1) It must conduct a pre-employment alcohol

test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions). (2) It must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., it must not test some covered employees and not others). (3) It must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test. (4) It must conduct all pre-employment alcohol tests using the alcohol testing procedures of part 40 of this title. (5) It must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

*All paperwork associated with alcohol and urine tests under this subpart has been combined with Subparts B, D, and G under the section for Subpart H below.*

Notification; records [219.503]

The railroad must provide for medical review of drug test results as provided in subpart H of this part. The railroad must notify the applicant of the results of the drug and alcohol tests in the same manner as provided for employees in subpart H of this part. Records must be maintained confidentially and be retained in the same manner as required under subpart J of this part for employee test records, except that such records need not reflect the identity of an applicant whose application for employment in covered service was denied.

*The burden for this requirement is covered under a separate information collection regarding DOT's regulation on Procedures for Transportation Workplace and Alcohol Testing Programs (49 CFR Part 40). Consequently, there is no additional burden associated with this requirement*

### **Subpart G - Random Alcohol and Drug Testing**

Railroad Random Drug Testing Programs [219.601(a)]

1. Each railroad must submit for FRA approval a random testing program meeting the requirements of this subpart. A railroad commencing operations must submit such a program not later than 30 days prior to such commencement. The program must be submitted to the Associate Administrator for Safety, FRA, for review and approval by the FRA Administrator.

During the first year of FRA's Random Drug Testing Program, 200 railroads submitted their random drug testing programs to FRA. This was a one-time requirement, and has been completed by all required railroads except for new railroads formed.

FRA estimates that approximately five (5) new railroads annually will submit random alcohol testing programs to FRA. It is estimated that it will take each railroad approximately one (1) hour to develop its plan and submit it to FRA. Total annual burden for this requirement is five (5) hours.

Respondent Universe:

5  
railroads

Burden time per response:

1 hour

Frequency of Response:

One-time

Annual number of Responses: 5 programs

Annual Burden: 5 hours

**Calculation:** 5 programs x 1 hr. = 5 hours

2. If, after approval, a railroad desires to amend the random testing program implemented under this subpart, the railroad must file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A railroad already subject to this subpart that becomes subject to this subpart with respect to one or more additional employees must amend its program not later than 60 days after these employees become subject to this subpart and file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A program responsive to the requirements of this section or any amendment to the program may not be implemented prior to approval.

FRA estimates that approximately 20 amendments will be filed each year. It is estimated that it will take each railroad approximately one (1) hour to amend its program and file the required notice with FRA. Total annual burden for this requirement is 20 hours.



Respondent Universe:

450  
railroads

Burden time per response:

1 hour

Frequency of Response:

On  
occasion

Annual number of Responses: 20 amendments

Annual Burden: 20 hours

**Calculation:** 20 amendments x 1 hr. = 20 hours

Total annual burden for the entire requirement is 25 hours (20 +5).

#### Random Selection Procedures - Drug/Alcohol [219.601(b)(1)]

Random testing programs submitted by or on behalf of each railroad under this subpart must meet the following criteria, and the railroad and its managers, supervisors, officials and other employees and agents must conform to such criteria in implementing the program: Selection of covered employees for testing must be made by a method employing objective, neutral criteria which ensure that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, i.e., no employee may be selected as the result of the exercise of discretion by the railroad. The selection method must be capable of verification with respect to the randomness of the selection process, and any records necessary to document random selection must be retained for not less than 24 months from the date upon which the particular specimens were collected.

Number of respondents is 450 railroads. FRA estimates that it will take each respondent approximately four (4) hours a month or 48 hours annually to develop and file their

random selection documentation. Total annual burden for this requirement is 21,600 hours.

Respondent Universe:

450  
railroads

Burden time per response:

4 hours

Frequency of Response:

Monthly

Annual number of Responses: 5,400 documents  
Annual Burden: 21,600 hours

**Calculation:** 5,400 documents x 4 hrs. = 21,600 hours

Notices to Employees [219.601(b)(4); 219.601(d)]

1. No later than 45 days prior to commencement of random testing, the railroad must publish to each of its covered employees, individually, a written notice that he or she will be subject to random drug testing under this part. Such notice must state the date for commencement of the program, must state that the selection of employees for testing will be on a strictly random basis, must describe the consequences of a determination that the employee has violated § 219.102 or any applicable railroad rule, and must inform the employee of the employee's rights under subpart E of this part. A copy of the notice must be provided to each new covered employee on or before the employee's initial date of service. Since knowledge of Federal law is presumed, nothing in this paragraph (d)(1) creates a defense to a violation of § 219.102.

Number of respondents is 450 railroads. FRA estimates that it will take each respondent approximately 10 hours to develop its notice, have it printed, and

distribute it to its employees. This is a one-time requirement and has already been completed by approximately 450 railroads.

In following years, the paperwork involved for this item is very negligible and would involve only providing copies of the printed notice to new employees before their initial date of service. FRA estimates that the total annual burden for all respondents to perform this task would be one (1) hour (100 notices x .5 min. ÷ 60 = .8333 hour).

Respondent Universe:

5  
railroads

Burden time per response:

.5  
minute

Frequency of Response:

On  
occasion

Annual number of Responses: 100 notices  
Annual Burden: 1 hour

**Calculation:** 100 notices x .5 min. = 1 hour

In addition, FRA estimates that approximately five (5) new railroads annually will have to develop a notice under this section. As mentioned earlier, FRA estimates that it will take each respondent approximately 10 hours to develop its notice, have it printed, and distribute it to its employees. Total annual burden for this requirement in subsequent years is 50 hours.

Respondent Universe:

5

railroads

Burden time per response:

10  
hours

Frequency of Response:

One-  
time

Annual number of Responses: 5 notices

Annual Burden: 50 hours

**Calculation:** 5 notices x 10 hrs. = 50 hours

2. Notice of an employee's selection may not be provided until the duty tour in which testing is to be conducted, and then only so far in advance as is reasonably necessary to ensure the employee's presence at the time and place set for testing.

Number of respondents is 450 railroads. FRA estimates that approximately 25,000 notices will be issued annually (whether verbally or in written form). It is estimated that it will take approximately one (1) minute to notify the employee. Total annual burden for this requirement is 417 hours.

Respondent Universe:

450  
railroads

Burden time per response:

1  
minute

Frequency of Response: On  
occasion

Annual number of Responses: 25,000 notices  
Annual Burden: 417 hours

**Calculation:** 25,000 notices x 1 min. = 417 hours

Total annual burden for the entire requirement is 468 hours (1 + 50 + 417).

Random Selection Procedures - Drug [219.601(b)(7)]

Each time an employee is notified for random drug testing, the employee will be informed that selection was made on a random basis.

*The burden for this requirement is included in section 219.601(b)(4) above.*

Specimen Security, Chain of Custody, and Transportation of Urine Specimens to Laboratory. [219.603]

The procedures for the documentation of urine collection is governed by DOT's regulation on Procedures for Transportation Workplace Testing Programs (49 CFR 40) and FRA's regulation 49 CFR 219 Subpart H. All paperwork associated with urine collection under this Subpart has been combined with Subparts B, D, and F under the section for Subpart H below.

Notice by Employee Asking to be Excused from Urine Testing [219.603]

A railroad shall, under the conditions specified in this subpart and subpart H of this part, require a covered employee selected through the random testing program to cooperate in urine testing to determine compliance with § 219.102, and the employee must provide the required specimen and complete the required paperwork and certifications. Compliance by the employee may be excused only in the case of a documented medical or family emergency.

FRA estimates that only .1 percent of the employees (20) to be tested annually will exercise their rights under this provision. It is estimated that it will take an employee about 15 minutes to provide the employer with a documented excuse. Total annual burden for this requirement is five (5) hours (.1% of 20,000 tests x .25 hr.).

Respondent Universe:

20,000  
employ  
ees

Burden time per response:

15  
minute  
s

Frequency of Response:

On  
occasion

Annual number of Responses: 20 documented excuses

Annual Burden: 5 hours

**Calculation:** 20 documented excuses x .25 hr. = 5 hours

Railroad Random Alcohol Testing Programs [219.607a]

1. Each railroad must submit for FRA approval a random alcohol testing program meeting the requirements of this subpart. A railroad commencing operations must submit a random alcohol testing program not later than 30 days prior to such commencement. The program must be submitted to the FRA Associate Administrator for Safety for review and approval.

In the previous submission, FRA accounted for the one-time occurrence where all the railroads would submit programs under the above requirement. Additionally, FRA estimates that approximately five (5) new railroads annually will submit random alcohol testing programs under this requirement. It is estimated that it will take eight (8) hours to develop and then submit each program. Total annual burden for this requirement is 40 hours.

Respondent Universe:

5

46

railroads

Burden time per response:

8 hours

Frequency of Response:

One-time

Annual number of Responses: 5 programs

Annual Burden: 40 hours

**Calculation:** 5 programs x 8 hrs. = 40 hours

2. If, after approval, a railroad desires to amend the random alcohol testing program implemented under this subpart, the railroad must file with FRA a notice of such amendment at least 30 days prior to the intended effective date of such action. A program responsive to the requirements of this section or any amendment to the program may not be implemented prior to approval.

FRA estimates that approximately 20 amendments will be filed each year. It is estimated that approximately one (1) hour will be required to file each amendment. Total annual burden for this requirement is 20 hours.

Respondent Universe:

450 railroads

Burden time per response:

1 hour

Frequency of Response:

On occasion

Annual number of Responses: 20 amendments  
Annual Burden: 20 hours

**Calculation:** 20 amendments x 1 hr. = 20 hours

Total annual burden for the entire requirement is 60 hours (40 + 20).

#### Random Selection Procedures - Alcohol [219.607(b)]

Random testing programs submitted by or on behalf of each railroad under this subpart must meet the following criteria, and the railroad and its managers, supervisors, officials and other employees and agents must conform to such criteria in implementing the program:

(1) Selection of covered employees for testing must be made by a method employing objective, neutral criteria which ensure that every covered employee has a substantially equal statistical chance of being selected within a specified time frame. The method may not permit subjective factors to play a role in selection, i.e., no employee may be selected as the result of the exercise of discretion by the railroad. The selection method must be capable of verification with respect to the randomness of the selection process, and any records necessary to document random selection must be retained for not less than 24 months from the date upon which the particular specimens were collected.

(2) --

(i) The program must select for testing a sufficient number of employees so that, during the first 12 months -

(A) The random testing program is spread reasonably through the 12-month period..

(B) [Reserved]

(ii) To calculate the total number of covered employees eligible for random testing throughout the year, as a railroad, you must add the total number of covered employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in a railroad's random testing pool, and all covered employees must be in the random pool. If you are a railroad conducting random testing more often than once per month (e.g., you select daily, weekly, bi-weekly), you do not need to compute this total number of covered employees rate more than on a once per month basis.



(iii) As a railroad, you may use a service agent (e.g., C/TPA) to perform random selections for you, and your covered employees may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only covered employees are in the random testing pool.

(3) Railroad random testing programs must ensure to the maximum extent practicable that each employee perceives the possibility that a random test may be required on any day the employee reports for work.

(4) Notice of an employee's selection may not be provided until the duty tour in which testing is to be conducted, and then only so far in advance as is reasonably necessary to ensure the employee's presence at the time and place set for testing.

(5) The program must include testing procedures and safeguards, and procedures for action based on positive test results, consistent with this part.

(6) An employee must be subject to testing only while on duty. Only employees who perform covered service for the railroad are subject to testing under this part. In the case of employees who during some duty tours perform covered service and during others do not, the railroad program must specify the extent to which, and the circumstances under which they are to be subject to testing. To the extent practical within the limitations of this part and in the context of the railroad's operations, the railroad program must provide that employees are subject to the possibility of random testing on any day they actually perform covered service.

(7) Each time an employee is notified for random drug testing the employee will be informed that selection was made on a random basis.

*These burden for these requirements are covered under § 219.601(b)(1), § 219.607(a), § 219.901, and § 219.903. Consequently, there is no burden associated with this requirement.*

*(Note: The requirement for § 219.607(b)(5) is covered in the Chain of Custody and Control Form (where a box is checked), and is accounted for in a separate submission by the Department of Health and Human Services (DHHS). Consequently, there is no burden associated with this requirement).*

#### Notice to Employees [219.607(c)(1)]

No later than 45 days prior to commencement of random alcohol testing, the railroad must publish to each of its covered employees, individually, a written notice that the employee will be subject to random alcohol testing under this part. Such notice must state the date for commencement of the program, must state that the selection of

employees for testing will be on a strictly random basis, must describe the consequences of a determination that the employee has violated § 219.101 or any applicable railroad rule, and must inform the employee of the employee's rights under subpart E of this part. A copy of the notice must be provided to each new covered employee on or before the employee's initial date of service. Since knowledge of Federal law is presumed, nothing in this paragraph (c)(1) creates a defense to a violation of § 219.101. This notice may be combined with the notice or policy statement required by § 219.23.

*This is a one-time requirement which has been fulfilled by all the railroads. Consequently, there is no burden associated with this requirement.*  
Administrator's determination of random alcohol testing rate [219.608]

Except as provided in paragraphs (b) through (d) of this section, the minimum annual percentage rate for random alcohol testing must be 25 percent of covered employees.

The Administrator's decision to increase or decrease the minimum annual percentage rate for random alcohol testing is based on the violation rate for the entire industry. All information used for the determination is drawn from the alcohol Management Information System (MIS) reports required by this part. In order to ensure reliability of data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate.

*The burden for this requirement is covered in a separate submission under 49 CFR Part 40 by the Department of Transportation. Consequently, there is no burden associated with this requirement.*

#### Participation in Alcohol Testing [219.609]

A railroad must, under the conditions specified in this subpart and subpart H of this part, require a covered employee selected through the random testing program to cooperate in breath testing to determine compliance with § 219.101, and the employee must provide the required breath and complete the required paperwork and certifications.

*The burden for this requirement is included above under section 219.603(a).*

#### Notice by Employee Asking to be Excused from Random Alcohol Testing [219.609]

Compliance by the employee may be excused only in the case of a documented medical or family emergency.

*The burden for this requirement is included under section 219.603(a).*

### **Subpart H - Drug and Alcohol Testing Procedures**

## A. Drug Testing Procedures

### Specimen Security, Chain of Custody, and Transportation of Specimens to Laboratory [219.701(a) & (b)]

Drug testing required or authorized by subparts B, D, F, and G of this part must be conducted in compliance with all applicable provisions of the Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing Programs (part 40 of this title).

Alcohol testing required or authorized by subparts B, D, F, and G of this part must be conducted in compliance with all applicable provisions of the Department of Transportation Procedures for Transportation Workplace Drug and Alcohol Testing Programs (part 40 of this title)

These procedures are designed to be reasonably simple while providing for redundant verification of identity and avoiding unnecessary disclosure of the name of the person tested. The following documents or procedures would be used in this process.

-Chain of Custody Form - This form is utilized for maintaining control and accountability from point of collection to final disposition of the primary and split specimen and offers a high degree of assurance that the specimen provided is the specimen received by the laboratory and identified to that employee. Some of the information to be contained on the chain-of-custody form is: preprinted specimen identification number, employee's Social Security or employee identification number, type of test conducted, temperature of specimen, date of collection, collection site and telephone number, employee data (name, duty location, job title, date of birth); and three certification statements (one to be completed by the employee, one by the collection site person, and one by the laboratory performing the test). The form shall also contain space for entering the date, purpose of change, name of person who released the specimen and the name of the person who received the specimen for each transfer of possession of the specimen.

-The second document would be the labels and seals on the primary and split specimen bottles, which would be physically overlapped to provide integral identification and protection for the specimen. After collection, the employee would initial the labels or seals on the primary and split bottles to affirm that the specimen is the one provided. The labels would also contain a unique identifying number identical to that appearing on the urine chain-of-custody and control form. Use of the identifying number in lieu of the name avoids disclosure of the donor's identity to employees of the laboratory.

-The third process is shipping the primary and split urine specimens to the drug testing laboratory. Collection site personnel are required to initial the tape sealing the container and ensure that the chain-of-custody form for the primary and split specimens are enclosed in the container.

*These requirements are covered under DOT's Part 49 CFR Part 40 Information Collection. The requirement for the Chain of Custody and Control Form (CCF) is covered under the Department of Health and Human Services Information Collection for the CCF. Consequently, there is no additional burden associated with these requirements.*

### Subpart I - Annual Report

#### A. Reporting alcohol misuse prevention program results in a management information system [219.800]

Each railroad that has a total of 400,000 or more employee hours (including hours worked by all employees of the railroad, regardless of occupation, not only while in the United States but also while outside the United States) must submit to FRA by March 15 of each year a report covering the previous calendar year (January 1-December 31), summarizing the results of its alcohol misuse prevention program. As used in this paragraph, the term "employees of the railroad" includes individuals who perform service for the railroad, including not only individuals who receive direct monetary compensation from the railroad for performing a service for the railroad, but also such individuals as employees of a contractor to the railroad who perform a service for the railroad.

As a railroad, you must use the Management Information System (MIS) form and instructions as required by 49 CFR part 40 (at § 40.25 and appendix H to part 40). You may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (e.g., electronic program transmitted via the Internet), other than hard-copy, for MIS form submission to FRA. For information on where to submit MIS forms and for the electronic version of the form, see: <http://www.fra.dot.gov/Content3.asp?P=504>.

Each railroad shall ensure the accuracy and timeliness of each report submitted.

A service agent (e.g., a consortium/third party administrator) may prepare the MIS report on behalf of a railroad. However, a railroad official (e.g., a designated employee representative) must certify the accuracy and completeness of the MIS report, no matter who prepares it.

*The requirements for alcohol and drug have been combined. Since the burden for these requirements is already covered under DOT's 49 CFR Part 40 Information Collection, there is no additional burden associated with these requirements.*

## Subpart J - Recordkeeping Requirements

### I. Retention of alcohol testing records [219.901]

(a) *General Requirement.* In addition to the records required to be kept by part 40 of this title, each railroad must maintain alcohol misuse prevention program records in a secure location with controlled access as set out in this section.

Each railroad must maintain the following records for a minimum of five years:

- (1) A summary record of each covered employee's test results; and
- (2) A copy of the annual report summarizing the results of its alcohol misuse prevention programs (if required to submit under 49 CFR 219.800(a).

(b) Each railroad must maintain the following records for a minimum of two years:

- (1) Records related to the collection process: (i) Collection logbooks, if used; (ii) Documents relating to the random selection process; (iii) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests; (iv) Documents generated in connection with decisions on post-accident testing; (v) Documents verifying the existence of a medical explanation of the inability of a covered employee to provide an adequate specimen.

(2) Records related to test results: (i) The railroad's copy of the alcohol test form, including the results of the test; (ii) Documents related to the refusal of any covered employee to submit to an alcohol test required by this part; (iii) Documents presented by a covered employee to dispute the result of an alcohol test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to employee training: (i) Materials on alcohol abuse awareness, including a copy of the railroad's policy on alcohol abuse; (ii) Documentation of compliance with the requirements of § 219.23; (iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion; (iv) Certification that any training conducted under this part complies with the requirements for such training.

### II. Retention of urine drug testing records [219.903]

(a) *General requirement.* In addition to the records required to be kept by part 40 of this title, each railroad must maintain drug abuse prevention program records in a secure location with controlled access as set forth in this section.

(b)(1) Each railroad must maintain the following records for a minimum of five years:

(i) A summary record of each covered employee's test results; and (ii) A copy of the annual report summarizing the results of its drug misuse prevention program (if required to submit under § 219.803(a)).

(2) Each railroad must maintain the following records for a minimum of two years.

(c) *Types of records.* The following specific records must be maintained:

(1) Records related to the collection process: (i) Documents relating to the random selection process; (ii) Documents generated in connection with decisions to administer reasonable suspicion drug tests; (iii) Documents generated in connection with decisions on post-accident testing; (iv) Documents verifying the existence of a medical explanation of the inability of a covered employee to provide a specimen.

(2) Records related to test results: (i) The railroad's copy of the drug test custody and control form, including the results of the test; (ii) Documents presented by a covered employee to dispute the result of a drug test administered under this part.

(3) Records related to other violations of this part.

(4) Records related to employee training: (i) Materials on drug abuse awareness, including a copy of the railroad's policy on drug abuse; (ii) Documentation of compliance with the requirements of § 219.23; (iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion; (iv) Certification that any training conducted under this part complies with the requirements for such training.

Number of respondents is 450 railroads. FRA estimates that approximately 100,500 records will have to be filed under these requirements annually. These estimates include initial and any retests. It is estimated that will take five (5) minutes per record to prepare a file folder, and file the report and any related material. Total annual burden for the program is 8,375 hours.

Respondent Universe:

450  
railroad

ds

Burden time per response:

5  
minute  
s

Frequency of Response:

On  
occasion

Annual number of Responses: 100,500 records

Annual Burden: 8,375 hours

**Calculation:**  $100,500 \times 5 \text{ min.} = 8,375 \text{ hours}$

Summary records of each covered employee's breath alcohol and/or drug test results (including Subpart C) and rehabilitation (including primary treatment, aftercare, and follow-up alcohol/drug testing) must be maintained for five (5) years.

Number of respondents is 450 railroads. FRA estimates that 200 reports will be prepared under this requirement. It is estimated that it will take each respondent approximately two (2) hours to prepare the summary report, and file it. Total annual burden for this requirement is 400 hours.

Respondent Universe:

450  
railroa  
ds

Burden time per response:

2 hours

Frequency of Response: On  
occasion

Annual number of Responses: 200 reports  
Annual Burden: 400 hours

**Calculation:** 200 reports x 2 hrs. = 400 hours

Total annual burden for the entire requirement is 8,775 hours (8,375 + 400).

III. Access to facilities and records [219.905].

Each railroad must make available copies of all results for railroad alcohol and drug testing programs conducted under this part and any other information pertaining to the railroad's alcohol and drug misuse prevention program, when requested by the Secretary of Transportation or any DOT agency with regulatory authority over the railroad or covered employee.

*The burden for this requirement is not a separate one, but rather on that is included in the burden for all the other requirements of this collection of information and that of DOT's 49 Part 40 Information Collection. Consequently, there is no additional burden associated with this requirement.*

Total annual burden for this entire information collection is 31,797 hours.

13. **Estimate of total annual costs to respondents.**

Respondent Costs

There are no other costs to respondents other than the ones reflected in the responses to question 12 above. The costs for the Custody and Control Forms (CCFs) are the responsibility of the Department of Health and Human Services (DHHS).

14. **Estimate of Cost to Federal Government.**

FRA estimates that it will take approximately one (1) man-year annually to monitor the program. Multiplying 2,080 hours times the estimated \$100 per hour (includes 75 percent overhead) would equal \$208,000 in labor cost annually.

\$208,000      Labor



5,000	Contract - Key punching of data
150	Postage
500	Miscellaneous_
<b>\$213,650</b>	<b>TOTAL</b>

**15. Explanation of program changes and adjustments.**

There is no change in burden from the previous submission as this request is for an **extension without change** of the previous OMB approval.

The current inventory burden total shows 31,797 hours, while the present submission exhibits a burden total of 31,797 hours. Hence, there is **no change** in burden.

There is no change in costs to respondents.

**16. Publication of results of data collection.**

The information concerning impairment in an accident setting, which is received pursuant to this program, will be published in a subset of data contained in FRA's annual Accident/Incident Bulletin. All of the remaining information obtained under this program is intended for use by the Office of Safety technical staff in its ongoing accident prevention activities or will be used by railroads in monitoring compliance by their employees with the prohibitions on alcohol and drug use.

**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, rail safety in the U.S. would be seriously jeopardized. If railroads did not have effective alcohol and drug misuse prevention programs and if these programs were not carefully monitored, railroad employees working in safety-sensitive positions might abuse alcohol and drugs while on duty, or just prior to coming on duty. This could lead to a substantial increase in the number of accidents/incidents where serious injuries and even fatalities happen to both railroad workers and the general public. In a worst case scenario of a locomotive engineer abusing drugs or alcohol, a catastrophic accident could occur where hundreds of passengers are killed and injured, or where there is great damage to the environment as well as extensive property damage. A catastrophic accident is a particular concern with the advent and increasing use of high-speed trains. Without the required alcohol and drug training programs, supervisors would not be able to spot employees who are abusing alcohol or drugs, and immediately remove them from service. Not spotting these employees increases the risk of accidents/incidents. The collection of information is designed to monitor railroad alcohol and drug misuse prevention programs to ensure that railroads educate their employees on the hazards of alcohol and drug abuse, and offer information on available treatment facilities. Also, the collection of information enhances rail safety by offering investigators records that might prove helpful in determining the cause of a rail accident which also might prove useful in preventing future accident/incidents. In sum, the collection of information serves as another means to make rail travel in the U.S. safe, and convenient by reducing the likelihood that safety-sensitive workers will abuse alcohol or drugs while they are working.

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.