INFORMATION COLLECTION
SUPPORTING JUSTIFICATION
FRA Emergency Order No. 28, Notice No. 1; OMB No. 2130-0601

Summary of Submission

- This submission is a request for **regular clearance** of a current information collection approved by OMB on August 29, 2013, for six-months under **Emergency Clearance Processing**. The current approval expires on **February 28, 2014**.

- The total number of burden **requested** for this collection of information is **205,404 hours.**

- The total number of burden **previously approved** for this collection of information is **1,981,133 hours.**

- Total burden for this information collection submission has decreased by **1,775,729 hours**.

- **Adjustment**s decreased the burden by **1,775,729 hours**.

- Total number of **responses requested** for this information collection is **23,480,082**.

- Total number of **responses previously approved** for this information collection is **23,511,355**.

- **Adjustments** decreased the number of **responses** by **31,273**.

- **The answer to question **number 12** itemizes the hourly burden associated with each requirement of this rule (See pp. 15-19).

1. Circumstances that make collection of the information necessary.

Background

FRA has re-examined its requirements for securing trains and vehicles on mainline track and mainline sidings outside of a yard or terminal in the aftermath of the catastrophic July 6, 2013, accident involving loaded tank cars containing petroleum crude oil that occurred in the town of Lac-Mégantic, Quebec, Canada, on track owned by Montreal, Maine & Atlantic Railway Corporation (MMA), a company incorporated in the United States. While Canadian authorities are still investigating the accident and no final conclusions have been made, the following is known based on preliminary information released by the Transportation Safety Board of Canada.

According to Rail Safety Advisory Letters issued by the Transportation Safety Board of Canada on July 19, 2013, the incident is summarized as follows:

At approximately 10:45 pm Eastern Daylight Time (EDT) on July 5, 2013, MMA train 2 was proceeding eastward from Montreal, Quebec, to St. John, New Brunswick. The train was approximately 4,700 feet long and weighed over 10,000 tons. It consisted of five locomotives, a loaded box car, and 72 loaded tank cars containing petroleum crude oil (U.S. DOT Hazard Class 3, UN 1267). At approximately 11:00 p.m. the train stopped near milepost 7.40 near Nantes, Quebec. At that location the operator of the train secured it and departed, leaving the train unattended on mainline track with a descending grade of approximately 1.2 percent.

At around 11:50 p.m. a local resident reported a fire on the controlling locomotive (MMA 5017) of the train. The local fire department was called and responded with another MMA employee. At approximately midnight, the controlling locomotive was shut down and the fire extinguished. After the fire was extinguished, the fire department and the MMA employee left the site.

At approximately 1:00 a.m. the next day (the early morning of July 6th) it appears that the train began rolling and picking up speed down the descending grade toward the town of Lac-Mégantic, Quebec, which sits approximately 30 miles from the United States-Canada border. Near the center of town, the box car and 63 of the loaded tank cars derailed. The locomotives, which separated from the train, traveled an additional ½ mile before coming to a stop. A number of derailed tank cars released product resulting in multiple explosions and subsequent fires. At this time, it is estimated that there were 42 fatalities and that 5 persons are still missing. There was also extensive damage to the town, and approximately 2,000 people were evacuated from the surrounding area. While the investigation is ongoing and the Transportation Safety Board of Canada has not reached any final conclusions, it has made a determination that the braking force applied to the train was insufficient to hold it on the 1.2-percent descending slope between Nantes and Lac-Mégantic.

In response to this accident, Transport Canada (the Canadian government department responsible for regulating transportation safety in Canada) issued an emergency railroad directive pursuant to Section 33 of the Canadian Railway Safety Act. While Transport Canada explained in the emergency directive that the cause of the accident in Lac-Mégantic remains unknown, the emergency directive stated that:

> [I]n light of the catastrophic results of the Lac-Mégantic accident and in the interest of ensuring the continued safety and security of railway transportation, there is an immediate need to clarify the regime respecting unattended locomotives on main track and sidings and the transportation of dangerous goods in tank cars using a one person crew to address any threat to the safety and security of railway operations.

As such, Transport Canada exercised its statutory emergency directive authority to order railroad companies operating in Canada to comply with certain requirements related to unauthorized entry into locomotive cabs, directional controls on locomotives, the application of hand brakes to cars left unattended for more than one hour, setting of the automatic brake and independent brake on any locomotive attached to cars that is left

unattended for one hour or less, attendance related to locomotives attached to loaded tank cars transporting dangerous goods on main track, and the number of crew members assigned to a locomotive attached to loaded tank cars transporting dangerous goods on a main track or siding.

In addition, Transport Canada issued an accompanying order pursuant to paragraph 19(a)(1) of the Canadian Railway Safety Act directing railroad companies in Canada to formulate or revise certain railroad operating rules, respecting the safety and security of unattended locomotives, uncontrolled movements, and crew size requirements. The order provides that rules should be based on an assessment of safety and security risks, and shall at a minimum ensure that the cab(s) of unattended controlling locomotives are secure against unauthorized entry; ensure that the reversers of unattended locomotives are removed and secured; prevent uncontrolled movements of railway equipment by addressing the application of hand brakes; ensure the security of stationary railway equipment transporting dangerous goods; and provide for minimum operating crew requirements considering technology, length of train, speeds, classification of dangerous goods being transported, and other risk factors.

DOT is taking actions consistent with Transport Canada to ensure the safe transportation of products by rail in the United States, with a particular focus on certain hazardous materials that present an immediate danger for communities and the environment in the event of a train accident. Through this EO, FRA is addressing the immediate dangers that arise from unattended equipment that is left unsecured. Additionally, FRA and the Pipeline and Hazardous Materials Safety Administration (PHMSA) are issuing a joint Safety Advisory to railroads and commodity shippers detailing eight recommended actions the industry should take to better ensure the safe transport of hazardous materials. These recommendations include the following: reviewing the details and lessons learned from the Lac-Mégantic accident; reviewing crew staffing levels; removing and securing the train's "reverser" when unattended; a thorough review of all railroad operating procedures, testing and operating rules around securing a train; reviewing Transport Canada's directives to secure and safely operate a train; and conducting a system-wide assessment of security risks when a train is unattended and identifying mitigation efforts for those risks. Additionally, the Safety Advisory recommends testing and sampling of crude oil for proper classification for shipment, as well as a review of all shippers' and carriers safety and security plans. Finally, FRA is convening an emergency meeting of FRA's Railroad Safety Advisory Committee to begin the deliberative process with FRA's stakeholders, including railroad management, railroad labor, shippers, car owners, and others, as the agency considers recommendations in the Safety Advisory that should be made a part of its regulations.

Safety Concerns Arising Out of Lac- Mégantic Derailment

Generally, the transportation of hazardous materials by rail is extremely safe. The vast majority of hazardous materials shipped by rail each year arrive at their destinations safely and without incident. Indeed, in calendar year 2011, there were only 20 accidents in which a hazardous material was released out of approximately 2.2 million shipments of hazardous material transported by rail in the United States. However, the Lac-Mégantic incident demonstrates the substantial potential for danger that exists when an unattended train rolls away and derails resulting in the sudden release of hazardous materials into the environment. Although the Lac-Mégantic incident occurred in Canada, the freight railroad operating environment in Canada is similar to that in the United States, and a number of railroads operate in both countries.[a] Freight railroads in the United States also transport a substantial amount and variety of hazardous materials, including materials poisonous by inhalation (PIH), materials or toxic by inhalation (TIH), and explosive materials. Moreover, an increasing proportion of the hazardous materials being transported by rail is classified as flammable.[b]

The MMA train in the Lac-Mégantic incident was transporting 72 carloads of petroleum crude oil with five locomotives and a loaded box car. A similar type of train consist is commonly found on rail lines in the United States because crude oil is often transported in units of cars or by a unit train consisting virtually entirely of tank cars containing crude oil. Crude oil is often classified by an offeror as a flammable liquid; per PHMSA's Hazmat Regulations (HMR), however, its packing group can be I, II, or III depending on the blend of constituent crude oils. According to the Association of American Railroads (AAR), crude oil traffic increased 443 percent in the United States between 2005 and 2012. Much of this growth has occurred because of developments in North Dakota, as the Bakken formation in the Williston Basin has become a major source for oil production in the United States. Texas also has contributed to the growth of crude oil shipments by rail. As a result, carloads of crude oil increased from approximately 65,600 in 2011 to approximately 257,450 in 2012. The Bakken crude oil from North Dakota is primarily shipped via rail to refineries located near the U.S. Gulf Coast–particularly in Texas and Louisiana–or also to pipeline connections, most notably to connections located in Oklahoma. Crude oil is also shipped via rail to refineries on the East Coast and, to a lesser extent, refineries in other regions of the U.S.[c]

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[a] As an example, MMA operates both in the United States and Canada, with approximately 510 miles of track in Maine, Vermont, and Quebec, and the tank cars transporting the crude oil that derailed in Lac-Mégantic originated in the Williston Basin of North Dakota.

[b] PHMSA prescribes a comprehensive regulatory safety system that categorizes hazardous materials into nine hazard classes based on the type of hazards presented by the materials. See 49 CFR Parts 172 and 173. Under PHMSA's regulations, crude oil, in most forms, meets the definition of a "Class 3" hazardous material, which signifies that it is a flammable liquid. Ethanol, discussed below, also is a Class 3 hazardous material. PIH materials, referenced above, include "Class 2 and Division 2.3" gases and "Class 6, and Division 6.1" poisons other than gases. Chlorine gas and anhydrous ammonia are two examples of PIH materials (Division 2.3) that are commonly transported by rail.

[c] See AAR's May 2013 paper "Moving Crude Oil by Rail" available online at: https://www.aar.org/keyissues/Documents/Background-Papers/Crude-oil-by-rail.pdf.

All indications from the U.S. Energy Information Administration (EIA) within the U.S. Department of Energy are that rail export capacity for Bakken crude oil from the Williston Basin will continue to expand to meet production.[d] Rail exports from the North Dakota region are forecast to increase over the next two years (as are pipeline exports). Much of the near-term growth in rail originations right now is a function of how quickly tank car manufacturers can produce new cars to meet the demand for tank cars, primarily for transporting Bakken crude oil. The rise in rail originations in crude oil is subject to changes in the number of tank cars available, price of crude oil, and overall production of crude oil in that region, and is also dependent on whether, or how quickly, additional pipeline export capacity from that region comes online. However, for the foreseeable future, all indications are for continued growth of rail originations of crude in that region as new tank car fleets come online to meet demand.

As demonstrated by the Lac-Mégantic derailment, in a catastrophic incident, crude oil is problematic when released because it is flammable. This risk is compounded because it is commonly shipped in large units. Similar dangers exist with other hazardous materials such as ethanol, which is another flammable liquid that is commonly transported by rail. More carloads of ethanol were transported via rail than any other hazardous material in 2012. Ethanol experienced an increase in traffic of 442 percent between 2005 and 2010. Although in 2012 the number of carloads dropped by 11 percent from 2010 levels, there were still approximately 366,000 carloads transported by rail. Since 2009, there have been at least four serious mainline derailments resulting in the breach of tank cars containing ethanol. While FRA recognizes that none of these four derailments resulted from a roll-away situation, they are instructive on the destructive potential of a derailment involving tank cars containing flammable products:

- On June 19, 2009, in Cherry Valley, IL, a Canadian National Railway train derailed 19 tank cars loaded with ethanol. Thirteen of the 19 derailed cars caught fire, and there were reports of explosions. One person died, and there were 9 reported injuries related to the fire. Additionally, approximately 600 residences were evacuated within a ½-mile radius of the derailment.

- On February 6, 2011, in Arcadia, OH, a Norfolk Southern Railway Co. (Norfolk Southern) train operating on single main track derailed 33 tank cars loaded with ethanol. The derailment caused a major fire and forced the evacuation of a one-mile radius around the derailment

- On July 11, 2012, in Columbus, OH, a Norfolk Southern train derailed while operating on main track. Thirteen tank cars containing ethanol derailed resulting

[d] See EIA reports "Bakken crude oil price differential to WTI narrows over last 14 months", available online at: http://www.eia.gov/todayinenergy/detail.cfm?id=10431; and "Rail delivery of U.S. oil and petroleum products continues to increase, but pace slows", available online at: http://www.eia.gov/todayinenergy/detail.cfm?id=12031.

in a fire and the evacuation of 100 people within a one-mile radius of the derailment.

- On August 5, 2012, in Plevna, MT, a BNSF Railway Co. train derailed 18 cars while en route from Baker, MT. Seventeen of the 18 cars were tank cars loaded with denatured alcohol, a form of ethanol. Five of the cars caught on fire resulting in explosions, the burning of surrounding property not within the railroad's right-of-way, and the evacuation of the immediate area.

Although these accidents were serious, their results had potential for more catastrophic outcomes. The catastrophic releases created the potential for additional deaths, injuries, property damage, and environmental damage.

There are other hazardous materials that have similar potential for catastrophic danger. For example, accidents involving trains transporting other hazardous materials, including PIH materials, such as chlorine and anhydrous ammonia, can also result in serious consequences as evidenced by the following accidents:

- On July 18, 2001, 11 of 60 cars in a CSX Transportation, Inc. freight train derailed while passing through the Howard Street Tunnel in downtown Baltimore, MD. The train included 8 tank cars loaded with hazardous material; 4 of these were among the cars that derailed. A leak in a tank car containing tripropylene resulted in a chemical fire. A break in a water main above the tunnel flooded both the tunnel and the streets above it, resulting in the tunnel collapsing.

- On January 18, 2002, a Canadian Pacific Railway train containing 15 tank cars of anhydrous ammonia derailed half a mile from the city limits of Minot, ND, due to a breaking of the rail at a joint. Five of these tank cars ruptured catastrophically, resulting in an ammonia vapor that spread 5 miles downwind over an area where 11,600 people lived. The accident caused one death, 11 serious injuries, and 322 minor injuries. Environmental cleanup costs reported to the National Transportation Safety Board (NTSB) were $8 million.

- On June 28, 2004, near Macdona, TX, a Union Pacific Railroad Company train passed a stop signal and collided with a BNSF train. A chlorine car was punctured and the chlorine gas that was released killed three and injured 32.

- On January 6, 2005, in Graniteville, SC, a Norfolk Southern train collided with another Norfolk Southern train that was parked on a customer side track, derailing both locomotives and 16 cars of the moving train. The accident was caused by a misaligned switch. Three tank cars containing chlorine derailed, one of which was punctured. The resulting chlorine exposure caused 9 deaths, approximately 554 people were taken to local hospitals, and an additional 5,400

people within a one-mile radius of the site were evacuated by law enforcement personnel. FRA's analysis of the total cost of the accident was $126 million, including fatalities, injuries, evacuation costs, property damage, environmental cleanup, and track out of service.

While train accidents involving hazardous materials are caused by variety of factors, nearly one-half of all accidents are related to railroad human factors or equipment defects. FRA's data show that since 2009, human factors have been the most common cause of reportable train accidents. Based on FRA's accident reporting data for the period from 2009 through 2012, 35.7 percent of train accidents were human factor-caused. With regard to the securement of unattended equipment, specifically, FRA accident data indicate that approximately 8.5 percent of human factor-caused train accidents from calendar year 2011 until April 2013 were the result of improper securement.

Authority to enforce Federal railroad safety laws has been delegated by the Secretary of Transportation to the Administrator of FRA. 49 CFR 1.89. Railroads are subject to FRA's safety jurisdiction under the Federal railroad safety laws. 49 U.S.C. 20101, 20103. FRA is authorized to issue emergency orders where an unsafe condition or practice "causes an emergency situation involving a hazard of death, personal injury, or significant harm to the environment." 49 U.S.C. 20104. These orders may immediately impose "restrictions and prohibitions . . . that may be necessary to abate the situation." Id.

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

This is a request for regular clearance of a previously approved collection under Emergency Clearance Processing. The collection of information is used and will be used by FRA to ensure that railroads and their employees fulfill the requirements that are set out in Emergency Order 28 (EO 28). Specifically, FRA uses and will use the information collected to verify that railroads develop, adopt, and comply with a plan that identifies specific locations and circumstances when a train or vehicle transporting the type and quantity of hazardous materials described in Appendix A of this Emergency Order shall be left unattended on a mainline track or mainline siding outside of a yard or terminal. FRA carefully monitors and will monitor such plans, and if FRA determines that adequate justification is not provided, the railroad must ensure that trains and equipment are attended until appropriate modifications to the plan are completed and approved by FRA. FRA believes that it is essential for safety that unattended trains spelled out in the railroads' plans are fully secured to prevent a tragedy similar to the Lac-Mégantic derailment or an even worse accident/ incident from occurring here in the United States

FRA uses and will use the collection of information to ensure that railroads develop a process for employees responsible for securing unattended trains or vehicles transporting EO 28 Appendix A materials on a mainline track or a mainline siding outside of a yard or

terminal to communicate to the train dispatcher the number of hand brakes applied, the tonnage and length of the train or vehicle, the grade and terrain features of the track, any relevant weather conditions, and the type of equipment being secured. The dispatcher is then required to record the information provided by the employee, and train dispatcher or qualified railroad employee must verify and confirm that the securement meets the railroad's requirements. Under this requirement, the controlling locomotive cab must be locked or the reverser on the controlling locomotive must be removed and secured. FRA inspectors use and will use the information to be collected to verify that dispatchers keep records of the information communicated to them by the railroad employee. These required records will be extremely helpful to FRA investigators in the event of an accident/incident involving an unattended train. Railroad employees use and will use the verification and confirmation information to make sure that necessary and employer required measures are used to secure unattended trains.

FRA uses and will use the proposed collection of information to confirm that railroads review and verify and adjust, as necessary, existing procedures and processes related to the number of hand brakes to be set on all unattended trains and equipment and must ensure the means of verifying that the number is appropriate. This information is used and will be used by railroads to carefully evaluate and change, if necessary, the measures they put in place for their employees to adequately secure unattended trains via hand brakes.

FRA uses and will also use the collection of information to ensure that railroads implement operating rules and practices requiring the discussion of securement among crewmembers and other involved railroad employees before engaging in any job that will impact or require the securement of any train or vehicle on a mainline track or a siding in the course of the work being performed. This job briefing requirement is used/will be used by railroad employees to discuss the equipment that is impacted, the responsibilities of each employee involved in the securement of a train or vehicle, the number of hand brakes that will be required to secure the affected equipment, the process for ensuring that securement is sufficient, which train crewmember will be responsible for contacting the dispatchers, how the verification will be determined, and any other relevant factors affecting securement.

The collection of information is used/will be used by FRA to verify that railroads develop procedures to ensure that a qualified railroad employee inspects all equipment that any emergency responder has been on, under, or between for proper securement before the rail equipment or train is left unattended. On rare occasions, there may be situations where an emergency responder accesses railroad equipment without the knowledge of the railroad. The information collected will take that type of situation into account, and will be used by railroads to ascertain that railroad equipment is still properly secured after an emergency responder has been on, under, or between such equipment and, if not properly secured, to take necessary steps to make such equipment properly secured before leaving it unattended.

Finally, all affected railroad employees must receive a copy of EO 28. Railroad employees will use this information to fully apprise themselves of the Emergency Order's content and clear up any questions/concerns that they may have regarding implementing its requirements.

3. Extent of automated information collection.

FRA strongly endorses and highly encourages the use of the latest information technology, wherever feasible, by the railroad industry to reduce burden. With respect to recording the securement information provided by train crews to the dispatcher, FRA has provided railroads with flexibility to determine the method for recording such data as long as the records are readily available to FRA personnel upon request. Thus, an electronic option is available. Some railroads may choose to make paper records, while others may elect to create electronic records. FRA also recognizes that some smaller railroads may not have employee-manned train dispatching services. In such a circumstance, FRA acknowledges that a voice recording system would be fine.

Since EO 28 went into effect last year, all railroads have already created/developed required plans identifying specific locations and circumstances where trains or vehicles transporting the type and quantity of hazardous materials described in EO 28 Appendix A may be left unattended. Railroads have also already developed processes for securing unattended trains transporting Appendix A materials on mainline track or mainline siding outside of a yard or terminal. These have been done electronically. Communication of the required information to train dispatchers by railroad employees responsible for securing trains and vehicles transporting Appendix A materials is done by radio or telephone.

Further, FRA estimates that 75 percent of the records required to be kept by dispatchers will kept electronically or by audio tape and that 50 percent of the required confirmations and verifications that train or vehicle securement meets the railroad's requirements will be made by telephone or local radio. FRA believes that 50 percent of the revisions to railroads' existing procedures and processes related to the number of hand brakes to be set on all unattended trains and equipment will be done electronically, and that all revisions to railroad operating rules and practices requiring the job briefing of securement for any job that will impact or require the securement of any train or vehicle in the course of work being will be done electronically. All copies of EO 28 were distributed electronically by railroads to their employees. Thus, less than one (1) percent of all responses will be made or kept electronically by railroads.

Note: The overwhelming majority of responses – 99.7 percent -- pertains to the securement job briefings requirement, and will be done face-to-face by railroad employees. Thus, they do not lend themselves to the use of advanced information technology.

4. Efforts to identify duplication.

The proposed collection of information pertains to railroad workplace safety, specifically to the necessity of fulfilling certain requirements to properly secure unattended trains transporting EO 28 Appendix A materials.

This information to our knowledge is not duplicated anywhere.

5. Efforts to minimize the burden on small businesses.

FRA does not intend to apply EO 28 to a railroad that operates only on track inside an installation which is not part of the general railroad system of transportation (i.e., plant railroads) when operating on track that is considered within the installation that is not part of the general system. FRA has outlined its policy towards plant railroads in its "Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws." See 49 CFR 209, App. A. Pursuant to that policy, under certain circumstances, if a plant railroad leases track immediately adjacent to its plant from a general system railroad assuming certain conditions are met (i.e., the lease provides for, and actual practice entails, the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant), the lease will remove the plant railroad's operations on that trackage from the general system for purposes of FRA's regulations.

FRA intends to utilize this statement of agency policy in applying the requirements of EO 28. Thus, the provisions of EO 28 do not apply to a plant railroad's operation within its own facility or on track immediately adjacent to its facility when the policy noted above is applicable to the adjacent track, unless that track is part of a general system railroad's mainline track or mainline siding. In other words, EO 28 would apply to a plant railroad if it operated on the general system by positioning cars or conducting other operations on mainline track or mainline siding outside of a yard or terminal. Trains or other equipment on these tracks containing the minimum quantities of Appendix A Materials must be attended unless, in accordance with the Order, the railroad adopts and complies with a plan that identifies the specific locations and circumstances for which it is safe and suitable for leaving such equipment unattended. Further, if any such train or equipment is left unattended, the equipment must be secured as required by EO 28.

Generally, EO 28 does not apply to passenger rail vehicles or passenger rail operations. FRA understands, however, that there are situations where a railroad engaged in passenger service "hosts" a freight railroad that is transporting freight over the mainline of a railroad engaged in passenger service. The requirements in EO 28 do apply to these freight operations while traveling over a rail line owned or operated by a railroad engaged in passenger service. In these situations, the host passenger railroad would need a plan in

place to address the requirements of EO 28. The host passenger railroad may adopt the plan of the freight railroad operating over its line if the host passenger railroad makes a determination that the freight railroad's plan is acceptable and suitable for the rail line being used. Additionally, EO 28 requirement Nos. 3, 4, and 5 would apply to work trains and other maintenance-of-way trains operated by passenger railroads. Thus, passenger railroads should be reviewing their existing securement plans and procedures related to these types of operations to ensure these requirements are addressed.

Approximately 75 percent of the estimated 655 freight railroads will be affected by EO 28's requirements. The great majority of these railroads are small railroads. However, because 85 percent of the estimated burden (or 195,000 hours of the estimated total burden of 229,643 hours) pertains to verbal job securement briefings, it is estimated that this collection of information will not have a significant impact on a substantial number of small entities.

6. Impact of less frequent collection of information.

If this information were not collected, rail safety in this country would be considerably jeopardized. In particular, without this collection of information, there would likely be increased numbers of train derailments, presenting an immediate hazard of death and personal injury to railroad employees and the general public or significant harm to the environment, relating to the securement of unattended trains or equipment. The requirements of EO 28 are intended to prevent a catastrophic accident like the one that occurred in Lac-Mégantic, Quebec, Canada, or possibly an even worse accident, from occurring here in the United States. The collection of information included under EO 28 is aimed at helping to ensure that railroads operating on the general system of transportation implement additional processes and procedures to help make sure that unattended trains and vehicles on main track or sidings are properly secured against unintended movement.

Without the collection of information necessitated by this Emergency Order, FRA would have no way to enforce compliance with the requirements of EO 28. Specifically, without the collection of information under Finding number 1 of the Order, it is unlikely that railroads would have taken the time to fully develop detailed plans spelling out the specific circumstances and locations where trains or vehicles transporting hazardous materials of the type and quantity described in Appendix A of the Order shall be left unattended on a mainline track or mainline siding outside of a yard or terminal. Without such detailed plans and the careful thought and analysis they require of railroad officials, or revised detailed plans if deemed necessary by FRA, there would be greater risk that unattended trains might not be properly secured by railroad employees under unusual or atypical circumstances or in certain critical locations, thereby leading to derailments that could result multiple injuries, deaths, and damage to the environment, particularly if flammable or hazardous materials were present on the derailed train or vehicle.

Without the information collected under Finding number 2 of the Order, it unlikely that railroads would have devoted all the necessary resources to develop well thought out processes for securing unattended trains or vehicles transporting Appendix A type materials on mainline track or mainline siding outside of a yard or terminal. Finding number 2 of the Order served to compel railroad officials to carefully examine and evaluate the processes they use to secure unattended trains. Heightened awareness and attention to developing effective and necessary processes serve to reduce risk and increase safety relating to unattended trains. This heightened awareness and attention particularly applies to the requirement under the Order's item Finding number 2 mandating that railroad employees responsible for securing trains and vehicles transporting Appendix A materials communicate to the train dispatcher the number of hand brakes applied, the tonnage and length of the train or vehicle, the grade and terrain features of the track, any relevant weather conditions, and the type of equipment being secured. Additionally, dispatchers must record the information provided, and train dispatchers or other qualified railroad employees must verify and confirm with the train crew that the securement meets the railroad's requirements. The redundancy that these measures in Finding number 2 provide will decrease the likelihood of human error that could result in a derailment. Without the information collected under Finding number 2 of the Order, FRA would not have access to a critically important record in the even there is an accident or derailment. FRA would have to take more time and devote more manpower to discovering information that now must be recorded by the dispatcher. These records then will aid FRA investigators and enhance the effectiveness of any accident investigation involving an unattended train.

Without the information collected under Finding number 3 of the Order, it is unlikely that railroads would review and verify and adjust, as necessary, existing procedures and processes related to the number of hand brakes to be set on all unattended trains and equipment. Under this requirement, railroads must ensure the means of verifying that number is appropriate. Without this requirement, the status quo concerning the existing procedures and processes related to the number of hand brakes that are currently set on all unattended trains might be deemed sufficient by railroads. This may or may not be the case in reality. This requirement compels railroads to take a second or more careful look at their current procedures and processes and make any necessary changes. This can only enhance rail safety and reduce unnecessary or preventable accidents, which come with a high price indeed that includes injuries, fatalities, property damage and, in certain instances, significant damage to the environment or local communities.

Without the information collected under Finding number 4 of the Order, it is unlikely that all railroads would implement operating rules and practices requiring the job briefing of securement for any job that will impact or require the securement of any train or vehicle in the course of work being performed. There may be some railroads that currently require in their operating rules for their employees to conduct securement job briefings for all unattended trains. FRA does not believe so. Now all affected railroads must

implement operating rules and practices requiring such securement job briefings by their employees for all unattended trains. Railroad employees will now be required to carry out these securement job briefings. FRA expects much useful information will be conveyed in these daily job briefings, including the equipment that is impacted, the responsibilities of each employee involved in the securement of a train or vehicle, the number of hand brakes that will be required to secure the affected equipment, the process for ensuring that securement is sufficient, which train crewmember will be responsible for contacting the dispatcher, and any other relevant factors affecting securement. These job briefings will serve to enhance rail safety through the exchange of essential information and reduce the likelihood of a human factor caused accident involving an unattended train.

Without the information collected under Finding number 5 of the Order, it is unlikely that railroads would have devoted the resources to develop procedures to ensure that a qualified railroad employee inspects all equipment that any emergency responder has been on, under, or between for proper securement before the train or vehicle is left unattended. FRA understands that, on rare occasions, there may be situations where an emergency responder accesses railroad equipment without the knowledge of the railroad. This requirement ensures that railroads take that type of situation into account so that a qualified railroad employee will inspect equipment after it has been accessed by an emergency responder in any circumstance whether known or unknown to the railroad. These extra inspections will enhance safety and reduce the likelihood of a train or vehicle left unattended from becoming unsecured and derailing.

Finally, without the information collected under Finding number 6 of the Order, railroad employees might not have received a copy of EO 28. As a result of this requirement, railroad employees have a convenient and readily available copy of EO 28 that they can consult first-hand regarding the content and specific requirements of the Order. This ready reference serves to enhance rail safety by reducing a uncertainty or confusion about what the Order entails and what it requires them to do.

In sum, this collection of information assists FRA in its primary mission of promoting and enhancing rail safety throughout the United States.

7. Special circumstances.

EO 28 was published in the **Federal Register** on August 7, 2013, (see 78 FR 48218). Upon issuance, it required affected railroads to immediately initiate steps to implement this Emergency Order and required affected railroad to complete implementation no later than **September 1, 2013**. Thus, affected railroads had less than 30 days to fulfill the information collection requirements mandated in Items 1-6 of this Emergency Order.

All other information collection requirements relating to E.O. 28 are in compliance with this section.

8. Compliance with 5 CFR 1320.8.

In accordance with the Paperwork Reduction Act of 1995, Pub.L. No.104-13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. §§ 3501-3520), and its implementing regulations, 5 CFR Part 1320, FRA published a notice in the Federal Register on September 25, 2013, soliciting public comments on these information collection requirements. *See* 78 FR 59086. FRA received no comments in response to this notice.

9. Payments or gifts to respondents.

There are no monetary payments or gifts made to respondents regarding the proposed information collection requirements resulting from this emergency order.

10. Assurance of confidentiality.

No assurances of confidentiality were made by the Federal Railroad Administration (FRA).

Information collected is not of a private nature.

11. Justification for any questions of a sensitive nature.

There are no questions of a sensitive or private nature involving the proposed collection of information associated with E.O. 26.

12. Estimate of burden hours for information collected.

Note: Based on the latest available information in the agency's database, FRA estimates that approximately 491 railroads (75% of the 6555 Class III's) and approximately 100,000 railroad operating employees (90,000 train and engine employees and 10,000 dispatchers) will be affected by EO 28.

FRA Emergency Order No. 28, Notice No. 1

(I) Finding and Order

1. No train or vehicles transporting the type and quantity of hazardous materials described in Appendix A (Appendix A Materials) shall be left unattended on a mainline track or mainline siding outside of a yard or terminal until the railroad develops, adopts, complies with and makes available to FRA upon request a plan that identifies specific locations and circumstances when such trains or vehicles may be left unattended. The plan shall contain a sufficient safety justification for any determination allowing such trains or vehicles to be unattended. FRA will monitor such plans and if FRA determines that adequate justification is not provided, the railroad shall ensure that trains and equipment are attended until appropriate modifications to the plan are completed. FRA does not intend to grant approval to any plan. Railroads shall notify FRA when the railroad has developed a plan under this provision prior to the railroad operating pursuant to the plan.

Railroads have already completed the plans required under this first Order finding. Consequently, there is no additional burden associated with this requirement.

Additionally, FRA estimates that there are approximately 50 plans will need to be revised under the above requirement. It is estimated that it will take each railroad approximately 10 hours to complete its plan revision. Total annual burden for this requirement is 500 hours.

	Respondent Universe: 655 Railroads
Burden time per response:	10 hours
Frequency of Response:	On occasion
Annual number of Responses:	50 revised plans
Annual Burden:	500 hours
Calculation:	50 revised plans x 10 hrs. = 500 hours

Furthermore, FRA estimates that approximately 50 notifications will be sent to FRA when railroads have developed a plan under the provision above prior to the railroad operating pursuant to the plan. It is estimated that it will take approximately 30 minutes to complete each notification. Total annual burden for this requirement is 25 hours.

	Respondent Universe: 655 Railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	50 notifications
Annual Burden:	25 hours
Calculation:	50 notifications x 30 min. = 25 hours

2. Railroads shall develop processes for securing unattended trains or vehicles transporting Appendix A Materials on a mainline track or mainline siding outside of a yard or terminal if permitted by the railroad's plan required under paragraph (1) of this order that contains the following requirements:

a. The controlling locomotive cab must be locked or the reverser on the controlling locomotive must be removed and secured.

Railroads have already completed the processes required under this second Order finding. Consequently, there is no additional burden associated with this requirement.

b. Employees who are responsible for securing trains and vehicles transporting Appendix A Materials must communicate to the train dispatcher the number of hand brakes applied, the tonnage and length of the train or vehicle, the grade and terrain features of the track, any relevant weather conditions, and the type of equipment being secured; train dispatchers must record the information provided; and train dispatchers or other qualified railroad employees must verify and confirm with the train crew that the securement meets the railroad's requirements.

FRA estimates that there will be an average of 100 trains/vehicles per day that will be transporting Appendix A materials. On average, these trains will operate approximately 260 days per year. Thus, FRA estimates that approximately 26,000 communications will be made to dispatchers by train and engine employees under the above requirement. It is estimated that it will take approximately 30 seconds to complete each radio communication. Total annual burden for this requirement is 217 hours.

	Respondent Universe: 100,000 RR employees
Burden time per response:	30 seconds
Frequency of Response:	On occasion
Annual number of Responses:	26,000 communications
Annual Burden:	217 hours

Calculation: 26,000communications x 30 sec. = 217 hours

Additionally, FRA estimates that approximately 26,000 records will be kept by train dispatchers under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each record. Total annual burden for this requirement is 867 hours.

Respondent Universe: 655 Railroads

Burden time per response: 2 minutes
Frequency of Response: On occasion
Annual number of Responses: 26,000 records
Annual Burden: 867 hours

Calculation: 26,000 records x 2 min. = 87 hours

Furthermore, FRA estimates that train dispatchers or other qualified employees will make approximately 26,000 verifications and confirmations with train crews that the securement meets the railroad's requirements under the above provision. It is estimated that each verification and confirmation with the train crew will take approximately two (2) minutes to complete each record. Total annual burden for this requirement is 867 hours.

Respondent Universe: 655 Railroads

Burden time per response: 2 minutes
Frequency of Response: On occasion
Annual number of Responses: 26,000 verifications and confirmations with train crews
Annual Burden: 867 hours

Calculation: 26,000 verifications/confirmations w/train crews x 2 min. = 867 hours

3. Railroads shall review and verify, and adjust, as necessary, existing procedures and processes related to the number of hand brakes to be set on all unattended trains and equipment and shall ensure the means of verifying that number is appropriate.
FRA estimates that approximately 491 procedures and processes will be revised by railroads after review and verification under the above provision. It is estimated that it will take approximately six (6) hours to complete each review/verification of existing procedures and processes and to make necessary revisions. Total annual burden for this requirement is 2,946 hours.

Respondent Universe: 655 Railroads

Burden time per response: 6 hours
Frequency of Response: On occasion
Annual number of Responses: 491 revised procedures/processes
Annual Burden: 2,946 hours

Calculation: 491 revised procedures/processes x 6 hrs. = 2,946 hours

4. Railroads shall implement operating rules and practices requiring the job briefing of securement for any job that will impact or require the securement of any train or vehicle in the course of the work being performed.

FRA estimates that approximately 491 operating rules and practices will be revised to require the job briefing of securement for any job that will impact or require the securement of any train or vehicle in the course of the work being performed under the above provision. It is estimated that it will take approximately two (2) hours for each railroad to complete the revision of its operating rules and practices. Total annual burden for this requirement is 982 hours.

	Respondent Universe: 655 Railroads
Burden time per response:	2 hours
Frequency of Response:	One-time
Annual number of Responses:	491 revised operating rules and practices
Annual Burden:	982 hours

Calculation: 491 revised operating rules/practices x 2 hrs. = 982 hours

Further, as noted earlier, trains run approximately 260 per year on average when not undergoing maintenance or repairs. Since there are approximately 90,000 railroad train and engine employees, FRA estimates that approximately 23,400,000 securement job briefings (90,000 employee briefings x 260 days p/yr.) will take place each year under the above requirement. It is estimated that it will take approximately 30 seconds to complete each securement job briefing. Total annual burden for this requirement is 195,000 hours.

	Respondent Universe: 100,000 Railroad Employees
Burden time per response:	30 seconds
Frequency of Response:	On occasion
Annual number of Responses:	23,400,000 securement job briefings
Annual Burden:	195,000 hours

Calculation: 23,400,000 securement job briefings x 30 sec. = 195,000 hours

5. Railroads shall develop procedures to ensure that a qualified railroad employee inspects all equipment that any emergency responder has been on, under, or between for proper securement before the train or vehicle is left unattended.

Railroads have already completed the procedures required under this fifth Order finding.

Consequently, there is no additional burden associated with this requirement.

Additionally, FRA estimates that approximately 1,000 inspections of equipment that any emergency responder has been on, under, or between for proper securement before the train or vehicle is left unattended will be made by qualified employees each year under the above requirement. It is estimated that it will take approximately four (4) hours to complete each inspection. Total annual burden for this requirement is 4,000 hours.

	Respondent Universe: 655 Railroads
Burden time per response:	4 hours
Frequency of Response:	On occasion
Annual number of Responses:	1,000 inspections
Annual Burden:	4,000 hours

Calculation: 1,000 inspections x 4 hrs. = 4,000 hours

6. Notice of this EO shall be provided to all employees affected by this EO.

Railroads have already provided a copy of EO 28 to all their employees. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is 205,404 hours (500 + 25 + 217 + 867 + 867 + 2,946 + 982 + 195,000 + 4,000).

(II) Relief

Petitions for special approval to take actions not in accordance with this EO may be submitted to the Associate Administrator for Railroad Safety/Chief Safety Officer (Associate Administrator), who shall be authorized to dispose of those requests without the necessity of amending this EO.

FRA estimates that it will receive zero (0) petitions under the above provision. Consequently, there is no burden associated with this requirement.

Total annual burden for this entire information collection is 205,404 hours.

13. Estimate of total annual costs to respondents.

Besides the cost outlined in the answer to question number 12 above, FRA does not anticipate any extra costs to respondents.

14. Estimate of Cost to Federal Government.

There is no extra cost to the Federal Government since FRA's safety inspectors will review required railroad documents during their routine duties.

15. <u>Explanation of program changes and adjustments</u>.

The total burden for this information collection submission has <u>decreased</u> by 1,775,729 hours from the previously approved submission. The change in burden is **due solely** to **adjustments**, which are listed in the following table:

Emerge Order Finding No.	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	FRA Burden Hours (This Submission)	Difference (plus/minus)
1 – Plan identifying locations and circumstances where trains or vehicles carrying Appendix A materials may be left unattended	491 plans 40 hours	0 plans 0 hours	19,640 hours	0 hours	--19,640 hours -- 491 resp.
2 a. Processes for securing unattended trains or vehicles carrying Appendix A materials	491 processes 60 minutes	0 processes 0 minutes	491 hours	0 hours	-- 491 hours -- 491 resp.
2 b. Train securement communications between train and engine employees	2,600 verbal communication 5 minutes	26,000 verbal communication 30 seconds	217 hours	217 hours	0 hours + 23,400 resp.
- Record of communications	2,600 records 2 minutes	26,000 records 2 minutes	87 hours	867 hours	+ 780 hours + 23,400 resp.
-Train dispatcher verification and confirmation with train crews of train securement	2,600 proofs/ verifications 2 minutes	26,000 proofs/ verifications 2 minutes	87 hours	867 hours	+ 780 hours + 23,400 resp.
3. Train Securement Job Briefings	23,400,000 briefings 5 minutes	23,400,000 briefings 30 seconds	1,950,000 hrs.	195,000 hours	-1,755,000 hrs. 0 responses
5. Procedures to ensure that a qualified railroad employee inspects all equipment that an emergency responder has been on, under, or	491 procedures 60 minutes	0 procedures 0 minutes	491 hours	0 hours	-- 491 hours -- 491 resp.

between for proper securement before train or vehicle is left unatteneded					
6. Copy of EO 28 to RR employees affected by this Order	100,000 copies 1 minute	0 copies 0 minutes	1,667 hours	0 hours	--1,667 hours -- 100,000 resp

Adjustment increases above amount to *1,560 hours* and *70,200 responses*, while **adjustment** decreases amount to *1,777,289 hours* and 101,473 *responses*.
The current OMB agency inventory for this information collection exhibits a total burden of 1, 981,133 hours, while the present submission reflects a total burden of 205,404 hours. Hence, there is a total decrease in burden of 1,775,729 hours.

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

16. Publication of results of data collection.

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

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, and will take necessary steps to obtain a regular OMB Clearance.

18. Exception to certification statement.

No exceptions are taken at this time.

Meeting Department of Transportation (DOT) Strategic Goals

This information collection supports the top DOT strategic goal, namely transportation safety. Specifically, this collection of information seeks to improve safety by imposing requirements that will serve to heighten awareness on the part of railroads and their employees regarding the perils of trains transporting hazardous materials that are left unattended and not properly secured. Without this raised awareness and full compliance with the requirements of EO 28 regarding all unattended trains or vehicles, more injuries, fatalities and property damage, and possibly harm to the environment, are likely to result from increased numbers of accidents/incidents. FRA believes EO 28 and its associated this collection of information will help prevent accidents similar to the catastrophic derailment that occurred in the town of Lac-Mégantic, Quebec, Canada, which resulted from a train left improperly unsecured. In a dangerous every day environment, attention to detail and adherence to proper operating practices and procedures is critical to ensuring safety for all. The collection of information included under EO 28 is aimed at helping to ensure that railroads operating on the general system of transportation implement additional processes and procedures to help make sure that unattended trains and vehicles on main track or sidings are properly secured against unintended movement.

Without the collection of information necessitated by this Emergency Order, FRA would have no way to enforce compliance with the requirements of EO 28. Specifically, without the collection of information under item number 1 of the Order, it is unlikely that railroads would take the time to develop detailed plans spelling out the specific circumstances and locations where trains or vehicles transporting hazardous materials of the type and quantity described in Appendix A of the Order shall be left unattended on a mainline track or mainline siding outside of a yard or terminal. Without such detailed plans and the careful thought and analysis they require of railroad officials, or revised detailed plans if deemed necessary by FRA, there would be greater risk that unattended trains might not be properly secured by railroad employees under unusual or atypical circumstances or in certain critical locations, thereby leading to derailments that could result multiple injuries, deaths, and damage to the environment, particularly if flammable or hazardous materials were present on the derailed train or vehicle.

Without the information collected under item number 2 of the Order, it unlikely that railroads would devote the necessary resources to develop well thought out processes for

securing unattended trains or vehicles transporting Appendix A type materials on mainline track or mainline siding outside of a yard or terminal. Item number 2 of the Order compels railroad officials to carefully examine and evaluate the processes they use to secure unattended trains. Heightened awareness and attention to developing effective and necessary processes will serve to reduce risk and increase safety relating to unattended trains. This heightened awareness and attention particularly applies to the requirement under the Order's item number 2 mandating that railroad employees responsible for securing trains and vehicles transporting Appendix A materials communicate to the train dispatcher the number of hand brakes applied, the tonnage and length of the train or vehicle, the grade and terrain features of the track, any relevant weather conditions, and the type of equipment being secured. Additionally, dispatchers must record the information provided, and train dispatchers or other qualified railroad employees must verify and confirm with the train crew that the securement meets the railroad's requirements. The redundancy that these measures in Item 2 will provide will decrease the likelihood of human error that could result in a derailment. Without the information collected under Item number 2 of the Order, FRA would not have access to a critically important record in the even there is an accident or derailment. FRA would have to take more time and devote more manpower to discovering information that now must be recorded by the dispatcher. These records then will aid FRA investigators and enhance the effectiveness of any accident investigation involving an unattended train.

Without the information collected under Item number 3 of the Order, it is unlikely that railroads would review and verify and adjust, as necessary, existing procedures and processes related to the number of hand brakes to be set on all unattended trains and equipment. Under this requirement, railroads must ensure the means of verifying that number is appropriate. Without this requirement, the status quo concerning the existing procedures and processes related to the number of hand brakes that are currently set on all unattended trains might be deemed sufficient by railroads. This may or may not be the case in reality. This requirement compels railroads to take a second or more careful look at their current procedures and processes and make any necessary changes. This can only enhance rail safety and reduce unnecessary or preventable accidents, which come with a high price indeed that includes injuries, fatalities, property damage and, in certain instances, significant damage to the environment or local communities.

Without the information collected under Item number 4 of the Order, it is unlikely that all railroads would implement operating rules and practices requiring the job briefing of securement for any job that will impact or require the securement of any train or vehicle in the course of work being performed. There may be some railroads that currently require in their operating rules for their employees to conduct securement job briefings for all unattended trains. FRA does not believe so. Now all affected railroads must implement operating rules and practices requiring such securement job briefings by their employees for all unattended trains. Railroad employees will now be required to carry out these securement job briefings. FRA expects much useful information will be conveyed in these daily job briefings, including the equipment that is impacted, the

responsibilities of each employee involved in the securement of a train or vehicle, the number of hand brakes that will be required to secure the affected equipment, the process for ensuring that securement is sufficient, which train crewmember will be responsible for contacting the dispatcher, and any other relevant factors affecting securement. These job briefings will serve to enhance rail safety through the exchange of essential information and reduce the likelihood of a human factor caused accident involving an unattended train.

Without the information collected under Item number 5 of the Order, it is unlikely that railroads will develop procedures to ensure that a qualified railroad employee inspects all equipment that any emergency responder has been on, under, or between for proper securement before the train or vehicle is left unattended. FRA understands that, on rare occasions, there may be situations where an emergency responder accesses railroad equipment without the knowledge of the railroad. This requirement ensures that railroads will now take that type of situation into account so that a qualified railroad employee will inspect equipment after it has been accessed by an emergency responder in any circumstance whether known or unknown to the railroad. These extra inspections will enhance will enhance safety and reduce the likelihood of a train or vehicle left unattended from becoming unsecured and derailing.

Finally, without the information collected under Item number 6 of the Order, railroad employees might not receive a copy of EO 28. As a result of this requirement, all affected railroads must provide a copy of EO 28 to their employees. Railroad employees will have a convenient and readily available copy of EO 28 that they can consult to learn first-hand the content and specific requirements of the Order. This ready reference will enhance safety by reducing a uncertainty or confusion about what the Order entails and requires them to do.

In sum, this collection of information enhances rail safety and assists FRA and DOT in their primary missions of rail and transportation safety.

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