

**FEDERAL RAILROAD ADMINISTRATION
ALCOHOL AND DRUG REGULATIONS (49 CFR 219)
SUPPORTING JUSTIFICATION
RIN No. 2130-AC10; OMB No. 2130-0526**

Summary

- This information collection submission is a revision to the previously approved collection approved by OMB on July 22, 2012, and which expires on July 31, 2015.
- FRA is publishing a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** titled Control of Alcohol and Drug Use: Coverage of Maintenance of Way Employees, Retrospective Review-Based Amendments on July 28, 2014. See 79 FR 43830.
- The total number of burden **hours requested** for this submission is **21,290 hours**.
- The total number of burden **hours previously approved** for this information collection is **31,797 hours**.
- The change in burden from the last approved submission amounts to a decrease of **10,507 hours**.
- Total **program changes** decreased the burden by **22,969 hours** (*see the answer to question 15 below for details*).
- Total **adjustments** amount to/increased the burden by **12,462 hours** (*see the answer to question 15 below for details*).
- Total number of **responses requested** for this submission is **301,549 responses**.
- Total number of **responses previously approved** for this information collection is **133,818 responses**. Total number of **responses** has increased by **167,731**.
- ****The answer to question number 12 below itemizes the hourly burden associated with each requirement of this proposed rule (see pp. 14-85).**

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

FRA has regulated the use of alcohol and drugs by certain railroad employees since 1985, when it issued a final rule establishing alcohol and drug use control regulations under 49 CFR Part 219 (Part 219). See 50 FR 31508, Aug. 2, 1985. The rule contained certain prohibitions on the use and possession of alcohol and drugs by covered employees, who

were defined as employees who had been assigned to perform covered service subject to the Hours of Service Act (45 U.S.C. 61-64b).¹ See id. at 31569. The rule also contained requirements for post-accident toxicological (PAT) testing, discretionary reasonable cause and reasonable suspicion testing, co-worker and voluntary referral policies, pre-employment drug testing, and reporting. See id. at 31508. In 1988, FRA amended part 219 to require random drug testing of covered employees. See 53 FR 47102, Nov. 21, 1988. In 1994, FRA again amended part 219 to require random alcohol testing and reasonable suspicion testing, in conformance with the requirements of the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act) (reasonable cause testing remained discretionary). See 59 FR 7448, Feb. 15, 1994. FRA has not fundamentally revised part 219 since 1994.²

The Omnibus Act required the Department of Transportation (DOT or Department) to establish Federal workplace testing procedures for transportation employees. The Department's Procedures for Transportation Workplace Drug and Alcohol Testing Program are contained in 49 CFR part 40 (part 40), which is published by the DOT Office of the Secretary (OST). Only the DOT Office of Drug and Alcohol Policy and Compliance (ODAPC) and the DOT Office of General Counsel (OGC) are authorized to interpret Part 40 requirements. See 49 CFR 40.5.³ Part 40 testing requirements and procedures apply to any drug or alcohol test required by DOT agency regulations, except for FRA's PAT testing and certain testing conducted pursuant to DOT-mandated peer prevention programs (including FRA's peer prevention program currently required by subpart E of part 219). See § 219.701. FRA's PAT testing program pre-dates the enactment of the Omnibus Act, which specifically exempts the program from part 40. See § 40.1(c).

In response to Congress' mandate in the RSIA, FRA is proposing to expand the scope of part 219 to cover employees who perform MOW activities. As used in this NPRM, the term "employee" includes employees, volunteers, and probationary employees of railroads and contractors (defined to include subcontractors) to railroads. In addition, because MOW employees are not subject to the HOS laws, FRA is proposing a new term-of-art – "regulated service" – that would encompass both covered service and MOW activities. Performance of regulated service would make an individual a "regulated employee" subject to part 219, regardless of whether the individual is employed by a railroad or a contractor to a railroad. This proposed expansion of Part 219 would both comply with the RSIA mandate and respond in part to NTSB Recommendation R-08-07

¹ The hours of service (HOS) laws are currently found at 49 U.S.C. Ch. 211.

² In 2004, FRA expanded the scope of part 219 to cover foreign railroad foreign-based employees who perform train or dispatching service in the United States. See 69 FR 19270, Apr. 12, 2004. In 2013, FRA added routine tests for certain non-controlled substances to its PAT testing program. See 78 FR 14217, Mar. 5, 2013.

³ Unless otherwise specified, all references to CFR sections and parts in this document refer to Title 49 of the CFR.

(Apr. 10, 2008), available at http://www.nts.gov/doclib/reclatters/2008/R08_05_07.pdf. In Recommendation R-08-07, the NTSB advised FRA to expand its alcohol and drug regulations to all railroad employees and contractors who perform FRA safety-sensitive functions as defined by §§ 209.301 and 209.303 (the regulations setting forth the purpose, scope and coverage of FRA's procedures for disqualifying individuals from performing certain safety-sensitive functions).

FRA is also proposing to amend Part 219 in response to NTSB Recommendation R-01-17, available at http://www.nts.gov/doclib/reclatters/2001/R01_17.pdf. Recommendation R-01-17 advised FRA to limit the current blanket exception for PAT testing after highway-rail grade crossing accidents to allow PAT testing when an accident was likely due to human factors or involved a regulated employee fatality.

This NPRM also proposes amendments based on a retrospective review of Part 219, which FRA has been implementing for more than 25 years. These amendments, which reflect practical lessons FRA has learned, are necessary to update and simplify the regulation's requirements.

Currently, Part 219 applies only to covered employees, defined in § 219.5 as individuals who perform covered service subject to the HOS laws at 49 U.S.C. 21103, 21104, or 21105. In Section 412 of the RSIA (Section 412), Congress directed the Secretary to "revise the regulations prescribed under section 20140 of title 49, United States Code, to cover all employees of railroad carriers and contractors or subcontractors to railroad carriers who perform maintenance-of-way activities." The Secretary has delegated this responsibility to the FRA Administrator. See 49 CFR 1.89(b); see also 49 U.S.C. 103(g).

The term "employee," as used in this NPRM, includes employees, contractors, subcontractors, volunteers, and probationary employees. Accordingly, the term "MOW employee" includes any individual performing MOW activities for a railroad, whether employed directly by the railroad, employed by a contractor or subcontractor to the railroad, or a volunteer for the railroad. MOW employees are at a high safety risk because they work along railroad track and roadbed and may suffer injury or death as a result of being struck by trains or other on-track or fouling equipment. Additionally, MOW employees directly affect the safety of railroad operations because they work on or near railroad tracks, operate on-track or fouling equipment, and assist in directing trains through work areas. The purpose of expanding Part 219 to include MOW employees is to improve safety by reducing the rate of alcohol and drug use among the MOW employee population.

On January 9, 2007, a southbound Massachusetts Bay Transit Administration (MBTA) passenger train, operated by the Massachusetts Bay Commuter Railroad (MBCR), struck a track maintenance vehicle that was on the track near Woburn, Massachusetts. See NTSB, RAILROAD ACCIDENT REPORT: COLLISION OF MASSACHUSETTS BAY TRANSPORTATION AUTHORITY TRAIN 322 AND TRACK MAINTENANCE EQUIPMENT NEAR

WOBURN, MASSACHUSETTS, NTSB/RAR-08/01, PB2008-916301, Mar. 18, 2008, at 1, [available at http://www.nts.gov/doclib/reports/2008/RAR0801.pdf](http://www.nts.gov/doclib/reports/2008/RAR0801.pdf) (“WOBURN REPORT”). At the time of the collision, six MBCR MOW employees were replacing crossties and were working on or near the track maintenance vehicle. The train rounded a curve at 62 mph and struck the track maintenance vehicle. The MOW workers had only about 15 seconds warning before the collision. *Id.* at 17. Two of the MBCR employees, a track foreman and a track worker/welder, were killed, and two were seriously injured. The NTSB investigated the collision and determined that one of its probable causes was the failure of the MOW crew to apply a shunting device that would have provided redundant signal protection for their track segment.⁴ An MBCR rule required the crew to have a shunting device at the end of the work area every time a track was taken out of service for maintenance. The track foreman in charge of the MOW crew, however, had not complied with this rule. *Id.* at vi and 17.

While the MOW employees involved in the MBTA accident were not covered employees, § 219.203(a)(4)(ii) requires PAT testing on the remains of any railroad employee fatally injured in a train accident or incident. The PAT testing results for the fatally injured foreman involved in the MBTA accident showed that that he had likely used marijuana within three hours of his death. The NTSB concluded that the foreman’s performance would likely have been measurably impaired at the time of the accident by his recent use of marijuana. The NTSB also concluded that the foreman’s positive drug test result was “not an isolated incident among MBCR maintenance-of-way employees.” *Id.* at 19. Between December 2003 and January 2007, the MBCR had four fatalities, one critical injury, and one potentially serious incident involving MOW employees. *Id.* Seven MOW employees were tested for drugs and/or alcohol as a result of these incidents. *Id.* (Four fatally injured employees were tested under FRA authority, and three surviving employees were tested under MBCR’s company authority. *Id.*) Of the seven MOW employees tested, four had positive results, and one employee submitted a specimen that was a negative dilute which may have masked a positive. *Id.* The NTSB found that this high rate of positive test results was symptomatic of a substance abuse problem among MBCR MOW employees. *Id.*

As part of its investigation of this accident, the NTSB reviewed industry-wide PAT testing data for accidents involving MOW employee fatalities. Over the 10-year period ending January 9, 2007, FRA PAT testing of 26 MOW fatalities resulted in five (5) positive test results, a positive rate of 19.23%. *Id.* at 19. In contrast, the overall PAT testing positive rate for covered employees was only 6.56%. *Id.* The NTSB concluded that these results showed greater alcohol and drug use among MOW employees than among covered employees subject to Part 219. *Id.* Thus, the NTSB determined that alcohol and drug use by MOW employees in the railroad industry was a safety concern. *Id.* at vi and 17.

⁴ The NTSB also found that a probable cause of the accident was the failure of the train dispatcher to maintain blocking that provided signal protection for the track segment occupied by the MOW crew. *See id.* at vi.

The NTSB noted that FRA data indicate that MOW employees are about three times more likely to have positive test results than covered employees (19.23% positive for MOW employees vs. 6.56% positive for covered employees). See WOBURN REPORT at 20. Attributing this difference “to the deterrent value of the FRA’s random testing program to which covered employees are subject but maintenance-of-way employees are not,” the NTSB recommended that FRA revise its definition of covered employee to include all railroad employees and contractors who perform FRA safety-sensitive functions, as defined by §§ 209.301 and 209.303. See NTSB Recommendation R-08-07.

Section 209.303 lists the safety-sensitive functions that an individual may be disqualified from performing if he or she has been found unfit to do so after committing a FRA safety violation. See § 209.301. If FRA expanded the scope of Part 219 to cover the safety-sensitive functions listed in § 209.303, it would include not only covered employees, as currently defined, but all railroad employees and contractor employees (including managers and supervisors) who: (1) inspect, install, repair, or maintain track and roadbed; (2) inspect, repair, or maintain locomotives, passenger cars, and freight cars; (3) conduct training and testing of employees when required to do so by the FRA’s safety regulations; (4) perform service subject to the Transportation of Hazardous Materials Law (Hazmat Law);⁵ (5) supervise and otherwise direct the performance of the safety-sensitive functions; or (6) are in a position to direct the commission of violations of any FRA safety regulation. FRA does not currently believe that it is necessary to expand part 219 beyond railroad employees (including contractors, subcontractors, volunteers and probationary employees) who perform covered service and/or MOW activities for a railroad.

In response to the mandate contained in Section 412 and NTSB Recommendation R-08-07, FRA is proposing to expand part 219 to include employees who perform MOW activities, as defined in proposed § 219.5. FRA’s proposed definition of MOW activities includes the following: (1) the inspection, repair, or maintenance of track, roadbed, or electric traction systems; (2) the operation of on-track or fouling equipment utilized for the inspection, repair, or maintenance of track, roadbed, or electric traction systems; (3)

⁵ The Transportation of Hazardous Materials Laws are located at 49 U.S.C. ch. 51. Under 49 U.S.C. 5103, the Secretary is directed to prescribe regulations for the “safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce.” These regulations apply to a person who performs a broad range of activities, including testing a “packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce” and “certif[y]ing compliance with any requirements under this chapter.” Such activities generally are not related to what would be considered railroad MOW activities.

The Secretary delegated the authority to issue these regulations to the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the resulting regulations are found at 49 CFR subtitle B, Ch. 1. The broad extent of these regulations go far beyond what would be an appropriate scope for FRA’s alcohol and drug regulations.

the performance of flagman or watchman/lookout duties; (4) the obtaining of on-track authority and/or permission for the performance of activities described by the proposed definition; or (5) the granting of on-track authority and/or permission for operation over a segment of track while workers are performing activities described by the proposed definition.

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 (wherever possible) that submit or retain information required by the agency. It should be noted that, even though there are many sections of the proposed rule that require written documentation, there are other parts of the rule – such as sections 219.613, 219.623, and 219.901 – that specify or require the electronic option. In all, approximately 155,038 responses of the estimated 301,539 requested responses in this submission will be submitted or kept by railroads electronically. Thus, approximately 51% of responses will be kept electronically under the proposed rule.

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 “universe” of the entities that can reasonably be expected to be directly potentially affected by this proposed rule are the following: (1) small railroads; (2) small contractors that engage in MOW operations; and (3) small contractors that provide HOS services (such as dispatching, signal, and train and engine services).

“Small entity” is defined in 5 U.S.C. § 601(3) as having the same meaning as “small business concern” under Section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of “small entities” not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operation. The U.S. Small Business Administration (SBA) stipulates in its size standards that the largest a railroad business firm that is “for profit” may be and still be classified as a “small entity” is 1,500 employees for “Line Haul Operating Railroads” and 500 employees for “Switching and Terminal Establishments.” Additionally, 5 U.S.C. § 601(5) defines as “small entities” governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes “small entities” or

“small businesses” as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR § 1201.1-1, which is \$20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. (See 68 FR 24891; May 9, 2003, codified at Appendix C to 49 CFR Part 209.) The \$20 million limit is based on the Surface Transportation Board’s revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR § 1201.1-1. FRA is using this definition for this rulemaking.

An estimated 1,098 entities will be affected by the proposed rule. FRA estimates that there are approximately 400 MOW contractor companies and 698 railroads on the general system of transportation. All but 44 railroads and an estimated 30 MOW contractor companies are small businesses as defined by the FRA waiver of small business size standard. FRA estimates that 86 percent of employees that will be regulated under this proposed rule work for these 74 railroads and contractors. Most railroads must comply with all provisions of Part 219. However, FRA has a “small railroad” definition associated with Part 219 that limits compliance requirements for railroads with 15 Hours of Service (HOS) employees or less and no joint operations to reduce burden on the smallest of railroads.

There are approximately 654 small railroads (as defined by revenue size). Class II and Class III railroads do not report to the STB, and although the number of Class II railroads is known, the precise number of Class III railroads is difficult to ascertain due to conflicting definitions, conglomerates, and even seasonal operations. Potentially, all small railroads could be impacted by this proposed regulation. Part 219 has a small railroad exception for all railroads with 15 or fewer covered employees, except when these railroads have joint operations with another railroad, therefore increasing risk. Thus, a railroad with such characteristics shall be called a “partially excepted small railroad” in this analysis, and is a subsection of the “small entities” as defined by the STB and FRA, addressed above. Currently, there are 288 partially excepted small railroads and, as FRA is not proposing amendments to the substantive criteria of classification, there should be no change in the number of partially excepted small railroads associated with the proposed rule.

FRA is aware of two commuter railroads that qualify as small entities: Saratoga & North Creek Railway, and Hawkeye Express, which is operated by the Iowa Northern Railway Company. All other commuter railroad operations in the United States are part of larger governmental entities whose jurisdictions exceed 50,000 in population.

All railroads must comply with all or limited subparts of Part 219. For partially excepted small railroads, per FRA’s definition, the significant burden involves the costs of adding MOW employees to the existing testing programs, and adding reasonable suspicion and pre-employment drug testing (which they currently do not need to comply with).

A significant portion of the MOW industry consists of contractors. FRA has determined that risk lies as heavily with contractors as with railroad employees, so contractors and subcontractors will be subject to the same provisions of Part 219 as the railroads for which they do contract work. Whether contractors must comply with all or part of the provisions of Part 219 will depend on the size of the largest railroad (assumed to have the largest risk) for which the contractor works.

FRA discussed with industry representatives how to ascertain the number of contractors that would be involved with this rulemaking. FRA is aware that some railroads hire contractors to conduct some or all of the MOW worker functions on their railroads. Generally, the costs for the burdens associated with this rulemaking would get passed on from the contractor to the pertinent railroad. FRA has determined that there are approximately 400 MOW-related contractor companies who would be covered by the proposed rule. Of those, 370 are considered to be a “small entity.” FRA has sought estimates of the number of contractors that may be fully compliant and how many may be partially excepted, depending on the size of the largest railroad for which they work. FRA requests comments on both the number of small contractors affected and the number of small railroads affected, as well as the burdens they may incur as a result of the proposed rulemaking and whether those burdens (costs) will be passed on the railroads.

FRA expects that some HOS small contractors will be impacted based upon the proposed compliance requirements for Part 219 small railroads to now include reasonable suspicion testing and pre-employment drug testing. This burden is estimated to be minimal, as reasonable suspicion tests occur extremely infrequently on small railroads (average less than one time per year for all small railroads), and pre-employment drug tests, the least costly of all tests, will only be required for new employees.

No other small businesses (non-railroad related) are expected to be negatively impacted significantly by this proposed rulemaking.

Expanding the program to cover MOW employees will only have a small effect in terms of testing burden for railroads, based upon the cost of pre-employment drug testing for new employees and the testing of MOW employees. FRA estimates that 90 percent of small railroads already conduct pre-employment drug testing under their own company authority. Many of these contractors have employees with commercial drivers’ licenses (CDLs), and, therefore, fall under the drug and alcohol program requirements of the Federal Motor Carrier Safety Administration (FMCSA). Consequently, an estimated 40 percent of MOW contracted employees already participate in a DOT drug and alcohol testing program. Furthermore, FRA estimates that as many as 50–75 percent of all MOW contractor companies have some form of a drug and alcohol testing program, and that around 25 percent of these companies currently complete random testing (the most burdensome type of testing). It is likely that all Part 219 small railroads already have a

compliant testing program for employees currently covered under the existing regulation. It should also be noted that approximately 125 of the small railroads that would be impacted are subsidiaries of large short line holding companies with resources comparable to larger railroads. Additionally, many small railroads are members of American Short Line and Regional Railroad Association (ASLRRA), which was consulted throughout the development of this regulatory proposal. ASLRRA has helped create a consortium for its members in the past, and FRA will work to ensure that small entities, as well as large, have the ability to adhere to the regulation as easily as possible.

The updating of a drug and alcohol program to be compliant with proposed Part 219 changes can generate a burden for all entities, and especially small entities. However, FRA has taken steps to minimize the significant economic impact on small entities. For example, FRA currently exempts railroads with 15 or fewer hours of service (HOS) employees and no joint operations (as defined by § 219.5) from certain Part 219 requirements, and is not proposing to amend this exemption definition in the proposed rule. See § 219.3(b)(2). (However there will be certain compliance requirements incurred by this proposed rule for those small railroads.) FRA has an extensive compliance manual available on its Web site at www.fra.dot.gov that can be used to help railroads of all sizes understand and comply with the regulations. FRA also provides a model railroad plan, a model contract plan, and model prohibitions for small railroads. Furthermore, FRA is active with railroad organizations, large and small, that provide training on the current Part 219, such as ASLRRA, the Association of American Railroads (AAR), and labor unions. FRA will be prepared to assist all small railroads, or other entities that will need to comply with the proposed regulation. FRA's Web site (http://www.fra.dot.gov/rrs/pages/fp_504.shtml) has model plans, programs, and tools needed to comply with the requirements of the proposed regulation.

There is a small amount of reporting, recordkeeping, and compliance costs associated with the proposed regulation. However, many of the entities are already doing some sort of employer-based testing, reporting, recordkeeping, and compliance in accordance with the recordkeeping requirements subpart. FRA believes that the added burden due to these requirements is minimal. The total 20-year cost of this proposed rulemaking is \$44.4 million, of which FRA estimates approximately 14 percent will be to the 644 small railroads and 370 small contractors. FRA believes this total burden for small businesses of \$6.2 million from this proposed rule does not impose a substantial burden. This averages approximately \$306 a year per small entity.

Based on the information in this analysis, FRA has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities. Absent evidence to the contrary being submitted in response to this NPRM, FRA intends to so certify at the final rule stage.

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.**

The proposed rule titled Control of Alcohol and Drug Use: Coverage of Maintenance of Way Employees, Retrospective Regulatory Review-Based Amendments (RRR) is being published in the Federal Register on July 28, 2014 (See 79 FR 43830). In this NPRM, FRA is soliciting comment from the regulated community, interested parties, and the public at large on both the requirements of the proposed rule and its associated information collection. FRA will respond to comments in the final rule and in its associated information collection submission.

Background

When the RSIA was enacted in 2008, FRA was already conducting a retrospective analysis of Part 219, looking for ways to clarify the regulations and make the requirements less burdensome. This NPRM, therefore, proposes both amendments that would incorporate MOW employees and amendments suggested by FRA's retrospective analysis of Part 219.

Part 219 incorporates the alcohol and drug testing procedures found in Part 40, which is published and administered by Office of Drug and Alcohol Policy Compliance (ODAPC). For this reason, FRA did not consult with the Railroad Safety Advisory Committee (RSAC) on this proposed rule. Instead, FRA gathered information and suggestions from railroads, labor organizations, and other stakeholders at railroad industry meetings. For example, railroad industry stakeholders provided statistics about the number of employees of railroads and contractors to railroads who perform MOW activities and submitted suggestions on how FRA should define MOW activities.

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: Respondent universe affected by this proposed rule is comprised of 698 railroads and 400 Maintenance-of-Way (MOW) contractors. Additionally, the number of employees affected by this proposed rule is 142,000; 32,000 of these 142,000 employees are MOW workers.

Recognition of a foreign railroad's workplace testing program (219.4)

(a) *General.* A foreign railroad may petition the FRA Associate Administrator for Safety for recognition of a workplace testing program promulgated under the laws of its home country as a compatible alternative to the return-to-service requirements in subpart B of this part and the requirements of subparts E, F, and G of this part with respect to its employees whose primary reporting point is outside the United States but who enter the United States to perform train or dispatching service and with respect to its final applicants for, or its employees seeking to transfer for the first time to, duties involving such service.

(1) To be so considered, the petition must document that the foreign railroad's workplace testing program contains equivalents to Subparts B, F, G, and K of this Part: **(Revised Requirement)**

(i) Pre-employment drug testing;

(ii) A policy dealing with co-worker and self-reporting of alcohol and drug abuse problems;

(iii) Random drug and alcohol testing;

(iv) Return-to-duty testing; and

(v) Testing procedures and safeguards reasonably comparable in effectiveness to all applicable provisions of the United States Department of Transportation Procedures for Workplace Drug and Alcohol Testing Programs (part 40 of this title).

(2) In approving a program under this section, the FRA Associate Administrator for Safety may impose conditions deemed necessary.

FRA estimates that this it will receive approximately two (2) petitions with the necessary documentation form foreign railroads under the above requirement. It is estimated that it will take approximately 40 hours to complete each petition. Total annual burden for this requirement is 80 hours.

Respondent Universe:		2 railroads
Burden time per response:	40 hours	
Frequency of Response:		On occasion
Annual number of Responses:	2 petitions	
Annual Burden:		80 hours

Calculation: 2 petitions x 40 hrs. = 80 hours

(b)(1) Alternate Programs. Upon FRA's recognition of a foreign railroad's workplace alcohol and drug use program as compatible with the return-to-service requirements in subpart B and the requirements of subparts F, G, and K of this part, the foreign railroad must comply with either the enumerated provisions of part 219 or with the standards of its recognized program, and any imposed conditions, with respect to its employees whose primary reporting point is outside the United States and who perform train or dispatching service in the United States. The foreign railroad must also, with respect to its final applicants for, or its employees seeking to transfer for the first time to, duties involving such train or dispatching service in the United States, comply with either subpart F of this part or the standards of its recognized program.

(2) The foreign railroad must comply with subparts A (general), B (prohibitions, other than the return-to-service provisions in § 219.104(d)), C (post-accident toxicological testing), D (reasonable suspicion testing), I (annual report requirements), and J (recordkeeping requirements) of this part. Drug or alcohol testing required by these subparts (except for post-accident toxicological testing required by subpart C) must be conducted in compliance with all applicable provisions of the DOT Procedures for Workplace Drug and Alcohol Testing Programs (part 40 of this title).

Any burden associated with this requirement is already included under OMB No. 2130-0555 and DOT's Part 40 information collection (OMB No. 2105-0529). Consequently, there is no additional burden associated with the above requirement.

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.

It is estimated that FRA will receive approximately four (4) waivers a year where a person has asked for relief from these requirements. FRA estimates that it will take approximately two (2) hours to prepare a letter and submit it to FRA. Total annual burden for this requirement is eight (8) hours.

Respondent Universe:

142,000
employees

Burden time per response:

2 hours

Frequency of Response:

On occasion

Annual number of Responses:

4 waiver letters

Annual Burden:

8 hours

Calculation: 4 waiver letters x 2 hrs. = 8 hours

Responsibility for compliance [219.9(b)(1) and (C)]

Joint operations.

(b)(1) In the case of joint operations, primary responsibility for compliance with Subparts C, D, and E of this Part rests with the host railroad, and all affected employees must be responsive to direction from the host railroad that is consistent with this Part. However, nothing in this paragraph restricts railroads engaged in joint operations from appropriately assigning responsibility for compliance with this Part amongst themselves through a joint operating agreement or other binding contract. FRA reserves the right to bring an enforcement action for noncompliance with this Part against the host railroad, the employing railroad, or both. **(Revised Requirement)**

FRA estimates that approximately 525 joint operating agreements assigning responsibility for compliance with this Part amongst themselves will be completed by railroads under the above requirement. It is estimated that it will take approximately 30 minutes to complete each joint operating agreement. Total annual burden for this requirement is 263 hours.

Respondent Universe:

698 railroads
+ 400 MOW
contractors

Burden time per response:

30 minutes

Frequency of Response:

On occasion

Annual number of Responses:

525 joint operating agreements

Annual Burden:

263 hours

Calculation:

525 joint operating agreements x 30 min. =
263 hours

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

Where an employee of a railroad engaged in joint operations is required to participate in breath or body fluid testing under subpart C, D, or E 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 engaged in the joint operations must be made available to the employee and his or her employing railroad on a reasonable basis. **(Revised Requirement)**

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:

698 railroads
+ 400 MOW
contractors

Burden time per response: 1 hour

Frequency of Response: On occasion

Annual number of Responses: 2 requests/documents

Annual Burden: 2 hours

Calculation: 2 requests x 1 hr. = 2 hours

Contractor responsibility for compliance [219.9(c)]

As provided by paragraph (a), any independent contractor or other entity that performs regulated service for a railroad, or any other services under this Part or Part 40 of this Title, has the same responsibilities as a railroad under this Part with respect to its employees who perform regulated service or other service required by this Part or Part 40 of this Title for the railroad. The entity's responsibility for compliance with this Part may be fulfilled either directly by that entity or by the railroad treating the entity's regulated employees as if they were the railroad's 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 a clear delineation of responsibility, FRA may hold the railroad and the other entity jointly and severally liable for compliance. **(Revised Requirement)**

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:

698 railroads
+ 400 MOW
contractors

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 person required to participate in body fluid testing under Subpart C of this Part (post-accident toxicological testing) shall, if requested by a representative of the railroad or the medical facility, evidence consent to the 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 railroad, 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:

698 railroads
+ 400 MOW
contractors

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

General conditions for chemical tests [219.11(e)(1)]

- I. (e)(1) A regulated employee who is notified of selection for testing under this Part must cease to perform his or her assigned duties and proceed to the testing site either immediately or as soon as possible without adversely affecting safety. (**New Requirement**)

FRA estimates that approximately 9,508 employees will receive notifications regarding selection for testing under the above requirement. It is estimated that it will take approximately five (5) seconds to complete each notification. Total annual burden for this requirement is 13 hours.

Respondent Universe:		142,000 railroad employees
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Burden time per response:	5 seconds	
Frequency of Response:		On occasion

Annual number of Responses:	9,508 notifications	
Annual Burden:		13 hours

Calculation: 9,508 notifications x 5 sec. = 13 hours

Training - Alcohol and Drug [219.11(g)]

Each supervisor responsible for regulated employees (except a working supervisor who is a co-worker as defined in § 219.5) 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, the major drug groups on the controlled substances list, and other impairing drugs. The program must also provide training on the qualifying criteria for post-accident toxicological 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. **(Revised Requirement)**

1. FRA estimates that approximately 698 railroads will need to modify their existing programs to meet the above requirement. It is estimated that it will take approximately one (1) hour to complete each program modification. Total annual burden for this requirement is 698 hours.

Respondent Universe:		698 railroads
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Burden time per response:	1 hour	
Frequency of Response:		One-time

Annual number of Responses:	698 modified programs	
Annual Burden:		698 hours

Calculation: 698 modified programs x 1 hrs. = 698 hours

Additional, FRA estimates that five (5) new railroads will come into existence annually and need to develop the required program of instruction. 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:

5
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 one (1) supervisor for each of the estimated 32,000 MOW employees or a total of 2,462 supervisory employees will be trained under the above requirement. It is estimated that training will take approximately three (3) hours to train each MOW supervisor. Total annual burden for this requirement is 7,386 hours.

Respondent Universe: 698 railroads + 400
MOW contractors

Burden time per response:

3 hours

Frequency of Response:		One-time
Annual number of Responses:	2,462 supervisory trained employees	
Annual Burden:		7,386 hours

Calculation: 2,462 sup. trained employees x 3 hrs. = 7,386 hours

(h) Nothing in this Subpart restricts any discretion available to the railroad to request or require that an employee cooperate in additional body fluid testing. However, no such testing may be performed on urine or blood specimens provided under this Part. For purposes of this paragraph, all urine from a void constitutes a single specimen.

FRA estimates that there will be zero (0) requests by railroads for additional testing. Consequently, there is no burden associated with this requirement.

Total annual burden for this entire requirement is 8,113 hours (1 + 13 + 698 + 15 + 7,386).

§ 219.12 Hours-of-service laws implications (New Requirements)

(a) Railroads are not excused from performing alcohol or drug testing under Subpart C (post-accident toxicological testing) and Subpart D (reasonable suspicion testing) of this Part because the performance of such testing would violate the hours-of-service laws at 49 U.S.C. Ch. 211. If a railroad establishes that a violation of the hours-of-service laws is caused solely because it was required to conduct post-accident toxicological testing or reasonable suspicion testing, FRA will not take enforcement action for the violation if the railroad used reasonable due diligence in completing the collection and otherwise completed it within the time limitations of § 219.203(d) (for post-accident toxicological testing) or § 219.305 (for reasonable suspicion testing), although the railroad must still report any excess service to FRA.

(b) Railroads may perform alcohol or drug testing authorized under Subpart E (reasonable cause testing) of this Part even if the performance of such testing would violate the hours-of-service laws at 49 U.S.C. Ch. 211. If a railroad establishes that a violation of the hours-of-service laws is caused solely by its decision to conduct authorized reasonable cause testing, FRA will not take enforcement action for the violation if the railroad used reasonable due diligence in completing the collection and otherwise completed it within the time limitations of § 219.407, although the railroad must still report any excess service to FRA.

The burden for reports of excess service is already included that of the Hours of Service Regulations information collection (OMB No. 2130-0005; under section 228.19). Consequently, there is no additional burden associated with this requirement.

(d) Railroads must schedule follow-up tests under § 219.104 so that sufficient time is provided to complete a test within a covered employee's hours-of-service limitations under 49 U.S.C. Ch. 211. If a railroad is having a difficult time scheduling the required number of follow-up tests because a covered employee's work schedule is unpredictable, there is no prohibition against the railroad placing an employee (who is subject to being called to perform regulated service) on duty for the purpose of conducting the follow-up tests; except that an employee may be placed on duty for a follow-up alcohol test only if he or she is required to completely abstain from alcohol by a return-to-duty agreement, as provided by § 40.303(b) of this title. A railroad must maintain documentation establishing the need to place the employee on duty for purpose of conducting the follow-up test and provide this documentation for review upon request of a FRA representative.

FRA estimates that this will happen approximately five times a year and thus five (5) documents establishing the need to place employees on duty for the purpose of follow-up test will be completed by railroads under the above requirement. It is estimated that it will take approximately 30 minutes to complete each document. Total annual burden for this requirement is three (3) hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response: 30 minutes

Frequency of Response: On occasion

Annual number of Responses: 5 documents

Annual Burden: 3 hours

Calculation: 5 documents x 30 min. = 3 hours

Total annual burden for this entire requirement is three (3) hours.

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

(a) Whenever a breath or body fluid test is required of an employee under this Part, the railroad (either through a railroad employee or a designated agent, such as a contracted collector) must provide clear and unequivocal written notice to the employee that the test is being required under FRA regulations and is being conducted under Federal authority. The railroad must also provide the employee clear and unequivocal written notice of the

type of test that is required (e.g., reasonable suspicion, reasonable cause, random selection, follow-up, etc.). These notice requirements are satisfied if:

- (1) For all FRA testing except mandatory post-accident toxicological testing under Subpart C of this Part, a railroad uses the mandated DOT alcohol or drug testing form, circles or checks off the box corresponding to the type of test, and shows this form to the employee prior to the commencement of testing; or
- (2) For mandatory post-accident toxicological testing under subpart C of this Part, a railroad uses the approved FRA form and shows this form to the employee prior to the commencement of testing.

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(c), (d), and (e))]

(c) Each railroad must develop and publish educational materials, specifically designed for regulated employees, that clearly explain the requirements of this Part, as well as 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 regulated employee hired for or transferred to a position that requires alcohol and drug testing under this Part. (This requirement does not apply to an applicant for a regulated service position who either refuses to provide a specimen for pre-employment testing or who has a pre-employment test with a result indicating a violation of the alcohol or drug prohibitions of this Part.) A railroad may satisfy this requirement by either—

- (1) Continually posting the materials in a location that is easily visible to all regulated employees going on duty at their designated reporting place and, if applicable, providing a copy of the materials to any employee labor organization representing a class or craft of regulated employees of the railroad;
- (2) Providing a copy of the materials in some other manner that will ensure that regulated employees can find and access these materials explaining the critical aspects of the program (e.g., by posting the materials on a company website that is accessible to all regulated employees); or
- (3) For a minimum of three years after the effective date of the final rule, a railroad must also ensure that a hard copy of these materials is provided to each maintenance-of-way employee.

(d) Required content. The materials to be made available to employees under paragraph (c) of this section must, at a minimum, include clear and detailed discussion of the following: (1) The position title, name, and means of contacting the person(s) designated by the railroad to answer employee questions about the materials; (2) The specific classes or crafts of employees who are subject to the provisions of this Part, such as engineers, conductors, MOW employees, signal maintainers, or train dispatchers; (3) Sufficient information about the regulated service functions performed by those employees to make clear that the period of the work day the regulated employee is required to be in compliance with the alcohol prohibition of this Part is that period when the employee is on duty and is required to perform or is available to perform regulated service; (4) Specific information concerning employee conduct that is prohibited under Subpart B of this Part (e.g., the minimum requirements of §§ 219.101, 219.102, and 219.103); (5) The requirement that a railroad utilizing the reasonable cause testing authority provided by Subpart E of this Part must give prior notice to regulated employees of the circumstances under which they will be subject to reasonable cause testing; (6) The circumstances under which a regulated 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 regulated 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 a regulated employee found to have violated Subpart B of this Part, including the requirement that the employee be removed immediately from regulated service, and the responsive action requirements under § 219.104; (11) The consequences for a regulated employee who has a Federal alcohol test indicating an alcohol concentration of .02 or greater but less than .04; (12) Information concerning the effects of alcohol and drug misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol or drug problem (the employee's or a coworker's); and available methods of evaluating and resolving problems associated with the misuse of alcohol and drugs, including utilization of the procedures set forth in Subpart K of this Part and the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.

(e) Optional provisions. 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 based on the railroad's independent company authority.

FRA will actually develop the required educational materials that regulated railroads and contractors will use to fulfill this requirement. However, these entities will modify/revise the FRA document to meet their own needs. It is estimated that it will take

approximately one (1) hour to modify/revise the FRA educational materials and publish them. Total annual burden for this requirement is 1,098 hours. **(Not a new requirement)**

Respondent Universe:	1,098 railroads/contractors (698 RRs + 400 MOW contractors)	
Burden time per response:	1 hour	
Frequency of Response:		One-time
Annual number of Responses:	1,098 modified/revise educational documents	
Annual Burden:		1,098 hours

Calculation: 1,098 modified/revise educational material documents x 1 hr. = 1,098 hours

Further, FRA estimates that approximately 142,000 copies of the educational materials documents will be provided to regulated employees under the above requirement. It is estimated that it will take approximately two (2) minutes to copy the document and give it to each employee. Total annual burden for this requirement is 4,733 hours.

Respondent Universe:		142,000 railroad employees
Burden time per response:	2 minutes	
Frequency of Response:		One-time
Annual number of Responses:	142,000 copies of educational material documents	
Annual Burden:		4,733 hours.

Calculation: 142,000 copies of educational material documents x 2 min. = 4,733 hours

Note: The requirement to provide educational materials to employee organizations/ representatives of employee organizations has already been fulfilled. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is 5,831 hours (1,098 + 4,733).

§ 219.25 Previous employer drug and alcohol checks.

(a) As required by § 219.701(a) and (b), which mandates that drug or alcohol testing conducted under this Part be conducted in compliance with Part 40 of this Title (except for post-accident toxicological testing under Subpart C of this Part), a railroad must comply with § 40.25 and check the alcohol and drug testing record of any direct employee (an employee who is not employed by a contractor to the railroad) it intends to use for regulated service before the employee performs such service for the first time. A railroad is not required to check the alcohol and drug testing record of contractor employees performing regulated service on its behalf (the alcohol and drug testing record of those contractor employees must be checked by their direct employers).

The burden for this requirement is included under that of the information collection associated with DOT's Part 40 (OMB No. 2105-0529). Consequently, there is no additional burden associated with this requirement.

(b) When determining whether a person may become or remain certified as a locomotive engineer or a conductor, a railroad must comply with the requirements in § 240.119(c) (for engineers) or § 242.115(e) (for conductors) of this chapter regarding the consideration of Federal alcohol and drug violations that occurred within a period of 60 consecutive months prior to the review of the person's records.

The burden for this requirement is included under that of the information collection associated with FRA's Part 240 (OMB No. 2130-0533) and FRA's Part 242 (OMB No. 2130-0596). Consequently, there is no additional burden associated with this requirement.

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 regulated service [219.104, 219.107]

A. (a) Removal from regulated service. (1) If the railroad determines that an employee has violated § 219.101 or § 219.102, or the alcohol or controlled substances misuse rule of another DOT agency, the railroad must immediately remove the employee from regulated service, and the procedures described in paragraphs (b) through (d) of this section apply. (2) If a regulated employee refuses to provide a breath or body fluid specimen or specimens when required to by the railroad under a provision of this part, a railroad must immediately remove the regulated employee from regulated service, and the procedures described in paragraphs (b) through (d) of this section apply. This provision also applies to Federal reasonable cause testing under subpart E of this part (if the railroad has elected to conduct this testing under Federal authority).

(b) Notice. Prior to or upon removing a regulated employee from regulated service under this section, a railroad must provide written notice to the employee of the reason for this action. A railroad may provide a regulated employee with an initial verbal notice so long as it provides a follow-up written notice to the employee as soon as possible. In addition to the reason for the employee’s withdrawal from regulated service, the written notice must also inform the regulated employee that he may not perform any DOT safety-sensitive duties until he completes the return-to-duty process of Part 40. (**Revised Requirement**)

FRA estimates that there will be approximately 500 instances annually where an employee has violated § 219.201 or § 219.202, and first an **initial verbal notice** and then a **follow-up written notice** will be provided to the employee under the above requirement. A form letter has been developed by railroads for this purpose. It is estimated that it will take approximately 30 seconds to complete each initial verbal notice and approximately two (2) complete each follow-up written notice/letter to the employee. Total annual burden for this requirement is 21 hours.

Respondent Universe: 698 railroads/400 MOW Contractors

Burden time per response: 30 seconds + 2 minutes

Frequency of Response: On occasion

Annual number of Responses: 500 verbal notices + 500 follow-up written notices/letters

Annual Burden: 21 hours

Calculation: 500 verbal notices x 30 sec. + 500 follow-up written

notices/letters x 2 min. = 21 hours

- B. (c) Hearing procedures. (1) Except as provided in subparagraph (e)(5) of this section, if a regulated employee denies that a test result or other information is valid evidence of a § 219.201 or § 219.202 violation, the regulated 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 regulated employee may demand that the hearing be convened within 10 calendar days of the employee's suspension or, in the case of a regulated employee who is unavailable due to injury, illness, or other sufficient cause, within 10 days of the date the regulated employee becomes available for the 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 Section 3 of the Railway Labor Act (49 U.S.C. 153), satisfies the procedural requirements of this paragraph (c). (4) With respect to a removal or other adverse action taken as a consequence of a positive test result or refusal in a test authorized or required by this part, nothing in this part may be deemed to abridge any procedural rights or remedies consistent with this part that are available to a regulated employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law. (5) Nothing in this part restricts the discretion of a railroad to treat a regulated employee's denial of prohibited alcohol or drug use as a waiver of any privilege the regulated employee would otherwise enjoy to have such prohibited alcohol or drug use treated as a non-disciplinary matter or to have discipline held in abeyance.

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 request a hearing. Further, it is estimated that four people will participate in each hearing and that each hearing will take approximately one (1) hour to complete (50 hearings x 4 people x 1 hr.). Total annual burden for this requirement is 202 hours.

Respondent Universe:	698 railroads + 400 MOW contractors
Burden time per response:	2 minutes + 4 hours
Frequency of Response:	On occasion

Annual number of Responses: 50 requests + 50 hearings
 Annual Burden: 202 hours

Calculation: 50 requests x 2 min. + 50 hearings x 4 hrs. = 202 hours

- C. (d) A railroad must comply with the requirements for Substance Abuse Professional evaluations, the return-to-duty process, and follow-up testing contained in Part 40 of this Title.

The burden for this requirement is included under that of the information collection associated with DOT's Part 40 (OMB No. 2105-0529). Consequently, there is no additional burden associated with this requirement.

(e)(4) Applicability. This section does not apply to an applicant who declines to be subject to pre-employment testing and withdraws the application for employment prior to the commencement of the test. The determination of when a drug or alcohol test commences will be made according to the provisions found in Subpart E and Subpart L of Part 40 of this Title. **(Revised Requirement)**

FRA estimated that approximately 60 applicants will decline pre-employment testing and withdraw their application for employment under the above requirement. It is estimated that it will take approximately two (2) minutes to communicate this information to the railroad. Total annual burden for this requirement is two (2) hours.

Respondent Universe: 698 railroads
 + 400 MOW
 contractors

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

Annual number of Responses: 60 communications
 Annual Burden: 2 hours

Calculation: 60 communications x 2 min. = 2 hours

Total annual burden for this entire requirement is 225 hours (21 + 202 + 2).

§ 219.105 Railroad's duty to prevent violations.

- I. (a) A railroad may not, with actual knowledge, permit a regulated employee to go or remain on duty in regulated service in violation of the prohibitions of §§ 219.101 or 219.102. As used in this section, the actual knowledge imputed to the railroad is limited to that of a railroad management employee (such as a supervisor deemed an “officer,” whether or not such person is a corporate officer) or a supervisory employee in the offending regulated employee’s chain of command. A railroad management or supervisory employee has actual knowledge of a violation when he or she:

(1) Personally observes a regulated employee use or possess alcohol or use drugs in violation of this Subpart. It is not sufficient for actual knowledge if the supervisory or management employee merely observes the signs and symptoms of alcohol or drug use that would require a reasonable suspicion test under § 219.301;

(2) Receives information regarding a violation of this Subpart from a previous employer of a regulated employee, in response to a background information request required by § 40.25 of this Title; or

The burden for this requirement is included under that of the information collection associated with DOT’s Part 40 (OMB No. 2105-0529). Consequently, there is no additional burden associated with this requirement.

- II. (3) Receives a regulated employee’s admission of prohibited alcohol possession or prohibited alcohol or drug use.

The burden for this requirement is included under that of the information collection associated with DOT’s Part 40 (OMB No. 2105-0529). Consequently, there is no additional burden associated with this requirement.

- III. (c) A railroad’s alcohol and/or drug use education, prevention, identification, intervention, and rehabilitation programs and policies must be designed and implemented in such a way that they do not circumvent or otherwise undermine the requirements, standards, and policies of this Part. Upon FRA’s request, a railroad must make available for FRA review all documents, data, or other records related to such programs and policies. **(New Requirement)**

FRA estimates that it will request such document approximately two (2) times annually and thus two (2) documents will be provided to FRA under the above requirement. It is estimated that it will take approximately five (5) minutes for the railroad to provide the necessary document to FRA. Total annual burden for this requirement is .17 hour hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response: 5
minutes

Frequency of Response: On
occasion

Annual number of Responses: 2 document copies
Annual Burden: .17 hour

Calculation: 2 document copies x 5 min. = .17
hour

Total annual burden for this entire requirement is .17 hour.

§ 219.107 Consequences of unlawful refusal.

(a) A regulated employee who refuses to provide a breath or a body fluid specimen or specimens when required to by the railroad under a provision of this Part must be withdrawn from regulated service for a period of nine (9) months. Per the requirements of Part 40 of this Title, a regulated employee who provides an adulterated or substituted specimen is deemed to have refused to provide the required specimen and must be withdrawn from regulated service in accordance with this section.

The burden for this requirement is included under that of the information collection associated with DOT's Part 40 (OMB No. 2105-0529). Consequently, there is no additional burden associated with this requirement.

(b) Notice. Prior to or upon withdrawing a regulated employee from regulated service under this section, a railroad must provide written notice to the employee of the reason for this action, and the procedures described in § 219.104(c) apply. A railroad may provide a regulated employee with an initial verbal notice so long as it provides a follow-up written notice as soon as possible.

The burden for this requirement is included under that § 219.104(b) above. Consequently, there is no additional burden associated with this requirement.

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, affirm it, and submit it to FRA. Total annual burden for this requirement is one (1) hour.

Respondent Universe:

698
railroads/400
MOW
Contractors

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

Responsibilities of railroads and employees. [219.203/207]

A. (a)(3) Major train accidents. (i) For an accident or incident meeting the criteria of a Major Train Accident in § 219.201(a)(1), all assigned crew members of all trains or other on-track equipment involved in the qualifying event must be subjected to post-accident toxicological testing, regardless of fault.

(ii) Other surviving regulated employees who are not assigned crew members of an involved train or other on-track equipment (e.g., a dispatcher or a signal maintainer) must be tested if a railroad representative can immediately determine, on the basis of specific information, that the employee may have had a role in the cause or severity of the accident/incident. In making this determination, the railroad representative must consider any such information that is immediately available at the time the qualifying event determination is made under § 219.201. *[Note: The burden for post-accident toxicological testing is included under the submission for DOT's Part 40. Consequently, there is no additional burden associated with this part of the requirement.]*

Based on the \$.15 million property damage threshold, FRA estimates that there will be approximately 80 major train accidents each year caused by human factors (HF). As a result, railroad employees involved in these accidents will have to complete Form FRA F 6180.73. It is estimated that an average of three employees will be tested per accident/event and have to complete the required form. It is estimated that it will take approximately 10 minutes to complete each of the 240 FRA 6180.73 forms (80 accidents events x 3 employees/forms per accident). Total annual burden for this requirement is 40 hours.

Respondent Universe:

142,000 RR
employees

Burden time per response:

10
minute
s

Frequency of Response:

On occasion

Annual number of Responses:

240 forms

Annual Burden:

40 hours

Calculation:

240 forms x 10 min. = 40 hours

B. (a)(6) Exception. For a qualifying Impact Accident, Passenger Train Accident, Fatal Train Incident, or Human-Factor Highway-Rail Grade Crossing Accident/Incident under §§ 219.201(a)(2) through 219.201(a)(5), a surviving crewmember or other regulated employee must be excluded from testing if the railroad representative can immediately determine, on the basis of specific information, that the employee had no role in the cause or severity of the accident/incident. In making this determination, the railroad representative must consider any information that is immediately available at the time the qualifying event determination is made under § 219.201. **(New Requirement)**

(i) This exception is not available for assigned crew members of all involved trains if the qualifying event also meets the criteria for a Major Train Accident under § 219.201(a)(1) (e.g., this exception is not available for an Impact Accident that also qualifies as a Major Train Accident because it results in damage to railroad property of \$1,500,000 or more).

(ii) This exception is not available for any on-duty employee who is fatally-injured in a qualifying event.

FRA estimates that approximately 50 determinations, based on specific information, will be made by a railroad representative regarding testing of a surviving crewmember or other regulated employee involved in qualifying accident/incident under the above requirement. It is estimated that it will take approximately five (5) minutes to make each determination. Total annual burden for this requirement is four (4) hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

5
minutes

Frequency of Response:

On
occasion

Annual number of Responses:

50 determinations

Annual Burden: 4 hours

Calculation: 50 determinations x 5 min. = 4 hours

- C. (d)(1) Timely specimen collection. The railroad must make every reasonable effort to assure that specimens are provided as soon as possible after the accident or incident, preferably within four hours. Specimens not collected within four hours after a qualifying accident or incident must be collected as soon thereafter as practicable. If a specimen is not collected within four hours of a qualifying event, the railroad must immediately notify the FRA Drug and Alcohol Program Manager at 202-493-6313 and provide detailed information regarding the failure (either verbally or via a voicemail). The railroad must also submit a concise, written narrative report of the reasons for such a delay to the FRA Drug and Alcohol Program Manager, 1200 New Jersey Ave., SE, Washington, DC 20590. The report must be submitted within 30 days after the expiration of the month during which the accident or incident occurred. This report may also be submitted via e-mail to an email address provided by the FRA Drug and Alcohol Program Manager. **(New Requirement)**

FRA estimates that approximately 80 telephone notifications and 80 narrative reports will be completed under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each telephone notification and approximately 30 minutes to complete each narrative report. Total annual burden for this requirement is 43 hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response: 2 minutes + 30 minutes
Frequency of Response: On occasion

Annual number of Responses: 80 notifications + 80 reports
Annual Burden: 43 hours

Calculation: 80 notifications x 2 min. + 80 reports x 30 min. = 43 hours

- D. (e) (2) Recall of employees for testing. A railroad must immediately recall and place on duty a regulated employee for post-accident drug testing, if—

(i) The employee could not be retained in duty status because the employee went off duty under normal railroad procedures prior to being contacted by a railroad supervisor and

instructed to remain on duty pending completion of the required determinations (e.g., in the case of a dispatcher or signal maintainer remote from the scene of an accident who was unaware of the occurrence at the time he or she went off duty);

(ii) The railroad's preliminary investigation (contemporaneous with the determination required by § 219.201) indicates a clear probability that the employee played a role in the cause or severity of the accident/incident.

(3) If the criteria in subparagraphs (e)(2)(i) and (ii) of this section are met, a regulated employee must be recalled for post-accident drug testing regardless of whether the qualifying event happened or did not happen during the employee's tour of duty. However, an employee may not be recalled for testing if more than 24 hours have passed since the qualifying event. An employee who has been recalled must be placed on duty for the purpose of accomplishing the required post-accident drug testing.

(4) Urine and blood specimens must be collected from an employee who is recalled for testing in accordance with this section. If the employee left railroad property prior to being recalled, however, the specimens shall be tested for drugs only. A railroad is prohibited from requiring a recalled employee to provide breath specimens for alcohol testing, unless the regulated employee has remained on railroad property since the time of the qualifying event and the railroad has a company policy completely prohibiting the use of alcohol on railroad property.

(5) A railroad must document its attempts to contact an employee subject to the recall provisions of this section. If a railroad is unable, as a result of the non-cooperation of an employee or for any other reason, to obtain a specimen(s) from an employee subject to mandatory recall within the 24 hour period after a qualifying event and to submit specimen(s) to FRA as required by this subpart, the railroad must contact FRA and prepare a concise narrative report according to the requirements of subparagraph (d)(1) of this section. The report must also document the railroad's good faith attempts to contact and recall the employee.

FRA estimates that approximately four (4) telephone calls and four (4) concise narrative reports will be completed showing railroads attempts to contact an employee subject to the recall provisions of under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each call and approximately 30 minutes to complete each report. Total annual burden for this requirement is two (2) hours. **(New Requirement)**

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:	2 minutes + 30 minutes	
Frequency of Response:		On occasion
Annual number of Responses:	4 calls + 4 reports	
Annual Burden:	2 hours	
<u>Calculation:</u>	4 calls x 2 min. + 4 reports x 30 min. = 2 hours	

- E. (g) Obtaining cooperation of facility. (1) In seeking the cooperation of a medical facility in obtaining a specimen under this Subpart, the railroad must, as necessary, make specific reference to the requirements of this Subpart and the instructions in FRA’s post-accident toxicological shipping kit. **(New Requirement)**

FRA estimates that approximately 80 references to Part 219 requirements and FRA’s post-accident toxicological kit will be made to medical facilities under the above requirement. It is estimated that it will take approximately 15 minutes to complete each reference. Total annual burden for this requirement is 20 hours.

Respondent Universe:	698 railroads/400 MOW Contractors
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Burden time per response:	15 minutes	
Frequency of Response:		On occasion
Annual number of Responses:	80 references	
Annual Burden:	20 hours	
<u>Calculation:</u>	100 references x 15 min. = 20 hours	

(g)(2) If an injured employee is unconscious or otherwise unable to evidence consent to the procedure and the treating medical facility declines to obtain blood and/or urine specimens after having been informed of the requirements of this Subpart, the railroad must immediately notify the duty officer at the National Response Center (NRC) at (800) 424-8802, stating the employee's name, the name and location of the medical facility, 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 specimens.

FRA estimates that telephone calls will be required in about two (2) occurrences a year. It is estimated that each phone call will take 10 minutes. Total annual burden for this requirement is .33 hour.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

10
minute
s

Frequency of Response:

On occasion

Annual number of Responses: 2 telephone calls

Annual Burden: .33 hour

Calculation: 2 telephone calls x 10 min. = .33 hour

Total annual burden for this entire requirement is 109 hours (40 + 4 + 43 + 2 + 20 + .33).

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 and either Form FRA F 6180.74 or Form FRA F6180.75 (for fatalities) for inclusion in the shipping kit. 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. Form FRA F 6180.73 and either Form FRA F 6180.74 or Form FRA F 6180.75 (for fatalities) are 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 80 accidents projected by FRA where toxicological tests will be required, it is estimated that an average of three (3) crew members per event will be required to provide blood or urine samples for a total of 240 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 Form FRA F 6180.74, and arrange for shipment of the specimens to the drug testing laboratory by the collection site person. Total annual burden for this requirement is 60 hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

15
minutes

Frequency of Response: On occasion

Annual number of Responses: 240 forms (FRA F 6180.74)
Annual Burden: 60 hours

Calculation: 240 forms x 15 min. = 60 hours

Additionally, FRA requests that approximately 80 requests will be made by railroad representatives to an appropriate representative of the medical facility to complete the remaining portion of the information on each Form FRA F 6180.74. It is estimated that it will take approximately two (2) minutes to complete each phone request. Total annual burden for this requirement is three (3) hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response: 2 minutes

Frequency of Response: On occasion

Annual number of Responses: 80 phone requests
Annual Burden: 3 hours

Calculation: 80 phone requests x 2 min. = 3 hours

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 80 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 13 hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

10
minutes

Frequency of Response:

On
occasion

Annual number of Responses: 80 forms

Annual Burden: 13 hours

Calculation: 80 forms x 10 min. = 13 hours

- B. Shipping kits. (c)(2) Standard shipping kits may be ordered directly from the laboratory designated in Appendix B to this Part by first requesting an order form from FRA's Drug and Alcohol Program Manager at 202-493-6313. In addition to the standard kit for surviving employees, FRA also has a post-mortem shipping kit that has been distributed to Class I, II, and commuter railroads. The post-mortem kit may not be ordered by other railroads. If a smaller railroad has a qualifying event involving a fatality to an on-duty employee, the railroad should advise the NRC at 1-800-424-8802 of the need for a post-mortem kit, and FRA will send one overnight to the medical examiner's office or assist the railroad in obtaining one from a nearby railroad.

FRA estimates that approximately five (5) telephone requests to FRA’s Drug and Alcohol Program Manager for standard shipping kits will be made 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 .17 hour. **(New Requirement)**

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response: 2 minutes
 Frequency of Response: On occasion
 Annual number of Responses: 5 requests
 Annual Burden: .17 hour

Calculation: 5 requests x 2 min. =.17 hour

Additionally, FRA estimates that approximately one (1) telephone call to FRA requesting a post-mortem kit will be made by small railroads under the above requirement. It is estimated that it will take approximately two (2) to complete each telephone call. Total annual burden for this requirement is .0333 hour. **(New Requirement)**

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response: 2 minutes
 Frequency of Response: On occasion
 Annual number of Responses: 1 telephone call
 Annual Burden: .0333 hour

Calculation: 1 telephone call x 2 min. =.0333 hour

- C. (d) Shipment. Specimens must be shipped as soon as possible by pre-paid air express (or other means adequate to ensure delivery within 24 hours from time of shipment) to the laboratory designated in Appendix B to this Part. However, if delivery cannot be ensured within 24 hours due to a suspension in air express delivery services, the specimens must

be held in a secure refrigerator until delivery can be accomplished. In no circumstances may specimens be held for more than 72 hours. Where express courier pickup is available, the railroad must request the medical facility to transfer the sealed toxicology kit directly to the express courier for transportation. If courier pickup is not available at the medical facility where the specimens are collected or if for any other reason a prompt transfer by the medical facility cannot be assured, the railroad must promptly transport the sealed shipping kit holding the specimens to the most expeditious point of shipment via air express. The railroad must maintain and document secure chain of custody of the kit(s) from release by the medical facility to delivery for transportation, as described in Appendix C to this Part. **(Current Requirement)**

FRA estimates that approximately 40 phone requests will be made by railroads to the medical facility to transfer the sealed toxicology kit directly to the express courier for transportation 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 one (1) hour.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response: 2 minutes

Frequency of Response: On occasion

Annual number of Responses: 40 phone requests

Annual Burden: 1 hour

Calculation: 40 phone requests x 2 min. = 1 hour

- D. (e) Specimen security. After a specimen kit or transportation box has been sealed, no entity other than the laboratory designated in Appendix B to this Part may open it. If the railroad or medical facility discovers an error with either the specimens or the chain of custody form after the kit or transportation box has been sealed, the railroad or medical facility must make a contemporaneous written record of that error and send it to the laboratory, preferably with the transportation box. **(New Requirement)**

FRA estimates that this will happen approximately 20 times a year and thus approximately 20 contemporaneous written records will be made by the railroad/medical facility and sent to the laboratory under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each written record. Total annual burden for this requirement is one (1) hour.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response: 2 minutes

Frequency of Response: On occasion

Annual number of Responses: 20 written records

Annual Burden: 1 hour

Calculation: 20 written records x 2 min. = 1 hour

Total annual burden for the entire requirement is 78 hours (60 + 3 + 13 + .17 + .0333 + 1 + 1).

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 (e.g., Impact Accident with a reportable injury); and (v) Number of employees tested.

FRA estimates that 40 telephonic reports will be made under this requirement. It is estimated that it will take 2 minutes to make each call. Total annual burden for this requirement is one (1) hour.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

2
minutes

Frequency of Response:

On
occasion

Annual number of Responses: 40 telephonic reports
Annual Burden: 1 hour

Calculation: 40 reports x 2 min. = 1 hour

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 provide it to FRA as required by this Subpart, the railroad must immediately notify the FRA Drug and Alcohol Program Manager at 202-493-6313 and provide detailed information regarding the failure (either verbally or via a voicemail). The railroad must also make a concise narrative written 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 and must also be mailed to the FRA Drug and Alcohol Program Manager at 1200 New Jersey Avenue, SE, Washington, DC 20590.

There have been zero (0) 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)]

- A. (b) Results of post-accident toxicological testing under this Subpart are reported to the railroad's Medical Review Officer (MRO) and the employee. Unless publicly disclosed by FRA or the National Transportation Safety Board, 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 that an MRO may report medical information gathered in the verification process (as provided for by § 40.327) only when he or she determines, in his or her reasonable medical judgment, that the information is likely to result in the employee being determined to be medically unqualified under an applicable DOT agency regulation. This paragraph shall not be construed to permit medical disqualification under the railroad's authority of an employee based upon a laboratory report indicating the presence of a controlled substance prior to completion of the MRO's review. An employer is prohibited from temporarily removing an employee from the performance of

regulated service based only on a report from the laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

FRA estimates that five (5) reports of post-accident toxicological testing results will be made to both railroad MROs and employees (a total of 10 reports) under the above requirement. It is estimated that it will take 15 minutes to complete and send each report. Total annual burden for this requirement is three (3) hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

15
minutes

Frequency of Response:

On
occasion

Annual number of Responses: 10 reports

Annual Burden: 3 hours

Calculation: 10 reports x 15 min. = 3 hours

(c) 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 Railroad Safety, FRA, 1200 New Jersey Avenue, SE, 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 may not disclose to FRA the underlying physical condition for which any medication was authorized or administered. The FRA is not bound by the railroad Medical Review Officer's determination, but that determination will be considered by FRA in relation to the accident/incident investigation and with respect to any enforcement action under consideration.

FRA estimates that approximately 10 reports of positive drug tests will be sent each year to FRA by MROs under the above requirement. It is estimated that it will take approximately 15 minutes for the railroad MRO to prepare the report and send it to FRA. Total annual burden for this requirement is three (3) hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

15
minute
s

Frequency of Response:

On occasion

Annual number of Responses: 10 reports

Annual Burden: 3 hours

Calculation: 10 reports x 15 min. = 3 hours

Total annual burden for this entire requirement is six (6) hours (3 + 3).

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 may do so by email or letter addressed to the Drug and Alcohol Program Manager, Office of Railroad Safety, FRA, 1200 New Jersey Avenue, S.E., Washington, DC 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 about five tests will be positive every year, the test results have never been challenged (at least not 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. 301]

(a) A railroad must require a regulated employee to submit to a breath alcohol test when the railroad has reasonable suspicion to believe that the regulated 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 regulated 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. A Federal reasonable suspicion alcohol test is not required to confirm the on-duty possession of alcohol.

(b) A railroad must require a regulated employee to submit to a drug test when the railroad has reasonable suspicion to believe that the regulated employee has violated the prohibitions of Subpart B of this Part concerning use of controlled substances. The railroad's determination that reasonable suspicion exists to require the regulated employee to undergo a drug 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.

(c) Reasonable suspicion observations made under this section must comply with the requirements of § 219.303.

(d) As provided by § 219.11(b)(2), in any case where an employee is suffering a substantiated medical emergency and is subject to alcohol or drug testing under this subpart, necessary medical treatment must be accorded priority over provision of the breath or body fluid specimens. However, when the employee's condition is stabilized, reasonable suspicion testing must be completed if within the eight-hour limit provided for in § 219.305.

The procedures for conducting and documenting breath alcohol testing and drug 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.

§ 219.303 Reasonable suspicion observations. (New Requirements)

(a) With respect to an alcohol test, the required observations must be made by a responsible railroad supervisor (defined by § 219.5) trained in accordance with § 219.11(g). The supervisor who makes the determination that reasonable suspicion exists may not conduct the reasonable suspicion testing on that regulated employee.

(b) With respect to a drug test, the required observations must be made by two responsible railroad supervisors (defined by § 219.5), at least one of whom must be both on site and trained in accordance with § 219.11(g). If one of the supervisors is off-site, the on-site supervisor must communicate with the off-site supervisor, as necessary, to provide him/her with the information needed to make the required observation. This communication may be performed via telephone, but not via radio or any other form of electronic communication.

FRA estimates that this will occur approximately 50 times a year and thus approximately 50 phone communications will be made by the on-site railroad supervisor with the off-site supervisor, as necessary, to provide him or her with the necessary information under the above requirement. It is estimated that it will take approximately two (2) minutes to

complete each telephone communication. Total annual burden for this requirement is two (2) hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response: 2 minutes

Frequency of Response: On occasion

Annual number of Responses: 50 telephone communications

Annual Burden: 2 hours

Calculation: 50 telephone communications x 2 min. = 2 hours

(c) This Subpart does not authorize holding any employee out of service pending receipt of toxicological analysis for reasonable suspicion testing, nor does it restrict a railroad from taking such action based on the employee's underlying conduct, so long as it is consistent with the railroad's policy and any such action is done under the railroad's own company authority.-

(d) The railroad must maintain written documentation that specifically describes the observed signs and symptoms upon which determination that reasonable suspicion exists is based. This documentation must be completed promptly by the trained supervisor.

FRA estimates that approximately 30 written documents that specifically describe the observed signs and symptoms upon which the determination that reasonable suspicion exists is based will be completed under the above requirement. It is estimated that it will take approximately five (5) minutes/hours to complete each written document. Total annual burden for this requirement is three (3) hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response: 5 minutes

Frequency of Response: On occasion

Annual number of Responses: 30 written documents
Annual Burden: 3 hours

Calculation: 30 written documents x 5 min. = 3 hours

Total annual burden for this entire requirement is five (5) hours (2 + 3).

§ 219.305 Prompt specimen collection; time limitations. (New Requirements)

(a) Consistent with the need to protect life and property, testing under this Subpart must be conducted promptly following the observations upon which the testing decision is based.

(b) If a test required by this Subpart is not administered within two hours following a determination made under this section, the railroad must prepare and maintain on file a record stating the reasons the test was not administered within that time period. If an alcohol or drug test required by this Subpart is not administered within eight hours of the determination made under this Subpart, the railroad must cease attempts to administer the test and must record the reasons for not administering the test. The eight-hour requirement is satisfied if the individual has been delivered to the collection site (where the collector is present) and the request has been made to commence collection of the specimens within that period. The records required by this section must be submitted to FRA upon request of the FRA Drug and Alcohol Program Manager.

FRA estimates that approximately 30 records stating the reasons the required test was not administered within the stipulated time period will be completed 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 one (1) hour.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response: 2 minutes
Frequency of Response:

On occasion

Annual number of Responses: 30 records
Annual Burden: 1 hour

Calculation: 30 records x 2 min. = 1 hour

Subpart E – Reasonable Cause Testing

§ 219.401 Authorization for reasonable cause testing.

(a) A railroad may, at its own discretion, elect to conduct Federal reasonable cause testing authorized by this Subpart. If a railroad chooses to do so, the railroad must use only Federal authority for all reasonable cause testing that meets the criteria of § 219.403. In addition, the railroad must notify its regulated employees of its decision to use Federal reasonable cause testing authority in the employee educational policy required by § 219.23(e)(5). The railroad must also provide written notification of its decision to FRA’s Drug and Alcohol Program Manager, 1200 New Jersey Ave., SE, Washington, DC, 20590. **(New Requirement)**

FRA estimates that it will receive approximately 50 notifications from railroads of their decision to conduct Federal reasonable cause testing authorized by this Subpart under the above requirement. It is estimated that it will take approximately 15 minutes to complete each notification. Total annual burden for this requirement is 13 hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response: 15 minutes

Frequency of Response: On occasion

Annual number of Responses: 50 notifications

Annual Burden: 13 hours

Calculation: 50 notifications x 15 min. = 13 hours

§ 219.403 Requirements for reasonable cause testing.

A railroad’s decision process regarding whether reasonable cause testing is authorized must be completed before the reasonable cause testing is performed and documented according to the requirements of § 219.405. The circumstances listed in § 219.403(a) and § 219.403(b) constitute reasonable cause for the administration of alcohol and/or drug tests under the authority of this Subpart.

The burden for this requirement is included under that of § 219.405. Consequently, there is no additional burden associated with this requirement.

§ 219.405 Documentation requirements.

(a) A railroad must maintain written documentation that specifically describes the basis for each reasonable cause test it performs under Federal authority. This documentation must be completed promptly by the responsible railroad supervisor; although it does not need to be completed before reasonable cause testing is conducted. **(New Requirement)**

FRA estimates that approximately 50 reasonable cause tests will be performed and thus 50 documents for each reasonable cause test it performs will be completed each year under the above requirement. It is estimated that it will take approximately 15 minutes/hours to complete each document. Total annual burden for this requirement is 13 hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response: 15 minutes

Frequency of Response: On occasion

Annual number of Responses: 50 documents

Annual Burden: 13 hours

Calculation: 50 documents x 15min. = 13 hours

(b) For a rule violation, the documentation must include the type of rule violation and the involvement of each tested regulated employee. For a train accident or train incident reportable under Part 225 of this Chapter, it must describe either the amount of railroad property damage or the reportable casualty and the basis for the supervisor's belief that the employee's acts or omissions contributed to the occurrence or severity of the train accident or train incident. **(New Requirement)**

FRA estimates that approximately 20 documents for each reasonable cause test it performs related to a rule violation will be completed each year under the above requirement. It is estimated that it will take approximately 15 minutes to complete each document. Total annual burden for this requirement is five (5) hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

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

Calculation: 20 documents x 15 min. = 5 hours

Total annual burden for this requirement is 18 hours (13 + 5).

§ 219.407 Prompt specimen collection; time limitations.

(a) Consistent with the need to protect life and property, testing under this Subpart must be conducted promptly following the observations upon which the testing decision is based.

(b) If a test conducted pursuant to the authority of this Subpart is not administered within two hours following the observations upon which the testing decision is based, the railroad must prepare and maintain on file a record stating the reasons the test was not conducted within that time period. If an alcohol or drug test authorized by this Subpart is not administered within eight hours of the event under this Subpart, the railroad must cease attempts to administer the test and must record the reasons for not administering the test. The eight-hour time period begins at the time a responsible railroad supervisor receives notice of the train accident, train incident, or rule violation. The eight-hour requirement is satisfied if the individual has been delivered to the collection site (where the collector is present) and the request has been made to commence collection of specimen(s) within that period. The records required by this section must be submitted to FRA upon request of the FRA Drug and Alcohol Program Manager. **(New Requirement)**

FRA estimates that approximately 15 records will be completed each year under the above requirement. It is estimated that it will take approximately 15 minutes to complete each record. Total annual burden for this requirement is four (4) hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:	15 minutes
Frequency of Response:	On occasion

Annual number of Responses: 15 records
Annual Burden: 4 hours
Calculation: 15 records x 15 min. = 4 hours

Subpart F - Pre-employment Tests

§ 219.501 Pre-employment drug testing.

(a) Prior to the first time an individual performs regulated service for a railroad, the railroad must ensure that the employee undergoes testing for drugs in accordance with the regulations of a DOT agency. No railroad may allow a direct employee (a railroad employee who is not employed by a contractor to the railroad) to perform regulated service, unless that railroad has conducted a DOT pre-employment test for drugs on that individual with a result that did not indicate the misuse of any controlled substance. This requirement applies both to a final applicant for direct employment and to a direct employee seeking to transfer for the first time from non-regulated service to duties involving regulated service. A regulated employee must have a negative DOT pre-employment drug test for each railroad for which he or she performs regulated service as the result of a direct employment relationship.

(b) A railroad must ensure that each employee of a contractor who performs regulated service on the railroad's behalf has a negative DOT pre-employment drug test on file with his or her employer. The railroad must also maintain documentation indicating that it had verified that the contractor employee had a negative DOT pre-employment drug test on file with his or her direct employer. A contractor employee who performs regulated service for more than one railroad does not need to have a DOT pre-employment drug test for each railroad for which he or she provides service. **(New Requirement)**

FRA estimates that approximately 1,200 documents verifying the railroad's contractor employees have a negative DOT pre-employment drug test will be completed each year under the above requirement. It is estimated that it will take approximately 15 minutes to complete each pre-employment drug test and approximately five (5) minutes to complete each document. Total annual burden for this requirement is 400 hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response: 15 minutes + 5 minutes

Frequency of Response: On occasion

Annual number of Responses: 1,200 tests + 1,200 documents

Annual Burden: 400 hours

Calculation: 1,200 tests x 15 min. + 1,200 documents x 5 min. = 400 hours

Notification; records [219.503]

The railroad must provide for medical review of drug test results according to the requirements of Part 40 of this Title, as provided in Subpart H of this Part. The railroad must also notify the applicant in writing of the results of any Federal drug and/or alcohol test that is a positive, adulteration, substitution, or refusal in the same manner as provided for employees in Part 40 of this title and 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 who withdrew an application to perform regulated service prior to the commencement of the testing process.

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; OMB No. 2105-0529). Consequently, there is no additional burden associated with this requirement.

Subpart G - Random Alcohol and Drug Testing Programs

§ 219.603 General requirements for random testing programs.

- I. (a) To the extent possible, a railroad must ensure that its FRA random testing program is designed and implemented so that every regulated employee performing regulated service on its behalf should reasonably anticipate that he or she may be called for a random test without advance warning at any time while on-duty and subject to performing regulated service.
- (b) Prohibited selection bias. A random testing program may not have a selection bias or an appearance of selection bias, or appear to provide an opportunity for a regulated employee to avoid complying with this section.
- (c) Plans. As required by §§ 219.603-219.609, each railroad must submit for FRA approval a random testing plan meeting the requirements of this subpart. The plan must address all regulated employees, as defined in § 219.5.

*The burden for this requirement is included under that of § 219.605 below.
Consequently, there is no additional burden associated with this requirement.*

(d) Pools. A railroad must construct and maintain random testing pools in accordance with § 219.611.

*The burden for this requirement is included under that of § 219.611 below.
Consequently, there is no additional burden associated with this requirement.*

II. (j) Records. A railroad must maintain records required by this Subpart in accordance with § 219.623.

*The burden for this requirement is included under that of § 219.623 below.
Consequently, there is no additional burden associated with this requirement.*

§ 219.605 Submission and approval of random testing plans.

(a) Plan submission. (1) Each railroad must submit for review and approval a random testing plan meeting the requirements of § 219.607 and § 219.609 to the FRA Drug and Alcohol Program Manager, 1200 New Jersey Ave., SE, Washington, DC 20590. A railroad commencing start-up operations must submit its plan no later than 30 days prior to its date of commencing operations. A railroad that must comply with Subpart G because it no longer qualifies for the small railroad exception under § 219.3 (due to a change in operations or its number of covered employees) must submit its plan no later than 30 days after it becomes subject to the requirements of this Subpart. A railroad may not implement a Federal random testing plan or any substantive amendment to that plan prior to FRA approval. **(New/Revised Requirements)**

FRA estimates that approximately 200 existing railroads will submit random alcohol testing programs/plans 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 200.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

1 hour

Frequency of Response:

One-time

Annual number of Responses: 200 programs/plans

Annual Burden: 200 hours

Calculation: 200 programs x 1 hr. = 200 hours

Additionally, FRA estimates that approximately five (5) new railroads annually will submit random alcohol testing programs/plans 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/plans

Annual Burden: 5 hours

Calculation: 5 programs x 1 hr. = 5 hours

(2) A railroad may submit separate random testing plans for each category of regulated employees (as defined in § 219.5), combine all categories into a single plan, or amend its

current FRA-approved plan to add additional categories of regulated employees, as defined by this Part.

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:

698
railroads/
400
MOW
Contractors

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

(b) Plan approval notification. FRA will notify a railroad in writing whether its plan is approved. If the plan is not approved because it does not meet the requirements of this Subpart, FRA will inform the railroad of its non-approval, with specific explanation as to necessary revisions. The railroad must resubmit its plan with the required revisions within 30 days of the date of FRA's written notice. Failure to resubmit the plan with the necessary revisions will be considered a failure to submit a plan under this Part. (**New Requirement**)

FRA estimates that approximately 21 plans will be disapproved each year by FRA because they do not meet the requirements of this Subpart and thus approximately 21 plans will need to be resubmitted to FRA under the above requirement. It is estimated that it will take each railroad approximately 15 minutes to amend its plan with the required revisions and resubmit it to FRA. Total annual burden for this requirement is five (5) hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

15
minutes

Frequency of Response:

On
occasion

Annual number of Responses: 21 resubmitted plans
Annual Burden: 5 hours

Calculation: 21 resubmitted plans x 15 min. = 5 hours

(c) Plan implementation. A railroad must implement its random testing plan no later than 30 days from the date of approval by FRA.

(d) Plan amendments. (1) A substantive amendment to an approved plan must be submitted to FRA at least 30 days prior to its intended effective date. A railroad may not implement any substantive amendment prior to FRA approval.

The burden for this requirement is already included above under that of § 219.605(a)(2). Consequently, there is no additional burden associated with this requirement.

(2) Non-substantive amendments to an approved plan (such as replacing or adding service providers) must be provided to the FRA Drug and Alcohol Program Manager in writing (by letter or email) before their effective date, but do not require pre-approval by FRA. **(New Requirement)**

FRA estimates that approximately 50 non-substantive amendments will be completed and sent each year to the FRA Drug and Alcohol Program Manager in writing (by letter or email) before their effective date under the above requirement. It is estimated that it will take approximately 10 minutes to complete each non-substantive amendment and send it

to FRA. Total annual burden for this requirement is eight (8) hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

10
minutes

Frequency of Response:

On
occasion

Annual number of Responses: 50 non-substantive amendments

Annual Burden: 8 hours

Calculation: 50 non-substantive amendments x 10 min. = 8 hours

(e) Existing approved plans. A railroad random testing plan approved before [EFFECTIVE DATE OF FINAL RULE] does not have to be resubmitted unless it has to be amended to comply with the requirements of this Subpart. New plans, combined plans, or amended plans incorporating new categories of regulated employees (i.e. maintenance-of-way employees) must be submitted for FRA approval by a railroad at least 30 days before [EFFECTIVE DATE OF FINAL RULE]. **(New Requirement)**

The burden for the first part of this requirement is already included under that of § 219.605(b) above. Consequently, there is no additional burden associated with this requirement.

FRA estimates that approximately 20 new, combined, or amended random testing plans incorporating new categories of regulated employees (i.e. maintenance-of-way employees) will be submitted to FRA under the above requirement. It is estimated that it will take each railroad approximately 15 minutes to complete its new, combined, or amended random testing plan and submit it to FRA. Total annual burden for this requirement is five (5) hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

15
minutes

Frequency of Response:

One-time

Annual number of Responses: 20 new/combined/amended random testing plans

Annual Burden: 5 hours

Calculation: 20 new/combined/amended random testing plans

x 15 min. = 5 hours

Total annual burden for the entire requirement is 243 hours (200 + 5 + 20 + 5 + 8 + 5).

§ 219.607 Requirements for random testing plans.

(a) General. A random testing plan submitted by a railroad under this Subpart must address and comply with the requirements of this Subpart. The railroad must also comply with these requirements in implementing the plan. (**New/Revised Requirements**)

(b) Model random testing plan. A railroad (or a contractor or service agent requested to submit a Part 219-compliant random testing plan to a railroad for submission as a part of the railroad's random testing plan) may complete, modify if necessary, and submit a plan based on the FRA model random testing plan that can be downloaded from FRA's Drug and Alcohol Program website.

(c) Specific plan requirements. Random testing plans must contain the following items of information, each of which must be contained in a separate, clearly identified section:

- (1) Total number of covered employees, including covered service contractor employees and volunteers;
- (2) Total number of maintenance-of-way employees, including maintenance-of-way contractor employees and volunteers;
- (3) Names of any contractors who perform regulated service for the railroad, with contact information;
- (4) Method used to ensure that any regulated service contractor employees and volunteers are subject to the requirements of this Subpart, as required by § 219.609;
- (5) Name, address, and contact information for the railroad's Designated Employer Representative (DER) and any back-ups (if applicable);
- (6) Name, address, and contact information for any service providers, including the railroad's Medical Review Officer (MRO), Substance Abuse and Mental Health Services Administration (SAMHSA) certified drug testing laboratory(ies), Substance Abuse Professional(s) (SAPs), and C/TPA or collection site management companies. Individual collection sites do not have to be identified;
- (7) Number of random testing pools and the proposed general pool entry assignments for each pool. If using a C/TPA, a railroad must identify whether its regulated employees are combined into one pool, contained in separate pools, or combined in a larger pool with other FRA and/or other DOT agency regulated employees.
- (8) Target random testing rates;
- (9) Method used to make random selections, including a detailed description of the computer program or random number table selection process employed;
- (10) Selection unit(s) for each random pool (e.g., employee name or ID number, job assignment, train symbol) and whether the individual selection unit(s) will be selected for drugs, alcohol, or both;
- (11) If a railroad makes alternate selections, under what limited circumstances these alternate selections will be tested (see § 219.613);
- (12) Frequency of random selections (e.g., monthly);

(13) Designated testing window. The designated testing window extends from the beginning to the end of the designated testing period established in the railroad's FRA-approved random plan (see § 219.603), after which time any individual selections for that designated testing window that have not been collected are no longer active (valid); and

(14) Description of how the railroad will notify a regulated employee that he or she has been selected for random testing.

FRA estimates that approximately 50 requests by railroads to a contractor or service agent to submit a part 219-compliant random testing plan on behalf of that railroad will be made under the above requirement. It is estimated that each request will take approximately 15 minutes to complete. Total annual burden for this requirement is 13 hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

15
minutes

Frequency of Response:

On
occasion

Annual number of Responses:

50 requests

Annual Burden:

13 hours

Calculation:

50 requests x 15 min. = 13 hours

Additionally, FRA estimates that approximately 50 random testing plans will be completed by a railroad (or a contractor or service agent) based on the FRA model random testing under the above requirement. It is estimated that each random testing plan will take approximately one (1) hour to complete each request. Total annual burden

for this requirement is 50 hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

1 hour

Frequency of Response:

On
occasion

Annual number of Responses: 50 random testing plans

Annual Burden: 50 hours

Calculation: 50 requests x 1 hr. = 50 hours

Total annual burden for this requirement is 63 hours (13 + 50).

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 (OMB No. 2105-0529). Consequently, there is

no burden associated with this requirement.

§ 219.609 Inclusion of contractor employees and volunteers in random testing plans
(New/Revised Requirements)

- I. (a) A railroad's random testing plan must demonstrate that all of its regulated service contractor employees and volunteers are subject to random testing that meets the requirements of this Subpart. A railroad can demonstrate that its regulated service contractor employees and volunteers are in compliance with this Subpart by either:
(1) Directly including regulated service contractor employees and volunteers in its own random testing plan and ensuring that they are tested according to that plan;

FRA estimates that approximately 15 random testing plans will be completed to directly include the railroad's regulated service contractor employees and volunteers to ensure that they are tested according to that plan under the above requirement. It is estimated that it will take approximately 10 minutes to complete each such random testing plan and send the required document to FRA. Total annual burden for this requirement is three (3) hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

10
minutes

Frequency of Response:

On
occasion

Annual number of Responses:

15 random testing plans

Annual Burden:

3 hours

Calculation:

15 random testing plans x 10 min. =
3 hours

II. or (2) Indicating in its random testing plan that its regulated service contractor employees and volunteers are part of a random testing program, compliant with the requirements of this Subpart, conducted by a contractor or a service agent, such as a C/TPA (“non-railroad random testing program”). If a railroad chooses this option, the railroad must append to its own random testing plan one or more addenda describing the method it will use to ensure that the non-railroad random testing program is testing its regulated service contractor employees and volunteers according to the requirements of this Subpart. A railroad could comply with this requirement by appending either the non-railroad random testing program or a detailed description of the program and how it complies with this Subpart.

(b) A railroad’s random testing plan(s) and any addenda must contain sufficient detail to fully document that the railroad is meeting the requirements of this Subpart for all personnel performing regulated service on its behalf.

FRA estimates that this will happen in approximately 15 instances each year and thus approximately 15 addenda will be appended either the non-railroad random testing program or a detailed description of the program and how it complies with this Subpart) to the railroads own random testing program under the above requirement. It is estimated that each request will take approximately 10 minutes to complete the addenda and send the required documents to FRA. Total annual burden for this requirement is three (3) hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

10
minutes

Frequency of Response:

On
occasion

Annual number of Responses: 15 addenda to railroads' own random testing program

Annual Burden: 3 hours

Calculation: 15 addenda to railroads' own random testing program

x 10 min. = 3 hours

- III. (d) FRA does not pre-approve contractor or service agent random testing plans, but may accept them as part of its approval process of a railroad's plan.

The burden for amendments is already included under that of § 219.609(a)(1) and (a)(2) above. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is six (6) hours (3 + 3).

§ 219.611 Random alcohol and drug testing pools. (New Requirements)

- I. (a) **General.** A railroad must ensure that its random testing pools include all regulated employees who perform regulated service on its behalf, except that a railroad's random testing pools do not have to include regulated employees who are part of a non-railroad random testing program that is compliant with the requirements of this subpart and that has been accepted by the railroad.

(b) **Pool entries.** A railroad must clearly indicate who will be tested when a specific pool entry is selected.

(1) Pool entries may be either employee names or ID numbers, train symbols, or specific job assignments, although all the entries in a single pool must be of generally consistent sizes and types.

(2) Pool entries may not be constructed in a manner that permits a field manager or field supervisor to have discretion over which employee would be tested when an entry is selected.

(3) Pool entries must be constructed and maintained so that all regulated employees have an equal chance of being selected for random testing for each selection draw.

The burden for indicating who will be tested when a specific pool is selected is included in the burden for random testing plans above under § 219.607 and § 219.609. Consequently, there is no additional burden associated with this requirement.

- II. (e) Frequency of regulated service. (3) A railroad must make a good faith effort when determining the frequency of an employee's performance of regulated service and must evaluate an employee's likelihood of performing regulated service in each upcoming selection period.

FRA estimates that approximately 25,000 good faith determinations and 25,000 evaluations of an employee's likelihood of performing regulated service in each upcoming selection period will be completed by railroads under the above requirement. It is estimated that it will take approximately .5 minute to complete each good faith determination and approximately .5 minute to complete each evaluation. Total annual burden for this requirement is 417 hours.

Respondent Universe:

698
railroads/
400 MOW
Contractors

Burden time per response:

.5
minute
+ .5
minute

Frequency of Response:

On
occasion

Annual number of Responses: 25,000 good faith determinations +
25,000 evaluations

Annual Burden: 417 hours

Calculation: 25,000 good faith determinations x .5 min. + 25,000
evaluations x .5 min. = 417 hours

- III. (f) Pool maintenance. Pool entries must be updated at least monthly, regardless of how often selections are made, and a railroad must ensure that each random testing pool is complete and does not contain outdated or inappropriate entries.

FRA estimates that pool entries will be updated monthly for each of the 698 railroads and 400 MOW contractors and thus approximately 13,176 random testing pools will be updated each year (1,098 RR/contractor pools x 12 mos.) under the above requirement. It is estimated that it will take approximately five (5) minutes to complete each such random testing pool update. Total annual burden for this requirement is 1,098 hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

5
minutes

Frequency of Response:

On
occasion

Annual number of Responses: 13,176 random testing pool updates

Annual Burden: 1,098 hours

Calculation: 13,176 random testing pool updates x 5 min. = 1,098 hours

- IV. (g) Multiple random testing pools. A railroad may maintain more than one random testing pool if it can demonstrate that its random testing program is not adversely impacted by the number and types of pools or the construction of pool entries, and that selections from each pool will meet the requirements of this Subpart. FRA estimates that approximately eight (8) railroads will maintain more than one random testing pool and thus 96 documents (8 RR random testing pools x 12 mos.) will be

completed by railroads to demonstrate that their random testing program is not adversely impacted by the number and types of pools or the construction of pool entries, and that selections from each pool will meet the requirements of this Subpart. It is estimated that it will take approximately five (5) minutes to complete each demonstration document. Total annual burden for this requirement is eight (8) hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

5
minutes

Frequency of Response:

On
occasion

Annual number of Responses: 96 demonstration documents
Annual Burden: 8 hours

Calculation: 96 demonstration documents x 5 min. = 8 hours

Total annual burden for this requirement is 1,523 hours (417 + 1,098 + 8).

§ 219.613 Random testing selections. (New Requirements)

- I. (a) General. A railroad must ensure that each regulated employee has an equal chance of being selected for random testing whenever selections are performed. A railroad may not increase or decrease an employee's chance of being selected by weighting an entry or pool.
- (b) Method of selection. (1) A railroad must use a selection method that is acceptable to FRA and that meets the requirements of this Subpart. Acceptable selection methods are a computer selection program, a method that makes proper use of a random number table,

or an alternative method including in a railroad's random testing plan and approved by FRA.

(2) A selection method must be free of bias or apparent bias and employ objective, neutral criteria to ensure that every regulated employee has an equal statistical chance of being selected within a specified time frame. The selection method may not utilize subjective factors that permit a railroad to manipulate or control selections in an effort to either target or protect any employee, job, or operational unit from testing.

(3) The randomness of a selection method must be verifiable, and, as required by § 219.623, any records necessary to document the randomness of a selection must be retained for not less than two years from the date the designated testing window for that selection expired.

The burden for randomness selection records is included below under § 219.623. Consequently, there is no additional burden associated with this requirement.

II. (c) Minimum random testing rate.

(3) To establish the total number of regulated employees eligible for random testing throughout the year and the number of tests which need to be conducted, a railroad must separately identify the total number of regulated employees (as defined by § 219.5) eligible for random testing during each random testing period for the year for each employee category for which the Administrator has established a separate random rate requirement. The railroad must then divide the subtotal by the number of random testing periods and apply the Administrator's random rate determination against this result. A railroad does not need to be perform this calculation more than once per month even if the railroad conducts random testing selections more often than once per month (e.g., selecting every two weeks).

FRA estimates that this will be done approximately twice a year for each of the 698 railroads and 400 MOW contractors. Thus, 2,196 identifications (1,098 railroads/contractors x 2) of the total number of eligible employees for random testing during each testing period will be made under the above requirement. It is estimated that it will take approximately two (2) minutes to complete the identification of random testing eligible employees. Total annual burden for this requirement is 73 hours.

Respondent Universe:

698
railroads/
400
MOW

Contractors

Burden time per response:

2
minutes

Frequency of Response:

On
occasion

Annual number of Responses: 2,196 identifications

Annual Burden: 73 hours

Calculation: 2,196 identifications x 2 min. = 73 hours

- III. (e) Discarded selection draws. Once a selection draw has been made, it must be used to identify which individuals will be subject to random testing. A selection draw cannot be discarded without an acceptable explanation (e.g., the pool from which the selection draw was made was incomplete or inaccurate). Records for all discarded selection draws, including the specific reason the selection draw was not used, must be documented and retained according to the requirements of § 219.623.

FRA estimates that approximately 10 explanations of discarded selection draws will be completed by railroads under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each discarded selection draw explanation. Total annual burden for this requirement is .33 hour.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

2
minute
s

Frequency of Response:

On
occasion

Annual number of Responses: 10 discarded selection draw
explanations/records

Annual Burden: .33 hour

Calculation: 10 discarded selection draw explanations/records x 2 min.
= .33 hour

- IV. (g) Selection snapshots. A railroad must capture and maintain an electronic or hard copy snapshot of each random testing pool at the time it makes a testing selection. The pool entries must not be re-created from records after the time of the original selection. The railroad must maintain this snapshot for a period of two years, as required by Subpart J of this Part.

FRA estimates that approximately 13,176 random testing pool snapshots (electronic or hard copy) will be made by railroads under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each random testing pool snapshot. Total annual burden for this requirement is 1,098 hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

2
minute
s

Frequency of Response: On occasion

Annual number of Responses: 13,176 random testing pool snapshots

Annual Burden: 1,098 hours

Calculation: 13,176 random testing pool snapshots x 2 min. = 1,098 hrs.

Total annual burden for this entire requirement is 1,171 hours (73 + .33 + 1,098).

§ 219.615 Random testing collections. (New Requirements)

I. (e) Notification requirements.

(1) A railroad may not notify a regulated employee that he or she has been selected for random testing until the duty tour in which the collection is to be conducted, and then only so far in advance as is reasonably necessary to ensure the employee's presence at the scheduled collection time and place.

(2) Collections must be conducted as soon as possible and commence no later than two hours after notification (unless there is an acceptable reason for the delay). An employee should be monitored after notification of selection for random testing and, whenever possible, immediately escorted by supervisory or management personnel to the collection location.

(3) Each time a regulated employee is notified that he or she has been selected for random testing, the employee must be informed that the selection was made on a random basis. Completion of the Federal Drug Testing Custody and Control Form (CCF) or the DOT Alcohol Testing Form (ATF) indicating the basis of the test satisfies this requirement, so long as the employee has been shown and directed to sign the CCF or ATF as required by §§ 40.73 and 40.241 of this title.

The notification burden is encompassed in the completion of the Federal Drug Testing Custody and Control Form (CCF/the DOT Alcohol Testing Form (ATF)). The CCF form burden is included in the associated the Health and Human Services (HHS) information collection while the DOT ATF form is included in the information collection associated with DOT's Part 40 (OMB No. 2101-0529). Consequently, there is no additional burden associated with this requirement.

- II. (f) Incomplete collections. A railroad must use due diligence to ensure that a random testing collection is completed for each selected pool entry, unless it has an acceptable explanation for not conducting the collection. All reasons for incomplete collections must be fully documented and are subject to inspection by FRA upon request.

FRA estimates that each year there will be approximately 2,000 instances where a random collection is incomplete/not conducted and thus 2,000 explanations documenting why the collection was incomplete/not conducted. It is estimated that it will take approximately half-a-minute (.5 minute) to complete each incomplete testing document. Total annual burden for this requirement is 17 hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

.5
minute

Frequency of Response:

On
occasion

Annual number of Responses: 2,000 incomplete testing documents
Annual Burden: 17 hours

Calculation: 2,000 incomplete testing documents x .5 min. = 17 hours

- III. (g) Hours-of-service limitations.

(1) Except as provided by paragraph (g)(2) of this section, if a random testing collection is not completed within a covered employee's hours-of-service limitations, a railroad must immediately terminate the collection and may not reschedule it.

(2) When something during a random collection triggers a mandatory direct observation

collection under § 40.67 of this Title, a directly observed collection must immediately proceed until completed. A railroad must submit an excess service report, as required by Part 228 of this Chapter, if completion of the directly observed collection causes the covered employee to exceed his or her hours-of-service limitations.

The burden for Excess Service Reports is already included under § 228.19 of the Hours of Service Information Collection (OMB No. 2130-0005). Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is 17 hours.

§ 219.617 Participation in random alcohol and drug testing. **(Revised Requirements)**

(a) Railroad responsibility.

(3) Once an employee has been notified that he or she has been selected for random testing, only a substantiated medical emergency involving the employee or an immediate family member (e.g. birth, death, or medical emergency) may excuse the selected employee from completing the collection or test. A medical emergency is defined in this Part as an acute medical condition requiring immediate emergency care. To be eligible for exclusion from random testing, the selected employee must provide verifiable documentation from a credible outside professional (e.g. doctor, dentist, hospital, law enforcement officer, school authority, court official) substantiating the emergency situation within a reasonable period of time. A selected employee who has been excused from testing may not later be tested by the railroad under the same selection.

FRA estimates that each year there will be approximately five (5) instances where an employee selected for random testing has a medical emergency. Thus, approximately five (5) medical emergency documents/verifications will be completed by employees and railroads, respectively. It is estimated that it will take approximately 60 minutes to complete each employee medical document/railroad verification. Total annual burden for this requirement is five (5) hours.

Respondent Universe: 698 railroads/400 MOW Contractors

Burden time per response:

1 hour

Frequency of Response:

On
occasion

Annual number of Responses: 5 employee medical emergency documents/railroad verifications
Annual Burden: 5 hours

Calculation: 5 employee medical emergency documents/railroad verifications x 1 hr. = 5 hours

(b) Employee responsibility. (1) A regulated employee subject to the random testing requirements of this subpart must cooperate with the selection and testing process, and must proceed to the testing site upon notification that he or she has been selected for random testing.

(2) A notified employee must fully cooperate and comply with the urine drug collection and/or breath alcohol testing procedure required by Subpart H of this Part, provide the required specimen(s), and must, upon request, complete the required paperwork and certifications.

As noted previously, the notification burden is encompassed in the completion of the Federal Drug Testing Custody and Control Form (CCF/the DOT Alcohol Testing Form (ATF), which are included in the associated HHS information collection and the information collection associated with DOT's Part 40 (OMB No. 2105-0529), respectively. The burden for the employee completing the required paperwork and certifications is also included in DOT's Part 40 Information Collection. Consequently, there is no additional burden associated with this part of the requirement.

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

§ 219.619 Positive alcohol and drug test results and refusals; procedures.

Section 219.104 contains the procedures for administrative handling by the railroad or contractor in the event a urine specimen provided under this Subpart is reported as a verified positive by the Medical Review Officer, a breath alcohol specimen is reported at 0.04 or greater by the Breath Alcohol Technician, or there has been a refusal to test. The responsive action required in § 219.104 is not stayed pending the result of the testing of a split urine specimen or a challenge to any part of the testing process or procedure. (**New Requirement**)

FRA estimates that approximately 88 reports by Medical Review Officers/Breath Alcohol Technicians of a verified positive test/ breath alcohol specimen at .04 or greater/employee refusal to test will be completed each year under the above requirement. It is estimated that it will take approximately five (5) minutes to complete each report. Total annual burden for this requirement is seven (7) hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

5
minutes

Frequency of Response:

On
occasion

Annual number of Responses: 88 reports

Annual Burden: 7 hours

Calculation: 88 reports x 5 min. = 7 hours

Additionally, FRA estimates that zero (0) challenges to the alcohol/drug testing process or procedure will be made by employees under the above requirement. Consequently, there is no additional burden associated with this part of the requirement.

Total annual burden for this entire requirement is seven (7) hours.

§ 219.621 Use of service agents

A railroad may not use a service agent to notify regulated employees that they have been selected for random testing, unless that service agent is an authorized representative of the railroad approved by FRA in the railroad's random testing plan. A regulated employee who has been selected for random testing must otherwise be notified of the selection by his or her employer. Service agents may also not perform roles that are specifically reserved for an employer under § 40.355 of this title. For purposes of this Subpart, only a railroad or a contractor performing railroad-accepted testing can be considered employers under § 40.355 of this title. **(New Requirement)**

As noted above, the notification burden is encompassed in the completion of the Federal

Drug Testing Custody and Control Form (CCF/the DOT Alcohol Testing Form (ATF), which are included in the associated HHS information collection and the information collection associated with DOT's Part 40 (OMB No. 2105-0529), respectively. The burden for the employee completing the required paperwork and certifications is also included in DOT's Part 40 Information Collection. Consequently, there is no additional burden associated with this part of the requirement.

§ 219.623 Records.

(a) As provided by § 219.901, railroads are required to maintain records related to random testing for a minimum of two years.

(b) Contractors and service agents performing random testing responsibilities under this Subpart must provide records required by this Subpart whenever requested by the contracting railroad or by FRA. A railroad remains responsible for maintaining records demonstrating that it is in compliance with the requirements of this Subpart.

FRA estimates that approximately 40,000 testing events will occur each year and thus 40,000 random testing records will be completed each year by railroads under the above requirement. It is estimated that it will take approximately one (1) minute to maintain each record. Total annual burden for this requirement is 667 hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

1
minute

Frequency of Response:

On
occasion

Annual number of Responses:

40,000 random testing records

Annual Burden:

667 hours

Calculation: 40,000 random testing records x 1 min. = 667 hours

§ 219.625 FRA Administrator's determination of random alcohol and drug testing rates.

(a) Notice. Each year, the FRA Administrator publishes a Federal Register notice announcing the minimum annual random alcohol and drug testing rates which take effect on January 1 of the following calendar year. These rates are based on the railroad industry's random testing violation rates for the preceding two consecutive calendar years, which are determined using annual railroad alcohol and drug program data required to be submitted to the FRA's Management Information System (MIS) under § 219.800.

The burden for MIS data obtained under § 219.800 is included under the information collection associated with DOT's Part 40. Consequently, there is no additional burden associated with this requirement.

(b) Information used for this determination is drawn from the MIS reports required by § 219.800. In order to ensure reliability of the data, the Administrator may consider the quality and completeness of the reported data, obtain additional information or reports from railroads, or make appropriate modifications in calculating the industry positive rate.

The burden for MIS data obtained under § 219.800 is included under the information collection associated with DOT's Part 40 (OMB No. 2105-0529). Consequently, there is no additional burden associated with this requirement.

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 (OMB No. 2130-0529). 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

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

(a) 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.

(b) 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. For information on where to submit MIS forms and for the electronic version of the form, see: <http://www.fra.dot.gov/eLib/details/L02639>. The Administrator may designate means (e.g., electronic program transmitted via the Internet), other than hard-copy, for MIS form submission to FRA.

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

(d) As a railroad, if you have a regulated employee who performs multi-DOT agency functions (e.g., an employee drives a commercial motor vehicle and performs switchman duties for you), count the employee only on the MIS report for the DOT agency under which he or she is random tested. Normally, this will be the DOT agency under which the employee performs more than 50% of his or her duties. Railroads may have to explain the testing data for these employees in the event of a DOT agency inspection or audit. **(Revised Requirement)**

(e) 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.

(f) A railroad required to submit an MIS report under this section must submit separate reports for covered employees and MOW employees. **(New Requirement)**

The requirements for alcohol and drug have been combined. Since the burden for these requirements relating to covered employees is already covered under DOT's 49 CFR Part 40 Information Collection and since the burden for MIS requirements is also covered under DOT's Part 49 CFR Part 40 Information Collection (OMB No. 2130-0529), there is no additional burden associated with these requirements.

Subpart J - Recordkeeping Requirements

I. Retention of alcohol testing records [219.901]

(a) General Requirement. (1) In addition to the records required to be kept by Part 40 of this Title, each railroad must maintain alcohol and drug misuse prevention program records in a secure location with controlled access as set out in this section.

(2) FRA requires certain records to be maintained for two years, rather than one year as provided for by § 40.333(a)(4) of this title. Railroads may maintain legible and accessible scanned or electronic copies of these records for the second year that they are required to be maintained by FRA. **(Revised Requirement)**

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

(1) A summary record or the individual files of each regulated employee's test results; and

(2) A copy of the annual report summarizing the results of its alcohol and drug misuse prevention program (if required to submit the report under § 219.801(a)).

(c) Records maintained for a minimum of two years. 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, including the railroad's approved random testing plan and FRA's approval letter for that plan.

(iii) Documents generated in connection with decisions to administer Federal reasonable suspicion or reasonable cause alcohol or drug tests.

(iv) Documents generated in connection with decisions on post-accident testing.

(v) Documents verifying the existence of a medical explanation for the inability of a regulated 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) The railroad's copy of the drug test custody and control form, including the results of the test.

(iii) Documents related to the refusal of any regulated employee to submit to an alcohol or drug test required by this Part.

(iv) Documents presented by a regulated employee to dispute the result of an alcohol or drug test administered under this Part.

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

(4) Records related to employee training:

(i) Materials on alcohol and drug abuse awareness, including a copy of the railroad's policy on alcohol and drug abuse.

(ii) Documentation of compliance with the requirements of § 219.23.

(iii) Documentation of training (including attendance records and training materials) provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for reasonable suspicion or post-accident alcohol and drug testing.

(iv) Documentation of training (including attendance records and training materials), required under § 219.103(b)(2) and (b)(3), provided to regulated employees regarding the use of prescription and over-the-counter drugs.

The burden for this requirement would normally be included under the information collection associated with DOT's Part 40. However, the proposed rule mandates that the required records be kept for two years by FRA rather than the one year under Part 40. As noted in the regulatory impact analysis accompanying this proposed rule, FRA estimates then that approximately 16,960 records for MOW employees will be kept under the above requirement. It is estimated that it will take approximately five (5) minutes to create/maintain each record. Total annual burden for this requirement is 1,413 hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

1
minute

Frequency of Response:

On
occasion

Annual number of Responses: 16,960 MOW records

Annual Burden: 1,413 hours

Calculation: 16,960 MOW records x 5 min. = 1,413 hours

II. Access to facilities and records [219.903] (Revised Requirement)

(a) Release of regulated employee information contained in records required to be maintained under § 219.901 must be in accordance with Part 40 of this Title and with this section. (For purposes of this section only, urine drug testing records are considered equivalent to breath alcohol testing records.)

(b) Each railroad must permit access to all facilities utilized in complying with the requirements of this Part to the Secretary of Transportation, United States Department of Transportation, or any DOT agency with regulatory authority over the railroad or any of its regulated employees.

(c) Each railroad must make available copies of all results for its 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 regulated 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 Part 40 Information Collection. Consequently, there is no additional burden associated with this requirement.

§ 219.1001 Requirement for peer support programs.

(a) The purpose of this Subpart is to help prevent the adverse effects of alcohol misuse and drug use in connection with regulated employees through the implementation of peer referral and support programs. **(New/Revised Requirements)**

(b) Each railroad must adopt, publish, and implement a peer support program policy that meets the requirements of this Subpart. The policy must be designed to encourage and facilitate the referral and rehabilitative support of regulated employees who abuse alcohol or drugs. The policy must also support and augment this Part, as well as Parts 40, 240, and 242 of this title.

(c) A railroad may comply with this Subpart by adopting, publishing, and implementing policies meeting the specific requirements of § 219.1003 and/or by complying with § 219.1007.

FRA estimates that approximately 698 peer referral and support programs will be adopted, published, and implemented under the above requirement. It is estimated that it will take approximately 30 minutes to develop each peer referral and support program. Total annual burden for this requirement is 349 hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

30
minutes

Frequency of Response:

On
occasion

Annual number of Responses:
Annual Burden:

698 peer referral & support programs
349 hours

Calculation: 698 peer referral & support programs x 30 min. = 349 hrs.

Additionally, FRA estimates that approximately five (5) new railroads will commence operations each year and thus five (5) peer referral and support programs will be adopted, published, and implemented under the above requirement. It is estimated that it will take approximately 30 minutes to develop each peer referral and support program. Total annual burden for this requirement is three (3) hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

30
minutes

Frequency of Response:

On
occasion

Annual number of Responses: 5 peer referral & support programs
Annual Burden: 3 hours

Calculation: 5 peer referral & support programs x 30 min. = 3 hours

FRA estimates that each of the estimated 698 railroads will receive one report a year or a total of approximately 698 reports 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 to complete. Total an annual burden for this requirement is 38 hours.

Respondent Universe:

698 railroads

Burden time per response: 5 minutes

Frequency of Response: On occasion

Annual number of Responses: 698 reports
Annual Burden: 58 hours

Calculation: 698 reports x 5 min. = 58 hours

Total annual burden for this requirement is 410 hours (349 + 3 + 58).

§ 219.1003 Peer support program requirements.

(a) Scope. This section prescribes the minimum requirements and standards for peer support programs required under this Subpart. Individuals involved in the implementation of any program subject to this Subpart must comply with the program's policies and implementation procedures.

(b) Referral policies. Except as provided in § 219.1007, each railroad must publish and implement a peer support program that meets the requirements of this section and which contains, at a minimum, the following types of policies:

(1) Self-referral policy. A self-referral policy must provide regulated employees with an opportunity to obtain referral, education, counseling, and/or treatment through a qualified Employee Assistance Program (EAP) Counselor or Drug and Alcohol Counselor (DAC) before an employee's alcohol or substance use problem manifests itself in an accident, injury, or is otherwise detected as a violation of this Part;

(2) Co-worker referral policy. A co-worker referral policy must be designed to encourage and facilitate employee participation in preventing violations of this Part; and

(3) Non-peer referral policy. As negotiated between a railroad and its collective bargaining organizations (if applicable), a non-peer referral policy must specify whether the program permits referrals from non-peers, such as supervisors, representatives of an employee's collective bargaining organization, or family members.

(c) Referral conditions. The referral policies required by paragraph (b) of this section must specify the conditions under which a self-referral, co-worker referral, or non-peer referral can occur, including:

(1) For a self-referral that does not involve a violation of this Part, identification of a designated EAP Counselor or DAC (including telephone number and email (if available)) and any expectations regarding when the referral is allowed to take place (e.g., only during non-duty hours and/or while the employee is unimpaired, as permitted by § 219.1005);

(2) Whether non-peer referrals (e.g., referrals from supervisors, labor organizations, or family members) are permitted and what the allowances, conditions, and procedures of such referrals are;

(3) For a co-worker referral or a non-peer referral (as permitted by the railroad's policy), a railroad may accept a referral under this Subpart only if the referral is based on an allegation that the regulated employee was apparently unsafe to work with or appeared to be in violation of this Part or the railroad's alcohol and drug rules; and

(4) For a co-worker referral or a non-peer referral (as permitted by the railroad's policy), a railroad may remove a regulated employee from service only if a railroad representative who has been trained in accordance with the requirements of § 219.11(g) confirms that the employee is unsafe to work with or in violation of this Part or the railroad's alcohol and drug rules.

FRA estimates that 700 employees will be referred for treatment under this program. FRA estimates that it will take approximately 20 minutes for an EAP, DAC, or 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:

698 railroads
+ 400 MOW
Contractors

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

(d) Employment maintained. A regulated employee who is affected by an alcohol or drug use problem may maintain an employment relationship with the railroad if:

(1) The employee seeks assistance through a railroad's peer support program for the employee's alcohol or drug use problem or is referred for such assistance by either a co-worker or a non-peer (as permitted by the railroad's policy); and

(2) The employee successfully completes the education, counseling, or treatment program specified by a Counselor under this section.

(e) Employment action. If the employee does not choose to seek assistance through a peer support program, or fails to cooperate with the prescribed program, the disposition of the employee's relationship with the railroad is subject to normal employment action.

(f) Evaluation by a qualified EAP Counselor, DAC, or SAP. (1)(i) A regulated employee entering a peer support program through a self-referral must be evaluated by an EAP Counselor or DAC acceptable to the railroad.

(ii) A regulated employee entering a peer support program through a co-worker or non-peer referral must be evaluated by a SAP acceptable to the railroad (according to the standards of Part 40 of this Title) if the co-worker or non-peer referral involves a substantiated violation of § 219.101 or § 219.102.

(iii) If a co-worker or non-peer referral involves a situation where the regulated employee was not in violation of § 219.101 or § 219.102, but was determined to be unsafe to work with or in violation of only the railroad's alcohol and drug rules, the referred individual must be evaluated by an EAP or DAC.

(2) Organizations employing Counselors and personnel supporting peer programs under this Subpart must meet any applicable State standards and comply with this Subpart.

(3) The Counselor (defined by § 219.5 to include an EAP Counselor, DAC, or SAP) must determine the appropriate level of care (including, but not limited to, education, counseling, and/or treatment) necessary to resolve any identified substance abuse problem involving a regulated employee. If the evaluation establishes that the employee has an active substance abuse disorder (such as, but not limited to, substance dependency) requiring education, counseling and/or treatment education, the Counselor must refer the employee to an appropriately qualified rehabilitation program in the community when possible. An employee's failure to fully cooperate with the evaluation, referral process, or aftercare is grounds for dismissal from the railroad's peer support program, and will subject the employee to the railroad's normal employment action.

(g) Removal from regulated service. A peer support program policy must stipulate that a regulated employee who has been evaluated by a Counselor and found to have an active substance abuse disorder must be removed from regulated service until the Counselor reports that the employee's identified problem is no longer reasonably expected to adversely affect the safety of railroad operations.

(h) Confidentiality maintained. Except as provided under paragraph (l) of this section, the railroad's peer support program policy must treat an employee's referral and subsequent handling (including evaluation, education, counseling, and/or treatment) as confidential. Only personnel who administer the railroad's peer support program may have access to the identities of the individuals in the program.

(i) Leave of absence. The railroad must grant a regulated employee a leave of absence for the period necessary to complete at least the primary education/counseling/treatment program recommended by the Counselor. The leave of absence must also cover a period sufficient for the employee to establish control over his or her alcohol or drug problem to the extent that the evaluating Counselor determines that he or she is now at a low risk to return to substance abuse.

(j) Return to regulated service. (1) Except as may be provided under § 219.1001(d)(4) and § 219.1005, a railroad must return a regulated employee to regulated service on the recommendation of the Counselor when the employee has established control over his or her substance abuse problem, is assessed by the Counselor as being a low risk to return to substance abuse, and has complied with any return-to-service requirements recommended by the Counselor (such as a negative alcohol and/or drug test performed under Federal or company authority, whichever is appropriate).

(2) The Counselor determines the appropriate number and frequency of required follow-up tests. The railroad determines the dates of testing.

(3) An employee's return to regulated service may be conditioned upon successful completion of a return-to-service medical evaluation, as directed by the railroad.

(4) Approval to return to regulated service may not be unreasonably withheld. The railroad must return an employee to regulated service within five working days of the Counselor's notification to the railroad that the employee is fit to return to regulated service (i.e., the employee is at a low risk to return to substance abuse).

(k) Rehabilitation plan. No person or entity—whether an employing railroad, managed care provider, service agent, or any entity other than the Counselor who conducted the initial evaluation—may change in any way the Counselor's evaluation or recommendation for assistance. The Counselor who made the initial evaluation may modify his or her initial evaluation and follow-up recommendations based on new or additional information.

(l) Locomotive engineers and conductors. As provided by § 240.119(e) or § 242.115(g) of this Chapter, with respect to a certified locomotive engineer, certified conductor, or a candidate for engineer or conductor certification, the peer support program policy must state that confidentiality is waived (to the extent that the railroad receives official notice of the active substance abuse disorder from a Counselor, and suspends or revokes the certification, as appropriate) if an employee at any time refuses to cooperate in a recommended course of counseling or treatment. The treating Counselor is not required to provide this notice if the locomotive engineer or conductor is medically restricted from regulated service and the Counselor is working with the locomotive engineer or conductor to correct a reoccurring active substance abuse disorder. If a locomotive engineer or conductor with an active substance abuse disorder fails to make the needed rehabilitative progress during a period of medical restriction, the Counselor must provide official notice to the railroad.

(m) Contacting a SAP. If the identification of the regulated employee was due to co-worker or non-peer referral for a substantiated violation of § 219.101 or § 219.102, the regulated employee must contact the SAP in a reasonable time (as specified by the railroad's policy). If the employee does not contact the SAP within the railroad's specified time limit, the railroad may begin an investigation to assess the employee's cooperation and compliance with its peer support policy.

(n) Time requirements for Counselor evaluations. Once a regulated employee has contacted the designated Counselor, the evaluation must be completed within 10 working days. If the employee needs more than one evaluation, the evaluations must be completed within 20 working days.

(o) Regulated employee agreement. A railroad's peer support policy must require a regulated employee to agree to undertake and successfully complete a course of prescribed care and any follow-up care (including appropriate railroad-administered follow-up testing) deemed appropriate by the Counselor. Any follow-up treatment, care, and/or testing established for this program cannot exceed 24 months beyond the regulated employee's initial removal from regulated service, unless the regulated employee entered the peer prevention program through a co-worker or non-peer referral that involved a substantiated Part 219 violation.

The burden for peer referral and support programs is included above under § 219.1001. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is 350 hours.

§ 219.1005 Optional provisions. **(New Requirement)**

A railroad's peer support program policy may include any of the following provisions at the option of the railroad and with the approval of the labor organization(s) affected:

(a) The policy may provide for a mark-off provision under which a regulated employee who is concerned that he or she may not be safe to work due to alcohol or prescription medication use may choose to refuse an assignment.

(b) The policy may provide that the rule of confidentiality is waived if:

(1) The regulated employee at any time refuses to cooperate in a course of education, counseling, or treatment recommended by an Counselor; or

(2) The regulated employee is later determined, after investigation, to have been involved in an alcohol or drug-related disciplinary offense growing out of subsequent conduct.

(c) The policy may require successful completion of a return-to-service medical examination as a further condition of reinstatement in regulated service.

(d) The policy may provide that it does not apply to a regulated employee who has previously been assisted by the railroad under a policy or program substantially consistent with this section.

(e) The policy may provide that, in order to invoke its benefits, the regulated employee must report to the contact designated by the railroad either:

(i) During non-duty hours (i.e., at a time when the regulated employee is off duty); or

(ii) While unimpaired and otherwise in compliance with the railroad's alcohol and drug rules consistent with this subpart.

FRA estimates that approximately 10 peer support programs with labor organizations approvals will include the optional provisions outlined under the above requirement. It is estimated that it will take approximately 20 hours to develop each such peer support program and obtain each labor organization approval of these programs. Total annual burden for this requirement is 200 hours.

Respondent Universe: 698 railroads/400 MOW Contractors

Burden time per response:

20
hours

Frequency of Response: On occasion

Annual number of Responses: 10 peer support programs/labor organization approvals of programs

Annual Burden: 200 hours

Calculation: 10 peer support programs/labor organization approvals of programs x 20 hrs. = 200 hours

§ 219.1007 Alternate peer support programs.

(a) In lieu of peer support programs under § 219.1003, railroads are permitted to develop, publish, and implement an alternate program or policy which meets the standards established in § 219.1003. Such programs or policies must have the written concurrence of the recognized representatives of the regulated employees. Nothing in this Subpart restricts a railroad or labor organization from adopting, publishing and implementing peer support policies that afford more favorable conditions to regulated employees troubled by alcohol or drug abuse problems, consistent with a railroad's responsibility to prevent violations of § 219.101 and § 219.102. (**New Requirements**)

(b) The concurrence of the recognized representatives of the regulated employees in an alternate program may be evidenced by a collective bargaining agreement or any other document describing the class or craft of employees to which the alternate program applies. The agreement or other document must make express reference to this Subpart and to the intention of the railroad and employee representatives that the alternate program applies in lieu of the program required by this Subpart.

The burden for peer support programs is included above under § 219.1005. Consequently, there is no additional burden associated with this requirement.

(c) The railroad must file the agreement or other document described in paragraph (b) of this section along with the requested alternate program being submitted for approval with the FRA Drug and Alcohol Program Manager. Approval will be based on FRA review to ascertain whether the alternative program meets the § 219.1003 objectives. The alternative program does not have to include each § 219.1003 component, but must meet the general standards and intent of § 219.1003. If an approved alternate policy is amended or revoked, the railroad must file a notice with FRA of such amendment or revocation.

FRA estimates that approximately 10 alternate peer support programs with the necessary labor organization concurrences will be filed with the FRA Drug and Alcohol Program Manager under the above requirement. It is estimated that it will take approximately one (1) hour to complete/file each document with FRA. Total annual burden for this requirement is 10 hours.

Respondent Universe:

698
railroads/400
MOW
Contractors

Burden time per response:

1 hour

Frequency of Response:

On
occasion

Annual number of Responses:

10 alternate peer support program documents with necessary labor organization concurrences (records)

Annual Burden:

10 hours

Calculation: 10 alternate peer support program documents x 1 hr. = 10 hours

Additionally, FRA estimates that approximately one (1) notice of an approved alternate peer support programs that is amended or revoked by the railroad will be filed with FRA under the above requirement. It is estimated that it will take approximately one hour to file such notice /amend such alternate peer support program document. Total annual burden for this requirement is one (1) hour.

railroads/400
MOW
Contractors

Burden time per response:

1 hour

Frequency of Response:

On
occasion

Annual number of Responses: 1 notice/amended peer support
program document

Annual Burden: 1 hour

Calculation: 1 notice/amended peer support program documents x 1hr. =
1 hour

Total annual burden for this entire requirement is 11 hours (10 + 1).

APPENDIX C

Exhibit C-2—Instructions for Collection of Post Mortem Specimens: Employee Killed in a Railroad Accident/Incident (Form FRA F 6180.75)

To the Medical Examiner, Coroner, or Pathologist:

a. In compliance with Federal safety regulations (49 CFR Part [219](#)), a railroad representative has requested that you obtain specimens for toxicology from the remains of a railroad employee who was killed in a railroad accident or incident. The deceased consented to the taking of such specimens, as a matter of Federal law, by performing service on the railroad (49 CFR [219.11\(f\)](#)).

b. Your assistance is requested in carrying out this program of testing, which is important to the protection of the public safety and the safety of those who work on the railroads.

A. Materials:

The railroad will provide you a post-accident shipping box that contains necessary supplies. If the box is not immediately available, please proceed using supplies available to you that are suitable for forensic toxicology.

B. Specimens requested, in order of preference:

a. Blood—20 milliliters or more. Preferred sites: intact femoral vein or artery or peripheral vessels (up to 10 ml, as available) and intact heart (20 ml). Deposit blood in gray-stopper tubes individually by site and shake to mix specimen and preservative.

Note:

If uncontaminated blood is not available, bloody fluid or clots from body cavity may be useful for qualitative purposes; but do not label as blood. Please indicate source and identity of specimen on label of tube.

b. Urine—as much as 100 milliliters, if available. Deposit into plastic bottles provided.

c. Vitreous fluid—all available, deposited into smallest available tube (e.g., 3 ml) with 1% sodium fluoride, or gray-stopper tube (provided). Shake to mix specimen and preservative.

d. If available at autopsy, organs—50 to 100 grams each of two or more of the following in order preference, as available: liver, bile, brain, kidney, spleen, and/or lung. Specimens should be individually deposited into zip-lock bags or other clean, single use containers suitable for forensic specimens.

e. If vitreous or urine is not available, please provide—

1. Spinal fluid—all available, in 8 ml container (if available) with sodium fluoride or in gray-stopper tube; or, if spinal fluid cannot be obtained,

2. Gastric content—up to 100 milliliters, as available, into plastic bottle.

C. Specimen collection:

a. Sampling at time of autopsy is preferred so that percutaneous needle puncturing is not necessary. However, if autopsy will not be conducted or is delayed, please proceed with sampling.

b. Blood specimens should be taken by sterile syringe and deposited directly into evacuated tube, if possible, to avoid contamination of specimen or dissipation of volatiles (ethyl alcohol).

Note:

If only cavity fluid is available, please open cavity to collect specimen. Note condition of cavity.

c. Please use smallest tubes available to accommodate available quantity of fluid specimen (with 1% sodium fluoride).

D. Specimen identification, sealing:

a. As each specimen is collected, seal each blood tube and each urine bottle using the respective blood tube or urine bottle using the identifier labels from the set provided with the Post-Accident Testing Blood/Urine Custody and Control Form (49 CFR part [219](#)) (Form FRA F 6180.74 (revised)). Make sure the unique identification number on the labels match the pre-printed number on the Control Form. Please label other specimens with name and specimen set identification numbers. You may use labels and seals from any of the extra forms, but annotate them accordingly.

b. Annotate each label with specimen description and source (as appropriate) (e.g., blood, femoral vein).

c. Please provide copy of any written documentation regarding condition of body and/or sampling procedure that is available at the time specimens are shipped.

E. Handling:

a. If specimens cannot be shipped immediately as provided below, specimens other than blood may be immediately frozen. Blood specimens should be refrigerated, but not frozen.

b. All specimens and documentation should be secured from unauthorized access pending delivery for transportation.

F. Information:

a. If the railroad has not already done so, please place the name of the subject at the top of the Control Form (STEP 1). You are requested to complete STEP 2 of the form, annotating it by writing the word "FATALITY," listing the specimens provided, providing any further information under "Remarks" or at the bottom of the form. If it is necessary to transfer custody of the specimens from the person taking the specimens prior to preparing the box for shipment, please use the blocks provided in STEP 5 to document transfer of custody.

b. The railroad representative will also provide Accident Information Required for Post-Accident Toxicological Testing (49 CFR part [219](#)), Form FRA 6180.73 (revised). Both forms should be placed in the shipping box when completed; but you may retain the designated medical facility copy of each form for your records.

G. Packing the shipping box:

a. Place urine bottles and blood tubes in the sponge liner in the individual kit, close the biohazard bag zipper, close the kit and apply the kit custody seal to the kit. You may use additional kits for each tissue specimen, being careful to identify specimen by tissue, name of deceased, and specimen set identification number. Apply kit security seals to individual kits and initial across all seals. Place all forms in the zip-lock bag and seal securely.

b. Place the bag in the shipping box. Do not put forms in with the specimens. Seal the shipping box with the seal provided and initial and date across the seal.

c. Affix the mailing label to the outside of the box.

H. Shipping the box:

a. The railroad must arrange to have the box shipped overnight air express or (if express service is unavailable) by air freight, prepaid, to FRA's designated laboratory. When possible, but without incurring delay, deliver the sealed shipping box directly to the express courier or the air freight representative.

b. If courier pickup is not immediately available at your facility, the railroad is required to transport the sealed shipping box to the nearest point of shipment via air express, air freight or equivalent means.

c. *If the railroad receives the sealed shipping box to arrange shipment*, please record under "Supplemental Information" on the Control Form, the name of the railroad official taking custody.

I. Other:

FRA requests that the person taking the specimens annotate the Control Form under "Supplemental Information" if additional toxicological analysis will be undertaken with respect to the fatality. FRA reports are available to the coroner or medical examiner on request.

FRA is revising Form FRA F 6180.75. This form is part of the shipping kit that is sent to medical examiners, coroners, or pathologists after a rail accident/incident where there is a fatality. FRA estimates that there are approximately 10 fatalities per year where Form FRA F 6180.75 would be filled-out. It is estimated that it takes approximately 20

minutes to do the necessary lab work and complete each form. Total annual burden for this requirement is three (3) hours.

Respondent Universe:	698 railroads/400 MOW Contractors
Burden time per response:	20 minutes
Frequency of Response:	On occasion
Annual number of Responses:	10 forms
Annual Burden:	3 hours

Calculation: 10 forms x 20 min. = 3 hours

Total annual burden for this requirement is three (3) hours.

Total annual burden for this entire information collection is 21,290 hours.

13. Estimate of total annual costs to respondents.

Respondent Costs

As noted in the regulatory evaluation accompanying this proposed rule, there are additional 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). Railroads bear the cost of shipping kits for post-accident toxicological (PAT) tests. This cost amounts to \$25 per box. At eight (8) additional PAT tests due to the inclusion of MOW employees, the cost for shipping specimens from the new MOW employee tests is estimated to be \$200. For the 21 impact accident and grade crossing event tests, the cost is estimated to be \$525 per year. The total cost for shipping is **\$575**.

Also, after the effective date of the final rule, all newly hired MOW employees would be required to undergo a pre-employment drug test (resulting in a negative result) prior to performing MOW activities for the railroad. FRA estimates this number to be approximately half of the estimated 32,000 MOW employees. Additionally, FRA estimates that the turnover rate of MOW employees to be approximately four (4) percent. An in-clinic pre-employment drug test is estimated to cost \$40. Therefore, pre-employment drug testing for MOW employees would result in an estimated cost of **\$25,600** per year [calculation = 32,000 MOW employees x .5 MOW employees who do not fall under company authority or FMCSA testing x .04 turnover x \$40 = \$25,600.]

Finally, there are the costs for random alcohol and drug testing of MOW employees under this proposed rule. The estimated cost of an onsite random drug and alcohol combination test is \$160. The estimated cost for an onsite random drug test is \$140. FRA estimates that the cost for random drug and alcohol tests at the minimum required

levels for MOW employees would be **\$1,440,000** per year (for the first five years).
 [Calculation = 32,000 MOW employees x .6 not already being tested x .25 tested for drugs and alcohol x \$160 per combo test = \$768,000; 32,000 MOW employees x .6 not already being tested x .25 tested for drugs x \$140 per drug test = \$672,000; \$768,000 + \$672,000 = \$1,440,000].

TOTAL RESPONDENT COST = \$1,466,175

14. Estimate of Cost to Federal Government.

As noted in its previous submission, FRA’s Alcohol and Drug Program Manager will monitor compliance with the requirements of Part 219. 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	
\$213,650	TOTAL	

15. Explanation of program changes and adjustments.

The burden for this collection of information has decreased by 10,507 hours from the last submission. The decrease in burden is due both to **program changes** and **adjustments**. The following table depicts the **program changes**:

TABLE For Program Changes

Part 219 Sec./ Form Number	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	Burden Hours (This Submission)	Difference (plus/minus)
219.4 – Petition for Recognition of a Foreign Railroads Workplace Testing Program (New Requirement)	0 petitions 0 hours	2 petitions 40 hours	0 hours	80 hours	+ 80 hours + 2 responses

219.9 – Joint Operating Agreement between Railroads Assigning Compliance Responsibility with this Part Amongst Themselves (Revised Requirement)	0 agreements 0 hours	525 agreements 30 minutes	0 hours	263 hours	+ 263 hours + 525 resp.
219.11(e) – Testing Notification to Regulated Employee (New Requirement)	0 notifications 0 seconds	9,508 notifications 5 seconds	0 hours	13 hours	+ 13 hours + 9,508 resp.
219.11(g) – RR Program that provides Training to Supervisors and info. on criteria for PAT Testing contained in Part 219 Subpar C & Appendix C (Rev. Requirement)	0 modified programs 0 hours	698 modified programs 1 hours	0 hours	698 hours	+ 698 hours + 698 resp.
219.12 – RR Documentation on need to place employee on duty for follow-up tests (New Requirement)	0 documents 0 hours	5 documents 30 minutes	0 hours	3 hours	+ 3 hours + 5 responses
219.104 – Notice to employee explaining reason for removal from regulated service – (Revised requirement) - Communications by applicant declining pre-employment testing/withdrawing application (Revised requirement)	500 notices/ letters 2 minutes 0 notices/ communication 0 minutes	500 verbal notices + 500 written notices /letters 30 seconds + 2 min. 60 notices/ communications 2 minutes	17 hours 0 hours	21 hours 2 hours	+ 4 hours + 500 resp. + 2 hours + 60 responses
219.105 – Document provided to FRA upon request concerning RR’s alcohol/drug use, education, prevention, intervention, rehab program/policies (New requirement)	0 document copies 0 minutes	2 document copies 5 minutes	0 hours	.17 hours	+ .17 hour + 2 responses

219.203 -- (New requirements) -Determination by RR representative to exclude surviving crew members /other regulated employee from testing - Verbal notification & subsequent written report of failure to collect urine/blood specimens w/in 4 hrs. - Recall of employees for testing & narrative report completion -- RR reference to Part 219 & FRA's PAT kit in seeking facility cooperation	0 decisions 0 minutes 0 notifications 0 reports 0 minutes 0 calls 0 reports 0 minutes 0 references	50 decisions 6 minutes 80 notifications + 80 reports 2 minutes + 30 minutes 4 calls 4 reports 2 min. + 30 min. 80 references 15 minutes	0 hours 0 hours 0 hours 0 hours	4 hours 43 hours 2 hours 20 hours	+ 4 hours + 50 responses + 43 hours + 160 resp. + 2 hours + 8 responses + 20 hours + 80 responses
219.205 – (New Requirements) -Request to FRA Alcohol/Drug Prog. Mgr. for order form for standard shipping kits - Request to FRA for post-mortem shipping kit - RR/Medical facility record of Kit error	0 requests 0 minutes 0 request 0 minutes 0 records 0 minutes	5 requests 2 minutes 1 request 2 minutes 20 records 2 minutes	0 hours 0 hours 0 hours	.17 hour .03333 hour 1 hour	+ .17 hour + 5 responses + .03333 hour + 1 response + 1 hour + 20 responses
219.303 — (New Requirements) - Dialogue between onsite & offsite supervisor re: reasonable suspicion observation - RR written documentation of observed signs for reasonable suspicion determination	0 phone conversations 0 minutes 0 documents 0 minutes	50 phone conversations 2 minutes 30 documents 5 minutes	0 hours 0 hours	2 hours 3 hours	+ 2 hours + 50 responses + 3 hours + 30 responses
219.305 – RR written record stating reason Part 219 testing was not promptly administered (New Requirement)	0 records 0 minutes	30 records 2 minutes	0 hours	1 hour	+ 1 hour + 30 responses

219.401 – RR Notice to FRA to conduct Federal reasonable cause testing at its own discretion (New Requirement)	0 notifications 0 minutes	50 notifications 15 minutes	0 hours	13 hours	+ 13 hours + 50 responses
219.405 – (New Requirements) - RR documentation describing basis of ea. reasonable cause test under Federal authority - RR documentation of rule/Part 225 violation for each reasonable cause test	0 documents 0 minutes	50 documents 15 minutes	0 hours	13 hours	+ 13 hours + 50 responses
	0 documents 0 minutes	20 documents 15 minutes	0 hours	5 hours	+ 5 hours + 20 responses
219.407 – Record that specimen collection time limitation is exceeded (New Requirement)	0 records 0 minutes	15 records 15 minutes	0 hours	4 hours	+ 4 hours + 15 responses
219.501 – RR documentation of negative pre-employment drug test on file (New Requirement)	0 tests + 0 records 0 minutes	1,200 tests + 1,200 records 15 minutes + 5 minutes	0 hours	400 hours	+ 400 hours + 2,400 resp.
Deleted requirement Current 219.601(b)(1) Verification of random selection method procedures	5,400 docs. 4 hours	0 documents 0 hours	21,600 hours	0 hours	-- 21,600 hours -- 5,400 resp.
Current 219.601(b)(4) – Copies of RR written notice to each covered employee that he/she will be subject to random testing	100 notices 30 seconds	N/A	1 hour	0 hours	-- 1 hour -- 100 resp.
- Publication of RR written notice to each covered employee that he/she will be subject to random testing –New RRs	5 notices 10 hours	N/A	50 hours	0 hours	-- 50 hours -- 5 responses

219.605 – Alcohol/Drug Random testing program/plans to FRA – existing RRs (Revised Requirement; alcohol/drug programs/plans combined now) New Requirements - Resubmitted Random Testing Program after FRA Disapproval - Non-substantive amendment to an approved plan - New/combined/ amended random testing plan	0 programs/ plans 0 hours	200 programs/ plans 1 hour	0 hours	200 hours	+ 200 hours + 200 resp.
	0 resubmitted programs 0 minutes	21 resubmitted programs 15 minutes	0 hours	5 hours	+ 5 hours + 21 responses
	0 amendments 0 minutes	50 amendments 10 minutes	0 hours	8 hours	+ 8 hours + 50 responses
	0 plans 0 minutes	20 plans 15 minutes	0 hours	5 hours	+ 5 hours + 20 responses
Current Rule 219.607a – New RRs Random Alcohol Testing Programs -Amendment to Random Alcohol Testing Program – existing RRs (<i>Note: Drug/Alcohol Testing programs/plans are combined under proposed rule</i>)	5 programs 8 hours	0 programs 0 hours	40 hours	0 hours	-- 40 hours -- 5 responses
20 amendments 1 hour	0 amendments 0 hours	20 hours	0 hours	-- 20 hours -- 20 responses	
Proposed Rule – (New Requirements) 219.607 – Request by RR to a contractor or service agent to submit a Part 219 random testing plan - Model random testing plans submitted to FRA by RR/contractor/service agent	0 requests 0 minutes	50 requests 15 minutes	0 hours	13 hours	+ 13 hours + 50 responses
0 plans 0 hours	50 plans 1 hour	0 hours	50 hours	+ 50 hours + 50 responses	

<p>219.609 – (New Requirements) - Inclusion of regulated service contractor employees /volunteers in RR random testing plan - - Addenda to RR random testing plan describing method used to test contractor/volunteer employees in non-random testing plan</p>	<p>0 plans 0 minutes</p> <p>0 addenda 10 minutes</p>	<p>15 plans 15 minutes</p> <p>15 addenda 10 minutes</p>	<p>0 hours</p> <p>0 hours</p>	<p>4 hours</p> <p>3 hours</p>	<p>+ 3 hours + 15 responses</p> <p>+ 3 hours + 15 responses</p>
<p>219.611 – (New Requirements) – Random alcohol and drug test pools: good faith determinations and evaluations of employee likelihood of performing regulated service - Random testing pool updates - Documents on RR multiple random testing pools</p>	<p>0 judgments/determinations + 0 evaluations 0 seconds</p> <p>0 updates 0 minutes 0 documents 0 minutes</p>	<p>25,000 judgments /determinations + 25,000 evaluations 30 seconds</p> <p>13,176 updates 5 minutes 96 documents 5 minutes</p>	<p>0 hours</p> <p>0 hours</p> <p>0 hours</p>	<p>417 hours</p> <p>1,098 hours</p> <p>8 hours</p>	<p>+ 417 hours + 50,000 resp.</p> <p>+ 1,098 hours + 13,176 resp. + 8 hours + 96 responses</p>
<p>219.613 – (New Requirements) –RR Identification of total number of eligible employees for random testing -- RR records /explanation of discarded selection draws -- Electronic or hard copy of RR snapshot of each random testing pool</p>	<p>0 IDs 0 minutes</p> <p>0 records/explanations 0 minutes</p> <p>0 snapshots</p>	<p>2,196 IDs 2 minutes</p> <p>10 records/explanations 2 minutes</p> <p>13,176 snapshots 2 minutes</p>	<p>0 hours</p> <p>0 hours</p> <p>0 hours</p>	<p>73 hours</p> <p>.33 hour</p> <p>1,098 hours</p>	<p>+ 73 hours +2,196 resp.</p> <p>+ .33 hour + 10 responses</p> <p>+ 1,098 hours + 13,176 resp.</p>
<p>219.615 – Incomplete Random Testing Collections – Documentation (New Requirement)</p>	<p>0 documents 0 minutes</p>	<p>2,000 documents 30 seconds</p>	<p>0 hours</p>	<p>17 hours</p>	<p>+ 17 hours + 2,000 resp.</p>

219.619 – Report by MRO of Verified Positive Test or by Breath Alcohol Technician of Breath Alcohol Specimen of 04 or Greater (New Requirement)	0 reports 0 minutes	88 reports 5 minutes	0 hours	7 hours	+ 7 hours + 88 responses
219.623 – Random Testing Records (New Requirement)	0 records 0 minutes	40,000 records 1 minute	0 hours	667 hours	+ 667 hours + 40,000 resp.
219.901- RR Alcohol and Drug Misuse Prevention Records for MOW Employees Kept by FRA(New Requirement)	100,500 record 5 minutes	16,960 records 5 minutes	8,375 hours	1,413 hours	-- 6,962 hours -- 83,540 resp.
219.1001- Revised requirement; formerly 219.401/403/405 Adoption of Peer Support Programs- Existing RRs Voluntary referral & coworker report policies – New Railroads	0 programs 0 minutes 5 policies 20 hours	698 programs 15 minutes 5 peer support programs 30 minutes	0 hours 100 hours	349 hours 3 hours	+ 349 hours + 698 resp. -- 97 hours 0 responses
219.1005 – Peer Support Programs with labor organization approvals that include optional provisions (New Requirement)	0 Peer support programs 0 hours	10 Peer Support Programs 20 hours	0 hours	200 hours	+ 200 hours + 10 responses

219.1007- (New Requirements) - Filing of documents/records with FRA of Labor Concurrences for Alternate Peer Support Programs - Notice to FRA of Amendment or Revocation of FRA Approved Alternate Peer Support Program	0 documents 0 hours	10 documents 1 hour	0 hours	10 hours	+ 10 hours + 10 responses
	0 notices/ amended peer support programs	1 notice/ amended peer support program	0 hours	1 hour	+ 1 hours + 1 response

Program changes above decreased the burden amount by 22,969 hours, and increased the number of responses by 47,076.

TABLE For Adjustments

Part 219 Sec./ Form Number	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	Burden Hours (This Submission)	Difference (plus/minus)
219.7 – Waiver Petitions	2 petitions 2 hours	4 petitions 2 hours	4 hours	8 hours	+ 4 hours + 2 responses
219.11(g) – Training of Supervisors in signs/symptoms of Alcohol/Drug Influence	50 supervisor training classes 3 hours	2,462 trained supervisors 3 hours	150 hours	7,386 hours	+ 7,236 hours + 2,412 resp.
219.23 – Educational materials concerning the effects of alcohol/drug misuse on employees - Copies of Educational materials to employees	0 documents 0 hours	1,098 documents 1 hour	0 hours	1,098 hours	+ 1,098 hours + 1,098 resp.
	0 copies 0 hours	142,000 copies 2 minutes	0 hours	4,733 hours	+ 4,733 hours +142,000 resp.
219.104/107 – Hearing requests	50 requests 2 minutes	50 requests + 50 hearings 2 minutes + 4 hrs.	2 hours	202 hours	+ 200 hours + 50 responses

219.203 – PAT testing after major train accidents & completion of Form FRA F 6180.73 - RR Notification to NRC of injured employee unconscious or otherwise unable to give consent	0 forms 0 hours 104 ph. calls 10 minutes	240 forms 10 minutes 2 ph. calls 10 minutes	0 hours 17 hours	40 hours .33 hour	+ 40 hours + 240 resp. -- 17 hours -- 102 resp.
219.205 – Completion of FRA F 6180.74 by train crew after accident - RR representative request to medical facility representative to complete remaining info. on Form FRA F 6180.74 - RR representative completion of Form FRA F 6180.73 - RR request to medical facility to transfer sealed toxicology kit	400 forms 15 minutes 0 ph. requests 0 minutes 100 forms 10 minutes 0 ph. requests 0 minutes	240 forms 10 minutes 80 ph. requests 2 minutes 80 forms 10 minutes 40 ph. requests 2 minutes	100 hours 0 hours 17 hours 0 hours	60 hours 3 hours 13 hours 1 hour	-- 40 hours -- 160 resp. + 3 hours + 80 responses -- 4 hours -- 20 responses + 1 hour + 40 responses
219.209 – Notice to NRC/FRA summarizing events of accident/incident where samples were obtained	80 ph. requests 2 minutes	40 ph. requests 2 minutes	3 hours	1 hour	-- 2 hours -- 40 responses
219.211– Results of PAT testing to RR MRO & employee - MRO report to FRA of positive test for alcohol/drugs of surviving employee	8 reports 15 minutes 0 reports 0 minutes	10 reports 15 minutes 10 reports 15 minutes	2 hours 0 hours	3 hours 3 hours	+ 1 hour + 2 responses + 3 hours + 10 responses
219.615 – Notice to employee of random testing (current 219.601(d)(1))	25,000 notices 1 minute	0 notices 0 minutes (burden included under HHS approved info. collection for CCF Form & under DOT OMB No. 2101-0529 for ATF Form)	417 hours	0 hours	-- 417 hours -- 25,000 resp.

219.617 – Employee Exclusion from Random alcohol/drug testing after providing verifiable evidence from credible outside professional (current 219.603 – documented medical emergency excusing employee from random testing)	20 documented excuses 15 minutes	5 documented excuses 60 minutes	5 hours	5 hours	0 hours -- 15 responses
219.901/903 – Summary reports/ records	200 reports 2 hours	0 reports 0 hours	400 hours	0 hours	-- 400 hours -- 200 resp.
219.1001 – Coworker reports (current 219.405)	450 reports 5 minutes	698 reports 5 minutes	38 hours	58 hours	+ 20 hours + 248 resp.
Appendix C – Post-Mortem Testing: Form FRA F 6180.75	0 forms 0 minutes	10 forms 20 minutes	0 hours	20 hours	+ 20 hours + 10 responses

Adjustments above increased the burden amount by *12,462 hours*, and increased the number of responses by 120,655.

The current inventory shows a burden total of 31,797 hours, while the present submission exhibits a burden total of 21,290 hours. Hence, there is a burden decrease of **10,507 hours**.

Total cost to respondents under the proposed rule amounts to/has increased by **\$1,466,175** from the last submission. This is a program change entirely associated with the requirements of this proposed rule.

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.

Meeting Department of Transportation (DOT) Strategic Goals

This information collection supports the top DOT strategic goal, namely transportation safety. Without this collection of information, rail safety 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.