SUPPORTING JUSTIFICATION
RAILROAD OPERATING RULES (49 CFR 217) (49 CFR 218)

OMB No. 2130-0035

Summary of Submission

- This is a revision to the above last approved information collection submission cleared by OMB on **December 31, 2014**, which expires on **December 31, 2017**.
- FRA is publishing a Notice of Proposed Rulemaking titled Train Crew Staffing and Location of Second Crew Member on March 15, 2016. See 81 FR 13917.
- Total number of burden **hours requested** for this submission is **4,809,680 hours.**
- The total number of burden **hours previously approved** was **4,797,428 hours.**
- The total burden has increased by **12,252** hours from the last approved submission.
- Total number of **responses requested** for this submission is **188,660,492**.
- Total number of **responses previously approved** for this submission was **188,659,926**.
- **Program changes** increased the total burden by **12,240 hours** and increased the total number of **responses** by **542**.
- **Adjustments** increased the total burden **12 hours**, and increased total **responses** by **24** from the last approved submission.
- **The answer to question **number 12** itemizes the hourly burden associated with each requirement of this rule (See pp. 28-68).

1. Circumstances that make collection of the information necessary.

Railroads have achieved a continually improving safety record during a period in which the industry largely employed two-person train crews. However, recent catastrophic accidents suggest that some railroads may not be employing or properly using a second crew member on trains. Studies show that one person train operations pose increased risks by potentially overloading the sole crew member with tasks. Task overload can lead to a loss of situational awareness, and thus the failure to have a second crew member properly engaged could be a contributing factor in some accidents. In other instances, a

second crew member could be instrumental in limiting damages and injuries after an accident takes place, or assisting emergency responders.
FRA has become aware that some railroads have shown a willingness to take on more risk and conduct more operations with only one crew member. FRA does not currently have a mechanism to collect detailed information about railroad one-person train operations to determine railroad safety risk. FRA could take emergency action to prohibit an unsafe operation if the agency is aware of it, but FRA often lacks such information until after an accident involving the one-person train operation has occurred. Consequently, this proposed rule is necessary for FRA to protect railroad employees and the general public by considering the safety risks of each type of operation and prohibiting operations that pose an unacceptable level of risk as compared to operations utilizing a two-person crew. This rulemaking is also necessary to ensure that FRA has some oversight over a railroad's decision to utilize one-person crews.

When analyzing safety data and information, railroads have focused on the fact that FRA does not have long lists of accidents where there was only a one-person train crew. Railroads have anecdotally pointed to accidents in which there were two or more crew members and argued that adding a second or a third crew member does not necessarily make the operation safer. FRA disagrees with those railroads that have made this argument because it discounts the research supporting the effectiveness of properly trained teams. It is not the act of adding a second person that makes the train safer, but instead it is the act of adding a properly qualified person, who understands the roles of all the crew members, and who has the experience to relieve the locomotive engineer of some of the mental strain that can contribute to accidents attributed to human factor errors. FRA understands that expert teamwork can be achieved through effective coordination, cooperation, and communication.

During the last five months of 2013, the railroad industry had three newsworthy accidents that suggest the need for greater Federal oversight of crew size issues. The first incident at Lac-Mégantic, Quebec, Canada, was the driving force for bring the crew size issue to FRA's Federal advisory committee known as the Railroad Safety Advisory Committee (RSAC). During the time that the RSAC's Working Group was deliberating whether it could make recommendations to FRA on the crew size issue, the other two accidents summarized here occurred. Although the many parties participating at the RSAC did not want to acknowledge that these accidents provide FRA with justification for regulating crew size, it is clear that there are different crew size lessons to be learned from each of these accidents. With regard to the first two accidents, FRA exercised its oversight following the accidents through use of its emergency order authority to ensure that the railroads involved had adequate redundancy to backstop human error. In the third accident, two train crews, each larger than one-person, were able to act efficiently as a team to protect one another and the general public from further harm after the occurrence of an accident.

FRA published Emergency Order 28 (78 FR 48218) on August 7, 2013, (issued on August 2, 2013) which contains the details of the events on July 5-6, 2013, that led to the catastrophic accident at Lac-Mégantic. In summary, an unattended train on mainline track did not stay secured and rolled down a grade to the center of town, where a number of the 72 petroleum crude oil tank cars in the train derailed. There were multiple explosions and fires causing an estimated 42 fatalities to the general public, extensive damage to the town, and approximately 2,000 people to be evacuated from the surrounding area. The train had been secured by its one-person crew prior to it being left unattended. Although some people in the railroad industry view this accident as having nothing to do with the crew size issue, others believe a train crew with a minimum of two-persons would have had more options available to secure the train safely, thereby potentially posing less of a risk of a runaway train. Although it is debatable whether the one-person aspect of the operation could be considered a contributing cause to this accident, there is no denying that there was a public outcry of disbelief, in both Canada and the U.S., that a railroad would be allowed to operate a train with so many petroleum crude oil tank cars without at least a two-person crew.

As FRA's Emergency Order 28 details, in the aftermath of the Montreal, Maine and Atlantic Railway (MMA) derailment at Lac-Mégantic, Transport Canada issued an order for all Canadian railroad companies to provide for minimum operating crew requirements considering technology, length of train, speeds, classification of dangerous goods being transported, and other risk factors. In response, MMA changed its operating procedures to use two-person crews on trains in Canada. However, FRA was astounded that MMA did not automatically make corresponding changes to its operating procedures in the U.S. even though the risk associated with this catastrophic accident also exists in the U.S.[1] It may have been that, without a specific two-person train crew requirement in the U.S., MMA did not feel compelled to take any action to enhance the safety of its U.S. operations in a like-minded way to the preventive measures it took in Canada.

The Lac-Mégantic accident is also relevant to the crew size conversation because the tank cars that derailed were carrying crude oil from the Bakken deposit in North Dakota and Montana and this proposed rule carries forward FRA's position that at least a two-person train crew is warranted on any train carrying 20 or more loads of unit oil or ethanol. Over the past few years, a technological advancement has allowed crude oil to be recovered from under non-permeable shale rock. This advancement of hydraulic fracturing, better known as "fracking," has resulted in a huge spike in crude oil shipments in both Canada and the U.S. According to the AAR, U.S. Class I railroads originated just 9,500 carloads of crude oil in 2008 and 407,642 carloads in 2013. "Moving Crude Oil by Rail" available online at http://bit.ly/1qFYPpi; and, http://www.railresource.com/content/?p=8277. That means that crude oil shipments by

[1] Letter from Joseph C. Szabo, FRA Administrator, to Mr. Edward Burkhardt, CEO of MMA (Aug. 21, 2013), placed in the docket.

the major U.S. freight railroads have increased 4,190 percent in five years, and 74 percent when compared to the 233,819 carloads originated in 2012. This substantial increase in the number of crude oil tank cars on U.S. rails, and the volatility of some of the blended crude oil from different sources or mixed with the chemicals used in the fracking process have created significantly greater potential for the crude oil to be improperly classified and packaged for transportation. Improper classification and packaging was likely a contributing cause to the catastrophic result at Lac-Mégantic. DOT has been trying to address the variety of issues created by transporting crude oil produced through fracking from various approaches. See e.g., FRA's Emergency Order 28; FRA's Safety Advisory 2013-06, 78 FR 48224 (Aug. 7, 2013), jointly issued with Pipeline and Hazardous Materials Safety Administration (PHMSA)(discussing the circumstances surrounding the Lac-Mégantic accident and making certain safety-related recommendations to railroads and crude oil offerors); FRA's Safety Advisory 2013-07, 78 FR 69745 (Nov. 20, 2013), jointly issued with PHMSA (reinforcing the importance of proper characterization, classification, and selection of a packing group for Class 3 materials and the corresponding requirements in the Federal hazardous materials regulations for safety and security planning after the Lac-Mégantic accident); and, FRA's Safety Advisory 2014-01, jointly issued with PHMSA, (79 FR 27370, May 13, 2014)(encouraging the use of railroad tank car designs with the highest level of integrity reasonably available). Thus, in consideration of the safety concerns involved in the rail transportation of crude oil, the catastrophic accident at Lac-Mégantic serves as the trigger to create redundant safeguards that have a high potential of preventing similar accidents. FRA's position, which is reinforced by research and review of accident information, confirms that railroads that provide two qualified crew members who can work as an effective team on those unit trains that commonly consist of over 100 loaded tank cars of Bakken crude oil improve the safety of those operations.

A catastrophic passenger train accident illustrates why having a second crew member actively engaged in the operation of the train can be a backstop if a locomotive engineer fails to operate safely. On December 1, 2013, the New York State Metropolitan Transportation Authority's Metro-North Commuter Railroad Company (Metro-North) dispatched train 8808 with a locomotive engineer, a conductor, and two assistant conductors. As Train 8808 approached the Spuyten Duyvil Station from the north, it traveled over a straightaway with a maximum authorized passenger train speed of 70 mph before reaching a sharp curve in the track where, by a civil engineering restriction implemented in the railroad's own rules, the maximum authorized speed was reduced to 30 mph. Train 8808 actually obtained a speed of approximately 82 mph as it entered the curve's 30-mph restriction and derailed. Four passengers were killed, seven were critically injured, and approximately 56 others were injured. Damages were estimated at $8.8 million.

As FRA explained in its Emergency Order 29 published on December 11, 2013, ordering Metro-North to take certain safety precautions, Metro-North's passenger trains are normally operated with only one crew member in the cab compartment, a locomotive

engineer. 78 FR 75442, 75444. The conductor and assistant conductors are directly involved in the operation of the train, even though the general public might view the conductor and assistant conductor's duties as limited to checking tickets and assuring the safety of the passengers. For example, the conductors help the engineer back the train out of the yard, perform brake tests, determine it is safe to depart a station, and signal the engineer to proceed.

Additionally, prior to the accident, Metro-North employed several different systems and technologies that were intended to provide safeguards in the event a locomotive engineer was inattentive or failed to abide by a signal indication, but did not engage the conductors to also serve as a redundant safeguard. For example, each cab control car was equipped with a dead-man pedal and the conventional controlling locomotive was equipped with an alertness device that could monitor the locomotive engineer-induced activities (i.e., brake or throttle adjustments), and if no activity was detected within a pre-determined time, a sequence of audible and visual alarms was activated to prompt the locomotive engineer to respond; a failure to respond to the alerter or release the "dead man pedal" resulted in a brake application that brought the train to a stop. See 49 CFR § 238.5 (defining "alerter"). Metro-North's locomotive controls and its signal systems also incorporated an Automatic Train Control System (ATC system), a train speed control system where trains may be automatically slowed or stopped if a locomotive engineer fails to comply with a signal indication; however, as FRA explained in Emergency Order 29, the ATC system was not designed to slow trains where permanent speed restrictions existed and the signal system was not implicated – which was the case in this accident. Consequently, in the case of a locomotive engineer error in failing to slow down for a speed restriction not governed by signal indication, the technologies employed created a gap in the safety assurance net. This gap allowed human error to go unchecked by technology, and there was no other procedure or practice that was in place to bridge the gap.

Considering this gap in redundant coverage, FRA ordered in Emergency Order 29 that Metro-North must have an additional qualified employee engaged with the operation of the train. That additional employee may be either in the cab of the controlling locomotive or occupying the space immediately adjacent to the control compartment (when the cab configuration does not permit a second person in the control compartment) in advance of reaching any location where significant speed reductions occur. FRA required that the second person be qualified on the physical characteristics of the territory over which the train is operating, qualified on the signal systems on the territory, and trained to apply the emergency brake if necessary to stop a train. FRA recognized in Emergency Order 29 that other railroads have coded their ATC systems to prevent overspeed events from occurring, and that it would allow Metro-North to come out from under the second crew member emergency requirement if Metro-North recoded its ATC system or other signal systems to enable warning and enforcement of relevant passenger train speed restrictions.

A recent train accident illustrates how multiple train crew members can improve the safety for the general public and the crew members themselves. On December 30, 2013, an eastbound BNSF "key train," consisting of two head end locomotives, one rear distributive power unit (DPU), and two buffer cars on each end of 104 loaded cars of petroleum crude oil cars, collided with a car from a westbound BNSF "grain train" that had derailed less than two minutes earlier from an adjacent main track. Thirteen cars in the middle of the 112 car grain train had derailed, most likely due to a broken axle on the 45th railcar, and that railcar ended up fouling the main track the key train was operating over. The collision derailed the key train's two leading locomotives, as well as the first 21 trailing cars behind the locomotives. After the collision, an estimated 474,936 gallons of petroleum crude oil were released from 18 loaded tank cars fueling a fire which caused subsequent explosions as the loaded oil tank cars burned. The local fire department had requested that nearby residents voluntarily evacuate immediately following the collision and approximately 1,500 residents did evacuate. The voluntary evacuation was lifted approximately 25 hours after the collision. There were no injuries to crew members, emergency responders, or the general public, but images and video of the burning railcars made the accident national news.

Many members of the general public who viewed the news accounts of burning wreckage may not be aware that the heroic actions of the grain train's crew members potentially prevented the environmental and property damages from being much worse, in addition to potentially shortening the evacuation period. The grain train was operated by a three-person crew, which included a locomotive engineer, a conductor, and a student locomotive engineer (i.e., a conductor training to be a locomotive engineer). Post-accident, the grain train crew was approached by the Assistant Fire Chief of the Casselton Fire Department who asked whether the crew could assist the emergency responders by pulling a cut of tank cars away from the burning derailed cars. Upon receiving the request, a BNSF road foreman of engines consulted with the crew to see if the crew members believed it was safe to move the cars, which they did. The grain train's locomotive engineer and student locomotive engineer went to the DPU on the key train and the conductor and road foreman of engines went to the east to the nearest grade crossing and made a cut of an estimated 50 tank cars. The engineer and student engineer then pulled the cars about a quarter mile west away from the burning train.

Approximately 45 minutes after that move was completed, the Assistant Fire Chief met the grain train's crew again and asked if additional tank cars from the key train could be moved. The grain train's crew made contact with a BNSF trainmaster and communicated the request. The trainmaster told the crew that if the move could be completed safely, they had permission to proceed. The student engineer borrowed the Assistant Fire Chief's fire protective clothing and walked within 10 car lengths of the fire and uncoupled approximately 20 additional cars from the burning train. Then, the locomotive engineer coupled to these cars and moved them to the west creating a safety gap of approximately 25 to 30 car lengths from the burning cars.

Adding these two emergency response moves together, the grain train's crew was responsible for moving approximately 70 loaded petroleum crude oil cars in the key train out of harm's way. These urgent moves would have been much more time consuming and logistically difficult if the grain train was operated with only a one-person crew. For those reasons, there is a question of whether either of these emergency response moves would have been attempted with a one-person crew.

Meanwhile, it is arguable that the two-person key train crew benefited from each other's presence in the cab of the controlling locomotive. The crew helped each other through the emergency by issuing appropriate warnings and sharing tasks. First, the locomotive engineer was able to warn the conductor to get down and brace for impact four to five seconds before colliding with the derailed grain train railcar. Second, after the impact, it was the conductor who first noticed that their train was on fire and was able to warn the locomotive engineer of that fact. Third, upon hearing this news, the engineer told the conductor to "grab your cell phone and run." Fourth, the engineer announced the collision by radio. Fifth, the crew attempted to exit the front door, but finding it jammed shut, they were able to help each other depart the locomotive through the back door located behind the engineer's seat. Sixth, they ran together away from the train with the engineer using his cell phone on the run to call 911. These two crew members worked as a team in an emergency situation to divvy up tasks, warning the dispatcher and local emergency responders, and protecting each other's safety.

In sum, FRA is proposing regulations establishing minimum requirements for the size of different train crew staffs depending on the type of operation. A minimum requirement of two crew members is proposed for those operations that pose significant safety risks to railroad employees, the general public, and the environment. This proposed rule would also establish minimum requirements for the appropriate location of the second train crew member on a moving train, and promote safe and effective teamwork.

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

The new information collected under the proposed rule will be used by FRA to ensure that railroads comply with the requirements of **new** Subpart G. Specifically, under proposed § 218.125, railroads have the option to adopt their own operating rules and practices to conform with the general crew staffing requirements of **new** Subpart G. For all affected railroads, each train must be assigned a minimum of two crew members (usually a conductor) unless an exception is provided for in this Subpart. FRA inspectors will review these revised/updated operating rules/practices to verify that affected freight and passenger railroads clearly spell out the roles and responsibilities of the second crew member. Section 218.125 stipulates that two crew members are always necessary when the train contains certain quantities and types of hazardous materials and also contains the general requirements pertaining to the location of a second crew member when the train is moving. This section proposes that the normal location of the second crew member be on the train "except when the train crew member cannot perform the duties assigned

without temporarily disembarking from the train." Railroads will also use the information collected concerning revised/updated operating rules/practices under this section to prescribe additional or more stringent requirements (as they see fit) to ensure the safety of their operations and their employees.

The information collected under proposed § 218.133, which permits railroads to continue one-person train operations that were conducted prior to January 1, 2014, will be used by FRA to ensure that affected railroads submit comprehensive descriptions that provide the following essential information to the agency: (1) The location of the continuing operation with as much specificity as can be provided as to industries served, and territories, divisions, or subdivisions operated over. [Documentation supporting the locations of prior operations will be favorably reviewed, although not required.]; (2) The class of tracks operated over; (3) The locations of any track where the average grade of any segment of the track operated over is 1% or more over 3 continuous miles or 2% or more over 2 continuous miles; (4) The maximum authorized speed of the operation; (5) The approximate average number of miles and hours a single person operates as a one-person train crew; (6) Whether any limitations are placed on a person in a one-person train crew operation. Such limitations may include, but are not limited to, a maximum number of miles or hours during a single tour of duty; (7) The maximum number of cars and tonnage, if any; (8) Whether the one-person operation is permitted to haul hazardous materials of any quantity and type, other than those types expressly prohibited for one-person train crew operations in accordance with § 218.125(c); (9) Information regarding other operations that travel on the same track as the one-person train operation or that travel on an adjacent track. Such information must include, but is not limited to, the volume of traffic and the types of opposing moves (i.e., either passenger or freight trains hauling hazardous materials); (10) Any information the railroad chooses to provide describing protections provided in lieu of a second train crew member; and (11) A safety analysis of the one-person train operation, including any information regarding the safety history of the operation.

FRA will use the above detailed information to conduct needed oversight in order to ensure that railroads are not conducting operations that pose significant safety risks to railroad employees or the general public. These thorough descriptions will provide a complete picture of the risks associated with the railroad's operations as well as how much thought the railroad's operations managers have given to whether the operation can provide an appropriate level of safety. If the railroad has not previously conducted a safety analysis of the one-train crew operation that it can use for its submission to FRA, it will be required to complete one to comply with this new section. It is critically important that a railroad show that it has contemplated all safety risks involved in a one-person train crew operation and has compensated for the loss of the second crew member. As proposed, § 218.133 will provide FRA an opportunity to consider all the circumstances, to exercise some flexibility in allowing safe operations with less than two assigned crew members, and assure railroad employees and the public-at-large that railroads are not placing them at unnecessary risk.

The information to be collected under proposed § 218.135 concerning special approval petitions will offer each railroad a procedure to obtain agency assent for a start-up method of train operation that does not meet the requirements of the general two-person crew requirements, any of the blanket exceptions, or the continuance of operations prior to January 1, 2014, exception. FRA will review petitions for special approval to gain a detailed understanding of the train operation and how it is safe. FRA needs to know and be assured that the railroad has considered how a one-person crew could potentially perform tasks typically completed by a second crew member, either with or without technological safeguards. It is essential that railroads describe not just what the technology can do, but also that it has considered the additional burden placed on the one-person crew member. FRA will also review these petitions to ascertain whether the railroad considered task overload, situational awareness concerns, as well as fatigue factors. In deciding on approval or disapproval of special approval petitions, railroads that have taken a holistic approach to the safety of the operations will likely see better results. In new Subpart G then, FRA's overriding concern is with the prevention of catastrophic accidents, wherever possible, or significantly mitigating the consequences of such accidents if they do happen.

The information collected under § 218.99(e)(5)(iii) is used by railroads and their employees to provide a reliable means of determining track occupancy prior to commencing a shoving or pushing movement. Requiring that written procedures be adopted and complied with is a way to create a uniform method of leaving a car or cut of cars on a departure track safely, thus permitting the yardmaster or next crew entering to know that the entire length of a particular departure track is not clear. FRA also uses this information when it conducts inspections of these departure yards to review these procedures to ensure that any particular procedure, or lack thereof, does not create an undue safety risk and that the departure yard operation utilizing the shove light system is managed in a safe manner.

The information collected under § 218.99(e)(5)(iv) requires that the departure track be designated in writing. This is an important requirement because it is an exception to providing point protection. It will be used by railroad employees so that they know specifically on which tracks the exception applies. FRA promulgated this requirement even though the agency is unaware of shove light systems being installed on other than designated departure tracks. The requirement in this paragraph is intended to prevent a railroad from installing shove lights on yard tracks that are not departure tracks and attempting to circumvent the point protection requirements under paragraph (b)(3) of this section.

The information collected from this rule's requirements is used by FRA to enhance safety and drive down the number and severity of accidents/incidents and corresponding injuries, fatalities, and property damage caused by human factors in the daily operation of the nation's railroads. The information collected is presently used by FRA to monitor

and enforce its safety regulations.

Under § 217.9, FRA reviews the filed copies of the code of operating rules, timetables, and timetable special instructions submitted by Class I, Class II, the National Railroad Passenger Corporation (Amtrak), and railroads providing commuter service in metropolitan or suburban areas to ensure that these railroads have developed safe operating rules and practices before commencing operations. Additionally, FRA reviews amendments to the code of operating rules, new timetables, and new timetable special instructions submitted by Class I, Class II, and railroads providing commuter service in metropolitan or suburban areas to attest that changes contemplated by these railroads are safe, necessary, and accord with Federal laws and regulations. FRA reserves the right to inspect Class III railroads' code of operating rules, new timetables, and new timetable special instructions, as well any amendments thereto, at their system headquarters to ensure that they have developed safe operating rules, and practices that conform to Federal laws and regulations.

Section 217.9 of this rule stipulates that railroad officers must be qualified on the railroad's operational rules in accordance with § 217.11 of this part; must be qualified on the operational testing program requirements and procedures relevant to the testing the officer will conduct; and must receive appropriate field training, as necessary to achieve proficiency, on each operational test that the officer is authorized to conduct. This information will be and is used by railroads and FRA to ensure that all railroad testing officers on a particular railroad are properly qualified. Thus, a railroad testing officer who is trained and knowledgeable in the railroad's operating rules will be able to conduct competent tests and inspections, and will understand how the tests they conduct fit into the railroad's testing program. As a consequence, it will be more difficult for railroad testing officers to accept inconsistency in the application of operating rules. Operating rules more closely adhered to will provide increased levels of safety.

Additionally, under § 217.9, written records documenting the qualifications of each railroad testing officer must be retained at its system headquarters and at the division headquarters for each division where the officer is assigned and made available to representatives of FRA for inspection and copying during normal business hours. Each railroad to which this Part applies must also keep a record of the date, time, place, and result of each operational test and inspection that was performed in accordance with its program. Each record must also specify the officer administering the test and inspection and each employee tested under this section. Railroads use this information to monitor the proficiency of their employees and to obtain greater compliance with their operating rules. FRA uses these records to ensure and enforce compliance with this regulation, and analyzes records of these tests to determine the extent these tests and inspections conform to the railroads written program of operational tests and inspections.

Further, under § 217.9, each railroad to which this part applies, except for a railroad with

less than 400,000 total employee work hours annually and except for a railroad subject to paragraph (e)(2) of this section, must conduct periodic reviews and analysis as provided in this paragraph and must retain, at each division headquarters, where applicable, and at its system headquarters, one copy of the required quarterly and six-month reviews of operational tests and inspections. Based on these reviews, officers designated by the railroads use this information to make adjustments to the implementation of the railroad's operating rules inspection and testing program to ensure that the overall direction of the program is sound. Railroads also use this information to redirect their testing officers in order to appropriately respond to any instances of non-compliance, including accidents/incidents. Finally, under this section, railroads with more than 400,000 man-hours per year must retain annual written summaries on operational tests and inspections for three years. FRA reviews these summaries to ensure compliance with Federal safety regulations, and utilizes them during accident/incident investigations to determine the cause(s) of such events.

Under § 217.11 and § 218.95, each railroad to which this Part applies must periodically instruct each affected employee on the meaning and application of the railroad's operating rules in accordance with a written program retained at its systems headquarters and at the division headquarters for each division where the employee is instructed. The railroads use this information to ensure that their employees are qualified and that they understand their duties and responsibilities vis-a-vis the railroad's current operating rules/any changes to their current operating rules. FRA inspectors examine the written program of new railroads' operating rules and amendments to existing railroads' operating rules to verify that their rules conform to Federal safety laws and regulations. In particular, under § 218.95(a)(1) and (a)(2), FRA inspectors review the railroads' written program to ensure that they include instruction for employees on the consequences of non-compliance, namely that FRA can take enforcement action through civil penalties or disqualification from safety sensitive service, and that the written program addresses the need to qualify employees on all aspects of the technology the employee will be utilizing when complying with the operating rules required by this subpart.

Also, under § 218.95, affected railroads must retain written records documenting the instruction, examination, and training of each employee at their system headquarters and at the division headquarters for each division where the employee is assigned, and must make these records available to representatives of FRA for inspection and copying during normal business hours. FRA inspectors review these records to ensure that railroad employees are qualified/re-qualified for the duties that they are/will be performing. In the event of an accident/incident, FRA can quickly ascertain whether an unqualified employee performed safety-sensitive work. Moreover, these written records provide an invaluable resource to FRA and other safety investigators in determining the cause(s) of an accident/incident, and assist in devising corrective measures to prevent future such occurrences.

Further, § 218.95 states that upon review of the program of instruction, training, and examination required by this section, the Associate Administrator for Safety may, for cause stated, disapprove the program. Notification of such disapproval must be made in writing and specify the basis for the disapproval decision. If the Associate Administrator disapproves the program, the railroad must be provided an opportunity of not less than 30 days to respond and to provide written and/or oral submissions in support of the program. FRA (the Associate Administrator for Safety) reviews a railroad's response to the notice of disapproval of its program to determine whether it is safe and in the public interest to rescind the disapproval decision or whether the railroad must amend its program to include requirements specified by the Associate Administrator. Upon affirming the disapproval decision, FRA (the Associate Administrator for Safety) will review the railroad's amended program of instruction, training, and examination to ensure that it meets agency requirements.

Under § 218.97, each employer is responsible for the training and compliance by its employees with the requirements of this subpart. Each employer must adopt and implement written procedures which guarantee each employee the right to challenge in good faith as to whether the procedures that will be applied to accomplish a specific task comply with the requirements of this subpart or any operating rule relied upon to fulfill the requirements of this subpart. Each employer's written procedures must provide for prompt and equitable resolution of challenges made in accordance with this part. Also, a copy of the written procedures must be provided to each affected employee and made available for inspection and copying by representatives of FRA during normal business hours. Information under this requirement will be used by railroad officials and railroad employees to improve understanding of procedures and to enhance dialogue and clear communication between railroad officials and their employees in safely carrying out orders related to operating rules. The good faith challenge procedures that are clearly spelled out – and that employees can readily carry with them (along with their operating rules book) as ready references –provide railroad employees an opportunity to question an order that may not comply with the railroads' own operating rules or that may be potentially unsafe, and will provide a means for all parties to promptly resolve any question so that an order can be effectively and safely carried out by the tasked party.

Also, under § 218.97(d), FRA has added new recordkeeping and retention requirements. Specifically, a copy of the written procedures required by this section must be retained at the railroad's system headquarters and at each division headquarters, and must be made available to representatives of FRA for inspection and copying during normal business hours. FRA reviews railroads copies of written procedures to ensure that railroads are fully adopting, implementing, and complying with the requirements of this regulation, particularly the critical requirement relating to good faith challenges by railroad employees. Good faith challenges are intended to provide a forum that will allow railroad officials to listen to employees concerns regarding an operational order and to reconsider the validity of the order, thereby both improving the lines of communication among railroad employees and increasing adherence to the railroad's operating rules.

Overall, railroad safety ought to be thereby enhanced. Under § 218.97(d)(2), a copy of any record of a good faith challenge verification decision, made in compliance with § 218.97(c)(4), must be retained at the railroad's system headquarters and at the division headquarters to which the employee was working when the challenge was initiated. Such record copies must be made available to FRA for inspection and copying during normal business hours. FRA reviews these records again to ensure regulatory compliance and also to resolve any questions/disputes relating to a good faith challenge.

Under § 218.99, rolling equipment must not be shoved or pushed until the locomotive engineer has participated in a job briefing by the employee who will direct the move. This employee must also describe, as part of the job briefing, the means of communication to be used and how protection will be provided. This information is used to facilitate better communication between train employees and other employees who are directing shoving or pushing movements. In particular, employees will clearly know the method of communication to be used in such movements, whether radio, hand signals, or pitch and catch. Such briefings are designed and are used to ensure that employees working together understand the task they intend to perform and know exactly what role is expected of them and their colleagues. Thus, through such proper job briefings, safety is likely to be enhanced, since clear communication may prevent some mishaps and contain others from exacerbating an already bad situation.

Also, under § 218.99, when rolling equipment is shoved or pushed, point protection must be provided by a crewmember or other qualified employee visually determining, for the duration of the shoving or pushing movement, that the track is clear either within the range of vision or for the complete distance the equipment is to be pushed or shoved; and giving signals or instructions necessary to control the movement. The information is used to ensure that a crewmember or other qualified employee visually determines, for the duration of the shoving or pushing movement, that the track is clear, and provides essential signals or instructions to control the movement. Thus, if the employee providing the visual determination can only see part of the way down the track to be shoved or pushed, the employee will only be permitted to initiate movement for the distance that the employee can directly and continuously observe. Greater employee accountability and improved communication are intended to reduce the number of shoving or pushing accidents that occur each year.

Under § 218.101, each railroad must have in effect an operating rule which establishes minimum requirements for preventing equipment from fouling connecting tracks unsafely, and each railroad must implement procedures that will enable employees to identify when the equipment is fouling. Additionally, each railroad officer, supervisor, and employee must uphold and comply with the rule. The information is used by railroads to delineate the steps their employees must follow to avoid fouling connecting tracks unsafely, and will be used by railroad employees to better understand and perform their duties in a more effective and safe manner. The mandated operating rule and adherence to it by railroad employees serve to reduce the likelihood of accidents,

particularly collisions that result from equipment fouling connecting tracks.

Under §§§ 218.103, 238.105, and 238.107, railroads are required to adopt operating rules which meet the minimum requirements set forth in these sections concerning hand-operated switches, including cross-over switches. Railroads must specify minimum requirements necessary for an adequate job briefing. Further, employees operating or verifying the position of a hand-operated switch must: (1) Conduct job briefings, before work is begun, each time a work plan is changed, and at completion of the work; (2) Be qualified on the railroad's operating rules relating to the operation of the switch; (3) Be individually responsible for the position of the switch in use; (4) Visually determine that switches are properly lined for the intended use; (5) Visually determine that points fit properly and the target, if so equipped, corresponds with the switch's position; (6) Before making movements in either direction over the switch, ensure the switch is secured from unintentional movement of the switch points; (7) Ensure that a switch is not operated while rolling and on-track maintenance-of-way equipment is standing or moving over the switch; and (8) Ensure that when not in use, each switch is locked, hooked or latched, if so equipped. There are also additional requirements for hand-operated main track switches. The information required under theses sections is used by FRA to ensure railroads highlight the importance of properly handling switches and to ensure that those employees performing such operations are fully qualified and knowledgeable regarding the tasks they will be called on to perform. Frequent job briefings are used by railroad supervisors and employees to focus greater attention on properly setting and then reversing operating switches in order to keep track safe for trains and other railroad equipment and to eliminate accidents/incidents similar to the ones which necessitated FRA Emergency Order No. 24. It is essential that rail employees know what is expected of them before they start working, that they know what is expected to happen if the work plan changes after work is initiated but before the work is completed, and that they understand the importance of confirming whether all the work was completed and according to the operating rules.

Finally, under § 218.109, employees operating or verifying the position of a fixed derail must: (1) Conduct job briefings, before work is begun, each time a work plan is changed, and at completion of the work; (2) Be qualified on the railroad's operating rules relating to the operation of the derail;(3) Be individually responsible for the position of the derail in use; (4) Determine that the target, if so equipped, corresponds with the derail's position; (5) Determine that the derail is secured by: (i) placing the throw lever in the latch stand, if so equipped; (ii) placing the lock or hook in the hasp, if so equipped; and (iii) testing such latches, locks or hooks; and (6) Ensure that when not in use, derails are locked, hooked, or latched if so equipped. The information will be used by FRA to ensure that railroads emphasize to their employees the importance of properly handling fixed derails, particularly that employees operating or verifying the position of a fixed derail ensure that derails are locked, hooked, or latched if so equipped when not in use. The information is used by railroad employees to facilitate clear communication in

working with this type of equipment and to effectively carry out job tasks associated with fixed derails so as to promote error free operations. Thus, all the enumerated requirements serve the goal of reducing the number of rail accidents/incidents and corresponding casualties that occur each year.

3. Extent of automated information collection.

FRA strongly endorses and highly encourages the use of advanced information technology, wherever possible, to reduce burden. Accordingly, FRA has authorized each railroad to which this Part applies the option of retaining the information prescribed in § 217.9 (d) and § 217.9 (f) by means of by electronic recordkeeping. This includes the written program of operational tests and inspections as well as the records of the date, time, place, and result of individual operational tests and inspections performed in accordance with the railroad's operating rules program. This also includes the annual summary on operational tests and inspections. FRA has authorized each railroad to which this Part applies the option of retaining by electronic recordkeeping its program for the periodic instruction of its operating rules under § 217.11, provided the stipulated requirements in § 217.9(e)(1) through (e)(5) are met. Also, the records of instruction, examination, and training required under (new) § 218.95(a)(5) can be retained electronically, as long as they are kept in accordance with §§ 217.9(g) and 217.111(c) instruction. Finally, under § 218.97(c)(2), railroad employees have the option of documenting electronically or in writing any protest to a direct order, and under § 218.97(d)(2), copies of records regarding good faith challenge verification decisions may be stored electronically if they are kept in accordance with the electronic recordkeeping standards set forth in § 217.9(g)(1) through (g)(5) of this chapter

Additionally, if this proposed rule becomes final, FRA plans to consider adding an electronic submission option for the information required under § 218.133 and § 218.135, and has invited public comment on this issue in the proposed rule. Thus, approximately five (5) percent of total responses may be kept electronically by railroads and their employees if they so choose. (*Note: Ninety-four percent (94%) of responses are completed verbally through oral job briefings /acknowledgments / confirmations/ communications and some (87,600,000) by signal instructions. Thus, 94% percent of responses do not lend themselves to an electronic option*.)

4. Efforts to identify duplication.

Because this information collection is entirely associated with this rulemaking, the collection of information is unique. To FRA's knowledge, the information collection requirements are not duplicated anywhere.

Similar data are not available from any other source at this time.

5. Efforts to minimize the burden on small businesses.

The "universe" of the entities under consideration includes only those small entities that can reasonably be expected to be directly affected by the provisions of this rule. In this case, the "universe" will be Class III freight railroads that carry out train operations with one-person crews.

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." "Small entity" is defined in the Act as a small business that is independently owned and operated, and is not dominant in its field of operation. Additionally, section 601(5) defines "small entities" as 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 policy that formally establishes "small entities" as railroads which meet the line haulage revenue requirements of a Class III railroad.* The revenue requirements are currently $20 million or less in annual operating revenue. The $20 million limit (which is adjusted by applying the railroad revenue deflator adjustment)[2] is based on the Surface Transportation Board's (STB) threshold for a Class III railroad carrier. FRA is using the STB's threshold in its definition of "small entities" for this rule.

There are approximately 671 Class III railroads on the general system of rail transportation that this proposed rule would apply to resulting in costs associated with adding a second crew member to train operations under proposed § 218.125 if they do not qualify for an exception under proposed §§ 218.127 or 218.131. Based on information available from the internal regional survey regarding railroad eligibility for exception, and crew size for Class III railroads, coupled with information in the 2011 waybill sample regarding railroads with one-person operations carrying high hazard commodities, FRA estimates that at least 88.9 percent of the affected Class III railroads would be able to qualify for one of the proposed exceptions. Class III railroads moving the high risk commodities in quantities described in proposed § 218.125(c)(1)–(2) would not qualify for the exception and would be required to add a second crew member and be impacted by the proposed regulation.

Seventy five Class III railroads (11.1%) would not qualify for an exception based on operating speed and key train operations. Fourteen Class III railroads operate with single-person crews and could be impacted to the extent they carry high risk commodities. FRA estimates that Class III railroads with single-person crews that do not

[2*] For further information on the calculation of the specific dollar limit, please see 49 CFR Part 1201.

qualify for an exception and will incur regulatory costs associated with an estimated average of an additional 241 labor-hours per year to add a second crew member. The actual level of increase would vary proportionally with the level of riskier products carried and may represent a different portion of total operations depending on the level of overall operations. Information from FRA's internal survey indicates that the 14 Class III railroads with single-crew operations have annual operations totaling an average of 73,491 labor-hours. Based on the 241 labor-hours per year average cost this means that impacted railroads would have to increase train crew costs by 0.33 percent (0.33 percent increase in labor hours) on average. Based on information available regarding eligibility for exception, and crew size coupled with information in the 2011 waybill sample regarding railroads with one-person operations carrying crude oil or ethanol, FRA believes that 3 to 5 Class III railroads would thus be impacted by the proposed rulemaking. These results indicate that the proposed rulemaking will not result in a significant economic impact on a substantial number of small entities.

In addition, FRA notes that several of the 14 Class III railroads with single-person operations are subsidiaries of much larger Class I railroads or well-established holding companies that have revenues in excess of the adjusted $20 million threshold for this analysis.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FRA Administrator certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. (*Note: To limit the burden on small railroads, the proposed train crew size regulation is designed to limit applicability to railroads that exceed 400,000 employee work hours annually*.)

6. <u>Impact of less frequent collection of information</u>.

If this information were not collected or collected less frequently, railroad safety in the United States would be seriously jeopardized. Specifically, without this proposed rule and associated collection of information that mandates a second crew member, there might be more accidents like the ones that occurred in Lac-Megantic, Quebec and Mt. Carbon, West Virginia. Each covered freight and passenger railroad is required to comply with the requirements of **new** Subpart G and, in order to do so, has the option to revise its operating rules to conform to the general crew staffing requirements and location of the second crew member. The proposed information collection will enable FRA to monitor and enforce railroad compliance with this new Subpart to enhance rail safety throughout the nation. A second crew member can help prevent the locomotive engineer from experiencing task overload and losing situational awareness. The second crew member can provide timely warnings of operational restrictions and can complete some of the tasks that may cause the locomotive engineer to be overloaded. Two crew members are always required when the train contains certain quantities and types of hazardous materials. For example, FRA is proposing to mandate a second crew member when a train contains even one just one loaded tank car of poisonous by inhalation

material (PIH) as defined in 49 CFR 171.8, and including anhydrous ammonia (UN 1005) and ammonia solutions (UN 3318).

FRA would have no way of knowing whether each affected railroad's code of operating rules, timetables, and timetable special instructions and subsequent amendments thereto conform to Federal safety laws and regulations. Unapproved operating rules, timetables, and timetable special instructions could have disastrous results. Without this collection of information, FRA would not know whether railroads conducted the required operational tests and inspections, and would not know whether these tests and inspections conform to the railroads' operating rules. Deprived of this information, FRA would not know whether railroads are engaging in unsafe practices. This could lead to higher rates of rail accidents/incidents with accompanying injuries – and possibly fatalities – to train crews and other railroad workers as well as to the general public.

Without the required written records documenting the qualifications of each railroad testing officer, FRA would have no way to verify whether railroad testing officers are qualified on the railroad's operating rules in accordance with §217.11 of this part, whether they are qualified on the operational testing program requirements and procedures relevant to the testing they will conduct, and whether they have received appropriate field training/retraining to achieve proficiency on each operational test that they are authorized to conduct. Railroad testing officers not properly qualified would lack the fundamental knowledge to perform adequate tests and inspections, thereby increasing the likelihood that railroad operating employees would inconsistently apply or violate the railroad's operating rules. The result would be a greater number of human factor errors and more human-factor related accident/incidents and corresponding casualties.

Without the required periodic reviews of tests (quarterly, and six-month), FRA would have no way to ensure that affected railroads are conducting tests and inspections directed at the causes of human factor train accidents and employee casualties. Such structured tests or observations permit railroads to find employees who are in need of additional training or who may benefit from a reminder that it is not acceptable to take shortcuts that violate operating rules. Additional training of railroad employees and greater adherence to operating rules will enhance safety.

Without the annual written summaries on operational tests and inspections required of railroads with more than 400,000 man-hours per year, FRA would lose a valuable resource necessary to monitor large railroads compliance with Federal safety laws and regulations. These annual written summaries are also extremely helpful to FRA and other investigatory agencies when searching for the cause(s) of accidents/incidents. Without the required program of instruction on operating rules for employees and corresponding records, FRA would not know whether the various classes of railroad employees whose activities are governed by the railroad's operating rules are instructed periodically in these rules and are qualified to perform the tasks that they are assigned.

Without this training, railroad employees might engage in unsafe practices that could result in more human factor-related accidents/incidents causing injuries, perhaps fatalities, to themselves, co-workers, and the general public. By careful monitoring of the information collected, FRA can take swift corrective action when safety in railroad operations begins to deteriorate.

Without the required good faith challenge procedures, railroad employees might be unsure how to comply with the requirements of this subpart or any operating rule relied upon to fulfill the requirements of this subpart. This could lead to employees taking greater risks or unsafe actions that lead to an accident/incident. The good faith challenges foster better communication through dialogue between employees and railroad officials. An employee who believes that a railroad officer has given the employee an order that does not comply with the railroad's own operating rules, or the operating rules required by this subpart, may initiate a good faith challenge. Good faith challenges will serve to resolve operational procedure questions and thus increase compliance with the railroad's own operating rules and with Federal regulations, thereby reducing the number of human factor errors by railroad employees and enhancing overall safety.
Without the required job briefings for shoving or pushing rolling equipment, railroad employees might not understand or be clear on the task given to them and exactly what role is expected of them and their colleagues. The required job briefings will cover the means of communication used to relay information (whether by radio, hand signals, or pitch and catch), and how protection will be provided. By fostering better communication through job briefings and by requiring a visual determinations be made and proper signals or instructions given by a crewmember or other qualified employee, train crews can be assured that the track is clear when making shoving or pushing movements. This will greatly reduce the likelihood of an accident/incident occurring.

Without the new requirements under § 218.99(e)(5)(iii) and (e)(5)(iv), there might be a greater number of accident/incidents and corresponding injuries and possibly fatalities to railroad employees because they did not reliably know whether or not a track was occupied prior to commencing a shoving or pushing movement and did not know whether or not a track was designated for such movements..

Finally, without the requirement that railroads have in effect an operating rule that establishes minimum requirements for leaving equipment in the clear in order to prevent equipment from fouling connecting tracks and an operating rule regarding hand-operating switches, cross-over switches, and derails, railroad employees might not be as highly focused in fulfilling their responsibilities in making sure that hand-operated switches and derails are left properly lined before leaving a work site. Without such careful attention to detail and to properly operating such equipment, there could be increased numbers of preventable accident/incidents.

In sum, this collection of information enhances accountability and responsibility on the part of railroad employees. It aims to reduce the number of human factor errors and

accidents/incidents with corresponding casualties that result from such errors. This collection of information furthers FRA's primary mission, which is to promote and enhance rail safety throughout the nation.

7. Special circumstances.

Class I railroads, Class II railroads, the National Railroad Passenger Corporation, and commuter railroads do not regularly file their operating rules, and any subsequent amendments thereto with FRA. However, each railroad must file one copy of its operating rules with FRA, and any amendment to its operating rules must also be filed with FRA within 30 days after it is issued. FRA believes that the 30-day requirement is not unreasonable, given the paramount importance of maintaining safe train operations.

All other information collection requirements contained in this proposed rule are in compliance with this section.

8. Compliance with 5 CFR 1320.8.

FRA is publishing a Notice of Proposed Rulemaking titled Train Crew Staffing and Location of Second Crew Member on March 15, 2016. See 81 FR 13917. In this proposed rulemaking, FRA is soliciting comment both on the proposed rule and its associated information collection. FRA will respond to any comments received on the proposed rule or its associated information collection in the final rule. FRA will also respond to comments on the proposed rule's collection of information in the final rule's information collection submission.

Background

In March 1996, FRA established the Railroad Safety Advisory Committee (RSAC), which provides a forum for collaborative rulemaking and program development. RSAC includes representatives from all of the agency's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of RSAC members follows:

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

Brotherhood of Maintenance of Way Employes Division (BMWED);
Brotherhood of Railroad Signalmen (BRS);
Chlorine Institute;
Federal Transit Administration (FTA);*
Fertilizer Institute;
Institute of Makers of Explosives;
International Association of Machinists and Aerospace Workers;
International Brotherhood of Electrical Workers (IBEW);
Labor Council for Latin American Advancement (LCLAA);*
League of Railway Industry Women;*
National Association of Railroad Passengers (NARP);
National Association of Railway Business Women;*
National Conference of Firemen & Oilers;
National Railroad Construction and Maintenance Association (NRC);
National Railroad Passenger Corporation (Amtrak);
National Transportation Safety Board (NTSB);*
Railway Passenger Car Alliance (RPCA)
Railway Supply Institute (RSI);
Safe Travel America (STA);
Secretaria de Comunicaciones y Transporte;*
SMART Transportation Division (SMART TD)
Transport Canada;*
Transport Workers Union of America (TWU);
Transportation Communications International Union/Brotherhood of Railway Carmen (TCIU/BRC);
Transportation Security Administration (TSA).
*Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. The working group may establish one or more task forces or other subgroups to develop facts and options on a particular aspect of a given task. The task force, or other subgroup, reports to the working group. If a working group comes to consensus on recommendations for action, the package is presented to RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, and because the RSAC recommendation constitutes the consensus of some of the industry's leading experts on a given subject, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation and the agency exercises its independent judgment on whether the recommended rule

achieves the agency's regulatory goals, is soundly supported, and is in accordance with applicable policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. If the working group or RSAC is unable to reach consensus on recommendations for action, FRA resolves the issue(s) through traditional rulemaking proceedings or other action.

On August 29, 2013, the RSAC accepted a task (No. 13-05) entitled "Appropriate Train Crew Size." The statement clarified that "[i]n light of the recent Canadian train incident and the subsequent emergency directive issued by Transport Canada, FRA believes it is appropriate to review whether train crew staffing practices affect railroad safety." FRA identified four purposes of this task, which were all variations on requests for RSAC to evaluate whether and how crew redundancy affects railroad safety and when crew redundancy should be deemed necessary. Crew redundancy is the idea that a second crew member can confirm for the locomotive engineer important information thereby providing a second layer of assurance that the train is being operated in accordance with all applicable rules, procedures, practices, restrictions, and signal indications. However, the second crew member's responsibilities are not just passive in a confirming way. The second crew member can provide redundancy by taking the lead on tasks that free the locomotive engineer to focus on the engineer's core role of train handling.

The task statement specified that RSAC was expected to look at a list of FRA rail safety regulations to evaluate whether and how crew size impacts rail safety. The statement also asked RSAC to review published studies and reports, as appropriate. FRA provided the five FRA-sponsored studies, as well as the one TRB conference report, each of which were described previously in this preamble. In reviewing these materials, FRA was hoping that RSAC would be able to address the following issues in its recommendations report:

- Report on whether there is a safety benefit or detriment from crew redundancy, including an analysis of observed safety data and outcomes from current crew deployment practices.
- Review existing regulations and consider the impact of crew size on the performance of any task or activity.
- Report on the costs and benefits associated with crew redundancy.
- If appropriate, develop recommended regulatory language or guidance documents regarding crew size requirements that enhance the safety of railroad operations by providing enhanced regulatory redundancy. In considering the development of regulatory language, specifically consider the value of regulatory redundancy in terms of crew size as it relates to trains or vehicles identified by the group responsible for task no. 13-02 [i.e., an RSAC task to identify types and quantities of hazardous materials for

special handling as a result of reviewing the Lac-Mégantic accident] as requiring special handling and/or operational controls, and if appropriate develop recommended regulatory language specific to these railroad operations.
Furthermore, in order to accommodate some RSAC members, RSAC agreed to consider other issues that have some arguable connection to the crew size issue. These other issues were to consider (1) the appropriate role and impact of technological advances on crew size and crew deployment and incorporate these into any recommendation developed; (2) positive train control (PTC) and Remote Control Operations or other operations where crew deployment practices or the use of technology may enhance the safety of operations; and, (3) the application of a System Safety Program to these issues.

In addition to FRA, the following organizations contributed members:

Association of American Railroads (AAR), including members from BNSF Railway Company (BNSF), Canadian National Railway (CN), Canadian Pacific Railway (CP), CSX Transportation, Inc. (CSX), Kansas City Southern Railway (KCS), National Railroad Passenger Corporation (Amtrak), Northeast Illinois Regional Commuter Railroad Corporation (METRA), Norfolk Southern Railway Company (NS), and Union Pacific Railroad (UP);
American Public Transportation Association (APTA), including members Capital Metropolitan Transportation Authority (CMTA), Keolis North America, Long Island Rail Road (LIRR), Massachusetts Bay Commuter Railroad Company (MBCR); Metro-North Railroad (MNCW), North County Transit District (NCTD), Regional Transportation District (RTD), and San Joaquin Regional Rail Commission;
ASLRRA, including members from Central California Traction Company (CCT), Farmrail System (FMRC); Genesee & Wyoming Inc. (GNWR), Indiana Rail Road Company (INRD), OmniTRAX, Pinsly Railroad Company,and WATCO Companies, Inc. (WATCO);
Association of State Rail Safety Managers (ASRSM), including members from California Public Utilities Commission (CPUC);
American Train Dispatchers Association (ATDA);
Association of Tourist Railroads and Railway Museums (ATRRM)
Brotherhood of Locomotive Engineers and Trainmen (BLET);
Brotherhood of Maintenance of Way Employes Division (BMWED);
Brotherhood of Railroad Signalmen (BRS);
National Railroad Construction and Maintenance Association (NRC), including members from Herzog Transit Services (Herzog);
SMART Transportation Division (SMART TD);
Railway Carmen (TCIU/BRC); and
Transport Workers Union of America (TWU).

The Working Group convened five times on the following dates in Washington, DC. Minutes of each of these meetings are part of the docket in this proceeding and are available for public inspection.

- October 29, 2013;
- December 18, 2013;
- January 29, 2014;
- March 5, 2014; and
- March 31, 2014.

As the Working Group meeting notes in the docket reflect, FRA started the first meeting by providing an overview of FRA's position on the crew size issue. Although FRA always enters any RSAC discussion with an agency position on the issue being discussed, FRA was quicker than in previous RSAC discussions to reveal its broad-based positions. Typically, FRA will start the first meeting with a free-form discussion of the topic, allowing the RSAC Working Group's members to brainstorm problems and a range of acceptable solutions. The typical approach works great when FRA is unsure of whether a regulation is necessary, there already is an informal consensus that action needs to be taken, or the Working Group knows FRA will regulate the issue because there is a statute mandating promulgation of a regulation. None of these scenarios were present with the crew size issue. For these reasons, FRA believed it needed to approach this RSAC differently by defining its broad position on appropriate train crew size at the beginning of the first meeting.

During that first RSAC Working Group meeting, FRA presented some background on the crew size issue. FRA acknowledged that it had not previously felt the need to talk about crew size until recently for several reasons. Historically, crew size has been an issue for labor relations, and technology has enabled a gradual reduction in the number of train crew members from about five in the 1960s to two in 2014. Four major technological breakthroughs were mentioned in FRA's presentation that led to the historic train crew size reductions: (1) the phase out of steam locomotives allowed locomotives to be operated without crew known as fireman dedicated to keeping the engine fed with coal; (2) the introduction of portable radios made it easier to transmit information from a crew member at the far end of the train to the leading end; (3) the end-of-train device replaced the need for one or more crew members to be at the rear of a train on a caboose to monitor brake pipe pressure; and (4) the development of improved train control devices helped automate safer operations in case of human error. Furthermore, FRA raised another significant technological innovation that has become widespread over the last 20 years; that is, remotely controlled locomotive operations utilizing only a one-person crew for switching service have become commonplace.

FRA told the Working Group that the agency's position on appropriate crew size is that: (1) railroad safety is enhanced through the use of multiple crew members; (2) it is difficult to comply with current safety regulations and operating rules when operating with a one-person crew; (3) FRA's safety regulations were written with at least a two-person crew in mind and that operating with a one-person crew may, in some cases, compromise railroad and public safety; and (4) a second crew member provides safety redundancy and provides a method of checks and balances on train operations. For all

these reasons, FRA took the position that it needs to have some oversight of train crew size so that it can protect railroad employees and the general public.

FRA then explained its broad position on establishing train crew size requirements, explaining that the agency wanted the Working Group to make recommendations that would establish safe practices for both two-person train operations and those with less than two-persons. For instance, FRA took the negotiating position that the Working Group should develop a recommendation with a baseline of a minimum two-person crew for freight and passenger trains. The Working Group was told that FRA wanted to hear about current one-person crew operations that have been safely conducted so that those exceptions to a two-person standard could be carved out in the RSAC's recommendations. FRA also expressed an interest in offering to provide for a special approval process in a crew size regulation that would allow FRA to quickly and efficiently provide review and approval of any train crew arrangement that could not meet any easy to define specific exclusions. In order to ensure reasonable oversight, FRA suggested that a special approval would be granted based on whether the railroad's petition demonstrated an appropriate level of safety based on a combination of safeguards offered by shoring up operating procedures and implementing proven technologies. FRA noted that this was a generous compromise position, as FRA was not taking an absolute position that all trains must be operated with a two-person crew because it has the expertise to recognize accepted safe practices.

FRA's broadly stated negotiating position at the Working Group meetings was also constructed based on feedback recently received from two railroad associations participating as RSAC members. In response to Emergency Order 28 that was issued after the Lac-Mégantic accident, AAR reported to FRA that "Class I railroads currently use two-person crews for over-the-road mainline operations."[3] AAR was certainly looking to assure FRA that the major railroads were not conducting one-person trains transporting the types and quantities of hazardous materials specified in appendix A of Emergency Order 28. ASLRRA could not be specific about each of its members' policies on transporting hazardous materials with one-person crews. However, ASLRRA tried to assure FRA that its members had "carefully consider[ed] the appropriate train and engine crew assignments to assure the highest degree of safety for the movements they operate."[4] Taking the AAR and ASLRRA's comments at face value, FRA did not believe the agency's initial negotiating position differed greatly from the status quo. That is, the major railroads were already using two-person train crews for over-the-road mainline operations and the shortlines were carefully considering safety, presumably through a safety analysis of each operation prior to implementation – or so that was intimated.

[3] Letter from Mr. Edward R. Hamberger, President & CEO of AAR, to Mr. Joseph C. Szabo, FRA Administrator (Oct. 16, 2013), which has been placed in the docket to this rulemaking.
[4] Letter from Mr. Richard F. Timmons, President of ASLRRA, to Mr. Joseph C. Szabo, FRA Administrator (Oct. 17, 2013), which has been placed in the docket to this rulemaking.

Despite the AAR and ASLRRA's publicly stated positions on crew size, it was clear from the first meeting that the members of these associations were opposed to RSAC making any recommendation that provided FRA with oversight on crew size issues. AAR stated at that first meeting that there is no safety justification for FRA to address train crew size. ASLRRA took the position that because there have been very few, if any, accidents involving a one-person crew, and management has been very responsible regarding crew size, that FRA should not dictate safety regulations on the subject. These statements puzzled FRA as they seemed to contradict the associations written pronouncements to FRA that were made to assure that their members' operations were safe. The unwillingness to allow FRA to regulate the subject in a way that would essentially approve the status quo suggested that the associations did not believe that their members' operations could withstand FRA's scrutiny.

As more Working Group meetings were held, FRA became increasingly concerned about the extent of one-person train operations in the U.S. and the extent that these operations may have proliferated without FRA oversight of them. Based on discussions with the railroad members of the Working Group, there appears to be a trend that more railroads of every class are willing to experiment with one-person train crew operations. Members representing Labor organizations seemed as surprised as FRA with some of the generalized statements made by a variety of railroads regarding the extent of the existing one-person operations. For example, railroads of all classes seemingly have permitted remote control operations with only one-person to routinely operate on main track in limited train service, as opposed to being used for switching service – the original expected use for which the technology was designed. AAR and ASLRRA were unwilling to recommend FRA oversight of their members, to assure railroad employees and the general public that their members' existing operations are safe, proclaiming that the lack of safety data showing there was an existing problem should somehow prevail as an argument. Without a requirement for railroads to consult FRA on questionable crew size practices, FRA did not field inquiries from railroads asking for the agency's opinion on the safety of the practices. Even if an FRA inspector were to observe a train being operated with only one-person, FRA personnel would not have any reason to write up an inspection report detailing the finding – unless the one-person operation was alleged to have violated an FRA safety law, regulation, or order and the issue was tangentially raised in the report. Certainly, high level safety personnel at FRA were unaware of how many railroads, especially freight railroads, were regularly fielding trains with only a one-person crew. For these reasons, the Working Group's discussions of existing one-person train crew operations were illuminating.

Just as railroads have explained for over a century that certain operating rules were "written in blood" because it took one or more accidents causing serious injuries or fatalities before the operating rule was written, railroad employees and the general public should not have to wait for horrific accidents before the Federal government takes action. FRA provided the Working Group with a number of significant reasons for

recommending regulatory action. In summary, FRA provided: (1) the scientific research studies showing the benefits of a second crew member; (2) the anecdotal information regarding recent train accidents and how a second crew member either could have played a safety role or did play such a role; (3) the explanation that FRA's railroad safety regulations were written with the expectation that nearly every train would be operated by no fewer than two crew members; and, (4) the general public's negative reaction to the idea that FRA did not already mandate two-person train crews to add another layer of safety.

During the Working Group's first meeting, SMART-TD stated its belief that FRA appears to be responding to the public's demand for action. SMART-TD backed up its statement during the Working Group's January 29, 2014, meeting when it shared a research report it sponsored that combined data from five surveys that indicated a strong level of bipartisan support among voters for a Federal law requiring freight trains to operate with a crew of two. The surveys were conducted in the States of Kentucky and North Dakota, and in select Congressional districts in the States of Colorado, Kansas, Iowa, and Pennsylvania. The data supported a finding that 77 percent of all respondents support Federal legislation requiring freight trains to be operated by a crew of two. Even when respondents were not reminded in a prior question about recent deadly train accidents in Quebec, Spain, and New York City, 74 percent supported Federal legislation. Another finding was that an overwhelming majority of those polled (between 83 to 87 percent in each of the five surveys) had the opinion that, generally speaking, when it comes to railroad safety and operations, one operator cannot be as safe as a train with a crew of two individuals. A copy of this report has been placed in the docket.

Despite the early warning signs that the Working Group would not be able to reach a consensus, FRA held five day-long meetings spread out over six months in which the agency continued to make substantive presentations and negotiate in good faith. Every time APTA or ASLRRA presented a new set of facts for a potential exception, FRA listened and came back with a written recommendation that tried to capture the request for leniency. Twice, AAR provided the Working Group with a list of a variety of railroad operations that it claimed should be allowed to continue with one-person with no restrictions. Each time, FRA responded with a written recommendation that tried to capture the request for leniency or, in a few instances, explained why it could not support such a request. Although no consensus was reached, there seemed to be a tacit understanding that FRA had adequately described each operation for which it included an exception in its working document.

FRA has greatly benefited from the open, informed exchange of information during the meetings. Although the Working Group did not reach consensus on any recommendations, FRA decided not to extend the April 1, 2014 deadline that FRA initially presented the RSAC. FRA did not think it would be beneficial to continue to discuss with the RSAC's railroad members the issue of what data FRA had to support

this rulemaking recommendation when they knew full well that the data, supplied by the railroads themselves to FRA, would not be very illuminating on this issue.
It was also made clear to FRA that organizations representing railroad employees supported FRA's overall concept of mandating two-person crews on each train with some exceptions, but were overwhelmingly opposed to FRA's draft rulemaking recommendation that attempted to greatly accommodate all classes of passenger and freight railroads. Several labor organizations wanted FRA to scale back some of the exceptions FRA accepted as part of the agency's attempt to reach a consensus. For example, these organizations wanted to limit the shortline railroad exceptions in § 218.131(a) to a freight train operated on a railroad and by an employee of a railroad with 15 or fewer employees, rather than the FRA position of "a freight train operated on a railroad and by an employee of a railroad with less than 400,000 total employee work hours annually" (which is the equivalent of about 200 or fewer employees). Thus, after five meetings, with labor and management representatives taking polar opposite positions on large and small issues, FRA decided not to accept some Working Group members' recommendation to extend the deadline for negotiating a recommendation.

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.

Under the Freedom of Information Act, the agency is required to make information collected in compliance with the regulations available to those requesting the documents. FRA does not actively solicit or encourage such requests.

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

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: Based on the latest available reporting data by railroads, FRA estimates that there are approximately 722 railroads currently operating on the general rail transportation system in the United States. The breakdown is as follows: seven (7) Class I railroads, 11 Class II railroads, 31 passenger/commuter railroads, and 673 Class III railroads.

Part 217.7 - Operating Rules; Filing and Recordkeeping

(a.) On or before December 21, 1994, each Class I railroad, Class II railroad, the National Railroad Passenger Corporation, and each railroad providing commuter service in a metropolitan or suburban area that is in operation on November 21, 1994, must file with the Federal Railroad Administrator, Washington, D.C. 20590, one copy of its code of operating rules, timetables, and timetable special instructions and each subsequent amendment to its code of operating rules, timetables, and timetable special instructions which were in effect on November 21, 1994. Each Class I railroad, each Class II railroad, and each railroad providing commuter service in a metropolitan or suburban area that commences operations after November 21, 1994, must file with the Administrator one copy of its code of operating rules, timetables, and timetable special instructions before it commences operations.

The requirement to file rules, timetables and timetable special instructions applies only to any railroad that qualifies as a Class I railroad or Class II railroad, or any new commuter railroad that is formed. FRA estimates that approximately two (2) railroads per year will fall into one of the specified categories. This is a one-time submission. It is estimated that it will take approximately one (1) hour to complete the required task. Total annual burden for this requirement is two (2) hours.

Respondent Universe:	2 new railroads
Burden time per response:	1 hour
Frequency of Response:	One-time
Annual number of Responses:	2 submissions
Annual Burden:	2 hours

Calculation: 2 submissions x 1 hr. = 2 hours

(b.) After November 21, 1994, each Class I railroad, each Class II railroad, the National Railroad Passenger Corporation, and each railroad providing commuter service in a metropolitan or suburban area must file each new amendment to its code of operating rules, each new timetable, and each new timetable special instruction with the Federal Railroad Administrator within 30 days after it is issued.

Respondent universe is approximately 55 railroads. It is estimated that each railroad will issue approximately three (3) amendments per year (165 amendments total). It is estimated that each amendment will take approximately 20 minutes to complete. Total annual burden for this requirement is 55 hours.

Respondent Universe:	55 railroads
Burden time per response:	20 minutes
Frequency of Response:	On occasion
Annual number of Responses:	165 amendments
Annual Burden:	55 hours

Calculation: 165 amendments x 20 min. = 55 hours

(c.)(i) On or after November 21, 1994, each Class III railroad and any other railroad subject to this Part but not subject to paragraphs (a) and (b) of this section must keep one copy of its current code of operating rules, timetables, and timetable special instructions, and one copy of each subsequent amendment to its code of operating rules, each new timetable, and each new timetable special instruction at its system headquarters, and must make such records available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.

The burden of the first part of this requirement applies only to new railroads that are formed annually. FRA is assuming that all Class III railroads in existence today already keep copies of their current code of operating rules, timetables, and timetable special instructions, and any subsequent amendments thereto at their system headquarters. FRA estimates that approximately five (5) Class III railroads will be formed each year. It is estimated that it will take each railroad approximately .92 hour to perform the required task. Total annual burden for this requirement is five (5) hours.

Respondent Universe:	5 new railroads
Burden time per response:	.92 hour
Frequency of Response:	On occasion
Annual number of Responses:	5 submissions
Annual Burden:	5 hours

Calculation: 5 submissions x .92 hr. = 5 hours

(ii) There are an additional 673 Class III railroads subject to the second part of the above requirement. It is estimated that each railroad will issue approximately three (3) amendments each year (2,019 amendments total). It is further estimated that each amendment will take approximately 15 minutes to complete. Total annual burden for this requirement is 505 hours.

Respondent Universe:	673 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	2,019 amendments
Annual Burden:	505 hours

Calculation: 2,013 amendments x 15 min. = 505 hours

Total annual burden for this entire requirement is 567 hours (2 + 55 + 5 + 505).

Part 217.9 - Program of Operational Tests and Inspections; Recordkeeping

(a.) Requirement to conduct operational tests and inspections. Each railroad to which this part applies must periodically conduct operational tests and inspections to determine the extent of compliance with its code of operating rules, timetables, and timetable special instructions, specifically including test and inspections sufficient to verify compliance with the requirements of subpart F of part 218 of this chapter, in accordance with a written program as required by paragraph (c) of this section.

The burden for this requirement is included under that of § 217.9(d) below. Consequently, there is no additional burden associated with this requirement.

(b.) Railroad and railroad testing officer responsibilities. (1) Each railroad officer who conducts operational tests and inspections (railroad testing officer) must: (i) Be qualified on the railroad's operational rules in accordance with § 217.11 of this part; and (ii) Be qualified on the operational testing and inspection program requirements and procedures relevant to the testing and inspections the officer will conduct; (iii) Receive appropriate field training, as necessary to achieve proficiency, on each operational test or inspection that the officer is authorized to conduct.

FRA believes that this requirement falls under one of the items in 5 CFR 1320.3(h)(7) (examinations designed to test the aptitudes, abilities, or knowledge of the person tested) that are not considered information by OMB. Consequently, there is no burden associated with it.

(iv) Conduct operational tests and inspections in accordance with the railroad's program of operational tests and inspections.

The burden for this requirement is also included under that of § 217.9(d) below. Consequently, there is no additional burden associated with this requirement.

(2) Written records documenting qualification of each railroad testing officer must be retained at the railroad's system headquarters and at the division headquarters for each division where the officer is assigned and must be made available to representatives of FRA for inspection and copying during normal business hours.

FRA estimates that approximately 4,732 records of railroad testing officers will be kept under the above requirement. It is estimated that it will take approximately two (2) minutes to conduct the exam and complete the record for each railroad testing officer. Total annual burden for these requirements is 158 hours.

Respondent Universe:	722 railroads
Burden time per response:	2 minutes
Frequency of Response:	On occasion
Annual number of Responses:	4,732 records
Annual Burden:	158 hours

Calculation: 4,732 records x 2 min. = 158 hours

(c.) Written program of operational tests and inspections. Every railroad must have a written program of operational tests and inspections in effect. New railroads must have such a program within 30 days of commencing rail operations. The program must: (1) Provide for operational testing and inspection under the various operating conditions on the railroad. As of January 1, 2009, the program must address with particular emphasis those operating rules that cause or are likely to cause the most accidents or incidents, such as those accidents or incidents identified in the quarterly reviews, six month reviews, and the annual summaries as required under paragraphs (e) and (f), as applicable; (2) Require a minimum number of tests and inspections per year covering the requirements of part 218, subpart F of this chapter; (3) Describe each type of operational test and inspection required, including the means and procedures used to carry it out; (4) State the purpose of each type of operational test and inspection; (5) State, according to operating divisions where applicable, the frequency with which each type of operational test and inspection is conducted; (6) As of January 1, 2009, identify the officer(s) by name, job title, and, division or system, who shall be responsible for ensuring that the program of operational tests and inspections is properly implemented. The responsibilities of such officers shall include, but not be limited to, ensuring that the railroad's testing officers are directing their efforts in an appropriate manner to reduce accidents/incidents and that all required reviews and summaries are completed. A railroad with divisions shall identify at least one officer at the system headquarters who is responsible for overseeing the entire program and the implementation by each division. (7) Include a schedule for making the program fully operative within 210 days after it begins.

Existing railroads already comply with this requirement. FRA estimates that approximately five (5) Class III railroads will commence operations each year. It is estimated that it will take approximately 9.92 hours to prepare the written program and file copies with the system and division headquarters (as required). Total annual burden for this requirement is 50 hours.

Respondent Universe:	5 new railroads
Burden time per response:	9.92 hours
Frequency of Response:	On occasion
Annual number of Responses:	5 programs
Annual Burden:	50 hours

Calculation: 5 programs x 9.92 hrs. = 50 hours

(d.) Records. Each railroad to which this Part applies must keep a record of the date, time, place, and result of each operational test and inspection that was performed in accordance with its program. Each record must specify the officer administering the test

and inspection and each employee tested. These records must be retained at the system headquarters and at each division headquarters where the tests and inspections are conducted for one calendar year after the end of the calendar year to which they relate. These records must be made available to representatives of the FRA for inspection and copying during normal business hours.

Respondent universe is 722 railroads. FRA estimates that railroads subject to this requirement will perform a total of approximately 9,188,700 tests per year. (FRA's estimate breaks down as follows: FRA believes Class I railroads will perform approximately 7,800,000 tests a year; Class II railroads will perform approximately 1,000,000 tests a year; commuter railroads will perform approximately 320,000 tests a year; and the remaining 600 railroads or Class IIIs will perform approximately 68,700 tests a year.) It is estimated that each test and corresponding record will take approximately five (5) minutes to complete. Total annual burden for this requirement is 765,725 hours.

Respondent Universe:	722 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	9,188,700 records
Annual Burden:	765,725 hours

Calculation: 9,188,700 records x 5 min. = 765,725 hours

(2) Each railroad shall retain one copy of its current program for periodic performance of the operational tests and inspections required by paragraph (a) of this section and one copy of each subsequent amendment to such program. These records shall be retained at the system headquarters and at each division headquarters where the tests and inspections are conducted for three calendar years after the end of the calendar year to which they relate. These records shall be made available to representatives of the FRA for inspection and copying during normal business hours.

As stipulated above, railroads must retain one copy of each amendment to their operational test and inspection programs at their division headquarters and system headquarters. Respondent universe is 55 railroads. FRA estimates that each railroad will issue approximately three (3) amendments per year (a total 165 amendments annually). FRA estimates that it will take approximately 70 minutes to complete this task. Total annual burden for this requirement is 193 hours.

Respondent Universe:	55 railroads
Burden time per response:	70 minutes
Frequency of Response:	On occasion
Annual number of Responses:	165 amendments
Annual Burden:	193 hours

Calculation: 165 amendments x 70 min. = 193 hours

(e.) Reviews of tests and inspections and adjustments to the program of operational tests. This paragraph (e) shall apply to each Class I railroad and the National Railroad Passenger Corporation effective April 1, 2009 and to all other railroads subject to this paragraph effective July 1, 2009.

Reviews by railroads other than passenger railroads. Each railroad to which this Part applies must conduct periodic reviews and analysis as provided in this paragraph and must retain, at each division headquarters, where applicable, and at its system headquarters, one copy of the following reviews, provided however that this requirement does not apply to either a railroad with less than 400,000 total employee work hours annually or a passenger railroad subject to paragraph (e)(2) of this section.

(ii) *Quarterly review*. The designated officer of each division headquarters, or system headquarters, if no division headquarters exists, must conduct a written quarterly review of the accident/incident data, the results of prior operational tests and inspections, and other pertinent safety data for that division or system to identify the relevant operating rules related to those accidents/incidents that occurred during the quarter. The review must also include the name of each railroad testing officer, the number of tests and inspections conducted by each officer, and whether the officer conducted the minimum number of each type of test or inspection required by the railroad's program. Based upon the results of that review, the designated officer shall make any necessary adjustments to the tests and inspections required of railroad officers for the subsequent period(s). Quarterly reviews and adjustments must be completed no later than 30 days after the quarter has ended.

This requirement applies to Class I, Class II, and approximately 10 Class III freight railroads (totaling 70 railroads in all). Consequently, FRA estimates that approximately 140 written quarterly reviews will be conducted under the above requirement. It is estimated that it will take approximately two (2) hours to complete each written quarterly review. Total annual burden for this requirement is 280 hours.

Respondent Universe:	70 railroads
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	140 written quarterly reviews
Annual Burden:	280 hours

Calculation: 140 written quarterly reviews x 2 hrs. = 280 hours

(iii) *Six-month review*. The designated officer of each system headquarters office responsible for development and administration of the program of operational tests and

inspections must conduct a review of the program of operational tests and inspections on a six month basis to ensure that it is being utilized as intended, that the quarterly reviews provided for in this paragraph have been properly completed, that appropriate adjustments have been made to the distribution of tests and inspections required, and that the railroad testing officers are appropriately directing their efforts. Six month reviews must be completed no later than 60 days after the review period has ended.

This requirement applies to Class I, Class II, and approximately 10 Class III freight railroads (totaling 70 railroads in all). Consequently, FRA estimates that approximately 70 designations will be made and approximately 140 semi-annual reviews will be conducted under the above requirement. It is estimated that it will take approximately five (5) seconds to make the required designations and approximately two (2) hours to complete each written semi-annual review. Total annual burden for this requirement is 280 hours.

Respondent Universe:	70 railroads
Burden time per response:	5 seconds + 2 hours
Frequency of Response:	On occasion
Annual number of Responses:	70 designations + 140 six-month reviews
Annual Burden:	280 hours

Calculation: 70 designations x 5 sec. + 140 six-month reviews x 2 hrs. = 280 hours

(2) *Reviews by passenger railroad*s. Not less that once every six months, the designated officers of the National Railroad Passenger Corporation and of each railroad providing commuter service in a metropolitan or suburban area must conduct periodic reviews and analyses as provided in this paragraph and must retain, at each division headquarters, where applicable, and at its system headquarters, one copy of the reviews. Each such review must be completed within 30 days of the close of the period.

(i) The designated officer(s) must conduct a written review of: (i) the operational testing and inspection data for each division, if any, or the system to determine compliance by the railroad testing officers with its program of operational tests and inspections required by paragraph (c) of this section. At a minimum, this review must include the name of each railroad testing officer, the number of tests and inspections conducted by each officer, and whether the officer conducted the minimum number of each type of test or inspection required by the railroad's program.

(ii) accident/incident data, the results of prior operational tests and inspections, and other pertinent safety data for each division, if any, or the system to identify the relevant operating rules related to those accidents/incidents that occurred during the period. Based upon the results of that review, the designated officer shall make any necessary

adjustments to the tests and inspections required of railroad officers for the subsequent period(s); and

(iii) implementation of the program of operational tests and inspections from a system perspective, to ensure that it is being utilized as intended, that the other reviews provided for in this paragraph have been properly completed, that appropriate adjustments have been made to the distribution of tests and inspections required, and that the railroad testing officers are appropriately directing their efforts.

FRA estimates that approximately 27 designations will be made and approximately 54 six-month reviews will be conducted under the above requirement. It is estimated that it will take approximately five (5) seconds to make the required designations and approximately two (2) hours to complete each written six-month review. Total annual burden for this requirement is 108 hours.

Respondent Universe:	Amtrak + 27 railroads
Burden time per response:	5 seconds + 2 hours
Frequency of Response:	On occasion
Annual number of Responses:	27 designations + 54 written six-month reviews
Annual Burden:	108 hours

Calculation: 27 designations x 5 sec. + 54 six mo. rev. x 2 hrs. = 108 hours

(3) *Records retention*. The records of periodic reviews required in paragraphs (e)(1) and (e)(2) of this section must be retained for a period of one year after the end of the calendar year to which they relate and must be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.

FRA estimates that approximately 334 records of periodic reviews will be retained under the above requirement. It is estimated that it will take approximately one (1) minute to keep each quarterly plan and each written review record. Total annual burden for this requirement is six (6) hours.

Respondent Universe:	97 railroads (70 + 27)
Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual number of Responses:	334 review records
Annual Burden:	6 hours

Calculation: 334 review records x 1 min. = 6 hours

(f) *Annual summary on operational tests and inspections*. Before March 1 of each calendar year, each railroad to which this part applies, except for a railroad with less than 400,000 total employee work hours annually, must retain, at each of its division headquarters and at the system headquarters of the railroad, one copy of a written summary of the following with respect to its previous calendar year activities: The number, type, and result of each operational test and inspection, stated according to operating divisions where applicable, that was conducted as required by paragraphs (a) and (c) of this section. These records must be retained for three calendar years after the end of the calendar year to which they relate, and must be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.

(g) *Electronic recordkeeping*. Each railroad to which this Part applies is authorized to retain by electronic recordkeeping the information prescribed in this section, provided that all of the following conditions are met: (1) The railroad adequately limits and controls accessibility to such information retained in its electronic database system and identifies those individuals who have such access; (2) The railroad has a terminal at the system headquarters and at each division headquarters; (3) Each such terminal has a computer (i.e., monitor, central processing unit, and keyboard) and either a facsimile machine or a printer connected to the computer to retrieve and produce information in a usable format for immediate review by FRA representatives; (4) The railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of the electronically kept records; and (5) The railroad provides representatives of the Federal Railroad Administration with immediate access to these records for inspection and copying during normal business hours and provides printouts of such records upon request.

FRA estimates that approximately 97 summary records will be kept each year under the above requirement. It is estimated that it will take approximately 61 minutes to complete each summary and corresponding record. Total annual burden of this requirement is 99 hours.

Respondent Universe:	97 railroads (70 + 27)
Burden time per response:	61 minutes
Frequency of Response:	Annually
Annual number of Responses:	97 summary records
Annual Burden:	99 hours

Calculation: 97 summary records x 61 min. = 99 hours

(h) Upon review of the program of operational tests and inspections required by this section, the Associate Administrator for Safety may, for cause stated, disapprove the program. Notification of such disapproval shall be made in writing and specify the basis

for the disapproval decision. If the Associate Administrator for Safety disapproves the program, (1) the railroad has 35 days from the date of the written notification of such disapproval to: (i) amend its program and submit it to the Associate Administrator for Safety for approval; or (ii) provide a written response in support of the program to the Associate Administrator for Safety, who informs the railroad of FRA's final decision in writing; and (2) a failure to submit the program with the necessary revisions to the Associate Administrator for Safety in accordance with this paragraph will be considered a failure to implement a program under this part.

FRA estimates that approximately five (5) programs will be disapproved by the Associate Administrator under the above requirement. As a result, railroads will submit five (5) written supporting documents defending their programs. It is estimated that it will take each railroad approximately 60 minutes to complete its supporting documents. Total annual burden of this requirement is five (5) hours.

Respondent Universe:	722 railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	5 supporting documents
Annual Burden:	5 hours

Calculation: 5 supporting documents x 60 min. = 5 hours

Additionally, FRA estimates that approximately five (5) programs will need to be amended under the above requirement. It is estimated that it will take each railroad approximately 30 minutes to amend its program and submit the revised documents. Total annual burden of this requirement is three (3) hours.

Respondent Universe:	722 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	5 amended program documents
Annual Burden:	3 hours

Calculation: 5 amended program documents x 30 min. = 3 hours

Total annual burden for this entire requirement is 766,907 hours (158 + 50 + 765,725 + 193 + 280 + 280 + 108 + 6 + 99 + 5 + 3).

Part 217.11 - Program of Instruction on Operating Rules; Recordkeeping; Electronic Recordkeeping

(a.) To ensure that each railroad employee whose activities are governed by the railroad's

operating rules understands those rules, each railroad to which this Part applies must periodically instruct each such employee on the meaning and application of the railroad's operating rules in accordance with a written program retained at its system headquarters and at the division headquarters for each division where the employee is instructed.

Each railroad is required to file one copy of its current program for periodic instruction of its employees. The system headquarters must retain one copy of all these records while the division headquarters for each division where the employees are instructed must retain one copy of all portions of these records that the division applies and enforces. (*Note: Existing railroads already comply with this requirement*.)

FRA estimates that approximately 130,000 railroad employees will receive periodic instruction under the above requirement. It is estimated that it will take approximately eight (8) hours to instruct each employee on the meaning and application of the railroad's operating rules in accordance with its written program. Total annual burden for this requirement is 1,040,000 hours.

Respondent Universe:	722 railroads
Burden time per response:	8 hours
Frequency of Response:	On occasion
Annual number of Responses:	130,000 instructed employees/records
Annual Burden:	1,040,000 hours

Calculation: 130,000 instructed employees x 8 hrs. = 1,040,000 hours

New Railroads

FRA estimates that approximately five (5) railroads will commence operations each year and will be required to retain one copy of their programs at their division and/or system headquarters. It is estimated that it will take each railroad approximately eight (8) hours to develop an operating rules instruction program. Total annual burden for this requirement is 40 hours.

Respondent Universe:	5 new railroads
Burden time per response:	8 hours
Frequency of Response:	On occasion
Annual number of Responses:	5 programs
Annual Burden:	40 hours

Calculation: 5 programs x 8 hrs. = 40 hours

(b.) On or after November 21, 1994, or 30 days before commencing operations, whichever is later, each railroad to which this Part applies must retain one copy of its current program for the periodic instruction of its employees as required by paragraph (a)

of this section and one copy of each subsequent amendment to that program. The system headquarters of the railroad must retain one copy of all these records; the division headquarters for each division where the employees are instructed must retain one copy of all portions of these records that the division applies and enforces. These records must be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours. This program must: (1) Describe the means and procedures used for instruction of the various classes of affected employees; (2) State the frequency of instruction and the basis for determining that frequency; (3) Include a schedule for completing the initial instruction of employees who are already employed when the program begins; (4) Begin within 30 days after November 21, 1994, or the date of commencing operations, whichever is later; and (5) Provide for initial instruction of each employee hired after the program begins.

Each railroad to which this Part applies is authorized to retain by electronic recordkeeping its program for periodic instruction of its employees on operating rules, provided that the requirements stated in §217.9(g)(1) through (g)(5) of this Part are satisfied.

The burden for the current program for the periodic instruction of employees is provided in (a) above. Additionally, each railroad must retain one copy of each amendment to its operating rules instruction program at its division and/or system headquarters. FRA estimates that Class I and Class II railroads will issue a total of approximately 80 amendments each year, and that Class IIIs railroads will issue approximately 30 amendments each year (a total of 110). It is estimated that it will take approximately 30 minutes to prepare an amendment and retain one copy of the amendment at each division and/or system headquarters. Total annual burden for this requirement is 55 hours.

Respondent Universe:	722 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	110 amendments
Annual Burden:	55 hours

Calculation: 110 amendments x 30 min. = 55 hours

Total annual burden for this entire requirement is 1,040,095 hours (1,040,000 + 40 + 55).

Part 218.95 - Instruction, Training, and Examination

(a.) *Program* Effective January 1, 2009, each railroad must maintain a written program of instruction, training, and examination of employees for compliance with operating rules implementing the requirements of this subpart to the extent these requirements are pertinent to the employee's duties. If all requirements of this subpart are satisfied, a

railroad may consolidate any portion of the instruction, training or examination required by this subpart with the program of instruction required under § 217.11 of this chapter. An employee who successfully completes all instruction, training, and examination required by this written program shall be considered qualified.

(1) The written program of instruction, training, and examination must address the requirements of this subpart, as well as consequences of non-compliance.

(2) The written program of instruction, training, and examination must include procedures addressing how the railroad qualifies employees in any technology necessary to accomplish work subject to the requirements of this subpart Such procedures shall include, but are not limited to, those which explain: (i) the purpose for using the technology; (ii) how an employee will be expected to use the technology; (iii) how to detect malfunctioning equipment or deviations from proper procedures; (iv) how to respond when equipment malfunctions or deviations from proper procedures are detected; and (v) how to prevent unintentional interference with the proper functioning of the technology.

The burden for this requirement is already included under that of § 217.11 above. Consequently, there is no additional burden associated with this provision.

(3) *Implementation schedule for employees, generally*. Each employee performing duties subject to the requirements in this subpart must be initially qualified prior to July 1, 2009.

The burden for this requirement is already included under that of § 217.11 above. Consequently, there is no additional burden associated with this provision.

(4) After July 1, 2009**,** no employee shall perform work requiring compliance with the operating rules implementing the requirements of this subpart unless qualified on these rules within the previous three years.

The burden for this requirement is already included under that of § 217.11 above. Consequently, there is no additional burden associated with this provision.

(5) The records of successful completion of instruction, examination, and training required by this section must document qualification of employees under this subpart. Written records documenting successful completion of instruction, training, and examination of each employee required by this subpart must be retained at its system headquarters and at the division headquarters for each division where the employee is assigned for three calendar years after the end of the calendar year to which they relate and made available to representatives of the FRA for inspection and copying during normal business hours. Each railroad to which this Part applies is authorized to retain a program, or any records maintained to prove compliance with such program, by electronic recordkeeping in accordance with §§ 217.9(g) and 217.11(c) of this chapter.

Because the required instruction, examination, and training takes place every other year or every three years in some cases, FRA estimates that approximately 98,000 records will be kept under the above requirement. It is estimated that it will take approximately five (5) minutes to complete each record. Total annual burden for this requirement is 8,167 hours.

Respondent Universe:	722 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	98,000 employee records
Annual Burden:	8,167 hours

Calculation: 98,000 employee records x 5 min. = 8,167 hours

(c) Upon review of the program of instruction, training, and examination required by this section, the Associate Administrator for Safety may, for cause stated, disapprove the program. Notification of such disapproval shall be made in writing and specify the basis for the disapproval decision. If the Associate Administrator for Safety disapproves the program, (1) the railroad has 35 days from the date of the written notification of such disapproval to: (i) amend its program and submit it to the Associate Administrator for Safety for approval; or (ii) provide a written response in support of the program to the Associate Administrator for Safety, who informs the railroad of FRA's final decision in writing; and (2) a failure to submit the program with the necessary revisions to the Associate Administrator for Safety in accordance with this paragraph will be considered a failure to implement a program under this Part.

FRA estimates that approximately five (5) written/oral responses will be submitted to the agency under the above requirement. It is estimated that it will take approximately one (1) hour to complete each response. Total annual burden for this requirement is five (5) hours.

Respondent Universe:	722 railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	5 written/oral submissions
Annual Burden:	5 hours

Calculation: 5 written/oral responses x 1 hr. = 5 hours

Additionally, FRA estimates that the Associate Administrator will disapprove five (5) of these written/oral submissions and, as a result, approximately five (5) programs will be amended under the above requirement. It is estimated that it will take each railroad approximately 30 minutes to amend its program and submit the revised document to

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

Respondent Universe:	722 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	5 amended program documents
Annual Burden:	3 hours

Calculation: 5 amended program documents x 30 min. = 3 hours

Total annual burden for this entire requirement is 8,175 hours (8,167 + 5 + 3).

Part 218.97 - Good Faith Challenge Procedures

(a) *Employee Responsibility*. An employee must inform the railroad or employer whenever the employee makes a good faith determination that the employee has been directed to either take actions that would violate FRA regulations regarding the handling of equipment, switches, and fixed derails as required by this subpart, or to take actions that would violate the railroad's operating rules implementing the requirements of this subpart.

The burden for this requirement is included under that of § 218.97 (c) below. Consequently, there is no additional burden associated with this requirement.

(b) *General Procedures*. Each railroad or employer is responsible for the training of and compliance by its employees with the requirements of this subpart. (1) Each railroad or employer shall adopt and implement written procedures which guarantee each employee the right to challenge in good faith whether the procedures that will be used to accomplish a specific task comply with the requirements of this subpart or any operating rule relied upon to fulfill the requirements of this subpart. Each railroad or employer's written procedures shall provide for prompt and equitable resolution of challenges made in accordance with this subpart. (2) The written procedures required by this section must indicate that the good faith challenge described in paragraph (b)(1) is not intended to abridge any rights or remedies available to the employee under a collective bargaining agreement, or any Federal law, including, but not limited to, 29 U.S.C. 651 et seq., 6 U.S.C. 1142 or 49 U.S.C. 20109.

Railroads have already fulfilled the above requirement. Consequently, there is no additional burden associated with it.

(3) Each affected employee shall be instructed on the written procedures required by this paragraph as part of the training prescribed by § 217.11 of this chapter.

The burden for this requirement is already included under that of § 217.11 above.

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

(4) A copy of the written procedures must be provided to each affected employee and made available for inspection and copying by representatives of the Federal Railroad Administration (FRA) during normal business hours.

This requirement has already been fulfilled for current employees. However, new employees will still have to receive a copy of the written procedures. Consequently, FRA estimates that approximately 4,732 affected employees will receive a copy of the written procedures under the above requirement. It is estimated that it will take approximately five (5) minutes to make each copy and another (1) minute to distribute it to each employee. Total annual burden for this requirement is 473 hours.

Respondent Universe:	722 railroads
Burden time per response:	6 minutes
Frequency of Response:	One-time
Annual number of Responses:	4,732 written procedures copies
Annual Burden:	473 hours

Calculation: 4,732 written procedures copies x 6 min. = 473 hours

(c) The written procedures shall: (1) grant each employee the right to challenge any directive which, based on the employee's good faith determination, would cause the employee to violate any requirement of this subpart or any operating rule relied upon to fulfill the requirements of this subpart; (2) provide that the railroad or employer shall not require the challenging employee to comply with the directive until the challenge resulting from the good faith determination is resolved; (3) provide that the railroad or employer may require the challenging employee to perform tasks unrelated to the challenge until the challenge is resolved; (4) provide that the railroad or employer may direct an employee, other than the challenging employee, to perform the challenged task prior to the challenge being resolved as long as this other employee is informed of the challenge and does not also make a good faith determination that the challenged task would violate FRA regulations regarding the handling of equipment, switches, and fixed derails as required in this subpart, or a railroad's operating rules implementing the requirements of this subpart.

FRA estimates that approximately 15 good faith challenges will be made by railroad employees under the above requirement. It is estimated that it will take approximately 10 minutes to make a good faith challenge. Total annual burden for this requirement is three (3) hours.

Respondent Universe:	98,000 railroad employees
Burden time per response:	10 minutes

Frequency of Response: On occasion
Annual number of Responses: 15 good faith challenges
Annual Burden: 3 hours

Calculation: 15 good faith challenges x 10 min. = 3 hours

(5) Provide that a challenge may be resolved by: (i) a railroad or employer officer's acceptance of the employee's request; (ii) an employee's acceptance of the directive; (iii) an employee's agreement to a compromise solution acceptable to the person issuing the directive; or (iv) as further determined under paragraph (d) of this of this section.

Based on the above numbers, FRA estimates that approximately 15 challenges will be resolved by one of the above listed methods. It is estimated that it will take approximately five (5) minutes for each type of resolution. Total annual burden for this requirement is one (1) hour.

Respondent Universe: 15 railroads
Burden time per response: 5 minutes
Frequency of Response: On occasion

Annual number of Responses: 15 challenge responses
Annual Burden: 1 hour

Calculation: 15 challenge responses x 5 min. = 1 hour

(d) In the event that the challenge cannot be resolved because the person issuing the directive determines the employee's challenge has not been made in good faith or there is no reasonable alternative to the direct order, the written procedures must: (1) provide for immediate review by at least one officer of the railroad or employer, except for each railroad with less than 400,000 total employee work hours annually. This immediate review must: (1) not be conducted by the person issuing the challenged directive, or that person's subordinate; and (ii) provide that a challenge may be resolved by using the same options available for resolving the challenge as the initial officer as well as the option described in paragraph (d)(2), except that the reviewing officer's decision shall not be subject to further review, unless provided for in the railroad's or employer's written procedures.

FRA estimates that approximately five (5) immediate reviews will be conducted by an officer of the railroad in response to a good faith challenge under the above requirement. It is estimated that it will take approximately 30 minutes to conduct each review. Total annual burden for this requirement is three (3) hours.

Respondent Universe: 15 railroads
Burden time per response: 30 minutes

Frequency of Response:	On occasion
Annual number of Responses:	5 immediate reviews
Annual Burden:	3 hours

Calculation: 5 immediate reviews x 30 min. = 3 hours

(2) Provide that if the officer making the railroad's or employer's final decision concludes that the challenged directive would not cause the employee to violate any requirement of this subpart or the railroad's or employer's operating rule relied upon to fulfill the requirements of this subpart and directs the employee to perform the challenged directive, the officer shall further explain to the employee that Federal law may protect the employee from retaliation if the employee refuses to do the work and if the employee's refusal is a lawful, good faith act.

FRA estimates that the officer will further explain, in five (5) out of the 15 good faith challenges mentioned above, to the employee that Federal law may protect the employee from retaliation if the employee refuses to do the work and if the employee's refusal is a lawful, good faith act. It is estimated that it will take approximately one (1) minute to convey this information. Total annual burden for this requirement is .08 hour.

Respondent Universe:	15 railroads
Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual number of Responses:	5 explanations
Annual Burden:	.08 hour

Calculation: 5 explanations x 1 min. = .08 hour

(3) Provide that the employee be afforded an opportunity to document electronically or in writing any protest to the railroad's or employer's final decision before the tour of duty is complete. The employee must be afforded the opportunity to retain a copy of the protest.

FRA estimates that approximately 10 protests will be made under the above requirement. It is estimated that each protest will take approximately 15 minutes to complete electronically or in writing. Total annual burden for this requirement is three (3) hours.

Respondent Universe:	10 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	10 electronic/written protests
Annual Burden:	3 hours

Calculation: 10 electronic/written protests x 15 min. = 3 hours

Additionally, FRA estimates that approximately 10 copies of protests will be made under the above requirement. It is estimated that each protest copy will take approximately one (1) minute to complete electronically or in writing. Total annual burden for this requirement is .17 hour.

Respondent Universe:	10 railroads
Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual number of Responses:	10 protest copies
Annual Burden:	.17 hour

Calculation: 10 protest copies x 1 min. = .17 hour

(4) Provide that the employee, upon written request, has a right to further review by a designated railroad or employer officer, within 30 days after the expiration of the month during which the challenge occurred, for the purpose of verifying the proper application of the regulation, law, procedure or rule in question.

FRA estimates that approximately three (3) further reviews will take place by a designated railroad or employer officer under the above requirement. It is estimated that each further review will take approximately 15 minutes to complete. Total annual burden for this requirement is one (1) hour.

Respondent Universe:	10 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	3 further reviews
Annual Burden:	1 hour

Calculation: 3 further reviews x 15 min. = 1 hour

The verification decision shall be made in writing to the employee.

FRA estimates that approximately 10 requests will be made by railroad employees to have the verification decision in writing. It is that it will take approximately 10 minutes to make the request and complete the written verification decision. Total annual burden for this requirement is two (2) hours.

Respondent Universe:	10 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	10 requested written verification decisions

Annual Burden:	2 hours

Calculation: 10 requested written verification decisions x 10 min. = 2 hours (rounded off)

(e) *Recordkeeping and record retention*. (1) A copy of the written procedures required by this section must be retained at the employer or railroad's system headquarters and at each division headquarters, and made available to representatives of the FRA for inspection and copying during normal business hours.

FRA estimates that approximately 722 copies of written procedures will be retained at the railroad's system headquarters and at each division headquarters under the above requirement. It is estimated that it will take approximately five (5) minutes to complete each copy. Total annual burden for this requirement is 60 hours.

Respondent Universe:	722 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	722 copies of written procedures
Annual Burden:	60 hours

Calculation: 722 copies written procedures x 5 min. = 60 hours

(2) A copy of any written good faith challenge verification decision, made in accordance with paragraph (d)(4), must be retained at the employer or railroad's system headquarters and at the division headquarters to which the employee was working when the challenge was initiated, and made available to representatives of the FRA for inspection and copying during normal business hours for at least one calendar year after expiration of the year during which the decision was issued.

Each employer or railroad to which this subpart applies is authorized to retain by electronic recordkeeping the information prescribed in this subpart in accordance with the electronic recordkeeping standards set forth in § 217.9(g)(1) through (5) of this chapter. FRA estimates that approximately 20 copies of good faith challenge verifications will be retained at the railroad's system headquarters and at each division headquarters under the above requirement. It is estimated that it will take approximately five (5) minutes to complete each copy. Total annual burden for this requirement is two (2) hours.

Respondent Universe:	20 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	20 verification decision copies
Annual Burden:	2 hours

Calculation: 20 verification decision copies x 5 min. = 2 hours

Total annual burden for this entire requirement is 548 hours (473 + 3 + 1 + 3 + .08 + 3 + .17 + 1 + 2 + 60 + 2)**.**

Part 218.99 - Shoving or Pushing Movements

(a) Each railroad must adopt and comply with an operating rule which complies with the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of an operating rule which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

This one-time requirement has already been fulfilled by the earlier estimated 673 Class III railroads. However, FRA estimates that five (5) new railroads that will come into existence and the additional 31 passenger/commuter railroads that comprise the estimated 722 railroads now in existence in this country will modify their operating rule to comply with the requirements contained in paragraphs (b) and (c) of this. It is estimated that it will take approximately one (1) hour to complete such a modification. Total annual burden for this requirement is 36 hours.

Respondent Universe:	722 railroads
Burden time per response:	1 hour
Frequency of Response:	One-time
Annual number of Responses:	36 operating rule modifications
Annual Burden:	36 hours

Calculation: 36 operating rule modifications x 1 hr. = 36 hours

(2) The following requirements for shoving or pushing movements do not apply to rolling equipment intentionally shoved or pushed to permit the rolling equipment to roll without power attached, i.e., free rolling equipment, during switching activities known as kicking, humping, or dropping cars.

(b) General movement requirements. (1) *Job briefing*. Rolling equipment shall not be shoved or pushed until the locomotive engineer participating in the move has been briefed by the employee who will direct the move. The job briefing must include the means of communication to be used between the locomotive engineer and the employee directing the move and how point protection will be provided. (2) *No unrelated tasks*. During the shoving or pushing movement, the employee directing the movement shall not engage in any task unrelated to the oversight of the shoving or pushing movement

FRA estimates that approximately 180,000 job briefings will be completed under the above requirement. It is estimated that each briefing will be a verbal communication and

will take approximately one (1) minute to complete. Total annual burden for this requirement is 3,000 hours.

	Respondent Universe: 130,000 Railroad Employees
Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual number of Responses:	180,000 job briefings
Annual Burden:	3,000 hours

Calculation: 180,000 job briefings x 1 min. = 3,000 hours

(3) *Point Protection*. When rolling equipment or a lite locomotive consist is shoved or pushed, point protection must be provided by a crewmember or other qualified employee by: (i) visually determining that the track is clear. The determination that the track is clear may be made with the aid of monitored cameras or other technological means, provided that it and the procedures for use provide an equivalent level of protection to that of a direct visual determination by a crewmember or other qualified employee properly positioned to make the observation as prescribed in this section and appendix D to this Part; and (ii) giving signals or instructions necessary to control the movement.

FRA estimates that approximately 87,600,000 shoving or pushing movements will be made each year requiring point protection and thus 87,600,000 determinations and 87,600,000 signals/instructions will be made/given under the above requirement. It is estimated that each determination and each signal or instruction will take approximately one (1) minute to complete. Total annual burden for this requirement is 2,920,000 hours.

Respondent Universe:	130,000 Railroad employees
Burden time per response:	1 minute + 1 minute
Frequency of Response:	On occasion
Annual number of Responses:	87,600,000 determinations + 87,600,000 point protection signals or instructions
Annual Burden:	2,920,000 hours

Calculation: 87,600,000 determinations x 1 min. + 87,600,000 point protection signals or instructions x 1 min. = 2,920,000 hours

(c) *Additional requirements for remote control movements*. All remote control movements are considered shoving or pushing movements, except when the remote control operator controlling the movement is riding the leading end of the leading

locomotive in a position to visually determine conditions in the direction of the movement. In addition to the other requirements of this section, (1) when initiating a remote control shoving or pushing movement: (i) the remote control operator shall visually determine the direction the equipment moves; or (ii) a member of the crew shall visually determine the direction the equipment moves and confirm the direction with the remote control operator. If no confirmation is received, the movement must be immediately stopped; and (2) if technology is relied upon, whether primarily or as a safeguard, to provide pull-out protection by preventing the movement from exceeding the limits of a remote control zone, the technology shall be demonstrated (i) to be failsafe; or (ii) to provide suitable redundancy to prevent unsafe failure.

FRA estimates that there will be approximately 876,000 remote control movements and 876,000 corresponding verbal confirmations made under the above requirement. It is estimated that it will take approximately one (1) minute to complete each verbal confirmation. Total annual burden for this requirement is 14,600 hours.

Respondent Universe:	130,000 Railroad employees
Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual number of Responses:	876,000 verbal confirmations
Annual Burden:	14,600 hours

Calculation: 876,000 verbal confirmations x 1 min. = 14,600 hours

(d) *Remote control zone, exception to track is clear requirements.* After an initial track is clear determination has been made in an activated remote control zone, it is not necessary to make a new determination prior to each subsequent shoving or pushing movement provided that: (1) The controlling locomotive of the remote control movement is on the leading end in the direction of movement, i.e., the movement occurs on the pull-out end; (2) The remote control zone is not jointly occupied; and (3) The initial determination was made by a crewmember of either: (i) The remote control crew; (ii) A relieved remote control crew who has transferred the remote control zone directly to the relieving crew; or (iii) The last jointly occupying crew who directly communicates, i.e., not through a third party, to a remote control crewmember that the remote control zone is no longer jointly occupied and meets the requirements for track is clear.

FRA estimates that approximately 876,000 determinations/communications will be made that the track is clear under the above requirement. It is estimated that it will take approximately one (1) minute to make each determination. Total annual burden for this requirement is 14,600 hours.

Respondent Universe:	130,000 Railroad employees

Burden time per response:	1 minute
Frequency of Response:	On occasion
Annual number of Responses:	876,000 determinations/ communications
Annual Burden:	14,600 hours

Calculation: 876,000 determinations/communications x 1 min. = 14,600 hours

(e) *Operational exceptions*. A railroad does not need to comply with paragraphs (b) through (d) in the following circumstances:

(1) Push-pull operations when operated from the leading end in the direction of movement, i.e., push mode;

(2) Shoving or pushing operations with manned helper locomotives or distributed power locomotives assisting a train when the train is being operated from the leading end in the direction of the movement;

(3) During the performance of roadway maintenance activity under the direct control of a roadway worker performing work in accordance with railroad operating rules specific to roadway workers; or

(4) When the leading end of a shoving movement is on a main track or signaled siding, under the following conditions:

(i) The train dispatcher gives authority or permission to make the movement and verifies that:

(A) Another movement or work authority is not in effect within the same or overlapping limits unless conflicting movements are protected; and

(B) A main track is not removed from service by a work authority within the same or overlapping limits;

FRA estimates that approximately 30,000 dispatcher authorized or permitted movements with the necessary verifications will be made under the above requirement. It is estimated that it will take approximately one (1) minute for the dispatcher to complete the verifications and give permission for movement. Total annual burden for this requirement is 500 hours.

Respondent Universe:	6,000 Railroad dispatchers
Burden time per response:	1 minute
Frequency of Response:	On occasion

Annual number of Responses: 30,000 dispatcher authorized or permitted movements

Annual Burden: 500 hours

Calculation: 30,000 dispatcher permitted movements x 1 min. = 500 hrs.

(ii) Movement is limited to the train's authority;

(iii) Movement shall not be made into or within yard limits, restricted limits, drawbridges, or work authority limits;

(iv) Movement shall not enter or foul a public highway-rail grade crossing or pedestrian crossing except when:

(A) Crossing gates are in the fully lowered position; or

(B) A designated and qualified employee is stationed at the crossing and has the ability to communicate with trains; or

Railroads already have designated employees of theirs who perform this function as part of their normal routine duties. Consequently, there is no additional burden involved with this requirement.

(C) At crossings equipped only with flashing lights or passive warning devices, when it is clearly seen that no traffic is approaching or stopped at the crossing and the leading end of the movement over the crossing does not exceed 15 miles per hour; and

(v) Movement shall not be made into or within interlocking limits or controlled point limits unless the following conditions are met:

(A) The signal governing movement is more favorable than restricting aspect;

(B) Each signal governing movement into and through interlocking limits or controlled point limits shall be continuously observed by a member of that crew who is in a position to determine that the train's movement has occupied the circuit controlling that signal as evidenced by that signal assuming its most restrictive aspect; and

(C) Movement does not exceed the train's length.

Crewmembers already perform this function as part of their normal routine duties. Consequently, there is no additional burden involved with this requirement.

(5) Shoving or pushing movements made in the direction of the circuited end of a designated departure track equipped with a shove light system, if all of the following conditions are met:(i) The shove light system is demonstrated to be failsafe; (ii) The shove light system is arranged to display a less favorable aspect when the circuited section of the track is occupied; (iii) Written procedures are adopted and complied with that provide for a reliable means of determining track occupancy prior to commencing a shoving or pushing movement.

This one-time requirement has already been fulfilled by all the Class I railroads. Consequently, there is no additional burden associated with this requirement.

(iv) The track is designated in writing; (v) The track is under the exclusive and continuous control of a yardmaster or other qualified employee; (vi) The train crewmember or other qualified employee directing the shoving or pushing movement complies with the general movement requirements contained in paragraphs (b)(1) and (b)(2) of this section; (vii) All remote control shoving or pushing movements comply with the requirements contained in paragraph (c)(1) of this section; and (viii) The shove light system is continuously illuminated when the circuited section of the track is unoccupied.

This one-time requirement has already been fulfilled by all the Class I railroads. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is 2,952,732 hours (32 + 3,000 + 2,920,000 + 14,600 + 14,600 + 500).

Part 218.101 - Leaving Rolling and On-Track Maintenance-of-Way Equipment in the Clear

(a) Each railroad must adopt and comply with an operating rule which complies with the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of an operating rule which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(b) Rolling and on-track maintenance-of-way equipment shall not be left where it will foul a connecting track unless: (1) The equipment is standing on a main track and a siding track switch that the equipment is fouling is lined for the main track on which the equipment is standing; or (2) The equipment is standing on a siding and a main track switch that the equipment is fouling is lined for the siding on which the equipment is standing; or (3) The equipment is standing on a yard switching lead track, and the yard track switch that the equipment is fouling is lined for the yard switching lead track on which the equipment is standing; or (4) The equipment is on an industry track beyond the clearance point of the switch leading to the industry.

(c) Each railroad must implement procedures that enable employees to identify clearance points and a means to identify locations where clearance points will not permit a person to safely ride on the side of a car.

This one-time requirement has already been fulfilled by the earlier estimated 673 railroads. However, FRA estimates that five (5) new railroads that will come into existence and the additional 31 passenger/commuter railroads that comprise the estimated 722 railroads now in existence in this country will amend their operating rules under the above requirement**.** It is estimated that it will take each railroad approximately 30 minutes to develop such procedures and amend its operating rule. Total annual burden for this requirement is 18 hours.

Respondent Universe:	722 railroads
Burden time per response:	30 minutes
Frequency of Response:	One-time
Annual number of Responses:	36 amended operating rules
Annual Burden:	18 hours

Calculation: 36 amended operating rules x 30 min. = 18 hours

Part 218.103 - Hand-operated switches, including cross-over switches.

(a)(1) Each railroad must adopt and comply with an operating rule which complies with the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of an operating rule which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

This one-time requirement has already been fulfilled by the earlier estimated 673 railroads. However, FRA estimates that five (5) new railroads that will come into existence and the additional 31 passenger/commuter railroads that comprise the estimated 722 railroads now in existence in this country will modify/amend their operating rules under the above requirement**.** It is estimated that it will take each railroad approximately 60 minutes to develop such procedures and amend its operating rule. Total annual burden for this requirement is 36 hours.

Respondent Universe:	722 railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	36 modified operating rules
Annual Burden:	36 hours

Calculation: 36 modified operating rules x 60 min. = 36 hours

(2) Each railroad must specify minimum requirements necessary for an adequate job briefing.

Class I and II railroads already do this. Consequently, only Class III railroads are affected by this requirement. All of the earlier estimated 673 Class III railroads have already fulfilled this one-time requirement. However, there still are approximately five (5) railroads that will need to modify their operating rules to meet the above requirement. It is estimated that it will take each railroad approximately 30 minutes to modify its operating rule. Total annual burden for this requirement is three (3) hours.

Respondent Universe:	722 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	5 modified operating rules
Annual Burden:	3 hours

Calculation: 5 modified operating rules x 30 min. = 3 hours

(b) *General*. Employees operating or verifying the position of a hand-operated switch must: (1) Conduct job briefings, before work is begun, each time a work plan is changed, and at completion of the work; (2) Be qualified on the railroad's operating rules relating to the operation of the switch; (3) Be individually responsible for the position of the switch in use; (4) Visually determine that switches are properly lined for the intended route and that no equipment is fouling the switches; (5) Visually determine that the points fit properly and the target, if so equipped, corresponds with the switch's position; (6) After operating a switch and before making movements in either direction over the switch, ensure that the switch is secured from unintentional movement of the switch points; (7) Ensure that a switch is not operated while rolling and on-track maintenance-of-way equipment is fouling the switch, or standing or moving over the switch; and (8) After operating a switch, ensure that when not in use, each switch is locked, hooked or latched, if so equipped.

FRA estimates that approximately 1,125,000 job briefings will be conducted annually under the above requirement. It is estimated that each job briefing will take approximately one (1) minute to complete. Total annual burden for this requirement is 18,750 hours.

Respondent Universe:	722 railroads
Burden time per response:	1 minute
Frequency of Response:	Annually
Annual number of Responses:	1,125,000 job briefings
Annual Burden:	18,750 hours

Calculation: 1,125,000 job briefings x 1 min. = 18,750 hours

(c) Rolling and on-track maintenance-of-way equipment shall not foul a track until all hand-operated switches connected with the movement are properly lined, or in the case of hand-operated switches designed and permitted to be trailed through, until the intended route is seen to be clear or the train has been granted movement authority. When a conflicting movement is approaching a hand-operated switch, the track shall not be fouled or the switch operated. (d) When rolling and on-track maintenance-of-way equipment has entered a track, the hand-operated switch to that track shall not be lined away from the track until the equipment has passed the clearance point of the track.

This is the usual and customary practice. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is 18,789 hours (36 + 3 + 18,750).

218.105 Additional operational requirements for hand-operated main track switches**.**

(a) Each railroad must adopt and comply with an operating rule which complies with the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of an operating rule which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

The burden for this requirement is included under that of § 218.103(a) above. Consequently, there is no additional burden associated with this provision.

(b) *Designating switch position.* The normal position of a hand-operated main track switch must be designated by the railroad in writing and the switch must be lined and locked in that position when not in use except when: (1) The train dispatcher directs otherwise with respect to the position of a hand-operated main track switch and the necessary protection is provided; or (2) The hand-operated switch is left in the charge of a crewmember of another train, a switchtender, or a roadway worker in charge.

The normal position of a hand-operated main track switch is designated by the railroad in writing in its operating rules, and the rest of the requirement is the usual and customary practice. Consequently, there is no additional burden associated with this requirement.

(c) *Additional job briefing requirements for hand-operated main track switches*.
(1) Before a train or a train crew leaves the location where any hand-operated main track switch was operated, all crewmembers must have verbal communication to confirm the position of the switch.

FRA estimates that all 722 railroads are affected by the above requirement and that approximately 60,000 job briefings will take place among crewmembers annually under the above requirement. It is estimated that each job briefing will take approximately one (1) minute to complete. Total annual burden for this requirement is 1,000 hours.

Respondent Universe:	722 railroads
Burden time per response:	1 minute
Frequency of Response:	Annually
Annual number of Responses:	60,000 job briefings
Annual Burden:	1,000 hours

Calculation: 60,000 job briefings x 1 min. = 1,000 hours

(2) In the case of exclusive track occupancy authority established under § 214.321, foul time under § 214.323, or train coordination under § 214.325, when a roadway worker qualified to operate hand-operated main track switches is granted permission by the roadway worker in charge to occupy or otherwise use the limits of the exclusive track occupancy, such employee receiving permission to occupy the working limits shall report the position of any such switches operated upon expiration of the authority limits to the roadway worker in charge or to a designated intermediary employee who shall convey the switch position to the roadway worker in charge.

FRA estimates that approximately 673 Class III railroads are affected by the above requirement and that approximately 100,000 employee reports and 100,000 switch position information conveyances will be made annually under the above requirement. It is estimated that each report and each information conveyance will take approximately one (1) minute to complete. Total annual burden for this requirement is 3,334 hours.

Respondent Universe:	673 railroads
Burden time per response:	1 minute
Frequency of Response:	Annually
Annual number of Responses:	100,000 oral employee reports + 100,000 switch position conveyances/oral communications
Annual Burden:	3,334 hours

Calculation: 100,000 oral employee reports x 1 min. + 100,000 switch position conveyances/oral comm. x 1 min. = 3,334 hours

(c) *Releasing Authority Limits.* In non-signaled territory, before an employee releases the limits of a main track authority and a hand-operated switch is used to clear the main track, and, prior to departing the switch's location, the following conditions are required: (1) the employee releasing the limits, after conducting a job briefing in accordance with this subpart, must report to the train dispatcher that the hand-operated main track switch

has been restored to its normal position and locked, unless the train dispatcher directs that the hand-operated main track switch be left lined and locked in the reverse position and the necessary protection is provided; (2) if the report of the switch position is correct, the train dispatcher must repeat the reported switch position information to the employee releasing the limits and ask whether that is correct; and (3) the employee releasing the limits must then confirm to the train dispatcher that this information is correct.

The only extra requirement here is for the train dispatcher since railroad employees (usually the conductor or engineer) normally reports the switch position as a routine part of the railroad's operating rules. FRA estimates that approximately 60,000 switches a year will be affected by the above requirement. Thus, dispatchers will make 60,000 acknowledgments (before clearing the limits of an authority) and railroad employees will make 60,000 confirmations a year in response. It is estimated that each acknowledgment will take approximately 30 seconds to complete and each confirmation by the employee will take approximately five (5) seconds. Total annual burden for this requirement is 583 hours.

	Respondent Universe: 6,000
	Dispatchers
Burden time per response:	30 seconds + 5 seconds
Frequency of Response:	On occasion
Annual number of Responses:	60,000 verbal acknowledgments + 60,000 verbal confirmations
Annual Burden:	583 hours

Calculation: 60,000 acknowledgments x 30 sec. + 60,000 verbal confirmations x 5 sec. = 583 hours

Total annual burden for this entire requirement is 4,917 hours (1,000 + 3,334 + 583).

218.107 Additional operational requirements for hand-operated crossover switches**.**

Each railroad must adopt and comply with an operating rule which complies with the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of an operating rule which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

The burden for this requirement is included under that of § 218.103(a) above. Consequently, there is no additional burden associated with this provision.

218.109 Hand-operated fixed derails**.**

A. (a) (1) Each railroad must adopt and comply with an operating rule which complies with the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of an operating rule which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section. (2) Each railroad shall specify minimum requirements necessary for an adequate job briefing.

The burden for this requirement is included under that of § 218.103(a) above. Consequently, there is no additional burden associated with this provision.

B. Employees operating or verifying the position of a fixed derail must: (1) Conduct job briefings, before work is begun, each time a work plan is changed, and at completion of the work; (2) Be qualified on the railroad's operating rules relating to the operation of the derail; (3) Be individually responsible for the position of the derail in use; (4) Determine that the target, if so equipped, corresponds with the derail's position; (5) Determine that the derail is secured by: (i) placing the throw lever in the latch stand, if so equipped; (ii) placing the lock or hook in the hasp, if so equipped; and (iii) testing such latches, locks or hooks; and (6) Ensure that when not in use, derails are locked, hooked, or latched if so equipped.

FRA estimates that approximately 562,500 job briefings will take place among crewmembers annually under the above requirement. It is estimated that each job briefing will take approximately 30 seconds to complete. Total annual burden for this requirement is 4,688 hours.

Respondent Universe:	722 railroads
Burden time per response:	30 seconds
Frequency of Response:	Annually
Annual number of Responses:	562,500 job briefings
Annual Burden:	4,688 hours

Calculation: 562,500 job briefings x 30 sec. = 4,688 hours

Total annual burden for this entire requirement is 4,688 hours.

Subpart G – Train Crew Staffing

218.125 General crew staffing and roles and responsibilities of second crew member for freight and passenger trains. (**New Requirements**)

(a) Each railroad shall comply with the requirements of this Subpart, and in doing so may adopt its own rules or practices. When any person as defined in § 218.9 (including, but not limited to, each railroad, railroad officer, supervisor, and employee) violates any

requirement of a railroad rule or practice that ensures compliance with the requirements of this Subpart, that person shall be considered to have violated the requirements of this Subpart.

FRA estimates that approximately 10 rules/practices will be adopted/revised by railroads under the above requirement. It is estimated that it will take approximately three (3) hours for each railroad to adopt/revise its own rules/practices. Total annual burden for this requirement is 30 hours.

Respondent Universe:	629 railroads
Burden time per response:	3 hours
Frequency of Response:	On occasion
Annual number of Responses:	10 adopted rules/practices
Annual Burden:	30 hours

Calculation: 10 adopted rules/practices x 3 hrs. = 30 hours

(b) *Two-person crew staffing requirement*. Except as provided for in this subpart, each train shall be assigned a minimum of two crewmembers.

(d) *Location of second crew member when the train is moving.* A train crew member that is not operating the train may be located anywhere outside of the operating cab of the controlling locomotive when the train is moving as long as:

(1) For each train, the train crew member is on the train, except when the train crew member cannot perform the duties assigned without temporarily disembarking from the train;

(2) The train crew member has the ability to directly communicate with the crew member in the cab of the controlling locomotive;

Direct communications between crew members during train operations are a usual and customary procedure. Consequently, there is no burden connected with this provision.

Total annual burden for this entire requirement is 30 hours.

218.129 Specific passenger train exceptions to two-person crew requirement.

The following passenger train operations do not require a minimum of two crew members:

(a) A passenger train operation in which cars are empty of passengers and are being moved for purposes other than to pick up or drop off passengers;

(b) A passenger train operation involving a single self-propelled car or married-pair unit, e.g., a diesel or electric multiple unit (DMU or EMU) operation, where the locomotive engineer has direct access to the passenger seating compartment and (for passenger railroads subject to 49 CFR Part 239) the passenger railroad's emergency preparedness plan for this operation is approved under 49 CFR 239.201;

The burden for emergency preparedness plans is already included under that of ***OMB No. 2130-0545*** *(see § 239.201). Consequently, there is no additional burden associated with this requirement.*

(c) A rapid transit operation in an urban area, i.e., an urban rapid transit system or a light rail transit operator that is connected with the general railroad system of transportation under the following conditions:

(1) The operation is temporally separated from any conventional railroad operations;

(2) There is an FTA-approved and designated State Safety Oversight (SSO) Agency that is qualified to provide safety oversight; and

(3) The light rail operator has an FTA/SSO approved System Safety Plan in accordance with 49 CFR part 659.

The burden for approved FTA System Safety Plans is included under that of ***OMB No. 2132-0558****. Consequently, there is no additional burden associated with this requirement.*

218.131 Specific freight train exceptions to two-person crew requirement.

Except as provided for in § 218.125(c), the following specific freight train operations are exceptions from the two-person crew staffing and roles and responsibilities requirements in § 218.125.

(a) *Small railroad exception*. A freight train is operated on a railroad and by an employee of a railroad with less than 400,000 total employee work hours annually and the train is being operated under the following conditions:

(1) The maximum authorized speed of the train is limited to 25 miles per hour or less; and

(2)(i) The average grade of any segment of the track operated over is less than 1 percent over 3 continuous miles or 2 percent over 2 continuous miles; or

(ii) *Second crew member*. A second train crew member, other than the locomotive engineer, is intermittently assisting the train's movements and has the ability to directly communicate with the crew member in the cab of the controlling locomotive. The second train crew member cannot meet the requirements in § 218.125 regarding the l roles and responsibilities of the second crew member because this person is frequently in transit and cannot continuously remain with the train.

Direct communications between crew members during train operations are a usual and customary procedure. Consequently, there is no burden connected with this provision.

218.133 Continuance of operations staffed without a two-person train crew prior to January 1, 2014. (**New Requirement**)

(a) Except as provided for in § 218.125(c), one-person train operations that were conducted prior to January 1, 2015 and that are not otherwise covered by the general or specific exceptions detailed in §§ 218.127 through 218.131 may continue to be conducted as long as the railroad conducting the one-person operation submits a description of the operation to the Associate Administrator for Railroad Safety and Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 no later than [**DATE 90 DAYS AFTER EFFECTIVE DATE OF THE FINAL RUL**E]. The description of the operation shall, at a minimum, include the following:

(1) The location of the continuing operation with as much specificity as can be provided as to industries served, and territories, divisions, or subdivisions operated over. Documentation supporting the locations of prior operations will be favorably reviewed, although not required;

(2) The class of tracks operated over;

(3) The locations of any track where the average grade of any segment of the track operated over is 1 percent or more over 3 continuous miles or 2 percent or more over 2 continuous miles;

(4) The maximum authorized speed of the operation;

(5) The approximate average number of miles and hours a single person operates as a one-person train crew;

(6) Whether any limitations are placed on a person in a one-person train crew operation. Such limitations may include, but are not limited to, a maximum number of miles or hours during a single tour of duty;

(7) The maximum number of cars and tonnage, if any;

(8) Whether the one-person operation is permitted to haul hazardous materials of any quantity and type, other than those types expressly prohibited for one-person train crew operations in accordance with § 218.125(c);

(9) Information regarding other operations that travel on the same track as the one-person train operation or that travel on an adjacent track. Such information shall include, but is not limited to, the volume of traffic and the types of opposing moves (i.e., either passenger or freight trains hauling hazardous materials);

(10) Any information the railroad chooses to provide describing protections provided in lieu of a second train crew member; and

(11) A safety analysis of the one-person train operation, including any information regarding the safety history of the operation.

This requirement basically affects only the seven (7) Class I railroads. Consequently, FRA estimates that approximately seven (7) one-person train crew operation descriptions with all the required information will be submitted to FRA under the above requirement. It is estimated that it will take approximately 960 hours to complete each one-person train crew operation description. Total annual burden for this requirement is 6,720 hours.

Respondent Universe:	629 railroads
Burden time per response:	960 hours
Frequency of Response:	On occasion
Annual number of Responses:	7 one-person train crew operation descriptions
Annual Burden:	6,720 hours

Calculation: 7 one-person train crew operation descriptions x 960 hrs. = 6,720 hours

218.135 Special approval procedure.

(a) *General.* The following procedures govern consideration and action upon requests for special approval of a start-up method of train operation that does not meet the requirements and conditions of §§ 218.125 through 218.133. Passenger railroads seeking to start-up a one-person train operation must have an approved passenger train emergency preparedness plan or apply for a waiver under part 239 of this chapter but may apply to FRA for special approval under this section in the same filing.

The above provision essentially applies to start-up operations. FRA estimates that there will be approximately 10 start-up operations affected by this requirement. Thus, approximately 10 requests for special approval for a train operation that does not meet the requirements and conditions of §§ 218.125 will be submitted to FRA under the above

requirement. It is estimated that it will take approximately 384 hours to complete each requests for special approval. Total annual burden for this requirement is 3,840 hours.

Respondent Universe:	629 railroads
Burden time per response:	384 hours
Frequency of Response:	On occasion
Annual number of Responses:	10 requests for special approval
Annual Burden:	3,840 hours

Calculation: 10 requests for special approval x 384 hrs. = 3,840 hours

(b) *Petitions for special approval of a train operation with less than two crew members.* Each petition for special approval of a train operation with less than two crew members that does not meet the requirements and conditions of §§ 218.125 through 218.133 shall contain:

(1) The name, title, address, telephone number, and email address (if available) of the primary person to be contacted with regard to review of the petition;

(2) A detailed description of the train operation proposed, including a description of any technology that could potentially perform tasks typically performed by a second crew member or that could prevent or significantly mitigate the consequences of catastrophic accidents.

(3) Appropriate data or analysis, or both, for FRA to consider in determining whether the train operation proposed will provide at least an appropriate level of safety to a train operation with two crew members; and

(4) A statement affirming that the railroad has served a copy of the petition on the president of each labor organization that represents the railroad's employees subject to this part, if any, together with a list of the names and addresses of the persons served.

(c) *Service.* Each petition for special approval under paragraph (b) of this section shall be submitted to the Associate Administrator for Railroad Safety and Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590.

FRA estimates that there will be approximately five (5) requests for special approval of a train operation with less than two crew members that does not meet the requirements and conditions of §§ 218.125 through 218.133 that will be submitted to FRA under the above requirement. It is estimated that it will take approximately 192 hours to complete each requests for special approval. Total annual burden for this requirement is 960 hours.

Respondent Universe:	722 railroads
Burden time per response:	192 hours

Frequency of Response:	On occasion
Annual number of Responses:	5 requests for special approval
Annual Burden:	960 hours

Calculation: 5 requests for special approval x 192 hrs. = 960 hours

(d) *Federal Register notice.* FRA will publish a notice in the **FEDERAL REGISTER** concerning each petition under paragraph (b) of this section.

(e) *Comment.* Not later than 30 days from the date of publication of the notice in the **FEDERAL REGISTER** concerning a petition under paragraph (b) of this section, any person may comment on the petition.

(1) A comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding.

(2) The comment shall be submitted to the Associate Administrator for Railroad Safety and Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590.

FRA estimates that approximately 30 petition comments (i.e., 2 comments per petition) will be submitted to FRA under the above requirement. It is estimated that it will take approximately 22 hours to complete each comment. Total annual burden for this requirement is 660 hours.

Respondent Universe:	629 railroads
Burden time per response:	22 hours
Frequency of Response:	On occasion
Annual number of Responses:	30 petition comments
Annual Burden:	660 hours

Calculation: 30 petition comments x 22 hrs. = 660 hours

(3) The commenter shall certify that a copy of the comment was served on each petitioner.

FRA estimates that approximately 30 certifications will be completed under the above requirement. Additionally, FRA estimates that approximately 450 comment copies (30 comments x 15 petitions) will be served on petitioners under the above requirement. It is estimated that it will take approximately 30 minutes to complete each certification and approximately two (2) minutes to complete each comment copy and send it to the petitioner. Total annual burden for this requirement is 30 hours.

Respondent Universe:	722 railroads

Burden time per response:	30 minutes + 2 minutes
Frequency of Response:	On occasion
Annual number of Responses:	30 certifications + 450 comment copies
Annual Burden:	30 hours

Calculation: 30 certifications x 30 min. + 450 comment copies x 2 min. = 30 hours

Total annual burden for this entire requirement is 5,490 hours (3,840 + 960 + 660 + 30).

Total annual burden for all the requirements in new **Subpart G** is 12,240 hours (30 + 6,720 + 3,840 + 960 + 660 + 30).

Part 220.21(b) - Railroad Operating Rules; Radio Communications; Recordkeeping

Thirty days before commencing to use radio communications in connection with railroad operations, each railroad must retain one copy of its current operating rules with respect to radio communications at the locations prescribed in paragraphs (b)(1) and (b)(2) of this section. Each amendment to these operating rules must be filed at such locations within 30 days after it is issued. These records must be made available to representatives of the Federal Railroad Administration for inspection and photocopying during normal business hours.

(1) Each Class I railroad, each Class II railroad, each railroad providing intercity rail passenger service, and each railroad providing commuter service in a metropolitan or suburban area must retain such rules at each of its division headquarters and at its system headquarters; and (2) Each Class III railroad and any other railroad subject to this Part, but not subject to paragraph (b)(1) of this section, must retain such rules at the system headquarters of the railroad.

Railroads then are required to retain one copy of their current operating rules with respect to radio communications and one copy of each subsequent amendment thereto. All Class I railroads, Class II railroads, the National Railroad Passenger Corporation (Amtrak), and railroads providing commuter service in a metropolitan or suburban area must retain their radio rules at their division headquarters and system headquarters. All Class III railroads must retain their radio rules at their system headquarters.
Railroads usually prepare their radio rules in conjunction with their operating rules as required by 49 CFR § 217.7. Section 220.21(b), however, does not require Class I railroads, Class II railroads, the National Railroad Passenger Corporation (Amtrak), and railroads providing commuter service in a metropolitan or suburban area to file their radio rules with FRA. Instead, these railroads must retain their radio rules at their system headquarters and division headquarters. (Class III railroads need only retain their radio rules at their system headquarters.) Therefore, FRA believes that the radio

rules requirements will not impose any additional burden on the railroad industry than what is already required under 49 CFR § 217.7.

The total annual burden for the entire information collection is **4,809,680** hours.

13. Estimate of total annual costs to respondents

According to the regulatory impact analysis (RIA) associated with the proposed train crew staffing rule, there will be an additional costs to the railroads outside of the burden hour costs mentioned above in response to question number 12. Specifically, there will be a cost to respondents associated with the requirement in new **§ 218.135**, Special Approval Procedures, related to the purchase of additional technology. The RIA provides a low range annual estimated cost of $419,422 and a high range annual estimated cost of $2,234,550. For this analysis, FRA has taken the average of the low and high range estimated cost. Thus, the additional cost to respondents amounts to **$1,382,486.**

TOTAL COST (ADDITIONAL TECHNOLOGY) $1,382,486

14. Estimate of Cost to Federal Government.

Approximately, 40 man-hours are spent annually reviewing the reports and an additional 15 hours in processing the respondents' submissions. This excludes time spent doing routine compliance and enforcement activities. Multiplying 40 hours times the estimated $100 per hour (includes 75% overhead) equals $4,000 which is the cost of reviewing the reports. An additional $1,500 is spent annually for processing the reports [$100 per hour (includes 75% overhead**)].** Total annual cost to the Federal government is $5,500. FRA believes this estimate will not change as a result of the proposed Train Crew Staffing rule.

15. Explanation of program changes and adjustments.

The burden for this collection of information has increased by 12,252 hours. The increase in burden is due both to **program changes** and **adjustments.** The following table depicts the **program changes:**

TABLE OF PROGRAM CHANGES

49 CFR Part 228	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	Burden Hours (This Submission)	Difference (plus/minus)
228.125 – Adopt-	N/A	10 adopted/	N/A	30 hours	+ 30 hours

ion/Revision of RR Rules/ Practices to comply with Subpart G		revised rules 3 hours			+ 10 responses
218.133 – Continuance of operations staffed with a 2-person crew prior to Jan. 1, 2014 – Descript –ion of by RR of 1-person crew operation	N/A	7 descriptions 960 hours	N/A	6,720 hours	+ 6,720 hours + 7 responses
218.135 – Request for Special Approval of a start-up method of operation that does not meet Subpart G requirements	N/A	10 petitions 384 hours	N/A	3,840 hours	+ 3,840 hours + 10 responses
- Request for special approval of a train operation with less than two crew members	N/A	5 petitions 192 hours	N/A	960 hours	+ 960 hours + 5 responses
- Comments sent to FRA on petitions for special approval	N/A	30 comments 22 hours	N/A	660 hours	+ 660 hours + 30 responses
- Statement and Commenter certification that copy of comment has been served on each petitioner	N/A	30 statements + 450 comment copies 30 minutes + 2 minutes	N/A	30 hours	+ 30 hours + 480 responses

Program changes above <u>increased</u> the burden by *12,240 hours* and <u>increased</u> the number of **responses** by *542*.

<u>TABLE FOR ADJUSTMENTS</u>

Part 217Sec./ Part 218 Sec.	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	Burden Hours (This Submission)	Difference (plus/minus)

217.9(c)(ii) – Amendments to RR operating rules, timetables, and timetable special instructions	2013 amendment 15 minutes	2019 amendment 15minutes	503 hours	505 hours	+ 2 hours + 6 responses
218.97 (e) — Copies of Written Procedures retained at RR headquarters and at each division headquarters	716 copies 5 minutes	722 copies 5 minutes	60 hours	60 hours	0 hours + 6 responses
218.99- Shoving or Pushing Movements – Operating Rule Modification	32 modifications 1 hour	36 modifications 1 hour	32 hours	36 hours	+ 4 hours + 4 responses
218.101 – Leaving Rolling and On-Track MOW Equipment in Clear- Procedures – Revised Operating Rules	32 revised rules 30 minutes	36 revised rules 30 minutes	16 hours	18 hours	+ 2 hours + 4 responses
218.103– Hand Operated Switches: Operating Rules/Revised Operating Rules that comply with the requirements of this section	32operating rules 60 minutes	36 operating rules 60 minutes	32 hours	36 hours	+ 4 hours + 4 responses

Adjustments above increased the burden amount by *12 hours*, and increased the number of responses by *24*.

The correct current inventory exhibits a burden total of 4,797,428 hours, while the present submission reflects a burden total of 4,809,680 hours. Hence, there is a total burden increase of **12,252 hours**.

The annual cost to respondents has increased by **$1,382,486** from the last approved submission. The increase is solely due to a **program change** resulting from the proposed rule's new **§ 218.135**, Special Approval Procedures, related to the purchase of additional technology. The previous submission had **no** additional cost to respondents.

16. Publication of results of data collection.

There is no tabulation or publication of responses. This information is used by specialists in the Office of Safety to determine the level of safety of each railroad's operations.

Persons outside FRA's Office of Safety use the material for research and development purposes.

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 throughout the U.S. might be seriously hindered. Specifically, the number of accidents/incidents and the severity of injuries might increase because railroads' code of operating rules, timetables, and timetable special instructions did not conform to Federal safety laws and regulations. Also, the number of accidents/incidents and the severity of injuries might increase because railroad employees were not familiar with the railroad's current operating rules, timetables, and timetable special instructions, and consequently engaged in unsafe practices.

The collection of information promotes safety by providing FRA an opportunity to review and monitor railroads operating rules and any amendments thereto to ensure full compliance with Federal laws and regulations. The collection of information promotes safety by providing FRA oversight to ensure that railroads conduct the required operational tests and inspections. Moreover, the collection of information promotes safety by ensuring that railroad workers are properly trained concerning the railroad's current operating rules, timetables, and timetable special instructions. Periodic training reduces the likelihood that workers will not understand current operating rules or engage in unsafe practices.

The collection of information, notably the written summaries on operational tests and inspections required of railroads with more than 400,000 man-hours per year, further enhances rail safety by providing a valuable resource that FRA and other investigating agencies can use in determining the cause(s) of accidents/incidents. These records provide valuable information such as the number, type, and result of each operational test and inspection that was conducted (as required under § 217.9(a)). By accurately determining the cause(s) of accidents/incidents, FRA and the railroad industry can take measures to reduce the likelihood of similar events occurring in the future.

In summary, this collection of information enhances railroad safety by providing an additional layer of protection through the agency's close monitoring and full awareness of the railroads' current operating rules and practices. It furthers DOT's goal of promoting the public health and safety by working toward the elimination of transportation-related deaths, injuries, and property damage.

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