

FEDERAL RAILROAD ADMINISTRATION
Rear End Marking Devices
(Title 49 Code of Federal Regulations Part 221)
SUPPORTING JUSTIFICATION
OMB Control No. 2130-0523

Summary of Submission

- This submission is a request for a three-year extension with a change of the previous approval granted by the Office of Management and Budget (OMB) on **September 30, 2016**, which now expires on **October 31, 2019**.
- The Federal Railroad Administration (FRA) published the required 60-day Notice in the *Federal Register* on **August 21, 2019**. See 84 FR 43645. FRA received no comments in response to this Notice.
- The total number of burden **hours** requested for this information collection submission is **2 hours**. The total number of burden hours **previously approved** for this information collection was **39 hours**.
- The total number of **responses** requested for this information collection submission is **two (2)**. The total number of responses **previously approved** for this information collection submission was **four (4)**.
- Adjustment(s) decreased the burden by 37 hours and 2 responses.
- There are no **program changes** at this time.
- ****The answer to question number 12 itemizes the hourly burden associated with each requirement of this rule (see page 5).**
- ****The answer to question number 15 itemizes all adjustments associated with this rule. (See page 6.)**

1. Circumstances that make collection of the information necessary.

Background

On July 8, 1976, Congress enacted the Federal Railroad Safety Authorization Act of 1976. In addition to providing authorization for continued railroad safety appropriations, the statute included a provision that required the Secretary of the U.S. Department of Transportation (DOT) to issue within 180 days such rules as may be necessary to require that the rear car of passenger, commuter, and freight trains are equipped with highly visible markers. (See 49 U.S.C. 20132).

On January 11, 1977, FRA issued Title 49 Code of Federal Regulations (49 CFR) Part 221, *Rear End Marking Device - Passenger, Commuter and Freight Trains*. Through the requirements of

this part, FRA ensures that marking devices for the trailing end of rear cars meet minimum requirements regarding visibility and display. The rule established the performance standards for “highly visible” marking devices in order to be approved by the Federal Railroad Administration (FRA) Administrator.

On December 8, 1977, an Appendix to Part 221 was added, which sets forth the specific procedures by which railroads are to obtain approval of the marking devices to be used.

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

FRA’s Office of Safety personnel use this information to monitor railroad compliance with the safety requirements stipulated in 49 CFR Part 221. Specifically, FRA reviews the information to ensure that passenger, commuter, and freight trains are equipped with at least one rear-end marking device, which has been approved by the FRA Administrator in accordance with the procedures included in Appendix A of this Part. Each submission for approval of a marking device must contain a detailed description of the device, including the type, luminance description, size of lens, manufacturer, catalog number, lamp manufacturer, lamp type, model number, and auxiliary optics used. Also, each submission for approval must include a certification signed by the Chief Operating Officer of the railroad at which the device described in the submission has been tested in accordance with the current “[Guidelines of Testing of FRA Rear End Marking Devices](#).” Additionally, each submission must incorporate the results of tests performed under Appendix A, demonstrating marking device performance in compliance with the standard prescribed in 49 CFR 221.15. Moreover, detailed test results must be maintained, including at a minimum, the name and address of the testing organization, the name of the individual in charge of the tests, a narrative description of the test procedures, the number of samples tested, and, for each sample tested, the on-axis beam candela, the beam candela at the plus-minus 15 degree points in the horizontal plane, and the chromaticity coordinates. These records must be made available for inspection by FRA at a designated location, which is identified in the submission.

FRA reviews these test records to determine if a particular device satisfies the specified visibility criteria. Where it deems it necessary, FRA will independently test any procedures to verify that a rear-end marking device’s performance in the operating environment accords with the test results submitted by the railroad. Where this is not the case, FRA reserves the right to withdraw approval.

For railroads electing to use rear-end marking devices that have been previously approved by FRA, agency safety staff review these applications to ensure that they include the marking device model and that this model is one approved in Appendix B of this Part. Applications must include a certification, signed by the Chief Operating Officer of the railroad that the marking devices installed in the operating environment consist of the same type and model of components used in the sample tested for the original approval.

In sum, the required submissions enable FRA enforcement personnel to effectively control the use of illegal, ineffective, or unapproved devices, which do not provide sufficient “visibility” to

maintain the necessary degree of safety in train operations.

3. **Extent of automated information collection.**

FRA strongly endorses and highly encourages the use of advanced information technology, wherever possible, to reduce burden. Railroads may keep detailed test records for marking devices consisting of lighted elements, non-lighted elements, or a combination of both electronically, if they are equipped to do so. It should be noted that the burden hours for this information collection are already extremely minimal.

4. **Efforts to identify duplication.**

To our knowledge, the information collection requirements are not duplicated anywhere. Similar data are not available from any other source.

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

Most small railroads are specifically exempt from this regulation. Those that are not exempt (because they operate more than one train at any given time) can utilize a shortened approval procedure. Under this procedure, they are able to adopt a marking device that has already been approved for use on a large Class I railroad. This minimizes any additional expenses due to a separate testing procedure.

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

If this information was not collected or collected less frequently, railroad safety in the United States would be seriously hindered. Specifically, if rear-end marking devices were not approved by FRA before being used by railroads, they might not meet Federal standards for visibility, particularly at certain distances. This could result in rear-end passenger, commuter, and freight cars not being visible to other trains or to motorists at highway-rail crossings. Such a lack of visibility could, in turn, result in an increased number of accidents/incidents in which train crews, the traveling public, and motorists are seriously injured or possibly killed.

The frequency of submission of information is presently as minimal as possible as the railroad has to submit the required data only once. If the railroad changes manufacturers or design, the new information must be submitted to FRA.

7. **Special circumstances.**

Railroads are required to keep detailed test records of marking devices indefinitely or for as long as the marking device approved by the FRA is being used by the railroad. These records are essential, and they are used by FRA and State inspectors to ensure that the marking devices installed consist of the same type and model of components as were used in the sample testing and approved by FRA.

All other information collection requirements contained in this rule comply with this section.

8. Compliance with Title 5 Code of Federal Regulations § 1320.8.

As required by the Paperwork Reduction Act of 1995, FRA published a notice in the *Federal Register* on **August 21, 2019**, soliciting comment on this particular information collection. *See* 84 FR 43645. FRA received no comments in response to this notice.

Background.

On November 17, 1976, a Notice of Proposed Rulemaking was published in the *Federal Register* (41 FR 50701) stating that FRA was considering proposed regulations in response to the provisions of the 1976 Federal Railroad Safety Authorization Act concerning highly visible markers on the rear car of all passenger, commuter, and freight trains. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments and appearing at a public hearing.

Comments were received from railroads, lighting manufacturers, rail labor groups, and the general public. All comments were taken into consideration in the formulation of the final regulation. Significant comments received and any subsequent changes were placed in Docket No. RSRM-1, Notice 2.

Shortly after issuance of the final rule, FRA held a public meeting on January 25, 1977, to discuss with interested parties draft testing guidelines and approval procedures for verification of the performance of specific marking devices. As a result of this meeting and additional study, FRA remained convinced that the original theoretical basis upon which the performance standards were premised was both sound and reasonable. However, FRA did modify the regulation to allow the approval of any device that satisfied the prescribed specifications, if tested in accordance with the guidelines established in a new Appendix A to this regulation.

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.

The agency is required to make available documents and information collected in compliance with the regulation to those individuals making formal requests under the Freedom of Information Act. 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.

There are no questions or information of a sensitive nature or data that would normally be considered private contained in this information collection.

12. Estimate of burden hours for information collected.

The burden is influenced by the number of new railroads (which do not fall under the exemption) that may come into being during the year. In addition, there may be a few railroads that seek approval of a different marking device to accommodate changes in their operations.

CFR Section	Respondent Universe	Total Annual Responses	Average Time per Responses	Total Annual Burden Hours ¹	Total Cost Equivalent	Wages ²
221.14 - Marking Devices, and Appendix A	746 railroads + 24 manufacturers	2 submissions + records	1 hour	2 hours	\$152	\$76 (Professional & administrative employee group category)

13. Estimate of total annual costs to respondents.

There are no continuous annual costs involved in carrier submissions in compliance with this regulation. The railroad must only submit once for each marking device that it wishes approved. Once it is approved, no further submissions are required. Therefore, the only annual costs are for railroads that come into being during the year or railroads that wish to change devices or gain approval of a different device they now wish to use. Based on experience over the past three years, two railroads are expected to file a submission annually.

There is no additional cost to the railroads outside the burden costs mentioned above.

14. Estimate of cost to Federal Government.

FRA estimates that approximately four (4) hours (at the GS-14 level) are spent processing the respondents' submissions. This excludes time spent during routine compliance and enforcement activities. To calculate the government administrative cost, the 2019 Office of Personnel Management wage rates were used. The average wage (of step 1 through step 10) was used as a midpoint. Wages were considered at the burdened wage rate by multiplying the actual wage rate by an overhead cost of 75 percent (or times 1.75). Multiplying four (4) times \$64.58 per hour times 1.75 (75 percent for overhead) equals \$452 in annualized costs.

¹ The estimated annual burden hours include recordkeeping.

² The hourly wage rate is obtained from the Surface Transportation Board's Full Year Wage A&B data series using the appropriate employee group hourly wage rate (plus the 75-percent overhead).

15. Explanation of program changes and adjustments.

The burden for this information collection submission has decreased by 37 hours from the last approved submission since the burden associated with the testing of the device is covered by the overall economic cost of the rule. Thus, the PRA estimate is strictly for the reporting of the detailed testing of the device and recordkeeping.

CFR Section	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	FRA Burden Hours (This Submission)	Difference (Plus/Minus)
221.14 - Marking Devices, and Appendix A	2 requests / submission 19 hours	2 requests / submission 1 hour	38 hours	2 hours	- 36 hours 0 responses
Recordkeeping	2 requests / submission 19 hours	Included under 221.14 and Appendix A	1 hour	Included under 221.14 and Appendix A	- 1 hour - 2 responses

16. Publication of results of data collection.

There is no tabulation or publication of submissions. Primarily, the information is used by specialists of the Office of Safety and field personnel to enforce the regulation. Persons outside the Office of Safety may 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 the information collection requirements in the *Federal Register*.

18. Exception to certification statement.

No exceptions are taken at this time.

Meeting Department of Transportation Strategic Goals

This information collection supports the main DOT strategic goal, namely transportation safety. Without this collection of information, rail safety throughout the United States might be seriously jeopardized. Specifically, the number of accidents/incidents and the severity of corresponding injuries might increase because rear-end marking devices did not meet Federal criteria for visibility and were not approved by FRA before being put into use on passenger, commuter, and freight cars. Such a lack of visibility could, in turn, result in a greater number of

accidents/incidents in which train crews, the traveling public, and motorists are seriously injured or possibly killed.

The collection of information promotes safety by providing FRA an opportunity to review and monitor all rear end-marking devices (new or modifications of previously approved devices) to ensure that they meet Federal standards for visibility. Each railroad must furnish a detailed description of the type of device, including the manufacturer, lamp type, luminance description, size of lens, and any auxiliary optics needed. Each railroad must also furnish a certification that the device has been tested in accordance with current “Guidelines for Testing of FRA Rear End Marking Devices.”

The collection of information, notably the detailed test records, further enhances rail safety by providing an important 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 testing organizations, description of tests, number of samples tested, and the test results. FRA can check this information to see whether the rear-end marking device met Federal performance standards. 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 type of rear-end marking devices used on passenger, commuter, and freight trains. It furthers DOT’s goal of promoting public health and safety by working toward the elimination of transportation-related deaths, injuries, and property damage.