FEDERAL RAILROAD ADMINISTRATION
Track Safety Standards: Concrete Crossties
(Title 49 Code of Federal Regulations Part 213)
SUPPORTING JUSTIFICATION
OMB Control No. 2130–0592

- This submission is a request for an extension without change (with changes in estimates) of the last three–year approval granted by the Office of Management and Budget (OMB) on February 1, 2018, which now expires on February 28, 2021.

- The Federal Railroad Administration (FRA) published the required 60–day *Federal Register* Notice on August 24, 2020. See 85 FR 52190. FRA received no comments in response to this Notice.

- The total number of burden hours requested for this information collection is 279 hours. The total number of burden hours previously approved by OMB was 4,875 hours.

- The total number of responses requested for this information collection is 2,405. The total number of responses previously approved by OMB was 2,318.

- Overall, the adjustments decreased the burden by 4,596 hours and increased responses by 87 after a thorough review of the data.

  ** The answer to question number 12 itemizes the hourly burden.

  ** The answer to question number 15 itemizes adjustments made.

1. Circumstances that make collection of the information necessary.

The first Federal Track Safety Standards were published on October 20, 1971, following the enactment of the Federal Railroad Safety Act of 1970, Pub. L. No. 91–458, 84 Stat. 971 (October 16, 1970), in which Congress granted to FRA comprehensive authority over "all areas of railroad safety."[1] FRA envisioned the new Standards to be an evolving set of safety requirements subject to continuous revision allowing the regulations to keep pace with industry innovations and agency research and development. The most comprehensive revision of the Standards resulted from the Rail Safety Enforcement and Review Act of 1992, Pub. L. No. 102–365, 106 Stat. 972 (Sept. 3, 1992), later amended by the Federal Railroad Safety Authorization Act of 1994, Pub. L. No. 103–440, 108 Stat. 4615 (Nov. 2, 1994). The amended statute is codified at 49 U.S.C. 20142 and required the Secretary of Transportation (Secretary) to review and then revise the Track Safety Standards, which are contained in 49 CFR Part 213. The Secretary has delegated such statutory responsibilities to the FRA Administrator.[2] FRA carried out this review on

[1] 36 FR 20336.

[2] 49 CFR 1.89.

behalf of the Secretary, which resulted in FRA issuing a final rule amending the Standards in 1998.[3]

Pursuant to 49 U.S.C. 20103, the Secretary may prescribe regulations as necessary in any area of railroad safety. FRA began its examination of rail integrity issues through the Railroad Safety Advisory Committee (RSAC) on October 27, 2007. On October 16, 2008, the Rail Safety Improvement Act (RSIA) (Pub. L. 110–432, Division A) was enacted. Section 403(a) of the RSIA required the Secretary to conduct a study of track issues, known as the Track Inspection Time Study (Study). The Study was completed and presented to Congress on May 2, 2011. Section 403(c) of the RSIA further provided that FRA prescribe regulations based on the results of the study two years after its completion.

FRA notes that Section 403 of the RSIA contained one additional mandate, which FRA has already fulfilled, promulgating regulations for concrete crossties. On April 1, 2011, FRA published a final rule on concrete crosstie regulations per this mandate in Section 403(d). That final rule specifies requirements for effective concrete crossties, for rail fastening systems connected to concrete crossties, and for automated inspections of track constructed with concrete crossties.[4]

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

This information collection is used by FRA to monitor regulatory compliance with 49 CFR 213. Specifically, the information collected under § 213.234 is used by FRA to: 1) monitor regulatory compliance with 49 CFR 213 and 2) ensure that automated track inspections of track constructed with concrete crossties are carried out as specified in this section to supplement visual inspections by Class I and Class II railroads, intercity passenger railroads, and commuter railroads or small governmental jurisdictions that serve populations greater than 50,000.

Automated inspections must identify and report exceptions to conditions described in § 213.109(d)(4) of this Part. Each exception report must be located and field verified no later than 48 hours after the automated inspection. The information collected under § 213.234(e)(1) that provides persons fully qualified under § 213.7 to be provided with or have ready access to a copy of the exception report will be used by railroad track inspectors to carry out the required field verifications.

Under § 213.234(g), track owners are required to institute procedures for maintaining the integrity of the data collected by the measurement system. FRA staff review these documented procedures to ensure correlation between measurements made on the ground and those recorded by instrumentation. Essentially, FRA checks to ensure that the equipment used by the track owners to comply with this regulation accurately detects

[3] 63 FR 34029, June 22, 1998; 63 FR 54078, Oct. 8, 1998.

[4] 76 FR 18073.

what such equipment is designed to detect.

Finally, under § 213.234(h), track owners are required to provide training in handling rail seat deterioration exceptions to all persons fully qualified under § 213.7 and whose territories are subject to the requirements of § 213.234. At a minimum, this training must address interpretation and handling of exception reports generated by the automatic inspection measurement system, locating and verifying exceptions in the field and required remedial action, and recordkeeping requirements. As part of their duties, FRA inspectors ensure that all persons required to comply with this regulation are properly trained and that they understand the basic principles provided in the training.[5]

3. Extent of automated information collection.

FRA strongly encourages the use of advanced information technology, wherever feasible, to reduce burden on respondents. The Track Safety regulations permit great flexibility in the methods employed to establish employee qualifications and to determine track conditions and only specify information which must be contained in the records. The form of that record is discretionary, and entities may use any medium capable of displaying information, including electronic recordkeeping. Records and reports in Part 213 may be either in hardcopy or electronic form.

Part 213 allows each railroad to design its own electronic system as long as the system meets the specified criteria to safeguard the integrity and authenticity of each record. Currently, approximately 75% of all responses are now submitted/collected electronically by railroads/track owners.

4. Efforts to identify duplication.

The information collection requirements are not duplicated anywhere to our knowledge.

Similar data are not available from any other source.

5. Efforts to minimize the burden on small businesses.

"Small entity" is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) 1has authority to regulate issues related to small businesses and 1stipulates in its size standards that a "small entity" in the railroad industry is a for profit "line–haul railroad" that has fewer than 1,500 employees, a "short

[5] Based on FRA's interpretation of the PRA's implementing regulations, specifically the definition of "information" within 5 C.F.R. § 1320.3(h), FRA considers training/testing to be an excepted category of information under the PRA. FRA does recognize, however, the distinction between trainings and training recordkeeping, as the definition of information collection does include recordkeeping.

line railroad" with fewer than 500 employees, or a "commuter rail system" with annual receipts of less than seven million dollars.[6]

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes "small entities" or "small businesses" as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less.[7]

1The $20 million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. The current threshold is $37.1 million or less.[8] For other entities, the same dollar limit in revenues governs whether a railroad, contractor, rail equipment supplier, or other respondent is a small entity.

Class I railroads have significant segments of concrete crossties, and own the overwhelming majority of all installed crossties. About a dozen Class II railroads that were formerly parts of Class I systems may have limited segments, and some Class III railroads may have remote locations with concrete crossties, typically in turnouts and other segment locations less than 600 feet in length. Small railroads were consulted during the RSAC Working Group deliberations, and their interests have been taken into consideration. The provisions requiring automated inspections do not apply to Class III railroads or any commuter railroads that may be considered small entities. Such entities would only be subject to requirements for tie and fastener conditions; however, small railroads typically do not have large numbers of concrete ties, and the cost associated with meeting such requirements is not significant.

FRA does not anticipate that the rule will negatively impact a substantial number of small entities.

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

If the information were not collected, or were collected less frequently, rail safety in the United States would be seriously jeopardized. The data collected under Part 213 allows FRA to verify that track constructed of concrete crossties are being done in accordance with the regulation.

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[6] Size Eligibility Provisions and Standards, 13 CFR part 121, subpart A.

[7] 68 FR 24891 (May 9, 2003) (codified at appendix C to 49 CFR part 209).

[8] The Class III revenue threshold is $37,108,875 or less, last updated in 2018. (The Class II threshold is between $37,108,875 and $463,860,933; and the Class I threshold is $463,860,933 or more.)

Without this information, FRA would not know—and would not be able to determine—whether track constructed of concrete crossties is safe and whether the track owner/railroad received the necessary automated inspections.

In sum, the information collected aids FRA in its primary mission, which is to promote and enhance rail safety throughout the nation.

7. Special circumstances.

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

8. Compliance with 5 CFR 1320.8.

As required by the Paperwork Reduction Act of 1995, FRA published a notice in the *Federal Register* on August 24, 2020, soliciting comment on this information collection.[9] FRA received no comments related to the proposed collection of information.

9. Payments or gifts to respondents.

There are no monetary payments provided or gifts made to respondents in connection with this information collection.

10. Assurance of confidentiality.

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.

In the following table, estimates for the respondent universe, annual responses, and average time per responses are based on the experience and expertise of FRA's Rail Integrity Division.

The total annual burden hours, under the fourth column, is calculated by multiplying total annual responses by average time per responses. For example, 125 * 15 minutes = 31.3 hours or 31 hours rounded.

[9] 85 FR 52190

The total cost equivalent, under the fifth column, is calculated by multiplying total annual burden hours by the appropriate employee group hourly wage rate that includes a 75-percent overhead charge. For example, 31.3 hours * $58 = $1,813. FRA is including the dollar equivalent cost for each of the itemized hours below using the Surface Transportation Board's Full-Year Wage A&B data series as the basis for each cost calculation. For railroad executives, officials, and staff assistants, the hourly wage rate is $120 per hour ($68.81 * 1.75 = $120). For maintenance of equipment and stores, the hourly wage rate is $58 per hour ($33.37 * 1.75 = $58).

Note: The hourly wage rate of $58 was used to calculate total cost equivalent for all items except for 213.234(g) which is $120.

CFR Section	Respondent universe	Total Annual responses (A)	Average time per responses (B)	Total annual burden hours (C) = A * B	Total cost equivalent (D) = C * wage rate[10]	Section analyses and estimates
213.234(e)—Automated inspection of track constructed with concrete crossties—Exception reports listing all exception to § 213.109(d)(4).	30 railroads	125 reports	15 minutes	31 hours	$1,813	Exceptions reports to be produced by the system; duty to field-verify exceptions. The automated inspection measurement system shall produce an exception report containing a systematic listing of all exceptions to § 213.109(d)(4), identified so that an appropriate person(s) designated as fully qualified under § 213.7 can field verify each exception. FRA estimates that approximately 125 exception reports will be produced under the above requirement. It is estimated that it will take, on average, approximately 15 minutes to complete each exception report since it system generated.
—(g) Procedure for integrity of data—Track owners to institute procedures for maintaining the integrity of the data collected by	30 railroads	30 revised procedures	2 hours	60 hours	$7,200	Procedures for integrity of track data. The track owner shall institute the necessary procedures for maintaining the integrity of the data collected by the measurement system. At a minimum, the track owner must do the following: (1) Maintain and make available to FRA documented calibration procedures of the measurement

[10] Totals may not add due to rounding

the measurement system						system that, at a minimum, specify an instrument verification procedure that ensures correlation between measurements made on the ground and those recorded by the instrumentation; and (2) Maintain each instrument used for determining compliance with this section such that it accurately measures the depth of rail seat deterioration in accordance with paragraph (d)(1) of this section. FRA estimates that approximately 30 data integrity procedures will be developed under the above requirement. It is estimated that it will take approximately 2 hours to revise each procedure.
—(h)(3) Training—Track owners to provide annual training in handling rail seat deterioration exceptions to all persons designated as fully qualified under § 213.7 and whose territories are subject to the requirements of § 213.234—Recordkeeping requirements	30 railroads	2,250 records of trained employees	5 minutes	188 hours	$10,875	The track owner must provide annual training in handling rail seat deterioration exceptions to all persons designated as fully qualified under §213.7 and whose territories are subject to the requirements of §213.234. At a minimum, the training must address the following: (1) Interpretation and handling of the exception reports generated by the automated inspection measurement system; (2) Locating and verifying exceptions in the field and required remedial action; and (3) Recordkeeping requirements. FRA estimates that approximately 2,250 employees will be trained each year under the above requirement. It is estimated that it will take approximately 5 minutes to keep the necessary record of the trained employees.
Total	30 railroads	2,405 Responses	N/A	279 Hours	$19,888	

13. <u>Estimate of total annual costs to respondents.</u>

As noted above in the answer to question number 12, railroads are required to make copies of exception reports under § 213.234(e)(1). For the estimated 125 exception report copies that will need to be made, the cost to respondent is as follows:

125 exception report copies (avg. 10 pages each @.03 cents per page) = $38.

14. Estimate of Cost to Federal Government.

There are no additional costs to the Federal Government, since the FRA Headquarters personnel and Federal and State track safety inspectors will carry out the requirements of the rule in the normal course of their duties.

15. Explanation of program changes and adjustments.

This is an extension without change (with changes in estimates) to a current collection of information.

The current OMB inventory for this information collection shows a total burden of 4,875 hours and 2,318 responses, while the present submission exhibits a total burden of 279 hours and 2,405 responses. Overall, the burden for this information collection has decreased by 4,596 hours and increased by 87 responses from the last submission. The decrease in burden is solely the result of adjustments.

FRA provided a thorough review of this package and determined that many of the PRA estimates were outdated, some estimates were not PRA requirements, and others were double counted. Additionally, the amount of time to create a report has been significantly reduced since the reports are system generated. The chart below provides specific information on any burden estimates that have changed from the previous submission.

TABLE FOR ADJUSTMENT(S)

CFR Section	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	Burden Hours (This Submission)	Difference (plus/minus)	Notes
213.234(e)—Automated inspection of track constructed with concrete crossties—Exception reports listing all exception to § 213.109(d)(4)	75 reports 8 hours	125 reports 15 minutes	600 hours	31 hours	-569 hours +50 responses	The average of time per response/record was reduced because FRA had previously overestimated the burden. The reports are system generated, and it takes about 15 minutes and not 8 hours to generate/create a report. Thus, the current figures represent our latest and best estimates.

						FRA also anticipates an increase in number of submissions.
—Copies of Exception Report Provided to Designated Person under § 213.234(e)(1)	75 report copies 12 minutes	0	15 hours	0	-15 hours -75 responses	The burden for this requirement is included under 213.234(e).
—(e)(3) Field verification of exception reports	75 verifications 2 hours	0	150 hours	0	-150 hours -75 responses	The burden for this requirement is included under 213.234(e).
—(f) Records of inspection data	75 records 30 minutes	0	38 hours	0	-38 hours -75 responses	The burden for this requirement is included under OMB Control Number 2130-0010.
—(g) Procedure for integrity of data—Track owners to institute procedures for maintaining the integrity of the data collected by the measurement system	18 procedures 4 hours	30 revised procedures 2 hours	72 hours	60 hours	-12 hours +12 responses	The average of time per response/record was reduced because FRA had previously overestimated the burden. It takes about 2 hours to revise an existing procedure since the industry is using an existing document. Thus, the current figures represent our latest and best estimates. FRA also anticipates an increase in number of submissions.
—(h)(3) Training—Track owners to provide annual training in handling rail seat deterioration exceptions to all persons designated as fully qualified under § 213.7 and whose territories are subject to the requirements of § 213.234—Recordkeeping requirements	2,000 trained employees 2 hours	2,250 records of trained employees 5 minutes	4,000 hours	188 hours	-3,813 hours	Based on FRA's interpretation of the PRA's implementing regulations, specifically the definition of "information" within 5 C.F.R. § 1320.3(h), FRA considers training/testing to be an excepted category of information under the PRA. FRA does recognize, however, the distinction between trainings and training recordkeeping, as the definition of information collection does include recordkeeping. The average of time per responses was

						reduced because FRA had previously added training time.

The cost to respondents increased by $15 from the last submission. This change in cost is due to an adjustment in the estimate for the number of exception report copies (from 75 copies to 125 copies, which changed the estimated cost from $23 to $38).

16. Publication of results of data collection.

There are no plans for publication of this submission. The information will be used exclusively for purposes of determining compliance with U.S. laws and FRA safety regulations

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. 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.