

1FEDERAL RAILROAD ADMINISTRATION
Control of Alcohol and Drug Use in Railroad Operations
(Title 49 Code of Federal Regulations Part 219)
Supporting Justification
RIN 2130-AC80; OMB Control No. 2130-0526

Summary

- This submission is a revision to the last approved submission pertaining to Title 49 Code of Federal Regulations (CFR) Part 219 (part 219), which was approved by OMB on September 4, 2020, and which expires February 28, 2023.
- FRA is publishing a Notice of Proposed Rulemaking (NPRM) revising part 219 titled Control of Alcohol and Drug Use: Coverage of Mechanical Employees and Miscellaneous Amendments in the Federal Register on January 8, 2021. See 86 FR 1418. FRA plans to respond to any comments received in response to the NPRM in the final rule.
- The total burden for this collection has increased by 2,103 hours and by 90,315 responses due entirely to a **program change**.
- The answer to question **number 12** itemizes information collection requirements.
- The answer to question **number 15** itemizes adjustments.

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

In 2018, Congress enacted the SUPPORT Act (Pub. L. 115-271). Section 8102 of the SUPPORT Act mandates that the Secretary of Transportation publish a rule amending the existing alcohol and drug regulations applicable to railroad employees (49 CFR Part 219) to cover “all employees of railroad carriers who perform mechanical activities.” The proposed rule would add mechanical (MECH) employees to the scope of part 219. As proposed, individuals who perform those duties typically performed by railroad carmen would be included within the definition of MECH employee.

Under existing part 219, except for maintenance-of-way (MOW) employees, employees in non-covered service crafts (i.e., employees not subject to the hours of service laws in 49 U.S.C. ch. 211, which would include those employees defined in the NPRM as MECH employees),¹ are subject to FRA-mandated alcohol and drug testing only if they are fatally injured as a result of a “fatal train incident” under § 219.203(a)(4). In such situations, the remains of a fatally injured employee (whether the employee was a

¹ Throughout this NPRM, the term “covered-service employees” means employees subject to the hours of service laws of 49 U.S.C. ch. 211.

covered-service or non-covered service employee) are subject to post-mortem post-accident toxicological (PAT) testing. The proposed rule would expand the collection of information for FRA's Part 219 program to cover MECH employees. The proposed rule would make MECH employees subject to all part 219 testing, including: random testing, PAT testing, reasonable suspicion testing, reasonable cause testing, pre-employment testing, return-to-duty testing, and follow-up testing.

Background

In 2016, FRA published the Control of Alcohol and Drug Use: Coverage of Maintenance of Way Employees and Retrospective Regulatory Review-Based Amendments Rule. (See 81 FRA 37894, June 10, 2016, codified at 49 CFR Part 219.) The rule, effective since June 10, 2016, expanded the scope of part 219 to cover MOW employees. Historically, FRA has conducted only PAT testing of MOW employees, since an MOW employee, unlike a covered service employee, has been subject to part 219 testing only when he or she has died as the result of a reportable railroad accident or incident. The 2016 rulemaking made MOW employees subject to all part 219 testing.

FRA has regulated the use of alcohol and drugs by certain railroad employees since 1985, when it issued a final rule establishing alcohol and drug use control regulations under part 219. See 50 FR 31508, Aug. 2, 1985. The rule contained certain prohibitions on the use and possession of alcohol and drugs by covered employees, who were defined as employees who had been assigned to perform covered service subject to the Hours of Service Act (45 U.S.C. 61-64b).² See id. at 31569. The rule also contained requirements for PAT testing, discretionary reasonable cause and reasonable suspicion testing, co-worker and voluntary referral policies, pre-employment drug testing, and reporting. See id. at 31508. In 1988, FRA amended part 219 to require random drug testing of covered employees. See 53 FR 47102, Nov. 21, 1988. In 1994, FRA again amended part 219 to require random alcohol testing and reasonable suspicion testing, in conformance with the requirements of the Omnibus Transportation Employee Testing Act of 1991 (Omnibus Act) (reasonable cause testing remained discretionary). See 59 FR 7448, Feb. 15, 1994. FRA has not fundamentally revised part 219 since 1994.³

The Omnibus Act required the Department of Transportation (DOT or Department) to establish Federal workplace testing procedures for transportation employees. The Department's Procedures for the Transportation Workplace Drug and Alcohol Testing Program are contained in 49 CFR part 40 (part 40), which is published by the DOT Office of the Secretary. Only the DOT Office of Drug and Alcohol Policy and Compliance and the DOT Office of General Counsel are authorized to interpret part 40

² The hours of service (HOS) laws are currently found at 49 U.S.C. Ch. 211.

³ In 2004, FRA expanded the scope of part 219 to cover foreign railroad foreign-based employees who perform train or dispatching service in the United States. See 69 FR 19270, Apr. 12, 2004. In 2013, FRA added routine tests for certain non-controlled substances to its PAT testing program. See 78 FR 14217, Mar. 5, 2013.

requirements. See 49 CFR 40.5.⁴ Part 40 testing requirements and procedures apply to any drug or alcohol test required by DOT agency regulations, except for FRA's PAT testing and certain testing conducted pursuant to DOT-mandated peer prevention programs (including FRA's peer prevention program currently required by subpart E of part 219). See § 219.701. FRA's PAT testing program pre-dates the enactment of the Omnibus Act, which specifically exempts the program from part 40. See § 40.1(c).

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

The information collected under part 219 is used by FRA to ensure that covered employees are subject to random alcohol and drug testing. More specifically, FRA is proposing to expand the scope of its alcohol and drug regulation to cover MECH employees.

The information collected under this part will be used by FRA to ensure that railroads establish required alcohol and drug use prevention programs. The information collected will also confirm that railroad employees who perform regulated service comply with Federal regulations prohibiting the use of alcohol and drugs while on duty. FRA uses the information collected to ensure that independent contractors and any other entities that perform regulated service for a railroad also comply with the requirements of this rule regarding its employees who perform regulated service. FRA reviews the required documentation to verify that the responsibility for compliance is clearly spelled out in the contract (or other document) between the railroad and the independent/other entity.

FRA uses the information collected to ensure that railroads devise adequate programs so that supervisors of regulated employees receive essential alcohol and drug training. Specifically, they must be trained in the signs and symptoms of alcohol and drug influence, intoxication, and misuse. At a minimum, training programs must provide information concerning the acute behavioral and apparent psychological effects of alcohol and the major drug groups on the controlled substances list. The program must also provide training on the qualifying criteria for PAT testing (contained in subpart C of 49 CFR Part 219) and the role of the supervisor in post-accident collections (described in subpart C and Appendix C of 49 CFR Part 219).

FRA reviews the information collected to confirm that railroads provide educational materials to employees which explain the requirements of 49 CFR Part 219 and the railroad's policies and procedures with respect to meeting those requirements. Railroads must ensure that a copy of these materials is distributed to each covered employee prior to the start of alcohol testing under the railroad's alcohol misuse prevention program and to each person who is subsequently hired or transferred to a covered position. FRA also reviews the collected information to confirm that railroads provide written notice to

⁴ Unless otherwise specified, all references to CFR sections and parts in this document refer to Title 49 of the CFR.

representatives of employee organizations of the availability of this information.

The information collection provisions contained in the pre-employment screening requirement and the authorization for detection screening of in-service employees are intended primarily to assure a sense of fairness and accuracy for protection of both the railroads and the employees in the implementation of these provisions. The basic information—evidence of unauthorized use of drugs—will be used to help prevent accidents by screening personnel (now new MECH employees, as well) who perform safety-sensitive functions. The ancillary information would be used by the railroad, the employee, or the prospective employee and FRA.

FRA reviews PAT testing reports/records to examine whether good faith determinations have been made regarding any decision by a person other than the responding railroad representative on whether an accident/incident qualifies for testing. FRA examines these reports to ensure they include the facts reported by the responding railroad representative, the basis upon which the testing was made, and the person making the decision. Also, to encourage and ensure compliance with this rule, FRA reviews records of tests not promptly administered under subpart C to monitor the reasons the test was not properly administered. Administering prompt tests is essential to having and maintaining an effective alcohol/drug prevention program, and it provides critical data for FRA, railroads, and other Federal agencies in the investigation of an accident/incident.

FRA reviews a random selection of records of alcohol/drug testing procedures practiced by railroads to ensure that the testing process is fair and made by a method employing objective, neutral criteria such that each covered employee has a substantially equal statistical chance of being selected within the specified time frame.

Railroads are required to retain breath alcohol testing records and urine drug testing records for stipulated time periods. These records provide FRA with an invaluable resource for reviewing railroad drug and alcohol programs and procedures and ensuring compliance with Federal regulations. They also serve as a vital tool for FRA, the National Transportation Safety Board (NTSB), and others in the investigation of accidents/incidents that may be drug or alcohol related.

FRA reviews laboratory records relating to required documentation of all aspects of the alcohol and drug testing process to ensure that these laboratories are following necessary protocols and procedures, and to ensure that the results sent to railroads' Medical Review Officers (MRO) are accurate, objective, and fair since the careers and livelihoods of railroad employees are at stake. Laboratory data must include a personnel file on analysts, supervisors, directors, and all individuals authorized to have access to specimens; chain-of-custody documents; quality assurance and control records; procedure manuals; all test data on tests conducted under subpart H; reports (including calibration curves and any calculations used in determining test results); performance records on

performance testing; performance on certification inspections; and hard copies of computer-generated data. These records are essential for FRA, the railroads, and the courts in making a determination concerning any specimen that is under legal challenge.

Overall, the information collected under this amended rule serves as a critical compliance tool, and FRA uses the information to promote and enhance railroad safety and reduce the number and severity of railroad accidents/incidents, particularly those related to the misuse of alcohol and drugs by regulated railroad employees who occupy safety-sensitive positions.

3. Extent of automated information collection.

Over the years, FRA has strongly supported and highly encouraged the use of advanced automated technology, particularly electronic recordkeeping, to reduce the burden on railroads and other entities (wherever possible) that submit or retain information required by the agency. It should be noted that, even though there are many sections of the final rule that require written documentation, there are other parts of the rule—such as section 219.623—that specify or require the electronic option. FRA believes approximately 100% of responses will be submitted and kept electronically.

4. Efforts to identify duplication.

The source of the information collection requirements is unique for each separate occurrence and, therefore, there is no known duplication of this material. Although other Federal agencies may utilize the information collected in the event of an accident/incident for their investigation (e.g., NTSB), FRA is the sole Federal agency requiring the collection of this information from the railroads.

The information submitted or collected for recordkeeping purposes is unique, and no other existing effort can be used or modified for these purposes. The data collected is not available from any other source.

5. Efforts to minimize the burden on small businesses.

The “universe” of the entities considered in this analysis generally includes only those small entities that can reasonably expect to be directly regulated by this proposed rule. The types of small entities potentially affected by this final rule are: (1) small railroads; (2) small contractors that engage in MECH and MOW operations; and (3) small contractors that provide Hours of Service (HOS) services (such as dispatching, signal, and train and engine services).

“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) has the authority to regulate issues related to

small businesses and stipulates 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 line railroad” with fewer than 1,500 employees, a “commuter rail system” with annual receipts of less than \$16.5 million dollars, or a contractor that performs support activities for railroads with annual receipts of less than \$16.5 million.⁵

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 which formally establishes small entities as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad.⁶ FRA is using this definition for this rulemaking.

FRA estimates that there are approximately 734 railroads (including 2 foreign-based railroads) and 30 contractors that collectively employ 36,300 MECH employees, 44,797 MOW employees, and 171,410 total regulated employees. Most railroads must comply with all provisions of part 219. However, FRA has a “small railroad” definition associated with part 219 that limits compliance requirements for railroads with 15 HOS employees or fewer and no joint operations, to reduce burden on the smallest of railroads. In addition, the proposed rule would partially exempt railroads from random cause testing. Approximately 1,103 of 25,410 MECH employees work for entities that are partially exempted from part 219 and therefore would not be required to participate in random drug and alcohol testing or authorized to conduct reasonable cause testing.

There are approximately 695 small railroads (as defined by revenue size). Most small railroads would be impacted by this proposed rule. Part 219 has a small railroad exemption for all railroads with 15 or fewer covered employees, except when these railroads have joint operations with another railroad, therefore increasing risk. Thus, a railroad with such characteristics shall be called a “partially exempted small railroad” in this analysis and is a subsection of the “small entities” as defined by the Surface Transportation Board (STB) and FRA, addressed above. Currently, there are 290 partially exempted small railroads.

All commuter railroad operations in the United States are part of larger governmental entities whose jurisdictions exceed 50,000 in population.⁷ All railroads must comply with all or limited subparts of part 219. For partially excepted small railroads, per FRA’s definition, the significant burden involves the costs of adding MECH employees to the

⁵ U. S. Small Business Administration, “Table of Small Business Size Standards Matched to North American Industry Classification System Codes, August 19, 2019. https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%202019,%202019.pdf

⁶ See 68 FR 24891, May 9, 2003.

⁷ However, one of these railroads does not fall in this category and is considered a small entity: the Hawkeye Express (operated by the Iowa Northern Railway Company).

existing testing programs and adding reasonable suspicion and pre-employment drug testing (which they have not needed to comply with).

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

FRA is aware that some railroads hire contractors to conduct some or all MOW worker functions on their railroads. Generally, the costs for the burdens associated with this rulemaking will get passed on from the contractor to the pertinent railroad. FRA has determined that there are approximately 30 MECH-related large contractor companies who will be covered by this proposed rule. FRA estimates that 444 railroads would include contractor employees in their own random testing plan, which would reduce the reporting burden on small contractors.

Expanding the program to cover MECH employees will only have a small effect in terms of testing burden for railroads, based upon the cost of pre-employment drug testing for new employees and the testing of MECH employees. FRA estimates that 90 percent of small railroads already conduct pre-employment drug testing under their own company authority. Many of these contractors have employees with commercial drivers' licenses, and, therefore, fall under the drug and alcohol program requirements of the Federal Motor Carrier Safety Administration.

The average annual burden to include MECH employees in a railroad's part 219 program is less than \$100 for a partial compliance small railroad and less than \$500 for a full compliance small railroad.

Also, it should be noted that this part does not apply to the following:

- (1) Railroads that operate only on track inside an installation that is not part of the general railroad system of transportation (i.e., plant railroads, as defined in § 219.5);
- (2) Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation, as defined in § 219.5; or
- (3) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

The small railroad exception in § 219.3(b)(2) has provided, in part, that a railroad with 15 or fewer covered employees that does not engage in joint operations with another railroad

is not subject to the requirements for reasonable suspicion or reasonable cause testing (both previously found in subpart D), identification of troubled employees (previously subpart E), pre-employment drug testing (subpart F), or random testing (subpart G).

6. Impact of less frequent collection of information.

If this collection of information were not conducted, or were conducted less frequently, rail safety in the U.S. might be seriously jeopardized. Specifically, if railroads did not have effective alcohol and drug misuse prevention programs, and if these programs were not carefully monitored, regulated railroad employees working in safety-sensitive positions might abuse alcohol and drugs while on-duty or just prior to coming on-duty. These actions could lead to increased numbers of—and perhaps more severe—accidents/incidents in which train crews, MOW employees, MECH employees, other railroad employees, passengers, and innocent bystanders are injured or killed. Particularly in the case of a catastrophic accident or an accident involving the release of other hazardous materials, the number of casualties and harm to the environment and surrounding communities could be great.

Without the required alcohol and drug training programs, supervisors would not be able to formally identify employees under the influence of alcohol or drugs and would not be able to immediately remove them from service. Consequently, the risk of additional rail accidents/incidents—with their corresponding injuries and death—would increase substantially.

Without this collection of information, FRA would have no way of determining whether laboratories, which conduct alcohol and drug testing, are following proper protocols and procedures. Thus, FRA would have no way of determining whether positive results affecting the careers and livelihoods of railroad employees were done fairly and accurately. Without this information, FRA would be unable to have confidence in laboratory results and so, too, would railroads, which rely on these laboratories to conduct an effective drug and alcohol prevention program. Without the required laboratory records, railroad employees would be denied a critical resource to mount a legal challenge for a positive test that was false, improperly or inaccurately processed, or invalid on medical/other grounds.

Without this collection of information, railroad employees and members of the public-at-large would be exposed to preventable dangers and would suffer as first-line casualties. Also, the collection of information is extremely helpful to FRA in determining whether railroads properly penalized an employee for a drug/alcohol infraction, and it is an invaluable resource to FRA, railroads, and other Federal agencies in determining accident causation or factors which contributed to an accident/incident.

Overall, this collection of information promotes and enhances FRA's comprehensive rail

safety program and contributes significantly to achieving both FRA's and DOT's mission, which is to enable safe transportation.

To be effective, a safety program requires timely information. Collection of this information less frequently would render it obsolete and meaningless, which would impair FRA's and railroads' safety programs. If future experience were to indicate that a lesser frequency is warranted, FRA would carefully review this part of its regulatory safety program and make necessary revisions accordingly.

7. Special circumstances.

Under section § 219.901(b), each railroad must maintain the following records for a minimum of five years:

- (1) A summary record or the individual files of each regulated employee's test results;
- (2) A copy of the annual report summarizing the results of its alcohol and drug misuse prevention program (if required to submit the report under § 219.800(a)).

Under (b)(1) above, FRA permits railroads to maintain either a summary record or an individual file of each regulated employee's alcohol/drug test results for five years. Previously, FRA had allowed only summary records, but smaller railroads may find it easier to maintain individual files rather than summary records.

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

8. Compliance with 5 CFR 1320.8.

FRA is publishing a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** January 8, 2021, titled Control of Alcohol and Drug Use: Coverage of Mechanical Employees and Miscellaneous Amendments soliciting comments on the proposed rule and its accompanying information collection requirements from the regulated community, the general public, and interested parties.⁸ FRA will respond to any comments received concerning the proposed rule and its associated collection of information at the final rule stage and in the final rule Supporting Justification.

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.

⁸ 86 FR 1418.

10. Assurance of confidentiality.

No assurances of confidentiality have been provided to affected respondents. FRA maintains a set of accident investigation files. FRA will not maintain a system of records that will permit the identification of records by an individual name. FRA does hold in confidence information concerning medically authorized use of controlled substances, pursuant to 5 U.S.C. 55 2 (b)(6), except where the information is deemed material to determination of accident causation. The random testing programs for alcohol and drugs require that results of random tests and related medical information be held in confidence, except as necessary to effect discipline and/or referral for rehabilitation.

11. Justification for any questions of a sensitive nature.

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 Drug and Alcohol Division.

The total annual burden hours, under the fourth column, is calculated by multiplying total annual responses by average time per responses. For example, 1 petition * 40 hours = 40 hours.

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, 40 hours * \$76 = \$3,040. FRA is including the

dollar equivalent cost for each of the itemized hours below using STB’s Full-Year Wage A&B data series as the basis for each cost calculation. For professional and administrative staff, the hourly wage rate is \$76 per hour (\$43.37 * 1.75 = \$76).

Note: The hourly wage rate of \$76 was used to calculate total cost equivalent for all items.

CFR Section	Respondent Universe	Total Annual Responses (A)	Average Time per Response (B)	Total Annual Burden Hours (C = A * B) ⁹	Total Annual Dollar Cost Equivalent (D = C * wage rate)	Section Analyses and Estimates
219.4 – Petition for recognition of a foreign railroad’s workplace testing program	1 railroad	1 petition	40 hours	40 hours	\$3,040	<p>A foreign railroad may petition the FRA Associate Administrator for Safety for recognition of a workplace testing program promulgated under the laws of its home country as a compatible alternative to the return-to-service requirements in Subpart B of this Part and the requirements of Subparts E, F, and G of this Part with respect to its employees whose primary reporting point is outside the United States but who enter the United States to perform train or dispatching service and with respect to its final applicants for, or its employees seeking to transfer for the first time to, duties involving such service.</p> <p>Each petition for recognition of a foreign workplace testing program must contain: (1) The name, title, address, and telephone number of the primary person to be contacted with regard to review of the petition; (2) The requirements of</p>

⁹ Totals may not add due to rounding

						<p>the foreign railroad workplace testing program to be considered for recognition; (3) Appropriate data or records, or both, for FRA to consider in determining whether the foreign railroad workplace testing program is equivalent to the minimum standards contained in this Part and provides at least an equivalent level of safety.</p> <p>FRA estimates that this it will receive approximately one (1) petition with the necessary documentation form. It is estimated that it will take approximately 40 hours to complete each petition.</p>
— Comments on petitions.	1 railroad	2 comments + 2 copies	15 minutes + 15 minutes	1 hour	\$76	FRA estimates that approximately two (2) comments (including copies) will be received under the above requirement. It is estimated that it will take approximately 30 minutes to complete each comment and send the comment to FRA.
219.7 – Waivers	734 railroads ¹⁰	3 waiver letters	90 minutes	5 hours	\$380	<p>A person subject to a requirement of this part may petition the FRA for a waiver of compliance with such requirement. Each petition for waiver under this section must be filed in a manner and contain the information required by Part 211 of this chapter. A petition for waiver of the Part 40 prohibition against stand down of an employee before the MRO has completed the verification must also comply with § 40.21 of this title.</p> <p>It is estimated that FRA will receive approximately three (3) waivers a year where a person has asked for relief from these requirements. FRA estimates that it will take approximately 90 minutes to prepare a letter and submit it to FRA.</p>

¹⁰ For the purposes of this table, the respondent universe of 734 railroads represents the estimated 30 contractor companies that would be newly subject to part 219 because they perform MECH activities on behalf of the 734 railroads.

219.11(d) and (h) – General conditions for chemical tests	FRA estimates that there will be zero (0) responses by railroads for additional testing. Consequently, there is no burden associated with this requirement.					
219.12(d) – RR Documentation on need to place employee on duty for follow-up tests	734 railroads	6 documents	30 minutes	3 hours	\$228	<p>A railroad must schedule follow-up tests under § 219.104 so that sufficient time is provided to complete a test within a covered employee’s hours-of-service limitations under 49 U.S.C. Ch. 211. If a railroad is having a difficult time scheduling the required number of follow-up tests because a covered employee’s work schedule is unpredictable, there is no prohibition against the railroad placing an employee (who is subject to being called to perform regulated service) on duty for the purpose of conducting the follow-up tests; except that an employee may be placed on duty for a follow-up alcohol test only if he or she is required to completely abstain from alcohol by a return-to-duty agreement, as provided by § 40.303(b) of this Title. A railroad must maintain documentation establishing the need to place the employee on duty for purpose of conducting the follow-up test and provide this documentation for review upon request of a FRA representative.</p> <p>FRA estimates that this will happen approximately six times a year and thus six (6) documents establishing the need to place employees on duty for the purpose of follow-up test will be completed by railroads under the above requirement. It is estimated that it will take approximately 30 minutes to complete each document.</p>
219.23(a) – Notification to employees for testing	171,410 employees ¹¹	75,154 notices	3 seconds + 30 seconds	204 hours	\$15,504	Whenever a breath or body fluid test is required of an employee under this Part, the railroad

¹¹ The respondent universe of 171,410 employees includes an estimated 25,410 MECH employees who would be newly subject to part 219.

						<p>(either through a railroad employee or a designated agent, such as a contracted collector) must provide clear and unequivocal written notice to the employee that the test is being required under FRA regulations and is being conducted under Federal authority. The railroad must also provide the employee clear and unequivocal written notice of the type of test that is required (e.g., reasonable suspicion, reasonable cause, random selection, follow-up, etc.).</p> <p>FRA estimates about 75,154 notices will be sent each year (75% verbal notifications and 25% written notifications) at an estimated effort of 3 seconds and 30 seconds each notice respectively.</p>
219.23 (c) and (e) – Educational materials	734 railroads	744 modified/revised educational documents	1 hour	744 hours	\$56,544	FRA will develop the required educational materials that regulated railroads and contractors will use to fulfill this requirement. However, these entities will modify/revise the FRA document to meet their own needs. It is estimated that it will take approximately one (1) hour to modify/revise the FRA educational materials and publish them.
— Copies of educational materials to employees	171,410 employees	22,901 copies of educational material documents	2 minutes	763 hours	\$57,988	FRA estimates that approximately 22,901 copies of the educational materials documents will be provided to regulated employees under the above requirement. It is estimated that it will take approximately two (2) minutes to copy the document and give it to each employee.
219.25(a) – Previous employer drug and alcohol checks – Employee testing records from previous employers and employee release of information (49 CFR Part 40.25(a) and (f))	25,410 MECH employees	10,164 reports	8 minutes	1,355 hours	\$102,980	As required by § 219.701(a) and (b), a railroad must conduct drug or alcohol testing conducted under this Part in compliance with Part 40 of this Title (except for post-accident toxicological testing under Subpart C of this Part). A railroad must, therefore, comply with § 40.25 by checking the alcohol and drug testing record of any direct

						<p>regulated employee (a regulated employee who is not employed by a contractor to the railroad) it intends to use for regulated service before the employee performs such service for the first time. A railroad is not required to check the alcohol and drug testing record of contractor employees performing regulated service on its behalf (the alcohol and drug testing record of those contractor employees must be checked by their direct employers).</p> <p>FRA estimates that approximately 10,164 reports will be made under this requirement. It is estimated that it will take approximately eight (8) minutes to complete each report.</p>
219.104(b) – Removal of employee from regulated service – Verbal notice + follow-up written letter	734 railroads	550 verbal notices + 550 letters	30 seconds + 2 minutes	23 hours	\$1,748	<p>Before or upon removing a regulated employee from regulated service under this section, a railroad must provide written notice to the employee of the reason for this action. A railroad may provide a regulated employee with an initial verbal notice so long as it provides a follow-up written notice to the employee as soon as possible. In addition to the reason for the employee’s withdrawal from regulated service, the written notice must also inform the regulated employee that he may not perform any DOT safety-sensitive duties until he completes the return-to-duty process of Part 40.</p> <p>FRA estimates that there will be approximately 550 instances annually where an employee has violated § 219.201 or § 219.202, and first an initial verbal notice and then a follow-up written notice will be provided to the employee under the above requirement. A form letter has been</p>

						<p>developed by railroads for this purpose. It is estimated that it will take approximately 30 seconds to complete each initial verbal notice and approximately two (2) minutes to complete each follow-up written notice/letter to the employee.</p> <p>Note: Burdens for § 219.107 are included in this section.</p>
219.105 – RR's duty to prevent violations –Documents provided to FRA after agency request regarding RR's alcohol and /or drug use education/prevention program.	734 railroads	3 document copies	5 minutes	.3 hours	\$23	<p>A railroad's alcohol and/or drug use education, prevention, identification, intervention, and rehabilitation programs and policies must be designed and implemented in such a way that they do not circumvent or otherwise undermine the requirements, standards, and policies of this Part. Upon FRA's request, a railroad must make available for FRA review all documents, data, or other records related to such programs and policies.</p> <p>It is estimated that it will take approximately five (5) minutes for the railroad to provide the necessary document to FRA.</p>
— RR Supervisor Rule G observations and records of regulated employees.	734 railroads	342,820 observation records	2 seconds	190 hours	\$14,440	<p>Each year, a railroad's supervisors must conduct and record a number of "Rule G" employee observations at a minimum equal to twice the railroad's total number of regulated employees. Each "Rule G" observation must be made sufficiently close to an individual regulated employee to determine whether the employee is displaying signs and symptoms indicative of a violation of the prohibitions of this Part. (New Requirement)</p> <p>FRA estimates that railroad supervisors will record approximately 342,820 "Rule G" employee observations annually under the above</p>

						requirement. It is estimated that it will take approximately two (2) seconds to record it.
219.201(c) – Report by RR concerning decision by person other than RR representative about whether an accident/incident qualifies for testing	734 railroads	2 reports	30 minutes	1 hour	\$76	<p>Upon specific request made to the railroad by the FRA, the railroad must provide a report describing any decision by a person other than the responding railroad representative with respect to whether an accident/incident qualifies for testing. This report must be affirmed by the decision maker, and provided to FRA within 72 hours of the request. The report must include the facts reported by the responding railroad representative, the basis upon which the testing decision was made, and the person making the decision.</p> <p>It is estimated that it will take 30 minutes to prepare the report, affirm it, and submit it to FRA.</p>
219.203/207 – Verbal notification and subsequent written report of failure to collect urine/blood specimens within four hours	734 railroads	80 notifications	2 minutes	2.7 hours	\$205	<p>A railroad must make every reasonable effort to assure that specimens are provided as soon as possible after the accident or incident, preferably within four hours. Specimens that are not collected within four hours after a qualifying accident or incident must be collected as soon thereafter as practicable. If a specimen is not collected within four hours of a qualifying event, the railroad must immediately notify the FRA Drug and Alcohol Program Manager at 202-493-6313 and provide detailed information regarding the failure (either verbally or via a voicemail). The railroad must also submit a concise, written narrative report of the reasons for such a delay to the FRA Drug and Alcohol Program Manager, 1200 New Jersey Ave. SE., Washington, DC 20590. The report must be submitted within 30 days after the expiration of the month during</p>

						<p>which the accident or incident occurred. This report may also be submitted via email to an email address provided by the FRA Drug and Alcohol Program Manager.</p> <p>It is estimated that it will take approximately two (2) minutes to complete each telephone notification.</p>
—Recall of employees for testing and Narrative Report Completion	734 railroads	4 reports	30 minutes	2 hours	\$152	<p>A railroad must immediately recall and place on duty a regulated employee for post-accident drug testing, if—</p> <p>The employee went off duty under normal railroad procedures before being contacted by a railroad supervisor and the railroad’s preliminary investigation indicates a clear probability that the employee played a role in the cause or severity of the accident/incident.</p> <p>A railroad must document its attempts to contact an employee subject to the recall provisions of this section. If a railroad is unable, as a result of the non-cooperation of an employee or for any other reason, to obtain a specimen(s) from an employee subject to mandatory recall within the 24-hour period after a qualifying event and to submit specimen(s) to FRA as required by this Subpart, the railroad must contact FRA and prepare a concise narrative report according to the requirements of paragraph (d)(1) of this section. The report must also document the railroad’s good faith attempts to contact and recall the employee.</p> <p>It is estimated that it will take approximately 30</p>

						minutes to complete each report.
—RR reference to part 219 requirements and FRA’s post-accident toxicological kit instructions in seeking to obtain facility cooperation	734 railroads	98 references	5 minutes	8 hours	\$608	In seeking the cooperation of a medical facility in obtaining a specimen under this Subpart, a railroad must, as necessary, make specific reference to the requirements of this Subpart and the instructions in FRA’s post-accident toxicological shipping kit. It is estimated that it will take approximately five (5) minutes to complete each reference.
—RR notification to National Response Center of injured employee unconscious or otherwise unable to give testing consent	734 railroads	2 phone calls	10 minutes	.3 hours	\$23	If an injured employee is unconscious or otherwise unable to consent to the procedure and the treating medical facility declines to obtain blood and/or urine specimens after having been informed of the requirements of this Subpart, the railroad must immediately notify the duty officer at the National Response Center to report that information. FRA estimates that each notification phone call will take 10 minutes.
—RR notification to local authority	734 railroads	5 phone calls	10 minutes	1 hour	\$61	In accordance with this section, the railroad must immediately notify the appropriate local authority (such as a coroner or medical examiner) of the fatality and the requirements of this subpart, making available the post-mortem shipping kit and requesting the local authority to assist in obtaining the necessary body fluid or tissue specimens. FRA estimates that each phone call to local authorities will take approximately 10 minutes.
219.205 – Post Accident Toxicological Testing Forms – Completion of FRA F 6180.73	734 railroads	105 forms	10 minutes	18 hours	\$1,368	In order to process the samples, analyze the significance of laboratory findings, and notify the railroads and employees of these results, it is necessary to obtain basic information concerning

						<p>the accident/incident and any treatment administered after the accident/incident. Accordingly, the railroad representative must complete the information required by Form FRA F 6180.73, entitled "Accident Information Required for Post-Accident Toxicological Testing."</p> <p>FRA estimates that it will take about 10 minutes for the railroad to complete Form FRA F 6180.73.</p>
—Specimen handling/collection – Completion of Form FRA F 6180.74 by train crew members after accident	171,410 employees	223 forms	15 minutes	56 hours	\$4,256	<p>Each employee subject to testing must cooperate in completion of the required information on Form FRA F 6180.74 (revised) for inclusion in the shipping kit and processing of the specimens. The railroad representative must ask an appropriate representative of the medical facility to complete the remaining portion of the information on each Form FRA F 6180.74.</p> <p>FRA estimates that it will take approximately 15 minutes for the employee to complete the necessary data on Form FRA F 6180.74</p>
—Completion of Form FRA 6180.75	734 railroads	7 forms	20 minutes	2 hours	\$152	<p>FRA requests that the person taking the specimens annotate the Control Form under "Supplemental Information" if additional toxicological analysis will be undertaken with respect to the fatality. FRA reports are available to the coroner or medical examiner on request.</p> <p>This form is part of the shipping kit that is sent to medical examiners, coroners, or pathologists after a rail accident/incident where there is a fatality. It is estimated that it takes approximately 20 minutes to do the necessary lab work and complete each form.</p>

—Documentation of chain of custody of sealed toxicology kit from medical facility to lab delivery	734 railroads	105 chain of custody documents	2 minutes	4 hours	\$304	<p>The railroad must maintain and document secure chain of custody of the kit(s) from release by the medical facility to its delivery for transportation, as described in Appendix C to this Part.</p> <p>FRA estimates that it will take approximately two (2) minutes to complete and maintain each chain of custody document.</p>
—RR/medical facility record of kit error	734 railroads	10 written records	2 minutes	.3 hours	\$23	<p>After a specimen kit or transportation box has been sealed, no entity other than the laboratory designated in Appendix B to this Part may open it. If the railroad or medical facility discovers an error with either the specimens or the chain of custody form after the kit or transportation box has been sealed, the railroad or medical facility must make a contemporaneous written record of that error and send it to the laboratory, preferably with the transportation box.</p> <p>It is estimated that it will take approximately two (2) minutes to complete each written record.</p>
219.206 – FRA access to breath test results	Breath tests are authorized, but are not a Federal requirement. Therefore, railroads do not have to do this. Over the past four years, no breath tests have been done. Consequently, there is no burden associated with this requirement.					
219.209(a) – Notification to NRC and FRA of accident/incident where samples were obtained	734 railroads	105 phone reports	2 minutes	4 hours	\$304	<p>A railroad that has experienced one or more events for which samples were obtained must provide prompt telephonic notification summarizing such events. Notification must immediately be provided to the duty officer at the National Response Center.</p> <p>It is estimated that it will take 2 minutes to make each call.</p>
219.211(b) – Results of post-accident toxicological testing	734 railroads	7 reports	15 minutes	2 hours	\$152	Results of post-accident toxicological testing under this Subpart are reported to the railroad's

to RR MRO and RR employee						MRO and the employee. It is estimated that it will take 15 minutes to complete and send each report.
—(c) MRO report to FRA of positive test for alcohol /drugs of surviving employee	734 railroads	6 reports	15 minutes	2 hours	\$152	With respect to a surviving employee, a test reported as positive for alcohol or a controlled substance by the designated laboratory must be reviewed by the railroad's MRO with respect to any claim of use or administration of medications (consistent with § 219.103) that could account for the laboratory findings. The MRO must promptly report the results of each review to FRA. It is estimated that it will take approximately 15 minutes for the railroad MRO to prepare the report and send it to FRA.
219.211(e) — E-mail or written response from employees to FRA regarding results of the toxicological analysis	<i>Even though about five tests will be positive every year, the test results have never been challenged (at least not over the past 15 years). Consequently, FRA believes zero (0) written responses will be made by railroad employees. Therefore, there is no burden associated with this requirement.</i>					
219.211(h) — Recordkeeping — post-accident toxicology tests	<i>Laboratories keep these records as part of their contract with FRA. Consequently, there is no burden associated with this requirement.</i>					
219.211(i) — Employee's request for a retest of split blood and urine samples	<i>FRA estimates that it will receive zero (0) letters requesting that a sample be retested. Consequently, there is no burden associated with this requirement.</i>					
219.213(a) & (b) — Notice of disqualification	<i>FRA believes that there will be zero (0) employees who refuse to cooperate in providing blood or urine samples following an accident or incident. Historically, this has never happened and so there will be no notices sent to employees. Consequently, there is no burden associated with this requirement.</i>					
219.303 – RR written	734 railroads	34 written	5 minutes	3 hours	\$228	The railroad must maintain written

documentation of observed signs/symptoms for reasonable suspicion determination		documents				documentation that specifically describes the observed signs and symptoms upon which determination that reasonable suspicion exists is based. This documentation must be completed promptly by the trained supervisor. It is estimated that it will take approximately five (5) minutes to complete each written document.
219.305 – RR written record stating reasons test was not promptly administered	734 railroads	11 records	2 minutes	.4 hours	\$30	If a test required by this Subpart is not administered within two hours following a determination made under this section, the railroad must prepare and maintain on file a record stating the reasons the test was not administered within that time period. If an alcohol or drug test required by this Subpart is not administered within eight hours of the determination made under this Subpart, the railroad must cease attempts to administer the test and must record the reasons for not administering the test. It is estimated that it will take approximately two (2) minutes to complete each record.
219.405 – RR documentation describing basis of reasonable cause testing	734 railroads	2,365 written documents	5 minutes	197 hours	\$14,972	Each railroad must maintain written documentation that specifically describes the basis for each reasonable cause test it performs under Federal authority. This documentation must be completed promptly by the responsible railroad supervisor. It is estimated that it will take approximately five (5) minutes to document each reasonable cause test. Note: Burdens for § 219.403 are included in this section.

219.407(b) – Prompt specimen collection time limitation exceeded – Record	734 railroads	17 records	15 minutes	4 hours	\$304	<p>If a test conducted pursuant to the authority of this Subpart is not administered within two hours following the observations upon which the testing decision is based, the railroad must prepare and maintain on file a record stating the reasons the test was not conducted within that time period. If an alcohol or drug test authorized by this Subpart is not administered within eight hours of the event under this Subpart, the railroad must cease attempts to administer the test and must record the reasons for not administering the test.</p> <p>It is estimated that it will take approximately 15 minutes to complete each record.</p>
219.501(e) – RR documentation of negative pre-employment drug tests	734 railroads	6,500 lists	30 seconds	54 hours	\$4,104	<p>Each railroad must ensure that each of its employees and each employee of a contractor who performs regulated service on the railroad’s behalf has a negative DOT pre-employment drug test on file with his or her employer. The railroad must also maintain documentation indicating that it had verified that the contractor employee had a negative DOT pre-employment drug test on file with his or her direct employer.</p> <p>It is estimated that it will take approximately 30 seconds to document each pre-employment negative drug test.</p>
219.603 – General requirements for random testing programs	<i>The burden for this requirement is included under that of §§ 219.605 and 219.623.</i>					
219.605(a) – Submission of random testing plan: New RRs	734 railroads	12 plans	1 hour	12 hours	\$912	<p>Each railroad must submit for review and approval a random testing plan meeting the requirements of § 219.607 and § 219.609 to FRA. A railroad commencing start-up operations must</p>

						<p>submit its plan no later than 30 days before its date of commencing operations.</p> <p>It is estimated that it will take approximately one (1) hour to prepare and submit each random testing plan.</p>
— Amendments to currently-approved FRA random testing plan	734 railroads	450 amendments	1 hour	450 hours	\$34,200	<p>A railroad may submit separate random testing plans for each category of regulated employees (as defined in § 219.5), combine all categories into a single plan, or amend its current FRA-approved plan to add additional categories of regulated employees, as defined by this Part.</p> <p>It is estimated that it will take each railroad approximately one (1) hour to amend its program and file the required notice with FRA.</p> <p>Note: Burdens for § 219.605(d) are included in this section.</p>
— Resubmitted random testing plans after notice of FRA disapproval of plan or amendment	734 railroads	57 resubmitted plans	30 minutes	29 hours	\$2,204	<p>FRA will notify a railroad in writing whether its plan is approved. If the plan is not approved because it does not meet the requirements of this Subpart, FRA will inform the railroad of its non-approval, with specific explanations of any required revisions. The railroad must resubmit its plan with the required revisions within 30 days of the date of FRA's written notice.</p> <p>It is estimated that it will take each railroad approximately 30 minutes to amend its plan with the required revisions and resubmit it to FRA.</p>
— Non-substantive amendment to an approved plan	734 railroads	300 amendments	15 minutes	75 hours	\$5,700	<p>Each railroad must provide a non-substantive amendment to an approved plan (such as the replacement or addition of service providers) to FRA.</p>

						It is estimated that it will take approximately 15 minutes to complete each non-substantive amendment and send it to FRA.
219.607/.609/.611/.1001/.1003, .1005, and .1007	<i>The burden for these requirements are included under that of § 219.605.</i>					
219.615 – Incomplete random testing collections – Documentation	734 railroads	2,333 documents	30 seconds	19 hours	\$1,444	<p>A railroad must use due diligence to ensure that a random testing collection is completed for each selected pool entry, unless it has an acceptable explanation for not conducting the collection. All reasons for incomplete collections must be fully documented and are subject to inspection by FRA upon request.</p> <p>It is estimated that it will take approximately 30 seconds to complete each incomplete testing document.</p>
219.617 – Employee Exclusion from random alcohol/drug testing after providing verifiable evidence from credible outside professional	734 railroads	6 documents	1 hour	6 hours	\$456	<p>A railroad may excuse an employee who has been notified of or her selection for random testing only if the employee can substantiate that a medical emergency involving the employee or an immediate family member (e.g. birth, death, or medical emergency) supersedes the requirement to complete the test. To be eligible for exclusion from random testing, the employee must provide verifiable documentation of the emergency situation from a credible outside professional within a reasonable period of time (e.g., a doctor, dentist, hospital, law enforcement officer, or school authority).</p> <p>It is estimated that it will take approximately one (1) hour to complete each employee medical document/railroad verification.</p>
219.623 – Random testing	734 railroads	52,153 records	1 minute	869 hours	\$66,044	Contractors and service agents performing

records						<p>random testing responsibilities under this Subpart must provide records required by this Subpart whenever requested by the contracting railroad or by FRA. A railroad remains responsible for maintaining records demonstrating that it is in compliance with the requirements of this Subpart.</p> <p>It is estimated that it will take approximately one (1) minute to maintain each record.</p> <p>Note: Burdens for §§ 219.613 and 219.901 are included in this section.</p>
219.800(b) – Annual reports – Management Information System (MIS) form for MECH employees (49 CFR Part 40.26 –MIS form submission)	38 railroads + 17 contractors	55 MIS reports	90 minutes	83 hours	\$6,308	<p>Railroads must use the MIS form and instructions as required by 49 CFR part 40 (at §40.25 and appendix H to part 40). Railroads may also use the electronic version of the MIS form provided by the DOT. The Administrator may designate means (e.g., electronic program transmitted via the Internet), other than hard-copy, for MIS form submission to FRA.</p> <p>Each MIS report will take approximately 90 minutes.</p>
219.1001 – Co-worker referral of employee who is unsafe to work with/in violation of Part 219 or railroad’s drug/alcohol rules	734 railroads	24 referrals	5 minutes	2 hours	\$152	<p>A railroad must adopt, publish and implement a coworker referral program.</p> <p>Each referral will take approximately five (5) minutes to complete.</p> <p>Note: Burdens for §§ 219.1003 are included in this section.</p>
Total	734 railroads + 171,410 employees	517,976 responses	N/A	5,235 hours	\$397,845	

Note: The burdens for §§ 219.12(c) 219.104(d), 219.105(a)(2) & (a)(3), 219.107(a) & (b), 219.203(a)(3)(ii), 219.300, 219.301, 219.302, 219.502, 219.503, 219.608, 219.615(g), 219.617(b)(2), 219.621, 219.701, and 219.903 are covered under DOT's Part 40 (OMB No. 2105-0529).

13. Estimate of total annual costs to respondents.

The respondent costs including PAT testing, pre-employment cause testing, random testing, and reasonable cause/suspicion testing costs. These costs come from the proposed inclusion of MECH employees into the scope of part 219 and existing costs associated with MOW employees being subject to part 219. The estimated costs to respondents are as follows:

MECH employees

FRA estimates that on average there will not be any additional PAT tests or PAT testing costs due to the inclusion of MECH employees to the scope of part 219. After the effective date of the final rule, all newly hired MECH employees would be required to undergo a pre-employment drug test (with a negative result) prior to performing MECH activities for the railroad. FRA estimates that the annual mechanical employee turnover rate is approximately 10 percent, or approximately 3,630 of 36,300 mechanical employees are hired each year.

However, about 30 percent of newly hired mechanical employees would be expected to hold a valid negative pre-employment drug test and would not be subject to the pre-employment testing requirement. Thus, each year, approximately 2,541 individuals would be subject to MECH employee pre-employment drug testing. A pre-employment drug test is estimated to cost \$60. Therefore, the annual pre-employment drug testing costs that would come from subjecting MECH employees to part 219 is \$152,460. [calculation: 2,541 (number of tests) x \$60 (testing cost) = \$152,460.]

After the effective date of the final rule, all newly hired MECH employees would be required to undergo a pre-employment drug test (with a negative result) prior to performing MECH activities for the railroad. FRA estimates that the annual mechanical employee turnover rate is approximately 10 percent, or approximately 3,630 of 36,300 mechanical employees are hired each year. However, about 30 percent of newly hired mechanical employees would be expected to hold a valid negative pre-employment drug test and would not be subject to the pre-employment testing requirement. Thus, each year, approximately 2,541 individuals would be subject to MECH employee pre-employment drug testing. A pre-employment drug test is estimated to cost \$60. Therefore, the annual pre-employment drug testing costs that would come from subjecting MECH employees to part 219 is \$152,460. [calculation: 2,541 (number of tests) x \$60 (testing cost) = \$152,460.]

The proposed rule would subject MECH employees to reasonable cause/suspicion testing. FRA estimates that MECH employees would be subject to approximately 203 reasonable cause/suspicion tests each year. The average cost of a reasonable cause/suspicion alcohol testing is \$222. Therefore, the annual cost of reasonable suspicion testing costs that would come from subjecting MECH employees to part 219 is \$45,066. [calculation: 203 (number of test) * \$222 (testing cost) = \$45,066].

The proposed rule would subject MECH employees to random testing costs. Approximately 25,410 mechanical employees are currently not subject to random testing requirements. The proposed rule includes a small business exception that would except about 1,103 MECH employees from random testing requirements. Therefore, the proposed rule would increase the number of new regulated employees subject to random testing by 24,307 MECH employees. Random testing costs include the cost of scheduling, administering, and processing the test and the cost of employee time. FRA estimates that fifty-five percent (55%) of random tests would be performed offsite and forty-five percent (45%) of random tests would be performed onsite. The estimated cost of an offsite random combination (alcohol and drug) test is \$136.15 and onsite random drug test is \$101.15. The estimated cost of an offsite random combination test is \$221.73 and onsite random drug test is \$186.73. FRA estimates the cost for subjecting MECH employees to random drug and alcohol tests based on the minimum required testing levels as specified under part 219. Therefore, random drug testing for MECH employees would result in an estimated cost of \$1,983,330 per year [Calculation =

(24,307 (MECH employees) * 0.25 (tested for drugs and alcohol) x 0.45 (on-site testing) * \$136.15 (cost of test) = \$455,042; (24,307 (MECH employees) * 0.25 (tested for drugs only) * 0.45 (on-site testing) * \$101.15 (cost of test) = \$276,598; (24,307 (MECH employees) * 0.25 (tested for drugs and alcohol) * 0.55 (clinic testing) * \$221.73 (cost of test) = \$741,069; (24,307 (MECH employees) * 0.25 (tested for drugs) * 0.55 (clinic testing) * \$186.73 (cost of test) = \$510,620; subtotal; \$1,983,330 total MECH employee annual random testing cost.]

Total Respondent Cost for MECH employees = Reasonable cause/suspicion testing (\$45,066) + Pre-employment testing (\$152,460) + Random cause testing (\$1,983,330) = \$2,180,856.

MOW employees

The PAT testing costs that comes from MOW employees being subject to part 219 includes government costs and railroad costs. The Department of Health and Human Services is responsible for the costs for the Custody and Control Forms. FRA is responsible for the costs of analyzing PAT tests. Railroads are responsible for the cost of shipping PAT test kits. The cost of shipping PAT test kits amounts to \$25 per box, and the medical review is another \$25 charged by the employer's MRO. FRA estimates that the respondent cost associated with MOW employees being subject to PAT testing requirements include 24 PAT test kits per year (24 impact accident and grade crossing events including covered service employees and MOW employees).

For the estimated annual 24 impact accident and grade crossing events, the cost of conducting the tests and shipping the boxes is estimated to be \$1,200 per year (24 test/kits x \$50). The total cost for shipping and medical review is \$1,200.

For the regulation covering MOW employees, FRA estimated that 209 reasonable cause/suspicion tests will be conducted each year. The average cost of a reasonable suspicion alcohol or drug test for a railroad, generally completed by a third-party contractor, is \$222. The annual cost for reasonable suspicion testing is \$46,398 (209 (number of tests) * \$222 (testing cost) = \$46,398).

FRA estimates the MOW employee turnover rate is approximately four percent (896 of 44,797 MOW employees). Based on a pre-employment drug test cost of \$60, the pre-employment drug testing cost of MOW employees is \$53,760 per year [calculation: 896 (number of tests) * \$60 (testing cost) = \$53,760].

Finally, there are the costs for random alcohol and drug testing of MOW employees. FRA estimates that approximately one-half, or 22,398 of the estimated 44,797 MOW employees were not subject to random testing requirements prior to the issuance of the MOW rule. FRA estimates that half of all random tests will be performed onsite and half at a clinic. FRA estimates the cost of subjecting MECH employees to random drug and

alcohol tests based on the minimum required testing levels as specified under part 219. Therefore, the estimate cost of random drug testing of MOW employees is \$1,855,591 per year.

[Calculation = (22,988 MOW employees * 0.25 tested for drugs and alcohol * 0.5 onsite testing * \$136.15 per combo test) = \$391,227; 22,988 MOW employees * 0.25 tested for drugs * 0.5 onsite testing * \$101.15 per drug test = \$290,655; (22,988 MOW employees * 0.5 not already being tested * 0.25 tested for drugs and alcohol * 0.5 clinic testing * \$221.73 per combo test) = \$637,141; 22,988 MOW employees * 0.25 tested for drugs * 0.5 clinic testing * \$186.73 per drug test = \$536,569; subtotal \$1,855,591. [Calculation = \$391,227 (onsite, combination testing) + \$290,655 (onsite, drug testing) + \$637,141 (offsite, combination testing) + \$536,569 (offsite, combination testing) = \$1,855,591]

Total Respondent Cost for MOW employees = \$1,200 (PAT testing) + \$46,398 (Reasonable cause/suspicion testing) + \$53,760 (Pre-employment testing) + \$1,855,591 (Random cause/suspicion testing) = \$1,956,949.

Total Respondent Cost = \$2,180,856 (Total Respondent Cost for MECH employee) + \$1,956,949 (Total Respondent Cost for MOW) = \$4,137,805.

The estimated cost to respondents listed above amounts to \$4,137,805, which is an increase of \$2,781,441 from the last approved submission (\$1,356,364). This increase is due to cost adjustments related to MOW employees and subjecting MECH employees to part 219 requirements.

14. Estimate of Cost to Federal Government.

FRA estimated that it takes approximately one (1) full-time equivalent employee (2,080 hours) at the GS-14 level to monitor FRA’s alcohol and drug program, which currently oversees covered service and MOW employees. FRA estimates that it will take approximately two-thirds of a full-time equivalent employee (1,400 hours) at the GS-14 level to expand FRA’s alcohol and drug program to include MECH employees. 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).

Pay Grade	Average Hourly Wage Rate	Hourly Compensation (Wages * 1.75 of Overhead Cost)	Total Hours	Total Annual Compensation
GS-14	\$65.88	\$115.29	\$3,480	\$401,209

In addition, FRA estimates that three (3) MOW-related PAT tests will be conducted each year. The average cost for PAT testing is \$1,200. Therefore, the annual cost for this testing is \$3,600.

Estimated Cost to Federal Government = \$404,808 (\$401,209 + \$3,600)

15. Explanation of program changes and adjustments.

This information collection request is a revision to the last approved submission. Currently, the OMB inventory for this collection of information shows a total burden of 3,132 hours and 427,661 responses, while this submission reflects a total burden of 5,235 hours and 517,976 responses. Overall, the burden has increased by 2,103 hours and 90,315 responses due to entirely program change.

Table for Program Change

CFR Section/Subject	Total Annual Responses			Total Annual Burden Hours		
	Previous Submission	Current Submission	Difference	Previous Submission	Current Submission	Difference
219.23(a) – Notification to employees for testing	63,000 notices	75,154 notices	12,154 notices	171 hours	204 hours	33 hours
219.12(d) – RR Documentation on need to place employee on duty for follow-up tests	5 documents	6 documents	1 document	3 hours	3 hours	0
219.23 (c) and (e) – Educational materials	500 modified/revised educational documents	744 modified/revised educational documents	244 modified/revised educational documents	500 hours	744 hours	244 hours
— Copies of educational materials to employees	19,506 copies of educational material documents	22,901 copies of educational material documents	3,395 copies of educational material documents	650 hours	763 hours	113 hours
219.25(a) – Previous employer drug and alcohol checks – Employee testing records from previous employers and employee release of information (49 CFR Part 40.25(a) and (f))	<i>The burden for this requirement was included under DOT's Part 40 (OMB No. 2105-0529).</i>	10,164 reports	10,164 reports	<i>The burden for this requirement was included under DOT's Part 40 (OMB No. 2105-0529).</i>	1,355 hours	1,355 hours

219.104(b) – Removal of employee from regulated service – Verbal notice + follow-up written letter	350 verbal notices + 350 letters	550 verbal notices + 550 letters	200 verbal notices + 200 letters	15 hours	23 hours	8 hours
219.105 – RR's duty to prevent violations - Documents provided to FRA after agency request regarding RR's alcohol and /or drug use education/prevention program.	2 document copies	3 document copies	1 document copy	.2 hours	.3 hours	.1 hours
— RR Supervisor Rule G observations and records of regulated employees.	292,000 observation records	342,820 observation records	50,820 observation records	162 hours	190 hours	28 hours
219.203/207 – Verbal notification and subsequent written report of failure to collect urine/blood specimens within four hours	80 notifications + 80 written reports	80 notifications	-80 written reports	9 hours	3 hours	-6 hours
— RR reference to part 219 requirements and FRA's post-accident toxicological kit instructions in seeking to obtain facility cooperation	97 references	98 references	1 reference	8 hours	8 hours	0
219.205 – Post Accident Toxicological Testing Forms – Completion of FRA F 6180.73	97 forms	105 forms	8 forms	16 hours	18 hours	2 hours
— Specimen handling/collection – Completion of Form FRA F 6180.74 by train crew members after accident	207 forms	223 forms	16 forms	52 hours	56 hours	4 hours

— Completion of Form FRA 6180.75	6 forms	7 forms	1 form	2 hours	2.3 hours	.3 hours
— Documentation of chain of custody of sealed toxicology kit from medical facility to lab delivery	97 chain of custody documents	105 chain of custody documents	8 chain of custody documents	3 hours	4 hours	1 hour
219.209(a) – Notification to NRC and FRA of accident/incident where samples were obtained	97 phone reports	105 phone reports	8 phone reports	3 hours	4 hours	1 hour
219.211(b) – Results of post-accident toxicological testing to RR MRO and RR employee	6 reports	7 reports	1 report	1.5 hours	1.8 hours	.3 hours
—(c) MRO report to FRA of positive test for alcohol /drugs of surviving employee	5 reports	6 reports	1 report	1 hour	2 hours	1 hour
219.303 – RR written documentation of observed signs/symptoms for reasonable suspicion determination	30 written documents	34 written documents	4 written documents	2.5 hours	2.8 hours	.3 hours
219.305 – RR written record stating reasons test was not promptly administered	10 records	11 records	1 record	.3 hours	.4 hours	.1 hours
219.405 – RR documentation describing basis of reasonable cause testing	2,160 written documents	2,365 written documents	205 written documents	180 hours	197 hours	17 hours
219.407(b) – Prompt specimen collection time limitation exceeded – Record	15 records	17 records	2 records	3.8 hours	4.3 hours	.5 hours
219.501(e) – RR documentation of negative pre-employment drug tests	6,100 lists	6,500 lists	400 lists	51 hours	54 hours	3 hours
219.605(a) – Submission of	5 plans	12 plans	7 plans	5 hours	12 hours	7 hours

random testing plan: New RRs						
— Amendments to currently-approved FRA random testing plan	450 amendments	450 amendments	0	450 hours	450 hours	0
— Resubmitted random testing plans after notice of FRA disapproval of plan or amendment	50 resubmitted plans	57 resubmitted plans	7 resubmitted plans	25 hours	29 hours	4 hours
— Non-substantive amendment to an approved plan	300 amendments	300 amendments	0	75 hours	75 hours	0
219.615 – Incomplete random testing collections – Documentation	2,000 documents	2,333 documents	333 documents	17 hours	19 hours	2 hours
219.617 – Employee Exclusion from random alcohol/drug testing after providing verifiable evidence from credible outside professional	5 documents	6 documents	1 document	5 hours	6 hours	1 hour
219.623 – Random testing records	40,000 records	52,153 records	12,153 records	667 hours	869 hours	202 hours
219.800(b) – Annual reports – Management Information System (MIS) form for MECH employees (49 CFR Part 40.26 —MIS form submission)	<i>The burden for this requirement was included under DOT's Part 40 (OMB No. 2105-0529).</i>	55 MIS reports	55 MIS reports	<i>The burden for this requirement was included under DOT's Part 40 (OMB No. 2105-0529).</i>	83 hours	83 hours
219-1001 – Co-worker referral of employee who is unsafe to work with/in violation of Part 219 or railroad's drug/alcohol rules	20 referrals	24 referrals	4 referrals	1.7 hours	2 hours	.3 hours

The cost to respondents has increased by \$2,781,441 from the last submission. This increase is due to cost adjustments (up \$600,585) related to MOW employees and subjecting MECH employees to part 219 requirements (up \$2,180,856). The previous

estimated cost to respondents amounted to \$1,356,364, while the present estimated cost to respondents amounts to \$4,137,805.

16. Publication of results of data collection.

The information concerning impairment in an accident setting, which is received pursuant to this program, will be published in a subset of data contained in FRA's annual Accident/Incident Bulletin. All of the remaining information obtained under this program is intended for use by the Office of Safety technical staff in its ongoing accident prevention activities or will be used by railroads in monitoring compliance by their employees with the prohibitions on alcohol and drug use.

17. Approval for not displaying the expiration date for OMB approval.

Once OMB approval is received, FRA will publish the approval number for these information collection requirements in the *Federal Register*.

18. Exception to certification statement.

No exceptions are taken at this time.