

11FEDERAL RAILROAD ADMINISTRATION
Railroad Operating Rules
(Title 49 Code of Federal Regulations Parts 217, 218, 229, and 299)
SUPPORTING JUSTIFICATION
OMB Control No. 2130-0035

Summary of Submission

- This submission is a revision to the last approved submission pertaining to Title 49 Code of Federal Regulations Parts 217, 218, 229, and 299 (Railroad Operating Rules), which was approved by OMB on April 9, 2021, which expires April 30, 2024.
- FRA is publishing a final rule revising Parts 217, 218, 229, and 299 titled Locomotive Image and Audio Recording Devices for Passenger Trains on October 12, 2023. See 88 FR 70722.
- Program change increased the burden by 2,252 hours and increased responses by 4,676.
- The answer to question number 12 itemizes all information collection requirements.
- The answer to question number 15 itemizes all adjustments.

1. Circumstances that make collection of the information necessary.

The Federal Railroad Safety Act of 1970, as codified at 49 U.S.C. 20103, provides that “[t]he Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.” The Secretary’s responsibility under this provision and the balance of the railroad safety laws have been delegated to the Federal Railroad Administrator.¹

FRA has monitored compliance with those requirements through appropriate inspections and audits, and when necessary, will be assessing appropriate civil penalties to assure compliance. This collection of information holds railroad management accountable for putting in place appropriate rules, instructions, and programs of operational tests. It also holds railroad supervisors accountable for doing their part to administer operational tests and establish appropriate expectations with respect to rules compliance. Finally, railroad employees are held accountable for complying with specified operating rules and have a right of challenge should they be instructed to take actions that, in good faith, they believe would violate those rules. That framework of accountability will promote good discipline, prevent train accidents, and reduce serious injuries to railroad employees.

¹ 49 CFR 1.89.

On Month Day, 2023, FRA published a final rule as mandated by section 11411 of the FAST Act, codified at 49 U.S.C. 20168 (the Statute), and under the agency’s general railroad safety rulemaking authority at 49 U.S.C. 20103.² The Statute requires FRA (as the Secretary of Transportation’s delegate)³ to promulgate regulations requiring each railroad carrier that provides regularly scheduled intercity rail passenger or commuter rail passenger transportation to the public to install inward- and outward-facing image recording devices in all controlling locomotives of passenger trains.⁴ This final rule implements the Statute’s requirements regarding such recording devices on “controlling” locomotives, which will normally be “lead” locomotives consistent with FRA’s existing regulations on locomotive event recorders. FRA issued a notice of proposed rulemaking (NPRM) on July 24, 2019, proposing inward- and outward-facing image recording devices be required on all lead passenger train locomotives.⁵

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

The information collected is used by FRA to enhance rail safety and reduce the number and severity of accidents/incidents and corresponding injuries, fatalities, and property damage caused by human factors in the daily operation of the nation’s railroads. Specifically, with this final rule, FRA is adding new requirements.

- Under new § 217.9(b), railroads that utilizes inward-facing locomotive image or in-cab audio recordings to conduct operational tests and inspections shall adopt and comply with a procedure in its operational tests and inspections program that ensures employees are randomly subject to such operational tests and inspections involving image or audio recordings.
- Under new § 229.22, railroads will be required to use a new Form FRA F 6180-49AP (Passenger Locomotive Inspection and Repair Record) to collect Federally required locomotive inspection, testing, and repair information for lead locomotives in commuter or intercity passenger train service, including information for locomotive recording devices. Form FRA F 6180-49AP, as the new counterpart to Form FRA F 6180-49A, will include a designated row for entering information about annual testing of locomotive image recording devices required under § 229.136, consistent with the designated row on Form FRA F 6180-49A (as well as new Form FRA F 6180-49AP) for entering information about required locomotive event recorder testing.
- Under new § 229.136(f)(1), railroads will be required to adopt, maintain, and

² The former Federal Railroad Safety Act of 1970, as codified at 49 U.S.C. 20103, provides that “[t]he Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.”

³ The Secretary’s responsibility under 49 U.S.C. 20103, 20168, and the balance of the railroad safety laws, is delegated to the Federal Railroad Administrator. 49 CFR 1.89.

⁴ A detailed discussion of the Statute’s requirements is provided in the NPRM (84 FR 35,712, 35,714-35,715).

⁵ 84 FR 35712.

comply with a chain-of-custody procedure governing the handling and release of any locomotive image or audio recordings accessed by railroad personnel.

- Under new § 229.136(f)(2)-(3), the railroad that was using the locomotive at the time of the accident shall, to the extent possible, and to the extent consistent with the safety of life and property, is required to preserve the data recorded by each such device for analysis by FRA or other Federal agencies.
- Under new § 229.136(g), railroads with locomotives in commuter or intercity passenger service are required to provide the FRA Associate Administrator for Railroad Safety and Chief Safety Officer with a description of the technical aspects of any locomotive image recording system installed to comply with this section.

Background on existing regulations:

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

Railroad officers must be qualified on the railroad's operational rules and testing program and procedures relevant to the testing the officer will conduct; and must receive appropriate field training, as necessary, to achieve proficiency, on each operational test that the officer is authorized to conduct. This information is used by railroads and FRA to ensure that all railroad testing officers on a particular railroad are properly qualified.

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

ensure and enforce compliance with this regulation and analyzes records of these tests to determine the extent these tests and inspections conform to the railroad's written program of operational tests and inspections.

Each railroad to which this Part applies must periodically instruct each affected employee on the meaning and application of the railroad's operating rules in accordance with a written program retained at its systems headquarters and at the division headquarters for each division where the employee is instructed. The railroads use this information to ensure that their employees are qualified and that they understand their duties and responsibilities vis-a-vis the railroad's current operating rules/any changes to their current operating rules. FRA inspectors examine the written program of new railroads' operating rules and amendments to existing railroads' operating rules to verify that their rules conform to Federal safety laws and regulations.

Affected railroads must retain written records documenting the instruction, examination, and training of each employee at their system headquarters and at the division headquarters for each division where the employee is assigned and must make these records available to representatives of FRA for inspection and copying during normal business hours. FRA inspectors review these records to ensure that railroad employees are qualified for the duties that they are performing. In the event of an accident/incident, FRA can quickly ascertain whether an unqualified employee performed safety-sensitive work.

Each employer is responsible for the training and compliance by its employees with the requirements of this subpart. Each employer must adopt and implement written procedures which guarantee each employee the right to challenge in good faith as to whether the procedures that will be applied to accomplish a specific task comply with the requirements of this subpart or any operating rule relied upon to fulfill the requirements of this subpart. Each employer's written procedures must provide for prompt and equitable resolution of challenges made in accordance with this part. Also, a copy of the written procedures must be provided to each affected employee and made available for inspection and copying by representatives of FRA during normal business hours. Information under this requirement is used by railroad officials and railroad employees to improve understanding of procedures and to enhance dialogue and clear communication between railroad officials and their employees in safely carrying out orders related to operating rules.

Rolling stock must not be shoved or pushed until the locomotive engineer has participated in a job briefing by the employee who will direct the move. This employee must also describe, as part of the job briefing, the means of communication to be used and how protection will be provided. This information is used to facilitate better communication between train employees and other employees who are directing shoving or pushing movements. In particular, employees know clearly the method of

communication to be used in such movements, whether radio, hand signals, or pitch and catch. Such briefings are designed and are used to ensure that employees working together understand the task they intend to perform and know exactly what role is expected of them and their colleagues.

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

Railroads are required to adopt operating rules which meet the minimum requirements set forth in this rule concerning hand-operated switches, including cross-over switches. Railroads must specify minimum requirements necessary for an adequate job briefing. Further, employees operating or verifying the position of a hand-operated switch must: (1) Conduct job briefings, before work is begun, each time a work plan is changed, and at completion of the work; (2) Be qualified on the railroad's operating rules relating to the operation of the switch; (3) Be individually responsible for the position of the switch in use; (4) Visually determine that switches are properly lined for the intended use; (5) Visually determine that points fit properly and the target, if so equipped, corresponds with the switch's position; (6) Before making movements in either direction over the switch, ensure the switch is secured from unintentional movement of the switch points; (7) Ensure that a switch is not operated while rolling and on-track maintenance-of-way equipment is standing or moving over the switch; and (8) Ensure that when not in use, each switch is locked, hooked or latched, if so equipped. There are also additional requirements for hand-operated main track switches.

The information required under these sections are used by FRA to ensure railroads highlight the importance of properly handling switches and to ensure that those employees performing such operations are fully qualified and knowledgeable regarding the tasks they are called on to perform. Frequent job briefings are used by railroad supervisors and employees to focus greater attention on properly setting and then reversing operating switches in order to keep track safe for trains and other railroad equipment.

3. Extent of automated information collection.

FRA strongly endorses and highly encourages the use of advanced information technology, wherever possible, to reduce burden. Accordingly, FRA has authorized each railroad to which this Part applies the option of retaining the information prescribed in

§ 217.9 (d) and § 217.9 (f) by means of by electronic recordkeeping. This includes the written program of operational tests and inspections as well as the records of the date, time, place, and result of individual operational tests and inspections performed in accordance with the railroad's operating rules program. This also includes the annual summary of operational tests and inspections.

FRA has authorized each railroad to which this Part applies the option of retaining by electronic recordkeeping its program for the periodic instruction of its operating rules under § 217.11, provided the stipulated requirements in § 217.9(e)(1) through (e)(5) are met. Also, the records of instruction, examination, and training required under (new) § 218.95(a)(5) can be retained electronically, as long as they are kept in accordance with §§ 217.9(g) and 217.11(c). Finally, under § 218.97(c)(1), railroad employees have the option of documenting electronically or in writing any protest to a direct order, and under § 218.97(d)(3), copies of records regarding good faith challenge verification decisions may be stored electronically if they are kept in accordance with the electronic recordkeeping standards set forth in § 217.9(g)(1) through (g)(5) of this chapter. Thus, approximately 43 percent of total responses may be kept electronically by railroads and their employees.

4. Efforts to identify duplication.

The information collected to FRA's knowledge is not duplicated anywhere. Similar data is not available from any other source.

5. Efforts to minimize the burden on small businesses.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) and Executive Order 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare a Final Regulatory Flexibility Analysis (FRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. As discussed below, FRA does not believe this final rule will have a significant economic impact on a substantial number of small entities.

Under section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121, FRA has issued a final policy statement that formally establishes "small entities" as railroads that meet the line-haulage revenue requirements of a Class III railroad, which is \$20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. See 49 CFR part 209, app. C.

This final rule will apply to railroad carriers that provide regularly scheduled intercity rail or commuter rail passenger transportation to the public. FRA notes that one passenger railroad is considered a small entity: the Hawkeye Express (operated by the Iowa

Northern Railway Company). All other passenger railroad operations in the United States are part of larger governmental entities whose service jurisdictions exceed 50,000 in population, and based on the definition, are not considered small entities. Hawkeye Express is a short-haul passenger railroad that does not provide commuter or intercity passenger service, and therefore will not be affected by the final rule. Additionally, the Hawkeye Express has not been in operation for at least the past two years. FRA does not believe that the provisions of the final rule will significantly impact a substantial number of small entities.

FRA invited all interested parties to submit comments, data, and information demonstrating the potential economic impact on any small entity that would result from the adoption of the final rule. During the NPRM comment period, FRA did not receive any comments from the public or stakeholders regarding the impact that the final rule would have on small entities.

Accordingly, the FRA Administrator hereby certifies this rule will not have a significant economic impact on a substantial number of small entities.

6. Impact of less frequent collection of information.

If this information were not collected or collected less frequently, railroad safety in the United States would be seriously jeopardized. Specifically, without the new information collected under § 229.136 regarding locomotive camera and audio recordings, FRA and NTSB investigators would lack critical data to review after an accident/incident to determine the circumstances and causes of that accident incident, particularly those involving train collisions or collisions between trains and motor vehicles at highway-rail grade crossings.

The collection of information promotes safety by providing FRA an opportunity to review and monitor railroads' operating rules and any amendments thereto to ensure full compliance with Federal laws and regulations. The collection of information promotes safety by providing FRA oversight to ensure that railroads conduct the required operational tests and inspections. Moreover, the collection of information promotes safety by ensuring that railroad workers are properly trained concerning the railroad's current operating rules, timetables, and timetable special instructions.

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

this collection of information enhances railroad safety by providing an additional layer of protection through the agency's close monitoring and full awareness of the railroads' current operating rules and practices.

If this information were not collected or collected less frequently, railroad safety in the United States may be negatively impacted. Specifically, without this collection of information, FRA would have no way of knowing whether each affected railroad's code of operating rules, timetables, and timetable special instructions and subsequent amendments thereto conform to Federal safety laws and regulations. Without this collection of information, FRA would not know whether railroads conducted the required operational tests and inspections and would not know whether these tests and inspections conform to the railroads' operating rules.

Without the required written records documenting the qualifications of each railroad testing officer, FRA would have no way to verify whether railroad testing officers are qualified on the railroad's operating rules in accordance with §217.11 of this part. FRA would also have no way to verify whether railroad testing officers are qualified on the operational testing program requirements and procedures relevant to the testing they will conduct, and whether they have received appropriate field training/retraining to achieve proficiency on each operational test that they are authorized to conduct.

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

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

Without the required good faith challenge procedures, railroad employees might be unsure how to comply with the requirements of this subpart or any operating rule relied upon to fulfill the requirements of this subpart. The good faith challenges foster better communication through dialogue between employees and railroad officials. An

employee who believes that a railroad officer has given the employee an order that does not comply with the railroad's own operating rules, or the operating rules required by this subpart, may initiate a good faith challenge.

Without the required job briefings for shoving or pushing rolling equipment, railroad employees might not understand or be clear on the task given to them and exactly what role is expected of them and their colleagues. The required job briefings cover the means of communication used to relay information (whether by radio, hand signals, or pitch and catch), and how protection will be provided.

In sum, this collection of information enhances accountability and responsibility on the part of railroad employees. It aims to reduce the number and severity of rail-related accidents/incidents. This collection of information furthers FRA's primary mission, which is to promote and enhance rail safety throughout the nation.

7. Special circumstances.

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

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

8. Compliance with 5 CFR 1320.8.

FRA is publishing a Final Rulemaking in the Federal Register on October 12, 2023, titled Locomotive Image and Audio Recording Devices for Passenger Trains.⁶

FRA received comments from fifteen different individuals or organizations in response to the notice of proposed rulemaking (NPRM) published on July 24, 2019.⁷ The details of those comments and FRA response are covered in the final rule document.

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.

⁶ 88 FR 70722

⁷ 84 FR 35712

10. Assurance of confidentiality.

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

Statute (49 U.S.C. 20168(h)) prohibits FRA from publicly disclosing recordings that FRA takes possession of after a railroad accident has occurred. Subsection (h) of the Statute, which is similar to the FOIA exemption for locomotive recordings applicable to the NTSB at 49 U.S.C. 1114(d), prohibits FRA from disclosing publicly locomotive audio and image recordings, or transcripts of communications by and among train employees or other operating employees, or between such operating employees and communication center employees, related to an accident investigated by FRA.⁸

Moreover, the Statute does not limit these protections to such recordings and transcripts of communications involving locomotives used only in intercity or commuter passenger train service. Section 20168(h)'s protections apply regardless of whether the underlying recording devices are required to be implemented by this final rule. Consequently, this subsection protects recordings and transcripts of communications involving locomotives on which the devices are voluntarily installed—notably, such locomotives used in freight service. In addition, FRA will apply these subsection (h) protections not just to recordings from inward-facing locomotive recording devices, but to recordings from outward-facing recording devices as well.

The Statute's prohibition on FRA disclosing publicly locomotive audio and image recordings or transcripts of oral communications among certain railroad employees addresses the concerns expressed by commenters. Therefore, FRA declines to adopt APTA's suggestion to "never" take possession of a locomotive recording. As stated in the NPRM, for the most serious of rail accidents, FRA anticipates that the NTSB will take possession of locomotive recordings, as they currently do, and that FRA will have the opportunity to view or listen to the recordings as a party to the investigation and in conducting its own parallel investigation under its separate statutory authority (49 U.S.C. 20107(a)(1)). However, in the vast majority of rail related accidents, the NTSB does not launch an investigation, and FRA is the sole Federal accident investigator. In these accidents or incidents, FRA normally attempts to view the recordings while they are still within the railroad's possession. However, if necessary, FRA has the statutory authority and obligation, as the Secretary's delegate to investigate railroad accidents, to take possession of locomotive image and audio recordings as part of an FRA accident investigation or investigation of a violation of a railroad safety law, regulation or order.⁹

⁸ Interested parties should note that FRA may make public a transcript or a written depiction of visual information that FRA deems relevant to the accident at the time other factual reports on the accident are released to the public.

⁹ See 49 U.S.C. 20107(c).

11. Justification for any questions of a sensitive nature.

There are no questions of a sensitive or private nature involving this regulation.

12. Estimate of burden hours for information collected.

The estimates for the respondent universe, annual responses, and average time per responses are based on the experience and expertise of FRA’s Office of Railroad Infrastructure and Mechanical Equipment.

CFR Section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A*B)	Total cost equivalent in U.S. dollar (D = C * ¹⁰ wage rates)	Wage rates ¹¹	PRA Estimates and Analyses
217.7(a) – Operating rules; filing and recordkeeping – Filing of code of operating rules, timetables, and timetable special instructions by Class Is, Class IIs, Amtrak, and commuter railroads with FRA	2 new railroads	2 documents	1 hour	2 hours	\$154	\$77	Each Class I railroad, each Class II railroad, and each railroad providing commuter service in a metropolitan or suburban area that commences operations after November 21, 1994, must file with the Administrator one copy of its code of operating rules, timetables, and timetable special instructions before it commences operations. The requirement to file rules, timetables and timetable special instructions applies only to any railroad that qualifies as a Class I railroad or Class II railroad, or any new commuter railroad that is formed. FRA estimates, after careful review, that it will take approximately one (1) hour to complete

¹⁰ Totals may not add up due to rounding.

¹¹ Throughout these tables the dollar equivalent cost is derived from the Surface Transportation Board’s Full Year Wage using employee group 200 (Professional & Administrative) wage rate of \$77 per hour (\$44.27* 1.75 overhead costs). The only exception is § 217.9(b)(3) and (c) which use group 100 (Executives, Officials, & Staff Assistants) wage rate of \$120 per hour (\$68.81 * 1.75 overhead costs).

							the required task.
—(b) Amendments to code of operating rules, timetables, and timetable special instructions by Class Is, Class IIs, Amtrak, and commuter railroads with FRA	53 railroads	312 revised documents	20 minutes	104 hours	\$8,008	\$77	<p>After November 21, 1994, each Class I railroad, each Class II railroad, Amtrak, and each railroad providing commuter service in a metropolitan or suburban area must file each new amendment to its code of operating rules, each new timetable, and each new timetable special instruction with the Federal Railroad Administrator within 30 days after it is issued.</p> <p>FRA estimates, after careful review, that each amendment will take approximately 20 minutes to revise.</p>
—(c) Class III and other railroads – Copy of code of operating rules, timetables, and timetable special instructions at system headquarters	2 new railroads	2 documents	1 hour	2 hours	\$154	\$77	<p>On or after November 21, 1994, each Class III railroad and any other railroad subject to this Part but not subject to paragraphs (a) and (b) of this section must keep one copy of its current code of operating rules, timetables, and timetable special instructions, and one copy of each subsequent amendment to its code of operating rules, each new timetable, and each new timetable special instruction at its system headquarters, and must make such records available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.</p> <p>The burden of the first part of this requirement applies only to new railroads that are formed annually. FRA is assuming that all Class III railroads in existence today already keep copies of their current code of operating rules, timetables, and timetable special instructions, and any subsequent amendments thereto at their system headquarters.</p>

							FRA estimates, after careful review, that it will take each railroad approximately one (1) hour to perform this task.
—(c) Class III and other railroads – Amendments to code of operating rules, timetables, and timetable special instructions at system headquarters	798 railroads	1,596 copies	15 minutes	399 hours	\$30,723	\$77	There are an additional Class III and others railroads subject to the second part of the above requirement. FRA estimates that each railroad will issue approximately two (2) amendments each year (1,596 amendments total). FRA estimates, after careful review, that each amendment will take approximately 15 minutes to complete.
217.9(a) – Requirement to conduct operational tests and inspections	The burden for this requirement is covered under § 217.9(d)(1)-(d)(2)						
—(b)(2) Program of operational tests and inspections; recordkeeping – Written records documenting qualification of each railroad testing officer	765 railroads	4,732 records	2 minutes	158 hours	\$12,166	\$77	Written records documenting qualification of each railroad testing officer must be retained at the railroad’s system headquarters and at the division headquarters for each division where the officer is assigned and must be made available to representatives of FRA for inspection and copying during normal business hours. FRA estimates, after careful review, that it will take approximately two (2) minutes to conduct to complete the record for each railroad testing officer.
—(b)(3) Development and adoption of procedure ensuring random selection of employees by railroads utilizing inward-facing locomotive and in-cab audio recordings to	36 railroads	12 adopted procedures	24 hours	288 hours	\$34,560	\$120	A passenger railroad that utilizes inward-facing locomotive image or in-cab audio recordings to conduct operational tests and inspections shall adopt and comply with a procedure in its operational tests and inspections program that ensures employees are randomly subject to such operational tests and inspections involving image or audio recordings.

conduct operational tests and inspections (New requirement)							FRA estimates, after careful review, that it will take approximately 24 hours to develop each procedure.
—(c) Written program of operational tests and inspections	2 new railroads	2 programs	10 hours	20 hours	\$2,400	\$120	<p>Every railroad must have a written program of operational tests and inspections in effect. New railroads must have such a program within 30 days of commencing rail operations.</p> <p>FRA estimates, after careful review, that it will take approximately 10 hours to prepare the written program and file copies with the system and division headquarters.</p>
—(d)(1) Records of operational tests/inspections	765 railroads	9,120,000 test records and updates	5 minutes	760,000 hours	\$58,520,000	\$77	<p>Each railroad to which this Part applies must keep a record of the date, time, place, and result of each operational test and inspection that was performed in accordance with its program. These records must be made available to representatives of the FRA for inspection and copying during normal business hours.</p> <p>FRA estimates that Class I railroads will perform approximately 7,800,000 tests a year; Class II railroads will perform approximately 1,000,000 tests a year; commuter railroads will perform approximately 260,000 tests a year; and the remaining 704 railroads or Class IIIs will perform approximately 60,000 tests a year.</p> <p>FRA estimates, after careful review, each record of the will take approximately five (5) minutes to upload into the system and maintenance.</p>
—(d)(2) Railroad copy of current program operational	53 railroads	159 program revisions	70 minutes	186 hours	\$14,322	\$77	Each railroad shall retain one copy of its current program for periodic performance of the operational tests and inspections required

tests/inspections – Amendments							<p>by paragraph (a) of this section and one copy of each subsequent amendment to such program. These records shall be made available to representatives of the FRA for inspection and copying during normal business hours. FRA anticipates that each railroad will issue approximately three (3) amendments per year (53 railroads times 3 = 159 program revisions annually).</p> <p>FRA estimates, after careful review, that it will take approximately 70 minutes to complete this task.</p>
—(e)(1)(i) Written quarterly review of operational tests/inspections by RRs other than passenger RRs	7 Class I railroads + Amtrak	32 reviews	2 hours	64 hours	\$4,928	\$77	<p>Each railroad to which this part applies shall conduct periodic reviews and analyses as provided in this paragraph and shall retain, at each division headquarters, where applicable, and at its system headquarters, one copy of the following written reviews, provided however that this requirement does not apply to either a railroad with less than 400,000 total employee work hours annually or a passenger railroad subject to paragraph (e)(2) of this section. FRA anticipates that approximately 32 written reviews (8 railroads times 4 quarterly reviews) will be conducted annually.</p> <p>FRA estimates, after careful review, that it will take approximately two (2) hours to complete each written review.</p>
—(e)(1)(ii) 6-month review of operational tests/inspections/ naming of officer	7 Class I railroads	14 reviews	2 hours	28 hours	\$2,156	\$77	<p>FRA estimates, after careful review, that about 14 reviews (7 railroads times two reviews) will be conducted annually, and it will take approximately two (2) hours to complete each review.</p>
—(e)(2) 6-month review by passenger	35 Amtrak +	70 reviews	2 hours	140 hours	\$10,780	\$77	<p>Not less than once every six months, the designated officer(s) of the National Railroad</p>

railroads designated officers of operational testing and inspection data	passenger railroads						<p>Passenger Corporation and of each railroad providing commuter service in a metropolitan or suburban area shall conduct periodic reviews and analyses as provided in this paragraph and shall retain, at each division headquarters, where applicable, and at its system headquarters, one copy of the reviews. Each such review shall be completed within 30 days of the close of the period.</p> <p>FRA anticipates 70 reviews (35 railroads times two reviews) will be conducted annually.</p> <p>FRA estimates, after careful review, that it will take approximately two (2) hours to complete each review.</p>
—(e)(3) Records of periodic reviews	50 railroads	116 records	1 minute	2 hours	\$154	\$77	<p>The records of periodic reviews required in paragraphs (e)(1) and (e)(2) of this section shall be retained for a period of one year after the end of the calendar year to which they relate and shall be made available to representatives of FRA for inspection and copying during normal business hours.</p> <p>FRA estimates, after careful review, that it will take approximately one (1) minute to keep each quarterly plan and each written review record.</p>
—(f)-(g) Annual summary of operational tests and inspections	50 railroads	71 summary records	1 hour	71 hours	\$5,467	\$77	<p>Each railroad to which this Part applies is authorized to retain by electronic recordkeeping the information prescribed in this section, provided that all of the following conditions are met: (1) thru (5) of this paragraph.</p> <p>FRA estimates, after careful review, that it will take about one (1) hour to complete each summary and corresponding record.</p>

<p>—(h)(1)(i) RR amended program of operational tests/inspections</p>	<p>765 railroads</p>	<p>6 revised programs</p>	<p>30 minutes</p>	<p>3 hours</p>	<p>\$231</p>	<p>\$77</p>	<p>Upon review of the program of operational tests and inspections required by this section, the Associate Administrator for Safety may, for cause stated, disapprove the program. The railroad has 35 days from the date of the written notification of such disapproval to: (i) Amend its program and submit it to the Associate Administrator for Safety for approval; or (ii) Provide a written response in support of the program to the Associate Administrator for Safety, who informs the railroad of FRA's final decision in writing. FRA estimates, after careful review, that it will take each railroad approximately 30 minutes to complete its supporting documents.</p>
<p>—(h)(1)(ii) FRA disapproval of RR program of operational tests/inspections and RR written response in support of program</p>	<p>765 railroads</p>	<p>6 supporting documents</p>	<p>1 hour</p>	<p>6 hours</p>	<p>\$462</p>	<p>\$77</p>	<p>Additionally, FRA estimates that about six (6) programs will need to be amended and it will take about one (1) hour to amend its program and submit the revised documents.</p>
<p>217.11(a) – RR periodic instruction of employees on operating rules -- New railroads</p>	<p>2 new railroads</p>	<p>2 written programs</p>	<p>8 hours</p>	<p>16 hours</p>	<p>\$1,232</p>	<p>\$77</p>	<p>To ensure that each railroad employee whose activities are governed by the railroad's operating rules understands those rules, each railroad to which this part applies shall periodically instruct each such employee on the meaning and application of the railroad's operating rules in accordance with a written program retained at its system headquarters and at the division headquarters for each division where the employee is instructed. (Note: Existing railroads already comply with this requirement.)</p> <p>FRA estimates, after careful review, that it will take each railroad approximately eight (8) hours to develop an operating rules instruction</p>

							program.
217.11(b) – RR copy of program amendments for periodic instruction of employees	765 railroads	110 modified written programs	30 minutes	55 hours	\$4,235	\$77	<p>On or after November 21, 1994, or 30 days before commencing operations, whichever is later, each railroad to which this part applies shall retain one copy of its current program for the periodic instruction of its employees as required by paragraph (a) of this section and one copy of each subsequent amendment to that program. These records shall be made available to representatives of the Federal Railroad Administration for inspection and copying during normal business hours.</p> <p>FRA estimates, after careful review, that it will take approximately 30 minutes to prepare an amendment and retain one copy of the amendment at each division and/or system headquarters.</p>
218.95(a)(1) - (a4)	The burden for this requirement is covered under § 217.11.						
—(a)(5) - (b) – Instruction, training, examination – Employee completed test records	765 railroads	85,600 employee records	1 minute	1,427 hours	\$109,879	\$77	<p>Written records documenting successful completion of instruction, training, and examination of each employee required by this subpart shall be retained at its system headquarters and at the division headquarters for each division where the employee is assigned for three calendar years after the end of the calendar year to which they relate and made available to representatives of the FRA for inspection and copying during normal business hours.</p> <p>The required instruction, examination, and training takes place every other year or every three years in some cases, FRA estimates, after careful review, that that it will take approximately one (1) minute to complete each</p>

							record.
—(c)(1) Amended RR program of instruction, testing, examination	765 railroads	5 amended programs	30 minutes	3 hours	\$231	\$77	<p>Upon review of the program of instruction, training, and examination required by this section, the Associate Administrator for Safety may, for cause stated, disapprove the program. If the Associate Administrator for Safety disapproves the program, the railroad has 35 days from the date of the written notification of such disapproval to amend its program and submit it to the Associate Administrator for Safety for approval or provide a written response in support of its program.</p> <p>FRA estimates, after careful review, that it will take approximately 30 minutes to complete each response.</p>
218.97(a) – Employee Responsibility	The burden for this requirement is covered under § 218.97(c).						
—(b) General procedures for the training of and compliance by its employees with the requirements of this subpart	Railroads have already fulfilled the above requirement.						
—(b)(3) General procedures for affected employees	The burden for this requirement is covered under § 217.11 above.						
—(b)(4) RR copy of good faith challenge procedures	765 railroads	4,732 copies to new employees	6 minutes	473 hours	\$36,421	\$77	<p>A copy of the current written procedures shall be provided to each affected employee and made available for inspection and copying by representatives of the FRA during normal business hours.</p> <p>FRA estimates, after careful review, that it will take approximately six (6) minutes to make each copy and distribute to each employee.</p>

218.97(c)(1) and (4) – RR employee good faith challenge of RR directive	10 workers	10 good faith challenges	15 minutes	3 hours	\$231	\$77	<p>A written procedure for good faith challenges of railroads’ directives as listed under (1) thru (4) of this section.</p> <p>FRA estimates, after careful review, that it will take approximately 15 minutes to make a good faith challenge.</p>
—(c)(5) RR resolution of employee good faith challenge	2 new railroads	5 responses	15 minutes	1 hour	\$77	\$77	<p>Provide that a challenge may be resolved by: (i) A railroad or employer officer's acceptance of the employee's request; (ii) An employee's acceptance of the directive; (iii) An employee's agreement to a compromise solution acceptable to the person issuing the directive; or (iv) As further determined under paragraph (d) of this section.</p> <p>FRA estimates, after careful review, that it will take approximately 15 minutes for each type of resolution.</p>
—(d)(1) RR officer immediate review of unresolved good faith challenge	2 new railroads	3 reviews	30 minutes	2 hours	\$154	\$77	<p>In the event that the challenge cannot be resolved because the person issuing the directive determines that the employee's challenge has not been made in good faith or there is no reasonable alternative to the direct order, the written procedures shall: (1) Provide for immediate review by at least one officer of the railroad or employer, except for each railroad with less than 400,000 total employee work hours annually.</p> <p>FRA estimates, after careful review, that it will take approximately 30 minutes to conduct each review.</p>

—(d)(2) RR officer explanation to employee that Federal law may protect against employer retaliation for refusal to carry out work if employee refusal is a lawful, good faith act	2 new railroads	3 answers	15 minutes	1 hour	\$77	\$77	(2) Provide that if the officer making the railroad's or employer's final decision concludes that the challenged directive would not cause the employee to violate any requirement of this subpart or the railroad's or employer's operating rule relied upon to fulfill the requirements of this subpart and directs the employee to perform the challenged directive, the officer shall further explain to the employee that Federal law may protect the employee from retaliation if the employee refuses to do the work and if the employee's refusal is a lawful, good faith act; FRA estimates, after careful review, that it will take approximately 15 minutes to convey this information.
—(d)(3) Employee written/electronic protest of employer final decision	2 new railroads	3 written protests	15 minutes	1 hour	\$77	\$77	(3) Provide that the employee be afforded an opportunity to document electronically or in writing any protest to the railroads or employer's final decision before the tour of duty is complete. The employee must be afforded the opportunity to retain a copy of the protest. FRA estimates, after careful review, that it will take approximately 15 minutes to document each protest of final decision.
—(d)(3) Employee copy of protest	2 new railroads	3 copies	1 minute	0.1 hour	\$8	\$77	FRA estimates, after careful review, that it will take approximately one (1) minute for each employee copy.
—(d)(4) Employer further review of good faith challenge after employee written request	2 new railroads	2 further reviews	15 minutes	0.5 hours	\$39	\$77	(4) Provide that the employee, upon written request, has a right to further review by a designated railroad or employer officer, within 30 days after the expiration of the month during which the challenge occurred, for the purpose of verifying the proper application of the

							regulation, law, procedure or rule in question. FRA estimates, after careful review, that each further review will take approximately 15 minutes to complete.
—(d)(4) RR verification decision to employee in writing	2 new railroads	2 decisions	15 minutes	0.5 hours	\$39	\$77	FRA estimates, after careful review, that it will take approximately 15 minutes for each written verification.
—(e) Recordkeeping and record retention – Employer’s copy of written procedures at division headquarters	765 railroads	765 copies	5 minutes	64 hours	\$4,928	\$77	Recordkeeping and record retention. (1) A copy of the written procedures required by this section shall be retained at the employer or railroad’s system headquarters and at each division headquarters and made available to representatives of the FRA for inspection and copying during normal business hours. FRA estimates, after careful review, that it will take approximately five (5) minutes to complete each copy.
—(e)(2) Copy of any written good faith challenge verification decision, made in accordance with paragraph (d)(4)	The burden for this requirement is covered under § 218.97(e).						
218.99(a) – Shoving or pushing movement – RR operating rule complying with section’s requirements	2 new railroads	2 rule modifications	1 hour	2 hours	\$154	\$77	Each railroad must adopt and comply with an operating rule which complies with the requirements of this section. This one-time requirement has already been fulfilled by the railroads. However, FRA estimates, after careful review, that it will take approximately one (1) hour to modify the operating rule.
—(b)(1) General movement	The is a routine requirement and covered by the economic cost.						

requirements—Job briefing							
—(b)(3) Point Protection	The is a routine requirement and covered by the economic cost.						
—(c) Additional requirements for remote control movements	The is a routine requirement and covered by the economic cost.						
—(d) Remote control zone, exception to track is clear requirements	The is a routine requirement and covered by the economic cost.						
—(e)(4) Operational exceptions— Dispatcher authorized train movements	The is a routine requirement and covered by the economic cost.						
—(e)(4)(iv)(B) Operational exceptions	Railroads already have designated employees of theirs who perform this function as part of their normal routine duties. .						
—(e)(4)(v)(C) Operational exceptions	Crewmembers already perform this function as part of their normal routine duties.						
—(e)(5) Operational exceptions	This one-time requirement has already been fulfilled by all the Class I railroads						
218.101(a)-(c) – Leaving equipment in the clear – Operating rule that complies with this section	2 new railroads	2 rule modifications	30 minutes	1 hour	\$77	\$77	Each railroad must implement procedures that enable employees to identify clearance points and a means to identify locations where clearance points will not permit a person to safely ride on the side of a car. This one-time requirement has already been fulfilled by the railroads. However, FRA estimates, after careful review, that it will take approximately one (1) hour for each modification.
218.103(a)(1) – Hand-Operated Switches – Operating Rule that Complies with this	2 new railroads	2 rule modifications	30 minutes	1 hour	\$77	\$77	Each railroad shall adopt and comply with an operating rule which complies with the requirements of this section. When any person including, but not limited to, each railroad,

section							<p>railroad officer, supervisor, and employee violates any requirement of an operating rule which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.</p> <p>FRA estimates, after care review, that it will take approximately one (1) hour to develop such procedures and amend its operating rule.</p>
—(a)(2) Job briefings – Minimum requirements specified in operating rules	The is a routine requirement and covered by the economic cost						
—(b)-(c) Job briefings	The is a routine requirement and covered by the economic cost						
218.105(a) – Additional operational requirements for hand-operated main track switches	The burden for this requirement is covered under § 218.103(a)						
—(b) Designating switch position	The normal position of a hand-operated main track switch is designated by the railroad in writing in its operating rules, and the rest of the requirement is routine and covered by the economic cost.						
—(c)(1) Additional job briefing requirements for hand-operated main track switches	This is a routine requirement and covered by the economic cost.						
—(c)(2) Employee reports and switch position conveyances	This is a routine requirement and covered by the economic cost						
—(d) Releasing Authority Limits	This is a routine requirement and covered by the economic cost						
218.107 – Additional operational requirements for hand-	The burden for this requirement is covered under § 218.103(a) above.						

operated crossover switches							
218.108(c/d) – Acknowledgements and verbal confirmations	This is a routine requirement and covered by the economic cost.						
218.109 – Job briefings	This is a routine requirement and covered by the economic cost						
220.21(b) – Railroad Operating Rules; Radio Communications; Recordkeeping	Railroads usually prepare their radio rules in conjunction with their operating rules as required by 49 CFR § 217.7.						
229.22 – Locomotive image recording systems – Form FRA F 6180-49AP (New requirements) ¹²	36 railroads	4,500 passenger locomotives	15 minutes	1,125 hours	\$86,625	\$77	Each locomotive subject to the requirements of § 229.136 shall use and maintain Form FRA F 6180-49AP in accordance with the requirements of § 229.136, except that Form FRA F 6180-49A may fulfill any requirement in § 229.136 with respect to Form FRA F 6180-49AP. FRA estimates, after careful review, that it will take each railroad approximately 15 minutes to complete each form.
229.136(f)(1) – Passenger railroads adoption and development of chain of custody (c of c) procedures (New requirements)	36 railroads	12 c of c procedures	48 hours	576 hours	\$44,352	\$77	Each railroad with locomotives in commuter or intercity passenger service subject to this section shall adopt, maintain, and comply with a chain-of-custody procedure governing the handling and the release of the locomotive image recordings described in paragraphs (a) through (c) of this section and any locomotive audio recordings. FRA estimates, after careful review, that it will take each railroad approximately 48 hours to develop each procedure.
—(f)(2)-(3) Passenger	36	140	10	23 hours	\$1,771	\$77	If any locomotive in commuter or intercity

¹² The burdens for §§ 229.21, 229.136(a)(3), (e)(2), and 229.139(i) are covered under § 229.22.

railroad preservation of accident/incident data of image and audio recording system from locomotive using such system at time of accident/incident (includes voluntary freight railroads & restates previous requirement under section 229.135(e)) (New requirements)	railroads	saved recordings	minutes				passenger service equipped with an image or audio recording system is involved in an accident/incident that must be reported to FRA under part 225 of this chapter, the railroad that was using the locomotive at the time of the accident shall, to the extent possible, and to the extent consistent with the safety of life and property, preserve the data recorded by each such device for analysis by FRA or other Federal agencies. FRA estimates, after careful review, that it will take approximately 10 minutes to save each recording.
—(g) Locomotive image recording system approval process – Description of technical aspects any locomotive image recording system to FRA for approval (New requirements)	36 railroads	12 descriptions/ plans	20 hours	240 hours	\$18,480	\$77	Each railroad with locomotives in commuter or intercity passenger service subject to this section must provide the FRA Associate Administrator for Railroad Safety and Chief Safety Officer with a description of the technical aspects of any locomotive image recording system installed to comply with this section. The required description must be submitted via electronic mail to the following e-mail address: FRAMP&E@dot.gov . FRA estimates, after careful review, that it will take approximately 20 hours to compile each plan.
Total	765 railroads	9,223,047 responses		765,488 hours	\$58,955,829		

13. Estimate of total annual costs to respondents

There are no additional costs to respondents outside of the economic impact cost covered under the regulatory impact

analysis (RIA) accompanying this final rule.

14. Estimate of Cost to Federal Government.

FRA estimates that approximately 55 hours (at the GS- 14step 5 level) are spent reviewing and processing the respondents’ submissions. This excludes time spent during routine compliance and enforcement activities. To calculate the government administrative cost, the 2022 Office of Personnel Management wage rates were used. Wages were considered at the burdened wage rate by multiplying the hourly wage rate of \$68.55 by an overhead cost of 75 percent (68.55 x 1.75= \$119.96). Multiplying 55 hours by \$119.96 equates to \$6,597.80 in annualized costs.

In addition to the existing government cost, in this finally rule, about 40 hours are spent annually reviewing the reports and an additional 15 hours in processing the respondents' submissions. This excludes time spent doing routine compliance and enforcement activities. Multiplying 40 hours times the estimated \$100 per hour (includes 75% overhead) equals \$4,000, which is the cost of reviewing the reports. An additional \$1,500 is spent annually for processing the reports [\$100 per hour (includes 75% overhead)]. Total annual cost to the Federal government is **\$5,500.**

15. Explanation of program changes and adjustments.

This is a revision to a current collection of information. The current OMB inventory for this information collection shows a total burden of 763,236 hours and 9,218,371 responses, while the requesting inventory estimates a total burden of 765,488 hours and 9,223,047 responses. The burden for this submission increased by 2,252 hours and increased by 4,676 responses. The increase in burden is solely due to a program change (final rule). There is no change in cost to respondents from the previously approved submission.

CFR Section	Total Annual Responses			Total Annual Burden Hours			PRA Estimates and Analyses
	Previous Submission	Current Submission	Difference	Previous Submission	Current Submission	Difference	
—(b)(3) Development and adoption of procedure ensuring	0	12 adopted procedures (24 hours)	12.00	0	288.00 hours	288.00 hours	This is a new requirement. FRA previously overestimated the number of responses and the

random selection of employees by railroads utilizing inward-facing locomotive and in-cab audio recordings to conduct operational tests and inspections (New requirement)							amount of time it would take to complete each plan. The number of responses is based on the number of railroads (e.g., 36 divided by 3 years = 12) that will submit their plans.
229.136(a)(3)—Locomotive image recording systems—Form FRA F 6180.49AP (New requirements)	0	4,500 passenger locomotives (15 minutes)	4,500.00	0	1,125.00 hours	1,125.00 hours	This is a new requirement.
—(f)(1) Passenger railroads adoption and development of chain of custody (c of c) procedures (New requirements)	0	12 c of c procedures (48 hours)	12.00	0	576.00 hours	576.00 hours	This is a new requirement. An update was made in the number of responses—from 20 procedures to 12.3 procedures per year. This updated figure is based on the number of railroads that will submit their procedures in the next 3 years.
—(f)(2) Passenger railroad preservation of accident/incident data of image and audio recording system from locomotive using such system at time of accident/incident (includes voluntary freight railroads & restates previous requirement under section 229.135(e)) (New requirements)	0	140 saved recordings (10 minutes)	140.00	0	23.33 hours	23.33 hours	This is a new requirement. FRA had previously overestimated the amount of time it would take to preserve the recordings in the NPRM. The new estimate is more accurate and only accounts for the PRA portion of this requirement.
—(g) Locomotive image	0	12 written	12.00	0	240.00	240.00	This is a new requirement. FRA

recording system approval process – Written description of technical aspects any locomotive image recording system to FRA for approval (New requirements)		descriptions/plans (20 hours)			hours	hours	previously overestimated the number of responses and the amount of time it would take to complete each plan. The number of responses is based on the number of railroads (e.g., 36 divided by 3 years = 12) that will submit their plans.
Total	9,218,371 responses	9,223,047 responses	4,676 responses	763,236 hours	765,488 hours	2,252 hours	

16. Publication of results of data collection.

FRA has no plans to publish this information.

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

FRA is not seeking approval to not display the expiration date.

18. Exception to certification statement.

No exceptions are taken at this time.

