

FEDERAL RAILROAD ADMINISTRATION
Filing of Dedicated Cars
(Title 49 Code of Federal Regulations Part 215)
SUPPORTING JUSTIFICATION
RIN 2130-AC94; OMB Control No. 2130-0502

Summary of Submission

- This submission is a revision to the last approved submission pertaining to Title 49 Code of Federal Regulations Part 215 (Filing of Dedicated Cars or Part 215), that was approved by the Office of Management and Budget (OMB) April 24, 2023, which expires April 30, 2026.
- The Federal Railroad Administration (hereafter “FRA” or “the Agency”) is publishing a Notice of Proposed Rulemaking (NPRM) revising Part 215 titled Amendments to the Freight Car Safety Standards Implementing the SAFE TRAINS Act in the Federal Register on Month Day, 2023. See 88 FR 85561. FRA plans to respond to any comments received in response to the NPRM in the final rule.
- Program change increased the burden by 46 hours and increased responses by 35.
- The answer to question number 12 itemizes all information collection requirements.

1. Circumstances that make collection of the information necessary.

On October 16, 1970, Congress enacted Public Law 91-458 (now 49 U.S.C. 20103), the Federal Railroad Safety Act of 1970. This Act gave the Secretary of Transportation the authority to prescribe as necessary appropriate rules, regulations, orders, and standards for all areas of railroad safety.

On March 23, 1978, the President issued Executive Order 12044. In that Order, he directed all executive agencies to adopt procedures to improve future regulations.

On December 31, 1979, FRA issued the final notice of rulemaking relative to revision of Title 49 Code of Federal Regulations (49 CFR) Part 215, *Railroad Freight Car Safety Standards*. Title 49 CFR part 215 contains freight car safety standards, including conditions for freight cars in dedicated service. “Dedicated service” means the exclusive assignment of railroad cars to the transportation of freight between specified points under the conditions listed in 49 CFR 215.5(d), including stenciling, or otherwise displaying, in clear legible letters on each side of the car body, the words “Dedicated Service.” The railroad must notify FRA in writing that the cars are to be operated in dedicated service.

On November 15, 2021, President Joseph R. Biden signed the SAFE TRAINS Act¹. The SAFE TRAINS Act (the Act) places certain restrictions on newly built freight cars placed into service in the United States (U.S.), including: (1) limiting content that originates from a country of concern (COC) or is sourced from a state-owned enterprise (SOE); and (2) prohibiting the use of sensitive technology that originates from a COC or SOE. The Secretary of Transportation conferred FRA with the responsibility of implementing the Act.

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

This proposed regulation outlined in 49 CFR part 215, subpart E, would help implement the Act by codifying a process for FRA to monitor and enforce compliance with the Act. To carry out the Act's certification requirement, FRA is proposing to require railroad freight car manufacturers to certify annually by electronic submission to FRA that each freight car complies with the Act before it operates on the U.S. general railroad system of transportation. The certification would be required to identify each car being offered for operation and include the manufacturer's name and the name of the individual responsible for certifying compliance with the Act. In addition, the manufacturers would be required to maintain all records showing information to support certification, including content calculations, and such records would be made available to FRA upon request. Additionally, under the existing regulation, the railroad must notify FRA in writing when cars are to be operated in dedicated service. FRA reviews the information collected to determine if the equipment is safe to operate and if the operation qualifies for dedicated service.

This proposed rule includes additional paperwork requirements, specified in question 12 of this document.

3. Extent of automated information collection.

FRA strongly encourages the use of advanced information technology, wherever feasible, to reduce the burden on respondents. FRA estimates that approximately 95 percent of all responses will be collected electronically.

4. Efforts to identify duplication.

The information collection requirements, to our knowledge, are not duplicated anywhere. Similar data is not available from any other source.

¹ Part of the Infrastructure Investment and Jobs Act (IIJA), the Stopping America's Foreign Enemies Through Rail and Infrastructure National Security Act (or the SAFE TRAINS Act). Sec. 22425, Pub. L. 117-58, 135 Stat. 752 (Nov. 15, 2021) (codified at 49 U.S.C. 20171)

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

The Regulatory Flexibility Act of 1980 requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary of Transportation certifies that the rule would not have a significant economic impact on a substantial number of small entities. “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 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.²

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Under that authority, FRA has published a proposed statement of agency policy that formally establishes “small entities” or “small businesses” as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1-1, which is \$20 million or less in inflation-adjusted annual revenues,³ and commuter railroads or small Governmental jurisdictions that serve populations of 50,000 or less. See 68 FR 24891 (May 9, 2003) (codified at Appendix C to 49 CFR part 209). FRA is using this definition for the proposed rule.

Freight car manufacturers are classified within NAICS 336510 *Railroad rolling stock manufacturing*.⁴ The SBA size standard for NAICS 336510 is 1,500 employees.⁵

Based on FRA subject matter expert input, three of the six freight car manufacturers are considered small entities, this analysis concludes that the three small freight car manufacturers currently comply with the proposed requirements in this rule related to content and sensitive technology limitations. Therefore, FRA concludes that the provisions related to content and sensitive technology limitations would not create a cost or benefit that would be borne by the three small freight car manufacturers.

² 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.

³ The Class III railroad revenue threshold is \$40.4 million or less, for 2021. (The Class II railroad threshold is between \$40.4 million and \$900 million.) Surface Transportation Board (STB), available at <https://www.stb.gov/news-communications/latest-news/pr-21-16/>.

⁴ This NAICS classification comprises establishments primarily engaged in one or more of the following: (1) manufacturing and/or rebuilding locomotives, locomotive frames, and parts; (2) manufacturing railroad, street, and rapid transit cars and car equipment for operation on rails for freight and passenger service; and (3) manufacturing rail layers, ballast distributors, rail tamping equipment, and other railway track maintenance equipment. <https://www.census.gov/naics/?input=336510&year=2022&details=336510>

⁵ “Table of Small Business Size Standard”, U.S. Small Business Administration, Size Standards effective as of March 17, 2023, p. 16 of 41 <https://www.sba.gov/document/support-table-size-standards>.

With respect to the three small freight car manufacturers, the proposed rule would create compliance costs⁶ related to: (1) affirming newly designed freight cars comply with the Act; (2) annual certification of compliance letter; and (3) participation in a periodic audit of freight car manufacturers. FRA estimates that each year small manufacturers introduce approximately six unique freight car design builds. For each of these introductions, the small manufacturer would need to inform FRA that the new designs are compliant with the Act. FRA also estimates that each year FRA would audit one small entity.

Each of the three small freight car manufacturers have annual revenue exceeding \$1 million. Therefore, issuing the proposed rule would result in an annual burden for each of the small freight car manufacturers of less than one-tenth of one percent of its annual revenue. FRA has not determined whether this proposed rule would have a significant economic impact on a substantial number of small entities. FRA welcomes public comment on these findings and conclusion.

6. Impact of less frequent collection of information.

The collection of information under this proposed rule aids FRA's comprehensive safety program and serves to promote safe rail travel and the safe operation of trains for both the traveling public and railroad workers. For instance, without the information collected:

Under §215.403(a)(1)(ii) FRA proposes that railroad freight car manufacturers maintain all records showing information support certification, including content calculations, and such records would be made available to FRA upon request. Specifically, this collection of information provides FRA access to the information on sensitive technology being placed on freight cars, which if coming from a COC or SOE could potentially compromise rail safety.

Issuing the proposed rule would protect the U.S. rail system from risks that come from manufacturing freight cars with sensitive technology and technological components, necessary to the functionality of the sensitive technology, from a COC or SOE such as potential vulnerabilities in information security. As such, this proposed rule would mitigate potential issues related to compromised national security and corporate espionage.

7. Special circumstances.

This is not a routine submission that must be regularly submitted to FRA. The requirement must be performed only when the carrier has a need to use cars under the provisions as set forth in Part 215.5(d). All information collection requirements are in compliance with this section.

⁶ These compliance cost estimates follow from the estimates in "VI. A. Executive Orders 12866."

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

FRA published a Notice of Proposed Rulemaking (NPRM) in the Federal Register December 8, 2023, titled Amendments to the Freight Car Safety Standards Implementing the SAFE TRAINS Act soliciting comments on the proposed rule and its accompanying information collection requirements from the regulated community, the general public, and interested parties.⁷ 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.

10. Assurance of confidentiality.

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

11. Justification for any questions of a sensitive nature.

This information collection does not contain any data of a personal or sensitive nature.

⁷ 88 FR 85561.

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 Safety.

CFR Section	Respondent Universe	Total Annual Responses (A)	Average Time per Response (B)	Total Annual Burden hours (C=A*B)	Total cost ⁸ equivalent in U.S. dollar (D = C * wage rates)	Section analyses and estimates
215.5(d)(6)—Dedicated Service— Notification to FRA	784 railroads	4 notifications	1 hour	4.00 hours	\$311.64	Railroads are required to notify FRA in writing that the cars are to be operated in dedicated service. After careful review, FRA estimates it will take approximately 1 hour to prepare each notification.
215.403(a)(1)—Certification of Compliance— Manufacturers to electronically certify to FRA that the cars comply with the requirements of this subpart (New requirement)	6 manufacturers	35 Certifications	1.25 hours	43.75 hours	\$2,786.00	Prior to providing any cars for operation on the United States general railroad system of transportation, each freight car manufacturer shall electronically certify to FRA that the cars comply with the 49 U.S.C. 20171. After careful review, FRA estimates that it will take approximately 1.25 hours for each affirmation.
—(a)(1)(ii) Records and such records shall be made available to FRA upon request (New requirement)	6 manufacturers	0.33 Reports	6 hours	1.98 hours	\$126.09	This collection is labor intensive which is reflected in the high average time per response. Total annual burden however is low due to FRA projecting that such a request for records would be a rare occurrence because of strict penalties associated with non-compliance.

⁸ The dollar equivalent cost is derived from U.S. Bureau of Labor Statistics, 2021 NAICS 336500 – Railroad Rolling Stock Manufacturing; 13-1000 Business Operations Specialist median wage \$63.68 (\$36.39 x 1.75 overhead costs). The one exception is section 215.5 (d)(6), which is derived from the Surface Transportation Board’s Full Year Wage 2021, group 200 Professional and Administrative of \$77.91 (\$44.52 x 1.75 overhead costs).

						After careful review, FRA estimates that it will take approximately 6 hours to make these records available.
Total ⁹	784 railroads + 6 manufacturers	39 notifications	N/A	50 hours	\$3,224	

13. Estimate of total annual costs to respondents.

There is no additional cost to the respondents outside of the burden hours accounted for under question number 12.

14. Estimate of Cost to Federal Government.

FRA estimates that approximately two hours (at the GS-14 level, step 5) are spent processing the respondents' notifications. This excludes time spent during routine compliance and enforcement activities. To calculate the government administrative cost, the 2023 Office of Personnel Management wage rates were used. Wages were considered at the burdened wage rate by multiplying the actual wage rate by an overhead cost of 75 percent (or times 1.75). Multiplying 2 times \$71.88 per hour times 1.75 (75 percent for overhead) equals \$252 (rounded) in annualized costs.

⁹ Totals may not add up due to rounding.

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 4 hours and 4 responses, while the requesting inventory estimates a total burden of 50 hours and 39 responses. Overall, the burden for this submission has increased by 46 hours and increased by 35 responses. The increase in burden is solely due to a program change.

CFR Section	Total Annual Responses			Total Annual Burden Hours		
	Previous Submission (Average Time per Response)	Current Submission (Average Time per Response)	Difference	Previous Submission	Current Submission	Difference
215.403(a)(1)—Certification of Compliance— Manufacturers to electronically certify to FRA that the cars comply with the requirements of this subpart (New requirement)	0	35.00 certifications (1 hour)	35.00 affirmations	0	43.75 hours	43.75 hours
—(a)(1)(ii) Records and such records shall be made available to FRA upon request (New requirement)	0	0.33 reports (6 hours)	0.33 reports	0	1.98 hours	1.98 hours
Total	4 notifications	39 notifications	35 notifications	0	50 hours	46 hours

16. Publication of results of data collection.

FRA plans no tabulation, or publication of responses.

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.