

**SUPPORTING JUSTIFICATION**  
**Qualification and Certification of Locomotive Engineers**  
**OMB No. 2130-0533**

**1. EXPLAIN THE CIRCUMSTANCES THAT MAKE THE COLLECTION OF INFORMATION NECESSARY. IDENTIFY ANY LEGAL OR ADMINISTRATIVE REQUIREMENTS THAT NECESSITATE THE COLLECTION. ATTACH A COPY OF THE APPROPRIATE SECTION OF EACH STATUTE AND REGULATION MANDATING OR AUTHORIZING THE COLLECTION OF INFORMATION.**

Summary

- This final rule information collection submission is a revision to the previously approved NPRM Part 240 submission and includes two new paperwork requirements and associated burden specified under § 240.127 and § 240.129.
- FRA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** regarding its Qualification and Certification of Locomotive Engineer; Miscellaneous Revisions on December 31, 2008. See 73 FR 80349. OMB approved the NPRM paperwork submission on April 24, 2009, for the maximum time period.
- The total number of burden hours requested for this submission is **278,682 hours**.
- The increase in burden from the last approved submission is **4,144 hours**.
- Total **program changes** amount to/increased the burden by **3,710 hours** (for new scoring system requirements under § 240.127(f), and § 240.129(g).
- Total **adjustments** (404 hours for § 240.127(e), § 240.129(f), and 30 hours for § § 240.201/221/223/301) amount to/increased the burden by **434 hours**.
- **\*\*The answer to question number 12 itemizes the hourly burden associated with each requirement of this rule (See pp. 14-63).**
- **\*\*The answer to question number 15 itemizes the adjustments under § 240.127(e) and § 240.129(f), and under §§ 240.201/221/223/301 and program changes under § 240.127(f) and § 240.129(g).**

Pursuant to the Rail Safety Improvement Act of 1988, Pub. L. No. 100-342, § 4, 102 Stat. 624, 625-27 (June 22, 1988) (re-codified at 49 U.S.C. 20135), Congress conferred on the Secretary of the United States Department of Transportation the authority to establish a locomotive engineer qualification licensing or certification program. The Secretary of

Transportation delegated this authority to the Federal Railroad Administrator. 49 CFR § 1.49(m). In 1991, FRA implemented this statutory provision by issuing the Locomotive Engineers Rule. 56 FR 28228, 28254 (June 19, 1991) (codified at 49 CFR part 240).

FRA does not test or certify engineers itself. Rather, the regulation requires each railroad to adopt training and certification programs that meet minimum requirements. See, e.g., 49 CFR § § 240.1 and 240.101. These requirements include, inter alia, a determination “that the person has demonstrated . . . the skills to safely operate locomotives or locomotives and trains, including the proper application of the railroad’s rules and practices for the safe operation of locomotives or trains, in the most demanding class or type of service that the person will be permitted to perform.” 49 CFR § 240.211(a). If a candidate passes the certification program, a railroad may issue a certificate to that person for any of the following classes of service: train service engineer, locomotive servicing engineer, or student engineer. 49 CFR § 240.107(b). Train service engineers may operate locomotives singly or in multiples, and may move them with or without cars coupled to them. Locomotive servicing engineers may operate locomotives singly or in multiples but may not move them with cars coupled to them. Student engineers may operate only under direct and immediate supervision of an instructor engineer. 49 CFR § 240.107(c). A railroad may impose additional conditions or operational restrictions on the service an engineer may perform provided those conditions or restrictions are not inconsistent with part 240. 49 CFR § 240.107(d).

A certified engineer must undergo periodic retesting and shall have his or her certification revoked if he or she demonstrates a failure to comply with those railroad rules and practices deemed essential for the safe operation of trains specified in § 240.117(e). Section 240.117(e) provides that a certification may only be revoked for six specific types of operating rules and operating practices violations: (1) Failure to control a locomotive or train in accordance with a signal indication; (2) Failure to adhere to limitations concerning train speed when the speed exceeds the maximum authorized limit by at least 10 miles per hour or a violation of restricted speed that causes a reportable accident or incident under part 225 of this chapter; (3) Failure to adhere to certain federally required procedures for the safe use of train or engine brakes; (4) Occupying a main track or a segment of main track without proper authority or permission; (5) Failure to comply with prohibitions against tampering with locomotive mounted safety devices or knowingly operating a train with an unauthorized disabled safety device; or (6) Incidents of noncompliance with the regulations regarding the use or possession of alcohol and drugs. 49 CFR § 240.117(e); see also 49 CFR §§ 219.101 and 240.119(c).

Due to the potentially severe consequences resulting from the denial of certification, the denial of recertification, or the revocation of a certificate (e.g., making it more difficult to be certified by another U.S. railroad under § 240.225 or being temporarily banned from operating a locomotive or train for any U.S. railroad), FRA regulations require each

railroad to make a deliberative decision and provide considerable FRA oversight. For example, if a railroad determines that a locomotive engineer's certificate should be revoked for violating an operating rule specified in § 240.117(e), the railroad is required to suspend the engineer's certificate pending a revocation determination. 49 CFR § 240.307(b)(1). Prior to or upon suspending an engineer's certificate, a railroad shall provide notice of the reason for the suspension and an opportunity for a hearing before a presiding officer other than the investigating officer. 49 CFR § 240.307(b)(2). Although a person may waive the opportunity for a hearing, the waiver must be in writing and meet certain safeguards to ensure the waiver is made voluntarily and with knowledge and understanding of the person's rights. 49 CFR § 240.307(f).

If adversely affected by a railroad's decision regarding revocation, an engineer may petition FRA's Locomotive Engineer Review Board (LERB) to review the decision. 49 CFR § 240.401. Following the LERB's decision, the adversely affected party (either the engineer or the railroad) has the right to request an administrative proceeding provided for by FRA 49 CFR § 240.407. The FRA hearing is a *de novo* hearing to find the relevant facts and determine the correct application of part 240 to those facts. Any party aggrieved by the presiding officer's decision may file an appeal with the Administrator. 49 CFR § 240.411.

In the case of a prospective engineer who is denied certification or a certified engineer who is denied re-certification when the currently held certificate lapses, the railroad must notify the person "of information known to the railroad that forms the basis for denying the person certification [or re-certification] and provide the person a reasonable opportunity to explain or rebut that adverse information in writing prior to denying certification." 49 CFR § 240.219(a). The person may then seek review of an adverse certification decision through a similar dispute resolution process that FRA affords to an engineer who has had his or her certificate revoked. 49 CFR § § 240.401-240.411.

With respect to deficiencies in an engineer's performance that do not rise to the level of revocation, each railroad retains a measure of discretion to fashion, within the context of existing and future collective bargaining agreements, appropriate responses, including disciplinary sanctions, to those types of deficiencies. *See, e.g.*, 49 CFR § 240.5(d). However, in exercising that discretion, at least one Class I railroad has handled engineer performance deficiencies in a manner not contemplated by FRA when it implemented the engineer certification regulation and not used by the industry generally. The practices of this railroad include re-classifying the certificates of some of its train service engineers to student engineer certificates when it discovers deficiencies in the engineers' performance not specifically identified in § 240.117(e). The reason for the re-classifications appears to be related to a deficiency in performance skills, but not a failure to pass a skills performance test required for re-certification. In some instances, subsequent skills performance tests were provided and the newly re-classified student engineers that failed those tests were denied certification and were terminated by the railroad.

The consequences of that Class I railroad's policy -- *inter alia*, engineers being required to exchange their train service certificates for student engineer certificates based on deficiencies not specified in § 240.117(e) without receiving a hearing pursuant to § 240.307 and the potential for disparate treatment of similarly situated engineers -- were simply not anticipated by FRA when it originally issued the regulations contained in part 240. However, because the regulation is silent with respect to re-classifications, FRA has interpreted the plain language of the existing regulation to permit re-classifications despite these unanticipated consequences. Consequently, FRA believes that modification of the existing regulation is necessary to address this issue.

In an effort to eliminate the unanticipated consequences created by unilateral re-classification of an engineer's certificate and to clarify the regulations regarding revocations, the final rule makes three specific changes to part 240. First, FRA prohibits the practice of re-classifying any type of engineer's certification to a more restrictive class of certificate or to a student engineer certificate during the period in which the certification is valid. Second, FRA clarifies part 240 to ensure that all parties understand that revocation of an engineer's certificate may only occur for the reasons specified in the regulation. Third, FRA requires each railroad to identify the actions it will take in the event that a person fails a skills performance test or that the railroad finds deficiencies with an engineer's performance during an operational monitoring observation or unannounced compliance test and requires each railroad to describe the scoring system it will use during performance skill tests, operational monitoring observations and unannounced compliance tests. These revisions are not only consistent with the overall original intent of part 240, but are also consistent with current industry practice concerning re-classification and revocation.

**2. INDICATE HOW, BY WHOM, AND FOR WHAT PURPOSE THE INFORMATION IS TO BE USED. EXCEPT FOR A NEW COLLECTION, INDICATE THE ACTUAL USE THE AGENCY HAS MADE OF THE INFORMATION RECEIVED FROM THE CURRENT COLLECTION.**

The additional information collected under § 240.127 and § 240.129 will be used by FRA to ensure that railroads comply with these two new requirements and include in their locomotive engineers certification programs the actions that they will take in the event that a person fails an initial examination/re-examination of his/her performance skills test in accordance with § 240.211 or in the event that the railroad finds deficiencies with a locomotive engineer's performance during an operational monitoring observation or unannounced compliance test administered in accordance with the procedures required under § 240.303. FRA will also review railroad amended certification programs to ensure that railroads comply with the new final rule requirements under § 240.127 and § 240.129 to describe the scoring system they use during a skills test administered in accordance with the procedures required under § 240.211 and during an operational monitoring observation or unannounced compliance test administered in accordance with the procedures required under § 240.303. FRA then will carefully review these amended

certification programs to ensure that scoring criteria are transparent and that the pass/fail determinations are arrived at consistently throughout each railroad.

The additional information collected under the two new requirements will be also used by railroad employees as a written reference to understand their railroad's locomotive engineer certification program, in particular the railroad's policies and procedures relating to certification/re-certification, the consequences of failing an initial examination/re-examination of a performance skills test in accordance with § 240.211 or of having the railroad find deficiencies with an engineer's performance during an operational monitoring observation or during an unannounced compliance test in accordance with the procedures required under § 240.303, and their rights/recourse regarding revocation of certification.

Under § 240.107, railroads shall not re-classify the certification of any type of certified engineer to a more restrictive class of certificate or a student engineer certificate during the period in which the certification is valid. FRA will review the railroads' certification programs to ensure that railroads adhere to this provision and use only proper criteria for designation of classes of service.

The information collected is used by railroads to evaluate the qualifications of individuals seeking to be a locomotive engineer, or a designated supervisor of locomotive engineers in order to ensure that qualified individuals operate locomotives and monitor the performance of locomotive engineers. Railroads examine and evaluate information pertaining to each locomotive engineer candidate's fitness in four distinct areas: (a) eligibility to be a locomotive operator based on prior conduct; (b) physical fitness to perform the task in terms of visual and hearing acuity; (c) possession of adequate knowledge to perform the task as demonstrated by successfully passing examinations; and (d) possession of adequate operational skills as demonstrated by successfully passing performance skills tests.

In particular, prior to certifying or re-certifying any person as an engineer for any class of service, each railroad reviews the available State licensing, National Driver Register (NDR), and other data concerning the person's motor vehicle driving record to determine if it reveals one or more incidents of unsafe conduct, i.e., a conviction for or state action for cause to cancel, revoke, suspend, or deny a motor vehicle driver's license for either of the following violations: (i) operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance; and (ii) refusal to undergo such testing as is required by State law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance.

Also, prior to certifying or re-certifying any person as a locomotive engineer for any class of service, each railroad reviews vision and hearing acuity data to determine that the person has visual acuity and hearing acuity; conducts written tests and reviews the results

to determine that the person has demonstrated sufficient knowledge of the railroad's rules and practices for the safe operation of trains as prescribed in its certification program; and conducts performance tests and evaluates the outcomes to determine that the person has demonstrated the necessary skills to safely operate locomotives, and/or locomotives and trains in the most demanding class or type of service that the person will be permitted to perform.

The information collected is also used by FRA. FRA reviews waiver requests from railroads to determine whether it is safe and in the public interest to grant an exception to any of the requirements of this rule. The agency uses this information to ensure that railroads employ and properly train qualified individuals as locomotive engineers and designated supervisors of locomotive engineers. The agency carefully scrutinizes the information collected to verify that railroads have established the required certification programs for locomotive engineers and that these programs fully conform to the standards specified in the regulation.

Moreover, FRA uses the information collected to confirm that railroads fulfill their oversight responsibilities by conducting the required written, performance, and annual operational monitoring observation tests of locomotive engineers and by conducting the formal annual reviews and analyses regarding the administration of their programs for responding to detected instances of poor safety conduct by certified locomotive engineers during the prior calendar year.

Finally, FRA uses -- and has used -- the required records of each locomotive engineer kept by railroads to assist it and other Federal agencies during accident investigations. Also, the required records have proven an extremely valuable resource in aiding FRA when making determinations of appeals of improper denial or revocation of certification brought by locomotive engineers.

In sum, this collection of information is an essential and invaluable tool that assists FRA in its primary mission, namely promoting and ensuring railroad safety throughout the United States.

**3. DESCRIBE WHETHER, AND TO WHAT EXTENT, THE COLLECTION OF INFORMATION INVOLVES THE USE OF AUTOMATED, ELECTRONIC, MECHANICAL, OR OTHER TECHNOLOGICAL COLLECTION TECHNIQUES OR OTHER FORMS OF INFORMATION TECHNOLOGY, E.G. PERMITTING ELECTRONIC SUBMISSION OF RESPONSES, AND THE BASIS FOR THE DECISION FOR ADOPTING THIS MEANS OF COLLECTION. ALSO DESCRIBE ANY CONSIDERATION OF USING INFORMATION TECHNOLOGY TO REDUCE BURDEN.**

FRA strongly endorses and highly encourages the use of the latest information technology, wherever feasible, by the railroad industry to reduce burden. For many

years, FRA has encouraged the use of advanced information technology, particularly electronic records. In keeping with its longstanding practice and with the requirements of the Government Paperwork Elimination Act (GPEA), railroads have the opportunity under the rule to seek approval from FRA for maintaining their list of designated certified locomotive engineers and their list of designated supervisors of locomotive engineers (DSLs) electronically (§§ 240.201/240.223). Railroads are presently keeping these lists electronically. Also, under the rule, railroads may seek FRA approval for electronic recordkeeping concerning the required records for each certified locomotive engineer that contains the pertinent information railroads relied on in making their qualifications determinations (§ 240.215). Railroads are also presently keeping these records electronically. Additionally, FRA permits the required documentation recording the results of locomotive engineers written tests under § 240.209/213 and the performance tests under § 240.211/213 to be kept electronically, and railroads are currently doing so. Furthermore, FRA permits the required documentation under § 240.303 concerning the annual operational monitoring observation and the annual operational observation/compliance test to be kept electronically, and again railroads are currently doing so. Thus, a total of 160,467 responses or approximately 74% of the entire number of estimated responses is now kept electronically.

Most of the substantial remaining requirements involve written responses (e.g., Locomotive Engineer Certificate under § 240.201/301, Medical Examiner's Certificate for Vision/Hearing Acuity under § 240.207, etc.) in order to clearly define the status, limitations and duties of locomotive engineers, and in order to safeguard the rights of all affected parties (locomotive engineers, railroads, and regulating agency). Written documents in these instances serve to eliminate the likelihood of error, confusion, or misunderstanding. Also, these requirements are stipulated in writing for evidentiary and other legal reasons in case of administrative and/or court proceedings.

**4. DESCRIBE EFFORTS TO IDENTIFY DUPLICATION. SHOW SPECIFICALLY WHY ANY SIMILAR INFORMATION ALREADY AVAILABLE CANNOT BE USED OR MODIFIED FOR USE FOR THE PURPOSES DESCRIBED IN ITEM 2 ABOVE.**

To our knowledge, the information collection requirements are unique and are not duplicated anywhere.

Similar data are unavailable from any other source.

**5. IF THE COLLECTION OF INFORMATION IMPACTS SMALL BUSINESSES OR OTHER SMALL ENTITIES (ITEM 5 OF OMB FORM 83-I), DESCRIBE ANY METHODS USED TO MINIMIZE BURDEN.**

“Small entity” is defined in 5 U.S.C. § 601. Section 601(3) defines a “small entity” as having the same meaning as a “small business concern” under §3 of the Small Business

Act. This includes any small business that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of “small entities” not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operation. The U.S. Small Business Administration (SBA) stipulates size standards for small entities in its “Table of Size Standards”. It provides that the largest a for-profit railroad business firm may be (and still classify as a “small entity”) is 1,500 employees for “Line-Haul Operating” railroads, and 500 employees for “Short-Line” operating railroads.

SBA’s size standards may be altered by Federal agencies upon consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final policy, which formally established small entities as railroads that meet the line haulage revenue requirements of a Class III railroad (See 68 FRA 24891; May 9, 2003). Currently, the revenue requirements are \$20 million or less in annual operating revenue. The \$20 million limit (adjusted annually for inflation) is based on the Surface Transportation Board’s (STB) threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment. The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity.

There are approximately 733 railroads that will be affected by this regulation. Of this number, approximately 687, or 94 percent, are small entities. Consequently, this regulation affects a substantial number of small entities. However, FRA does not anticipate that this regulation would impose a significant economic impact on a substantial number of small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), FRA has prepared and placed in the docket a Certification Statement that assesses the impact of this final rule, and certifies that this final rule is not expected to have a significant economic impact on a substantial number of small entities. Although a substantial number of small railroads may be affected by this final rule, none of the entities will be significantly impacted, and it will not have a noticeable impact on the competitive position of those small railroads that are impacted.

**6. DESCRIBE THE CONSEQUENCE TO FEDERAL PROGRAM OR POLICY ACTIVITIES IF THE COLLECTION IS NOT CONDUCTED OR IS CONDUCTED LESS FREQUENTLY, AS WELL AS ANY TECHNICAL OR LEGAL OBSTACLES TO REDUCING BURDEN.**

If the information were not collected or collected less frequently, railroad safety throughout the United States would be greatly jeopardized. Specifically, if FRA were not able to verify that railroads have developed and implemented suitable locomotive engineer certification and training programs, and that railroads periodically update or amend these programs (as necessary), there might be a drastic increase in the number of train accidents/incidents, particularly severe collisions and major derailments, because unfit or unqualified individuals were employed as operators of freight and passenger locomotives and trains. Such an increase in train accidents/incidents could cause



significant increased in injuries, fatalities, and property damage as well as potential damage to the environment and surrounding communities.

FRA uses the information collected to ensure that railroads fulfill their critical oversight responsibilities by conducting the required formal annual reviews, tests, and analyses relating to the administration of their locomotive engineer certification/re-certification programs, which are crucial to detecting unfit and/or unqualified employees, in particular instances of poor safety conduct by certified locomotive engineers or designated supervisor of locomotive engineers (DSLEs) during the prior calendar year. By collecting the required information from the nation's railroads, FRA seeks to minimize the potentially grave risks posed when unfit or unqualified persons operate locomotives and other locomotive vehicles (e.g., service vehicles, and non-traditional locomotives or dual purpose vehicles that function as locomotives).

If FRA were not to collect the additional information required under § 240.127 and § 240.129, it would have no way to ensure that railroads have policies and procedures written into their locomotive engineer certification programs that comply with Federal standards aimed at preventing railroads from re-classifying a person's locomotive engineer certificate to that of a more restrictive class during the period in which the certificate is valid. FRA has found that there is significant room for abuse in a system that allows re-classifications based on the somewhat subjective scoring of a skills performance test. Thus, without these two new requirements, more employees might experience a re-classification of their locomotive engineer's certificate. Such a re-classification of person's locomotive engineer certificate to a more restrictive class before its valid expiration could cause great career harm to such employees as well as significant economic harm to these individuals and their families. Because of these two new provisions, each railroad is required to identify the actions that it will take in the event a person fails a skills performance test or when the railroad finds deficiencies with an engineer's performance during an operational monitoring observation or unannounced compliance test. Consequently, all affected employees will have clear written guidelines that spell out the railroad's policies and procedures and the consequences of inadequate performance during a skills performance test or during an operational monitoring observation or unannounced compliance tests. In § 240.307 of the final rule, FRA makes clear that, except as provided for in § 240.119 (e), revocation of a locomotive engineer's certificate may only occur for violations of § 240.117(e) or § 240.119(c) of this chapter.

If FRA were not to collect the new information required under § 240.119 (f) and § 240.129 (g), it would have no way to ensure that railroads are handling skill test failures and operational monitoring/unannounced compliance test deficiencies by locomotive engineers in accordance with the intent and spirit of the regulation. Without these two new requirements concerning railroads' scoring systems, FRA would have no way to determine that railroads are dealing with their locomotive engineers in an objective manner, and railroad employees would not have the benefit of having scoring criteria that are transparent and of knowing that pass/fail decisions are arrived at consistently

throughout their railroad.

The frequency of submission of required information is presently as minimal as possible. Requesting any of the required information less frequently would increase the probability of unqualified or unfit individuals serving as locomotive engineers, or as designated supervisors of locomotive engineers (DSLEs), and potentially increase the number and severity of railroad accidents/incidents and corresponding casualties. Also, requesting any of the required information less frequently would seriously impede FRA's rail safety program.

In short, this collection of information promotes and enhances national rail safety, and thus serves as a vital component of FRA's multi-faceted safety program. It is essential in assisting FRA to fulfill its primary agency mission and objective.

**7. EXPLAIN ANY SPECIAL CIRCUMSTANCES THAT WOULD CAUSE AN INFORMATION COLLECTION TO BE CONDUCTED IN A MANNER:**

- **REQUIRING RESPONDENTS TO REPORT INFORMATION TO THE AGENCY MORE OFTEN THAN QUARTERLY;**
- **REQUIRING RESPONDENTS TO PREPARE A WRITTEN RESPONSE TO A COLLECTION OF INFORMATION IN FEWER THAN 30 DAYS AFTER RECEIPT OF IT;**
- **REQUIRING RESPONDENTS TO SUBMIT MORE THAN AN ORIGINAL AND TWO COPIES OF ANY DOCUMENT;**
- **REQUIRING RESPONDENTS TO RETAIN RECORDS, OTHER THAN HEALTH, MEDICAL, GOVERNMENT CONTRACT, GRANT-IN-AID, OR TAX RECORDS FOR MORE THAN THREE YEARS;**
- **IN CONNECTION WITH A STATISTICAL SURVEY, THAT IS NOT DESIGNED TO PRODUCE VALID AND RELIABLE RESULTS THAT CAN BE GENERALIZED TO THE UNIVERSE OF STUDY;**
- **REQUIRING THE USE OF A STATISTICAL DATA CLASSIFICATION THAT HAS NOT BEEN REVIEWED AND APPROVED BY OMB;**
- **THAT INCLUDES A PLEDGE OF CONFIDENTIALITY THAT IS NOT SUPPORTED BY AUTHORITY ESTABLISHED IN STATUTE OR REGULATION, THAT IS NOT SUPPORTED BY DISCLOSURE AND DATA SECURITY POLICIES THAT ARE CONSISTENT WITH THE PLEDGE, OR WHICH UNNECESSARILY IMPEDES SHARING OF DATA WITH OTHER AGENCIES FOR COMPATIBLE CONFIDENTIAL**

**USE; OR**

- **REQUIRING RESPONDENTS TO SUBMIT PROPRIETARY TRADE SECRET, OR OTHER CONFIDENTIAL INFORMATION UNLESS THE AGENCY CAN DEMONSTRATE THAT IT HAS INSTITUTED PROCEDURES TO PROTECT THE INFORMATION'S CONFIDENTIALITY TO THE EXTENT PERMITTED BY LAW.**

FRA requires each railroad that issues locomotive engineer certificates to maintain a record for each certified engineer that contains the pertinent information the railroad relied on in making its determinations. All records must be retained for a period of six (6) years from the date of the certification or re-certification decision. The reason for this requirement is that FRA needs to know how certification and re-certification decisions are made. In the event of an accident or incident, FRA needs to look at the locomotive engineer's history. The locomotive engineer may have worked for more than one railroad. FRA will want to know this, along with any other pertinent information available in the certification record.

With the one exception just mentioned, all other information collection requirements contained in the rule are in compliance with this section.

8. **IF APPLICABLE, PROVIDE A COPY AND IDENTIFY THE DATE AND PAGE NUMBER OF PUBLICATION IN THE FEDERAL REGISTER OF THE AGENCY'S NOTICE, REQUIRED BY 5 CFR 1320.8(d), SOLICITING COMMENTS ON THE INFORMATION COLLECTION PRIOR TO SUBMISSION TO OMB. SUMMARIZE PUBLIC COMMENTS RECEIVED IN RESPONSE TO THAT NOTICE AND DESCRIBE ACTIONS TAKEN BY THE AGENCY IN RESPONSE TO THOSE COMMENTS. SPECIFICALLY ADDRESS COMMENTS RECEIVED ON COST AND HOUR BURDEN.**

**DESCRIBE EFFORTS TO CONSULT WITH PERSONS OUTSIDE THE AGENCY TO OBTAIN THEIR VIEWS ON THE AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, THE CLARITY OF INSTRUCTIONS AND RECORDKEEPING, DISCLOSURE, OR REPORTING FORMAT (IF ANY), AND ON THE DATA ELEMENTS TO BE RECORDED, DISCLOSED, OR REPORTED.**

**CONSULTATION WITH REPRESENTATIVES OF THOSE FROM WHOM INFORMATION IS TO BE OBTAINED OR THOSE WHO MUST COMPILE RECORDS SHOULD OCCUR AT LEAST ONCE EVERY 3 YEARS--EVEN IF THE COLLECTION OF INFORMATION ACTIVITY IS THE SAME AS IN PRIOR PERIODS. THERE MAY BE CIRCUMSTANCES THAT MAY PRECLUDE CONSULTATION IN A SPECIFIC SITUATION. THESE CIRCUMSTANCES SHOULD BE EXPLAINED.**

On December 31, 2008, FRA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** soliciting public comments on the proposed rule and its accompanying information collection requirements. See 73 FR 80349. In this document, FRA proposed revisions to its regulations governing the qualification and certification of locomotive engineers. The comment period for the NPRM closed on March 2, 2009. FRA received written comments submitted by interested parties, as well as a written request for a hearing.

Pursuant to 49 U.S.C. § 20103(e), which requires that “[a]n opportunity for an oral presentation shall be provided” when prescribing or amending a railroad safety regulation, FRA held a public hearing on April 14, 2009. Additionally, on April 14, 2009, FRA reopened the NPRM comment period for an additional 30 days so that (i) FRA could make the public hearing transcript available for review and comment by the general public, (ii) interested parties could provide additional comments or documents, and (iii) interested parties could respond to testimony provided at the public hearing. By letter dated May 18, 2009, FRA received a request for an extension of that comment period, which closed on May 14, 2009. Based on that request, FRA reopened the comment period for an additional 30 days until June 15, 2009. See 74 Fed. Reg. 25,208 (May 27, 2009). The comment period for the NPRM closed on June 15, 2009.

After publication of the NPRM, some commenters chose to address some of the proposed new requirements. Specifically, in response to FRA’s proposal to amend 49 CFR 240.127 and 240.129, a commenter asserted that there is no reason to require railroads to specify the potential measures to be taken. According to the commenter, railroads need the flexibility to change the actions they take in the event of failure, but the proposal would prohibit railroads from adopting new approaches to failures unless the changes were reflected in the certification programs. Further, the situation will be even worse if FRA requires railroads to resubmit programs each time a change is made.

Another commenter suggested that FRA's proposed language should be used along with the following: "and if said action is subject in any regard to a collective bargaining agreement, the applicable provisions of the collective bargaining agreement shall be included as an appendix to the railroad's program."

In FRA’s opinion, the rule balances the need to provide railroads with flexibility to handle skills test failures appropriately with the need to make the skills test process transparent. FRA believes that transparency will help prevent railroads from developing processes for handling skills test failures that could result in unanticipated consequences. Although FRA considered other options, such as prescribing the specific actions a railroad must take, FRA believes it should be left up to each railroad to decide the appropriate action to take in light of various factors, including collective bargaining agreements. Indeed, FRA previously proposed prescribing the number of tests and interval between retests and other consequences of test failure in the 1989 NPRM (see 54 FR 50890, 50933-50935; December 11, 1989), but did not implement those proposals

based, in part, on commenters' concerns that the proposals would disrupt contractual agreements (56 FR 28228, 28236-28237 (June 19, 1991)). Further, FRA has found that the vast majority of railroads have adequate policies to deal with skills test failures or deficiencies and have handled them appropriately for many years.

To avoid restricting the options available to the railroads and employee representatives to develop processes for handling skill test failures, FRA designed this rule to be as flexible as possible. There are a variety of actions and approaches that a railroad can take in response to a skills test failure and FRA does not want to stifle a railroad's ability to adopt an approach that is best for its organization. FRA realizes that a railroad's list of actions it will take in response to a skills test failure or deficient performance could be expansive given the various circumstances that could contribute to a test failure or deficient performance. FRA disagrees with the suggestion to add a provision regarding collective bargaining agreements (CBAs). FRA does not enforce CBAs. In addition, railroad discipline policies are beyond the scope of the NPRM and Part 240. See 49 CFR 240.5.

In the NPRM, FRA sought comments as to whether it should require the railroads to explain the scoring system they use to determine whether a person passes or fails a skills test or operational monitoring ride. Some commenters suggested that railroad scoring systems should be published in detail and subject to FRA approval. Another commenter advocated against requiring railroads to explain their scoring systems. According to that commenter, FRA lacks evidence of a problem with the railroads' assessment of engineer performance and there are no allegations that railroads are falling short in efforts to ascertain whether engineers are capable of safely performing. Further, the commenter suggested that there is no safety basis for interfering in railroads' decisions on how to construct their scoring systems nor is there an indication of the criteria FRA would use in deciding whether the scoring systems are adequate.

As discussed in the NPRM, FRA is aware of concerns raised by locomotive engineers that they have no way of knowing why and how they failed a skills test or monitoring ride. Further, FRA is aware that at least one railroad has, in the past, deducted points on a performance skills test for non-safety related items that should not have been counted towards the engineer's evaluation score. FRA believes that requiring railroads to explain their scoring systems will have the benefit of ensuring that the scoring criteria are transparent and the pass/fail determinations are arrived at consistently throughout the railroad. FRA believes that transparency will help prevent railroads from developing part 240-required tests that include items that should not be scored (e.g., fuel conservation, meets schedule, etc.) and will assist FRA in determining how the tests are scored.

FRA received no comments pertaining to burden hour costs and burden hour estimates included in the NPRM publication.

**9. EXPLAIN ANY DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS, OTHER THAN REMUNERATION OF CONTRACTORS OR**

**GRANTEES.**

There are no monetary payments provided or gifts made to respondents associated with the information collection requirements contained in this regulation.

**10. DESCRIBE ANY ASSURANCE OF CONFIDENTIALITY PROVIDED TO RESPONDENTS AND THE BASIS FOR THE ASSURANCE IN STATUTE, REGULATION, OR AGENCY POLICY.**

Regarding the protection of confidentiality, § 240.119(e) of the regulation states the following:

Noting in this part shall affect the responsibility of the railroad under § 240.403 of this chapter ('Voluntary Referral Policy') to treat voluntary referrals for substance abuse counseling and treatment as confidential; and the certification status of an engineer who is successfully assisted under the procedures of that section shall not be adversely affected. However, the railroad shall include in its voluntary referral policy required to be issued pursuant to § 240.403 of this chapter a provision that, at least with respect to a certified locomotive engineer or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the EAP Counselor official notice of the substance abuse disorder and shall suspend or revoke the certification, as appropriate) if the person at any time refuses to cooperate in a recommended course of counseling or treatment.

No other assurances of confidentiality were made except for those implicit in the Privacy Act and those limiting access to data in the National Driver Register.

**11. PROVIDE ADDITIONAL JUSTIFICATION FOR ANY QUESTIONS OF A SENSITIVE NATURE, SUCH AS SEXUAL BEHAVIOR AND ATTITUDES, RELIGIOUS BELIEFS, AND OTHER MATTERS THAT ARE COMMONLY CONSIDERED PRIVATE. THIS JUSTIFICATION SHOULD INCLUDE THE REASONS WHY THE AGENCY CONSIDERS THE QUESTIONS NECESSARY, THE SPECIFIC USES TO BE MADE OF THE INFORMATION, THE EXPLANATION TO BE GIVEN TO PERSONS FROM WHOM THE INFORMATION IS REQUESTED, AND ANY STEPS TO BE TAKEN TO OBTAIN THEIR CONSENT.**

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

**12. PROVIDE ESTIMATES OF THE HOUR BURDEN OF THE COLLECTION OF INFORMATION. THE STATEMENT SHOULD:**

- **INDICATE THE NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, ANNUAL HOUR BURDEN, AND AN EXPLANATION OF HOW THE BURDEN WAS ESTIMATED. UNLESS DIRECTED TO DO**

**SO, AGENCIES SHOULD NOT CONDUCT SPECIAL SURVEYS TO OBTAIN INFORMATION ON WHICH TO BASE HOUR BURDEN ESTIMATES. CONSULTATION WITH A SAMPLE (FEWER THAN 10) OF POTENTIAL RESPONDENTS IS DESIRABLE. IF THE HOUR BURDEN ON RESPONDENTS IS EXPECTED TO VARY WIDELY**

- **BECAUSE OF DIFFERENCES IN ACTIVITY, SIZE, OR COMPLEXITY, SHOW THE RANGE OF ESTIMATED HOUR BURDEN, AND EXPLAIN THE REASONS FOR THE VARIANCE. GENERALLY, ESTIMATES SHOULD NOT INCLUDE BURDEN HOUR FOR CUSTOMARY AND USUAL BUSINESS PRACTICES.**
  
- **IF THIS REQUEST FOR APPROVAL COVERS MORE THAN ONE FORM, PROVIDE SEPARATE HOUR BURDEN ESTIMATES FOR EACH FORM AND AGGREGATE THE HOUR BURDENS IN ITEMS 13 OF OMB FORM 83-I.**
  
- **PROVIDE ESTIMATES OF ANNUALIZED COST TO RESPONDENTS FOR THE HOUR BURDENS FOR COLLECTIONS OF INFORMATION, IDENTIFYING AND USING APPROPRIATE WAGE RATE CATEGORIES. THE COST OF CONTRACTING OUT OR PAYING OUTSIDE PARTIES FOR INFORMATION COLLECTION ACTIVITIES SHOULD NOT BE INCLUDED HERE. INSTEAD, THIS COST SHOULD BE INCLUDED IN ITEM 14.**

*Note: The number of railroads in the United States is constantly changing as new railroads come into existence and existing railroads consolidate and merge. Based on the latest FRA data, the total number of railroads currently conducting operations in this country is 733. Of these 733 railroads, approximately seven (7) are Class I railroads, 39 are Class II railroads, and 687 are Class III railroads.*

#### Waivers (§ 240.9)

A person subject to a requirement of this part may petition the FRA Administrator for a waiver of compliance with such requirement. The filing of such petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered. Each petition for a waiver under this section must be filed in the manner and contain the information required by Part 211 of this chapter.

FRA estimates that approximately three (3) waivers will be received annually. It is calculated that it will take approximately one (1) hour to collect the necessary data, prepare a letter, and forward it to FRA. Total annual burden for this requirement is three (3) hours.

Respondent Universe:	733 railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	3 waivers
Annual Burden:	3 hours

**Calculation:** 3 waivers x 1 hr. = 3 hours

**Penalties and Consequences For Non-Compliance (§ 240.11)**

A person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

*FRA estimates that it will receive zero (0) falsified reports/records under the above provision. Consequently, there is no burden associated with this requirement.*

**Certification Program Required**

(§ 240.101; 103; 105; 107; 109; 117; 119; 121; 123; 125; 127; 129; 303; Appendix B)

Each railroad subject to this part must have in effect a written program for certifying the qualifications of locomotive engineers. Each railroad must have such a program in effect prior to commencing operations. Each railroad must have a certification program approved in accordance with § 240.103 that includes the following:

- a procedure for designating any person it determines to be qualified as a supervisor of locomotive engineers that complies with the criteria established in § 240.105;
- a designation of the classes of service that it determines will be used in compliance with the criteria established in § 240.107;
- a procedure for evaluating prior safety conduct that complies with the criteria established in § 240.109;
- a procedure for evaluating visual and hearing acuity that complies with the criteria established in § 240.121;
- a procedure for training that complies with the criteria established in § 240.123;
- a procedure for knowledge testing that complies with the criteria established in § 240.125;
- a procedure for skill performance testing that complies with the criteria established in § 240.127; and



- a procedure for monitoring operational performance that complies with the criteria established in § 240.129.

Each railroad must submit its written certification program and a description of how its program conforms to the specific requirements of this part in accordance with the procedures contained in Appendix B to this part and must submit this written certification program for approval at least 60 days before commencing operations. That submission must state the railroad’s election either: (1) To accept responsibility for the training of student engineers and thereby obtain authority for that railroad to initially certify a person as an engineer in an appropriate class of service, or (2) To re-certify only engineers previously certified by other railroads. A railroad that elects to accept responsibility for the training of student engineers must state in its submission whether it will conduct the training program or employ a training program conducted by some other entity on its behalf but adopted and ratified by that railroad.

This is a one-time requirement which has been completed by the railroads. However, FRA estimates that approximately 50 railroads will have to amend their certification programs and resubmit them to FRA in order to comply with the above requirements. It is estimated that it will take each railroad approximately 60 minutes to make the necessary changes. Total annual burden for this requirement is 50 hours.

Respondent Universe:	733 railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	50 amended certification programs
Annual Burden:	
	50 hours

**Calculation:** 50 amended certification programs x 60 min. = 50 hours

(b.) Additionally, as indicated by the change in the total number of railroads, FRA estimates approximately 20 new railroads will commence operations annually that will be required to submit certification programs to FRA. It is estimated that it will take each respondent approximately 40 hours to develop and send its certification program to FRA. Total annual burden for the preparation of the certification program is 800 hours.

Respondent Universe:	20 new railroads
Burden time per response:	40 hours
Frequency of Response:	Annually
Annual number of Responses:	20 certification programs
Annual Burden:	800 hours

**Calculation:**

20  
certific  
ation  
progra  
ms x  
40 hrs.  
= 800  
hours

Furthermore, FRA estimates that it will take an additional (1) hour for final review and submission of its program to FRA. Total annual burden is 20 hours.

Respondent Universe:	20 new railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	20 reviews
Annual Burden:	

20  
hours

**Calculation:** 20 reviews x 1 hr. = 20 hours

(c.) A railroad must resubmit its program within 30 days after being notified in writing by the Administrator that its program does not conform to the criteria set forth in this part and after being informed by the Administrator of the specific deficiencies. If the program does not conform, the railroad must resubmit its program. A failure to resubmit the program with the necessary revisions will be considered a failure to implement the program under this part.

*FRA estimates that there will be no requests by FRA for a railroad amend its certification program under the above requirement. Consequently, there is no burden associated with this provision.*

(d.) A railroad that intends to materially modify its program after receiving initial FRA approval must submit a description of how it intends to modify the program in conformity with the specific requirements of this part at least 30 days prior to implementing such a change. A modification is material if it would affect the program's conformance with this part. The modification submission must contain a description that conforms with the pertinent portion of the procedures contained in Appendix B. The modification submission will be handled in accordance with the procedures of paragraph

(c) and (d) of this section as though it were a new program.

FRA estimates that approximately 30 railroads will materially modify their certification programs after receiving initial FRA approval. It is estimated that it will take each railroad approximately 45 minutes to modify its program and submit it to FRA. Total annual burden for this requirement is 23 hours.

Respondent Universe:	733 railroads
Burden time per response:	45 minutes
Frequency of Response:	On occasion
Annual number of Responses:	30 modified certification programs
Annual Burden:	

23  
hours

**Calculation:** 30 modified certification program x 45 min. = 23 hours

Total annual burden for this requirement is 893 hours (50 + 800 + 20 + 23).

Selection Criteria For Designated Supervisors of Locomotive Engineers (§ 240.105)

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) The railroad shall examine any person it is considering for qualification as a supervisor of locomotive engineers to determine that he or she: (1) Knows and understands the requirements of this part; (2) Can appropriately test and evaluate the knowledge and skills of locomotive engineers; (3) Has the necessary supervisory experience to prescribe appropriate remedial action for any noted deficiencies in the training, knowledge or skills of a person seeking to obtain or retain certification; (4) Is a certified engineer who is qualified on the physical characteristics of the portion of the railroad on which that person will perform the duties of a Designated Supervisor of Locomotive Engineers

FRA estimates that approximately 50 persons will be examined for positions as Designated Supervisors of Locomotive Engineers (DSLEs) under the above requirement. FRA estimates that it will take approximately one (1) hour to conduct each exam. Total annual burden for this requirement is 50 hours.

		Respondent Universe: 733 railroads
Burden time per response:	1 hour	
Frequency of Response:	On occasion	
Annual number of Responses:	50 DSLE examinations	
Annual Burden:		

50  
hours

**Calculation:**

50  
DSLE  
examin  
ations  
x 1 hr.  
= 50  
hours

(c) If a railroad does not have any Designated Supervisors of Locomotive Engineers and wishes to hire one, the chief operating officer of the railroad shall make a determination in writing that the Designated Supervisor of Locomotive Engineers designate possesses the necessary performance skills in accordance with § 240.127. This determination must take into account any special operating characteristics which are unique to that railroad.

Section 240.127(d) stipulates that the conduct of the test must be documented in writing by the designated supervisor and the documentation shall contain: (1) The relevant facts concerning the train being operated; (2) The constraints applicable to its operation; and (3) The factors observed and relied on for evaluation purposes by the designated supervisor.

FRA estimates that approximately 10 reports will be written per year under this requirement. FRA estimates that it will take approximately one (1) hour to write each report. Total annual burden for this requirement is 10 hours.

		Respondent Universe: 10 railroads
Burden time per response:	1 hour	
Frequency of Response:	On occasion	
Annual number of Responses:	10 reports	
Annual Burden:		

10 hours

**Calculation:**

10  
reports  
x 1 hr.  
= 10  
hours

Total annual burden for this entire requirement is 60 hours (50 + 10).

**General Criteria For Eligibility Based on Prior Safety Conduct (§ 240.109)**

When evaluating a person’s motor vehicle driving record or a person’s railroad employment record, a railroad shall not consider information concerning motor vehicle driving incidents or prior railroad safety conduct that occurred at a time other than that specifically provided for in § 240.115, § 240.117, or § 240.119 of this subpart.

*The burden for this requirement is include below under § 240.111.*

**Candidate's review and written comments on prior safety conduct data (§ 240.109 and Appendix C)**

(a.) A railroad’s program must provide a candidate for certification or re-certification a reasonable opportunity to review and comment in writing on any record which contains information concerning the person’s prior safety conduct, including information pertinent to determinations required under § 240.119 of this subpart (and in accordance with the provisions of § 240.219), if the railroad believes the record contains information that could be sufficient to render the person ineligible for certification (or re-certification) under this subpart.

As noted earlier, there are approximately 53,000 locomotive engineers at the present time. The locomotive engineers are certified or re-certified on an ongoing basis so that approximately one-third of these employees or 17,667 locomotive engineers go through this process each year. Of these 17,667 candidates, FRA estimates that approximately 25 candidates will respond in writing to records containing prior safety conduct information. It is estimated that it will take approximately 60 minutes for the employee to review the data and prepare and forward his/her letter/response back to the railroad. Total annual burden for this requirement is 25 hours.

Respondent Universe:	17,667 candidates
Burden time per response:	60 minutes
Frequency of Response:	Annually
Annual number of Responses:	25 responses
Annual Burden:	25 hours

**Calculation:** 25 responses x 60 min. = 25 hours

(b.) The opportunity for comment must be afforded to the person prior to the railroad's rendering its eligibility decision based on that information. Any responsive comment furnished must be retained by the railroad in accordance with § 240.215 of this part.

*The burden for keeping records is included under § 240.215.*

(c.) The program must include a method for a person to advise the railroad that he/she has never been a railroad employee or obtained a license to drive a motor vehicle. Nothing in this section shall be construed as imposing a duty or requirement that a person have prior railroad employment experience or obtain a motor vehicle driver's license in order to become a certified locomotive engineer.

*The burden for this requirement is included under § 240.111(g).*

Request for State Driving License Data and National Driver Register Data (§ 240.111 and Appendix C)

Railroads must consider the motor vehicle driving record of each person prior to issuing him/her certification or re-certification as a qualified locomotive engineer. To fulfill that obligation, a railroad must review a certification candidate's recent motor vehicle driver's record. Generally, that will be a single record on file with the state agency that issued the candidate's current driver's license. However, it can include multiple records if the candidate has been issued a motor vehicle driver's license by more than one State agency. In addition, the railroad must determine whether the certification candidate is listed in the National Driver Register and, if so listed, to review the data that caused the candidate to be so listed.

Driver's license data

Each railroad employee who wants to serve as a locomotive engineer must request in writing that his/her current State driver's licensing agency/agencies furnish such data directly to the railroad considering certifying him/her as a locomotive operator. This would involve the candidate either sending the State agency a brief letter requesting such action or executing a State agency form that accomplishes the same aim. Except for initial certifications under paragraph (b), (h), or (i) of § 240.201 or for persons covered by § 240.109(h), the request must be made within 366 days preceding the date of the railroad's decision on certification or re-certification. Such a request will normally involve payment of a nominal fee established by the State agency for such a records check. In rare instances, when a certification candidate has been issued multiple licenses, it may require more than a single request.

A certificate is good for three (3) years. FRA anticipates that the railroads will certify or re-certify approximately a third of the estimated 53,000 locomotive engineers each year.

Respondent universe then is approximately 17,667 certification candidates. It is estimated that it will take approximately 15 minutes for each request. Total annual burden for this requirement is 4,417 hours.

Respondent Universe:	17,667 candidates
Burden time per response:	15 minutes
Frequency of Response:	Triennially
Annual number of Responses:	17,667 requests
Annual Burden:	4,417 hours

**Calculation:** 17,667 requests x 15 min. = 4,417 hours

### National Driver Register Data

In addition to seeking an individual State's data, each locomotive engineer candidate is required to request that a search and retrieval be performed of any relevant information concerning his or her driving record contained in the National Driver Register (NDR). Currently, the NDR is maintained by the National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation under the provisions of the National Driver Register Act (23 U.S.C. 401 note). Under that statute, state motor vehicle licensing authorities voluntarily notify NHTSA when they take action to deny, suspend, revoke or cancel a person's motor vehicle driver's license and, under the provisions of a 1982 change to the statute, states are also authorized to notify NHTSA concerning convictions for operation of a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance, and for traffic violations arising in connection with a fatal traffic accident, reckless driving or racing on the highway even if these convictions do not result in the immediate loss of driving privileges.

Each person must submit a written request to NHTSA at the following address: Chief, National Driver Register, National Highway Traffic Safety Administration, 1200 New Jersey Ave., S.E., Washington, D.C. 20590. In making the necessary request to NHTSA to perform an NDR check, FRA requires that the request be in writing and contain the following information: (1) full legal name; (2) any other names used by the person; (e.g., nickname or professional name); (3) date of birth; (4) sex; (5) height and weight; (6) color of eyes; (7) drivers license number (unless that is not available); (8) authorization of NHTSA to perform the NDR check and furnish the results of the search directly to the railroad; and (9) identification of the railroad to which the results are to be furnished, including the proper name of the railroad and the proper mailing address of the railroad. The person seeking to become a certified locomotive engineer must sign the request and that signature must be notarized.

*NOTE: The paperwork burden associated with a request for National Driver Register data is currently approved by OMB under National Highway Traffic Safety Administration's (NHTSA's) information collection no. 2127-0001.*

Request for NDR data from a State Agency

For a prospective operator who has a motor vehicle driver's license issued by a State motor vehicle licensing agency that is participating under the provisions of a 1982 amendment to the National Driver Register Act, railroads may reduce administrative burden by availing themselves of information from states which are able to perform NDR checks. Previously, this amendment applied only to the District of Columbia. This is no longer the case. *Consequently, there is no burden associated with this requirement.*

Response from State Agency on request for NDR data

State agencies normally will respond in approximately 30 days or less and advise whether there is, or is not a listing for a person with the requested name and date of birth. The response provided after a State agency performs an NDR check is limited to either a notification that no potential match was identified, or a notification that a potential match was identified. The notification will include the identification of the State motor vehicle licensing authority which possesses the relevant record. Presently, all states participate in the National Driver Register (NDR), and as mentioned above, the District of Columbia now participates too. *Therefore, all NDR data will be obtained through NHTSA, and there is no burden associated with this requirement.*

Railroad notification to candidate when there is an NDR match and subsequent request from candidate to State agency for relevant data

If the NDR check results indicate a potential match and the State with the relevant data is different from the State which furnished detailed data, it then is necessary to contact the individual State motor vehicle licensing authority that furnished the NDR information to obtain the relevant record. FRA places responsibility on the railroad to notify the engineer candidate and on the candidate to contact the State with the relevant information. FRA requires the certification candidate to write to the State licensing agency and request that the agency inform the railroad concerning the person's driving record. If required by the State agency, the person may have to pay a nominal fee for providing such data and may have to furnish written evidence that the prospective operator consents to the release of the data to the railroad.

FRA estimates that approximately 1% (177) of the 17,667 annual NDR requests will yield a match and the railroad will receive data concerning a candidate's driving record. It is estimated that it will take the railroad approximately 15 minutes to notify the engineer candidate and another 15 minutes for the candidate/employee to prepare a request and mail it to the State agency holding the relevant data. Total annual burden for this requirement is 89 hours.

Respondent Universe:	733 railroads
Burden time per response:	15 minutes + 15 minutes



Frequency of Response:	On occasion
Annual number of Responses:	177 notifications + 177 requests
Annual Burden:	89 hours

**Calculation:** 177 notific. x 15 min + 177 requests x 15 min. = 89 hours

Written response from candidate on driver's license data

Once the railroad has obtained the motor vehicle driving record which, depending on the circumstance, may consist of more than two documents, the railroad must afford the prospective engineer an opportunity to review that record and respond in writing to its contents in accordance with the provisions of § 240.219. The review opportunity must occur before the railroad evaluates that record. The railroad’s required evaluation and subsequent decision making must be done in compliance with the provisions of this part.

FRA estimates that in approximately 20 cases annually railroads will receive information concerning a candidate's driving record from the State agency. It is estimated that it will take approximately 15 minutes for the employee to review the information and make any comments necessary concerning the data to the certifying railroad. Total annual burden for this requirement is five (5) hours.

Respondent Universe:	733 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	20 cases/comments
Annual Burden:	5 hours

**Calculation:** 20 comments x 15 min. = 5 hours

Notice to railroad of absence of license (§ 240.111(g))

If a candidate has never obtained a motor vehicle driver’s license, he/she is not required to comply with the provisions of paragraph (b) of this section, i.e., to make a request for driving license data or NDR data. However, the candidate must notify the railroad of that fact in accordance with the procedures of the railroad that comply with § 240.109(d).

FRA believes that just about all of the candidates (53,000) will have a driver's license. However, FRA calculates for these purposes that in approximately four (4) cases annually the candidate will never have applied for, or received a driver's license. It is estimated that it will take the candidate approximately 15 minutes to prepare a letter and forward it to the railroad informing it that he/she has never had a driver's license. Total annual burden for this requirement is one (1) hour.

Respondent Universe:	53,000 candidates
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	4 letters
Annual Burden:	1 hour

**Calculation:** 4 letters x 15 min = 1 hour

Individual's Duty to Furnish Data on Prior Safety Conduct as Motor Vehicle Operator  
(§ 240.111(h))

Except for persons covered by § 240.109(h), each person seeking certification or re-certification under this part must, within 366 days preceding the date of the railroad's decision on certification or re-certification, report motor vehicle incidents as described in § 240.115 (b)(1) and (2) to the employing railroad within 48 hours of being convicted for, or having state action completed to cancel, revoke, suspend, or deny a motor vehicle driver's license for, such violations. For the purposes of engineer certification, no railroad shall require reporting earlier than 48 hours after the conviction, or completed state action to cancel, revoke, or deny a motor vehicle driver's license.

FRA estimates that approximately 200 of the approximate 53,000 locomotive engineers will report by phone a conviction or a completed state action to cancel, revoke, suspend, or deny a motor vehicle driver's license. FRA estimates that each phone call will take approximately 10 minutes. Total annual burden for this requirement is 33 hours.

Respondent Universe:	733 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	200 phone calls
Annual Burden:	33 hours

**Calculation:** 200 x 10 min. = 33 hours

Individual's Duty to Furnish Data on Prior Safety Conduct as an Employee of a Different Railroad (§ 240.113)

(a) Except for persons covered by § 240.109(h), each person seeking certification under

this part shall, within 366 days preceding the date of the railroad's decision on certification or recertification: (1) Take the actions required by paragraph (b) of this section to make information concerning his or her prior railroad service record available to the railroad that is considering such certification or recertification; and (2) Take any additional actions, including providing any necessary consent required by State or Federal law to make information concerning his or her service record available to that railroad.

(b) Each person seeking certification or re-certification must request, in writing, that the chief operating officer or other appropriate person of the former employing railroad provide a copy of that railroad's available information concerning his or her service record to the railroad that is considering such certification or re-certification.

FRA estimates that approximately 2% (353) of the 17,667 candidates annually will have worked for another railroad. It is estimated that it will take the employee approximately 15 minutes to prepare his/her written request and another 30 minutes for the railroad to review its files and provide the employee's service record to the railroad that is considering such certification or re-certification. Total annual burden for this requirement is 265 hours.

Respondent Universe:	17,667 candidates
Burden time per response:	15 min. + 30 min.
Frequency of Response:	On occasion
Annual number of Responses:	353 requests + 353 responses
Annual Burden:	265 hours

**Calculation:** 353 requests x 15 min. + 353 responses x 30 min. = 265 hours

#### Criteria For Consideration of Prior Safety Conduct As a Motor Vehicle Operator (§ 240.115)

When evaluating a person's motor vehicle driving record, a railroad must not consider information concerning motor vehicle driving incidents that occurred more than 36 months before the month in which the railroad is making its certification decision and shall only consider information concerning the following types of motor vehicle incidents: (1) A conviction for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle driver's license for, operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance; (2) A conviction for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle driver's license for, refusal to undergo such testing as is required by State law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance.

If such an incident is identified, the railroad must provide the data to the railroad's EAP Counselor, together with any information concerning the person's railroad service record, and must refer the person for evaluation to determine if the person has an active substance abuse disorder; (2) The person must cooperate in the evaluation and must provide any requested records of prior counseling or treatment for review exclusively by the EAP Counselor in the context of such evaluation; and (3) If the person is evaluated as not currently affected by an active substance abuse disorder, the subject data must not be considered further with respect to certification. However, the railroad shall, on the recommendation of the EAP Counselor, condition certification upon participation in any needed aftercare and/or follow-up testing for alcohol or drugs deemed necessary by the EAP Counselor consistent with the technical standards specified in § 240.119 (d)(3) of this part. If the person is evaluated as currently affected by an active substance abuse disorder, the person shall not be currently certified and the provisions of § 240.119(b) will apply.

*The burden for this requirement is included under § 240.205.*

#### Criteria For Consideration of Operating Rules Compliance Data (§ 240.117)

A Designated Supervisor of Locomotive Engineers, a certified locomotive engineer pilot or instructor engineer who is monitoring, piloting, or instructing a locomotive engineer and fails to take appropriate action to prevent a violation of paragraph (e) of this section shall have his or her certification revoked. Appropriate action does not mean that a supervisor, pilot, or instructor must prevent a violation from occurring at all costs; the duty may be met by warning an engineer of a potential or foreseeable violation. A Designated Supervisor of Locomotive Engineers will not be held culpable under this section when this monitoring event is conducted as part of the railroad's operational compliance tests as defined in § 217.9 and § 240.303 of this chapter.

*Despite the requirement allowing a warning, FRA estimates that a Designated Supervisor of Locomotive Engineers (DSLE) monitoring a locomotive engineer will commit a violation that will cause the railroad to revoke his certification in approximately three (3) cases a year. In such an instance, FRA estimates that the Designated Supervisor of Locomotive Engineers will appeal the revocation of certification. Since this would initiate an administrative action/investigation, the burden for this requirement would be exempt from the Paperwork Reduction Act under 5 CFR 1320.4(2). Consequently, there is no burden associated with this requirement.*

#### Criteria For Consideration of Data on Substance Abuse Disorders and Alcohol/Drug Rules Compliance/Self-Referral to EAP Counselor (240.119(b)(3))

In the case of a current employee of the railroad evaluated as having an active substance abuse disorder (including a person identified under the procedures for substance abuse

counseling and treatment as confidential; and the certification status of an engineer who is successfully assisted under the procedures of § 240.115), the employee may, if otherwise eligible, voluntarily self-refer for substance counseling or treatment under the policy required by § 240.403 of this chapter; and the railroad shall then treat the substance abuse evaluation as confidential except with respect to current ineligibility for certification.

FRA estimates that approximately 50 locomotive engineers will self-refer under the above requirement. The locomotive engineer will most likely self-refer in person (or possibly by phone). It is estimated that it will take approximately five (5) minutes for the employee to refer himself/herself to the EAP Counselor. Total annual burden for this requirement is four (4) hours.

Respondent Universe:	53,000 locomotive engineers
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	50 self-referrals
Annual Burden:	4 hours

**Calculation:** 50 self-referrals x 5 min. = 4 hours

Criteria For Vision and Hearing Acuity Data (§ 240.121)

(a.) A person not meeting the thresholds in paragraphs (c) and (d) of this section shall, upon request, be subject to further medical evaluation by a railroad’s medical examiner to determine the person’s ability to safely operate a locomotive. In accordance with the guidance prescribed in Appendix F to this Part, a person is entitled to one retest without making any showing and to another retest if the person provides evidence substantiating that circumstances have changed since the last test to the extent that the person could now arguably operate a locomotive or train safely. The railroad must provide its medical examiner with a copy of this part, including all appendices.

*This is a one-time requirement which has already been fulfilled. Consequently, there is no burden associated with this requirement.*

Subsequent Years

As noted earlier, the estimated number of railroads has changed over the past three years. Based on the latest data, FRA adheres to its previous estimate that approximately 20 new railroads will be formed each year. FRA estimates that all 20 railroad medical examiners will need a copy of the required part, including the appendices, and that it will take approximately 15 minutes for each railroad to provide them a copy. Total annual burden for this requirement is five (5) hours.

Respondent Universe:	20 new railroads
Burden time per response:	15 minutes
Frequency of Response:	One-time
Subsequent Years # Responses:	20 copies
Subsequent Years Burden:	5 hours

**Calculation:** 20 copies x 15 min. = 5 hours

(b.) Even though not meeting the thresholds stated in paragraphs (c) and (d) of this section, a person may be certified as a locomotive engineer and such certification conditioned on any special restrictions the medical examiner determines in writing to be necessary (after the medical examiner has consulted with one of the railroad’s designated supervisors of locomotive engineers).

In approximately 20 cases a year, FRA estimates that a person not meeting the required thresholds will be further evaluated and may be certified conditionally as a locomotive engineer by the railroad medical examiner in writing after he/she confers with the designated supervisor of locomotive engineers. FRA estimates that it will take approximately one (1) hour for the medical examiner to write this conditional certification report. Total annual burden for this requirement is 20 hours.

Respondent Universe:	733 railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	20 reports
Annual Burden:	20 hours

**Calculation:** 20 reports x 1 hr. = 20 hours

(c.) As a condition of maintaining certification, each certified locomotive engineer must notify his/her employing railroad’s medical department or, if no such department exists, an appropriate railroad official if the person’s best correctable vision/hearing has deteriorated to the extent that the person no longer meets one or more of the prescribed vision/hearing standards or requirements of this section. This notification is required prior to any subsequent operation of a locomotive or train which would require a certified locomotive engineer.

FRA estimates that approximately 10 notifications will be made per year under this requirement. It is estimated that each notification will take approximately 15 minutes. Total annual burden for this requirement is three (3) hours.

Respondent Universe:	733 railroads
Burden time per response:	15 minutes

Frequency of Response:	On occasion
Annual number of Responses:	10 notifications
Annual Burden:	3 hours

**Calculation:** 10 notifications x 15 min. = 3 hours

Total annual burden for this entire requirement is 28 hours (5 + 20 + 3).

Criteria For Initial and Continuing Education (§ 240.123)

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) A railroad shall provide for the continuing education of certified locomotive engineers to ensure that each engineer maintains the necessary knowledge, skill and ability concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics as determined by a qualified Designated Supervisor of Locomotive Engineers), and relevant Federal safety rules.

*The burden for this requirement is included under that of the certification program in § 240.101 as well as under §§ 240.209, 240.211, 240.213, and 240.303.*

(c) A railroad that elects to train a previously untrained person to be a locomotive engineer shall provide initial training which, at a minimum: (1) Is composed of classroom, skill performance, and familiarization with physical characteristics components; (2) Includes both knowledge and performance skill testing; (3) Is conducted under the supervision of a qualified class instructor; (4) Is subdivided into segments or periods of appropriate duration to effectively cover the following subject matter areas: (i) Personal safety, (ii) Railroad operating rules, (iii) Mechanical condition of equipment, (iv) Train handling procedures (including use of locomotive and train brake systems), (v) Familiarization with physical characteristics including train handling, and (vi) Compliance with Federal regulations; (5) Is conducted so that the performance skill component shall (i) Be under the supervision of a qualified instructor engineer located in the same control compartment whenever possible; (ii) Place the student engineer at the controls of a locomotive for a significant portion of the time; and (iii) Permit the student to experience whatever variety of types of trains are normally operated by the railroad.

*The burden for this requirement is included under that §§ 240.209, 240.211, 240.213, and 240.303.*

(d) Pursuant to paragraphs (b) and (c) of this section, a person may acquire familiarity with the physical characteristics of a territory through the following methods if the specific conditions included in the description of each method are met. The methods

used by a railroad for familiarizing its engineers with new territory while starting up a new railroad, starting operations over newly acquired rail lines, or reopening of a long unused route, shall be described in the railroad's locomotive engineer qualification program required under this part and submitted according to the procedures described in Appendix B to this part.

*This is a one-time requirement which has already been fulfilled. Consequently, there is no burden associated with this requirement.*

#### Criteria For Testing Knowledge (§ 240.125)

(a.) A railroad must have procedures for testing a person being evaluated for qualification as a locomotive engineer in either train or locomotive service to determine that the person has sufficient knowledge of the railroad's rules and practices for the safe operation of trains.

The testing methods selected by the railroad must be:

(1) designed to examine a person's knowledge of the railroad's rules and practices for the safe operation of trains; (2) objective in nature; (3) administered in written form; (4) cover the following subjects:(i) personal safety practices; (ii) operating practices; (iii) equipment inspection practices; (iv) train handling practices including familiarity with the physical characteristics of the territory; and (v) Compliance with Federal safety rules. (5) Sufficient to accurately measure the person's knowledge of the covered subjects; and (6) Conducted without open reference books or other materials except to the degree the person is being tested on his/her ability to use such reference books or materials.

(b.) The conduct of the test must be documented in writing and the documentation must contain information to identify the relevant facts relied on for evaluation purposes.

*The burden for these requirements is included under that for the testing requirements listed below, specifically § 240.209/213.*

#### Criteria For Examining Skill Performance (§ 240.127)

A railroad must have procedures for examining the performance skills of a person being evaluated for qualification as a locomotive engineer in either train or locomotive service to determine whether the person has the skills to safely operate locomotives and/or trains, including the proper application of the railroad's rules and practices for the safe operation of locomotive or trains, in the most demanding class or type of service that the person will be permitted to perform.

The testing procedures selected by the railroad shall be: (1) Designed to examine a



person's skills in safely operating locomotives or trains including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains when performing the most demanding class or type of service that the person will be permitted to perform; (2) Conducted by a Designated Supervisor of Locomotive Engineers, who does not need to be qualified on the physical characteristics of the territory over which the test will be conducted; (3) Cover the following subjects during the test period: (i) Operating practices; (ii) Equipment inspection practices; (iii) Train handling practices; and (iv) Compliance with Federal safety rules; (4) Be of sufficient length to effectively evaluate the person's ability to operate trains; and (5) Conducted when the person either (i) Is at the controls of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification or (ii) Is at the controls of a Type I or Type II simulator programmed to replicate the responsive behavior of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification.

The conduct of the test must be documented in writing by the designated supervisor and the documentation must contain: (1) The relevant facts concerning the train being operated; (2) The constraints applicable to its operation; and (3) The factors observed and relied on for evaluation purposes by the designated supervisor.

*The burden for these requirements is included under that for the testing requirements listed below, specifically § 240.211/213.*

Criteria for Examining Skill Performance  
(§ 240.127)

(e) Each railroad's program shall indicate the action the railroad will take in the event that a person fails an initial examination or re-examination of his or her performance skills test in accordance with the procedures required under § 240.211.

(f) Each railroad's program shall describe the scoring system used by the railroad during a skills test administered in accordance with the procedures required under § 240.211. The description shall include the skills to be tested and the weight or possible score that each skill will be given. **(New)**

FRA estimates that all 733 railroads will have to modify their certification programs to comply with the above requirements and the two new requirements spelled out in § 240.129 below. It is estimated that it will take the large/medium railroads (46 Class I and Class II) a total of approximately 48 hours to amend their programs to meet the above requirements and the two new requirements in § 240.129 below and that it will take the smaller railroads (687 Class III) a total of approximately eight (8) hours to amend their programs to meet the above requirements and the two new requirements in

§ 240.129 below. Total annual burden for these requirements is 7,704 hours.

Respondent Universe:	733 railroads
Burden time per response:	48 hours; 8 hours
Frequency of Response:	On occasion
Annual number of Responses:	733 amended programs
Annual Burden:	7,704 hours

**Calculation:** 46 amended programs x 48 hrs. + 687 amended programs x 8 hrs. = 7,704 hours

Criteria for Monitoring Operational Performance of Certified Engineers  
(§ 240.129)

(a) Each railroad's program must include criteria and procedures for implementing this section.

(b) A railroad must have procedures for monitoring the operational performance of those it has determined as qualified as a locomotive engineer in either train or locomotive service.

(c) The procedures must:

(1) Be designed to determine that the person possesses and routinely employs the skills to routinely operate locomotives and/or trains, including the proper application of the railroad's rules and practices for the safe operation of locomotives and trains;

(2) Be designed so that each engineer shall be monitored each calendar year by a Designated Supervisor of Locomotive Engineers, who does not need to be qualified on the physical characteristics of the territory over which the operational performance monitoring will be conducted;

(3) Be designed so that the locomotive engineer is either accompanied by the designated supervisor for a reasonable length of time or has his or her train handling activities electronically recorded by a train operations event recorder;

(d) The procedures may be designed so that the locomotive engineer being monitored either (i) is at the controls of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification or (ii) is at the controls of a Type I or Type II simulator programmed to replicate the responsive behavior of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification.

(e) The testing and examination procedures selected by the railroad for the conduct of a monitoring program must be:

(1) Designed so that each locomotive engineer shall be given at least one unannounced test each calendar year;

(2) Designed to test:

(i) Engineer compliance with provisions of the railroad's operating rules that require response to signals that display less than a "clear" aspect, if the railroad operates with a signal system that must comply with Part 236 of this chapter;

(ii) Engineer compliance with provisions of the railroad's operating rules, timetable or other mandatory directives that require affirmative response by the locomotive engineer to less than favorable conditions than that which existed prior to initiation of the test; or

(iii) Engineer compliance with provisions of the railroad's operating rules, timetable or other mandatory directives violation of which by engineers were cited by the railroad as the cause of train accidents or train incidents in accident reports filed in compliance with part 2225 of this chapter in the preceding calendar year;

(3) Designed so that the administration of these tests is effectively distributed throughout whatever portion of a 24-hour day that the railroad conducts its operations; and

(4) Designed so that individual tests are administered without prior notice to the engineer being tested.

*The burden for this requirement is included under that of the certification program under § 240.101 and under that of the testing requirements in § 240.211/213 and that of § 240.303. Consequently, there is no additional burden associated with this requirement.*

(f) Each railroad's program shall indicate the action the railroad will take in the event that it finds deficiencies with a locomotive engineer's performance during an operational monitoring observation or unannounced compliance test administered in accordance with the procedures required under § 240.303.

(g) Each railroad's program shall describe the scoring system used by the railroad during an operational monitoring observation or unannounced compliance test administered in accordance with the procedures required under § 240.303. **(New)**

*The burden for the above requirements is already included in that of § 240.127 above. Consequently, there is no additional burden associated with this requirement.*

#### List of Designated Supervisor of Locomotive Engineers

(§ 240.201/221)

(a) Each railroad must designate in writing any person(s) it deems qualified as a Designated Supervisor of Locomotive Engineers. Each person so designated shall have demonstrated to the railroad through training, testing or prior experience that he or she has the knowledge, skills, and ability to be a designated supervisor of locomotive engineers.

A railroad must maintain a written record identifying each person designated by it as a supervisor of locomotive engineers.

Each list must be kept at the divisional or regional headquarters of the railroad; must be available for inspection or copying by FRA during regular business hours; and must be updated at least annually.

All 733 railroads will have such a list. This list must be updated at least annually. It is estimated that it will take approximately 60 minutes per respondent to update the list. Total annual burden for this requirement is 733 hours.

Respondent Universe:	733 railroads
Burden time per response:	60 minutes
Frequency of Response:	Annually
Annual number of Responses:	733 updates
Annual Burden:	733 hours

**Calculation:** 733 updates x 60 min. = 733 hours

List of Designated Qualified Locomotive Engineers

(§ 240.201/221)

(b.) Each railroad must designate in writing all persons that it will deem to be qualified as certified locomotive engineers for the purpose of initial compliance with paragraph (d) of this section, except as provided for in paragraph (h) of this section.

(1) Each person so designated shall have demonstrated to the railroad through training, testing or prior experience that he or she has the knowledge and skills to be a certified locomotive engineer.

(2) Each railroad must issue a certificate that complies with § 240.223 to each person that it designates as qualified under the provisions of paragraph (b) of this section. *(Note: The burden for this requirement is included under that of § 240.201/217/223/301 below. Consequently, there is no additional burden associated with this requirement.)* Each railroad must maintain a written record identifying each person it designates as a certified locomotive engineer. That listing of certified engineers must indicate the class

of service the railroad determines each person is qualified to perform and the date of the railroad's certification decision. The listing required by paragraphs (a), (b), and (c) of § 240.221 must be updated at least annually. The record/list required under § 240.221 must be kept at the divisional or regional headquarters of the railroad, and must be available for inspection or copying by FRA during regular business hours.

All 733 railroads are required to prepare a record or list identifying their qualified locomotive engineers. It is estimated that it will take each railroad approximately 60 minutes to annually update its list/record. Total annual burden for updating the list of qualified locomotive engineers is 733 hours.

Respondent Universe:	733 railroads
Burden time per response:	60 minutes
Frequency of Response:	Annually
Annual number of Responses:	733 updated lists/records
Annual Burden:	733 hours

**Calculation:** 733  
update  
d  
lists/re  
cords x  
60  
min. =  
733  
hours

(c) No railroad shall permit or require a person, designated as qualified for certification under the provisions of paragraph (b) of this section, to perform service as a certified locomotive or train service engineer for more than a 36-month period unless that person has been determined to be qualified in accordance with procedures that comply with Subpart C.

(d) No railroad shall permit or require any person to operate a locomotive in any class of locomotive or train service unless that person has been certified as a qualified locomotive engineer and issued a certificate that complies with § 240.223.

(e) No Class I railroad (including the National Railroad Passenger Corporation) or railroad providing commuter service shall designate any person it deems qualified as a designated supervisor of locomotive engineers or initially certify or re-certify a person as a locomotive engineer in either locomotive or train service unless that person has been tested, evaluated, and determine to be qualified in accordance with procedures that comply with Subpart C.

(f) No Class II railroad shall designate any person it deems qualified as a designated supervisor of locomotive engineers or initially certify or re-certify a person as a locomotive engineer in either locomotive or train service unless that person has been tested, evaluated, and determine to be qualified in accordance with procedures that comply with Subpart C.

(g) No Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall designate any person it deems qualified as a designated supervisor of locomotive engineers or initially certify or re-certify a person as a locomotive engineer in either locomotive or train service unless that person has been tested, evaluated, and determine to be qualified in accordance with procedures that comply with Subpart C.

*The burden for the above requirements is included under that of §§ 209/211/213/303. Consequently, there is additional burden associated with this requirement.*

(h) Each person designated as a locomotive engineer shall be issued a certificate that complies with § 240.223 prior to being required or permitted to operate a locomotive.

*The burden for this requirement is included under that of § 240.223 below. Consequently, there is no additional burden associated with this requirement.*

(i.) A railroad may obtain approval from FRA to maintain this record electronically or maintain this record at the railroad's general offices, or both. Requests for such approval must be filed in writing with the Associate Administrator for Safety and contain sufficient information to explain how FRA will be given access to the data that is fully equivalent to that created by compliance with paragraph (e) of this section (§ 240.221).

*FRA believes that it would receive zero (0) requests under the above requirement since all the railroads already keep this information electronically in some sort of database and would readily print out its list upon request by an FRA representative. Consequently, there is no burden associated with this requirement.*

Total annual burden for this entire requirement is 733 hours.

#### Locomotive Engineers Certificate (§ 240.201/217/223/301)

(a.) Each railroad must issue a certificate that complies with § 204.223 to each person that it designates as a qualified locomotive engineer under paragraph b of this section. As a minimum, each certificate issued must: (1) Identify the railroad or parent company that is issuing the certificate; (2) Indicate that the railroad, acting in conformity with this part, has determined that the person to whom it is being issued has been determined to be qualified to operate a locomotive; (3) Identify the person to whom it is being issued (including the person's name, date of birth, and employee identification number, and

either a physical description or photograph of the person); (4) Identify any conditions or limitations, including the class of service or conditions to ameliorate vision or hearing acuity deficiencies, that restrict the person's operational authority; (5) Show the date of its issuance; (6) Be signed by a supervisor of locomotive engineers or other individual designated in accordance with paragraph (b) of this section; (7) Show the date of the person's last operational compliance test as required by § 240.129(c) and § 240.303(b), unless that information is reflected on supplementary documents which the locomotive engineer has in his/her possession when operating a locomotive; and (8) Be of sufficiently small size to permit being carried in an ordinary pocket wallet.

Each person designated as a locomotive engineer shall be issued a certificate that complies with § 240.223 prior to being required or permitted to operate a locomotive. Nothing in paragraph (a) of this section (§ 240.223) shall prohibit any railroad from including additional information on the certificate or supplementing the certificate through other documents.

Except as provided for in § 240.201 concerning initial implementation of the program, a railroad must issue a person designated as a certified locomotive engineer a certificate that complies with § 240.223 no later than 30 days from the date of its decision to certify or re-certify that person. Additionally, railroads must have a system for the prompt replacement of lost, stolen, or mutilated certificates and that system must be reasonably accessible to certified locomotive engineers in need of a replacement certificate.

No railroad shall permit or require a person, designated as qualified for certification under the provisions of paragraph (b) of this section (§ 240.201), to perform service as a certified locomotive or train service engineer for more than the 36-month period unless that person has been determined qualified in accordance with procedures that comply with subpart C.

Thus, the Certification Program was phased in over a three year period. FRA estimates that approximately one-third of the 53,000 candidates have their certificates renewed annually. Therefore, approximately 17,667 certificates will be issued annually. It is estimated that it will take approximately five (5) minutes to prepare each certificate. Total annual burden for this requirement is 1,472 hours.

Respondent Universe:	53,000 candidates
Burden time per response:	5 minutes
Frequency of Response:	Triennially
Annual number of Responses:	17,667 certificates
Annual Burden:	1,472 hours

**Calculation:** 17,667 certificates x 5 min. = 1,472 hours

(b.) It shall be unlawful for any railroad to knowingly or any individual to willfully make,

cause to be made, or participate in the making of a false entry on the certificate; or otherwise falsify that certificate through material misstatement, omission, or mutilation.

*Because it is so highly unlikely, FRA believes that zero (0) railroads/individuals will willfully falsify an entry on a certificate or otherwise falsify that certificate through material misstatement, omission, or mutilation. Consequently, there is no burden associated with this requirement.*

#### List of designated persons authorized to sign Locomotive Engineers Certificate (§240.201/223)

Each railroad to which this part applies must designate in writing any person, other than a supervisor of locomotive engineers, that it authorizes to sign the certificates designated in this section (§ 240.223). The designation can identify such person(s) by name or job title.

*FRA estimates that railroads will solely designate supervisors of locomotive engineers (DSLEs) for this task. Consequently, there is no additional burden associated with this requirement.*

#### Determinations Required as a Prerequisite to Certification (§ 240.203)

Except as provided in paragraph (b), each railroad, prior to initially certifying or re-certifying any person as an engineer for any class of service, must, in accordance with its FRA-approved program, determine in writing that: (1) The individual meets the eligibility requirements of § 240.115, § 240.117, § 240.119; and (2) The individual meets the vision and hearing acuity standards of § 240.121; (3) The individual has the necessary knowledge, as demonstrated by successfully completing a test that meets the requirements of § 240.125; (4) The individual has the necessary applied knowledge and operating performance skills, as demonstrated by successfully completing an operational performance test that meets the requirements of § 240.127; and (5) Where the person has not been previously certified, that the person has completed a training program that meets the requirements of § 240.123.

*The burden for this requirement is included under § 240.117, § 240.205, § 240.209/213, § 240.211/213, and § 240.303.*

#### Procedures For Determining Eligibility Based on Prior Safety Conduct /Data to EAP Counselor (§ 240.205)

Each railroad, prior to initially certifying or re-certifying any person as an engineer for any class of service, must determine that the person meets the eligibility requirements of § 240.115 involving prior conduct as a motor vehicle operator, § 240.117 involving prior conduct as a railroad worker, and § 240.119 involving substance abuse disorders and



alcohol/drug rules compliance.

In order to make the determinations required under paragraph (a) of this section, a railroad must have on file documents pertinent to the determinations referred to in paragraph (a) of this section, including a written document from its EAP Counselor either reflecting his or her professional opinion that the person has been evaluated as not currently affected by a substance abuse disorder or that the person has been evaluated as affected by an active substance abuse disorder and is ineligible for certification. Essentially under this section, each railroad must review the available information concerning the locomotive engineer candidate's motor vehicle driving record to determine if it reveals any incident(s) of unsafe conduct; i.e., a conviction for, or state action for cause to cancel, revoke, suspend, or deny a motor vehicle driver's license for the following: (1) operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance; and (2) refusal to undergo such testing as is required by State law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance. Each railroad is required to provide the data to the railroad's Employee Assistance Program (EAP) Counselor along with any information concerning the person's railroad service record, and must refer the person for evaluation to determine if the person has an active substance abuse disorder. The person must cooperate in the evaluation and must provide any requested records of prior counseling or treatment for review exclusively by the Employee Assistance Program (EAP) Counselor in the context of such evaluation.

FRA estimates that approximately 177 cases annually will be forwarded by the railroads to the EAP Counselor for review. FRA believes that, in all of the 177 cases, the candidate will have received some kind of counseling or treatment and must provide the EAP Counselor with the requested records. It is estimated that it will take approximately five (5) minutes for the employee to provide the data to the EAP Counselor. Total annual burden for this requirement is 15 hours.

Respondent Universe:	733 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	177 records
Annual Burden:	15 hours

**Calculation:** 177 records x 5 min. = 15 hours

Procedure For Making Determination On Vision/Hearing Acuity (Medical Certificate) - (§ 240.207)

(a.) Each railroad, prior to initially certifying or re-certifying any person as an engineer for any class of [train or locomotive] service, must determine that the person meets the

standards for visual acuity and hearing acuity prescribed in § 240.121. In order to make this determination, each railroad must have on file either a medical examiner's certificate showing that the individual has been medically examined and meets these acuity standards, or possess a written document from its medical examiner stating his/her professional opinion that the person does not meet one or both acuity standards and stating the basis for his/her determination that (i) the person can nevertheless be certified under certain conditions or (ii) the person's acuity is such that he/she cannot safely operate a locomotive even with conditions attached.

According to the regulation, a certificate is good for three years and, assuming that the railroads will re-certify 1/3 of the 53,000 candidates annually, approximately 17,667 medical examiner's certificates will be issued annually to the railroads. It is estimated that it will take approximately 60 minutes – 30 minutes each – for the visual and hearing tests and another 10 minutes for the preparation of a medical certificate. Total annual burden for this requirement is 20,612 hours.

Respondent Universe:	53,000 candidates
Burden time per response:	70 minutes
Frequency of Response:	Triennially
Annual number of Responses:	17,667 certificates
Annual Burden:	20,612 hours

<b><u>Calculation:</u></b>	17,667
	certificates x
	70 min. =
	20,612 hours

(b.) If the examination required under this section discloses that the person needs corrective lenses or a hearing aid, or both, either to meet the threshold acuity levels established in § 240.121 or to meet the a lower threshold determined by the railroad's medical examiner to be sufficient to safely operate a locomotive or train on that railroad, that fact must be noted on the certificate issued in accordance with the provisions of this part.

*The burden for this is included under § 240.201/217/223/301.*

(c.) Any person with such a certificate notation must use the relevant corrective device(s) while operating a locomotive in locomotive or train service unless the railroad's medical examiner subsequently determines in writing that the person can safely operate without using the device.

FRA believes that the situation referenced above will occur rarely. It is estimated that the railroad's medical examiner will make such a written determination in approximately

10 cases a year. It is estimated that it will take approximately two (2) hours for the medical examiner to complete the written determination explaining why that the person can safely operate the locomotive or train without using the corrective device. Total annual burden for this requirement is 20 hours.

	Respondent Universe:	733 railroads
Burden time per response:	2 hours	
Frequency of Response:	On occasion	
Annual number of Responses:	10 written determinations	
Annual Burden:	20 hours	

**Calculation:** 10 written determinations x 2 hrs. = 20 hours

Total annual burden for this entire requirement is 20,632 hours (20,612 + 20).

Denial of certification (§ 240.219)

(a) A railroad must notify a candidate for certification or re-certification of information known to the railroad that forms the basis for denying the person certification and provide the person an opportunity to explain or rebut that adverse information in writing prior to denying certification. This section does not require further opportunity to comment if the railroad’s denial is based solely on factor addressed by § 240.115, § 240.117, and § 240.119, and the opportunity to comment afforded by those sections has been provided.

FRA currently estimates that there will be approximately 30 certification or re-certification cases annually where the candidate will be denied a certificate. It is further estimated that it will take the railroad approximately one (1) hour to prepare and forward a letter to the employee, and approximately one (1) additional hour for the employee to prepare and forward a response back to the railroad. Total annual burden for this requirement is 60 hours.

Respondent Universe:	17,667 candidates
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	30 letters + 30 responses
Annual Burden:	60 hours

**Calculation:** 30 letters x 1 hr. + 30 responses x 1 hr. = 60 hours

(b) If it denies a person certification or re-certification, a railroad must notify the person of the adverse decision and explain, in writing, the basis for its denial decision. The document explaining the basis for the denial must be mailed or delivered to the person within 10 days after the railroad’s decision and must give the date of the decision.

FRA estimates that approximately 30 denial notices will be written annually. It is estimated that it will take approximately one (1) hour to collect the necessary information, prepare the written documentation, and forward the denial notification to the employee. Total annual burden for this requirement is 30 hours.

Respondent Universe:	733 railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	30 notifications
Annual Burden:	30 hours

**Calculation:** 30 notifications x 1 hr. = 30 hours

Total annual burden for this entire requirement is 90 hours (60 + 30).

#### Reliance on Qualifications Determinations Made by Other Railroads (§ 240.225)

A railroad that is considering certification of a person as a qualified engineer may rely on determinations made by another railroad concerning that person's qualifications. The railroad's certification program must address how the railroad will administer the training of previously uncertified engineers with extensive operating experience or previously certified engineers who have had their certification expire. If a railroad's certification program fails to specify how to train a previously certified engineer hired from another railroad, then the railroad shall require the newly hired engineer to take the hiring railroad's entire training program.

*The burden for this requirement is included under § 240.101. Consequently, there is no additional burden associated with this requirement.*

A railroad relying on another's certification must determine that: (1) the prior certification is still valid in accordance with the provisions of §§ 240.201, 240.217, and 240.307; (2) the prior certification was for the same classification of locomotive or train service as the certification being issued under this section; (3) the person has received training on and visually observed the characteristics of the new territory in accordance with § 240.123; (4) the person has demonstrated the necessary knowledge concerning the railroad's operating rules in accordance with § 240.125; (5) the person has demonstrated the necessary performance skills concerning the railroad's operating rules in accordance with § 240.127.

*The burden for this requirement is included under that of §§§ 240.201, 240.209, 240.211, 240.213, 240.303, and 240.307. Consequently, there is no additional burden associated with this requirement.*

#### Reliance on Qualification Requirements of Other Countries (Canadian Certification Data)

(§ 240.227)

(a) A railroad that conducts joint operations with a Canadian railroad may certify, for the purposes of compliance with this part, that a person is qualified to be a locomotive or train service engineer provided that it determines that (1) the person is employed by the Canadian railroad; and (2) the person meets or exceeds the qualifications issued by Transport Canada for such service.

*FRA believes American railroads will defer to Canadian railroads and accept persons certified by them as a qualified locomotive or train service engineer. No persons then are likely to be certified under the above circumstances. Consequently, there is no burden associated with this requirement.*

(b) Any Canadian railroad that is required to comply with this regulation may certify that a person is qualified to be a locomotive or train service engineer provided it determines that (1) the person is employed by the Canadian railroad; and (2) the person meets or exceeds the qualifications standards issued by Transport Canada for such service.

*Engineers are certified by Transport Canada, so there is no special issuing of a certificate or special procedures involved. Consequently, there is no burden associated with this requirement.*

Requirements For Joint Operations Territory (§ 240.229)

Each locomotive engineer who is called to operate on another railroad must be qualified on the segment of track upon which he/she will operate in accordance with the requirements set forth by the controlling railroad, and must immediately notify the railroad upon which he or she is employed if he/she is not qualified to perform that service.

FRA estimates that approximately 321 railroads operate jointly over territory. FRA estimates that 1% (184) of the 18,400 locomotive engineers working for these railroads will notify their employer annually that they are not qualified to perform on a given segment of track in accordance with the controlling railroad's requirements. FRA estimates that each call (radio/phone) will take approximately five (5) minutes. Total annual burden for this requirement is 15 hours.

Respondent Universe:	321 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	184 calls (radio/phone)
Annual Burden:	15 hours

**Calculation:** 184 calls x 5 min. = 15 hours

Prohibited Conduct (§ 240.305)

After December 31, 1991, it shall be unlawful to be a Designated Supervisor of Locomotive Engineers, a certified locomotive engineer pilot or an instructor engineer who is monitoring, piloting or instructing a locomotive engineer and fail to take appropriate action to prevent a violation of paragraphs (a)(1) through (a) (5) of this section. Appropriate action does not mean that a supervisor, pilot or instructor must prevent a violation from occurring at all costs; the duty may be met by warning an engineer of a potential or foreseeable violation. A Designated Supervisor of Locomotive Engineers will not be held culpable under this section when this monitoring event is conducted as part of the railroad’s operational compliance tests as defined in § 217.9 and § 340.303 of this chapter.

*If a violation occurred after the verbal warning had been given, it is most likely that a Designated Supervisor of Locomotive Engineers (or certified locomotive engineer pilot or instructor engineer) would not have his/her certification revoked because the DSLE has met his/her burden. The verbal warning itself would only take a few seconds. Concerning the rare instances where the certification is revoked, any burden incurred by the DSLE pertaining to an appeal would be exempt for the reason cited under § 240.117. Consequently, there is no burden associated with this requirement.*

Railroad Oversight Responsibilities (§ 240.309)

For reporting purposes, each category of detected poor safety conduct identified in paragraph (d) of this section shall be capable of being annotated to reflect the following: (1) The nature of the remedial action taken and the number of events subdivided so as to reflect which of the following actions was selected: (i) Imposition of informal discipline; (ii) Imposition of formal discipline; (iii) Provision of informal training; or (iv) Provision of formal training; and (2) If the nature of the remedial action taken was formal discipline, the number of events further subdivided so as to reflect which of the following punishments was imposed by the hearing officer: (i) The person was withheld from service; (ii) The person was dismissed from employment; or (iii) The person was issued demerits. If more than one form of punishment was imposed, only that punishment deemed most severe shall be shown

FRA estimates approximately six (6) annotations will be sent annually under the above requirement. FRA estimates it will take approximately 15 minutes to complete each annotation. Total annual burden for this requirement is two (2) hours.

Respondent Universe:	15 railroads
Burden time per response:	15 minutes

Frequency of Response:	On occasion
Annual number of Responses:	6 annotations
Annual Burden:	2 hours

**Calculation:** 6 annotations x 15 minutes = 2 hours

## **TESTING REQUIREMENTS**

### **Written Test (§ 240.209/213)**

(a) Each railroad, prior to initially certifying or re-certifying any person as an engineer for any class of train or locomotive service, must determine that the person has, in accordance with the requirements of §240.125 of this part, demonstrated sufficient knowledge of the railroad's rules and practices for the safe operation of trains.

(b) In order to make the determination required by paragraph (a), a railroad must have written documentation showing that the person either exhibited his or her knowledge by achieving a passing grade in testing that complies with this part, or did not achieve a passing grade in such testing. If a person fails to achieve a passing score under the testing procedures required by this part, no railroad shall permit or require that person to operate a locomotive as a locomotive or train service engineer prior to that person's achieving a passing score during a re-examination of his/her knowledge.

FRA estimates that approximately 17,667 tests (1/3 of the total of 53,000) will be given annually. It is estimated that it will take approximately two (2) hours to administer the test and prepare the required written documentation. Total annual burden for this requirement is 35,334 hours.

Respondent Universe:	53,000 candidates
Burden time per response:	2 hours
Frequency of Response:	Triennially
Annual number of Responses:	17,667 tests
Annual Burden:	35,334 hours

**Calculation:** 17,667 tests x 2 hrs. = 35,334 hours

### **Performance Test (§ 240.211/ 213)**

(a) Each railroad, prior to certifying or re-certifying any person as an engineer for any class of train or locomotive service, must determine that the person has demonstrated, in accordance with the requirements of § 240.127 of this part, the skills to safely operate locomotives or locomotives and trains, including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains, in the most demanding class or type of service that the person will be permitted to perform.

(b) In order to make this determination, a railroad must have written documentation showing the person either exhibited his/her knowledge by achieving a passing grade in testing that complies with this part, or did not achieve a passing grade in such testing. If a person fails to achieve a passing score under the testing procedures required by this part, no railroad shall permit or require that person to operate a locomotive as a locomotive or train service engineer prior to that person's achieving a passing score during a re-examination of performance skills. No railroad shall permit a designated supervisor of locomotive engineers to test, examine or evaluate his/her own performance skills when complying with this section.

FRA estimates that approximately 17,667 (1/3 of 53,000) skill performance tests will be conducted annually. It is estimated that it will take a total of approximately two (2) hours to administer the test and prepare the required written documentation. Total annual burden for this requirement is 35,334 hours.

Respondent Universe:	53,000 candidates
Burden time per response:	2 hours
Frequency of Response:	Triennially
Annual number of Responses:	17,667 tests
Annual Burden:	35,334 hours

<b><u>Calculation:</u></b>	17,667
	tests x
	2 hrs.
	=
	35,334
	hours

Annual Operational Monitor Observation (§ 240.303)

Each railroad to which this part applies must, prior to FRA approval of its program in accordance with § 240.201, have a program to monitor the conduct of its certified locomotive engineers by performing both operational monitoring observations and by conducting unannounced operating rules compliance tests. The program must be conducted so that each locomotive engineer must be given at least one operational monitoring observation by a qualified supervisor of locomotive engineers in each calendar year.

Approximately 53,000 operational monitoring observation tests will be performed annually. FRA currently estimates that it will take approximately two (2) hours to



perform the test and prepare the written documentation of the test. Total annual burden for this requirement is 106,000 hours.

Respondent Universe:	53,000 candidates
Burden time per response:	2 hours
Frequency of Response:	Annually
Annual number of Responses:	53,000 tests/documents
Annual Burden:	106,000 hours
<b>Calculation:</b>	53,000 tests/documents x 2 hrs. = 106,000 hours

#### Annual Operating Rules Compliance Test/Observation (§ 240.303)

The program shall be conducted so that each locomotive engineer shall be given at least one unannounced compliance test each calendar year (by a qualified supervisor of locomotive engineers). The unannounced test program must:

- (1) test engineer compliance with (i) one or more provisions of the railroad's operating rules that require response to signals that display less than a "clear" aspect, if the railroad operates with a signal system that must comply with part 236 of this chapter;
  - (ii) test engineer compliance with one or more provisions of the railroad's operating rules, timetable, or other mandatory directives that require affirmative response by the locomotive engineer to less favorable conditions than that which existed prior to initiation of the test;
  - (iii) test engineer compliance with provisions of the railroad's operating rules, timetable, or other mandatory directives the violations of which by engineers were cited by the railroad as the cause of train accidents or train incidents in accident reports filed in compliance with part 225 of this chapter for the preceding year;
- (2) be conducted so that the administration of these tests is effectively distributed throughout whatever portion of a 24-hour day that the railroad conducts its operations;
  - (3) be conducted so that individual tests are administered without prior notice to the locomotive engineer being tested; and
  - (4) be conducted so that the results of the test are recorded on the certificate and entered on the record established under § 240.215 within 30 days of the day the test is administered.

Approximately 53,000 compliance tests will be performed annually. It is estimated that it will take approximately one (1) hour to perform the test and prepare the written

documentation of the test. Total annual burden for this requirement is 53,000 hours.

Respondent Universe:	53,000 candidates
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	53,000 tests
Annual Burden:	53,000 hours
<b>Calculation:</b>	53,000 tests x 1 hr. = 53,000 hours

## **RECORDKEEPING REQUIREMENTS**

### Retaining information supporting determinations (§ 240.215)

(a) A railroad that issues, denies, or revokes a certificate after making the determinations required under § 240.203 must maintain a record for each certified engineer or applicant for certification that contains the information the railroad relied on in making its determinations.

(b) The information concerning eligibility that the railroad must retain includes: (1) Any relevant data from the railroad's records concerning the person's prior safety conduct; (2) any relevant data furnished by another railroad; (3) any relevant data furnished by a governmental agency concerning the person's motor vehicle driving record; (4) any relevant data furnished by the person seeking certification concerning his or her eligibility.

(c) The information concerning vision and hearing acuity that the railroad must retain includes: (1) The relevant test results data concerning acuity; and (2) if applicable, the relevant data concerning the professional opinion of the railroad's medical examiner on the adequacy of the person's acuity.

(d) The information concerning demonstrated knowledge that the railroad must retain includes: (1) Any relevant data from the railroad's records concerning the person's success or failure of the passage of knowledge test(s); and (2) a sample copy of the written knowledge tests or tests administered.

(e) The information concerning demonstrated performance skills that the railroad must retain includes: (1) The relevant data from the railroad's records concerning the person's success or failure on the performance skills test(s) that documents the relevant operating facts on which the evaluation is based, including the observations and evaluation of the designated supervisor of locomotive engineers; (2) if a railroad relies on the use of a locomotive operations simulator to conduct the performance skills testing required under this part, the relevant data from the railroad's records concerning the person's success or failure on the performance skills test(s) that documents the relevant operating facts on which the determination was based, including the observations and evaluation of the

designated supervisor of locomotive engineers; and (3) the relevant data from the railroad's records concerning the person's success or failure on tests the railroad performed to monitor the engineer's operating performance in accordance with § 240.129.

(f) If a railroad is relying on successful completion of an approved training program conducted by another entity, the relying railroad must maintain a record for each certified engineer that contains the relevant data furnished by the training entity concerning the person's demonstration of knowledge and performance skills and relied on by the railroad in making its determinations.

(g) If a railroad is relying on a certification decision initially made by another railroad, the relying railroad must maintain a record for each certified engineer that contains the relevant data furnished by the other railroad which it relied on in making its determinations.

(h) All records required under this section must be retained for a period of six years from the date of the certification, re-certification, denial or revocation decision and must be made available to FRA representatives upon request during normal business hours.

(i) It shall be unlawful for any railroad to knowingly or any individual to willfully:  
(1) Make, cause to be made, or participate in the making of a false entry on the record(s) required by this section; or (2) Otherwise falsify such records through material misstatement, omission, or mutilation. *(Note: As stated earlier under § 240.11 above, FRA believes that there will be zero (0) falsified record/ reports. Consequently, there is no burden associated with this requirement.)*

(j) Nothing in this section precludes a railroad from maintaining the information required to be retained under this section in an electronic format provided: (1) The railroad adequately limits and controls those who have access to such information; (2) the railroad employs a system for data storage that permits reasonable access and retrieval of the information in usable format when requested to furnish data by FRA representatives; and (3) information retrieved from the system can be easily produced in a printed format which can be readily provided to FRA representatives and authenticated by a designated representative of the railroad as a true and accurate copy of the railroad's records if requested to do so by FRA representatives.

Approximately 17,667 (1/3 of 53,000) individual records will be established and maintained annually by the railroads. It is estimated that it will take approximately 30 minutes per employee to prepare a file folder and place in it all the required information. Total annual burden for this requirement is 8,834 hours.

Respondent Universe:

733 railroads

Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	17,667 records
Annual Burden:	8,834 hours

**Calculation:** 17,667 records x 30 min. = 8,834 hours

Engineer's Notification of Non-Qualification or Loss of Qualification (§ 240.305)

(a.) Any locomotive engineer, who is notified or called to operate a locomotive or train and such operation would cause the locomotive engineer to exceed certificate limitations set forth in accordance with subpart B of this part, must immediately notify the railroad that he or she is not qualified to perform that anticipated service and it shall be unlawful for the railroad to require such service.

FRA estimates that this will occur approximately 100 times a year. It is estimated that it will take approximately five (5) minutes for the employee to notify the railroad (this is done verbally rather than in writing) that the employee believes that he/she is not qualified to perform an anticipated service. Total annual burden for this requirement is eight (8) hours.

Respondent Universe:	53,000 engineers/candidates
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	100 notifications
Annual Burden:	8 hours

**Calculation:** 100 notifications x 5 min. = 8 hours

(b.) During the duration of any certification interval, a locomotive engineer who has a current certificate from more than one railroad must immediately notify the other certifying railroad(s) if he or she is denied re-certification by a railroad or has his or her certification revoked by a railroad.

FRA estimates that approximately 2% (1,060) of the 53,000 engineers will hold certificates from two or more railroads. It is estimated that approximately two (2) engineers will lose their certificate from at least one of the railroads. It is calculated that it will take the engineer approximately 30 minutes to prepare and forward his letter to the railroad informing them of his/her loss of certification from another railroad. Total annual burden for this requirement is one (1) hour.

Respondent Universe:	1,060 locomotive engineers
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Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	2 letters
Annual Burden:	1 hour

**Calculation:** 2  
 letters  
 x 30  
 min. =  
 1 hour

Total burden for this entire requirement is nine (9) hours (8 +1).

Revocation of Certification/Notice to Engineer of Disqualification (§ 240.307)

Except as provided in § 240.119(e), a railroad that certifies or re-certifies a person as a qualified locomotive engineer and, during the period that certification is valid, acquires information regarding violations of § 240.117(e) or § 240.119(c) of this chapter, which convinces the railroad that the person no longer meets the qualifications requirements of this part, shall revoke the person’s certificate as a qualified locomotive engineer.

Pending a revocation determination under this section, the railroad shall:

- (1) Upon receipt of reliable information indicating the person’s lack of qualification under this part, immediately suspend the person’s certificate;
- (2) prior to or upon suspending the person’s certificate, provide notice of the reason for the suspension, the pending revocation, and an opportunity for a hearing before a presiding officer other than the investigating officer. The notice may initially be given either orally, or in writing. If given orally, it must be confirmed in writing and the written confirmation must be made promptly. Written confirmation which conforms to the notification provisions of an applicable collective bargaining agreement shall be deemed sufficient to satisfy the written confirmation requirements of this section. In the absence of an applicable collective bargaining agreement provision, the written confirmation must be made within 96 hours;
- (3) Convene the hearing within the deadline prescribed by either paragraph (c)(1) of this section or the applicable collective bargaining agreement as permitted under paragraph (d) of this section;

(4) Determine, on the record of the hearing, whether the person no longer meets the qualification requirements of this part stating explicitly the basis for the conclusion reached;

(5) When appropriate, impose the pertinent period of revocation provided for in § 240.117 or § 240.119; and

(6) Retain the record of the hearing for three (3) years after the date the decision is rendered.

FRA estimates that this will occur 900 times a year (1.698% of 53,000 times a year). It is calculated that it will take approximately one (1) hour to prepare and forward the

notification letter to the employee, for the employee to respond to the written notification with a request for a hearing, and for the railroad to make a file folder and file any pertinent data concerning the hearing. Total annual burden for this requirement is 900 hours.

Respondent Universe:	733 railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	900 notification letters
Annual Burden:	900 hours

**Calculation:** 900 notification letters x 1 hr. = 900 hours

The railroad shall place the relevant information in the records maintained in compliance with § 240.309 for Class I (including the National Railroad Passenger Corporation) and Class II railroads, and § 240.215 for Class III railroads if sufficient evidence meeting the criteria provided in paragraph (i) of this section becomes available either: (1) Prior to a railroad's action to suspend the certificate as provided for in paragraph (b)(1) of this section; or (2) Prior to the convening of the hearing provided for in this section.

*The burden for this requirement is included under that of § 240.209 and § 240.215, respectively. Consequently, there is no additional burden associated with this requirement.*

#### Railroad Oversight Responsibilities - Railroad Annual Review (§ 240.309)

(a.) No later than March 31<sup>st</sup> of each year, each Class I railroad (including the National Railroad Passenger Corporation and a railroad providing commuter service) and Class II railroad must conduct a formal annual review and analysis concerning the administration of its program for responding to detected instances of poor safety conduct by certified locomotive engineers during the prior calendar

year.

- (b.) Each review and analysis must involve the following:
- (1) the number and nature of the instances of detected poor safety conduct including the nature of the remedial action taken in response thereto;
  - (2) the number and nature of FRA reported train accidents attributed to poor safety performance by locomotive engineers;
  - (3) the number and type of operational monitoring test failures and observations of inadequate skill performance recorded by supervisors of locomotive engineers; and
  - (4) if it conducts joint operations with another railroad, the number of locomotive engineers employed by such other railroad(s) to which such events were ascribed which the controlling railroad certified for joint operations purposes.

Based on that review and analysis, each railroad must determine what action(s) it will take to improve the safety of train operations to reduce or eliminate future incidents of that nature.

FRA estimates that approximately 51 railroads will have to perform an annual review and analysis. It is estimated that it will take an average of approximately 40 hours per railroad for this review and analysis. Total annual burden for this requirement is 2,040 hours.

Respondent Universe:	51 railroads
Burden time per response:	40 hours
Frequency of Response:	Annually
Annual number of Responses:	51 reviews
Annual Burden:	2,040 hours

**Calculation:** 51 reviews x 40 hrs. = 2,040 hours

- (d.) If requested in writing by FRA, the railroad shall provide a report of the findings and conclusions reached during such annual review and analysis effort.
- (e.) For reporting purposes, information about the nature of detected poor safety conduct shall be capable of segregation for study and evaluation purposes into the following categories: (1) Incidents involving non-compliance with Part 218; (2) Incidents involving non-compliance with Part 219; (3) Incidents involving non-compliance with the procedures for the safe use of train or engine brakes

when the procedures are required for compliance with the Class I, Class IA, Class II, Class III, or transfer train brake test provisions of 49 CFR Part 232 or when the procedures are required for compliance with Class I, Class IA, Class II, or running brake test provisions of 49 CFR Part 238; (4) Incidents involving non-compliance with the railroad's operating rules involving operation of a locomotive or train to operate at a speed that exceeds the maximum authorized limit; (5) Incidents involving non-compliance with the railroad's operating rules resulting in the operation of a locomotive or train past any signal, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it; (6) Incidents involving non-compliance with the provisions of restricted speed, and the operational equivalent thereof, that must be reported under the provisions of Part 225 of this chapter; (7) Incidents involving occupying main track or a segment of main track without proper authority or permission; (8) Incidents involving the failure to comply with prohibitions against tampering with locomotive mounted safety devices, or knowingly operating or permitting to be operated a train with an unauthorized or disabled safety device in the controlling locomotive; (9) Incidents involving non-compliance with the railroad's operating practices (including train handling procedures) resulting in excessive in-train force levels; and

- (f.) For reporting purposes, each category of detected poor safety conduct identified in paragraph (d) of this section shall be capable of being annotated to reflect the following:
  - (1) The nature of the remedial action taken and the number of events subdivided so as to reflect which of the following actions was selected: (i) Imposition of informal discipline; (ii) Imposition of formal discipline; (iii) Provision of informal training; or (iv) Provision of formal training; and
  - (2) If the nature of the remedial action taken was formal discipline, the number of events further subdivided so as to reflect which of the following punishments was imposed by the hearing officer: (i) The person was withheld from service; (ii) The person was dismissed from employment or (iii) The person was issued demerits. If more than one form of punishment was imposed, only that punishment deemed the most severe shall be shown.
- (g.) For reporting purposes, each category of detected poor safety conduct identified in paragraph (d) of this section which resulted in the imposition of formal or informal discipline shall be annotated to reflect the following: (1) The number of instances in which the railroad's internal appeals process reduced the punishment initially imposed at the conclusion of its hearing; and (2) The number of instances in which the punishment imposed by the railroad was reduced by any of the following entities: the National Railroad Adjustment Board, a Public Law Board, a Special Board of Adjustment or other body for the resolution of disputes duly



constituted under the provisions of the Railway Labor Act.

- (h.) For reporting purposes, each category of detected poor safety conduct identified in paragraph (d) of this section shall be capable of being annotated to reflect the following: (1) The total number of incidents in that category; (2) The number of incidents within the total which reflect incidents requiring an FRA accidents/incidents report; and (3) The number of incidents within that total which were detected as a result of a scheduled operational monitoring effort.

FRA estimates that it will make such a request approximately 12 times a year. Most likely, this request will involve the major railroads. FRA believes the major railroads will have the necessary information in a running electronic database. As a result, it is estimated that it will take approximately one (1) hour to complete the necessary report. Total annual burden for this requirement is 12 hours.

Respondent Universe:	51 railroads
Burden time per response:	1 hour
Frequency of Response:	Annually
Annual number of Responses:	12 reports
Annual Burden:	12 hours

**Calculation:** 12 reports x 1 hr. = 12 hours

Engineer's appeal to FRA when a certification is denied, revoked, or suspended (§240.401/403)

(a.) Any person who has been denied certification, denied re-certification, or has had his or her certification revoked and believes that a railroad incorrectly determined that he or she failed to meet the qualification requirements of this regulation when making the decision to deny or revoke the certification, may petition the Federal Railroad Administrator to review the railroad's decision. The Federal Railroad Administrator has delegated initial responsibility for adjudicating such disputes to the Locomotive Engineer Review Board (LERB).

To obtain review of a railroad's decision to deny certification, deny re-certification, or revoke certification, a person must file a petition that complies this section (§ 240.403). Each petition must: (1) be in writing; (2) be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590; (3) contain all available information that the person thinks supports the person's belief that the railroad acted improperly, including the following: (i) the petitioner's full name; (ii) the petitioner's current mailing address; (iii) the petitioner's daytime telephone number; (iv) the name and address of the railroad; and (v) the facts that the petitioner believes constitute the improper action by the railroad, specifying the locations, dates, and identities of all persons who were present or involved

in the railroad's actions (to the degree known by the petitioner); (4) explain the nature of the remedial action sought; (5) be supplemented by a copy of all written documents in the petitioner's possession that document that railroad's decision; and (6) be filed in a timely manner. A petition seeking review of a railroad's decision to deny certification or recertification filed with FRA more than 180 days after the date of the railroad's denial decision will be denied as untimely.

*Since this initiates administrative proceedings (action/investigation), the requirements of this provision are exempted from the Paperwork Reduction Act under 5 CFR 1320.4(2) which states: "The requirements of this Part ... shall not apply to collections of information ... during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities ..."*

(b.) A petition seeking review of a railroad's decision to revoke certification in accordance with the procedures required by § 240.307 filed with FRA more than 120 days after the date of the railroad's revocation decision will be denied as untimely except that the Locomotive Engineer Review Board for cause shown may extend the petition filing period at any time in its discretion: (1) Provided the request for extension is filed before the expiration of the period provided in this paragraph (d); or (2) Provided that the failure to timely file was the result of excusable neglect.

*The requirements of this provision are exempted from the Paperwork Reduction Act under 5 CFR 1320.4(2) which states: "The requirements of this Part ... shall not apply to collections of information ... during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities ..." Since this provision pertains to an administrative action/investigation, there is no burden associated with these requirements.*

(c.) A party aggrieved by a Board decision to deny a petition as untimely may file an appeal with the Administrator in accordance with § 240.411.

*The requirements of this provision are exempted from the Paperwork Reduction Act under 5 CFR 1320.4(2) which states: "The requirements of this Part ... shall not apply to collections of information ... during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities ..." Since this provision pertains to an administrative action/investigation, there is no burden associated with these requirements.*

#### Processing qualifications review petitions/Railroad's Response to Appeal (§ 240.405)

Each petition must be acknowledged in writing by FRA. The acknowledgment must

contain the docket number assigned to the petition and a statement of FRA's intention that the Board will render a decision on this petition within 180 days from the date that the railroad's response is received or from the date upon which the railroad's response period has lapsed pursuant to paragraph (c) of this section.

Upon receipt of the petition, FRA will notify the railroad that it has received the petition and provide the railroad with a copy of the petition. The railroad will be given a period of not to exceed 60 days to submit to FRA any information that the railroad considers pertinent to the petition. Late filings will be only be considered to the extent practicable.

A railroad that submits such information must: (1) identify the petitioner by name and the docket number of the review proceeding; (2) provide a copy of the information being submitted to FRA to the petitioner; and (3) submit the information in triplicate to the Docket Clerk, Federal Railroad Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590. Each petition will then be referred to the Locomotive Engineer Board for a decision.

*The requirements of this provision are exempted from the Paperwork Reduction Act under 5 CFR 1320.4(2) which states: "The requirements of this Part ... shall not apply to collections of information ... during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities ..." Since this provision pertains to an administrative action/investigation, there is no burden associated with these requirements.*

#### Request for a Hearing (§ 240.407)

If adversely affected by the Locomotive Engineer Review Board decision, either the petitioner before the Board or the railroad involved shall have a right to an administrative proceeding as prescribed in § 240.409.

To exercise that right, the adversely affected party must, within 20 days of service of the Board's decision on that party, file a written request with the Docket Clerk, Department of Transportation Central Docket Management System, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590. The form of such request may be in written or electronic form consistent with the standards and requirements established by the Central Docket Management System and posted on its website at <http://dms.dot.gov>.

The result of a failure to request such a hearing within the period provided in paragraph (b) of this section is that the Locomotive Engineer Review Board's decision will constitute final agency action.

If a party elects to request a hearing, that person must submit a written request to the Docket Clerk containing the following: (1) the name address, and telephone number of

the respondent and the requesting party's designated representative, if any; (2) the specific factual issues, industry rules, regulations, or laws that the requesting party alleges need to be examined in connection with the certification decision in question; and (3) the signature of the requesting party or the requesting party's representative, if any.

*The requirements of this provision are exempted from the Paperwork Reduction Act under 5 CFR 1320.4(2) which states: "The requirements of this Part ... shall not apply to collections of information . . . during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities . . ." Since this provision pertains to an administrative action/investigation, there is no burden associated with these requirements.*

#### Hearings (§ 240.409)

(a) An administrative hearing for a locomotive engineer qualification petition shall be conducted by a presiding officer, who can be any person authorized by the Administrator, including an administrative law judge.

(b) The presiding officer may exercise the powers of the Administrator to regulate the conduct of the hearing for the purpose of achieving a prompt and fair determination of all material issues in controversy.

(c) The presiding officer shall convene and preside over the hearing. The hearing shall be a *de novo* hearing to find the relevant facts and determine the correct application of this part to those facts. The presiding officer may determine that there is no genuine issue covering some or all material facts and limit evidentiary proceedings to any issues of material fact as to which there is a genuine dispute.

(d) The presiding officer may authorize discovery of the types and quantities which in the presiding officer's discretion will contribute to a fair hearing without unduly burdening the parties. The presiding officer may impose appropriate non-monetary sanctions, including limitations as to the presentation of evidence and issues, for any party's willful failure to comply with approved discovery requests.

(e) Every petition, motion, response, or other authorized or required document shall be signed by the party filing the same, or by the duly authorized officer or representative of record, or by any other person. If signed by such other person, the reason therefor must be stated and the power of attorney or other authority authorizing such other person to subscribe the document must be filed with the document. The signature of the person subscribing any document constitutes a certification that he or she has read the document; that to the best of his or her knowledge, information and belief every statement contained in the document is true and no such statements are misleading; and that it is not interposed for delay or to be vexatious.

(f) After the request for a hearing is filed, all documents filed or served upon one party must be served upon all parties. Each party may designate a person upon whom service is to be made when not specified by law, regulation, or directive of the presiding officer. If a party does not designate a person upon whom service is to be made, then service may be made upon any person having subscribed to a submission of the party being served, unless otherwise specified by law, regulation, or directive of the presiding officer. Proof of service shall accompany all documents when they are tendered for filing.

(g) If any document initiating, filed, or served in, a proceeding is not in substantial compliance with the applicable law, regulation, or directive of the presiding officer, the presiding officer may strike or dismiss all or part of such document, or require its amendment.

(h) Any party to a proceeding may appear and be heard in person or by an authorized representative.

(i) Any person testifying at a hearing or deposition may be accompanied, represented, and advised by an attorney or other representative, and may be examined by that person.

(j) Any person may request to consolidate or separate the hearing of two or more petitions by motion to the presiding officer, when they arise from the same or similar facts or when the matters are for any reason deemed more efficiently heard together.

(k) Except as provided in § 240.407(c) of this part and paragraph (u)(4) of this section, whenever a party has the right or is required to take action within a period prescribed by this part, or by law, regulation, or directive of the presiding officer, the presiding officer may extend such period, with or without notice, for good cause, provided another party is not substantially prejudiced by such extension. A request to extend a period which has already expired may be denied as untimely.

(l) An application to the presiding officer for an order or ruling not otherwise specifically provided for in this part shall be by motion. The motion shall be filed with the presiding officer and, if written, served upon all parties. All motions, unless made during the hearing, shall be written. Motions made during hearings may be made orally on the record, except that the presiding officer may direct that any oral motion be reduced to writing. Any motion shall state with particularity the grounds therefor and the relief or order sought, and shall be accompanied by any affidavits or other evidence desired to be relied upon which is not already part of the record. Any matter submitted in response to a written motion must be filed and served within fourteen (14) days of the motion, or within such other period as directed by the presiding officer.

(m) Testimony by witnesses at the hearing shall be given under oath and the hearing shall be recorded verbatim. The presiding officer shall give the parties to the proceeding adequate opportunity during the course of the hearing for the presentation of arguments

in support of or in opposition to motions, and objections and exceptions to rulings of the presiding officer. The presiding officer may permit oral argument on any issues for which the presiding officer deems it appropriate and beneficial. Any evidence or argument received or proffered orally shall be transcribed and made a part of the record. Any physical evidence or written argument received or proffered shall be made a part of the record, except that the presiding officer may authorize the substitution of copies, photographs, or descriptions, when deemed to be appropriate.

(n) The presiding officer shall employ the Federal Rules of Evidence for United States Courts and Magistrates as general guidelines for the introduction of evidence. Notwithstanding paragraph (m) of this section, all relevant and probative evidence shall be received unless the presiding officer determines the evidence to be unduly repetitive or so extensive and lacking in relevancy that its admission would impair the prompt, orderly, and fair resolution of the proceeding.

(o) The presiding officer may: (1) administer oaths and affirmations; (2) issue subpoenas as provided for in § 209.7 of part 209 in this chapter; (3) adopt any needed procedures for the submission of evidence in written form; (4) examine witnesses at the hearing; (5) convene, recess, adjourn or otherwise regulate the course of the hearing; and (6) take any other action authorized by or consistent with the provisions of this part and permitted by law that may expedite the hearing or aid in the disposition of the proceeding.

(p) The petitioner before the Locomotive Engineer Review Board, the railroad involved in taking the certification action, and FRA shall be parties at the hearing. All parties may participate in the hearing and may appear and be heard on their own behalf or through designated representatives. All parties may offer relevant evidence, including testimony, and may conduct such cross-examination of witnesses as may be required to make a record of the relevant facts.

(q) The party requesting the administrative hearing shall be the “hearing petitioner.” The hearing petitioner shall have the burden of proving its case by a preponderance of the evidence. Hence, if the hearing petitioner is the railroad involved in taking the certification action, that railroad will have the burden of proving that its decision to deny certification, deny re-certification, or revoke certification was correct. Conversely, if the petitioner before the Locomotive Engineer Review Board is the hearing petitioner, that person will have the burden of proving that the railroad’s decision to deny certification, deny re-certification, or revoke certification was incorrect. Between the petitioner before the Locomotive Engineer Review Board and the railroad involved in taking the certification action, the party who is not the hearing petitioner will be a respondent.

(r) FRA will be a mandatory party to the administrative hearing. At the start of each proceeding, FRA will be a respondent.

(s) The record in the proceeding shall be closed at the conclusion of the evidentiary hearing unless the presiding officer allows additional time for the submission of

additional evidence. In such instances, the record shall be left open for such time as the presiding officer grants for that purpose.

(t) At the close of the record, the presiding officer shall prepare a written decision in the proceeding.

(u)(1) The decision must contain the findings of fact and conclusions of law, as well as the basis for each concerning all material issues of fact or law presented on the record;  
(2) Shall be served on the hearing petitioner and all other parties to the proceeding;

(3) Shall not become final for 35 days after issuance; (4) Constitutes final agency action unless an aggrieved party files an appeal within 35 days after issuance; and (5) Is not precedential.

*The requirements of this provision are exempted from the Paperwork Reduction Act under 5 CFR 1320.4(2) which states: “The requirements of this Part ... shall not apply to collections of information ... during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities ...” Since this provision pertains to an administrative action/investigation, there is no burden associated with these requirements.*

#### Appeals (§ 240.411)

(a) Any party aggrieved by the presiding officer's decision may file an appeal. The appeal must be filed within 35 days of issuance of the decision with the FRA Administrator, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590. A copy of the appeal must be served on each party. The appeal must set forth the objections to the presiding officer's decision, supported by reference to applicable laws and regulations and with specific reference to the record. If no appeal is timely filed, the presiding officer's decision constitutes final agency action.

(b) A party may file a reply to the appeal within 25 days of service of the appeal. The reply must be supported by reference to applicable laws and regulations and with specific reference to the record, if the party relies on evidence contained in the record.

(c) The Administrator may extend the period for filing an appeal or a response for good cause shown, provided that the written request for extension is served before expiration of the applicable period provided in this section.

(d) The Administrator has sole discretion to permit oral argument on the appeal. On the Administrator's own initiative or written motion by any party, the Administrator may grant the parties an opportunity for oral argument.

(e) The Administrator may remand, vacate, affirm, reverse, alter or modify the decision of the presiding officer and the Administrator's decision constitutes final agency action except where the terms of the Administrator's decision (for example, remanding a case to the presiding officer) show that the parties' administrative remedies have not been exhausted.

(f) Where a party files an appeal from a Locomotive Engineer Review Board decision pursuant to § 240.403(e), the Administrator may affirm or vacate the Board's decision, and may remand the petition to the Board for further proceedings. An Administrator's decision to affirm the Board's decision constitutes final agency action.

*The requirements of this provision are exempted from the Paperwork Reduction Act under 5 CFR 1320.4(2) which states: "The requirements of this Part ... shall not apply to collections of information ... during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities ..." Since this provision pertains to an administrative action/investigation, there is no burden associated with these requirements.*

Total annual burden under this entire information collection is 278,682 hours.

**13. PROVIDE AN ESTIMATE OF THE TOTAL ANNUAL COST BURDEN TO RESPONDENTS OR RECORDKEEPERS RESULTING FROM THE COLLECTION OF INFORMATION. (DO NOT INCLUDE THE COSTS OF ANY HOUR BURDEN SHOWN IN ITEMS 12 AND 14).**

- **THE COST ESTIMATES SHOULD BE SPLIT INTO TWO COMPONENTS: (A) A TOTAL CAPITAL AND START-UP COST COMPONENT (ANNUALIZED OVER IT EXPECTED USEFUL LIFE); AND (B) A TOTAL OPERATION AND MAINTENANCE AND PURCHASE OF SERVICES COMPONENT. THE ESTIMATES SHOULD TAKE INTO ACCOUNT COSTS ASSOCIATED WITH GENERATING, MAINTAINING, AND DISCLOSING OR PROVIDING THE INFORMATION. INCLUDE DESCRIPTIONS OF METHODS USED TO ESTIMATE MAJOR COSTS FACTORS INCLUDING SYSTEM AND TECHNOLOGY ACQUISITION, EXPECTED USEFUL LIFE OF CAPITAL EQUIPMENT, THE DISCOUNT RATE(S), AND THE TIME PERIOD OVER WHICH COSTS WILL BE INCURRED. CAPITAL AND START-UP COSTS INCLUDE, AMONG OTHER ITEMS, PREPARATIONS FOR COLLECTING INFORMATION SUCH AS PURCHASING COMPUTERS AND SOFTWARE; MONITORING, SAMPLING, DRILLING AND TESTING EQUIPMENT; AND RECORD STORAGE FACILITIES.**
  
- **IF COST ESTIMATES ARE EXPECTED TO VARY WIDELY,**



**AGENCIES SHOULD PRESENT RANGES OF COST BURDENS AND EXPLAIN THE REASONS FOR THE VARIANCE. THE COST OF PURCHASING OR CONTRACTING OUT INFORMATION COLLECTION SERVICES SHOULD BE A PART OF THIS COST BURDEN ESTIMATE. IN DEVELOPING COST BURDEN ESTIMATES, AGENCIES MAY CONSULT WITH A SAMPLE OF RESPONDENTS (FEWER THAN 10), UTILIZE THE 60-DAY PRE-OMB SUBMISSION PUBLIC COMMENT PROCESS AND USE EXISTING ECONOMIC OR REGULATORY IMPACT ANALYSIS ASSOCIATED WITH THE RULEMAKING CONTAINING THE INFORMATION COLLECTION, AS APPROPRIATE.**

- **GENERALLY, ESTIMATES SHOULD NOT INCLUDE PURCHASES OF EQUIPMENT OR SERVICES, OR PORTIONS THEREOF, MADE (1) PRIOR TO OCTOBER 1, 1995, (2) TO ACHIEVE REGULATORY COMPLIANCE WITH REQUIREMENTS NOT ASSOCIATED WITH THE INFORMATION COLLECTION, (3) FOR REASONS OTHER THAN TO PROVIDE INFORMATION OR KEEP RECORDS FOR THE GOVERNMENT, OR (4) AS PART OF CUSTOMARY AND USUAL BUSINESS OR PRIVATE PRACTICES.**

Additional costs to respondents outside of the burden hour costs above are as follows:

\$ 88,335	Notary (17,667 requests @ \$5 ea.)
88,355	Fee for NDR data (17,667 requests @ \$5 ea.)
12,000	Postage
<u>12,000</u>	Miscellaneous
\$ 200,670	Total

- 14. PROVIDE ESTIMATES OF ANNUALIZED COST TO THE FEDERAL GOVERNMENT. ALSO, PROVIDE A DESCRIPTION OF THE METHOD USED TO ESTIMATE COSTS, WHICH SHOULD INCLUDE QUANTIFICATION OF HOURS, OPERATIONAL EXPENSES SUCH AS EQUIPMENT, OVERHEAD, PRINTING, AND SUPPORT STAFF, AND ANY OTHER EXPENSE THAT WOULD NOT HAVE BEEN INCURRED WITHOUT THIS COLLECTION OF INFORMATION. AGENCIES ALSO MAY AGGREGATE COST ESTIMATES FROM ITEMS 12, 13, AND 14 IN A SINGLE TABLE.**

FRA estimates that approximately two (2) man-years annually (at the GS-14-5 level) will be spent in administering the Qualification for Locomotive Engineers Program. This excludes time spent doing routine compliance and enforcement activities. Multiplying 4,160 hours times the estimated \$98 per hour (includes 75% for overhead) equals an annual Federal cost of \$407,680.

**15. EXPLAIN THE REASONS FOR ANY PROGRAM CHANGES OR ADJUSTMENTS REPORTED IN ITEMS 13 OR 14 OF THE OMB FORM 83-I.**

The total burden for this information collection submission reflects an increase of 4,144 burden hours from the last approved submission. The burden increase is due to two **program changes** and three **adjustments**.

The two **program changes** are as follows:

(1 & 2.) Under § 240.127(e)(f)/§ 240.129(f)(g) of the final rule, railroads are now required to describe the scoring systems they use for a skills test administered in accordance § 240.211 and the scoring system they used during an operational monitoring observation or unannounced compliance test administered in accordance with the procedures required under § 240.303. The **new requirements** *increased* the burden by 3,710 *hours* (733 amended certification programs @ approx 5 hrs. ea.).

**Program changes** then *increased* the burden by a total of 3,710 *hours*.

There were also three **adjustments**, which increased the burden. They are as follows:

(1.) Under § 240.127(e)(f)/240.129(f)(g) of the final rule, FRA revised its estimates based on both the number of railroads and size of the railroad. Of the 733 railroads now in the FRA database, 46 are large/medium railroads and 687 are small railroads. The total number of railroads affected and the corresponding number of amended certification programs changed then (from 718 to 733) and the burden time estimate changed (from five (5) hours for all 718 railroads to 48 hours for the 46 large/medium railroads and eight (8) hours for the small railroads. These changes in estimate *increased* the burden by 404 *hours* (from 3,590 hours to 3,994 hours).

(2.) Under § 240.201/221, FRA revised the total number of railroads affected and the corresponding number of updated lists/records of designated supervisors of locomotive engineers (from 718 to 733). This change in estimate *increased* the burden by 15 *hours* (from 718 hours to 733 hours).

(3.) Under § 240.201/221, FRA revised the total number of railroads affected and the corresponding number of updated lists/records of qualified locomotive engineers (from 718 to 733). This change in estimate *increased* the burden by 15 *hours* (from 718 hours to 733 hours).

Thus, **adjustments** increased the burden by 434 *hours*.

The current burden inventory exhibits a total of 274,538 hours, while the current submission shows a total of 278,682 hours. Hence, there is an increase of 4,144 hours.

There is no change in costs to respondents from the last submission.

- 16. FOR COLLECTIONS OF INFORMATION WHOSE RESULTS WILL BE PUBLISHED, OUTLINE PLANS FOR TABULATION, AND PUBLICATION. ADDRESS ANY COMPLEX ANALYTICAL TECHNIQUES THAT WILL BE USED. PROVIDE THE TIME SCHEDULE FOR THE ENTIRE PROJECT, INCLUDING BEGINNING AND ENDING DATES OF THE COLLECTION OF INFORMATION, COMPLETION OF REPORT, PUBLICATION DATES, AND OTHER ACTIONS.**

There are no plans for publication of this submission. Primarily, the information is used by specialists of the Office of Safety, as well as field personnel, to enforce the regulation.

- 17. IF SEEKING APPROVAL TO NOT DISPLAY THE EXPIRATION DATE FOR OMB APPROVAL OF THE INFORMATION COLLECTION, EXPLAIN THE REASONS THAT DISPLAY WOULD BE INAPPROPRIATE.**

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

- 18. EXPLAIN EACH EXCEPTION TO THE CERTIFICATION STATEMENT IDENTIFIED IN ITEM 19, "CERTIFICATION FOR PAPERWORK REDUCTION ACT SUBMISSIONS," OF OMB FORM 83-I.**

No exceptions are taken at this time.

## Meeting Department of Transportation (DOT) Strategic Goals

As mentioned in the last submission, this information collection supports DOT strategic goals in several notable respects. First, it supports the Department's top strategic goal, transportation safety. This information collection seeks to reduce the number and severity of railroad accidents/incidents, as well as any resulting property damage, by ensuring that only qualified individuals are employed by railroads as locomotive engineers, or designated supervisors of locomotive engineers. Specifically, railroads are required to establish minimum qualification standards, or a certification program for locomotive engineers. All railroad certification programs must be approved by FRA. Railroads must make a series of determinations concerning each locomotive engineer's fitness or competency. In order to be certified, locomotive engineers must meet certain performance standards. For example, locomotive engineers must undergo an annual operational monitoring test, as well as an annual unannounced compliance test, in each calendar year. Also, locomotive engineers must pass a written test that demonstrates sufficient knowledge of the railroad's rules and practices for the safe operation of trains as prescribed in the railroad certification program. Additionally, railroads must have a plan to familiarize locomotive engineers with the physical characteristics of a given territory, if new or unfamiliar. Records of the results of these various tests must be kept and made available to FRA upon request.

Locomotive engineers must meet standards for hearing and visual acuity in tests conducted by railroad medical examiners, and must inform the railroad medical department or other appropriate railroad official when hearing or vision deteriorates such that the person can no longer meet one or more of the prescribed vision/hearing standards. Furthermore, anyone wishing to be certified as a locomotive engineer must furnish to his/her employer or prospective employer information regarding his/her driving record. As a result, appropriate action can be taken if information pertaining to driving under the influence of alcohol or drugs is discovered.

Moreover, railroads are required to devise and adhere to a training program for locomotive engineers that is approved by FRA. There must be initial and continuing education to ensure that each locomotive engineer maintains the necessary knowledge, skills, and abilities concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe handling, and relevant Federal safety rules. Railroads are required to keep records that contain all pertinent information the railroad relied on in making its determination for each certified locomotive engineer. These and other required records are reviewed by FRA and serve as a ready check to confirm that railroads are fulfilling their responsibilities and to verify that unqualified or unfit individuals do not operate locomotives, or locomotive and trains.

In sum, all the information gathered in this collection furthers the first and main DOT strategic goal by reducing the likelihood that unfit or unqualified people will operate

trains and become involved in accidents/incidents that result in injuries, deaths, and property damage.

This information collection also supports DOT's strategic goal of mobility. By ensuring that only highly qualified individuals serve as locomotive engineers, the number and severity of accidents and injuries should continue their downward trend of recent years. This, in turn, should promote greater confidence in the nation's railroads and encourage travel by train. The public will be encouraged to see rail travel as not only accessible but also as a safe and viable alternative to travel by car, bus, or plane.

This information collection further supports the DOT strategic goal of economic growth and trade. By reducing the number and severity of railroad accidents/incidents and their related costs through better trained and better qualified locomotive engineers, railroads will be able to reduce the average time and average cost for delivery of people, goods, and services to their destinations. Greater movement of goods and people by rail will thus be facilitated both nationally and across American borders to Canada and Mexico. Rail transportation then will play its part in fostering domestic economic growth.

Last, this information collection supports the DOT strategic goal of human and natural environment. By reducing the number and severity of railroad accidents/incidents through better trained and better qualified locomotive engineers, surrounding communities and the natural environment will be protected. This is especially true in the case of train-tanker truck collisions, and train accidents/incidents involving hazardous materials. The sustainability and livability of communities will be greatly improved by promoting a safer rail environment. Fewer accidents/incidents will translate into fewer pollutants and other possible toxic substances being released into the natural environment.

In this information collection and indeed all its information collection activities, FRA seeks to do its very best to fulfill DOT Strategic Goals and to be an integral part of One DOT.