

INFORMATION COLLECTION

SUPPORTING JUSTIFICATION

U.S. Locational Requirement for Dispatching of U.S. Rail Operations OMB No. 2130-0556

Summary

- This submission is a request for an extension without change to the last approval granted by OMB on March 16, 2009, and which expires March 31, 2012.
- FRA published the required 60-day **Federal Register** Notice on October 17, 2011. See 76 FR 64172.
- The total number of burden hours requested for this submission is **eight (8) hours**. Total number of responses requested for this submission is **one (1)**.
- ******The answer to question **number 12** itemizes the hourly burden associated with each requirement of this rule (See pp. 7-10).

1. Circumstances that make collection of the information necessary.

Background

Proper dispatching is essential to conducting safe railroad operations. Freight trains can be more than a mile in length, typically carry hazardous materials, and require a mile or more to stop. Freight trains sometimes carry arms, ammunition, and implements of war as well as spent nuclear fuel or other high level nuclear material. Shipments of spent nuclear fuel or other high-level nuclear materials are currently transported by rail on a limited basis as national security or operational situations may dictate, but shipments are expected to dramatically increase once a permanent central storage location is approved. Also, the possibility exists that one or more temporary storage locations could be designated that would prompt an increase in the rail transport of this type of nuclear material prior to a permanent central storage location becoming operational. Dispatchers actually steer the train by remotely aligning switches. They determine whether the train should stop or move and, if so, at what speed, by operating signals and issuing train orders and other forms of movement authority or speed restriction. Also, dispatchers protect track gangs and other roadway workers from passing trains by issuing authorities for working limits. Train crews on board locomotives carry out the dispatchers' instructions and are responsible for actually moving the train, but dispatchers make it possible to do so safely.

It is commonplace in today's railroad operations for dispatchers to be located at a

significant distance from the trackage and operations they control. Indeed, today's technology allows railroads operating in the United States that now dispatch their trains in the United States to dispatch these trains from anywhere in the world. Currently, dispatchers located outside the United States control only very limited movements in the United States ("extraterritorial dispatching"). However, there is the prospect of increased use of "extraterritorial dispatching" because of the recent increase in mergers and acquisitions by and between large railroads. Notably, there were several high-profile mergers involving both domestic and Canadian railroads. For example, Canadian National Railway Company (CN) acquired the Grand Trunk Western Railroad, Inc. (GTW) (646 miles of track), the Illinois Central Railroad Company (2,591 miles of track), and the 2,500 route miles of United States Class II and Class III railroads formerly owned by the Wisconsin Central Transportation Company. Additionally, the Canadian Pacific Railway Company (CP) acquired the Soo Line Railroad Company (3,225 miles of track). Now that the Surface Transportation Board (STB) has lifted a moratorium on these types of transactions more mergers may occur.

Federal statutes, regulations, and oversight actions by FRA safeguard railroad operations when railroad dispatchers are located in the United States. FRA has full regulatory oversight of dispatchers in the United States, including overseeing compliance with U.S. laws and regulations regarding operating rules and efficiency testing (49 CFR Part 217), drug and alcohol testing (49 CFR Part 219), and hours of service (49 U.S.C. 21105 and 49 CFR Part 228). To promote compliance, FRA may conduct inspections and investigations and impose sanctions for violations of its safety standards against both railroads and individuals, including dispatchers, if the individual or railroad is located in the United States. FRA may conduct investigations of railroad accidents in the United States, including those involving dispatching, and may issue reports on the agency's findings, including its determination of probable cause.

FRA has recently taken a proactive approach in its ability to influence non-regulated aspects of dispatching operations through its Safety Assurance and Compliance Program (SACP), through its safety advisories published in the Federal Register, and through its visits to dispatching centers to ensure that dispatching is being safely conducted whether or not specific federal standards are being violated. FRA may impose sanctions for violations of its safety standards against both railroads and individuals, including dispatchers, if the railroad or individual is located in the United States. FRA may also issue emergency orders to eliminate or reduce an unsafe condition or practice, identified through testing, inspecting, investigation, or research, that causes an emergency situation involving a hazard of death or injury to persons. See 49 U.S.C. 20104.

Congress has established hours of service standards for safety-sensitive domestic railroad employees, including railroad dispatchers. In order to prevent fatigue which could adversely affect job performance, 49 U.S.C. 21105 mandates that dispatchers in the United States may not work more than nine hours during a 24-hour period in a location where two or more shifts are employed, or 12 hours during a 24-hour period where only

one shift is employed. Part 228 requires railroads to retain written hours of service records for dispatchers and allows for access to those records by FRA inspectors. Additionally, domestic railroad dispatchers are subject to the minimum FRA safety standards to safeguard railroad dispatching. Under Part 217, railroads operating in the United States are required to have operating rules, to periodically instruct employees (including dispatchers) on those rules, to periodically conduct operational tests and inspections on employees (including dispatchers) to determine the extent of their compliance with the rules, and to keep records of the individual tests and inspections for review by FRA.

Under Part 219, dispatchers located in the United States are subject to random, reasonable suspicion, return-to-duty, follow-up, and post-accident drug and alcohol testing, as well as pre-employment testing for drugs. Post-accident testing is required for a dispatcher who is directly and contemporaneously involved in the circumstances of any train accident meeting FRA testing thresholds. A dispatcher found to have violated FRA's drug and alcohol rules, or who refuses to submit to testing, is required to be immediately removed from dispatching service for a nine-month period, and the railroad must follow specified procedures including return-to-duty and follow-up requirements before returning the dispatcher to dispatching service. Moreover, domestic-based employers must provide self-referral and co-worker reporting (self-policing) programs for their employees; must submit random alcohol and drug testing plans for approval by FRA; must conduct random testing under Part 219 and DOT procedures found in Part 40; and must submit annual reports and maintain program records.

Previously, FRA had no safety standards applicable to extraterritorial dispatchers. Furthermore, the possibility that extraterritorial dispatchers may not be adequately regulated by the countries in which the dispatchers are located became a grave FRA concern. An extraterritorial dispatcher who controls United States rail operations while under the influence of alcohol or drugs, who is exhausted because of working excessive hours, or who is not properly tested on railroad operating rules could issue incorrect directions, thereby jeopardizing the safety of American railroad employees and the communities through which the trains operate. Specifically, this could cause a train collision or derailment in the United States with resulting injuries or death to train crews, passengers, or both, and possibly great harm to surrounding communities if the train were carrying hazardous materials. Because problems such as fatigue, drug and alcohol abuse, and lack of effective job training seriously compromise the safety-critical performance of employees who dispatch trains, FRA was concerned that foreign railroads, or domestic railroads that may employ or enter into a contract for services of a foreign-based dispatcher who would control a domestic train movement, may not comply with the substantive requirements of American Hours of Service laws, FRA Hours of Service regulations, FRA drug and alcohol testing regulations, or FRA operational testing regulations.

To avoid the serious safety and security threats posed by extraterritorial dispatching, FRA

issued an Interim Final Rule (IFR) that barred extraterritorial dispatching, subject to limited exceptions, while FRA gathered public comments on the issue. The IFR was scheduled to terminate on January 10, 2003, in the absence of further FRA action. After considering the public comments, FRA decided to issue a final rule to continue the general bar on extraterritorial dispatching, with two minor exceptions. Under the first exception, a railroad would be allowed to conduct “extraterritorial dispatching” in an *emergency situation* for the duration of the emergency, if it promptly notified, in writing, the FRA Regional Administrator of each region where the operation was conducted of its actions. Under the second exception, railroads would be permitted to continue very limited “extraterritorial dispatching” for a transitional period of 90 days while they file a petition for waiver under the special “*fringe border*” waiver provision. (The fringe border provision is discussed in more detail under #2 below.) If a waiver request is filed within the transitional period, the railroad may continue to conduct “extraterritorial dispatching” until FRA acts on the waiver petition. The fringe border provision would also apply to new “extraterritorial dispatching” of operations that do not extend more than five route miles into the United States from the Canadian or Mexican border. FRA believes that the approach that it adopted is necessary to ensure the safety and security of United States railroad operations.

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

As part of its oversight function of rail operations in the United States, the information collected is used by FRA to ensure that “extraterritorial dispatchers” comply with the conditions stated in the exceptions of Part 241 for “extraterritorial dispatching” of United States railroad operations relating to emergency situations and “fringe border” operations. FRA reviews information submitted in petitions for waiver to determine if current or proposed “extraterritorial dispatching” is consistent with railroad safety and is in the public interest. Specifically, in cases of emergency “extraterritorial dispatching,” FRA reviews the information provided in the petition for waiver to determine whether the dispatching in fact fell within the exception, and, if not, to consider whether enforcement action should be taken to deter future violations. FRA Regional Administrators in the areas where the emergency “extraterritorial dispatching” takes place review the required notifications to monitor the frequency and specifics of these types of train movements in order to ensure that railroad safety is not endangered in their territory.

In cases of “fringe border” operations where railroads request approval to conduct extraterritorial dispatching, FRA reviews the waiver petition to ascertain (i) if the railroad has taken adequate steps to ensure the security of its dispatch center, (ii) if the railroad has in place specified safety programs for its “extraterritorial dispatchers”, (iii) if a government safety agency in the country where the dispatching occurs/will occur has safety jurisdiction over the railroad and the dispatchers and is satisfied with the railroad’s safety programs, and (iv) if the railroad agrees to abide by the operating restrictions specified in this rule. FRA will generally grant a “fringe border” waiver petition that meets these requirements.

It should be noted that the information is only collected if a railroad applies for a waiver to this Part or if a railroad conducts extraterritorial dispatching in emergency situations.

3. Extent of automated information collection.

FRA strongly supports and highly encourages the use of advanced information technology, wherever possible, to reduce burden on respondents. FRA has done so for many, many years now. The exception permitting “extraterritorial dispatching” during emergency situations requires electronic or written notification to the FRA Regional Administrator of each region where the operation was conducted.

It should be noted that the information collection requirements of this rule and the resulting burden are extremely minimal.

4. Efforts to identify duplication.

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

Similar data are not available from any other source.

5. Efforts to minimize the burden on small businesses.

Two large Canadian railroads and one small Canadian railroad are already conducting “extraterritorial dispatching” over four short rail lines. At this time, the only relevant requirement concerns “extraterritorial dispatching” in an emergency situation. Again, it should be observed that the total burden of this renewal information collection is extremely minimal and that the notification required by the emergency exception can be sent electronically to further minimize burden.

Additionally, it is important to point out that railroads whose entire operations are conducted on track within an installation that is outside the general railroad system of transportation in the United States are not covered by this Part. Consequently, many small railroads are excluded from the requirements of this rule.

6. Impact of less frequent collection of information.

If this information were not collected or collected less frequently, railroad safety throughout the United States might be seriously jeopardized. Specifically, the number of rail accidents/incidents and related severity of injuries to train crews and passengers might increase because an “extraterritorial dispatcher”, who was not subject to and did not comply with the substantive requirements of United States Hours of Service laws, FRA Hours of Service regulations, FRA drug and alcohol testing regulations, or FRA operational testing regulations, controlled a railroad operation in the United States during

what was not in fact an emergency situation. Any dispatcher, wherever located, who controls rail operations while under the influence of alcohol or drugs, who is exhausted because of working excessive hours, or who is not properly trained and tested on railroad operating rules could issue incorrect directions, or could fail to issue directions altogether, thereby jeopardizing the safety of railroad employees or causing a train collision or derailment, resulting in injuries/deaths to crews, passengers, or both, and possible severe environmental harm to surrounding communities if the train were carrying hazardous materials.

If this information were not collected, FRA would be unable to ensure that railroads comply with agency safety regulations by not abusing the “emergency” exception to the prohibition on foreign-based dispatching and that these railroads conduct only limited “extraterritorial dispatching” near the Canadian and Mexican borders. FRA seeks to ensure that critical hand-offs between foreign and domestic dispatchers go smoothly and safely.

Frequency of submission is not an issue for this collection of information, since waiver petition requests to the agency are expected to be rare. Moreover, the notification to the appropriate FRA Regional Administrator(s) is required only in emergency situations, which should be infrequent.

In sum, the collection of information serves as another important tool that FRA employs to promote and enhance rail transportation safety throughout the United States. In this, it furthers both DOT’s and FRA’s core missions.

7. **Special circumstances.**

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

8. **Compliance with 5 CFR 1320.8.**

As required by the Paperwork Reduction Act of 1995, FRA published a Notice in the Federal Register on October 17, 2008, soliciting comment on this particular information collection. See 76 FR 64172. FRA received no comments either from the public or the railroad community regarding the information collecting activities associated with the requirements of this rule.

Background

The Interim Final Rule (IFR) for “United States Locational Requirement for Dispatching of United States Rail Operations” was published in its entirety in the Federal Register on December 11, 2001 (See 66 FR 63942). Nine parties submitted written comments to FRA in response to the IFR. However, FRA received no comments pertaining to

information collection costs or burden hours resulting from this rule. In addition to requesting written comments, FRA held a public hearing on the IFR in Washington, D.C., on February 12, 2002, at which four parties submitted oral comments. These parties included the following: (1) the Canadian Pacific Railway Company (CP); (2) the Canadian National Railway Company (CN); (3) the Brotherhood of Locomotive Engineers and Trainmen (BLET); and (4) the American Train Dispatchers Department of the Brotherhood of Locomotive Engineers and Trainmen (ATDD). A transcript of this hearing is available in the public docket of this rulemaking. None of the oral comments pertained to information collection costs or burden hours. After reviewing both the written and oral comments, FRA decided that the safety and security issues presented by “extraterritorial dispatching” mandated that FRA proceed with the Final Rule, which was published in the Federal Register on December 10, 2002 (See 67 FR 75938).

9. Payments or gifts to respondents.

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

10. Assurance of confidentiality.

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

11. Justification for any questions of a sensitive nature.

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

12. Estimate of burden hours for information collected.

Section 241.7 Waivers

(a) General. A person subject to a requirement of this Part may petition the Administrator for a waiver of compliance with such requirement. Except as provided in paragraph (b) of this section, the filing of such petition does not affect the person’s responsibility for compliance with that requirement while the petition is being considered. Each petition for waiver under this section must be filed in the manner and contain the information required by Part 211 of this chapter. Petitions seeking approval to conduct fringe border operations must also comply with the requirements of paragraph (c) of this section. Petitioners not filing under paragraph (c) of this section should review the guidelines at 66 FR 63942 (Dec. 11, 2001), and frame their petitions to address the safety and security concerns articulated in the preamble, or contact the Office of Chief Counsel, RCC-12, FRA, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590, for a copy of the guidelines.

FRA estimates that it will receive zero (0) general waiver petitions in the next three years under the above requirement. Consequently, there is no burden associated with this provision.

(b) Special dispensation for existing extraterritorial dispatching. A railroad that files a waiver request seeking to continue extraterritorial dispatch of an operation that it has dispatched from Canada or Mexico pursuant to regulations contained in 49 CFR Part 241, revised as of October 1, 2002, may continue extraterritorial dispatching of that operation until the railroad's waiver request is acted upon by FRA if the petition is filed no later than April 11, 2003. If the waiver request is for an operation not listed in Appendix A to this Part, the waiver request must describe when the extraterritorial dispatching of the operation commenced and how the dispatching was authorized by regulations contained in 49 CFR Part 241, revised as of October 1, 2002. FRA will notify the railroad if FRA determines that the operation was not permitted by the terms of those regulations.

The burden for this requirement occurred in the first year after the issuance of this regulation. Over the next three years, FRA expects zero (0) petitions. Consequently, there is no burden associated with this requirement.

(c) Fringe border dispatching. (1) A waiver request to have a railroad employee located in Canada or in Mexico dispatch a railroad operation in the United States immediately adjacent to the border of the country in which the dispatcher conducts the dispatching will generally be approved by FRA, subject to any conditions imposed by FRA, if the waiver request meets all of the terms of paragraphs (c)(2) and (c)(3) of this section. A proponent of a waiver request may seek relief from the terms of subparagraphs (c)(2) and (3) of this section.

(2) The railroad proposing to conduct fringe border dispatching must supply the following documents as part of the waiver request: (i) A description, by railroad division, applicable subdivision(s), and mileposts, of the line proposed to be dispatched; (ii) A copy of the operating rules of the railroad that would apply to the proposed fringe border dispatching, including hours of service limitations, and the railroad's program for testing the dispatchers in accordance with these operating rules and for ensuring that the dispatchers do not work in excess of the hours of service restrictions; (iii) A copy of the railroad's drug and alcohol abuse prevention program that applies to the fringe border dispatchers. The program must, to the extent permitted by the laws of the country where the dispatching occurs, contain the following: (A) Pre-employment drug testing; (B) A general prohibition on possession and use of alcohol and drugs while on duty; (C) Reasonable cause alcohol and drug testing; (D) A policy dealing with co-worker and self-reporting of alcohol and drug abuse problems; (E) Post-accident testing; and (F) Random drug testing; (iv) The steps the railroad has taken to ensure the security of the dispatch center where the fringe border dispatching will take place; (v) The railroad's plans for complying with the requirements of subparagraph (c)(3) of this section; and

(vi) A verification from a government agency in the country where the dispatching will occur that the agency has safety jurisdiction over the railroad and the proposed dispatching, and that the railroad's safety programs referenced in paragraphs (c)(2)(ii) and (iii) of this section meet the safety requirements established by the agency or, in the absence of established safety requirements, that the programs are satisfactory to the agency.

FRA estimates that it will receive zero (0) waiver petitions relating to extraterritorial dispatching in the next three years under the above requirement. Consequently, there is no burden associated with this provision.

Section 241.9 - Prohibition against extraterritorial dispatching: exceptions

Emergencies. In an emergency situation, a railroad may require or permit one of its dispatchers located outside the United States to dispatch a railroad operation that occurs in the United States, provided that (i) the dispatching railroad notifies the FRA Regional Administrator of each FRA region where the operation was conducted, in writing as soon as practicable, of the emergency, and (ii) the extraterritorial dispatching is limited to the duration of the emergency. Written notification may be made either on paper or by electronic mail.

FRA estimates that approximately one (1) notification per year will be sent to the appropriate FRA Regional Administrators regarding dispatching under the circumstances described above. It is estimated that it will take the dispatching railroad approximately eight (8) hours to prepare each notification letter and send it to the appropriate FRA Regional Administrator. Total annual burden for this requirement is eight (8) hours.

Respondent Universe:

4
railroads

Burden time per response:

8 hours

Frequency of Response:

Annually

Annual number of Responses:

1 notification

Annual Burden:

8 hours

Calculation: 1 notification x 8 hrs. = 8 hours

Section 241.11 - Prohibition against conducting a railroad operation dispatched by an extraterritorial dispatcher; exceptions

Emergencies. In an emergency situation, a railroad may conduct, or contract for the conduct of, a railroad operation in the United States that is dispatched from a location outside of the United States, provided that (i) the dispatching railroad notifies the FRA Regional Administrator of each FRA region where the operation was conducted, in writing as soon as practicable, of the emergency; and (ii) the extraterritorial dispatching is limited to the duration of the emergency. Written notification may be made either on paper or by electronic mail.

The burden for this requirement is included under § 241.9. Consequently, there is no additional burden associated with this requirement.

Section 241.13- Prohibition against track owner's requiring or permitting use of its line for a railroad operation dispatched by an extraterritorial dispatcher; exceptions

Emergencies. In an emergency situation, an owner of railroad track located in the United States may require or permit the track to be used for a railroad operation that is dispatched from outside the United States, provided that (1) the dispatching railroad notifies the FRA Regional Administrator of each FRA region where the operation was conducted, in writing as soon as practicable, of the emergency; and (2) the extraterritorial dispatching is limited to the duration of the emergency. Written notification may be made either on paper or by electronic mail.

The burden for this requirement is included under § 241.9. Consequently, there is no additional burden associated with this requirement.

Section 241.15 - Penalties and other consequences for non-compliance

A person who knowingly and wilfully 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 records or reports that are required by this Part. Consequently, there is no burden associated with this requirement.

The total burden for this entire information collection is eight (8) hours. [Note: The dollar equivalent of the requested eight (8) burden hours amounts to \$464 based on an average hourly wage of \$58 per hour that includes 75 percent overhead costs.]

13. Estimate of total annual costs to respondents.

Other than the burden listed in answer to question 12, there is no additional cost to respondents associated with this collection of information.

14. Estimate of Cost to Federal Government.

There is no extra cost to the Federal Government associated with this collection of information, since the burden is so minimal and is handled as part of the routine duties of FRA regional staff.

15. Explanation of program changes and adjustments.

There is **no change** in burden from the last approved submission. After a complete and careful review, FRA believes that the burden hour estimates that it submitted previously are still valid. Thus, there are **no program changes** or **adjustments** at this time. The total burden for this information collection remains at eight (8) hours.

There is no change in cost from the previous information collection submission.

16. Publication of results of data collection.

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

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

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

18. Exception to certification statement.

No exceptions are taken at this time.

Meeting Department of Transportation (DOT) Strategic Goals

This information collection supports the main DOT strategic goal, namely transportation safety. Without this collection of information, rail safety throughout the United States might be seriously jeopardized. Specifically, the number of rail accidents/incidents and related severity of injuries might increase because an “extraterritorial dispatcher” who was not subject to, and did not comply with the substantive requirements of the United States Hours of Service laws, FRA Hours of Service regulations, FRA drug and alcohol testing regulations, or FRA operational testing regulations controlled a railroad operation in the United States during what was not in fact an emergency. An “extraterritorial dispatcher” controlling domestic rail operations who is under the influence of alcohol or drugs, who is exhausted from working excessive hours, or who is not sufficiently knowledgeable of railroad operating rules could issue incorrect directions, or could fail to issue directions altogether. This could cause a train collision or derailment with resulting injuries and/or deaths to train crews, passengers, or both, as well as significant property damage and possibly environmental harm – in cases where hazardous materials are being transported – to the surrounding communities.

The exceptions to the prohibition against extraterritorial dispatching are, therefore, very narrow. The exception for emergency situations is designed to permit extraterritorial dispatching of a railroad operation only where the safety risks of that dispatching are justified either by the risk of a substantial disruption in rail traffic or a significant safety risk posed by domestic dispatching of the railroad operation. The collection of information will ensure that FRA is fully apprised of each alleged emergency situation so that it can monitor compliance with agency safety regulations by verifying that an emergency under Part 241 did in fact exist and that the “extraterritorial dispatching” occurred only for the duration of that emergency.

The exception for “fringe border” dispatch operations is designed for flexibility to allow for situations where “fringe border” dispatching might be necessary. The collection of information ensures that FRA is fully informed of these cases. Reviewing the required

waiver petition allows the agency to confirm the following: (1) that the requesting railroad has taken adequate steps to ensure the security of its dispatch center; (2) that the railroad has in place specified safety programs for its extraterritorial dispatcher; (3) that a government agency in the country where the dispatching will occur has safety jurisdiction over the railroad and the dispatchers and is satisfied with the railroad's safety programs; and (4) that the railroad agrees to abide by the operating restrictions specified in the rule.

In sum, this collection of information enhances railroad safety by providing an additional layer of protection through the agency's close monitoring and full awareness of the "extraterritorial dispatching" of movements of passengers, personnel, property, and cargo. It furthers DOT's goal of promoting the public health and safety by working toward the elimination of transportation-related deaths, injuries, and property damage.

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

