

**SUPPORTING JUSTIFICATION**  
**Conductor Certification**  
**OMB No. 2130-NEW; RIN 2130-AC08**

Summary

- This is a new collection of information solely associated with FRA's Final Rule titled Conductor Certification pertaining to new 49 CFR Part 242..
  - FRA is publishing this Final Rule in the **Federal Register** on November 9, 2011. See 76 FR 69802.
  - On November 10, 2010, FRA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** titled Conductor Certification. See 75 FR 69166 (RIN 2130-AC08). FRA received a number of comments in response to the NPRM which are discussed in the answer to question number eight of this document, along with the FRA response to each comment. FRA submitted the required NPRM paperwork package that same day.
  - On February 17, 2011, OMB issued a Notice of Action on the NPRM submission. The Notice of Action stated: "Terms of the previous clearance remain in effect. This ICR should be submitted to OMB prior to publication of the final rule."
  - The total number of burden hours **requested for this submission** is 3,972,997 hours.
  - The total number of responses requested for this submission is 354,076.
  - By definition, this entire submission is a **program change**.
- \*\* The answer to question **number 12** itemizes the hourly burden associated with each requirement of this rule (See pp. 29-126).

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

*Note: \*\*\*\*As with every Supporting Justification associated with an agency rulemaking, each individual information collection requirement is clearly spelled out in the precise language of the rule in the answer to question 12 of the aforementioned document.*

Pursuant to the Railroad Safety Improvement Act of 2008 § 402, Pub. L. 110-432, 122 Stat. 4884, (Oct. 16, 2008) (codified at 49 U.S.C. 20163) (hereinafter "RSIA") Congress required the Secretary of DOT to prescribe regulations to establish a program requiring

the certification of train conductors. The Secretary of Transportation delegated this authority to the Federal Railroad Administrator. 49 CFR § 1.49(o).

Section 20163(a) of 49 U.S.C. (Section 402 of the RSIA08) provides that:

“the Secretary of Transportation shall prescribe regulations to establish a program requiring the certification of train conductors. In prescribing such regulations, the Secretary shall require that train conductors be trained, in accordance with the training standards developed pursuant to section 20162.”

Section 20163(b) provides that “[i]n developing the regulations required by subsection (a), the Secretary may consider the requirements of section 20135(b) through (e).” The requirements in 49 U.S.C. 20135 concern the certification of locomotive engineers.

Section 20162(a)(2) of 49 U.S.C. (Section 401 of the RSIA) provides that:

“(a) IN GENERAL.—The Secretary of Transportation shall, not later than 1 year after the date of enactment of the Rail Safety Improvement Act of 2008, establish—  
\* \* \*

(2) a requirement that railroad carriers, contractors, and subcontractors develop and submit training and qualification plans to the Secretary for approval, including training programs and information deemed necessary by the Secretary to ensure that all safety-related railroad employees receive appropriate training in a timely manner; and”

Section 20162(b) of 49 U.S.C. provides that “[t]he Secretary shall review and approve the plans required under subsection (a)(2) utilizing an approval process required for programs to certify the qualification of locomotive engineers pursuant to part 240 of title 49, Code of Federal Regulations.”

FRA then is prescribing regulations for certification of conductors, as required by the Rail Safety Improvement Act of 2008. This rule requires railroads to have a formal program for certifying conductors. As part of that program, railroads are required to have a formal process for training prospective conductors and determining that all persons are competent before permitting them to serve as a conductor. FRA is issuing this regulation to ensure that only those persons who meet minimum Federal safety standards serve as conductors, to reduce the rate and number of accidents and incidents, and to improve railroad safety. Although this rule does not propose any specific amendments to the regulation governing locomotive engineer certification, it does highlight areas in that regulation that may require conforming changes.

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

This is a new collection of information. The information collected under this final rule will be used by FRA to ensure that only certified persons who are qualified serve as

railroad conductors to enhance the safety of daily railroad operations throughout the nation and to reduce the rate, severity, and number of train accidents/incidents that occur each year.

The information collected will also be used by FRA to ensure that railroads and their employees fully comply with all the requirements of this final regulation. The information collected under § 242.9 will be used by FRA to determine whether it is feasible, safe, and beneficial to the public interest for the agency to grant a waiver pertaining to any of the requirements of this Part.

The information collected under § 242.101/103 will be used by FRA to ensure that all covered railroads establish conductor certification programs by the specified dates. All Class I railroads (Amtrak included), Class II railroads, and commuter railroads must submit their written certification programs and requests for approval by March 30, 2012. Class III railroads must submit their written certification programs and requests for FRA approval by July 30, 2012. FRA will also review each railroad's certification program to ensure that its content conforms to requirements, particularly the essential six elements prescribed by this final rule. Included among these are the following: (1) A designation of the types of service that it determines will be used in compliance with the criteria established in § 242.107; (2) A procedure for evaluating prior safety conduct that complies with the criteria established in § 242.109; (3) A procedure for establishing visual and hearing acuity that complies with the criteria established in § 242.117; (4) A procedure for training that complies with the criteria established in § 242.119; (5) A procedure for knowledge testing that complies with the criteria established in § 242.121; and (6) A procedure for monitoring operational performance that complies with criteria established in § 242.123.

Further, under § 242.103, railroads must serve a copy of their conductor certification program submissions/resubmissions, or materially modified submissions to the president of each labor organization that represents the employees of railroads subject to this Part, and must include in their conductor certification program submissions to FRA a statement affirming that the railroad has served such copy on the president of each rail labor organization representing railroad employees and a list of the names and addresses of persons served. Officials of rail labor organizations will review copies of railroads' conductor certification programs to determine whether they comport with collective bargaining agreements and to safeguard employees' rights. FRA will scrutinize the list of persons served with a copy of the conductor certification program to verify that the appropriate official of all rail labor organizations representing covered railroad employees actually receives a copy of the railroad's conductor certification program.

Under § 242.105, railroads are required to designate as certified conductors all persons authorized by the railroad to perform the duties of conductor. They must do so in writing by specified dates. Also, covered railroads must issue certificates that comply with

§ 242.207 to each person it designates. FRA will use the designation information to ensure that railroads do not engage in disparate treatment of their employees (i.e., designate and provide a certificate to some individuals who are authorized to perform the duties of a conductor as of the effective date of the final rule but not to others). This was a notable concern of some of the rule's RSAC Working Group members. During their normal compliance duties, FRA safety inspectors will request production of conductors' certificates to ensure that the individual is qualified to perform the duties of a conductor for that particular railroad and to verify that the certificate is current and contains the essential information prescribed in § 242.207. Conductor certificates are good for a maximum of 36 months and must list any conditions or limitations, including the type of service (conductor or passenger conductor) or conditions to ameliorate vision or hearing acuity deficiencies, that restrict the person's operational authority. FRA inspectors will check a conductor's certificate to ascertain that person has been determined to be eligible by the railroad to perform conductor duties and to ensure that the person is fully complying with the type of service and any conditions or limitations detailed on his/her conductor's certificate.

Under § 242.107, railroads are not permitted to reclassify the certification of any type of certified conductor to a different type of conductor certification during the period in which the certification is otherwise valid except when the conductor completes the emergency training identified in Part 239 of this chapter and is certified as a passenger conductor. The emergency training will be used by conductors changing their type of service to enable them to understand their duties and responsibilities on a passenger train and to equip them with the necessary knowledge of the railroad's procedures and practices to safely and quickly evacuate passengers in the event of a collision, derailment, fire, or explosion. FRA safety inspectors will review the conductor's certificate to confirm that he/she is authorized by the railroad and has completed the appropriate training.

Under the determinations for eligibility pertaining to certification/recertification in § 242.109, railroads must provide candidates for certification or recertification a reasonable opportunity to comment in writing on the person's prior safety conduct, including information pertinent to determinations required under § 242.115, if the railroad believes the record contains information that could be sufficient to render the person ineligible for certification under this Subpart. The comments will be used by railroads to confirm that prior safety information they have in their possession pertaining to candidates for certification/recertification is complete and accurate. The comments will also be used by railroads to provide balance and a measure of fairness before making the certification/recertification determination.

Under § 242.111, each person seeking certification or recertification must take action to make information concerning his or her driving record available to the railroad that is considering such certification or recertification. Railroad employees routinely sign a

form upon hire that provides any necessary consent required by State, Federal, or foreign law to make information concerning his/her driving record available to their railroad. Further action, however, is necessary and, under the rule, such persons seeking certification/recertification must write to the chief of the driver licensing agency of any jurisdiction, including a state or foreign country which last issued or reissued that person a driver's license within the preceding five years, to provide to the railroad available information concerning his or her driving record. Railroads will use the driving record information provided to them to determine whether a conductor or conductor candidate might have an undisclosed drug or alcohol problem (based on DUI convictions or State action to cancel, revoke, suspend, or deny a motor vehicle driver's license for operating a motor vehicle while under the influence or impaired by alcohol or a controlled substance) that could impact his/her job performance and the safety of fellow employees and railroad operations.

Driving record information is an important factor in the certification or recertification decisions that railroads must make. Railroads will evaluate the driving record information received and, if a drug/alcohol incident is identified, will refer the data to the railroad's Drug and Alcohol Counselor (DAC) for evaluation to determine if the person has an active substance abuse disorder. Such employees are required to cooperate in the DAC's evaluation and provide any requested records of prior counseling or treatment to the railroad DAC. The railroad DAC will review this information and use it to determine whether the employee has an active substance abuse disorder as well as to recommend a course of action that may include conditional certification as long as the employee participates in counseling, treatment, or any needed aftercare and/or follow-up testing for alcohol or drugs, or both.

Under § 242.113, each person seeking certification or recertification must make a written request to the chief operating officer or other appropriate person of a former employing railroad to provide a copy of the railroad's available information concerning his/her service record to the railroad considering certification or recertification. Railroads will review this information to ascertain whether there is any information regarding the person's previous job performance, driving record and alcohol/drug rules compliance that it needs to consider in its decision to certify or recertify the person as a conductor. Also, railroads will examine the information to see if the previous railroad denied, suspended, or revoked the person's certificate as a conductor before making its own determination. The current railroad will factor such information into its decision to certify or recertify the person as a conductor.

Under § 242.115, prior to initially certifying or recertifying any person as a conductor for any type of service, railroads must make determinations regarding fitness vis-à-vis substance abuse disorders and alcohol/drug rules compliance. Persons having an active substance abuse disorder must be denied certification or recertification as a conductor. Such persons are eligible for a grant of reinstatement of the certificate if the following

conditions are met: (1) The person has been evaluated by an DAC to determine if the person currently has an active substance disorder; (2) The person successfully completed any program of counseling or treatment determined to be necessary by the DAC prior to return to service; and (3) The person presented a urine sample for testing under subpart H of Part 219 that tested negative for controlled substances assayed and tested negative for alcohol. Railroads are required to keep on file written documents that they used in making their determination regarding fitness. These documents will be used by railroads to record the status of conductors and conductor candidates and to track periods of ineligibility. They may also be used as evidence by railroads or employees during a hearing to deny, suspend or revoke a person's conductor certification.

Under § 242.117, each railroad, prior to initially certifying or recertifying any person as a conductor for any class of service, must determine that the person meets the standards for visual acuity and hearing acuity prescribed in this section. Each conductor or conductor candidate then will have to undergo vision and hearing acuity tests that meet stringent Federal standards before they can be certified or recertified. Railroad medical examiners make the required determination and must also complete a certificate that the individual has been medically examined and meets the specified acuity standards. Persons not meeting one or both acuity standards can nevertheless be certified under certain conditions or with certain limitations (such as wearing glasses or using a hearing aid). In cases where the conductor or conductor candidate is determined to need glasses or wear a hearing aid, medical examiners will make a notation on the medical certificate. This information will be used by railroads and by FRA to ensure that conductors and conductor candidates can physically perform their duties in a safe manner.

Under § 242.119, railroads must provide initial and periodic training of conductors. Railroads must make a determination the individual is qualified to perform as a conductor in each type of service that the person will be permitted to carry out. In that regard, railroads will administer tests, and conductors or conductor candidates will need to receive a passing grade, which will be documented in the railroads' training records. Under this section, railroads are required to provide instructional briefings to ensure that conductors have the knowledge of Federal railroad safety laws, regulations, and orders that relate to the tasks they are assigned to perform. Railroads must document this knowledge, and the information will be used by FRA to assure accountability for both railroads and conductors. Railroads are also required to document that a conductor demonstrated that he or she is qualified on the physical characteristics of the railroad or its pertinent segments over which that person will perform service. Further, railroads are required to review and modify their certification program whenever new safety-related railroad laws, regulations, technologies, procedures, or equipment are introduced into the workplace. The information collected under this section will be used by FRA to ensure that conductors have the knowledge, skills, and abilities necessary to competently and safely perform all of the safety-related duties mandated by Federal laws, regulations, and orders.

Under § 242.121, railroads must provide initial and periodic testing of conductors. That testing would have to effectively examine and measure a conductor's knowledge of the following five areas: (1) Safety and operating rules; (2) Timetable instructions; (3) Compliance with all applicable Federal regulations; (4) The physical characteristics of the territory on which a person will be or is currently serving as a conductor; and (5) The use of any job aid that a railroad may provide to a conductor. Railroads cannot permit conductors or conductor candidates who fail to pass the test to function as a conductor prior to that person's achieving a passing score during re-examination of his/her knowledge. The information then will be used by railroads and FRA to ensure that rail employees working as conductors have necessary and continuing knowledge in the five specified areas to perform their jobs effectively.

Under § 242.123, railroads are required to have a program to monitor the conduct of their conductors by performing unannounced compliance tests. Specifically, each conductor would have to be given one unannounced compliance test each calendar year by a railroad officer who meets the requirements of 49 CFR 217.9(b)(1). The information collected by monitoring operational compliance will be used by railroads to determine operational proficiency of conductors. Railroads will take appropriate action to handle test failures, which must be spelled out and approved by FRA in the conductor certification submitted to the agency. FRA will review railroads' certification programs to make sure the actions that the railroad will take in monitoring operational compliance failures are spelled out and sufficient to address any deficiencies.

Under § 242.125, railroads that are considering certification of a person as a conductor may rely on determinations made by another railroad concerning that person's certification. Every covered railroad's certification program must address how the railroad will administer the training of previously uncertified conductors with extensive operating experience or previously certified conductors who have had their certification expire. The information collected will be used by railroads to determine the extent of training that they will need to provide to these employees who are now working for their railroad. The information collected will also be used by the current railroad to determine the following: (1) The prior certification is still valid in accordance with the provisions of §§ 242.201 and 242.207; (2) The prior certification was for the same type for service as the certification being issued under this section; (3) The person has received training on the physical characteristics of the new territory in accordance with § 242.119; and (4) The person has demonstrated the necessary knowledge concerning the railroad's operating rules in accordance with § 242.121. The information collected will also be used by FRA to review each railroad's submitted certification program to ensure that the issue of certification determinations by other railroads is addressed as required by this section.

Under § 242.203, a railroad that issues, denies, or revokes a certificate after making the determinations required under § 242.109 must maintain a record for each certified

conductor or applicant for certification that contains the information the railroad relied on in making the determinations. In particular, railroads are required to retain the following information: (1) Relevant data from the railroad's records concerning the person's prior safety conduct; (2) Relevant data furnished by another railroad; (3) Relevant data furnished by a governmental agency concerning the person's motor vehicle driving record; (4) Relevant data furnished by the person seeking certification concerning his or her eligibility; (5) The relevant test results data concerning hearing and vision acuity; (6) If applicable, the relevant data concerning the professional opinion of the railroad's medical examiner on the adequacy of the person's acuity; (7) Relevant data from the railroad's records concerning the person's success or failure of the passage of knowledge test(s); (8) A sample copy of the written knowledge test or tests administered; and (9) The relevant data from the railroad's records concerning the person's success or failure on unannounced operating rules compliance tests the railroad performed to monitor the conductor's performance in accordance with § 242.123. These records may be stored electronically by railroads, if they so choose. FRA will use the information collected to monitor and enforce compliance with the requirements of this regulation. These records may also be produced by various parties – railroads, rail employees, rail labor representatives – as evidence during a hearing concerning denial or revocation of a conductor's certification.

Under § 242.205, each railroad is required to maintain a list of its certified conductors. This list must identify each person designated as a certified conductor, and must indicate the types of service the railroad determines each person is authorized to perform and the date of the railroad's certification decision. The list will be used by FRA to ensure that conductor's are currently certified and qualified to perform the service they have been assigned by the railroad, including service in joint operations territory.

Under § 242.207, each certificate issued in compliance with this part must: (1) Identify the railroad or parent company that is issuing it; (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 eligible to perform as a conductor; (3) Identify the person to whom it is being issued (including the person's name, employee identification number, and either the year of birth or photograph of the person); (4) Identify any conditions or limitations, including the type of service or conditions to ameliorate vision or hearing acuity deficiencies, that restrict the person's operational authority; (5) Show the effective date of each certification held; (6) Be signed by an individual designated in accordance with paragraph (b) of this section; and (7) Be of sufficiently small size to permit being carried in an ordinary pocket wallet. Section 242.409 requires each conductor who has received a certificate to have the certificate in his/her possession while on duty as a conductor. Section 242.211 provides for prompt replacement of certificates that are lost, stolen, or mutilated at no cost to conductors. FRA inspectors will review conductor's certificates as part of their normal compliance duties to ensure that conductors are



currently qualified to perform their assigned job duties. Conductors may have multiple certifications all contained on his/her one certificate (as provided in § 242.213).

Section 242.215 details railroad oversight responsibilities. Under this section, Class I railroads (Amtrak included), Class II railroads, and commuter railroads are required to conduct an annual review and analysis of its program for responding to detected instances of poor safety conduct by certified conductors. Thus, railroads must have an internal auditing plan to keep track of eight distinct kinds of events that involve poor safety conduct by conductors. The information will be used by railroads to collect data on conductor safety behavior and feed that information into their operational monitoring events to enhance safety. For each event, the railroad would have to indicate what response it took to the situation. The railroad would evaluate this information, together with data showing the results of annual operational testing and the causation of FRA reportable train accidents, to determine what additional or different efforts, if any, are needed to improve the safety performance of that railroad's certified conductors. FRA will also review this information to determine whether railroads are taking necessary corrective steps to address such instances of poor safety conduct by certified conductors or whether agency action might be needed to prevent future accidents/incidents.

Section 242.301 spells out requirements for territorial qualifications. Railroads, including a railroad that employs conductors working in joint operations territory, are not permitted to have a person serve as a conductor unless that railroad determines that the person is a certified conductor and possesses the necessary territorial qualifications for the applicable territory pursuant to § 242.119. This means possessing the necessary knowledge concerning a railroad's operating rules and timetable special instructions, including familiarity with applicable main track and other than main track physical characteristics of the territory over which the locomotive or train movement will occur. Also, conductors are required to immediately notify their employing railroad if they do not meet the required territorial qualification. The information will be used both by railroads and FRA to ensure that only individuals meeting the territorial qualification requirements serve as conductors on that territory or segment of territory to enhance the safety of train operations and reduce the likelihood of an accident/incident occurring.

Under § 242.401, a railroad must notify a candidate for certification or recertification of information known to the railroad that forms the basis for denying the person certification and provide a reasonable opportunity for that person to explain or rebut that adverse information in writing prior to denying certification. The information will be used by candidates for certification/recertification to respond to any negative information in the railroad's possession that might jeopardize their ability or fitness to serve as a conductor. In their responses, candidates can provide contextual or rebuttal information to incomplete or inaccurate data obtained by railroads. The response provided by candidates will be used by railroads in their evaluation of the candidate and their decision whether or not to deny certification. If a railroad denies a person certification or

recertification, it 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 served on the person within 10 days after the railroad's decision and must give the date of the decision. The information will be used by candidates and any chosen representative as the basis to request a hearing by the railroad on the denial decision and will be incorporated into their challenge presented at the hearing. The denial notification chronology will be used by FRA to determine timeliness, that is, whether a petition seeking review of a denial decision was filed within 120 days of the date the denial was served on the petitioner. As stipulated in § 242.503(c), a petition seeking FRA review of a railroad decision to deny certification/recertification or revoke certification that is filed with the agency more than 120 days after the date the railroad's denial or revocation decision was served on the petitioner will be denied as untimely, except that the Operating Crew Review Board may extend the petition filing period at any time in its discretion for cause shown.

Under § 242.403, railroads must adopt and comply with a program which meets the requirements of this section. FRA then will review conductor certification programs to ensure compliance with this section. Also, section 242.403 stipulates the circumstances under which a conductor may have his/her certification revoked by the railroad. In determining whether a person may be or remain certified as a conductor, a railroad must consider as operating rule compliance data only conduct described in paragraphs (e)(1) through (e)(11) of this section that occurred within a period of 36 consecutive months prior to the determination. A review of an existing certification must be initiated promptly upon the occurrence and documentation of any conduct described in this section. Railroads will use this information (i.e., conduct the required review) to determine whether a conductor failed to take appropriate action or failed to comply with Federal safety regulations (as outlined in this section) that jeopardized the safe operation or movement of the train, thus warranting revocation of the conductor's certification. FRA will use this information to ensure that railroads conduct the required review and, where railroads fail to initiate warranted revocation action, FRA might initiate enforcement action.

Section 242.405 describes how a railroad would determine periods of ineligibility (e.g., for revocation or denial of certification) that a conductor or conductor candidate might have to undergo. For a person not currently certified, a period of ineligibility must begin on the date of the railroad's written determination that the most recent incident has occurred. Railroads will use the required written determination to evaluate whether the conductor has failed to comply with its safety rule concerning one or more events listed in § 242.403(e). If the railroad decides the conductor has failed to comply with its safety rule for one or more listed events, then the railroad would be required to revoke the conductor's certification for the period of time provided in this section. Moreover, that revocation would initiate a period during which the conductor would be subject to an increasingly more severe response if additional revocable events occur in the next 24 to

36 months.

Finally, under § 242.407, a railroad that certifies or recertifies a person as a conductor and, during the period that certification is valid, acquires reliable information regarding violation(s) of § 242.403(e) or § 242.115(e) of this chapter must revoke the person's conductor certificate. The procedures a railroad must follow regarding revocations are fully spelled out in this section. Pending the revocation determination, the railroad would be required to immediately suspend the person's certificate upon receipt of reliable information of a violation of § 242.403(e) or § 242.115(e) of this chapter. Also, prior to or upon suspending the person's certificate, the railroad is required to provide oral or written notice of the reason for suspension, the pending revocation, and an opportunity for a hearing. If the initial notice was verbal, then the notice would have to be promptly confirmed in writing.

The notification information will be used by conductor or conductor candidates and their chosen representative to understand the railroad's action and to determine their course of action regarding the suspension and possible revocation action by the railroad. Suspended conductors could waive having a hearing. Railroads will use the hearing waiver request from the suspended conductor as an admission of the violation and then to determine the length of suspension. If the suspended conductor elected to have a hearing, not later than the convening of the hearing, the railroad is required to provide the person with a copy of the written information and list of witnesses the railroad would present at the hearing. This information will be used by the suspended conductor and his/her chosen representative(s) to prepare their counter arguments or defense at the hearing. Railroads must keep a record of the hearing (for three years) after the date a decision is rendered. The record of the hearing and the required written decision by the railroad official will be used by the person having his certification/recertification denied or certification revoked to petition FRA to review the railroad's decision.

The above description of how FRA will use the information to be collected is fully consistent with how it is characterized in the rule, but a more specific explanation is provided in the rule itself.

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

### **3. Extent of automated information collection.**

For many years, FRA has strongly endorsed and highly encouraged the use of the latest information technology, wherever feasible, to reduce burden on the railroad industry. FRA has particularly encouraged the use of electronic records by railroads and other respondents. In keeping with its longstanding practice and with the requirements of the

Government Paperwork Elimination Act (GPEA) and the Paperwork Reduction Act (PRA) of 1995, railroads have the opportunity under this rule to maintain records required under § 242.203 and the list of certified conductors required under § 242.205 electronically. Also, replacement certificates under § 242.211 may be delivered/transmitted to conductors electronically.

Finally, as noted in Appendix B of this rule, each railroad subject to this Part is authorized to file by electronic means any program submissions required under this rule. Prior to any person submitting a railroad's first program submission electronically, the person must provide the Associate Administrator with the following information in writing: (1) The name of the railroad; (2) The names of two individuals, including job titles, who will be the railroad's points of contact and will be the only individuals allowed access to FRA's secure document submission site; (3) The mailing addresses for the railroad's points of contact; (4) The railroad's system or main headquarters address located in the United States; (5) The e-mail addresses for the railroad's points of contact; and (6) The daytime telephone numbers for the railroad's points of contact.

Most of the substantial remaining requirements involve written responses (e.g., Medical Examiner's Certificate for Vision/Hearing Acuity under § 242.117, Conductor Training Documentation under § 242.119, Knowledge Testing Documentation under § 242.121, Documentation Monitoring Operational Performance under § 242.123, etc.) in order to clearly define the status, limitations, duties, and qualifications of conductors, and in order to safeguard the rights of all affected parties (certified conductors and conductor candidates, 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.

It is up to the railroads whether or not they chose to exercise the electronic option available to them under this rule. If they were to fully exercise this option, approximately 26 percent of all responses could be transmitted/kept electronically.

#### **4. Efforts to identify duplication.**

To our knowledge, the information collection requirements are unique and are not duplicated anywhere because they are associated with this specific and new agency rulemaking.

Similar data are unavailable from any other source.

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

“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 677 railroads that will be affected by this regulation. Of this number, approximately 627, or 93 percent, are small entities. Consequently, this regulation affects a substantial number of small entities. Most small railroads that will be impacted by this rulemaking are members of the American Short Line and Regional Railroad Association (ASLRRA). The ASLRRA plans to develop a generic conductor certification program for its members to use. FRA anticipates that almost all of the small railroads will take the shortline generic plan and tailor it for their railroad. 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 rule, and certifies that this rule is not expected to have a significant economic impact on a substantial number of small entities.

It should also be noted that this rule does not apply to tourist, scenic, or excursion railroads that are not part of the general of the general railroads system. These types of railroads are invariably small. It also does not apply to rapid transit operations in an urban area that are not connected to the general railroad system of transportation. Further, to ease the burden on small railroads, the schedule for conductor certification

program submissions has been gradated and would require Class I railroads, Amtrak, the commuter railroads, and Class II railroads to submit their programs at an earlier date than Class III or small railroads. FRA is sensitive to the burdens placed on small railroads and has developed a flexible approach in this rulemaking to minimize burden wherever possible.

**6. Impact of less frequent collection of information.**

If the information were not collected or collected less frequently, railroad safety throughout the United States would be significantly jeopardized. Specifically, if FRA were unable to verify that railroads have developed and implemented suitable conductor certification 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 conductors or passenger conductors. Such an increase in train accidents/incidents could cause significant increases in injuries, fatalities, and property damage as well as potential damage to the environment and surrounding communities.

Without the information collected under § 242.9 pertaining to waiver requests, FRA would be unable to determine whether it is feasible, safe, and in the public interest to grant a petition for waiver concerning railroad compliance with any of the requirements of this regulation. Without this information, FRA would have no basis to evaluate waiver requests that make sense both from the agency's perspective and the railroad's perspective, and would be unable to carry out its regulatory duties to promote and enhance rail safety.

Without the information collected under § 242.101/103, FRA would be unable to review and approve conductor certification program submissions to ensure that railroads have established written programs that meet the rule's requirements detailed in these two sections, including the following: (1) designating the types of conductor service to be certified that comply with the criteria in § 242.107; (2) instituting a procedure for evaluating prior safety conduct that complies with the criteria set forth in § 242.109; (3) instituting a procedure for evaluating visual and hearing acuity that complies with the criteria spelled out in § 242.117; (4) instituting a procedure for training that complies with the criteria itemized in § 242.119; (5) instituting a procedure for knowledge testing that complies with the criteria outlined in § 242.121; and (6) instituting a procedure for monitoring operational performance that complies with the criteria listed in § 242.123. Also, without the information collected under these two sections, FRA would be unable to determine whether railroads meet the specific target dates set forth to establish their conductor certification programs. Without this information then, FRA would have no way of knowing that railroads have established and implemented conductor certification programs to equip individuals with the necessary knowledge, skills, and abilities to serve

as conductors or passenger conductors in safety-sensitive rail service.

Without the information collected under § 242.111, individuals might be certified as conductors or passenger conductors because railroads did not have information regarding an individual's prior safety conduct as a motor vehicle operator that would have indicated an alcohol or substance abuse incident or history. Without the individual's driver's motor record, railroads might certify an individual as a conductor who has a hidden alcohol or undisclosed drug problem that would go untreated. This could negatively impact the safety of rail operations and might lead to accident/incident that could have been avoided had the railroad had the necessary DMV data and then been aware of a DUI conviction or failure to take an alcohol or drug test so as to recommend the conductor for treatment or counseling by the railroad's Drug and Alcohol Counselor (DAC).

Without the information collected under § 242.117 pertaining to vision and hearing acuity, individuals might be certified as conductors or passenger conductors who did not have the physical capabilities to perform their assigned duties. Such an individual with a vision deficiency (e.g., nearsighted, color blind/color impaired, etc.) or hearing impairment might fail to take a required action that could lead to a derailment or some other type of accident/incident causing injuries, fatalities, and property damage that could have been prevented through proper vision and hearing testing and, where feasible, necessary corrective measures (such as wearing eyeglasses or a hearing aid). Although some individuals may not be able to meet the threshold acuity levels specified in the rule, they might be able to compensate in other ways that would permit them to function at an appropriately safe level despite their physical limitations. The railroad's medical examiner could make such a determination after testing.

Without the information collected under § 242.119, conductor candidates and conductors would not receive the initial and periodic training essential to capably perform their duties. Without this training, these individuals would not have the knowledge, skills, and abilities necessary to competently and safely perform all of the safety-related duties mandated by Federal laws, regulations, and orders. Without railroad documentation of a conductor's knowledge and ability to comply with Federal railroad safety laws and regulations and railroad rules to implement them, FRA would have no assurance that a conductor demonstrated that he/she is qualified on the physical characteristics of the territory, or its pertinent segments, over which that person will perform service. Unfamiliarity with territory or with job aids (such as maps, charts, or visual aids of the territory) might lead to an accident/incident and corresponding casualties because the conductor was not familiar with the location of permanent derails and switches, assigned radio frequencies in use and special instructions required for train movement, or railroad-identified unique operating conditions.

Without the information collected under § 242.121, FRA would have no way to be certain that conductor candidates and conductors received the initial and periodic

knowledge testing critical to the proper and safe performance of their duties. Specifically, FRA would not know that these individuals have been examined and their knowledge measured in the following five key subject areas: (1) safety and operating rules; (2) timetable instructions; (3) compliance with all applicable Federal regulations; (4) the physical characteristics of the territory on which a person will be or is currently serving; and (5) the use of any job aid that a railroad may provide. There are a variety of actions and approaches that a railroad could take in response to test failures. The required documentation assures FRA that all individuals serving as conductors have achieved a passing score during an examination or re-examination of that person's initial and periodic knowledge testing. This serves to enhance rail safety.

Without the information collected under § 242.123, FRA would have no way to ascertain whether railroads were monitoring the operational performance of conductors. Under this section, railroads are required to monitor the conduct of their conductors by performing unannounced compliance tests. Thus, each conductor would have to be given at least one unannounced compliance test each calendar year by a railroad officer who meets the requirement under 49 CFR 217.9(b)(1). During the unannounced compliance test, the supervisory official would closely monitor the conductor's practices and performance of procedures to determine compliance with Federal and railroad requirements. The required written records provide proof to FRA inspectors that railroads are fulfilling their duties under the rule and that conductors are having their performance monitored and evaluated on an ongoing basis to ensure that their knowledge, skills, and ability stay current and meet a minimum standard to ensure safety. Without the information collected in this section, which also requires railroads to indicate the types of action they will take in the event that they find deficiencies with a conductor's performance during an unannounced compliance test, FRA would be unable to ascertain whether railroads had adequate steps in place to correct the conductor's deficiencies before such deficiencies led to an accident/incident.

Without the information collected under § 242.201-242.213, FRA and participating State inspectors would be unable to identify certified conductors or passenger conductors. Conductor certificates are valid for 36 months, and must be kept in the possession of each individual conductor. Without this required documentation, FRA could not be sure of the qualifications status of conductors, notably whether they are currently certified, certified for more than one type of service, or are performing service that conforms to their certificates. Operational safety might be seriously jeopardized in cases where the conductor's service exceeds his/her certificate's limits.

Without the information collected under § 242.215, FRA could not be assured that railroads are properly carrying out their oversight responsibilities to conduct an annual review and analysis of their programs for responding to detected instances of poor safety conduct by their certified conductors. Without the ability to review required reports of the findings and conclusions reached during such annual reviews and analyses, FRA



would not know whether a railroad has established necessary and effective measures to address instances of poor safety conduct by its conductors that might jeopardize the safety movement of trains. Without such reports, FRA could not provide feedback to railroads that might need to modify their programs for responding to such instances of poor safety conduct by their certified conductors. More rail accidents/incidents might result without such important information.

Without the information collected under § 242.301, FRA's overall safety program would be hindered because there would not be a mechanism in place to ensure that railroads only permit or require a person to serve as conductor who actually possesses the necessary territorial qualifications. Under this section, each person called to serve as a conductor must meet the territorial qualifications on the segment of track upon which he or she will serve as a conductor. Also, each person must immediately notify the railroad upon which he or she is employed if he or she does not meet the territorial qualifications. These notifications enhance safety by enabling railroads to assign conductors familiar with the territory or segment of territory that the train will operate over, thereby reducing the likelihood of an accident/incident occurring.

Without the information collected under § 242.401-407, FRA's could not be assured that there would be a formalized process in place regarding the denial, suspension, and revocation of a conductor's certification. Without such a process, national rail safety would suffer because qualified conductors had their certificates revoked without just cause or unqualified conductors remained in service, thereby endangering rail safety. Under these sections, railroads must notify a candidate for certification or recertification of information known to the railroad that forms the basis for denying the person certification and must provide conductors/conductor representatives with relevant documents. This provides the certification candidate with a reasonable opportunity to explain or rebut adverse information and prepare his/her defense to any charges of non-compliance with the regulation. Criteria for revoking certification are set forth in § 242.403. Upon the railroad's determination that the most recent incident has occurred, a period of ineligibility would begin. The periods of ineligibility are detailed in § 242.405, enabling a sense of certitude on the part of both the railroads and conductors as to actions and consequences relating to job conduct. The circumstances under which a conductor may have his or her certification revoked are clear, specifically relating to violations of § 242.403(e) or § 242.115(e). A railroad receiving reliable information of a violation of one of these sections must immediately suspend the person's certificate. A written notice of the reason for the suspension, pending revocation, and an opportunity for a hearing before a presiding officer – other than the investigating officer – must be given to the conductor or conductor candidate. A record of the hearing must be kept (for a period of three years). No later than 10 days after the close of the record, a railroad official – other than the investigating officer – must prepare and sign a written decision in the proceeding. The hearing record and written decision are important documents that FRA will use in the dispute resolution proceedings established under Subpart E of this

rule (sections 242.501-511) should one of the parties decide to appeal the hearing decision to FRA. Thus, the information under these sections enhance safety by assuring that qualified individuals serve and remain in service as certified railroad conductors.

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

**7. Special circumstances.**

FRA requires each railroad that issues conductor certificates to maintain a record for each applicant or certified conductor 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/re-certification/denial or revocation decision. The reason for this requirement is that FRA needs to know how certification/re-certification/denial/revocation decisions are made. In the event of an accident or incident, FRA needs to be able look at the conductor's history. The conductor may have worked for more than one railroad or demonstrated prior safety conduct difficulties. FRA will want to know this, along with any other pertinent information available in the certification record.

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

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

FRA published a Notice of Proposed Rulemaking (NPRM) titled Conductor Certification in the **Federal Register** on November 10, 2010, soliciting public comments on the proposed rule and its accompanying information collection requirements. See 75 FR 69166. FRA received written comments from a number of interested parties. FRA received written comments from AAR, Amsted Rail, Amtrak, American Public Transportation Association (APTA), American Short Line and Regional Railroad Association (ASLRRA), Brotherhood of Locomotive Engineers and Trainmen (BLET), New York Mass Transportation Association (NYMTA), Southeastern Pennsylvania Transportation Authority (SEPTA), and BLET/United Transportation Union (UTU). None of the comments pertained to burden cost or burden hour estimates provided in the published NPRM.

Some of the comments received did pertain to requirements detailed in the proposed rule. FRA solicited comments on whether § 242.9 of the NPRM dealing with waivers should be removed as unnecessary in light of the fact that 49 CFR Part 211 addresses the waiver process. While all three commenters on this section, SEPTA, AAR and BLET/UTU

agreed that the waiver process was covered by Part 211, AAR and SEPTA indicated that they were indifferent to the elimination of § 242.9. UTU/BLET suggested that it may be helpful to laypeople, who may not be aware of 49 CFR Part 211, to retain the reference to the waiver process in § 242.9.

FRA agrees that § 242.9 may be helpful to laypeople and, therefore, has retained that section.

There were comments relating to prior safety conduct as a motor vehicle operator. BLET/UTU commented that they expect that, in the application of proposed § 242.111(f), the Railroad Safety Board would require a notarized declaration, affidavit or some other form of sworn statement that no § 242.111(n) incident has occurred within the preceding 36 months as a condition precedent for granting the waiver petition. Based on that expectation, BLET/UTU suggested that such a requirement could be written directly into the rule, thereby relieving the Railroad Safety Board of the burden of having to handle these matters.

FRA declines to adopt this suggestion as FRA cannot speak to what the Railroad Safety Board may require with respect to a waiver of certain requirements of 242.111. Moreover, it is beyond the scope of this rulemaking to remove a railroad's right to petition the Railroad Safety Board for a waiver of the FRA's regulatory requirements.

There were comments regarding training. NYMTA, SEPTA and AAR commented that the proposed language in § 242.119(d)(1) specifying the development of a task analysis should be removed.

In the Working Group meetings and the preamble to the NPRM, FRA indicated that, to the extent possible and appropriate, it would conform the training requirements in Part 242 to the training requirements in proposed Part 243. Since the Training Standards and Plans Working Group's (RSAC Task No. 10-01) Part 243 recommendation does not require a task analysis and FRA believes that the more comprehensive on-the-job training requirement included in the final rule adequately substitutes for a task analysis requirement, FRA has removed the proposed task analysis requirement from the final rule.

NYMTA, SEPTA and AAR commented that FRA should remove paragraphs (l) and (m) in proposed § 242.119 of the NPRM. Those paragraphs proposed to require railroads to perform initial instructional briefings with their conductors.

In the Working Group meetings and the preamble to the NPRM, FRA indicated that, to the extent possible and appropriate, it would conform the training requirements in Part 242 to the training requirements in proposed Part 243. Since the Training Standards and Plans Working Group's (RSAC Task No.10-01) Part 243 recommendation does not

require initial instructional briefings and FRA believes that the initial training program requirements included in the final rule adequately cover the requirements in the proposed paragraphs at issue, FRA has removed paragraphs (l) and (m) in proposed § 242.119 of the NPRM from the final rule.

BLET/UTU commented that § 242.119(n), providing an exception to the initial briefing requirements of § 242.119(l) and (m) should be deleted and replaced in its entirety as follows: “Initial training shall be conducted in accordance with the requirements of Part 243.”

Since FRA does not expect that the final rule for Part 243 will be published before this final rule, FRA cannot use BLET/UTU’s proposed language. However, since the Training Standards and Plans Working Group’s (RSAC Task No.10-01) Part 243 recommendation does not require initial instructional briefings and FRA believes that the initial training program requirements included in the final rule (adequately cover the substance of proposed paragraph (n), FRA has removed paragraph (n) in proposed § 242.119 of the NPRM from the final rule.

There were comments on knowledge testing. SEPTA commented that proposed § 242.121(c)(4)(v), which requires testing on use of job aids, should be deleted since this section includes requirements for an examination on operating rules and timetable instructions which would presumably demonstrate an individual’s ability to use those documents.

FRA believes it is an important safety measure to ensure that conductors be able to use any job aid, as defined by this Part, that they may be given. Moreover, FRA does not believe that testing on operating rules and timetable instructions would necessarily demonstrate an individual’s ability to use a job aid. Accordingly, FRA declines to delete § 242.121(c)(4)(v) as proposed in the NPRM.

BLET/UTU commented that § 242.121(c)(6) of the NPRM, which would have required knowledge testing to be conducted without open reference books or other materials except to the degree the person is being tested on his or her ability to use such reference books or materials, should be deleted.

While one would expect a conductor to refer to his or her written rules and instructions whenever there is any uncertainty about what is required by a particular rule, instruction or practice, FRA believes that some rules are so fundamental to railroad safety, such as compliance with stop signals, that a conductor would be expected to know the rule without referring to reference materials. Accordingly, FRA declines to delete § 242.121(c)(6) as proposed in the NPRM.

There were comments on monitoring operational performance. SEPTA and NYMTA commented that it is not feasible to test each of its certified conductors on one or more of the provisions in 49 CFR §§ 218.99-218.109 because the majority of passenger conductors do not have the opportunity to perform Part 218 tasks on a regular basis. SEPTA recommends revising § 242.123(d)(2)(i) to allow annual training to substitute for annual test for all passenger conductors.

FRA declines to adopt NYMTA and SEPTA's comments in this final rule. FRA believes that § 242.123(d)(2)(i) addresses SEPTA and NYMTA's concerns about passenger conductors who rarely engage in activities covered by Part 218, Subpart F. FRA expects that most passenger conductors will never have to engage in activities covered by Part 218, Subpart F (which is what FRA means by the phrase "compliance with Part 218, subpart F") except in emergency circumstances. Accordingly, FRA expects that most passenger conductors will be permitted to be given annual training in lieu of an unannounced compliance test. While not revising § 242.123(d)(2)(i) based on the comment, FRA is revising that paragraph to clarify its intent. FRA intended for § 242.123(d)(2)(i) to state that the annual training exception only applies to Part 218 Subpart F testing and that a railroad will still have to test on § 217.9. The final rule has been revised accordingly.

There were comments on territorial qualification. The BLET/UTU commented that the job aid provision in § 242.301(d) should be mandatory and suggested that the last sentence of that section should read: "Where not practicable, the conductor shall be provided an accurate job aid prior to entering the track."

It was FRA's intent that the job aid provision of § 242.301(d) be mandatory, and it has been revised accordingly in this final rule. FRA declines to adopt the additional proposed revisions as it believes that the phrase "appropriate up-to-date" used in the NPRM encompasses the proposed term "accurate" and the "prior to entering the track" language is unnecessary because a conductor who lacks territorial qualification on a segment of track will not be permitted to enter that track until they are, where, practicable, assisted by a certified conductor who is qualified or provided an appropriate up-to-date job aid.

There were comments on denial of certification. In the NPRM, FRA solicited comments on whether to add two provisions to § 242.401. The first provision proposed to add the following sentence to paragraph (a) of that section: "The railroad shall provide the conductor candidate with any written documents or records, including written statements, which support its pending denial decision." The second provision proposed to add the following sentence to paragraph (c) of this section: "The basis for a railroad's denial decision shall address any explanation or rebuttal information that the conductor candidate may have provided in writing pursuant to paragraph (a) of this section." AAR commented that they oppose the first proposal because the supporting documentation could include privileged documents and documents that will be used in litigation.

As stated in the NPRM, the intent of the first proposal is to improve the transparency of the certification denial process and improve FRA's ability to adjudicate petitions seeking review of a railroad's denial decision pursuant to Subpart E of this rule. Denial decisions are not accompanied by a hearing transcript and often contain little or no documentary record. The issue that FRA is trying to address is the situation where a conductor candidate does not get enough information regarding a denial decision to draft an appropriate rebuttal. FRA wants to avoid the delay and cost of a conductor candidate having to petition the Operating Crew Review Board (OCRB) to obtain the documents they need to rebut the denial decision. If conductor candidates are provided better information upfront, FRA expects that fewer petitions will be filed with the OCRB. FRA is not requiring documentation regarding employment/personal issues, but rather is only interested in documents related to a failure to meet a requirement of Part 242. For example, FRA would expect that locomotive download printouts, Form Bs, and/or transcripts of railroad communications that support the pending denial decision would be provided to the conductor candidate. Under this final rule, the OCRB already has the authority to order a railroad to produce those types of documents, and FRA would not expect that they would be privileged. Accordingly, FRA is adopting the first proposal, with some modification, in this final rule. Since FRA did not receive any comments objecting to the second proposal and FRA sees no reason to change its approach, the second proposal will be adopted in this final rule.

There were comments on the process for revoking certification. FRA solicited comments on whether a railroad decision issued pursuant to § 242.407(c) should include the following: (1) state whether the railroad official found that a revocable event occurred and the applicable period of revocation with a citation to 49 CFR 242.405 (Periods of revocation); (2) contain an explanation of the factual findings and citations to all applicable railroad rules and practices; (3) not cite a railroad rule or practice that was not cited in the written notice of suspension; and (4) be served on the employee and the employee's representative, if any, with the railroad to retain proof of that service. AAR commented that there is no need for the third proposal. According to AAR, at least one railroad's labor agreement provides that a specific rule violation shall not be cited in the initial charge letter and many other railroads have long-standing practices that are similar. A comment from a Working Group member also indicated that the rule cited would have to be changed if evidence developed at a railroad hearing required it. Thus, in that instance, the railroad would need the flexibility to cite a rule not cited in the written notice of suspension. AAR also commented that the fourth proposal is unnecessary.

As stated in the preamble to the NPRM, FRA proposed the changes to ensure that clearer and more detailed decisions are issued. Clearer and more detailed decisions would allow a conductor to understand exactly why his or her certification was revoked and would allow the Operating Crew Review Board to have a more detailed understanding of the case if asked to review the revocation decision pursuant to Subpart E of this rule. Moreover, the service proposal would help eliminate disputes as to when the conductor

was notified of the railroad decision. FRA understands that a railroad may, under certain circumstances, need to change the rule being cited. Accordingly, FRA has adopted the first, second and fourth but not the third proposal in this final rule. However, FRA is concerned about conductors preparing their defense for the railroad hearing based on the rule cited in the written notice of suspension only to have the railroad change the rule cited during the hearing or in the decision. Railroads must take actions to avoid this and should grant a recess, if appropriate, to allow a conductor to prepare a defense to the violation being cited. Railroads should also note that the OCRB may grant a petition on review if the OCRB finds that citing a different violation caused the petitioner substantial harm.

Finally, there were comments on the appeals process. FRA solicited comments whether to add a provision to § 242.503(b) providing that: “If the petitioner is requesting review of a railroad decision which is based on a failure to comply with any drug or alcohol related rules or a return-to-service agreement, then the petitioner shall supplement his or her petition with all relevant written documents, including the information under 49 CFR 40.329 that laboratories, medical review officers, and other service agents are required to release to employees.” The petitioner should provide written explanation in the petition if written documents that should be reasonably available to the petitioner are not supplied.” AAR supported the provision. BLET/UTU commented that FRA should add a requirement for the railroad to notify conductors in writing of their right to acquire the litigation package from the laboratories, MRO and other service agents and that it be disclosed to the conductor on the record of revocation hearings conducted in compliance with §242.407(b)(4) for charges of violating § 242.403(e)(12). BLET/UTU suggested that the notification should contain at a minimum the exact language contained in 49 CFR 40.329.

Because the OCRB may not need the information listed in 49 CFR 40.329 in all cases and because there may be some cost associated with obtaining the information, FRA is adopting a modified version of the proposal for this final rule which clarifies that petitioners will be responsible for obtaining the information listed in 49 CFR 40.329 if requested by the OCRB. Since it will not be mandatory for a petitioner to submit the information listed in 49 CFR 40.329 to the OCRB in all cases involving a violation of § 242.403(e)(12) and FRA expects that, in those cases where the OCRB does want information listed in 49 CFR 40.329, the OCRB will explain to the petitioner what information it is looking to obtain from the petitioner and how the petitioner can get it, FRA declines to adopt BLET/UTU’s additional requirement.

BLET/UTU submitted numerous comments regarding changes they wanted to see made to the appeals process contained in §§ 242.501, 503, 505, 507, 509 and 511. According to BLET/UTU, the changes “will create a more expeditious process to resolve disputes that may arise from the conductor certification rules.” The suggested changes include eliminating the opportunity for parties to appeal FRA decisions to the Administrator,

incorporating the Administrative Hearing Officer (AHO) level of appeal into the OCRB process, requiring the OCRB to grant a decision if any procedural error by the railroad is shown, adding an attorney to the OCRB and making the OCRB decision final agency action.

FRA declines to adopt BLET/UTU's proposed revisions to the appeals process. The appeals process was thoroughly discussed during the Working Group meetings and most of BLET/UTU's proposals were rejected at those meetings. As explained to the Working Group, due process requirements and issues concerning trials *de novo* necessitate that FRA retain the OCRB and AHO as distinct levels of review.

Contrary to BLET/UTU's claims, FRA believes that their proposal will actually increase the amount of time and cost it takes to resolve the average case on appeal to the FRA. Under the BLET/UTU proposal, FRA expects a significant increase in the number of cases/issues handled by the AHO and the federal courts. For example, under the BLET/UTU proposal, it appears that a decision by the OCRB to deny a petition as untimely would be appealed to Federal court as that decision would constitute final agency action and the opportunity to appeal the decision to the Administrator, as provided for in the NPRM, would be eliminated. As a result, cases would take much longer to resolve and would involve increased costs for all parties involved. Moreover, the BLET/UTU proposal advocates for extending the time for filing a petition of review with the FRA from four months as provided in the NPRM to six months. That proposal would only add to the time required for a case to be resolved by FRA following a railroad's decision to deny or revoke certification.

Although FRA is not adopting BLET/UTU's proposals, FRA is taking steps to make the appeals process more efficient. Over the past two years, the average length of time for the AHO to render a decision in a locomotive engineer case under Part 240 has dropped by six months due, in part, to the fact that the AHO is no longer allowing parties to hold cases in abeyance. FRA expects that the AHO will not hold conductor cases in abeyance either, thereby eliminating one of the main obstacles in achieving faster case processing times. In addition, FRA has revised the requirements proposed in the NPRM to require petitions to be submitted to the Docket Clerk of DOT rather than FRA's Docket Clerk. With that change, the process for submitting petitions to the OCRB will parallel the process for requesting an administrative hearing under Part 240 and § 242.507. FRA believes this change will make the process more efficient as DOT's Docket is better equipped to process, scan and store these types of filings.

### Background

In March 1996, FRA established the Railroad Safety Advisory Committee (RSAC), which provides a forum for collaborative rulemaking and program development. RSAC



includes representatives from all of the agency's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties.

The following organizations are members of RSAC:

American Association of Private Railroad Car Owners (AARPCO);  
American Association of State Highway & Transportation Officials (AASHTO);  
American Chemistry Council;  
American Petroleum Institute;  
American Public Transportation Association (APTA);  
American Short Line and Regional Railroad Association (ASLRRRA);  
American Train Dispatchers Association (ATDA);  
Association of American Railroads (AAR);  
Association of Railway Museums (ARM);  
Association of State Rail Safety Managers (ASRSM);  
Brotherhood of Locomotive Engineers and Trainmen (BLET);  
Brotherhood of Maintenance of Way Employees Division (BMWED);  
Brotherhood of Railroad Signalmen (BRS);  
Chlorine Institute;  
Federal Transit Administration (FTA);\*  
Fertilizer Institute;  
High Speed Ground Transportation Association (HSGTA);  
Institute of Makers of Explosives;  
International Association of Machinists and Aerospace Workers;  
International Brotherhood of Electrical Workers (IBEW);  
Labor Council for Latin American Advancement (LCLAA);\*  
League of Railway Industry Women;\*  
National Association of Railroad Passengers (NARP);  
National Association of Railway Business Women;\*  
National Conference of Firemen & Oilers;  
National Railroad Construction and Maintenance Association;  
National Railroad Passenger Corporation (Amtrak);  
National Transportation Safety Board (NTSB);\*  
Railway Supply Institute (RSI);  
Safe Travel America (STA);  
Secretaria de Comunicaciones y Transporte;\*  
Sheet Metal Workers International Association (SMWIA);  
Tourist Railway Association Inc.;  
Transport Canada;\*  
Transport Workers Union of America (TWU);  
Transportation Communications International Union/BRC (TCIU/BRC);  
Transportation Security Administration (TSA); and

United Transportation Union (UTU).

\*Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. The working group may establish one or more task forces or other subgroups to develop facts and options on a particular aspect of a given task. The task force, or other subgroup, reports to the working group. If a working group comes to consensus on recommendations for action, the package is presented to RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, and because the RSAC recommendation constitutes the consensus of some of the industry's leading experts on a given subject, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goals, is soundly supported, and is in accordance with applicable policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. If the working group or RSAC is unable to reach consensus on recommendations for action, FRA resolves the issue(s) through traditional rulemaking proceedings or other action.

On December 10, 2008, the RSAC accepted a task (No. 08-07) entitled "Conductor Certification." The purpose of this task was defined as follows: "To develop regulations for certification of railroad conductors, as required by the Rail Safety Improvement Act of 2008 (Act), and to consider any appropriate related amendments to existing regulations." The task called for the RSAC Conductor Certification Working Group (Working Group) to perform the following:

- Review safety data bearing on opportunities for reducing risk associated with the duties performed by freight and passenger conductors.
- Assist FRA in developing regulations responsive to the legislative mandate.
- Consider any revisions to 49 CFR Part 240 appropriate to conform and update the certification programs for locomotive engineers and conductors.

The task also listed issues requiring specific report:

- What requirements for training and experience are appropriate?
- What classifications of conductors should be recognized?
- To what extent do existing requirements and procedures for certification of locomotive engineers provide a model for conductor certification?
- To what extent should unsafe conduct occurring while a locomotive engineer affect certification status as a conductor, and vice versa?
- Starting with the locomotive engineer certification model, what opportunities are available for simplifying appeals from decertification decisions of the railroads?

The Working Group was formed from interested organizations that are members of the RSAC. In addition to FRA, the following organizations contributed members:

- American Association of Railroads (AAR), including members from Burlington Northern Santa Fe Railway Company (BNSF), Canadian National Railway (CN), Canadian Pacific Railway (CP), CSX Railroad (CSX), Iowa Interstate Railroad, LTD, Kansas City Southern Railroad (KCS), METRA Railroad (METRA), Norfolk Southern Railway Company (NS), Union Pacific Railroad (UP);
- American Public Transportation Association (APTA), including members from Long Island Rail Road (LIRR), Metro-North Railroad (MNCW), Southeastern Pennsylvania Transportation Authority (SEPTA), Southern California Regional Rail Authority (Metrolink), Transit Solutions Group (TSG);
- American Short Line and Regional Railroad Association (ASLRRA), including members from Anacostia Rail Holdings (ARH), Genesee & Wyoming Inc. (GNWR), Omnitrac Inc.(Omnitrac), Rio Grande Pacific Corporation (RGP), WATCO Companies, Inc. (WATCO);
- Brotherhood of Locomotive Engineers and Trainmen (BLET);
- National Railroad Construction & Maintenance Association, including members from Herzog Transit Services (Herzog);
- National Railroad Passenger Corporation (Amtrak);
- National Transportation Safety Board (NTSB);
- Transportation Workers Union (TWU);

- United Transportation Union A(UTU).
- DOT's John A. Volpe National Transportation Systems Center (Volpe Center) also contributed members to the Working Group.

The Working Group convened six times on the following dates and locations:

- July 21-23, 2009 in Washington, DC;
- August 25-27, 2009 in Overland Park, KS;
- September 15-17, 2009 in Colorado Springs, CO;
- October 20-22, 2009 in Arlington, VA;
- November 17-19, 2009 in Scottsdale, AZ; and
- December 16-18, 2009 in Washington, DC.

To aid the Working Group in its development of recommendations for certification of conductors, FRA prepared draft regulatory text, which it distributed prior to the July meeting. The draft text closely followed 49 CFR Part 240 which governs the qualification and certification of locomotive engineers.

During each meeting, Working Group members made recommendations regarding changes and additions to the draft text. Following each meeting, FRA considered all of the recommendations and revised the draft text accordingly.

Having worked closely with the RSAC in developing its recommendations, FRA believes that the RSAC has effectively addressed concerns with regard to FRA's handling of the certification of conductors. FRA has greatly benefited from the open, informed exchange of information during the meetings. The Working Group reached consensus on all of its recommended regulatory provisions. On March 18, 2010, the Working Group presented its recommendations to the full RSAC for concurrence. All of the members of the full RSAC in attendance at the March meeting accepted the regulatory recommendations submitted by the Working Group. Thus, the Working Group's recommendations became the full RSAC's recommendations to FRA.

As contemplated by the Working Group's task statement, the promulgation of the conductor certification regulation opens up consideration of conforming changes to 49 CFR Part 240. Such changes could include amending the program submission process, adding 49 CFR 218, subpart F violations as revocable offenses, and handling engineer and conductor petitions for review with a single FRA board. Although FRA intended for

the Working Group to consider changes to Part 240 during its July – December meetings, the Working Group was unable to undertake that task. Moreover, members of the Working Group felt that it would be more efficient to discuss changes to Part 240 after the conductor certification regulation is finalized and comments are received. Therefore, FRA expects the Working Group to continue meeting after publication of this NPRM and to provide recommendations that address both the comments to this NPRM and conforming changes to Part 240.

**9. Payments or gifts to respondents.**

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

**10. Assurance of confidentiality.**

Regarding the protection of confidentiality, § 242.115(g) of the regulation states the following:

Noting in this Part shall affect the responsibility of the railroad under § 219.403 of this chapter ('Voluntary Referral Policy') to treat voluntary referrals for substance abuse counseling and treatment as confidential; and the certification status of a conductor 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 § 219.403 of this chapter a provision that, at least with respect to a certified conductor or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the SAP 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. (*Note: No Privacy Impact Analysis (PIA) was performed concerning Part 242; however, one has been previously performed for Part 219.*)

**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 matters contained in this rule.

**12. Estimate of burden hours for information collected.**

*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 in operation that will be covered under this rule is 677. Of these 677 railroads, approximately eight (8) are Class I railroads*

*(includes Amtrak), 12 are Class II railroads, 627 are Class III railroads, and 30 are commuter railroads. FRA estimates that there are approximately 54,000 conductors who are affected by this rulemaking.*

*Again, it bears mentioning that this collection of information is solely associated with this rulemaking. Also, the requirements in this rulemaking are fixed for railroads in terms of compliance, although railroads have flexibility relating to the most economical way to fulfill these requirements in terms of choosing a paper or electronic option, where applicable.*

#### Waivers (§ 242.9)

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 it will receive approximately 10 waiver requests each year under the above requirement. It is calculated that it will take approximately three (3) hours to complete each waiver request. Total annual burden for this requirement is 30 hours.

Respondent Universe:	677 railroads
Burden time per response:	3 hours
Frequency of Response:	On occasion
Annual number of Responses:	10 waiver requests/petitions
Annual Burden:	30 hours

**Calculation:** 10 waiver requests x 3hrs. = 30 hours

#### Certification Program Required (§ 242.101)

(a) After the pertinent date specified in § 242.105(d) or (e), each railroad shall have a certification program approved in accordance with § 242.103 that includes:

(1) A designation of the types of service that it determines will be used in compliance with the criteria established in § 242.107;

(2) A procedure for evaluating prior safety conduct that complies with the criteria established in [§ 242.109](#);

(3) A procedure for evaluating visual and hearing acuity that complies with the criteria established in § 242.117;

(4) A procedure for training that complies with the criteria established in § 242.119;

(5) A procedure for knowledge testing that complies with the criteria established in § 242.121; and

(6) A procedure for monitoring operational performance that complies with the criteria established in § 242.123.

FRA estimates that approximately 678 written conductor certification program will be developed and submitted to FRA meet all the above requirements. It is estimated that it will take approximately 130 hours for the eight (8) Class I railroads, 12 Class II, and 25 commuter railroads and five (5) railroad contractors to develop their program, 580 hours for the one (1) generic plan developed by ASLRRRA, and approximately 15.5 hours for the 627 small railroads to modify the ASLRRRA program. Total annual burden for this requirement is 15,139 hours. *[Note: The burden for training programs is not accounted for here; rather, it is accounted for separately under § 242.119.]*

Respondent Universe:	677 railroads
Burden time per response:	130 hours + 581 hours + 15.5 hours
Frequency of Response:	One-time
Annual number of Responses:	678 conductor certification programs
Annual Burden:	16,799 hours

**Calculation:** 50 programs x 130 hrs. + 1 generic program x 580 hrs. + 627 programs x 15.5 hrs. = 16,799 hours

#### Approval of Design of Individual Railroad Programs by FRA (§ 242.103)

(a) Each railroad shall submit its written certification program and request for approval in accordance with the procedures contained in Appendix B of this Part according to the following schedule:

(1) A Class I railroad (including the National Railroad Passenger Corporation), Class II railroad, or railroad providing commuter service shall submit a program no later than March 30, 2012; and

(2) A Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall submit a program no later than July 30, 2012.

*The burden for conductor certification programs is included under that of § 242.101 above. Consequently, there is no additional burden associated with this requirement.*

(b) A railroad commencing operations after the pertinent date specified in paragraph (a) of this section shall submit its written certification program and request for approval in accordance with the procedures contained in Appendix B to this Part at least 60 days prior to commencing operations.

Railroads commencing operations after the specified date will most likely be small or Class III railroads. FRA estimates that approximately six (6) railroads will commence operations after the specified date and thus six (6) written conductor certification programs will be developed that meet this Part's requirements. It is estimated that it will take approximately 15.5 hours to develop each conductor certification program and file it with FRA. Total annual burden for this requirement is 93 hours.

Respondent Universe:	677 railroads
Burden time per response:	15.5 hours
Frequency of Response:	One-time
Annual number of Responses:	6 conductor certification programs
Annual Burden:	93 hours

**Calculation:** 6 conductor certification programs x 15.5 hrs. = 93 hours

(c) Each railroad shall:

(1) Simultaneous with its filing with the FRA, serve a copy of the submission filed pursuant to paragraph (a) or (b) of this section, a resubmission filed pursuant to paragraph (h) of this section, or a material modification filed pursuant to paragraph (i) of this section on the president of each labor organization that represents the railroad's employees subject to this Part;

This requirement pertains to railroads that have union employees, and would include the eight (8) Class I railroads, the 12 Class II railroads, and 30 commuter railroads. FRA then estimates that approximately 200 conductor certification program submission copies will be made and served on the president of rail labor organizations under the above requirement. It is estimated that it will take approximately 15 minutes to make each copy and serve it on the president of each labor organization. Total annual burden for this requirement is 50 hours.

Respondent Universe:	677 railroads
Burden time per response:	15 minutes
Frequency of Response:	One-time
Annual number of Responses:	200 certification program submission copies
Annual Burden:	50 hours



**Calculation:** 200 certification program submission copies x 15 min. = 50 hours

and (2) Include in their submission filed pursuant to paragraph (a) or (b) of this section, a resubmission filed pursuant to paragraph (h) of this section, or a material modification filed pursuant to paragraph (i) of this section a statement affirming that the railroad has served a copy on the president of each labor organization that represents the railroad's employees subject to this Part, together with a list of the names and addresses of persons served.

FRA estimates that approximately 200 affirmative statements will be included in the necessary submissions under the above requirement. It is estimated that it will take approximately 15 minutes to complete each affirmative statement. Total annual burden for this requirement is 50 hours.

Respondent Universe:	677 railroads
Burden time per response:	15 minutes
Frequency of Response:	One-time
Annual number of Responses:	200 affirmative statements
Annual Burden:	50 hours

**Calculation:** 200 affirmative statements x 15 min. = 50 hours

(d) Not later than 45 days from the date of filing a submission pursuant to paragraph (a) or (b) of this section, a resubmission pursuant to paragraph (h) of this section, or a material modification pursuant to paragraph (i) of this section, any designated representative of railroad employees subject to this Part may comment on the submission, resubmission, or material modification:

(1) Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding;

(2) Each comment shall be submitted to the Associate Administrator for Railroad Safety/Chief Safety Officer, FRA, 1200 New Jersey Avenue, SE, Washington, DC 20590; and

(3) The commenter shall certify that a copy of the comment was served on the railroad.

FRA estimates that approximately 35 certified comments from designated employee representatives will be made under the above requirement. It is estimated that it will take approximately four (4) hours to complete each comment. Total annual burden for this requirement is 140 hours.

Respondent Universe:	677 railroads
Burden time per response:	4 hours
Frequency of Response:	On occasion
Annual number of Responses:	35 certified comments
Annual Burden:	140 hours

**Calculation:** 35 certified comments x 4 hrs. = 140 hours

(e) The submission required by paragraph (a) or (b) of this section shall state the railroad's election either:

(1) To accept responsibility for the training of conductors and thereby obtain authority for that railroad to initially certify a person as a conductor in an appropriate type of service; or

(2) To recertify only conductors previously certified by other railroads.

*The burden for conductor certification programs is included under that of § 242.101 above. Consequently, there is no additional burden associated with this requirement.*

(f) A railroad that elects to accept responsibility for the training of conductors shall 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.

*The burden for conductor certification programs is included under that of § 242.101 above. Consequently, there is no additional burden associated with this requirement.*

(g) A railroad's program is considered approved and may be implemented 30 days after the required filing date (or the actual filing date) unless the Administrator notifies the railroad in writing that the program does not conform to the criteria set forth in this Part.

(1) If the Administrator determines that the program does not conform, the Administrator will inform the railroad of the specific deficiencies.

(2) If the Administrator informs the railroad of deficiencies more than 30 days after the initial filing date, the original program may remain in effect until 30 days after approval of the revised program is received so long as the railroad has complied with requirements of paragraph (h) of this section.

FRA estimates that approximately 10 conductor certification programs will be disapproved by the Administrator and need to be revised under the above requirement. It is estimated that it will take approximately four (4) hours to revise each conductor

program and resubmit it to FRA. Total annual burden for this requirement is 40 hours.

Respondent Universe:	677 railroads
Burden time per response:	4 hours
Frequency of Response:	On occasion
Annual number of Responses:	10 revised certification programs
Annual Burden:	40 hours

**Calculation:** 10 revised certification programs x 4 hrs. = 40 hours

(h) A railroad shall resubmit its program within 30 days after the date of such notice of deficiencies. A failure to resubmit the program with the necessary revisions will be considered a failure to implement a program under this Part.

(1) The Administrator will inform the railroad in writing whether its revised program conforms to this Part.

(2) If the program does not conform, the railroad shall resubmit its program.

FRA estimates that approximately three (3) revised conductor certification programs will still not conform to this Part's requirements and will need to be resubmitted under the above requirement. It is estimated that it will take each railroad approximately two (2) hours to revise further each conductor program and resubmit it to FRA. Total annual burden for this requirement is six (6) hours.

Respondent Universe:	677 railroads
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	3 resubmitted certification programs
Annual Burden:	6 hours

**Calculation:** 3 resubmitted certification programs x 2 hrs. = 6 hours

(i) A railroad that intends to materially modify its program after receiving initial FRA approval shall submit a description of how it intends to modify the program in conformity with the specific requirements of this Part at least 60 days prior to implementing such a change.

(1) A modification is material if it would affect the program's conformance with this Part.

(2) The modification submission shall contain a description that conforms to the pertinent portion of the procedures contained in Appendix B of this Part.

This requirement will entail small change. FRA estimates that approximately 50 railroads per year will modify their initially approved conductor certification programs under the above requirement. It is estimated that it will take approximately two (2) hours for each railroad to materially modify its conductor certification program and resubmit it to FRA. Total annual burden for this requirement is 100 hours.

Respondent Universe:	677 railroads
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	50 certification program modification submissions
Annual Burden:	100 hours

**Calculation:** 50 certification program modification submissions x 2 hrs.  
= 100 hours

(3) The modification submission will be handled in accordance with the procedures of paragraphs (g) and (h) of this section as though it were a new program.

FRA estimates that approximately three (3) modified conductor certification program submissions will be disapproved by the Administrator and need to be revised under the above requirement. It is estimated that it will take approximately two (2) hours to further revise each modified conductor program and resubmit it to FRA. Total annual burden for this requirement is six (6) hours.

Respondent Universe:	677 railroads
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	3 revised certification programs
Annual Burden:	6 hours

**Calculation:** 3 revised certification programs x 2 hrs. = 6 hours

Additionally, FRA estimates that approximately one (1) revised conductor certification programs will still not conform to this Part's requirements and will need to be resubmitted under the above requirement. It is estimated that it will take approximately two (2) hours to revise further each conductor certification program and resubmit it to FRA. Total annual burden for this requirement is two (2) hours.

Respondent Universe:	677 railroads
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	1 resubmitted certification programs

Annual Burden: 2 hours

**Calculation:** 1 resubmitted certification programs x 2 hrs. = 2 hours

Total annual burden for this entire requirement is 869 hours (375 + 100 + 100 + 140 + 40 + 6 + 100 + 6 + 2).

Schedule for Implementation (§ 242.105)

(a) By March 1, 2012, each railroad shall:

(1) In writing, designate as certified conductors all persons authorized by the railroad to perform the duties of a conductor as of January 1, 2012; and

This requirement will affect Class I railroads which employ 90 percent of the total number of conductors. FRA estimates then that approximately 48,600 certified conductors will be designated in writing by railroads by the stipulated date under the above requirement. It is estimated that it will take approximately five (5) minutes to designate each individual as a certified conductor. Total annual burden for this requirement is 4,050 hours.

Respondent Universe:	677 railroads
Burden time per response:	5 minutes
Frequency of Response:	One-time
Annual number of Responses:	48,600 designated certified conductors
Annual Burden:	4,050 hours

**Calculation:** 48,600 des. certified conductors x 5 min. = 4,050 hours

(2) Issue a certificate that complies with § 242.207 to each person that it designates.

As with certificates for locomotive engineers, certificates for conductors are issued every three years. Consequently, FRA estimates that approximately 16,200 conductor certificates (48,600 x .33) will be issued each year that comply with § 242.207 to designated individuals under the above requirement. It is estimated that it will take approximately 60 minutes to issue each conductor certificate. Total annual burden for this requirement is 16,200 hours.

Respondent Universe:	677 railroads
Burden time per response:	60 minutes
Frequency of Response:	Annually
Annual number of Responses:	16,200 issued conductor certificates

Annual Burden: 16,200 hours

**Calculation:** 16,200 issued conductor certificates x 60 min. = 16,200 hours

(b) After March 1, 2012, each railroad shall:

(1) In writing, designate as a certified conductor any person who has been authorized by the railroad to perform the duties of a conductor between January 1, 2012, and the pertinent date in paragraph (d) or (e) of this section; and

This requirement applies to the Class II and Class III railroads or the balance of the total number of conductors. Consequently, FRA estimates that approximately 5,400 certified conductors will be designated in writing by railroads under the above requirement. It is estimated that it will take approximately five (5) minutes to designate each individual as a certified conductor. Total annual burden for this requirement is 450 hours.

Respondent Universe:	677 railroads
Burden time per response:	5 minutes
Frequency of Response:	One-time
Annual number of Responses:	5,400 designated certified conductors
Annual Burden:	450 hours

**Calculation:** 5,400 designated certified conductors x 5 min. = 450 hours

(2) Issue a certificate that complies with § 242.207 to each person that it designates.

Again, as with certificates for locomotive engineers, certificates for conductors are issued every three years. FRA estimates that approximately 1,800 conductor certificates (5,400 x .33) will be issued each year that comply with § 242.207 to designated individuals under the above requirement. It is estimated that it will take approximately 60 minutes to issue each conductor certificate. Total annual burden for this requirement is 1,800 hours.

Respondent Universe:	677 railroads
Burden time per response:	60 minutes
Frequency of Response:	Annually
Annual number of Responses:	1,800 issued conductor certificates
Annual Burden:	1,800 hours

**Calculation:** 1,800 issued conductor certificates x 60 min. = 1,800 hours

(c) No railroad shall permit or require a person, designated as a certified conductor under the provisions of paragraph (a) or (b) of this section, to perform service as a certified

conductor for more than a 36-month period beginning on the pertinent date for compliance with the mandatory procedures for testing and evaluation set forth in the applicable provisions of paragraph (d) or (e) of this section unless that person has been certified in accordance with procedures that comply with Subpart B of this Part.

(1) Except for as provided in paragraph (c)(3) of this section, a person who has been designated as a certified conductor under the provisions of paragraph (a) or (b) of this section and who is eligible to receive a retirement pension in accordance with the terms of an applicable agreement or in accordance with the terms of the Railroad Retirement Act (45 U.S.C. 231) within 36 months from the pertinent date for compliance with the mandatory procedures for testing and evaluation set forth in the applicable provisions of paragraph (d) or (e) of this section, may request, in writing, that a railroad not recertify that person, pursuant to subpart B of this Part, until 36 months from the pertinent date for compliance with the mandatory procedures for testing and evaluation set forth in the applicable provisions of paragraph (d) or (e) of this section.

(2) Upon receipt of a written request pursuant to paragraph (c)(1) of this section, a railroad may wait to recertify the person making the request until the end of the 36-month period described in paragraph (c) of this section. If a railroad grants any request, it must grant the request of all eligible persons to every extent possible.

(3) A person who is subject to recertification under Part 240 of this chapter may not make a request pursuant to paragraph (c)(1) of this section.

Regarding delays, this most likely happen in cases where conductors are close to retirement, and will ask for a delay because it impacts their pension. Thu, FRA estimates that approximately 5,000 certified conductors will make a written request for delayed recertification under the above requirement. It is estimated that it will take approximately 30 minutes to complete issue each written request and send it to the railroad. Total annual burden for this requirement is 2,500 hours.

Respondent Universe:	677 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	5,000 written requests
Annual Burden:	2,500 hours

**Calculation:** 5,000 written requests x 30 min. = 2,500 hours

(d) After June 1, 2012, no Class I railroad (including the National Railroad Passenger Corporation), Class II railroad, or railroad providing commuter service shall initially certify or recertify a person as a conductor unless that person has been tested and

evaluated in accordance with procedures that comply with Subpart B of this Part and issued a certificate that complies with § 242.207.

All certified conductors are grandfathered in until June 1, 2012. After that, FRA estimates that approximately 1,000 conductors per year will be tested and evaluated in accordance with procedures that comply with Subpart B of this Part under the above requirement. Essentially, they will be made conductors right out of school. It is estimated that it will take approximately 560 hours to complete each test and evaluation. Total annual burden for this requirement is 560,000 hours.

Respondent Universe:	677 railroads
Burden time per response:	560 hours
Frequency of Response:	Annually
Annual number of Responses:	1,000 tests /evaluations
Annual Burden:	560,000 hours

**Calculation:** 1,000 tests/evaluations x 560 hrs. = 560,000 hours

(e) After October 1, 2012, no Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall initially certify or recertify a person as a conductor unless that person has been tested and evaluated in accordance with procedures that comply with Subpart B of this Part and issued a certificate that complies with §242.207.

FRA estimates that approximately 100 conductors per year will be tested and evaluated in accordance with procedures that comply with Subpart B of this Part by Class III railroads under the above requirement. It is estimated that it will take approximately 400 hours to complete each test and evaluation. Total annual burden for this requirement is 40,000 hours.

Respondent Universe:	677 railroads
Burden time per response:	400 hours
Frequency of Response:	Annually
Annual number of Responses:	100 tests/evaluations
Annual Burden:	40,000 hours

**Calculation:** 100 tests/evaluations x 400 hrs. = 40,000 hours

(f) After the applicable dates specified in paragraphs (d) and (e) of this section, no person shall serve as a conductor in any type of service and no railroad shall require or permit any person to serve as a conductor in any type of service unless that person has been tested and evaluated in accordance with procedures that comply with subpart B of this Part and issued a certificate that complies with § 242.207.



*The burden for testing/evaluations is included above and the burden for certificates is included below under that of § 242.207. Consequently, there is no additional burden associated with this requirement.*

Total annual burden for this entire requirement is 625,000 hours (4,050 + 16,200 + 450 + 1,800 + 2,500 + 560,000 + 40,000).

Types of Service (§ 242.107)

(a) Each railroad's program shall state which of the two types of service (conductor and passenger conductor), provided for in paragraph (b) of this section, that it will cover.

*The burden for conductor certification programs is included under that of § 242.101 above. Consequently, there is no additional burden associated with this requirement.*

(b) A railroad may issue certificates for either of the following types of service:

(1) Conductor; and

(2) Passenger conductor.

*The burden for this requirement is included under that of § 242.105 above. Consequently, there is no additional burden associated with this requirement.*

(c) A railroad shall not reclassify the certification of any type of certified conductor to a different type of conductor certification during the period in which the certification is otherwise valid except when a conductor completes the emergency training identified in Part 239 of this chapter and is certified as a passenger conductor.

FRA estimates that approximately 25 conductors will complete the emergency training identified under Part 239 and will be reclassified/certified as passenger conductors under the above requirement. It is estimated that it will take approximately eight (8) hours to complete the emergency training and reclassification of each conductor. Total annual burden for this requirement is 200 hours.

Respondent Universe:	677 railroads
Burden time per response:	8 hours
Frequency of Response:	On occasion
Annual number of Responses:	25 tests/evaluations
Annual Burden:	200 hours

**Calculation:** 25 tests/evaluations x 8 hrs. = 200 hours

Total annual burden for this entire requirement is 200 hours.

Determinations Required for Certification and Recertification (§ 242.109)

(a) After the pertinent date specified in § 242.105(d) or (e), each railroad, prior to initially certifying or recertifying any person as a conductor, shall, in accordance with its FRA-approved program, determine in writing that:

(1) The individual meets the eligibility requirements of §§ 242.111, 242.113, 242.115 and 242.403; and

(2) The individual meets the vision and hearing acuity standards of § 242.117 (“Vision and hearing acuity”);

(3) The individual has the necessary knowledge, as demonstrated by successfully completing a test that meets the requirements of § 242.121 (“Knowledge testing”); and

(4) Where a person has not previously been certified, that the person has completed a training program that meets the requirements of § 242.119 (“Training”).

*The burden for the above requirements are included under those of §§ 242.111, 242.113, 242.115, 242.117, 242.119, 242.121, and 242.403, respectively. Consequently, there is no additional burden associated with these requirements.*

(b) When evaluating a person's railroad employment record, a railroad shall not consider information concerning prior conduct that:

(1) Occurred prior to the effective date of this rule; or

(2) Occurred at a time other than that specifically provided for in §§ 242.111, 242.115 or 242.403.

(c) In order to make the determination required under paragraph (a) of this section, a railroad shall have on file documents pertinent to those determinations.

*The burden for the above requirement is included under those of §§ 242.111, 242.113, 242.115, 242.117, 242.119, 242.121, and 242.403, respectively. Consequently, there is no additional burden associated with this requirement.*

(d) A railroad's program shall provide a candidate for certification or recertification 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 § 242.115, if the railroad believes the record contains

information that could be sufficient to render the person ineligible for certification under this Subpart.

FRA estimates that approximately 200 records pertaining to prior safety conduct will be sent to candidates for conductor certification or recertification each year so that the candidate can review and comment on them under the above requirement. It is estimated that each railroad approximately 30 minutes to collect and send the information and approximately 10 minutes for each candidate to complete the review of the record and comment on it in writing. Total annual burden for this requirement is 133 hours.

Respondent Universe:	677 railroads
Burden time per response:	30 minutes + 10 minutes
Frequency of Response:	Annually
Annual number of Responses:	200 collected records + 200 written comments
Annual Burden:	133 hours

**Calculation:** 200 collected records x 30 min. + 200 comments x 10 min.  
= 133 hours

(e) The opportunity for comment shall be afforded to the person prior to the railroad's rendering its eligibility decision based on that information. Any responsive comment furnished shall be retained by the railroad in accordance with § 242.203.

*The burden for the above requirement is included under that of § 242.203 below. Consequently, there is no additional burden associated with this requirement.*

(f) The program shall include a method for a person to advise the railroad that he or 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 conductor.

*The burden for the above requirement is included under those of §§ 242.101 above. Consequently, there is no additional burden associated with this requirement.*

(g) Nothing in this section, §§ 242.111 or 242.113 shall be construed to prevent persons subject to this Part from entering into an agreement that results in a railroad's obtaining the information needed for compliance with this Subpart in a different manner than that prescribed in §§ 242.111 or 242.113.

*As a condition of employment, conductors will sign an agreement upon being hired. Since this is the usual and customary procedure, there is no burden associated with the above provision.*

Total annual burden for this entire requirement is 133 hours.

Prior Safety Conduct As Motor Vehicle Operator (§ 242.111)

(a) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including, but not limited to, each railroad, railroad officer, supervisor, and employee) violates any provision of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

*The burden for conductor certification programs is included under that of § 242.101 above. Consequently, there is no additional burden associated with this requirement.*

(b) Except as provided in paragraphs (c), (d), (e) and (f) of this section, after the pertinent date specified in § 242.105(d) or (e), each railroad, prior to initially certifying or recertifying any person as a conductor for any type of service, shall determine that the person meets the eligibility requirements of [this](#) section involving prior conduct as a motor vehicle operator.

FRA estimates that approximately 1,100 eligibility determinations involving prior conduct as a motor vehicle operator will be made under the above requirement. It is estimated that it will take approximately 10 minutes to look at the employee file/database and make the necessary determination. Total annual burden for this requirement is 183 hours.

Respondent Universe:	677 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	1,100 eligibility determinations
Annual Burden:	183 hours

**Calculation:** 1,100 eligibility determinations x 10 min. = 183 hours

(c) A railroad shall initially certify a person as a conductor for 60 days if the person:

(1) Requested the information required by paragraph (h) of this section at least 60 days prior to the date of the decision to certify that person; and

(2) Otherwise meets the eligibility requirements provided in § 242.109.

This will occur when railroads do not obtain the necessary information from the National Drivers Registry (NDR) for various reasons. Consequently, FRA estimates that approximately 75 individuals each year will be initially certified for 60 days under the above requirement. It is estimated that it will take approximately 10 minutes to complete each certification. Total annual burden for this requirement is 13 hours.

Respondent Universe:	677 railroads
Burden time per response:	10 minutes
Frequency of Response:	Annually
Annual number of Responses:	75 two month certifications
Annual Burden:	13 hours

**Calculation:** 75 two month certifications x 10 min. = 13 hours

(d) A railroad shall recertify a person as a conductor for 60 days from the expiration date of that person's certification if the person:

(1) Requested the information required by paragraph (h) of this section at least 60 days prior to the date of the decision to recertify that person; and

(2) Otherwise meets the eligibility requirements provided in § 242.109.

FRA estimates that approximately 125 individuals each year will be recertified for 60 days under the above requirement. It is estimated that it will take approximately 10 minutes to complete each recertification. Total annual burden for this requirement is 21 hours.

Respondent Universe:	677 railroads
Burden time per response:	10 minutes
Frequency of Response:	Annually
Annual number of Responses:	125 two month re-certifications
Annual Burden:	21 hours

**Calculation:** 125 two month re-certifications x 10 min. = 21 hours

(e) Except as provided in paragraph (f) of this section, if a railroad which certified or recertified a person pursuant to paragraph (c) or (d) of this section does not obtain and evaluate the information required pursuant to paragraph (h) within 60 days of the pertinent dates identified in paragraph (c) or (d) of this section, that person will be ineligible to perform as a conductor until the information can be evaluated.

(f) If a person requests the information required pursuant to paragraph (h) of this section but is unable to obtain it, that person or the railroad certifying or recertifying that person

may petition for a waiver of the requirements of paragraph (b) of this section in accordance with the provisions of Part 211 of this chapter. A railroad shall certify or recertify a person during the pendency of the waiver request if the person otherwise meets the eligibility requirements provided in § 242.109.

FRA estimates that it will receive approximately 25 waivers under the above requirement. It is estimated that it will take approximately two (2) hours to complete each waiver. Total annual burden for this requirement is 50 hours.

Respondent Universe:	677 railroads
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	25 waivers
Annual Burden:	50 hours

**Calculation:** 25 waivers x 2 hrs. = 50 hours

(g) Individual's duty. Except for persons designated as conductors under §242.105 (a) or (b) or for persons covered by § 242.109(f), each person seeking certification or recertification 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 paragraphs (h) through (j) of this section to make information concerning his or her driving record available to the railroad that is considering such certification or recertification; and

*The burden for requirements under paragraphs (h) through (j) of this section is included below. Consequently, there is no additional burden associated with this provision.*

(2) Take any additional actions, including providing any necessary consent required by State, Federal, or foreign law to make information concerning his or her driving record available to that railroad.

*Since a consent form is signed at the time of hiring to make driving information available to the railroad, no additional action/signed consent will be needed. Consequently, there is no burden associated with this requirement.*

(h) Each person seeking certification or recertification under this Part shall request, in writing, that the chief of each driver licensing agency identified in paragraph (i) of this section provide a copy of that agency's available information concerning his or her driving record to the railroad that is considering such certification or recertification.

(i) Each person shall request the information required under paragraph (h) of this section from:

(1) The chief of the driver licensing agency of any jurisdiction, including a state or foreign country, which last issued that person a driver's license; and

(2) The chief of the driver licensing agency of any other jurisdiction, including states or foreign countries, that issued or reissued the person a driver's license within the preceding five years.

Again, certification and re-certifications are good for three years. Consequently, FRA estimates that approximately 18,000 written requests will be made each year under the above requirement. It is estimated that it will take approximately 15 minutes to complete each written request. Total annual burden for this requirement is 4,500 hours.

Respondent Universe:	54,000
	Conductors/Candidates
Burden time per response:	15 minutes
Frequency of Response:	Annually
Annual number of Responses:	18,000 written requests
Annual Burden:	4,500 hours

**Calculation:** 18,000 written requests x 15 min. = 4,500 hours

(j) If advised by the railroad that a driver licensing agency has informed the railroad that additional information concerning that person's driving history may exist in the files of a state agency or foreign country not previously contacted in accordance with this section, such person shall:

(1) Request in writing that the chief of the driver licensing agency which compiled the information provide a copy of the available information to the prospective certifying railroad; and

FRA estimates that approximately 25 written requests will be made under the above requirement. It is estimated that it will take approximately 10 minutes to complete each written request. Total annual burden for this requirement is four (4) hours.

Respondent Universe:	54,000
	Conductors/Candidates
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	25 written requests
Annual Burden:	4 hours

**Calculation:** 25 written requests x 10 min. = 4 hours

(2) Take any additional action required by State, Federal, or foreign law to obtain that additional information.

*Again, since a consent form is signed at the time of hiring to make driving information available to the railroad, no additional action/signed consent will be needed. Consequently, there is no burden associated with this requirement.*

(k) Any person who has never obtained a motor vehicle driving license is not required to comply with the provisions of paragraph (h) of this section but shall notify the railroad of that fact in accordance with procedures of the railroad that comply with § 242.109(f).

A driver's license is pretty much a condition for employment in the railroad industry. However, FRA estimates that there will be approximately two (2) individuals each year who will notify railroads of never having obtained a driver's license under the above requirement. It is estimated that it will take approximately 10 minutes to complete each notification. Total annual burden for this requirement is .3333 hour.

Respondent Universe:	54,000
	Conductors/Candidates
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	2 notifications
Annual Burden:	.3333 hour

**Calculation:** 2 notifications x 10 min. = .3333 hour

(l) Each certified conductor or person seeking initial certification shall report motor vehicle incidents described in paragraphs (n)(1) and (2) of this section to the employing railroad within 48 hours of being convicted for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle drivers license for, such violations. For purposes of this paragraph and paragraph (n) of this section, "state action" means action of the jurisdiction that has issued the motor vehicle driver's license, including a foreign country. For the purposes of conductor 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 drivers license.

FRA estimates that approximately 200 reports by certified conductors or individuals seeking initial certification of motor vehicle incidents described in paragraphs (n)(1) and (2) of this section to the employing railroad will be made each year under the above requirement. It is estimated that it will take approximately 10 minutes to complete each report. Total annual burden for this requirement is 33 hours.



Respondent Universe:	54,000 Conductors/Candidates
Burden time per response:	10 minutes
Frequency of Response:	Annually
Annual number of Responses:	200 reports
Annual Burden:	33 hours

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

(m) Evaluation of record. When evaluating a person's motor vehicle driving record, a railroad shall not consider information concerning motor vehicle driving incidents that occurred:

- (1) Prior to the effective date of this rule;
- (2) More than 36 months before the month in which the railroad is making its certification decision; or
- (3) At a time other than that specifically provided for in §§ 242.111, 242.115, or 242.403.

(n) A railroad 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 drivers license for, operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance; or
- (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 or foreign 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.

Since certification and recertification take places every year for a third of the estimated 54,000 conductors, FRA estimates that approximately 18,000 individual motor vehicle record evaluations related to information related to the two causes stipulated above will be conducted by railroads under the above requirement. It is estimated that it will take approximately 15 minutes to conduct each motor vehicle record evaluation. Total annual burden for this requirement is 4,500 hours.

Respondent Universe:	54,000
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	Conductors/Candidates
Burden time per response:	15 minutes
Frequency of Response:	Annually
Annual number of Responses:	18,000 motor vehicle record evaluations
Annual Burden:	4,500 hours

**Calculation:** 18,000 record evaluations x 15 min.  
= 4,500 hours

(o) If such an incident is identified:

(1) The railroad shall provide the data to the railroad's DAC, together with any information concerning the person's railroad service record, and shall refer the person for evaluation to determine if the person has an active substance abuse disorder;

FRA estimates that there will be approximately 180 cases where alcohol/controlled substance incidents are identified, data/service records then provided to the railroad DAC, and referrals for evaluation made under the above requirement. It is estimated that it will take approximately five (5) minutes to provide the necessary data/service record and complete each referral for evaluation. Total annual burden for this requirement is 15 hours.

Respondent Universe:	677 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	180 DAC referrals
Annual Burden:	15 hours

**Calculation:** 180 DAC referrals x 5 min. = 15 hours

(2) The person shall cooperate in the evaluation and shall provide any requested records of prior counseling or treatment for review exclusively by the DAC in the context of such evaluation; and

FRA estimates that there will be approximately five (5) cases where the railroad DAC will request records of prior counseling or treatment for review under the above requirement. It is estimated that it will take approximately 30 minutes for the DAC professional to make the records request and for the certification candidate to supply the necessary records. Total annual burden for this requirement is three (3) hours.

Respondent Universe:	677 railroads
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Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	5 requests/supplied records
Annual Burden:	3 hours

**Calculation:** 5 record requests x 30min. = 3 hours

(3) If the person is evaluated as not currently affected by an active substance abuse disorder, the subject data shall not be considered further with respect to certification. However, the railroad shall, on recommendation of the DAC, condition certification upon participation in any needed aftercare and/or follow-up testing for alcohol or drugs deemed necessary by the DAC consistent with the technical standards specified in § 242.115(f)(3).

FRA estimates that railroad SAPs will recommend 50 conditional certifications under the above requirement. It is estimated that it will take approximately four (4) hours to conduct the necessary evaluation and make the conditional certification recommendation. Total annual burden for this requirement is 200 hours.

Respondent Universe:	677 railroads
Burden time per response:	4 hours
Frequency of Response:	On occasion
Annual number of Responses:	50 conditional certification recommendations
Annual Burden:	200 hours

**Calculation:** 50 conditional cert. recommendations x 4 hrs. = 200 hours

(4) If the person is evaluated as currently affected by an active substance abuse disorder, the provisions of § 242.115(d) will apply.

(5) If the person fails to comply with the requirements of paragraph (o)(2) of this section, the person shall be ineligible to perform as a conductor until such time as the person complies with the requirements.

*The burden for these two requirements are included under that of § 242.111(o)(2) and § 242.111(o)(3) above. Consequently, there is no additional burden associated with these requirements.*

Total annual burden for this entire requirement is 8,022 hours (183 + 13 + 21 + 50 + 3,000 + 4 + .33 + 33 + 4,500 + 15 + 3 + 200).

Prior Safety Conduct As An Employee of a Different Railroad (§ 242.113)

(a) Each railroad shall adopt and comply with a program which complies with the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

*The burden for conductor certification programs is included under that of § 242.101 above. Consequently, there is no additional burden associated with this requirement.*

(b) After the pertinent date specified in § 242.105(d) or (e), each railroad, prior to initially certifying or recertifying any person as a conductor for any type of service, shall determine that the person meets the eligibility requirements of this section.

(c) Except for persons designated as conductors under § 242.105(a) or (b) or for persons covered by § 242.109(f), each person seeking certification or recertification under this part shall, within 366 days preceding the date of the railroad's decision on certification or recertification:

(1) 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 pertaining to compliance or non-compliance with §§ 242.111, 242.115 and 242.403 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.

FRA estimates that approximately two percent of the 18,000 certifications/recertification candidates (or 360 individuals) annually will have worked for another railroad. It is that it will take each of these employees approximately 15 minutes to prepare his/her written request to the former employing railroad for the necessary information and approximately 30 minutes for the former employing railroad to review its files and provide the former employee's record to the railroad that is considering certification or recertification. Total annual burden for this requirement is 270 hours.

Respondent Universe:	677 railroads
Burden time per response:	15 minutes + 30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	360 written requests + 360 records
Annual Burden:	270 hours

**Calculation:** 360 written requests x 15 min. + 360 records x 30 min. = 270 hours

Total annual burden for this requirement is 270 hours.

Substance Abuse Disorders and Alcohol Drug Rules Compliance § 242.115)

(a) Each railroad shall adopt and comply with a program which complies with the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

*The burden for conductor certification programs is included under that of § 242.101 above. Consequently, there is no additional burden associated with this requirement.*

(b) After the pertinent date specified in § 242.105(d) or (e), each railroad, prior to initially certifying or recertifying any person as a conductor for any type of service, shall determine that the person meets the eligibility requirements of this section.

Based on the three year cycle of certifications, FRA estimates that approximately 18,000 determinations will be made by railroads under the above requirement. It is estimated that it will take approximately two (2) minutes to conduct the necessary evaluation and make the conditional certification recommendation. Total annual burden for this requirement is 600 hours.

Respondent Universe:	677 railroads
Burden time per response:	2 minutes
Frequency of Response:	On occasion
Annual number of Responses:	18,000 determinations
Annual Burden:	600 hours

**Calculation:** 18,000 determinations x 2 min. = 600 hours

(c) In order to make the determination required under paragraph (d) of this section, a railroad shall have on file documents pertinent to that determination, including a written document from its DAC which states 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.

FRA estimates that approximately 400 documents, including the written SAP document,

will be kept on file under the above requirement. It is estimated that it will take approximately 30 minutes to file the required documents. Total annual burden for this requirement is 200 hours.

Respondent Universe:	677 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	400 filed documents
Annual Burden:	200 hours

**Calculation:** 400 filed documents x 30 min. = 200 hours

(d) Fitness requirement.

(1) A person who has an active substance abuse disorder shall be denied certification or recertification as a conductor.

(2) Except as provided in paragraph (g) of this section, a certified conductor who is determined to have an active substance abuse disorder shall be ineligible to hold certification. Consistent with other provisions of this Part, certification may be reinstated as provided in paragraph (f) of this section.

(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 of [§ 242.111](#)), the employee may, if otherwise eligible, voluntarily self-refer for substance abuse counseling or treatment under the policy required by § 219.403 of this chapter; and the railroad shall then treat the substance abuse evaluation as confidential except with respect to ineligibility for certification.

*The burden for evaluations is included under that of § 242.111 (o)(3) above. Consequently, there is no additional burden associated with this requirement.*

FRA estimates that approximately 10 current employees will voluntarily self-refer for substance abuse counseling or treatment under the above requirement. It is estimated that it will take approximately 10 minutes for each employee to self-refer. Total annual burden for this requirement is two (2) hours.

Respondent Universe:	677 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	10 self-referrals
Annual Burden:	2 hours

**Calculation:** 10 self-referrals x 10 min. = 2 hours

(e) Prior alcohol/drug conduct; Federal rule compliance.

(1) In determining whether a person may be or remain certified as a conductor, a railroad shall consider conduct described in paragraph (e)(2) of this section that occurred within a period of 60 consecutive months prior to the review. A review of certification shall be initiated promptly upon the occurrence and documentation of any incident of conduct described in this paragraph.

(2) A railroad shall consider any violation of §§ 219.101 or 219.102 of this chapter and any refusal or failure to provide a breath or body fluid sample for testing under the requirements of Part 219 of this chapter when instructed to do so by a railroad representative.

Based on the three-year certification/recertification cycle, FRA estimates that approximately 18,000 certification reviews will be conducted by railroads under the above requirement. It is estimated that it will take approximately 10 minutes to conduct each certification review. Total annual burden for this requirement is 3,000 hours.

Respondent Universe:	677 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	18,000 certification reviews
Annual Burden:	3,000 hours

**Calculation:** 18,000 certification reviews x 10 min. = 3,000 hours

(3) A period of ineligibility described in this paragraph shall begin:

(i) For a person not currently certified, on the date of the railroad's written determination that the most recent incident has occurred; or

FRA estimates that approximately 150 written determinations will be made by railroads under the above requirement. It is estimated that it will take approximately 60 minutes to complete each written determination. Total annual burden for this requirement is 150 hours.

Respondent Universe:	677 railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	150 written determinations
Annual Burden:	150 hours

**Calculation:** 150 written determination x 60 min. = 150 hours

(ii) For a person currently certified, on the date of the railroad's notification to the person that recertification has been denied or certification has been revoked; and

FRA estimates that approximately 150 notifications to individuals denying/revoking recertification will be completed by railroads under the above requirement. It is estimated that it will take approximately 10 minutes to complete each notification. Total annual burden for this requirement is 25 hours.

Respondent Universe:	677 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	150 notifications
Annual Burden:	25 hours

**Calculation:** 150 notifications x 10 min. = 25 hours

(4) The period of ineligibility described in this paragraph shall be determined in accordance with the following standards:

(i) In the case of a single violation of § 219.102 of this chapter, the person shall be ineligible to hold a certificate during evaluation and any required primary treatment as described in paragraph (f) of this section. In the case of two violations of § 219.102 of this chapter, the person shall be ineligible to hold a certificate for a period of two years. In the case of more than two such violations, the person shall be ineligible to hold a certificate for a period of five years.

(ii) In the case of one violation of § 219.102 of this chapter and one violation of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of three years.

(iii) In the case of one violation of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of 9 months (unless identification of the violation was through a qualifying "co-worker report" as described in § 219.405 of this chapter and the conductor waives investigation, in which case the certificate shall be deemed suspended during evaluation and any required primary treatment as described in paragraph (f)). In the case of two or more violations of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of five years.



*The burden for identification of violations of § 219.101 of this chapter through a qualifying "co-worker report" is included under that of § 219.405 and covered under OMB No. 2130-0526. Consequently, there is no additional burden associated with this first part of the above requirement.*

FRA estimates that approximately 100 conductors will waive investigation (by completing a form letter) and have their certification suspended under the above requirement. It is estimated that it will take approximately 10 minutes for each conductor to waive investigation. Total annual burden for this requirement is 17 hours.

Respondent Universe:	54,000 Conductors
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	100 waived investigations
Annual Burden:	17 hours

**Calculation:** 100 waived investigations x 10 min. = 17 hours

(iv) A refusal or failure to provide a breath or body fluid sample for testing under the requirements of Part 219 of this chapter when instructed to do so by a railroad representative shall be treated, for purposes of ineligibility under this paragraph, in the same manner as a violation of:

(A) Section 219.102 of this chapter, in the case of a refusal or failure to provide a urine specimen for testing; or

(B) Section 219.101 of this chapter, in the case of a refusal or failure to provide a breath sample for alcohol testing, or a blood specimen for mandatory post-accident toxicological testing.

*The burden for all Part 219 requirements is covered under OMB No. 2130-0526. Consequently, there is no additional burden associated with the above requirements.*

(f) Future eligibility to hold certificate following alcohol/drug violation. The following requirements apply to a person who has been denied certification or who has had certification suspended or revoked as a result of conduct described in paragraph (e) of this section:

(1) The person shall not be eligible for grant or reinstatement of the certificate unless and until the person has:

(i) Been evaluated by a SAP to determine if the person currently has an active substance abuse disorder;

*The burden for DAC evaluations is included under that of § 242.111(o)(3) above. Consequently, there is no additional burden associated with the above requirement.*

(ii) Successfully completed any program of counseling or treatment determined to be necessary by the SAP prior to return to service; and

(iii) In accordance with the testing procedures of subpart H of Part 219 of this chapter, has had an alcohol test with an alcohol concentration of less than .02 and presented a urine sample that tested negative for controlled substances assayed.

(2) A conductor placed in service or returned to service under the above-stated conditions shall continue in any program of counseling or treatment deemed necessary by the SAP and shall be subject to a reasonable program of follow-up alcohol and drug testing without prior notice for a period of not more than 60 months following return to service. Follow-up tests shall include not fewer than 6 alcohol tests and 6 drug tests during the first 12 months following return to service.

(3) Return-to-service and follow-up alcohol and drug tests shall be performed consistent with the requirements of Subpart H of Part 219 of this chapter.

(4) This paragraph does not create an entitlement to utilize the services of a railroad SAP, to be afforded leave from employment for counseling or treatment, or to employment as a conductor. Nor does it restrict any discretion available to the railroad to take disciplinary action based on conduct described herein.

*The burden for all Part 219 requirements is covered under OMB No. 2130-0526. Consequently, there is no additional burden associated with the above requirements.*

(g) Confidentiality protected. Nothing in this part shall affect the responsibility of the railroad under § 219.403 of this chapter ("Voluntary Referral Policy") to treat voluntary referrals for substance abuse counseling and treatment as confidential; and the certification status of a conductor 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 § 219.403 of this chapter a provision that, at least with respect to a certified conductor or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the DAC 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.

*The burden for self-referrals is included under that of § 242.115(d) above. Railroads already have the required provision in their policies of confidentiality related to Part 219*

*and the burden is already covered under OMB No. 2130-0526. Consequently, there is no additional burden associated with the above requirement.*

Total annual burden for this entire requirement is 3,994 hours (600 + 200 + 2 + 3,000 + 150 + 25 + 17).

Vision and Hearing Acuity (§ 242.117)

(a) Each railroad shall adopt and comply with a program which complies with the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

*The burden for conductor certification programs is included under that of § 242.101 above. Consequently, there is no additional burden associated with this requirement.*

(b) After the pertinent date specified in § 242.105(d) or (e), each railroad, prior to initially certifying or recertifying any person as a conductor for any class of service, shall determine that the person meets the standards for visual acuity and hearing acuity prescribed in this section.

Based on the three year cycle of certifications, FRA estimates that approximately 18,000 determinations will be made by railroads based on vision tests under the above requirement. It is estimated that it will take a total of approximately 20 minutes to complete the necessary test (10 minutes for the traveling mobile vans railroads employ to reach the employees and 10 minutes to conduct each vision test and make the necessary determination). Total annual burden for this requirement is 6,000 hours.

Respondent Universe:	677 railroads
Burden time per response:	20 minutes
Frequency of Response:	On occasion
Annual number of Responses:	18,000 determinations (vision tests)
Annual Burden:	6,000 hours

**Calculation:** 18,000 determinations (vision tests) x 20 min. = 600 hours

Again, based on the three year cycle of certifications, FRA estimates that approximately 18,000 determinations will be made by railroads based on hearing acuity tests under the above requirement. It is estimated that it will take a total of approximately 20 minutes to complete the necessary test. Total annual burden for this requirement is 6,000 hours.

Respondent Universe:	677 railroads
Burden time per response:	20 minutes
Frequency of Response:	On occasion
Annual number of Responses:	18,000 determinations (hearing tests)
Annual Burden:	6,000 hours

**Calculation:** 18,000 determinations (hearing tests) x 20 min. = 6,000 hours  
 Additionally, to cover any gaps, FRA estimates that approximately 200 hearing tests per year will be conducted under the above requirement. It is estimated that it will take a total of approximately 20 minutes to complete the necessary test. Total annual burden for this requirement is 67 hours.

Respondent Universe:	677 railroads
Burden time per response:	20 minutes
Frequency of Response:	On occasion
Annual number of Responses:	200 determinations (hearing tests)
Annual Burden:	67 hours

**Calculation:** 200 determinations (hearing tests) x 20 min. = 67 hours

(c) In order to make the determination required under paragraph (b) of this section, a railroad shall have on file either:

(1) A medical examiner's certificate that the individual has been medically examined and meets these acuity standards;

Based on the three year certification/recertification cycle, FRA estimates that railroads will have approximately 18,000 medical examiner certificates on file under the above requirement. It is estimated that it will take approximately two (2) hours to conduct the medical exam, complete the certificate, and file it. Total annual burden for this requirement is 36,000 hours.

Respondent Universe:	677 railroads
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	18,000 filed medical examiner certificates
Annual Burden:	36,000 hours

**Calculation:** 18,000 filed medical examiner certificates x 2 hrs. = 36,000 hours

Or (2) A written document from its medical examiner documenting his or her professional opinion that the person does not meet one or both acuity standards and stating the basis for his or her determination that:

(i) The person can nevertheless be certified under certain conditions; or

FRA estimates that approximately 50 written documents from medical examiners will be completed under the above requirement. It is estimated that it will take approximately 30 minutes to complete each document. Total annual burden for this requirement is 25 hours.

Respondent Universe:	677 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	50 written documents
Annual Burden:	25 hours

**Calculation:** 50 written documents x 30 min. = 25 hours

(ii) The person's acuity is such that he or she cannot safely perform as a conductor even with conditions attached.

FRA estimates that approximately 25 written documents from medical examiners will be completed under the above requirement. It is estimated that it will take approximately 30 minutes/hours to complete each document. Total annual burden for this requirement is 13 hours.

Respondent Universe:	677 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	25 written documents
Annual Burden:	13 hours

**Calculation:** 25 written documents x 30 min. = 13 hours

(e) 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 this section or to meet a lower threshold determined by the railroad's medical examiner to be sufficient to perform as a conductor, that fact shall be noted on the certificate issued in accordance with the provisions of this Part.

FRA estimates that approximately 10,000 conductors wearing glasses/a few wear hearing aids and thus approximately 10,000 certificate notations will be made by medical

examiners under the above requirement. It is estimated that it will take approximately 10 minutes to make each notation. Total annual burden for this requirement is 1,667 hours.

Respondent Universe:	677 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	10,000 certificate notations
Annual Burden:	1,667 hours
<b>Calculation:</b>	10,000 certificate notations x 10 min. = 1,667 hours

(f) Any person with such a certificate notation shall use the relevant corrective device(s) while performing as a conductor unless the railroad's medical examiner subsequently determines in writing that the person can safely perform without using the device.

*Since conductors are required to wear their glasses/hearing aids as a condition of employment, there would be no cases where a written determination would be made that the person can safely perform his/her duties without using the device. Consequently, there is no burden associated with this requirement.*

(g) Fitness requirement. In order to be currently certified as a conductor, except as permitted by paragraph (j) of this section, a person's vision and hearing shall meet or exceed the standards prescribed in this section and Appendix D to this Part. It is recommended that each test conducted pursuant to this section should be performed according to any directions supplied by the manufacturer of such test and any American National Standards Institute (ANSI) standards that are applicable.

(h) Except as provided in paragraph (j) of this section, each person shall have visual acuity that meets or exceeds the following thresholds:

(1) For distant viewing, either:

(i) Distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses;  
or

(ii) Distant visual acuity separately corrected to at least 20/40 (Snellen) with corrective lenses and distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses;

(2) A field of vision of at least 70 degrees in the horizontal meridian in each eye; and

(3) The ability to recognize and distinguish between the colors of railroad signals as demonstrated by successfully completing one of the tests in Appendix E to this Part.

(i) Except as provided in paragraph (j) of this section, each person shall have a hearing test or audiogram that shows the person's hearing acuity meets or exceeds the following thresholds: the person does not have an average hearing loss in the better ear greater than 40 decibels with or without use of a hearing aid, at 500 Hz, 1,000 Hz, and 2,000 Hz. The hearing test or audiogram shall meet the requirements of one of the following:

(1) As required in 29 CFR 1910.95(h) (OSHA);

(2) As required in § 227.111 of this chapter; or

(3) Conducted using an audiometer that meets the specifications of and is maintained and used in accordance with ANSI S3.6-2004 "Specifications for Audiometers."

(j) A person not meeting the thresholds in paragraphs (h) and (i) of this section shall, upon request, be subject to further medical evaluation by a railroad's medical examiner to determine that person's ability to safely perform as a conductor. In accordance with the guidance prescribed in Appendix D 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 safely perform as a conductor. The railroad shall provide its medical examiner with a copy of this Part, including all appendices. If, after consultation with a railroad officer, the medical examiner concludes that, despite not meeting the threshold(s) in paragraphs (h) and (i) of this section, the person has the ability to safely perform as a conductor, the person may be certified as a conductor and such certification conditioned on any special restrictions the medical examiner determines in writing to be necessary.

FRA estimates that approximately 100 requests for further medical evaluation will be made by conductor certification candidates under the above requirement. It is estimated that it will take approximately 60 minutes to make each request and approximately two (2) hours to complete each determination (usually a field test). Total annual burden for this requirement is 300 hours.

Respondent Universe:	677 railroads
Burden time per response:	60 minutes + 2 hours
Frequency of Response:	On occasion
Annual number of Responses:	100 further medical evaluation requests + 100 determinations
Annual Burden:	300 hours

**Calculation:** 100 further medical evaluation requests x 60 min. + 100 determinations x 2 hrs. = 300 hours

Further, FRA estimates that approximately 25 requests for a second retest because the

person provided evidence substantiating circumstances have changed since the last test under the above requirement. It is estimated that it will take approximately 60 minutes to complete each retest request and two (2) hours for the railroad medical examiner to review the evidence and make a determination. Total annual burden for this requirement is 75 hours.

Respondent Universe:	677 railroads
Burden time per response:	60 minutes + 2 hours
Frequency of Response:	On occasion
Annual number of Responses:	25 retest requests + 25 reviews/determinations
Annual Burden:	75 hours

**Calculation:** 25 retest requests x 60 min. + 25 reviews/determinations x 2 hrs. = 75 hours

Additionally, FRA estimates that approximately 677 copies of this part, including all appendices, will be provided to railroad medical examiners under the above requirement. It is estimated that it will take approximately 60 minutes to complete copy. Total annual burden for this requirement is 677 hours.

Respondent Universe:	677 railroads
Burden time per response:	60 minutes
Frequency of Response:	One-time
Annual number of Responses:	677 Part 242 copies
Annual Burden:	677 hours

**Calculation:** 677 Part 242 copies x 60 min. = 677 hours

Finally, FRA estimates that approximately 100 consultations by medical examiners with railroad officers will be made and 100 conditional conductor certifications granted under the above requirement. It is estimated that it will take approximately two (2) hours to complete each consultation and approximately 10 minutes to complete each conditional certification. Total annual burden for this requirement is 217 hours.

Respondent Universe:	677 railroads
Burden time per response:	2 hours + 10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	100 consultations + 100 conditional certifications
Annual Burden:	217 hours

**Calculation:** 100 consultations x 2 hrs. + 100 conditional certifications x



10 min. = 217 hours

(k) As a condition of maintaining certification, each certified conductor shall notify his or her employing railroad's medical department or, if no such department exists, an appropriate railroad official if the person's best correctable vision or hearing has deteriorated to the extent that the person no longer meets one or more of the prescribed vision or hearing standards or requirements of this section. This notification is required prior to any subsequent performance as a conductor.

FRA estimates that approximately 10 notifications will be made by certified conductors under the above requirement. It is estimated that it will take approximately 10 minutes to make each notification. Total annual burden for this requirement is two (2) hours.

Respondent Universe:	677 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	10 notifications
Annual Burden:	2 hours

**Calculation:** 10 notifications x 10 min. = 2 hours

Total annual burden for this entire requirement is 51,043 hours (6,000 + 6,000 + 67 + 36,000 + 25 + 13 + 1,667 + 300 + 75 + 677 + 217 + 2).

#### Training (242.119)

(a) Each railroad shall adopt and comply with a program that meets the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any provision of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

FRA estimates that railroads will have to adapt their training programs to comply with this part of the rule. Thus, FRA estimates that approximately 678 training programs will be developed under the above requirement. It is estimated that it will take approximately 36 hours for the eight (8) Class I railroads, 12 Class II, and 25 commuter railroads and five (5) railroad contractors to develop their program, approximately 70 hours for the one (1) generic plan developed by ASLRRRA, and approximately three (3) hours for the 627 small railroads to modify the ASLRRRA program. Total annual burden for this requirement is 3,751 hours.

Respondent Universe:	677 railroads
Burden time per response:	36 hours + 70 hours + 3 hours

Frequency of Response:	One-time
Annual number of Responses:	678 conductor certification programs
Annual Burden:	3,751 hours

**Calculation:** 50 programs x 36 hrs. + 1 generic program x 70 hrs. + 627 programs x 3 hrs. = 3,751hours

Additionally, the NPRM had a requirement for “task analysis” as part of the training plan. Since that time the Training Standards RSAC Working Group developed recommendations that did not require a task analysis. In the final rule, FRA replaced the task analysis requirement with a more comprehensive on-the-job training requirement. This more additional or more robust description of what is entailed with on-the-job training was partially taken from the definition of “on-the-job training” as written in the NPRM. Basically the final rule simplified the definition and added the detail to the requirement for it in this training section. Consequently, railroads will need to do further work to modify their training programs.

Thus, FRA estimates that approximately 678 training programs will be modified. It is estimated that it will take approximately 12 hours for the eight (8) Class I railroads, 12 Class II, and 25 commuter railroads and five (5) railroad contractors to complete this change to their program, approximately 20 hours for the one (1) generic plan developed by ASLRRRA to complete this change, and approximately 30 minutes for the 627 small railroads to complete this change to the ASLRRRA program. Total annual burden for this requirement is 934 hours.

Respondent Universe:	677 railroads
Burden time per response:	12 hours + 20 hours + 30 minutes
Frequency of Response:	One-time
Annual number of Responses:	678 conductor certification programs
Annual Burden:	934 hours

**Calculation:** 50 programs x 12 hrs. + 1 generic program x 20 hrs. + 627 programs x 30 min. = 934 hours

(b) After the pertinent date specified in § 242.105(d) or (e), each railroad, prior to the initial issuance of a certificate to any person as a conductor, shall determine that the person has, in accordance with the requirements of this section, the knowledge to safely perform as a conductor in each type of service that the person will be permitted to perform.

*The burden for this requirement is included under that of § 242.105(f) above. Consequently, there is no additional burden associated with this requirement.*

(c) In making this determination, a railroad shall have written documentation showing that:

(1) The person completed a training program that complies with paragraph (d) of this section;

(2) The person demonstrated his or her knowledge by achieving a passing grade under the testing and evaluation procedures of that training program; and

Based on the three year certification/re-certification process of conductors, FRA estimates that approximately 18,000 written documents will be completed under the above requirement. Further, under the final rule, conductors presently employed by railroads will be/are grandfathered in regarding training, and thus will not need to undergo the full training. Only newly hired employees will need to undergo the full training. FRA estimates that there will be approximately 5,400 newly hired employees each year due to conductor attrition (10 percent of the total number of conductors). Training will take approximately 14 weeks and will run eight hours per day for the five day work week. Thus, it is estimated that it will take 60 minutes to complete each written document and 560 hours to complete the training and testing of each conductor certification candidate. Total annual burden for this requirement is 3,042,000 hours.

Respondent Universe:	677 railroads
Burden time per response:	60 minutes + 560 hours
Frequency of Response:	One-time
Annual number of Responses:	18,000 written documents + 18,000 trained/tested conductor candidates
Annual Burden:	3,042,000 hours

**Calculation:** 18,000 written documents x 60 min. + 5,400 trained/tested conductor candidates x 560 hrs. = 3,042,000 hours

Additionally, as noted in the regulatory impact analysis accompanying this final rule, FRA estimates that approximately 18,000 conductors will undergo refresher training each year. It is estimated that it will take approximately two (2) for each conductor to complete the refresher training. Total annual burden for this requirement is 36,000 hours.

Respondent Universe:	677 railroads
Burden time per response:	2 hours
Frequency of Response:	Annually
Annual number of Responses:	18,000 retrained/retested conductors
Annual Burden:	36, 000 hours

**Calculation:** 18,000 retrained/retested conductors x 2 hrs. = 36,000 hours

(3) The person demonstrated that he or she is qualified on the physical characteristics of the railroad, or its pertinent segments, over which that person will perform service.

*The burden for this requirement is already covered under that of § 242.105(d) and (e) above. Consequently, there is no additional burden associated with this requirement.*

(d) A railroad that elects to train a previously untrained person to be a conductor shall develop an initial training program which, at a minimum, includes the following:

(1) Determine how training must be structured, developed, and delivered, including on-the-job training and any combination of classroom, simulator, computer-based, or other formal training. The curriculum shall be designed to impart knowledge of, and ability to comply with applicable Federal railroad safety laws, regulations, and orders, as well as any railroad rules and procedures promulgated to implement those applicable Federal railroad safety laws, regulations, and orders. This training shall document a person's knowledge of, and ability to comply with, Federal railroad safety laws, regulations, and orders, as well as railroad rules and procedures.

*The burden for this requirement is already covered under that of § 242.101 and § 242.119(c)(2) above. Consequently, there is no additional burden associated with this requirement.*

(2) The on-the-job portion of the training program shall consist of the following three key components:

(i) A brief statement describing the tasks and related steps the employee learning the job shall be able to perform;

(ii) A statement of the conditions (prerequisites, tools, equipment, documentation, briefings, demonstrations, and practice) necessary for learning transfer; and

(iii) A statement of the standards by which proficiency is measured through a combination of task/step accuracy, completeness, and repetition.

(3) Prior to beginning the initial safety-related tasks associated with on-the-job exercises, employers shall make any relevant information or materials, such as operating rules, safety rules, or other rules available to employees involved for referencing.

(4) The tasks and related steps associated with on-the-job exercises for a particular type of conductor service (*e.g.*, passenger conductor) shall be maintained together in one

manual, checklist, or similar document. This reference shall be made available to all employees involved in those on-the-job exercises.

*The burden for these requirements are included under that of § 242.119(a) above. Consequently, there is no additional burden associated with this requirement.*

(5) When new safety-related railroad laws, regulations, orders, technologies, procedures, or equipment are introduced into the workplace, the railroad must review its training program and modify its training plan accordingly.

FRA estimates that approximately 30 training programs will need to be reviewed and modified under the above requirement. It is estimated that it will take four (4) hours to review and modify each training program. Total annual burden for this requirement is 120 hours.

Respondent Universe:	677 railroads
Burden time per response:	4 hours
Frequency of Response:	On occasion
Annual number of Responses:	30 reviewed/modified training programs
Annual Burden:	120 hours

**Calculation:** 30 reviewed/modified training programs x 4 hrs. = 120 hours

(e) Prior to a previously untrained person being certified as a conductor, a railroad shall require the person to:

(1) Successfully complete the formal initial training program developed pursuant to paragraph (d) of this section and any associated examinations covering the skills and knowledge the person will need to possess in order to perform the tasks necessary to be a conductor; and

(2) Demonstrate, to the satisfaction of the railroad with input from a qualified instructor, on-the-job proficiency by successfully completing the tasks necessary to be a conductor. However, a person may perform such tasks under the direct onsite supervision of a person, who has the necessary operating experience, as part of the on-the-job training process prior to completing such training and passing the field evaluation; and

(3) Demonstrate knowledge of the physical characteristics of any assigned territory by successfully completing a test created by a person qualified on the physical characteristics of the territory.

*The burden for this requirement is already covered under that of § 242.101 and § 242.119(c)(2) above. Consequently, there is no additional burden associated with this requirement.*

(f) If a railroad uses a written test for purposes of paragraph (e)(3) of this section, the railroad must provide the person(s) being tested with an opportunity to consult with a supervisory employee, who possesses territorial qualifications for the territory, to explain a question.

FRA estimates that approximately 1,000 consultations with supervisory employees will take place under the above requirement. It is estimated that it will take 15 minutes to complete each consultation. Total annual burden for this requirement is 250 hours.

Respondent Universe:	677 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	1,000 consultations
Annual Burden:	250 hours

**Calculation:** 1,000 consultations x 15 min. = 250 hours

(g) A person may acquire familiarity with the physical characteristics of a territory through the following methods:

(1) The methods used by a railroad for familiarizing its conductors with new territory while starting up a new railroad;

(2) The methods used by a railroad for starting operations over newly acquired rail lines;  
or

(3) The methods used by a railroad for reopening of a long unused route.

(h) The methods listed in paragraph (g) of this section shall be described in the railroad's conductor qualification program required under this Part and submitted according to the procedures described in Appendix B to this Part.

*The burden for this requirement is already covered under that of § 242.101 above. Consequently, there is no additional burden associated with this requirement.*

(i) If ownership of a railroad is being transferred from one company to another, the conductor(s) of the acquiring company may receive familiarization training from the selling company prior to the acquiring railroad commencing operation.

FRA estimates that approximately 10 conductors of the acquiring company will receive familiarization training under the above requirement. It is estimated that it will take eight (8) hours to complete the familiarization training. Total annual burden for this requirement is 80 hours.

Respondent Universe:	677 railroads
Burden time per response:	8 hours
Frequency of Response:	On occasion
Annual number of Responses:	10 trained conductors
Annual Burden:	80 hours

**Calculation:** 10 trained conductors x 8 hrs. = 80 hours

(j) A railroad shall designate in its program required by this section the time period in which a conductor must be absent from a territory or yard, before re-qualification on physical characteristics is required.

*The burden for this requirement is already covered under that of § 242.101 above. Consequently, there is no additional burden associated with this requirement.*

(k) A railroad’s program shall include the procedures used to qualify or re-qualify a person on the physical characteristics.

*The burden for this requirement is already covered under that of § 242.101 above. Consequently, there is no additional burden associated with this requirement.*

(l) A railroad shall provide for the continuing education of certified conductors to ensure that each conductor maintains the necessary knowledge concerning railroad safety and operating rules and compliance with all applicable Federal regulations, including, but not limited to, hazardous materials, passenger train emergency preparedness, brake system safety standards, pre-departure inspection procedures, and passenger equipment safety standards, and physical characteristics of a territory.

Based on the three year conductor certification cycle, FRA estimates that approximately 18,000 certified conductors will receive continuing education under the above requirement. It is estimated that it will take eight (8) hours to complete each continuing education session. Total annual burden for this requirement is 144,000 hours.

Respondent Universe:	677 railroads
Burden time per response:	8 hours
Frequency of Response:	On occasion
Annual number of Responses:	18,000 continuously educated

Annual Burden:	conductors	144,000 hours
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<b><u>Calculation:</u></b>	18,000 cont. educ. conductors x 8 hrs. = 144,000 hours
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Total annual burden for this entire requirement is 3,227,135 hours (3,751 + 934 + 3,042,000 + 36,000 + 120 + 250 + 80 + 144,000).

**Knowledge Testing (§ 242.121)**

(a) Each railroad shall adopt and comply with a program that meets the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any provision of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

*The burden for conductor certification programs is included under that of § 242.101 above. Consequently, there is no additional burden associated with this requirement.*

(b) After the pertinent date specified in § 242.105(d) or (e), each railroad, prior to initially certifying or recertifying any person as a conductor for any type of service, shall determine that the person has, in accordance with the requirements of this section, demonstrated sufficient knowledge of the railroad's rules and practices for the safe movement of trains.

The burden for most of this requirement is already included under that of training in § 242.119 above. However, FRA believes that there will be some small new burden. Thus, FRA estimates that approximately 18,000 determinations will be made under the above requirement. It is estimated that it will take approximately 30 minutes to complete each determination. Total annual burden for this requirement is 9,000 hours.

Respondent Universe:	677 railroads
Burden time per response:	30 minutes
Frequency of Response:	One-time
Annual number of Responses:	18,000 determinations
Annual Burden:	9,000 hours

<b><u>Calculation:</u></b>	18,000 determinations x 30 min. = 9,000 hours
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(c) In order to make the knowledge determination required by paragraph (b) of this section, a railroad shall have procedures for testing a person being evaluated for certification as a conductor that shall be:

(1) Designed to examine a person's knowledge of the railroad's operating rules and practices for the safe movement of trains;

(2) Objective in nature;

(3) Administered in written or electronic form;

(4) Cover the following subjects:

(i) Safety and operating rules;

(ii) Timetable instructions;

(iii) Compliance with all applicable Federal regulations;

(iv) Physical characteristics of the territory on which a person will be or is currently serving as a conductor; and

(v) Use of any job aid that a railroad may provide a conductor;

(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 or her ability to use such reference books or materials.

*The burden for this requirement is included under that of conductor certification programs in § 242.101 above. Consequently, there is no additional burden associated with this requirement.*

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

*The burden for this requirement is included under that of § 242.121(b) above. Consequently, there is no additional burden associated with this requirement.*

(e) For purposes of paragraph (c) of this section, the railroad must provide the person(s) being tested with an opportunity to consult with a supervisory employee, who possesses territorial qualifications for the territory, to explain a question.

*The burden for this requirement is included under that of § 242.121(b) above. Consequently, there is no additional burden associated with this requirement.*

(f) The documentation shall indicate whether the person passed or failed the test.

*The burden for this requirement is included under that of § 242.121(b) above. Consequently, there is no additional burden associated with this requirement.*

(g) If a person fails to pass the test, no railroad shall permit or require that person to function as a conductor prior to that person's achieving a passing score during a reexamination of his or her knowledge.

FRA estimates that approximately 500 retests/reexaminations will take place under the above requirement. It is estimated that it will take eight (8) hours to conduct each knowledge retest/re-examination. Total annual burden for this requirement is 4,000 hours.

Respondent Universe:	677 railroads
Burden time per response:	8 hours
Frequency of Response:	On occasion
Annual number of Responses:	500 retests/reexaminations
Annual Burden:	4,000 hours

**Calculation:** 500 retests/re-examinations x 8 hrs. = 4,000 hours

Total annual burden for this entire requirement is 13,000 hours (9,000 + 4,000).

#### Monitoring Operational Performance (§ 242.123)

(a) Each railroad shall adopt and comply with a program that meets the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any provision of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

*The burden for conductor certification programs is included under that of § 242.101 above. Consequently, there is no additional burden associated with this requirement.*

(b) Each railroad shall have a program to monitor the conduct of its certified conductors by performing unannounced operating rules compliance tests. The program shall include procedures to address the testing of certified conductors who are not given an unannounced compliance test in a calendar year pursuant to paragraph (f) of this section.

At a minimum, the procedures shall include the following:

(1) A requirement that an unannounced compliance test must be conducted within 30 days of a return to conductor service; and

*The burden for this requirement is included under that of conductor certification programs in § 242.101 above. Consequently, there is no additional burden associated with this requirement.*

(2) The railroad must retain a written record indicating the date that the conductor stopped performing service that requires certification pursuant to this Part, the date that the conductor returned to performing service that requires certification pursuant to this Part, and the date that the unannounced compliance test was performed.

(c) Except as provided in paragraph (f) of this section, each conductor shall be given at least one unannounced compliance test in each calendar year by a railroad officer who meets the requirements of § 217.9(b)(1) of this chapter.

Based on the three-year certification/recertification cycle, FRA estimates that approximately 18,000 unannounced compliance tests will be conducted and 18,000 written records of these tests will be kept under the above requirement. It is estimated that it will take approximately 10 minutes to conduct each unannounced compliance test and approximately five (5) minutes to complete each written record. Total annual burden for this requirement is 4,500 hours.

Respondent Universe:	677 railroads
Burden time per response:	10 minutes + 5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	18,000 unannounced compliance tests + 18,000 written records
Annual Burden:	4,500 hours

**Calculation:** 18,000 unannounced compliance tests x 10 min. + 18,000 written records x 5 min. = 4,500 hours

(d) The unannounced test program shall:

(1) Test those persons certified as a conductor pursuant to § 242.107(b)(1) for compliance with one or more operational tests in accordance with the provisions of § 217.9 of this chapter; and one or more provisions of §§ 218.99 through 218.109 of this chapter; and

(2) Test those persons certified as a passenger conductor pursuant to § 242.107(b)(2) for compliance with one or more operational tests in accordance with the provisions of § 217.9 of this chapter.

*The burden for this requirement is included under that of conductor certification programs in § 242.101 and under § 242.123(c) above. Consequently, there is no additional burden associated with this requirement.*

(i) For persons certified as passenger conductors pursuant to § 242.107(b)(2) who do not require compliance with Part 218, subpart F of this chapter except under emergency circumstances, the requirement for an annual, unannounced test on the requirements of Part 218, Subpart F may be satisfied by annual training.

*The burden for training is included under that of § 242.119 above. Consequently, there is no additional burden associated with this requirement.*

(e) Each railroad's program shall indicate the action the railroad will take in the event that it finds deficiencies with a conductor's performance during an unannounced compliance test administered in accordance with this section.

*The burden for this requirement is included under that of conductor certification programs in § 242.101 above. Consequently, there is no additional burden associated with this requirement.*

(f) A certified conductor who is not performing a service that requires certification pursuant to this Part need not be given an unannounced compliance test. However, when the certified conductor returns to a service that requires certification pursuant to this Part, that certified conductor must be tested pursuant to this section within 30 days of his or her return.

FRA estimates that approximately 1,000 unannounced compliance tests will be conducted and 1,000 written records of these tests will be kept under the above requirement. It is estimated that it will take 10 minutes to conduct each unannounced compliance test and approximately five (5) minutes to complete each written record. Total annual burden for this requirement is 250 hours.

Respondent Universe:	677 railroads
Burden time per response:	10 minutes + 5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	1,000 unannounced compliance tests + 1,000 written records
Annual Burden:	250 hours

**Calculation:** 1,000 unannounced compliance tests x 10 min. + 1,000 written records x 5 min. = 250 hours

Total annual burden for this entire requirement is 4,750 hours (4,500 + 250).

Certificate Determination Made by Other Railroads (§ 242.125)

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

*All the certification programs will specify how previously certified conductors hired from another railroad will be trained. The burden then for this requirement entire requirement is included under that of conductor certification programs in § 242.101 above. Consequently, there is no additional burden associated with this requirement.*

(b) A railroad relying on another railroad's certification shall determine that:

(1) The prior certification is still valid in accordance with the provisions of §§ 242.201 and 242.407;

(2) The prior certification was for the same type of service as the certification being issued under this section;

(3) The person has received training on the physical characteristics of the new territory in accordance with § 242.119; and

(4) The person has demonstrated the necessary knowledge concerning the railroad's operating rules in accordance with § 242.121.

FRA estimates that approximately 100 determinations will be made under the above requirement. It is estimated that it will take approximately 30 minutes to make each determination. Total annual burden for this requirement is 50 hours.

Respondent Universe:	677 railroads
Burden time per response:	.5 hour
Frequency of Response:	On occasion
Annual number of Responses:	100 determinations
Annual Burden:	50 hours

**Calculation:** 100 determinations x 30 min. = 50 hours

Total annual burden for this entire requirement is 50 hours.

Reliance on Qualification Requirements of Other Countries (§ 242.127)

(a) A Canadian railroad that is required to comply with this regulation or a railroad that conducts joint operations with a Canadian railroad may certify that a person is eligible to be a conductor 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.

FRA estimates that approximately 200 determinations will be made under the above requirement. It is estimated that it will take approximately 30 minutes to make each determination. Total annual burden for this requirement is 100 hours.

Respondent Universe:	677 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	200 determinations
Annual Burden:	100 hours

**Calculation:** 200 determinations x 30 min. = 100 hours

Total annual burden for this entire requirement is 150 hours (50 + 100).

**SUBPART C – ADMINISTRATION OF THE CERTIFICATION PROGRAM**

Time Limitations for Certification (§ 242.201)

(a) After the pertinent date in § 242.105(d) or (e), a railroad shall not certify or recertify a person as a conductor in any type of service, if the railroad is making:

- (1) A determination concerning eligibility under §§ 242.111, 242.113, 242.115 and 242.403 and the eligibility data being relied on was furnished more than 366 days before the date of the railroad's certification decision;
- (2) A determination concerning visual and hearing acuity and the medical examination being relied on was conducted more than 450 days before the date of the railroad's certification decision;

(3) A determination concerning demonstrated knowledge and the knowledge examination being relied on was conducted more than 366 days before the date of the railroad's certification decision; or

(4) A determination concerning demonstrated knowledge and the knowledge examination being relied on was conducted more than 24 months before the date of the railroad's recertification decision if the railroad administers a knowledge testing program pursuant to § 242.121 at intervals that do not exceed 24 months.

(b) The time limitations of paragraph (a) of this section do not apply to a railroad that is making a certification decision in reliance on determinations made by another railroad in accordance with paragraph (c)(3) of this section, § 242.125, or § 242.127.

*The burden for the above requirement is included under that of § 242.125 and § 242.127 above. Consequently, there is no additional burden associated with this requirement.*

(c) No railroad shall:

(1) Permit or require a person, designated under § 242.105(a) or (b), to perform service as a certified conductor for more than the 36-month period beginning on the pertinent date for compliance with the mandatory procedures for testing and evaluation set forth in the applicable provisions of § 242.105(d) or (e) unless that person has been determined to be eligible in accordance with procedures that comply with Subpart B of this Part.

(2) Certify a person as a conductor for an interval of more than 36 months; or

(3) Rely on a certification issued by another railroad that is more than 36 months old.

*The burden for the above requirement is included under that of § 242.105 above. Consequently, there is no additional burden associated with this requirement.*

(d) Except as provided for in § 242.105 concerning initial implementation of the program, a railroad shall issue each person designated as a certified conductor a certificate that complies with § 242.207 no later than 30 days from the date of its decision to certify or recertify that person.

*The burden for the above requirement is included under that of § 242.105 above. Consequently, there is no additional burden associated with this requirement.*

#### Retaining Information Supporting Determinations (§ 242.203)

(a) After the pertinent date in § 242.105(d) or (e), a railroad that issues, denies, or revokes a certificate after making the determinations required under § 242.109 shall maintain a

record for each certified conductor or applicant for certification that contains the information the railroad relied on in making the determinations.

(b) A railroad shall retain the following information:

- (1) Relevant data from the railroad's records concerning the person's prior safety conduct;
- (2) Relevant data furnished by another railroad;
- (3) Relevant data furnished by a governmental agency concerning the person's motor vehicle driving record;
- (4) Relevant data furnished by the person seeking certification concerning his or her eligibility;
- (5) The relevant test results data concerning hearing and vision acuity;
- (6) If applicable, the relevant data concerning the professional opinion of the railroad's medical examiner on the adequacy of the person's hearing or vision acuity.
- (7) Relevant data from the railroad's records concerning the person's success or failure of the passage of knowledge test(s) under § 242.121;
- (8) A sample copy of the written knowledge test or tests administered; and
- (9) The relevant data from the railroad's records concerning the person's success or failure on unannounced operating rules compliance tests the railroad performed to monitor the conductor's performance in accordance with § 242.123.

Based on the three year certification/recertification cycle, FRA estimates that approximately 18,000 certification records will be kept under the above requirement. It is estimated that it will take approximately 15 minutes to complete each record. Total annual burden for this requirement is 4,500 hours.

Respondent Universe:	677 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	18,000 certification records
Annual Burden:	4,500 hours

**Calculation:** 18,000 certification records x 15 min. = 4,500 hours



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

*The burden for this requirement is included under that of § 242.203 (b) above. Consequently, there is no additional burden associated with this requirement.*

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

*The burden for this requirement is included under that of § 242.203 (b) above. Consequently, there is no additional burden associated with this requirement.*

(e) All records required under this section shall be retained for a period of six (6) years from the date of the certification, recertification, denial or revocation decision and shall be made available to FRA representatives upon request during normal business hours.

(f) 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.

(g) Nothing in this section precludes a railroad from maintaining the information required to be retained under this section in an electronic format provided that:

(1) The railroad maintains an information technology security program adequate to ensure the integrity of the electronic data storage system, including the prevention of unauthorized access to the program logic or individual records;

(2) The program and data storage system must be protected by a security system that utilizes an employee identification number and password, or a comparable method, to establish appropriate levels of program access meeting all of the following standards:

(i) No two individuals have the same electronic identity; and

(ii) A record cannot be deleted or altered by any individual after the record is certified by the employee who created the entry;

(3) Any amendment to a record is either:

(i) Electronically stored apart from the record that it amends; or

(ii) Electronically attached to the record as information without changing the original record;

(4) Each amendment to the record uniquely identifies the person making the amendment;

(5) The system employed by the railroad for data storage permits reasonable access and retrieval of the information in usable format when requested to furnish data by FRA representatives; and

(6) Information retrieved from the system can be easily produced in a printed format which can be readily provided to FRA representatives in a timely manner 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.

FRA estimates that approximately 20 records will be amended under the above requirement. It is estimated that it will take 60 minutes to amend each record. Total annual burden for this requirement is 20 hours.

Respondent Universe:	677 railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	20 amended records
Annual Burden:	20 hours

**Calculation:** 20 amended records x 60 min. = 20 hours

Total annual burden for this entire requirement is 4,520 hours (4,500 + 20).

#### Identification of Certified Persons and Recordkeeping (§ 242.205)

(a) After March 1, 2012, a railroad shall maintain a list identifying each person designated as a certified conductor. That list shall indicate the types of service the railroad determines each person is authorized to perform and date of the railroad's certification decision.

*The burden for this requirement is already included under that of certifications under § 242.105 above. Consequently, there is no additional burden associated with this requirement.*

(b) If a railroad employs conductors working in joint operations territory, the list shall include person(s) determined by that railroad to be certified as conductor(s) and possessing the necessary territorial qualifications for the applicable territory in accordance with § 242.301.

(c) The list required by paragraphs (a) and (b) of this section shall:

- (1) Be updated at least annually;
- (2) Be available at the divisional or regional headquarters of the railroad; and
- (3) Be available for inspection or copying by FRA during regular business hours.

FRA estimates that approximately 625 lists of certified conductors working in joint operations territory will be kept each year under the above requirement. It is estimated that it will take one (1) hour to complete each list. Total annual burden for this requirement is 625 hours.

Respondent Universe:	677 railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	625 certification lists
Annual Burden:	625 hours

**Calculation:** 625 certification lists x 1 hrs. = 625 hours

(e) Nothing in this section precludes a railroad from maintaining the list required this section in an electronic format provided that:

- (1) The railroad maintains an information technology security program adequate to ensure the integrity of the electronic data storage system, including the prevention of unauthorized access to the program logic or the list;
- (2) The program and data storage system must be protected by a security system that utilizes an employee identification number and password, or a comparable method, to establish appropriate levels of program access meeting all of the following standards:
  - (i) No two individuals have the same electronic identity; and

(ii) An entry on the list cannot be deleted or altered by any individual after the entry is certified by the employee who created the entry;

(3) Any amendment to the list is either:

(i) Electronically stored apart from the entry on the list that it amends; or

(ii) Electronically attached to the entry on the list as information without changing the original entry;

(4) Each amendment to the list uniquely identifies the person making the amendment;

(5) The system employed by the railroad for data storage permits reasonable access and retrieval of the information in usable format when requested to furnish data by FRA representatives; and

(6) Information retrieved from the system can be easily produced in a printed format which can be readily provided to FRA representatives in a timely manner 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.

*The burden for this requirement is already included under that of § 242.205(b) above. Consequently, there is no additional burden associated with this requirement.*

Total annual burden for this entire requirement is 625 hours.

#### Certificate Components(§ 242.207)

(a) At a minimum, each certificate issued in compliance with this Part shall:

(1) Identify the railroad or parent company that is issuing it;

(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 eligible to perform as a conductor or as a passenger conductor;

(3) Identify the person to whom it is being issued (including the person's name, employee identification number, the year of birth, and either a physical description or photograph of the person);

(4) Identify any conditions or limitations, including the type of service or conditions to ameliorate vision or hearing acuity deficiencies, that restrict the person's operational authority;

- (5) Show the effective date of each certification held;
- (6) Be signed by an individual designated in accordance with paragraph (b) of this section; and
- (7) Be of sufficiently small size to permit being carried in an ordinary pocket wallet.

*The burden for the above requirement is included under that of § 242.105 above. Consequently, there is no additional burden associated with this requirement*

- (b) Each railroad shall designate in writing any person that it authorizes to sign the certificates described in this section. The designation shall identify such persons by name or job title.

*The burden for the above requirement is included under that of § 242.101 above. Consequently, there is no additional burden associated with this requirement*

- (c) Nothing in paragraph (a) of this section shall prohibit any railroad from including additional information on the certificate or supplementing the certificate through other documents.

*The burden for the above requirement is included under that of § 242.105 above. Consequently, there is no additional burden associated with this requirement.*

#### Maintenance of the Certificate (§ 242.209)

- (a) Each conductor who has received a certificate required under this Part shall:
  - (1) Have that certificate in his or her possession while on duty as a conductor; and
  - (2) Display that certificate upon the receipt of a request to do so from:
    - (i) A representative of the Federal Railroad Administration,
    - (ii) A State inspector authorized under Part 212 of this chapter,
    - (iii) An officer of the issuing railroad, or
    - (iv) An officer of another railroad when serving as a conductor in joint operations territory.

FRA estimates that approximately 2,000 conductors will be asked to display their

certificates (usually during their efficiency test) each year under the above requirement. It is estimated that it will take two (2) minutes to display each certificate. Total annual burden for this requirement is 67 hours.

Respondent Universe:	677 railroads
Burden time per response:	2 minutes
Frequency of Response:	Annually
Annual number of Responses:	2,000 displayed certificates
Annual Burden:	67 hours

**Calculation:** 2,000 displayed certificates x 2 min. = 67 hours

(b) Any conductor who is notified or called to serve as a conductor and such service would cause the conductor to exceed certificate limitations set forth, in accordance with Subpart B of this Part, shall immediately notify the railroad that he or she is not authorized to perform that anticipated service and it shall be unlawful for the railroad to require such service. Nothing in this section shall be deemed to alter a certified conductor's duty to comply with other provisions of this chapter concerning railroad safety.

FRA estimates that approximately 1,000 notifications by conductors will be made under the above requirement. It is estimated that it will take 10 minutes to complete each notification. Total annual burden for this requirement is 167 hours.

Respondent Universe:	677 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	1,000 notifications
Annual Burden:	167 hours

**Calculation:** 1,000 notifications x 10 min. = 167 hours

Total annual burden for this entire requirement is 234 hours (67 + 167).

#### Replacement of Certificates (§242.211)

(a) A railroad shall have a system for the prompt replacement of lost, stolen or mutilated certificates at no cost to conductors. That system shall be reasonably accessible to certified conductors in need of a replacement certificate or temporary replacement certificate.

*Such a system would be part of the conductor certification program. The burden for conductor certification programs is included under that of § 242.101 above. Consequently, there is no additional burden associated with this requirement.*

(b) At a minimum, a temporary replacement certificate must identify the person to whom it is being issued (including the person's name, identification number and year of birth); indicate the date of issuance; and be authorized by a designated supervisor. Temporary replacement certificates may be delivered electronically and are valid for a period no greater than 30 days.

FRA estimates that approximately 500 temporary replacement certificates will be issued under the above requirement. It is estimated that it will take approximately five (5) minutes to issue each temporary replacement certificate. Total annual burden for this requirement is 42 hours.

Respondent Universe:	677 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	500 temporary replacement certificates
Annual Burden:	42 hours

**Calculation:** 500 replacement certificates x 5 min. = 42 hours

Total annual burden for this entire requirement is 42 hours.

#### Multiple Certifications (§ 242.213)

(a) A person may hold certification for multiple types of conductor service.

*The burden for conductor certification programs is included under that of § 242.105 above. Consequently, there is no additional burden associated with this requirement.*

(b) A person may hold both conductor and locomotive engineer certification.

(c) A railroad that issues multiple certificates to a person, shall, to the extent possible, coordinate the expiration date of those certificates.

*The burden for conductor certificates is included under that of § 242.105 above. Consequently, there is no additional burden associated with this requirement. [Note: The burden for locomotive certificates is included under § 240.201 (OMB No. 2130-0533).]*

(d) Except as provided in paragraph (e) of this section, a locomotive engineer, including a remote control operator, who is operating a locomotive without an assigned certified conductor must either be (i) certified as both a locomotive engineer under Part 240 of this chapter and as a conductor under this Part or (ii) accompanied by a person certified as a conductor under this Part but who will be attached to the crew in a manner similar to that of an independent assignment.

*The burden for conductor certificates is included under that of § 242.105 above. Consequently, there is no additional burden associated with this requirement. [Note: The burden for locomotive certificates is included under § 240.201 (OMB No. 2130-0533).]*

(e) Passenger Railroad Operations. If the conductor is removed from a train for a medical, police or other such emergency after the train departs from an initial terminal, the train may proceed to the first location where the conductor can be replaced without incurring undue delay without the locomotive engineer being a certified conductor. However, an assistant conductor or brakeman must be on the train and the locomotive engineer must be informed that there is no certified conductor on the train prior to any movement.

The above situation occurs very rarely. FRA estimates that locomotive engineers will be informed/notified that there is no certified conductor on the train in five (5) instances under the above requirement. It is estimated that it will take 10 minutes to the locomotive engineer. Total annual burden for this requirement is one (1) hour.

Respondent Universe:	677 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	5 locomotive engineer notifications
Annual Burden:	1 hour

**Calculation:** 5 locomotive engineer notifications x 10 min. = 1 hour

(f) During the duration of any certification interval, a person who holds a current conductor and/or locomotive engineer certificate from more than one railroad shall immediately notify the other certifying railroad(s) if he or she is denied conductor or locomotive engineer recertification under § 242.401 or § 240.219 of this chapter or has his or her conductor or locomotive engineer certification revoked under § 242.407 or § 240.307 of this chapter by another railroad.

FRA estimates that approximately 10 notifications will be made by conductors to the other certifying railroad(s) if he or she is denied conductor recertification under the above requirement. It is estimated that it will take 10 minutes to complete each notification. Total annual burden for this requirement is two (2) hours. (*Note: The burden for locomotive engineers is covered under OMB No. 2130-0533 (§ 240.305)*).



Respondent Universe:	677 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	10 notifications
Annual Burden:	2 hours

**Calculation:** 10 notifications x 10 min. = 2 hours

(n) In lieu of issuing multiple certificates, a railroad may issue one certificate to a person who is certified to perform multiple types of conductor service or is certified as a conductor and a locomotive engineer. The certificate must comply with § 240.223 of this chapter and § 242.207.

*The burden for conductor certificates is included under that of § 242.105 above. Consequently, there is no additional burden associated with this requirement. [Note: The burden for locomotive certificates is included under § 240.201 (OMB No. 2130-0533).]*

Total annual burden for this entire requirement is three (3) hours (1 + 2).

#### Railroad Oversight Responsibilities (§ 242.215)

(a) No later than March 31 of each year (beginning in calendar year 2013), each Class I railroad (including the National Railroad Passenger Corporation and a railroad providing commuter service) and each Class II railroad shall conduct a formal annual review and analysis concerning the administration of its program for responding to detected instances of poor safety conduct by certified conductors during the prior calendar year.

(b) Each review and analysis shall involve:

(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 conductors;

(3) The number and type of operational monitoring test failures recorded by railroad officers who meet the requirements of § 217.9(b)(1) of this chapter; and

(4) If the railroad conducts joint operations with another railroad, the number of conductors employed by the other railroad(s) which: were involved in events described in this paragraph and were determined to be certified and to have possessed the necessary territorial qualifications for joint operations purposes by the controlling railroad.

This requirement pertains to the Class I and II railroads. Thus, FRA estimates that approximately 44 reviews and analyses will be conducted each year by railroads under the above requirement. It is estimated that it will take 40 hours to complete each review and analysis. Total annual burden for this requirement is 1,760 hours.

Respondent Universe:	677 railroads
Burden time per response:	40 hours
Frequency of Response:	Annually
Annual number of Responses:	44 reviews and analyses
Annual Burden:	1,760 hours

**Calculation:** 44 reviews and analyses x 40 hrs. = 1,760 hours

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

(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.

FRA estimates that it will make approximately 36 requests and thus 36 reports of the findings and conclusions reached during such annual review and analysis effort will be completed under the above requirement. It is estimated that it will take approximately four (4) hours to complete each report. Total annual burden for this requirement is 144 hours.

Respondent Universe:	677 railroads
Burden time per response:	4 hours
Frequency of Response:	On occasion
Annual number of Responses:	36 reports
Annual Burden:	144 hours

**Calculation:** 36 reports x 4 hrs. = 144 hours

(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 noncompliance with Part 218 of this chapter;
- (2) Incidents involving noncompliance with Part 219 of this chapter;

(3) Incidents involving noncompliance 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 Part 232 of this chapter or when the procedures are required for compliance with the Class 1, Class 1A, Class II, or running brake test provisions of Part 238 of this chapter;

(4) Incidents involving noncompliance 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 noncompliance with the railroad's operating rules resulting in 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 noncompliance 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; and

(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.

*The burden for this requirement is included under that of § 242.215(d) above. Consequently, there is no additional burden associated with this requirement.*

(f) For reporting purposes, an instance of poor safety conduct involving a person who holds both conductor certification pursuant to this Part and locomotive engineer certification pursuant to Part 240 of this chapter need only be reported once (either under 49 CFR § 240.309 of this chapter or this section). The determination as to where to report the instance of poor safety conduct should be based on the work the person was performing at the time the conduct occurred.

*The burden for this requirement is included under OMB No. 2130-0533. Consequently, there is no additional burden associated with this requirement.*

(g) For reporting purposes, each category of detected poor safety conduct identified in paragraph (b) 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 railroad:

- (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.

*The burden for this requirement is included under § 242.215(g) above. Consequently, there is no additional burden associated with this requirement.*

(h) For reporting purposes, each category of detected poor safety conduct identified in paragraph (b) 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.

*The burden for this requirement is included under OMB No. 2130-0533. Consequently, there is no additional burden associated with this requirement.*

(i) For reporting purposes, each category of detected poor safety conduct identified in paragraph (b) 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 that total which reflect incidents requiring an FRA accident/incident report under Part 225 of this chapter; and

(3) The number of incidents within that total which were detected as a result of a scheduled operational monitoring effort.

*The burden for this requirement is included under that of § 242.215(d) above. Consequently, there is no additional burden associated with this requirement.*

Total annual burden for this entire requirement is 1,904 hours (1,760 + 144).

## **SUBPART D – TERRITORIAL QUALIFICATION AND JOINT OPERATIONS**

### Requirements for Territorial Qualification (§ 242.301)

(a) Except as provided in paragraph (c) or (d), or (e) of this section, a railroad, including a railroad that employs conductors working in joint operations territory, shall not permit or require a person to serve as a conductor unless that railroad determines that the person is certified as a conductor and possesses the necessary territorial qualifications for the applicable territory pursuant to § 242.119.

FRA estimates that approximately 320 railroads operate over joint territory and that approximately two percent of the total number of conductors (2% of 54,000) or 1,080 will be qualified for a joint territory and the necessary determination made. It is estimated that it will take approximately 15 minutes to make each determination. Total annual burden for this requirement is 270 hours.

Respondent Universe:	320 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	1,080 determinations
Annual Burden:	270 hours

**Calculation:** 1,080 determinations x 15 min. = 270 hours

(b) Each person who is called to serve as a conductor shall:

(i) Meet the territorial qualification requirements on the segment of track upon which he or she will serve as a conductor; and

(ii) Immediately notify the railroad upon which he or she is employed if he or she does not meet the required territorial qualifications.

FRA estimates that this will happen 500 times per year and thus approximately 500

notifications will be made by conductors under the above requirement. This will usually be done by phone or radio. It is estimated that it will take approximately 10 minutes to complete each notification. Total annual burden for this requirement is 83 hours.

Respondent Universe:	677 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	500 notifications
Annual Burden:	83 hours

**Calculation:** 500 notifications x 10 min. = 83 hours

Total annual burden for this entire requirement is 353 hours (270 + 83).

## **SUBPART E – DENIAL AND REVOCATION OF CERTIFICATION**

### Denial of Certification (§ 242.401)

(a) A railroad shall notify a candidate for certification or recertification of information known to the railroad that forms the basis for denying the person certification and provide the person a reasonable opportunity to explain or rebut that adverse information in writing prior to denying certification. A railroad shall provide the conductor candidate with any written documents or records, including written statements, related to failure to meet a requirement of this Part which support its pending denial decision.

This situation will occur rarely and usually in situations where student conductors cannot pass their examinations and are denied certification. Thus, FRA estimates that there will be approximately 40 notifications per year of information known to the railroad that forms the basis for denial of certification and approximately 40 rebuttal responses will be made by employees in response to the letter of denial. It is estimated that it will take approximately one (1) hour to complete each notification letter and approximately one (1) hour to complete each rebuttal response. Total annual burden for this requirement is 80 hours. *[Note: FRA expects that the railroad will include with the notice any written documents or records, including written statements, related to a failure to meet a requirement of this Part which supports its pending denial decision. The burden, therefore, is included below.]*

Respondent Universe:	677 railroads
Burden time per response:	1 hour + 1 hour
Frequency of Response:	On occasion
Annual number of Responses:	40 notification letters + 40 explanations/rebuttals
Annual Burden:	80 hours

**Calculation:** 40 notification letters x 2 hrs. + 40 explanations/rebuttals x 60 min. = 80 hours

(b) This section does not require further opportunity to comment if the railroad's denial is based solely on factors addressed by §§ 242.111, 242.115, or 242.403 and the opportunity to comment afforded by § 242.109 has been provided.

*The burden for this requirement is already included under that of § 242.109. Consequently, there is no additional burden associated with this requirement.*

(c) If a railroad denies a person certification or recertification, it shall notify the person of the adverse decision and explain, in writing, the basis for its denial decision. The basis for a railroad's denial decision shall address any explanation or rebuttal information that the conductor candidate may have provided in writing pursuant to paragraph (a) of this section. The document explaining the basis for the denial shall be served on the person within 10 days after the railroad's decision and shall give the date of the decision.

FRA estimates that approximately 40 notifications of denial of certification or recertification will be sent by railroads in writing to employees under the above requirement. It is estimated that it will take 60 minutes to complete each notification letter. Total annual burden for this requirement is 40 hours.

Respondent Universe:	677 railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	40 notification letters
Annual Burden:	40 hours

**Calculation:** 40 notification letters x 60 min. = 40 hours

Total annual burden for this requirement is 120 hours (80 + 40).

#### Criteria for Revoking Certification (§242.403)

(a) Each railroad shall adopt and comply with a program which meets the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any provision of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

*The burden for conductor certification programs is included under that of § 242.101 above. Consequently, there is no additional burden associated with this requirement.*

(b) It shall be unlawful to fail to comply with any of the railroad rules and practices described in paragraph (e) of this section.

(c)(1) A certified conductor who has demonstrated a failure to comply with railroad rules and practices described in paragraph (e) of this section shall have his or her certification revoked.

(2) A certified conductor who is monitoring, piloting, or instructing a conductor 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 the conductor or the engineer, as appropriate, of a potential or foreseeable violation.

*The burden for the above is covered under the hearing process that is included under § 242.405 below. Consequently, there is no additional burden associated with this requirement.*

(d) Limitations on consideration of prior operating rule compliance data. In determining whether a person may be or remain certified as a conductor, a railroad shall consider as operating rule compliance data only conduct described in paragraphs (e)(1) through (e) (11) of this section that occurred within a period of 36 consecutive months prior to the determination. A review of an existing certification shall be initiated promptly upon the occurrence and documentation of any conduct described in this section.

FRA estimates that approximately 950 reviews of an existing certification will take place under the above requirement. It is estimated that it will take 10 minutes to conduct each certification review. Total annual burden for this requirement is 158 hours.

Respondent Universe:	677 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	950 certification reviews
Annual Burden:	158 hours

**Calculation:** 950 certification reviews x 10 min. = 158 hours

(e) A railroad shall only consider violations of its operating rules and practices that involve:

(1) Failure to take appropriate action to prevent the locomotive engineer of the train the conductor is assigned to from failing to control a locomotive or train in accordance with a signal indication, excluding a hand or a radio signal indication or a switch, that requires a



complete stop before passing it, when the conductor is located in the operating cab, or otherwise has knowledge of the signal indication. Appropriate action does not mean that a conductor must prevent a violation from occurring at all costs; the duty may be met by warning an engineer of a potential or foreseeable violation.

(2) Failure to take appropriate action to prevent the locomotive engineer of the train the conductor is assigned to from failing to adhere to limitations concerning train speed:

(i) When the conductor is located in the operating cab and the speed at which the train was operated exceeds the maximum authorized limit by at least 10 miles per hour. Where restricted speed is in effect, railroads shall consider only those violations of the conditional clause of restricted speed rules (*i.e.*, the clause that requires stopping within one half of the locomotive engineer's range of vision), or the operational equivalent thereof, which cause reportable accidents or incidents under part 225 of this chapter, except for accidents and incidents that are classified as "covered data" under § 225.5 of this chapter. Appropriate action does not mean that a conductor must prevent a violation from occurring at all costs; the duty may be met by warning an engineer of a potential or foreseeable violation.

(ii) When not in the operating cab, the conductor is deemed to have taken appropriate action when in compliance with all applicable Railroad Operating Rules and Special Instructions.

(3) Failure to perform or have knowledge that a required brake test was performed pursuant to the Class I, Class IA, Class II, Class III, or transfer train brake test provisions of Part 232 of this chapter or the Class 1, Class 1A, Class II, or running brake test provisions of part 238 of this chapter.

(4) Failure to take appropriate action to prevent the locomotive engineer of the train the conductor is assigned to from occupying main track or a segment of main track without proper authority or permission. Appropriate action does not mean that a conductor must prevent a violation from occurring at all costs; the duty may be met by warning an engineer of a potential or foreseeable violation.

(5) Failure to comply with prohibitions against tampering with locomotive mounted safety devices; knowingly fail to take appropriate action to prevent the locomotive engineer of the train the conductor is assigned to from failing to comply with prohibitions against tampering with locomotive mounted safety devices; or knowingly fail to take appropriate action to prevent the locomotive engineer of the train the conductor is assigned to from operating or permitting to be operated a train with an unauthorized disabled safety device in the controlling locomotive. (See [49 CFR part 218, subpart D and appendix C](#) to part 218);

(6) Failure to comply with the provisions of § 218.99 of this chapter (Shoving or pushing movements). Railroads shall only consider those violations of § 218.99 of this chapter which cause reportable accidents or incidents under part 225 of this chapter, except for accidents and incidents that are classified as "covered data" under § 225.5 of this chapter.

(7) Failure to comply with the provisions of § 218.101 of this chapter (Leaving rolling and on-track maintenance-of-way equipment in the clear). Railroads shall only consider those violations of § 218.101 of this chapter which cause reportable accidents or incidents under part 225 of this chapter, except for accidents and incidents that are classified as "covered data" under § 225.5 of this chapter.

(8) Failure to comply with the provisions of § 218.103 of this chapter (Hand-operated switches, including crossover switches). Railroads shall only consider those violations of § 218.103 of this chapter which cause reportable accidents or incidents under Part 225 of this chapter, except for accidents and incidents that are classified as "covered data" under § 225.5 of this chapter.

(9) Failure to comply with the provisions of § 218.105 of this chapter (Additional operational requirements for hand-operated main track switches). Railroads shall only consider those violations of § 218.105 of this chapter which cause reportable accidents or incidents under part 225 of this chapter, except for accidents and incidents that are classified as "covered data" under § 225.5 of this chapter.

(10) Failure to comply with the provisions of § 218.107 of this chapter (Additional operational requirements for hand-operated crossover switches). Railroads shall only consider those violations of § 218.107 of this chapter which cause reportable accidents or incidents under Part 225 of this chapter, except for accidents and incidents that are classified as "covered data" under § 225.5 of this chapter.

(11) Failure to comply with the provisions of § 218.109 of this chapter (Hand-operated fixed derails). Railroads shall only consider those violations of § 218.109 of this chapter which cause reportable accidents or incidents under Part 225 of this chapter, except for accidents and incidents that are classified as "covered data" under § 225.5 of this chapter.

(12) Failure to comply with § 219.101 of this chapter; however such incidents shall be considered as a violation only for the purposes of § 242.405(a)(2) and (3).

*The burden for this entire requirement is included under that of § 242.401(d) above. Consequently, there is no additional burden associated with this requirement.*

(f)(1) If in any single incident the person's conduct contravened more than one operating rule or practice, that event shall be treated as a single violation for the purposes of this section.

(2) A violation of one or more operating rules or practices described in paragraphs (e)(1) through (e)(11) of this section that occurs during a properly conducted operational compliance test subject to the provisions of this chapter shall be counted in determining the periods of ineligibility described in § 242.405.

(3) An operational test that is not conducted in compliance with this Part, a railroad's operating rules, or a railroad's program under § 217.9 of this chapter, will not be considered a legitimate test of operational skill or knowledge, and will not be considered for certification, recertification or revocation purposes.

(4) A railroad shall not be permitted to deny or revoke an employee's certification based upon additional conditions or operational restrictions imposed pursuant to § 242.107(d).

*The burden for this requirement is included under that of § 242.405 below. Consequently, there is no additional burden associated with this requirement.*

Total annual burden for this entire requirement is 158 hours.

Periods of Ineligibility (§ 242.405)

(a) A period of ineligibility described in this paragraph shall:

(1) Begin, for a person not currently certified, on the date of the railroad's written determination that the most recent incident has occurred; or  
FRA estimates that approximately 950 written determinations will be completed under the above requirement. It is estimated that it will take 60 minutes to complete each written determination. Total annual burden for this requirement is 950 hours.

Respondent Universe:	677 railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	950 written determinations
Annual Burden:	950 hours

**Calculation:** 950 written determinations x 60 min. = 950 hours

(2) Begin, for a person currently certified, on the date of the railroad's notification to the person that recertification has been denied or certification has been revoked;

*The burden for this requirement is included under that of § 242.403 above. Consequently, there is no additional burden associated with this requirement.*

(3) Be determined according to the following standards:

(i) On other than main track where restricted speed or the operational equivalent thereof is in effect, the period of revocation for a violation of § 242.403(e)(6) through (e)(8), (e)(10), or (e)(11) shall be reduced by one half provided that another revocable event has not occurred within the previous 12 months.

(ii) In the case of a single incident involving violation of one or more of the operating rules or practices described in § 242.403(e)(1) through (e)(11), the person shall have his or her certificate revoked for a period of 30 calendar days.

*The burden for this requirement is included under that of § 242.403 above.  
Consequently, there is no additional burden associated with this requirement.*

(iii) In the case of two separate incidents involving a violation of one or more of the operating rules or practices described in § 242.403(e)(1) through (e)(11), that occurred within 24 months of each other, the person shall have his or her certificate revoked for a period of six months.

*The burden for this requirement is included under that of § 242.403 above.  
Consequently, there is no additional burden associated with this requirement.*

(iv) In the case of three separate incidents involving violations of one or more of the operating rules or practices, described in § 242.403(e)(1) through (e)(12), that occurred within 36 months of each other, the person shall have his or her certificate revoked for a period of one year.

*The burden for this requirement is included under that of § 242.403 above.  
Consequently, there is no additional burden associated with this requirement.*

(v) In the case of four separate incidents involving violations of one or more of the operating rules or practices, described in § 242.403(e)(1) through (e)(12), that occurred within 36 months of each other, the person shall have his or her certificate revoked for a period of three years.

*The burden for this requirement is included under that of § 242.403 above.  
Consequently, there is no additional burden associated with this requirement.*

(vi) Where, based on the occurrence of violations described in §242.403(e)(12), different periods of ineligibility may result under the provisions of this section and § 242.115, the longest period of revocation shall control.

*The burden for this requirement is included under that of § 242.403 above. Consequently, there is no additional burden associated with this requirement.*

(b) Any or all periods of revocation provided in paragraph (a) of this section may consist of training.

*The burden for training is included under that of § 242.119 above. Consequently, there is no additional burden associated with this requirement.*

(c) Reduction in period of ineligibility. A person whose certification is denied or revoked shall be eligible for grant or reinstatement of the certificate prior to the expiration of the initial period of ineligibility only if:

(1) The denial or revocation of certification in accordance with the provisions of paragraph (a)(3) of this section is for a period of one year or less;

(2) Certification is denied or revoked for reasons other than noncompliance with § 219.101 of this chapter;

(3) The person is evaluated by a railroad officer and determined to have received adequate remedial training;

*The burden for determinations is included above and the burden for training/retraining is included under that of § 242.119 above. Consequently, there is no additional burden associated with this requirement.*

(4) The person successfully completes any mandatory program of training or retraining, if that is determined to be necessary by the railroad prior to return to service; and

(5) At least one half the pertinent period of ineligibility specified in paragraph (a)(3) of this section has elapsed.

*The burden for training/retraining is included under that of § 242.119 above. Consequently, there is no additional burden associated with this requirement.*

Total annual burden for this entire requirement is 950 hours.

#### Process for Revoking Certification (§ 242.407)

(a) Except as provided for in § 242.115(g), a railroad that certifies or recertifies a person as a conductor and, during the period that certification is valid, acquires reliable information regarding violation(s) of § 242.403(e) or § 242.115(e) of this chapter shall revoke the person's conductor certificate.

*The burden for revoked certifications regarding violation(s) of § 242.403(e) is included above under of § 242.403(d) above. Consequently, there is no additional burden associated with this requirement.*

Regarding violation(s) of § 242.115(e) of this chapter, FRA estimates that approximately 950 certified conductors will have his/her certification revoked under the above requirement. It is estimated that it will take eight (8) hours to revoke each certification at the railroad hearing. Total annual burden for this requirement is 7,600 hours.

Respondent Universe:	677 railroads
Burden time per response:	8 hours
Frequency of Response:	On occasion
Annual number of Responses:	950 revoked certifications
Annual Burden:	7,600 hours

**Calculation:** 950 revoked certifications x 8 hrs. = 7,600 hours

- (b) Pending a revocation determination under this section, the railroad shall:
- (1) Upon receipt of reliable information regarding violation(s) of § 242.403(e) or § 242.115(e) of this chapter, immediately suspend the person's certificate;

This actually starts the railroad hearing. FRA estimates that approximately 950 certified conductors will have his/her certification immediately suspended after the railroad receives reliable information regarding violation(s) of § 242.403(e) or § 242.115(e) of this chapter. It is estimated that it will take 60 minutes to receive the information and notify each employees of the suspended certification. Total annual burden for this requirement is 950 hours.

Respondent Universe:	677 railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	950 suspended certifications/letters
Annual Burden:	950 hours

**Calculation:** 950 suspended certifications/letters x 60 min. = 950 hours

- (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

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.

*The burden for this requirement is included under that of § 242.407(b) above. Consequently, there is no additional burden associated with this requirement.*

(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) No later than the convening of the hearing and notwithstanding the terms of an applicable collective bargaining agreement, the railroad convening the hearing shall provide the person with a copy of the written information and list of witnesses the railroad will present at the hearing. If requested, a recess to the start of the hearing will be granted if that information is not provided until just prior to the convening of the hearing. If the information was provided through statements of an employee of the convening railroad, the railroad will make that employee available for examination during the hearing required by paragraph (b)(3) of this section. Examination may be telephonic where it is impractical to provide the witness at the hearing.

*The burden for this requirement is included under that of § 242.407(a) above. Consequently, there is no additional burden associated with this requirement.*

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

Based on the record of the railroad hearing, FRA estimates that approximately 950 determinations will be made under the above requirement. It is estimated that it will take approximately 15 minutes to complete each determination. Total annual burden for this requirement is 238 hours. (*Note: The burden for the hearing record is included below.*)

Respondent Universe:	677 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	950 determinations
Annual Burden:	238 hours

**Calculation:** 950 determinations x 15 min. = 238 hours

(6) When appropriate, impose the pertinent period of revocation provided for in § 242.405 or § 242.115; and

*The burden for this requirement is included that of § 242.405 and § 242.115 above. Consequently, there is no additional burden associated with this requirement.*

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

FRA estimates that approximately 950 hearing records will kept under the above requirement. It is estimated that it will take 30 minutes to keep each record. Total annual burden for this requirement is 475 hours.

Respondent Universe:	677 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	950 records
Annual Burden:	475 hours

**Calculation:** 950 records x 30 min. = 475 hours

(c) Except as provided for in paragraphs (d), (f), (i) and (j) of this section, a hearing required by this section shall be conducted in accordance with the following procedures:

(1) The hearing shall be convened within 10 days of the date the certificate is suspended unless the conductor requests or consents to delay in the start of the hearing.

(2) The hearing shall be conducted by a presiding officer, who can be any proficient person authorized by the railroad other than the investigating officer.

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

(4) The presiding officer shall convene and preside over the hearing.

(5) Testimony by witnesses at the hearing shall be recorded verbatim.

(6) 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.

(7) The presiding officer may:

(i) Adopt any needed procedures for the submission of evidence in written form;

(ii) Examine witnesses at the hearing;



(iii) Convene, recess, adjourn or otherwise regulate the course of the hearing; and

(iv) 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.

(8) Parties may appear and be heard on their own behalf or through designated representatives. Parties may offer relevant evidence including testimony and may conduct such examination of witnesses as may be required for a full disclosure of the relevant facts.

(9) The record in the proceeding shall be closed at conclusion of the hearing unless the presiding officer allows additional time for the submission of information. In such instances, the record shall be left open for such time as the presiding officer grants for that purpose.

*The burden for this requirement related to hearings is included above under § 242.407(a). Consequently, there is no additional burden associated with this requirement.*

(10) No later than 10 days after the close of the record, a railroad official, other than the investigating officer, shall prepare and sign a written decision in the proceeding.

(11) The decision shall:

(i) Contain the findings of fact as well as the basis therefor, concerning all material issues of fact presented on the record;

(ii) State whether the railroad official found that a revocable event occurred and the applicable period of revocation with a citation to 49 CFR 242.405 (Periods of revocation); and

(ii) Be served on the employee and the employee's representative, if any, with the railroad to retain proof of that service.

(12) The railroad shall have the burden of proving that the conductor's conduct was not in compliance with the applicable railroad operating rule or practice or Part 219 of this chapter.

FRA estimates that approximately 950 written decisions by a railroad official, other than the investigating officer, will be completed under the above requirement. It is estimated that it will take approximately two (2) hours to complete each written decision. Total annual burden for this requirement is 1,900 hours.

Respondent Universe:	677 railroads
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	950 written decisions
Annual Burden:	1,900 hours

**Calculation:** 950 written decisions x 2 hrs. = 1,900 hours

Additionally, FRA estimates 950 written decisions will be served on the employee/employee representative under the above requirement. Also, railroads will retain 950 service proofs under this requirement. It is estimated that it will take approximately 10 minutes to complete serving each decision on the employee/employee representative and five (5) minutes for the railroad to retain each proof of service. Total annual burden for this requirement is 238 hours.

Respondent Universe:	677 railroads
Burden time per response:	10 minutes + 5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	950 served written decisions + 950 service proofs
Annual Burden:	238 hours

**Calculation:** 950 served written decisions x 10 min. + 950 service proofs x 5 min. = 238 hours

(d) A hearing required by this section which is conducted in a manner that conforms procedurally to the applicable collective bargaining agreement shall be deemed to satisfy the procedural requirements of this section.

(e) A hearing required under this section may be consolidated with any disciplinary or other hearing arising from the same facts, but in all instances a railroad official, other than the investigating officer, shall make separate findings as to the revocation required under this section.

*The burden for this requirement related to hearings is included above under § 242.407(a) and the burden for written decisions/findings is included under § 242.407(c)(10-12). Consequently, there is no additional burden associated with this requirement.*

(f) A person may waive the right to the hearing provided under this section. That waiver shall:

- (1) Be made in writing;
- (2) Reflect the fact that the person has knowledge and understanding of these rights and voluntarily surrenders them; and
- (3) Be signed by the person making the waiver.

Besides the 950 cases mentioned above, FRA estimates that there will be approximately 425 additional cases where conductors will waive a hearing and a written hearing waiver will be completed by the affected person under the above requirement. It is estimated that it will take 10 minutes to complete each written waiver. Total annual burden for this requirement is 71 hours.

Respondent Universe:	677 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	425 written waivers
Annual Burden:	71 hours

**Calculation:** 425 written waivers x 10 min. = 71 hours

(g) A railroad that has relied on the certification by another railroad under the provisions of § 242.127 or § 242.301, shall revoke its certification if, during the period that certification is valid, the railroad acquires information which convinces it that another railroad has revoked its certification in accordance with the provisions of this section. The requirement to provide a hearing under this section is satisfied when any single railroad holds a hearing and no additional hearing is required prior to a revocation by more than one railroad arising from the same facts.

FRA estimates that approximately 15 certifications will be revoked under the above circumstances. It is estimated that it will take 10 minutes to receive and review the information and then revoke the person's certification. Total annual burden for this requirement is three (3) hours.

Respondent Universe:	677 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	15 revoked certifications
Annual Burden:	3 hours

**Calculation:** 15 revoked certifications x 10 min. = 3 hours

(h) The period of certificate suspension prior to the commencement of a hearing required under this section shall be credited towards satisfying any applicable revocation period imposed in accordance with the provisions of § 242.405.

(j) The railroad shall place the relevant information in the records maintained in compliance with § 242.215 for Class I (including the National Railroad Passenger Corporation) and Class II railroads, and § 242.203 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;

FRA estimates that the relevant information will be placed in approximately 100 records maintained in compliance with § 242.215 and § 242.203 under the above requirement. It is estimated that it will take 60 minutes to place this information in each record or update the record. Total annual burden for this requirement is 100 hours.

Respondent Universe:	677 railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	100 updated records
Annual Burden:	100 hours

**Calculation:** 100 updated records x 60 min. = 100 hours

(k) Provided that the railroad makes a good faith determination after a reasonable inquiry that the course of conduct provided for in paragraph (i) of this section is appropriate, the railroad which does not suspend a conductor's certification, as provided for in paragraph (b) of this section, is not in violation of paragraph (a) of this section.

*The burden for this requirement is included above under that of § 242.401(d) above. Consequently, there is no additional burden associated with this requirement.*

Total annual burden for this requirement is 11,575hours (7,600 + 950 + 238 + 475 + 1,900 + 238 + 71 + 3 + 100).

## **SUBPART F – DISPUTE RESOLUTION PROCEDURES**

Review Board Established (§ 242.501)

Any person who has been denied certification, denied recertification, or has had his or her certification revoked and believes that a railroad incorrectly determined that he or she failed to meet the certification requirements of this regulation when making the decision to deny or revoke certification, may petition the Federal Railroad Administrator to review the railroad's decision. The Administrator has delegated initial responsibility for adjudicating such disputes to the Operating Crew Review Board. The Operating Crew Review Board shall be composed of employees of the Federal Railroad Administration selected by the Administrator.

*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 ..."*

#### Petition Requirements (§ 242.503)

(a) To obtain review of a railroad's decision to deny certification, deny recertification, or revoke certification, a person shall file a petition for review that complies with this section.

(b) Each petition shall:

(1) Be in writing;

(2) Be filed with the Docket Clerk, U.S. Department of Transportation, Docket Operations (M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590. The form of such request may be in written or electronic form consistent with the standards and requirements established by the Federal Docket Management System and posted on its web site at <http://www.regulations.gov>.

(3) Contain all available information that the person thinks supports the person's belief that the railroad acted improperly, including:

(i) The petitioner's full name;

(ii) The petitioner's current mailing address;

(iii) The petitioner's daytime telephone number;

(iv) The petitioner's e-mail address (if available);

(v) The name and address of the railroad; and

(vi) 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 or reasonably available to the petitioner that document that railroad's decision; and

(6) Be filed in a timely manner.

(7) Be supplemented, if requested by the Operating Crew Review Board, with a copy of the information under 49 CFR 40.329 that laboratories, medical review officers, and other service agents are required to release to employees. The petitioner must provide written explanation in response to an Operating Crew Review Board request if written documents that should be reasonably available to the petitioner are not supplied.

(c) A petition seeking review of a railroad's decision to deny certification or recertification or revoke certification in accordance with the procedures required by § 242.407 filed with FRA more than 120 days after the date the railroad's denial or revocation decision was served on the petitioner will be denied as untimely except that the Operating Crew 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; or

(2) Provided that the failure to timely file was the result of excusable neglect.

(d) A party aggrieved by a Board decision to deny a petition as untimely or not in compliance with the requirements of this section may file an appeal with the Administrator in accordance with § 242.511.

*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 Certification Review Petitions (§ 242.505)

(a) Each petition shall be acknowledged by FRA in writing. The acknowledgment shall 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.

(b) Upon receipt of the petition, FRA will notify the railroad that it has received the petition and where the petition may be accessed.

(c) Within 60 days from the date of the notification provided in paragraph (b) of this section, the railroad may submit to FRA any information that the railroad considers pertinent to the petition. Late filings will only be considered to the extent practicable.

(d) A railroad that submits such information shall:

(1) Identify the petitioner by name and the docket number of the review proceeding provide the railroad's e-mail address (if available);;

(2) Serve copy of the information being submitted to FRA to the petitioner and petitioner's representative, if any; and

(3) File the information with the Docket Clerk, U.S. Department of Transportation, Docket Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, D.C. 20590. The form of such information may be in written or electronic form consistent with the standards and requirements established by the Federal Docket Management System and posted on its web site at <http://www.regulations.gov>.

(e) Each petition will then be referred to the Operating Crew Review Board for a decision.

(f) Based on the record, the Board shall have the authority to grant, deny, dismiss or remand the petition.

(g) If the Board finds that there is insufficient basis for granting or denying the petition, the Board shall issue an order affording the parties an opportunity to provide additional information or argument consistent with its findings.

(h) Standard of review for factual issues. When considering factual issues, the Board will determine whether there is substantial evidence to support the railroad's decision, and a negative finding is grounds for granting the petition.

(i) Standard of review for procedural issues. When considering procedural issues, the Board will determine whether substantial harm was caused the petitioner by virtue of the failure to adhere to the dictated procedures for making the railroad's decision. A finding of substantial harm is grounds for reversing the railroad's decision. To establish grounds upon which the Board may grant relief, Petitioner must show:

- (1) that procedural error occurred, and
- (2) the procedural error caused substantial harm.

(j) Standard of review for legal issues. Pursuant to its reviewing role, the Board will consider whether the railroad's legal interpretations are correct based on a de novo review.

(k) The Board will determine whether the denial or revocation of certification or recertification was improper under this regulation (i.e., based on an incorrect determination that the person failed to meet the certification requirements of this regulation) and grant or deny the petition accordingly. The Board will not otherwise consider the propriety of a railroad's decision, i.e., it will not consider whether the railroad properly applied its own more stringent requirements.

(l) The Board's written decision shall be served on the petitioner, including the petitioner's representative, if any, and the railroad.

*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 (§ 242.507)

(a) If adversely affected by the Operating Crew Review Board's decision, either the petitioner before the Board or the railroad involved shall have a right to an administrative proceeding as prescribed by § 242.509.

(b) 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, U.S. Department of Transportation, Docket Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, 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 Federal Docket Management System and posted on its website at <http://www.regulations.gov>.

(c) If a party fails to request a hearing within the period provided in paragraph (b) of this section, the Operating Crew Review Board's decision will constitute final agency action.

(d) If a party elects to request a hearing, that person shall submit a written request to FRA's Docket Clerk containing the following:

(1) The name, address, telephone number, and email address (if available) 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.

(e) Upon receipt of a hearing request complying with paragraph (d) of this section, FRA shall arrange for the appointment of a presiding officer who shall schedule the hearing for the earliest practicable date.

*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 (§ 242.509)

(a) An administrative hearing for a conductor certification 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 § 242.507(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 Operating Crew 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 Operating Crew 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. 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) The decision:

(1) Shall 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 (§ 242.511)

- (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 Federal Railroad Administrator, 1200 New Jersey Avenue, SE, Washington, D.C. 20590 and with the Docket Clerk, U.S. Department of Transportation, Docket Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, 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) An appeal from an Operating Crew Review Board decision pursuant to § 242.503(d) must be filed within 35 days of issuance of the decision with the Federal Railroad Administrator, 1200 New Jersey Avenue, SE, Washington, DC 20590 and with the Docket Clerk, U.S. Department of Transportation, Docket Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, D.C. 20590. A copy of the appeal shall be served on each party. 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.*

## **APPENDIX B TO PART 242--PROCEDURES FOR SUBMISSION AND APPROVAL OF CONDUCTOR CERTIFICATION PROGRAMS**

This appendix establishes procedures for the submission and approval of a railroad's program concerning the training, testing, and evaluating of persons seeking certification or recertification as a conductor in accordance with the requirements of this part. It also contains guidance on how FRA will exercise its review and approval responsibilities.

### **Submission by a Railroad**

As provided for in § 242.101, each railroad must have a program for determining the certification of each person it permits or requires to perform as a conductor. Each railroad must submit its individual program to FRA for approval as provided for in [§ 242.103](#). Each program must be accompanied by a request for approval organized in accordance with this appendix. Requests for approval must contain appropriate references to the relevant portion of the program being discussed. Requests should be submitted in writing on standard sized paper (8.5 x 11) and can be in letter or narrative format. The railroad's submission shall be sent to the Associate Administrator for Railroad Safety/Chief Safety Officer, FRA. The mailing address for FRA is 1200 New Jersey Avenue, SE, Washington, DC 20590. Simultaneous with its filing with the FRA,

each railroad must serve a copy of its submission on the president of each labor organization that represents the railroad's employees subject to this Part.

Each railroad is authorized to file by electronic means any program submissions required under this part. Prior to any person submitting a railroad's first program submission electronically, the person shall provide the Associate Administrator with the following information in writing:

- (1) The name of the railroad;
- (2) The names of two individuals, including job titles, who will be the railroad's points of contact and will be the only individuals allowed access to FRA's secure document submission site;
- (3) The mailing addresses for the railroad's points of contact;
- (4) The railroad's system or main headquarters address located in the United States;
- (5) The e-mail addresses for the railroad's points of contact; and
- (6) The daytime telephone numbers for the railroad's points of contact.

A request for electronic submission or FRA review of written materials shall be addressed to the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590. Upon receipt of a request for electronic submission that contains the information listed above, FRA will then contact the requestor with instructions for electronically submitting its program.

A railroad that electronically submits an initial program or new portions or revisions to an approved program required by this Part shall be considered to have provided its consent to receive approval or disapproval notices from FRA by e-mail. FRA may electronically store any materials required by this part regardless of whether the railroad that submits the materials does so by delivering the written materials to the Associate Administrator and opts not to submit the materials electronically. A railroad that opts not to submit the materials required by this part electronically, but provides one or more e-mail addresses in its submission, shall be considered to have provided its consent to receive approval or disapproval notices from FRA by e-mail or mail.

*The burden for this requirement is included under that of § 242.101 and § 242.103 above. Consequently, there is no additional burden associated with this requirement.*

#### Organization of the Submission

Each request should be organized to present the required information in the following standardized manner. Each section must begin by giving the name, title, telephone number, and mailing address of the person to be contacted concerning the matters addressed by that section. If a person is identified in a prior section, it is sufficient to merely repeat the person's name in a subsequent section.

#### Section 1 of the Submission: General Information and Elections

The first section of the request must contain the name of the railroad, the person to be contacted concerning the request (including the person's name, title, telephone number, and mailing address) and a statement electing either to accept responsibility for educating previously untrained persons to be certified conductors or recertify only conductors previously certified by other railroads. See § 242.103(b).

If a railroad elects not to conduct the training of persons not previously trained to be a conductor, the railroad is not obligated to submit information on how the previously untrained will be trained. A railroad that makes this election will be limited to recertifying persons initially certified by another railroad. A railroad that initially elects not to accept responsibility for training its own conductors can rescind its initial election by obtaining FRA approval of a modification of its program. See § 242.103(f).

If a railroad elects to accept responsibility for training persons not previously trained to be conductors, the railroad is obligated to submit information on how such persons will be trained but has no duty to actually conduct such training. A railroad that elects to accept the responsibility for the training of such persons may authorize another railroad or a non-railroad entity to perform the actual training effort. The electing railroad remains responsible for assuring that such other training providers adhere to the training program the railroad submits. This section must also state which types of service the railroad will employ. See § 242.107.

*The burden for this requirement is included under that of § 242.101, § 242.103, and § 242.107 above. Consequently, there is no additional burden associated with this requirement.*

#### Section 2 of the Submission: Training Persons Previously Certified

The second section of the request must contain information concerning the railroad's program for training previously certified conductors. As provided for in § 242.119(o), each railroad must have a program for the ongoing education of its conductors to assure that they maintain the necessary knowledge concerning operating rules and practices, familiarity with physical characteristics, and relevant Federal safety rules.



Section 242.119(l) provides a railroad latitude to select the specific subject matter to be covered, duration of the training, method of presenting the information, and the frequency with which the training will be provided. The railroad must describe in this section how it will use that latitude to assure that its conductors remain knowledgeable concerning the safe discharge of their responsibilities so as to comply with the performance standard set forth in § 242.119(l). This section must contain sufficient detail to permit effective evaluation of the railroad's training program in terms of the subject matter covered, the frequency and duration of the training sessions, the training environment employed (for example, and use of classroom, use of computer based training, use of film or slide presentations, use of on-job-training) and which aspects of the program are voluntary or mandatory.

Time and circumstances have the capacity to diminish both abstract knowledge and the proper application of that knowledge to discrete events. Time and circumstances also have the capacity to alter the value of previously obtained knowledge and the application of that knowledge. In formulating how it will use the discretion being afforded, each railroad must design its program to address both loss of retention of knowledge and changed circumstances, and this section of the submission to FRA must address these matters.

For example, conductors need to have their fundamental knowledge of operating rules and procedures refreshed periodically. Each railroad needs to advise FRA how that need is satisfied in terms of the interval between attendance at such training, the nature of the training being provided, and methods for conducting the training. A matter of particular concern to FRA is how each railroad acts to assure that conductors remain knowledgeable about the territory over which a conductor is authorized to perform but from which the conductor has been absent. The railroad must have a plan for the familiarization training that addresses the question of how long a person can be absent before needing more education and, once that threshold is reached, how the person will acquire the needed education. Similarly, the program must address how the railroad responds to changes such as the introduction of new technology, new operating rule books, or significant changes in operations including alteration in the territory conductors are authorized to work over.

*The burden for this requirement is included under that of § 242.101, § 242.103, and § 242.119 above. Consequently, there is no additional burden associated with this requirement.*

### Section 3 of the Submission: Testing and Evaluating Persons Previously Certified

The third section of the request must contain information concerning the railroad's program for testing and evaluating previously certified conductors. As provided for in § 242.121, each railroad must have a program for the ongoing testing and evaluating of

its conductors to assure that they have the necessary knowledge and skills concerning operating rules and practices, familiarity with physical characteristics of the territory, and relevant Federal safety rules. Similarly, each railroad must have a program for ongoing testing and evaluating to assure that its conductors have the necessary vision and hearing acuity as provided for in § 242.117.

Section 242.121 requires that a railroad rely on written procedures for determining that each person can demonstrate his or her knowledge of the railroad's rules and practices and skill at applying those rules and practices for the safe performance as a conductor. Section 242.121 directs that, when seeking a demonstration of the person's knowledge, a railroad must employ a written test that contains objective questions and answers and covers the following subject matters: (i) safety and operating rules; (ii) timetable instructions; (iii) physical characteristics of the territory; and (iv) compliance with all applicable Federal regulations. The test must accurately measure the person's knowledge of all of these areas.

Section 242.121 provides a railroad latitude in selecting the design of its own testing policies (including the number of questions each test will contain, how each required subject matter will be covered, weighting (if any) to be given to particular subject matter responses, selection of passing scores, and the manner of presenting the test information). The railroad must describe in this section how it will use that latitude to assure that its conductors will demonstrate their knowledge concerning the safe discharge of their responsibilities so as to comply with the performance standard set forth in § 242.121.

Section 242.117 provides a railroad latitude to rely on the professional medical opinion of the railroad's medical examiner concerning the ability of a person with substandard acuity to safely perform as a conductor. The railroad must describe in this section how it will assure that its medical examiner has sufficient information concerning the railroad's operations to effectively form appropriate conclusions about the ability of a particular individual to safely perform as a conductor.

*The burden for this requirement is included under that of § 242.101, § 242.103, § 242.117, and § 242.111above. Consequently, there is no additional burden associated with this requirement.*

#### Section 4 of the Submission: Training, Testing, and Evaluating Persons Not Previously Certified

Unless a railroad has made an election not to accept responsibility for conducting the initial training of persons to be conductors, the fourth section of the request must contain information concerning the railroad's program for educating, testing, and evaluating persons not previously trained as conductors. As provided for in § 242.119(d), a railroad that is issuing an initial certification to a person to be a conductor must have a program

for the training, testing, and evaluating of its conductors to assure that they acquire the necessary knowledge and skills concerning operating rules and practices, familiarity with physical characteristics of the territory, and relevant Federal safety rules.

Section 242.119 establishes a performance standard and gives a railroad latitude in selecting how it will meet that standard. A railroad must describe in this section how it will use that latitude to assure that its conductors will acquire sufficient knowledge and skill and demonstrate their knowledge and skills concerning the safe discharge of their responsibilities. This section must contain the same level of detail concerning initial training programs as that described for each of the components of the overall program contained in sections 2 through 4 of this appendix. A railroad that plans to accept responsibility for the initial training of conductors may authorize another railroad or a non-railroad entity to perform the actual training effort. The authorizing railroad may submit a training program developed by that authorized trainer but the authorizing railroad remains responsible for assuring that such other training providers adhere to the training program submitted. Railroads that elect to rely on other entities, to conduct training away from the railroad's own territory, must indicate how the student will be provided with the required familiarization with the physical characteristics for its territory.

*The burden for this requirement is included under that of § 242.101, § 242.103, and § 242.119 above. Consequently, there is no additional burden associated with this requirement.*

#### Section 5 of the Submission: Monitoring Operational Performance by Certified Conductors

The fifth section of the request must contain information concerning the railroad's program for monitoring the operation of its certified conductors. As provided for in § 242.123, each railroad must have a program for the ongoing monitoring of its conductors to assure that they perform in conformity with the railroad's operating rules and practices and relevant Federal safety rules.

*The burden for this requirement is included under that of § 242.101, § 242.103, and § 242.123 above. Consequently, there is no additional burden associated with this requirement.*

#### Section 6 of the Submission: Procedures for Routine Administration of the Conductor Certification Program

The final section of the request must contain a summary of how the railroad's program and procedures will implement the various specific aspects of the regulatory provisions that relate to routine administration of its certification program for conductors. At a

minimum, this section needs to address the procedural aspects of the rule's provisions identified in the following paragraph.

[Section 242.109](#) provides that each railroad must have procedures for review and comment on adverse prior safety conduct, but allows the railroad to devise its own system within generalized parameters. Sections 242.111, 242.115 and 242.403 require a railroad to have procedures for evaluating data concerning prior safety conduct as a motor vehicle operator and as railroad workers, yet leave selection of many details to the railroad. Sections 242.109, 242.201, and 242.401 place a duty on the railroad to make a series of determinations but allow the railroad to select what procedures it will employ to assure that all of the necessary determinations have been made in a timely fashion; who will be authorized to conclude that person will or will not be certified; and how it will communicate adverse decisions. Documentation of the factual basis the railroad relied on in making determinations under §§ 242.109, 242.117, 242.119 and 242.121 is required, but these sections permit the railroad to select the procedures it will employ to accomplish compliance with these provisions. Sections 242.125 and 242.127 permit reliance on certification/qualification determinations made by other entities and permit a railroad latitude in selecting the procedures it will employ to assure compliance with these provisions. Similarly, § 242.301 permits the use of railroad selected procedures to meet the requirements for certification of conductors performing service in joint operations territory. Sections 242.211 and 242.407 allow a railroad a certain degree of discretion in complying with the requirements for replacing lost certificates or the conduct of certification revocation proceedings.

This section of the request should outline in summary fashion the manner in which the railroad will implement its program so as to comply with the specific aspects of each of the rule's provisions described in the preceding paragraph.

*The burden for this requirement is included under that of §§§ 242.101, 242.109, 242.111, 242.115, 242.117, 242.119, 242.121, 242.125, 242.127, 242.201, 242.211, 242.301, 242.401, 242.403, and 242.407 above. Consequently, there is no additional burden associated with this requirement.*

#### **APPENDIX C TO PART 242—PROCEDURES FOR OBTAINING AND EVALUATING MOTOR VEHICLE DRIVING RECORD DATA**

The purpose of this appendix is to outline the procedures available to individuals and railroads for complying with the requirements of §§ 242.109 and 242.111 of this part. Those provisions require that railroads consider the motor vehicle driving record of each person prior to issuing him or her certification or recertification as a conductor.

To fulfill that obligation, a railroad must review a certification candidate's recent motor vehicle driving record. Generally, that will be a single record on file with the state

agency that issued the candidate's current license. However, it can include multiple records if the candidate has been issued a motor vehicle driving license by more than one state agency or foreign country.

*The burden for this requirement is included under that of § 242.109, and § 242.111 above. Consequently, there is no additional burden associated with this requirement.*

#### Access to State Motor Vehicle Driving Record Data

The right of railroad workers, their employers, or prospective employers to have access to a state motor vehicle licensing agency's data concerning an individual's driving record is controlled by state law. Although many states have mechanisms through which employers and prospective employers such as railroads can obtain such data, there are some states in which privacy concerns make such access very difficult or impossible. Since individuals generally are entitled to obtain access to driving record data that will be relied on by a state motor vehicle licensing agency when that agency is taking action concerning their driving privileges, FRA places responsibility on individuals, who want to serve as conductors to request that their current state drivers licensing agency or agencies furnish such data directly to the railroad considering certifying them as a conductor. Depending on the procedures adopted by a particular state agency, this will involve the candidate's either sending the state agency a brief letter requesting such action or executing a state agency form that accomplishes the same effect. It 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.

Once the railroad has obtained the motor vehicle driving record(s), the railroad must afford the prospective conductor an opportunity to review that record and respond in writing to its contents in accordance with the provisions of § 242.401. 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.

*The burden for this requirement is included under that of § 242.109, § 242.111, and § 242.401 above. Consequently, there is no additional burden associated with this requirement.*

#### **APPENDIX D TO PART 242—MEDICAL STANDARDS GUIDELINES**

(1) The purpose of this appendix is to provide greater guidance on the procedures that should be employed in administering the vision and hearing requirements of § 242.117.

(2) In determining whether a person has the visual acuity that meets or exceeds the requirements of this part, the following testing protocols are deemed acceptable testing methods for determining whether a person has the ability to recognize and distinguish among the colors used as signals in the railroad industry. The acceptable test methods are specified in this section.

(3) In administering any of these protocols, the person conducting the examination should be aware that railroad signals do not always occur in the same sequence and that "yellow signals" do not always appear to be the same. It is not acceptable to use "yarn" or other materials to conduct a simple test to determine whether the certification candidate has the requisite vision. No person shall be allowed to wear chromatic lenses during an initial test of the person's color vision; the initial test is one conducted in accordance with one of the accepted tests in the chart and § 242.117(h)(3).

(4) An examinee who fails to meet the criteria in the chart, may be further evaluated as determined by the railroad's medical examiner. Ophthalmologic referral, field testing, or other practical color testing may be utilized depending on the experience of the examinee. The railroad's medical examiner will review all pertinent information and, under some circumstances, may restrict an examinee who does not meet the criteria for serving as a conductor at night, during adverse weather conditions or under other circumstances. The intent of § 242.117(j) is not to provide an examinee with the right to make an infinite number of requests for further evaluation, but to provide an examinee with at least one opportunity to prove that a hearing or vision test failure does not mean the examinee cannot safely perform as a conductor. Appropriate further medical evaluation could include providing another approved scientific screening test or a field test. All railroads should retain the discretion to limit the number of retests that an examinee can request but any cap placed on the number of retests should not limit retesting when changed circumstances would make such retesting appropriate. Changed circumstances would most likely occur if the examinee's medical condition has improved in some way or if technology has advanced to the extent that it arguably could compensate for a hearing or vision deficiency.

(5) Conductors who wear contact lenses should have good tolerance to the lenses and should be instructed to have a pair of corrective glasses available when on duty.

*The burden for this requirement is included under that of § 242.117 above. Consequently, there is no additional burden associated with this requirement.*

Total annual burden under this entire information collection is 3,972,997 hours.

**13. Estimate of total annual costs to respondents.**

As noted in the regulatory impact analysis (RIA) accompanying this rule, there are

additional annual costs to respondents besides the burden hours shown above. They are as follows:

**ADDITIONAL COSTS**

\$6,780 – Certification Program Submissions to FRA (§ 242.101/103) (678 submissions @\$10 each for postage/handling)

\$60 – Additional Certification Program Submissions to FRA (§ 242.101/103) (6 additional submissions @\$10 each for postage/handling)

\$2,000 – Certification Program Copies to Rail Labor Organizations (§ 242.101/103) (200 copies @\$10 each for postage/handling)

\$350 – Comments to FRA and Copies of Comments to railroads on Certification Program Submissions (§ 242.101/103) (35 comments + 35 comment copies @\$5 each for postage/handling)

\$100 – Revised Certification Program Submissions to FRA (§ 242.101/103) (10 submissions @\$10 each for postage/handling)

\$30 – Resubmitted Certification Program Submissions to FRA (§ 242.101/103) (3 resubmissions @\$10 each for postage/handling)

\$500 – Modified Certification Program Submissions to FRA (§ 242.101/103) (50 modified submissions @\$10 each for postage/handling)

\$30 – Revised Certification Program Submissions to FRA (§ 242.101/103) (3 revised submissions @\$10 each for postage/handling)

\$10 – Resubmitted Certification Program Submissions to FRA (§ 242.101/103) (1 resubmitted Certification Program @\$10 each for postage/handling)

\$75 – Comments to Railroad on Employee’s Prior Safety Conduct (§ 242.109) (50 comments @\$1.50 each for postage/handling)

\$187,920 – Letters to State Chief Licensing Officer for Motor Vehicle Record + Fee to State for Record (§ 242.111) (18,000 letters @\$.44 for postage + 18,000 State fees @\$10 each)

\$25 – Letters/Requests to Foreign Country/State Agency Not Previously Contacted for Motor Vehicle Record (25 letter/requests@\$1 per request)

\$1,170,000 – Vision/Hearing Acuity Tests (§ 242.117) (18,000 conductor vision tests @\$20 per test + 18,000 conductor hearing tests @\$45 per test)

\$50,000 – Training Materials (§ 242.119)

**\$1,417,880 = TOTAL COSTS**

**OTHER COSTS**

Development of ASLRRA Generic Certification Program = **\$26,000** (See p. 12 of rule RIA)

Cost for Replacement Certificates = **\$500** (500 certificates x \$1)

**Total Cost = \$26,500**

**Grand Total Cost = \$1,444,380**

**14. Estimate of Cost to Federal Government.**

FRA estimates that approximately two (2) man-years annually (at the GS-14-5 level) will be spent in administering the Conductor Certification Program. This excludes time spent doing routine compliance and enforcement activities. Multiplying 4,160 hours times the estimated \$100 per hour (includes 75% for overhead) equals an annual Federal cost of **\$416,000**.

As noted in the regulatory impact analysis (RIA) accompanying this rule, there will also be annual costs to FRA for staff members who will sit on the Operating Crew Review Board (OCRB) and will handle Dispute Resolution Procedures. These costs are as follows:

**\$768,000** – Processing Certification Review Petitions to FRA (§ 242.503) (160 petitions each year @\$700 per petition)

**\$52,000** – Agency Hearings (§ 242.509) (25 hearings each year @\$2,076 per hearing)

**\$7,200** – Appeals (§ 242.511) (4 appeals each year @\$1,800 per appeal)

**\$827,200 = TOTAL FOR DISPUTE RESOLUTION PROCEDURES**

**\$1,243,200 = GRAND TOTAL**

**15. Explanation of program changes and adjustments.**



This is a new collection of information solely associated with FRA's new Part 242 rule. The total burden requested for this submission amounts to **3,972,997** hours. By definition, the entire requested burden is a **program change**. [*Note: If a dollar value equivalent of these 3,972,997 hours were assigned to this final rule, it would amount to \$171,633,470 based on an average wage of \$43.20 per hour for the train and engine employees (i.e., conductors) affected by this final rule.*]

The total cost to respondents amounts to **\$1,444,380**. By definition, the entire cost to respondents is also a **program change**.

\*\*\*\*Please note that the changes in the number of annual responses, burden hours, and cost to respondents shown in the ICR Summary Burden of this final rule information collection submission reflect revised estimates from the NPRM submission which OMB elected not to fully review and which OMB did not assign a Control Number in its Notice of Action on February 17, 2011. These changed estimates show up as adjustments. \*\*\*\*

**16. Publication of results of data collection.**

There are no plans for publication of this submission.

The information to be collected will be used by specialists of the Office of Safety, as well as field personnel, to enforce the regulation. The information collected may be incorporated into the FRA database, where relevant and appropriate, and provided to the general public and other interested parties who wish to access the information on the FRA Website.

**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 a Notice in the Federal Register.

**18. Exception to certification statement.**

No exceptions are taken at this time regarding this information collection. FRA does not expect that there would be circumstances in the future where the agency would take an exception to one of the certification criteria. However, FRA can not categorically state that the agency would never take an exception because there may be circumstances (such as legislative mandate by Congress, etc.) that might warrant FRA taking an exception. In such a case, FRA would provide a full explanation to OMB for it to evaluate and comment on.

### Meeting Department of Transportation (DOT) Strategic Goals

This information collection supports DOT's main 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 conductors or passenger conductors. Specifically, railroads are required to establish minimum qualification standards, or a certification program for conductors. All railroad certification programs must be approved by FRA. Railroads must make a series of determinations concerning each conductor's fitness or competency. In order to be certified, conductors/conductor candidates must meet certain performance standards. For example, conductors must undergo an annual operational monitoring test, as well as an annual unannounced compliance test, in each calendar year. Also, conductors must pass a written test that demonstrates sufficient knowledge of Federal and 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 conductors 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.

Conductors must meet standards for hearing and visual acuity in tests performed by railroad medical examiners, and must inform the railroad medical department or other appropriate railroad official when his/her 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 conductor must furnish to his/her employer or prospective employer information regarding his or her driving record. As a result, appropriate action can be taken if information relating to driving under the

influence of alcohol or drugs is discovered.

Moreover, railroads are required to devise and adhere to a training program for conductors that is approved by FRA. There must be initial and continuing education to ensure that each conductor 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 conductor. 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 serve as conductors or passenger conductors, which would jeopardize safety and lead to increased numbers of accidents/incidents and corresponding casualties.

In sum, all the information gathered in this collection furthers the first and main DOT strategic goal by ensuring that qualified and well trained individuals serve as conductors or passenger conductors on the nation's railroads, thereby facilitating the safe movement of trains.

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.