

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

Summary

- This submission is a revision to the last approved submission pertaining to Part 240 that was approved by OMB on July 3, 2016, and which expires **July 31, 2019**.
- FRA is publishing a Notice of Proposed Rulemaking revising Part 240 titled Qualification and Certification of Locomotive Engineers; Miscellaneous Revisions (RRR) in the **Federal Register** on **May 9, 2019**. See 84 FR 20472.
- The total number of burden **hours requested** for this submission is **93,408 hours**.
- The total number of burden hours **previously approved** is **272,672 hours**.
- Total number of **responses requested** for this submission is **352,054**.
- Total number of **responses previously approved** for this submission is **216,863**.
- The **change** in burden from the last approved submission amounts to a decrease of **179,264 hours**, and an increase of **135,191 responses**.
- Total **program changes** amount to/increased the burden by **9,786 hours**, and increased the number of responses by **30,359**.
- Total **adjustments** amount to/decreased the burden by **189,050** and increased the number of responses by **104,832**.

The answer to question **number 12 itemizes the hourly burden associated with each requirement of this rule (See pp. 15-116). *** The tables in answer to question number 15 itemize **program changes** and **adjustments** (See pp. 118-126).

1. Circumstances that make collection of the information necessary.

The Secretary of Transportation (Secretary) has broad statutory authority to “prescribe regulations and issue orders for every area of railroad safety.” 49 U.S.C. 20103. The Rail Safety Improvement Act of 1988, Pub. L. 100-342, Sec. 4, 102 Stat. 624, 625-27 (June 22, 1988) (re-codified at 49 U.S.C. 20135) (1988 RSIA), specifically required the Secretary to “prescribe regulations and issue orders to establish a program requiring the licensing or certification . . . of any operator of a locomotive.” The Secretary delegated

these authorities to the Federal Railroad Administrator (Administrator). See 49 CFR 1.89(a). Exercising these delegated authorities, in 1991, FRA issued a certification final rule for locomotive engineers. 56 FR 28228 (codified at 49 CFR part 240).¹ Since that first final rule, FRA has amended the locomotive engineer certification requirements through six rulemakings. In 2009, FRA published the most recent final rule amending the locomotive engineer requirements. 74 FR 68173.

In 2008, over 17 years after FRA’s promulgation of the engineer certification rule, Congress required the Secretary to prescribe regulations establishing a program requiring the certification of train conductors. See Rail Safety Improvement Act of 2008, Sec. 402, Pub. L. 110-432, 122 Stat. 4884 (Oct. 16, 2008) (codified at 49 U.S.C. 20163). The Secretary delegated this authority to the Federal Railroad Administrator. 49 CFR 1.89(b). To implement this statutory provision, FRA established a Railroad Safety Advisory Committee (RSAC) Conductor Certification Working Group (RSAC Working Group or Working Group)² to make recommendations regarding the certification of train conductors.³ In 2011, FRA published a final conductor certification rule. 76 FR 69802 (Nov. 9, 2011) (codified at 49 CFR part 242).

FRA’s locomotive engineer certification regulation (Part 240) provided a starting point for discussions on what requirements could be appropriate for conductor certification and the final conductor certification regulation (Part 242) is largely organized and comparable to the locomotive engineer certification regulation. The NPRM FRA published in 2010 in the conductor certification rulemaking noted that the Working Group’s accepted task statement included the discretion to “consider any revisions to 49 CFR part 240 appropriate to conform and update the certification programs for locomotive engineers and conductors.” 75 FR 69166, 69167 (2010). During the Working Group’s meetings, some members provided feedback to FRA on whether corresponding amendments to the locomotive engineer rule were preferable. However, this feedback was not part of a consensus recommendation and, after considering the Working Group’s discussions and the limited scope of this proposed rule, FRA decided not to seek RSAC recommendations on the contents of this proposed rule.

FRA believes that issues that go beyond conforming FRA’s locomotive engineer regulation with FRA’s conductor certification regulation and updating and clarifying the existing requirements for locomotive engineer certification are best saved for a separate,

¹ Unless otherwise specified, all references to CFR sections and parts refer to title 49 of the CFR.

² The RSAC 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. For more information regarding the RSAC process and the conduct of the Working Group, see 76 FR 69802, 69802-69804 (Nov. 9, 2011).

³ RSAC accepted the task (Task No. 08-07, titled “Conductor Certification”) on December 10, 2008. This issue was thoroughly discussed and analyzed at the part 242 RSAC Working Group meetings and in the part 242 rulemaking documents. See 75 FR 69166, 69168 (Nov. 10, 2010).

future rulemaking. Accordingly, FRA is proposing to revise its regulation governing the minimum requirements for the qualification and certification of locomotive engineers to make certain provisions consistent with its regulation for the qualification and certification of conductors and to update and clarify, as appropriate, the existing requirements of the locomotive engineer certification regulation.

President Trump issued Executive Order 13771 (EO 13771), “Reducing Regulation and Controlling Regulatory Costs,” on January 30, 2017. EO 13771 seeks to “manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations” and directs each executive department or agency to identify for elimination two existing regulations for every new regulation issued. EO 13771 also requires any new incremental cost associated with a new regulation, to the extent permitted by law, be at least offset by the elimination of existing costs associated with at least two prior regulations. Similarly, Executive Order 13610, “Identifying and Reducing Regulatory Burdens,” issued May 12, 2012, seeks “to modernize our regulatory system and to reduce unjustified regulatory burdens and costs” and directs each executive agency to conduct retrospective reviews of its regulatory requirements to identify potentially beneficial modifications to regulations. 77 FR 28469. Executive agencies are to “give priority, consistent with the law, to those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety and our environment.” *See id.* at 28470.

In compliance with these EOs, FRA expects this rulemaking will reduce the railroad industry’s overall regulatory, paperwork, and cost burden without affecting safety on the nation’s railroad system and, at the same time, benefit individual locomotive engineers. FRA also expects the proposals in this NPRM, if implemented, to generate savings in governmental administrative costs by reducing FRA’s Part 240 program’s reliance on paper documents and conforming its review processes under Part 240 as much as possible to those under Part 242. FRA believes consistency in the processes, procedures and criteria between Part 240 and Part 242 will not only lead to an overall reduction in the regulatory, paperwork and cost burden on the railroad industry, but also benefit individual locomotive engineers by making the processes, procedures and requirements of the two certification systems consistent to the extent possible.

In summary, FRA is proposing to revise its regulation governing the qualification and certification of locomotive engineers to make it consistent with its regulation for the qualification and certification of conductors. The proposed changes include the following: amending the program submission process; handling engineer and conductor petitions for review with a single FRA review board (Operating Crew Review Board or OCRB); and revising the filing requirements for petitions to the OCRB. The proposed revisions would result in cost savings and benefits for railroads and locomotive engineers by adopting the conductor certification regulation’s streamlined processes developed

twenty years after the engineer certification regulation. Consistent with Executive Order 13771, the proposed rule would reduce the overall regulatory burden and the paperwork and reporting burden under the Paperwork Reduction Act of 1995 on railroads and locomotive engineers.

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

This information collection request is a revision to the last approved submission. FRA is proposing to revise its regulation governing the qualification and certification of locomotive engineers (Part 240) to make it consistent with its regulation governing the qualification and certification of conductors (Part 242). FRA proposes to revise § 240.103 to require railroads to serve a copy of their locomotive engineer certification program submissions, resubmissions, and material modifications on the president of each labor organization that represents the railroad's certified locomotive engineers. This information will be used to facilitate comments to FRA by locomotive engineers or their designated representatives on whether FRA should approve the railroad's submission, resubmission, or material modification to its certification program. FRA believes these comments will be useful in determining whether the railroad's program meets the criteria in this proposed rule.

The proposed revision under § 240.111 requires each person seeking certification or recertification to furnish data on prior safety conduct as motor vehicle operator to the railroad to include taking any additional actions, including providing necessary consent required by State, Federal, or *foreign law* to make information concerning his or her driving record available to the railroad. This information will be used by railroads to obtain the most complete record possible of the certification candidate's driving history and ensure that they do not unknowingly certify as a locomotive engineer someone with a driving history of drug or alcohol abuse or other serious motor vehicle violations.

The proposed revisions under § 240.115(c)-(f) incorporate the same temporary certification provisions included in the corresponding § 240.11(c)-(f). Section 240.115(c) permits railroads to initially certify a person as a locomotive engineer 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 § 240.109. This provision will be used by railroads to help with staffing in train movements and other situations where certification candidates had properly requested motor vehicle operator information but could not be certified or recertified as locomotive engineers because of a driver licensing agency's delay or mix-up sending the required information to the railroad. Certified locomotive engineers will be enabled to keep working while railroads have additional time to receive the requested documents.

The proposed revisions under § 240.125(e)-(g) would be the same as § 242.121(e)-(g). The new requirement under § 240.125(e) requires railroads to provide persons being tested for their knowledge an opportunity to consult with a supervisory employee who possesses territorial qualifications for the territory to explain a question. The information will be used by certification candidates to obtain clarification of test questions by someone with knowledge of the relevant territory and thus be much fairer and more accurate test of the candidate's knowledge.

The proposed revisions under § 240.219(a) would require railroads to 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. More importantly, a railroad must provide the locomotive engineer candidate with any written documents or records, including written statements, related to failure to meet a requirement of this part that support its pending denial decision. This change will allow locomotive engine certification candidates to see and provide the most complete rebuttal to all information accumulated by the railroad that will influence the railroad's decision and potentially affects the person's livelihood.

The proposed revisions under § 240.219(c) would explicitly require a railroad's denial decision to address any explanation or rebuttal information a locomotive engineer candidate may have provided in writing under paragraph (a) of this section. The current rule strongly implies a railroad's denial decision should address any such information a certification candidate provides, but often railroads' decisions do not address this information. The failure of railroads to explicitly address information certification candidates provide to rebut potential adverse decisions impedes a fair decision. It has also led to delays in FRA's review of railroads' decisions, as FRA often needs to query the railroad on why the explanation or rebuttal was unsatisfactory before determining whether the railroad's decision was proper. By requiring a railroad's decision to explicitly address a candidate's rebuttal, FRA anticipates locomotive engineer candidates petitioning FRA will have a better understanding of the railroad's reasoning for its denial decision and FRA's Occupational Crew Review Board (OCRB) will be able to complete its review of the railroad's decision on a more-timely basis. FRA believes this change improves the entire process and makes it much more fair.

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

that railroads comply with the rule requirements under § 240.127 and § 240.129 to describe the scoring system they use during a skills test administered in accordance with the procedures required under § 240.211 and during an operational monitoring observation or unannounced compliance test administered in accordance with the procedures required under § 240.303. FRA then carefully reviews these amended certification programs to ensure that scoring criteria are transparent and that the pass/fail determinations are arrived at consistently throughout each railroad.

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

Under § 240.107, railroads are prohibited from re-classifying the certification of any type of certified engineer to a more restrictive class of certificate or a student engineer certificate during the period in which the certification is valid. FRA reviews the railroads' certification programs to ensure that railroads adhere to this provision and use only proper criteria for designation of classes of service.

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

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

person is operating a vehicle while under the influence of alcohol or a controlled substance.

Also, prior to certifying or re-certifying any person as a locomotive engineer for any class of service, each railroad reviews vision and hearing acuity data to determine that the person has visual acuity and hearing acuity; conducts written tests and reviews the results to determine that the person has demonstrated sufficient knowledge of the railroad's rules and practices for the safe operation of trains as prescribed in its certification program; and conducts performance tests and evaluates the outcomes to determine that the person has demonstrated the necessary skills to safely operate locomotives, and/or locomotives and trains in the most demanding class or type of service that the person will be permitted to perform.

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

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

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

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

3. Extent of automated information collection.

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

years, FRA has encouraged the use of advanced information technology, particularly electronic records. In keeping with its longstanding practice and with the requirements of the Government Paperwork Elimination Act (GPEA), railroads have the opportunity under the rule to seek approval from FRA for maintaining their list of designated certified locomotive engineers and their list of designated supervisors of locomotive engineers (DSLs) electronically (§§ 240.201/240.223). Railroads are presently keeping these lists electronically. Also, under the rule, railroads may seek FRA approval for electronic recordkeeping concerning the required records for each certified locomotive engineer that contains the pertinent information railroads relied on in making their qualifications determinations (§ 240.215). Railroads are also presently keeping these records electronically. Additionally, FRA permits the required documentation recording the results of locomotive engineers written tests under § 240.209/213 and the performance tests under § 240.211/213 to be kept electronically, and railroads are currently doing so. Furthermore, FRA permits the required documentation under § 240.303 concerning the annual operational monitoring observation and the annual operational observation/compliance test to be kept electronically, and again railroads are currently doing so. Thus, a total of 160,704 responses or approximately 74% of the entire number of estimated responses is now kept electronically.

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

4. Efforts to identify duplication.

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

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 “switching and terminal establishments.” Additionally, 5 U.S.C. 601(5) defines as small entities governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final Statement of Agency Policy that formally establishes small entities or small businesses as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1-1, which is \$20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. See 68 FR 24891, May 9, 2003 (codified as appendix C to 49 CFR part 209). The \$20 million limit is based on the Surface Transportation Board’s revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1-1. This definition is what FRA is proposing to use for the rulemaking.

Based on the latest available FRA data, the proposed rule would affect approximately 696 railroads including 7 Class I railroads, 11 Class II railroads, 645 Class III railroads, and 33 passenger railroads. The universe of the entities considered in an Initial Regulatory Flexibility Analysis (IRFA) generally includes only those small entities that can reasonably expect to be directly regulated by the proposed action. Based on FRA’s established size standards, only Class III railroads (645) are small entities, which may be potentially affected by this proposed rule.

All railroads that do business on the general railroad system would have to comply with the proposed amendments to Part 240. FRA believes that the amount of effort to comply with the proposed rule, or new costs borne on railroads, is positively correlated with the size of the entity. In addition, FRA concluded that the proposed rule is expected to be deregulatory, which means issuing the proposed rule should result in each affected entity, including small entities, accruing cost savings greater than any new costs.

For the railroad industry over a 20-year period, FRA estimates that issuing the proposed rule would result in new costs of \$166,054 (PV 7%) and \$194,843 (PV 3%). Based on information currently available, FRA estimates that \$94,062 (PV 7%) and \$102,183 (PV 3%) of the total costs associated with implementing the proposed rule would be borne by small entities. Therefore, less than 60 percent of the proposed rule’s total cost would be borne by small businesses. In addition, FRA estimate that the proposed rule would result in cost savings over 20 years of \$6.1 million (PV 7%), and \$8.6 million (PV 3%). In total, FRA estimates that the proposed rule would result in net cost savings of \$6.0

million (PV 7%), and \$8.4 million (PV 3%). FRA expects that small entities would accrue 94 percent of the cost savings associated with implementing the proposed rule. Thus, FRA does not believe that this proposed rule would have a significant economic impact on a substantial number of small entities.

It should be noted that this proposed rule applies to all railroads except the following: (1) “plant railroads”; (2) tourist, scenic, historic or excursion operations that are not part of the general railroad system of transportation; and (3) rapid transit operations in an urban area that are not connected to the general railroad system of transportation. These are usually small railroads entities.

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 greatly jeopardized. Specifically, if FRA were not able to verify that railroads have developed and implemented suitable locomotive engineer certification and training programs, and that railroads periodically update or amend these programs (as necessary), there might be a drastic increase in the number of train accidents/incidents, particularly severe collisions and major derailments, because unfit or unqualified individuals were employed as operators of freight and passenger locomotives and trains. Such an increase in train accidents/incidents could cause significant increased in injuries, fatalities, and property damage as well as potential damage to the environment and surrounding communities.

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

If FRA were not to collect the additional information required under § 240.127 and § 240.129, it would have no way to ensure that railroads have policies and procedures written into their locomotive engineer certification programs that comply with Federal standards aimed at preventing railroads from re-classifying a person’s locomotive engineer certificate to that of a more restrictive class during the period in which the certificate is valid. FRA has found that there is significant room for abuse in a system that allows re-classifications based on the somewhat subjective scoring of a skills performance test. Thus, without these two new requirements, more employees might

experience a re-classification of their locomotive engineer's certificate. Such a re-classification of person's locomotive engineer certificate to a more restrictive class before its valid expiration could cause great career harm to such employees as well as significant economic harm to these individuals and their families. Because of these two new provisions, each railroad is required to identify the actions that it will take in the event a person fails a skills performance test or when the railroad finds deficiencies with an engineer's performance during an operational monitoring observation or unannounced compliance test. Consequently, all affected employees will have clear written guidelines that spell out the railroad's policies and procedures and the consequences of inadequate performance during a skills performance test or during an operational monitoring observation or unannounced compliance tests. In § 240.307 of the rule, FRA makes clear that, except as provided for in § 240.119 (e), revocation of a locomotive engineer's certificate may only occur for violations of § 240.117(e) or § 240.119(c) of this chapter.

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

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

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

7. Special circumstances.

FRA requires each railroad that issues locomotive engineer certificates to maintain a record for each certified engineer that contains the pertinent information the railroad relied on in making its determinations. All records must be retained for a period of six (6) years from the date of the certification or re-certification decision. The reason for this requirement is that FRA needs to know how certification and re-certification decisions

are made. In the event of an accident or incident, FRA needs to look at the locomotive engineer's history. The locomotive engineer may have worked for more than one railroad. FRA needs to know this, along with any other pertinent information available in the certification record.

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

8. Compliance with 5 CFR 1320.8.

FRA is publishing a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on May 9 2019, titled Qualification and Certification of Locomotive Engineers; Miscellaneous Revisions (RRR) soliciting comments on the proposed rule and its accompanying information collection requirements from the regulated community, the general public, and interested parties. See 84 FR 20472. FRA will respond to any comments received concerning the proposed rule and its associated collection of information at the final rule stage and in the final rule Supporting Justification.

FRA developed this NPRM with the assistance of the RSAC Working Group⁴, which was tasked with, among other things, considering “any revisions to 49 CFR Part 240 appropriate to conform and update the certification programs for locomotive engineers and conductors.”⁵ FRA presented the Working Group with a document containing suggested changes in the form of regulatory text as a starting point for discussions. Various members of the Working Group provided comments to FRA which are described and addressed below in the section-by-section analysis. FRA expects to meet with the Working Group after publication of this NPRM to request additional feedback regarding any comments received in response to this NPRM.

Background

In March 1996, FRA established RSAC, which provides a forum for developing consensus recommendations to the Administrator of FRA on rulemakings and other safety program issues. 61 FR 9740 (Mar. 11, 1996). RSAC's charter under the Federal Advisory Committee Act (Public Law 92-463) was most recently renewed in 2012. 77 FR 28421 (May 14, 2012).

RSAC includes representation from all of FRA's major stakeholders, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. An alphabetical list of RSAC members includes the following:
Association of American Railroads (AAR);

⁴ For more information regarding the RSAC process and the conduct of the Working Group, see 76 FR 69802, 69802-69804 (Nov. 9, 2011).

⁵ RSAC task No. 08-07 entitled “Conductor Certification.” was accepted on December 10, 2008.

American Association of Private Railroad Car Owners (AAPRCO);
American Association of State Highway and Transportation Officials (AASHTO);
American Chemistry Council (ACC);
American Petroleum Institute (API);
American Public Transportation Association (APTA);
American Short Line and Regional Railroad Association (ASLRRA);
American Train Dispatchers Association (ATDA);
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);
The Chlorine Institute, Inc.;
Federal Transit Administration (FTA);*
The Fertilizer Institute;
High Speed Ground Transportation Association;
Institute of Makers of Explosives;
International Association of Machinists and Aerospace Workers;
International Brotherhood of Electrical Workers (IBEW);
Labor Council for Latin American Advancement;*
League of Railway Industry Women;*
National Association of Railroad Passengers;
National Association of Railway Business Women;*
National Conference of Firemen & Oilers;
National Railroad Passenger Corporation (Amtrak);
National Railroad Construction and Maintenance Association (NRCMA);
National Transportation Safety Board (NTSB);*
Railway Passenger Car Alliance;
Railway Supply Institute;
Safe Travel America;
Secretaria de Comunicaciones y Transporte;*
Sheet Metal Workers International Association;
Tourist Railway Association Inc.;
Transport Canada;*
Transport Workers Union of America;
Transportation Communications International Union/BRC (TCIU);
Transportation Security Administration (TSA); and
United Transportation Union (UTU)

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is 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. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The task force then provides that information to the working group for consideration.

If a working group comes to a unanimous consensus on recommendations for action, the proposal is presented to the full 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 members play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation.

However, FRA is in no way bound to follow the RSAC recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with 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 will proceed to resolve the issue through traditional rulemaking proceedings.

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

Nothing in this part shall affect the responsibility of the railroad under § 240.403 of this chapter ('Voluntary Referral Policy') to treat voluntary referrals for substance abuse counseling and treatment as confidential; and the certification status of an engineer who is successfully assisted under the procedures of that section shall not be adversely affected. However, the railroad shall include in its voluntary referral policy required to be issued pursuant to § 240.403 of this chapter a provision that, at least with respect to a certified locomotive engineer or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the EAP Counselor official notice of the substance abuse disorder and shall suspend or revoke the certification, as appropriate) if the person at any time refuses to cooperate in a recommended course of counseling or treatment.

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

11. 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 currently conducting operations in this country is 740. However, of these 740 railroads, 44 railroads are not part of the general system of rail transportation and thus are exempt from the requirements of this proposed rule. There is a total then of approximately 696 railroads consisting of seven (7) Class I railroads, 11 Class II railroads, 33 passenger railroads, and 645 Class III railroads that will be affected. As noted in the economic analysis accompanying this proposed rule, FRA estimates that the pool of certified locomotive engineers amounts to 52,000 individuals. The pool of certified locomotive engineers increases to 80,000 individuals after including Class II and Class III railroads.

Further, to be consistent with the regulatory impact analysis accompanying this rule, this analysis uses its fully burdened compensation rate of \$67.88 for managers and \$55.25 for locomotive engineers. These hourly wage rates are derived from the Surface Transportation Board's (STB's) Group 600 Transportation.

Waivers (§ 240.9)

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

FRA estimates that approximately 54 waivers will be received annually. It is calculated that it will take approximately 90 minutes to collect the necessary data, prepare a letter, and forward it to FRA. Total annual burden for this requirement is 81 hours.

Respondent Universe:	696 railroads
Burden time per response:	90 minutes
Frequency of Response:	On occasion
Annual number of Responses:	54 waivers
Annual Burden:	81 hours
Annual Cost:	\$5,498
	(\$67.88 x 81 hrs.)

Calculation: 54 waivers x 90 min. 81 hours

Certification Program Required

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

(a) Each railroad shall submit its written certification program and a description of how its program conforms to the specific requirements of this part in accordance with the procedures contained in appendix B to this part and shall submit this written certification program for approval at least 60 days before commencing operations.

Each railroad must have a certification program approved in accordance with § 240.103 that includes the following:

- a procedure for designating any person it determines to be qualified as a supervisor of locomotive engineers that complies with the criteria established in § 240.105;
- a designation of the classes of service that it determines will be used in compliance with the criteria established in § 240.107;
- a procedure for evaluating prior safety conduct that complies with the criteria established in § 240.109;
- a procedure for evaluating visual and hearing acuity that complies with the criteria established in § 240.121;
- a procedure for training that complies with the criteria established in § 240.123;
- a procedure for knowledge testing that complies with the criteria established in § 240.125;
- a procedure for skill performance testing that complies with the criteria established in § 240.127; and
- a procedure for monitoring operational performance that complies with the criteria established in § 240.129.

Each railroad must submit its written certification program and a description of how its program conforms to the specific requirements of this part in accordance with the procedures contained in Appendix B to this part and must submit this written certification program for approval at least 60 days before commencing operations. That submission must state the railroad's election either: (1) To accept responsibility for the training of

student engineers and thereby obtain authority for that railroad to initially certify a person as an engineer in an appropriate class of service, or (2) To re-certify only engineers previously certified by other railroads. A railroad that elects to accept responsibility for the training of student engineers must state in its submission whether it will conduct the training program or employ a training program conducted by some other entity on its behalf but adopted and ratified by that railroad.

This is a one-time requirement which has been completed by the railroads. However, FRA estimates that approximately 150 railroads will amend their certification programs and resubmit them to FRA in order to comply with the above requirements. It is estimated that it will take each railroad approximately 60 minutes to make the necessary changes. Total annual burden for this requirement is 50 hours.

Respondent Universe:	696 railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	150 amended certification programs
Annual Burden:	

		150
		hours
Annual Cost:		\$10,182
	(\$67.88 x 150 hrs.)	

Calculation: 150 amended certification programs x 60 min. = 150 hours

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

Respondent Universe:	20 new railroads
Burden time per response:	40 hours
Frequency of Response:	Annually
Annual number of Responses:	20 written certification programs
Annual Burden:	800 hours
Annual Cost:	\$54,304
	(\$67.88 x 800 hrs.)

Calculation: 20 written

certification programs x 40 hrs. = 800 hours

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

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

		20 hours
Annual Cost:		\$1,358
	(\$67.88 x 20 hrs.)	

<u>Calculation:</u>		20 review s x 1 hr. = 20 hours
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(b) Each railroad shall: **(Revised Requirement)**

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

FRA estimates approximately 750 copies of certification program submissions/re-submissions/material modifications will be sent to the president of relevant labor organizations under the above requirement. It is estimated that it will take approximately five (5) minutes to complete and send each copy. Total annual burden for

this requirement is 63 hours.

Respondent Universe:	696 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	750 copies of certification program submissions /resubmissions/material modifications
Annual Burden:	63 hours
Annual Cost:	\$4,276 (\$67.88 x 63 hrs.)

Calculation: 750 certification program submissions/resubmissions/
material modifications x 5 min. = 63 hours

(2) Include in its submission filed pursuant to paragraph (a) of this section, a resubmission filed pursuant to paragraph (f) of this section, or a material modification filed pursuant to paragraph (g) 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. **(New Requirement)**

FRA estimates approximately 750 affirmative statements/lists of labor organization persons served will be completed under the above requirement. It is estimated that it will take approximately 20 minutes to complete each affirmative statement list. Total annual burden for this requirement is 250 hours.

Respondent Universe:	696 railroads
Burden time per response:	20 minutes
Frequency of Response:	On occasion
Annual number of Responses:	750 affirmative statements/lists
Annual Burden:	250 hours
Annual Cost:	\$16,970 (\$67.88 x 250 hrs.)

Calculation: 750 affirmative statements/lists x 20
min. = 250 ours

(c.) Not later than 45 days from the date of filing a submission pursuant to paragraph (a) of this section, a resubmission pursuant to paragraph (f) of this section, or a material modification pursuant to paragraph (g) of this section, any designated representative of railroad employees subject to this part may comment on the submission, resubmission, or material modification: **(Revised Requirement)**

(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 approximately 25 comments with the required certification will be completed under the above requirement. It is estimated that it will take approximately 40 hours to complete each comment with the necessary certification. Total annual burden for this requirement is 1,000 hours.

Respondent Universe:	696 railroads
Burden time per response:	40 hours
Frequency of Response:	On occasion
Annual number of Responses:	25 comments w/required certification
Annual Burden:	1,000 hours
Annual Cost:	\$55,250 (\$55.25 x 1,000 hrs.)
<u>Calculation:</u>	25 comments w/required certification x 40 hrs.
	= 1,000 hours

(d) The submission required by paragraph (a) shall state the railroad's election either:

(1) To accept responsibility for the training of student engineers and thereby obtain authority for that railroad to initially certify a person as an engineer in an appropriate class of service, or

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

(e) A railroad that elects to accept responsibility for the training of student engineers 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 this requirement is included under that of § 240.103(a) above. Consequently, there is no additional burden associated with this requirement.

(f) 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 (g) of this section.

FRA estimates approximately 25 railroad certification programs will be disapproved by the FRA Administrator and will be revised under the above requirement. It is estimated that it will take approximately four (4) hours to complete each revised railroad certification program. Total annual burden for this requirement is 100 hours.

Respondent Universe:	696 railroads
Burden time per response:	4 hours
Frequency of Response:	On occasion
Annual number of Responses:	25 revised railroad certification programs
Annual Burden:	100 hours
Annual Cost:	\$6,788 (\$67.88 x 100 hrs.)

Calculation: 25 revised railroad certification program x 4 hrs.
= 100 hours

(g) 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 approximately five (5) revised railroad certification programs will be

disapproved by the FRA Administrator and will be resubmitted under the above requirement. It is estimated that it will take approximately four (4) hours to complete each resubmitted railroad certification program. Total annual burden for this requirement is 20 hours.

Respondent Universe:	696 railroads
Burden time per response:	4 hours
Frequency of Response:	On occasion
Annual number of Responses:	5 resubmitted railroad certification programs
Annual Burden:	20 hours
Annual Cost:	\$1,358 (\$67.88 x 20 hrs.)

Calculation: 5 resubmitted railroad certification programs x 4 hrs.
= 20 hours

(h.) A railroad that intends to materially modify its program after receiving initial FRA approval must submit a description of how it intends to modify the program in conformity with the specific requirements of this part at least 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 must contain a description that conforms to the pertinent portion of the procedures contained in Appendix B. (3) The modification submission will be handled in accordance with the procedures of paragraph (b) and (c) of this section as though it were a new program.

FRA estimates that approximately 75 railroads will materially modify their certification programs after receiving initial FRA approval. It is estimated that it will take each railroad approximately 45 minutes to modify its program and submit it to FRA. Total annual burden for this requirement is 56 hours.

Respondent Universe:	696 railroads
Burden time per response:	45 minutes
Frequency of Response:	On occasion
Annual number of Responses:	75 modified certification programs
Annual Burden:	

56
hours

Annual Cost: \$3,801
($\$67.88 \times 56 \text{ hrs.}$)

Calculation: 75 modified certification program x 45 min. = 56 hours

Total annual burden for this requirement is 2,459 hours (150 + 800 + 20 + 63 + 250 + 1,000 + 100 + 20 + 56).

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

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

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

Under 5 CFR 1320.3(h)(7), OMB's Implementing Guidance of the 1995 Paperwork Reduction Act (PRA), examinations fall under one of the exemptions pertaining to "information." This section of the Guidance states the following is not considered "information":

. . . examinations designed to test the aptitude, abilities, or knowledge of the persons tested and the collection of information for identification or classification in connection with such examination. Consequently, there is no burden associated with this requirement.

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

Section 240.127(d) stipulates that the conduct of the test must be documented in writing

by the designated supervisor and the documentation shall contain: (1) The relevant facts concerning the train being operated; (2) The constraints applicable to its operation; and (3) The factors observed and relied on for evaluation purposes by the designated supervisor.

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

		Respondent Universe: 10 railroads
Burden time per response:	1 hour	
Frequency of Response:	On occasion	
Annual number of Responses:	10 reports	
Annual Burden:		10 hours
Annual Cost:		\$679 (\$67.88
	x 5 hrs.)	

Calculation: 10
reports
x 1 hr.
= 10
hours

(d) Each railroad is authorized to designate a person as a designated supervisor of locomotive engineers with additional conditions or operational restrictions on the service the person may perform. **(New Requirement)**

This provision is denoting, under Part 240, there is a general DSLE requirement, but with remote control operations railroads have labeled some DSLEs to remote control certification only, which is acceptable. The NPRM is introducing this reality that a DSLE can be specific to remote locomotive engineers (DSLE subset known as Designated Supervisor of Remote Control Operators (DSRCOs). These designations have already been made. Consequently, there is no burden associated with this requirement.

Total annual burden for this entire requirement is 10 hours.

Types of Service (§ 240.107)

(a) Each railroad’s program shall state which of the classes of service, provided for in paragraph (b) of this section, that it will cover.

(b) A railroad may issue certificates for any or all of the following classes of service:

- (1) Train service engineers,
- (2) Locomotive servicing engineers,
- (3) Remote control operators,
- (4) Student engineers, and
- (5) Student remote control operators.

The burden for this requirement is included under that of § 240.103(a) above. Consequently, there is no additional burden associated with this requirement.

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

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

The burden for this requirement is include below under § 240.111. Consequently, there is no additional burden associated with this requirement.

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

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

As noted earlier, there are approximately 80,000 locomotive engineers at the present time. The locomotive engineers are certified or re-certified on an ongoing basis so that approximately one-third of these employees or 26,000 locomotive engineers go through this process each year. Of these 26,000 candidates, FRA estimates that approximately 40 candidates will respond in writing to records containing prior safety conduct information. It is estimated that it will take approximately 60 minutes for the employee to review the data and prepare and forward his/her letter/response back to the railroad. Total annual burden for this requirement is 40 hours.

Respondent Universe:

26,000 candidates

Burden time per response:	60 minutes
Frequency of Response:	Annually
Annual number of Responses:	40 responses
Annual Burden:	40 hours
Annual Cost:	\$2,210
	(\$67.88 x 40 hrs.)

Calculation: 40 responses x 60 min. = 40 hours

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

The burden for keeping records is included under § 240.215. Consequently, there is no additional burden associated with this requirement.

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

The burden for this requirement is included under § 240.111(g). Consequently, there is no additional burden associated with this requirement.

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

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

(a) Except for persons covered by 240.109 (h), 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 (b) through (f) or paragraph (g) of this section to make information concerning his or her driving record available to the railroad that is considering such certification or recertification.

(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. **(Revised requirement)**

(b) Each person seeking certification or recertification under this part shall:

(1) Request, in writing, that the chief of each driver licensing agency identified in paragraph (c) 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; and

(2) Request, in accordance with the provisions of paragraph (d) or (e) of this section, that a check of the National Driver Register be performed to identify additional information concerning his or her driving record and that any resulting information be provided to that railroad.

(c) Each person shall request the information required under paragraph (b)(1) of this section from: **(Revised requirement)**

(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 him or her a driver's license within the preceding five years.

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

A certificate is good for three (3) years. FRA anticipates that the railroads will certify or re-certify approximately a third of the estimated 80,000 locomotive engineers each year. Respondent universe then is approximately 26,000 certification candidates. It is

estimated that it will take approximately 15 minutes for each request. Total annual burden for this requirement is 6,500 hours.

Respondent Universe:	26,000 candidates
Burden time per response:	15 minutes
Frequency of Response:	Triennially
Annual number of Responses:	26,000 requests/letters
Annual Burden:	6,500 hours
Annual Cost:	\$441,220 (\$67.88 x 6,500 hrs.)

Calculation: 26,000 requests/letters x 15 min. = 6,500 hours

(d) Each person shall request the information required under paragraph (b)(2) of this section from the Chief, National Driver Register, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 in accordance with the procedures contained in appendix C unless the person's motor vehicle driving license was issued by a state or the District of Columbia. **(Revised requirement)**

(e) If the person's motor vehicle driving license was issued by one of the driver licensing agencies of a state or the District of Columbia, the person shall request the chief of that driver licensing agency to perform a check of the National Driver Register for the possible existence of additional information concerning his or her driving record and to provide the resulting information to the railroad. **(Revised requirement)**

National Driver Register Data

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

Each person must submit a written request to NHTSA at the following address: Chief, National Driver Register, National Highway Traffic Safety Administration, 1200 New Jersey Ave., S.E., Washington, D.C. 20590. In making the necessary request to NHTSA

to perform an NDR check, FRA requires that the request be in writing and contain the following information: (1) full legal name; (2) any other names used by the person; (e.g., nickname or professional name); (3) date of birth; (4) sex; (5) height and weight; (6) color of eyes; (7) drivers license number (unless that is not available); (8) authorization of NHTSA to perform the NDR check and furnish the results of the search directly to the railroad; and (9) identification of the railroad to which the results are to be furnished, including the proper name of the railroad and the proper mailing address of the railroad. The person seeking to become a certified locomotive engineer must sign the request and that signature must be notarized.

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

Request for NDR data from a State Agency

For a prospective operator who has a motor vehicle driver's license issued by a State motor vehicle licensing agency that is participating under the provisions of a 1982 amendment to the National Driver Register Act, railroads may reduce administrative burden by availing themselves of information from states which are able to perform NDR checks.

Previously, this amendment applied only to the District of Columbia. This is no longer the case. Consequently, there is no burden associated with this requirement.

Response from State Agency on request for NDR data

State agencies normally will respond in approximately 30 days or less and advise whether there is, or is not a listing for a person with the requested name and date of birth. The response provided after a State agency performs an NDR check is limited to either a notification that no potential match was identified, or a notification that a potential match was identified. The notification will include the identification of the State motor vehicle licensing authority which possesses the relevant record.

Presently, all States participate in the National Driver Register (NDR), and as mentioned above, the District of Columbia now participates too. Therefore, all NDR data will be obtained through NHTSA, and there is no burden associated with this requirement.

(f) If advised by the railroad that a driver licensing agency or the National Highway Traffic Safety Administration 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:
(Revised requirement)

(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

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

FRA estimates that approximately 125 candidates will be informed/will receive notices by railroads/NHTSA additional information regarding 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, and thus 125 requests will be made by these affected candidates under this requirement. FRA estimates that it will take approximately two (2) hours for each railroad to complete/send the notice to the locomotive engineer candidate and approximately 60 minutes for each candidate to complete the information request to the state agency or foreign country not previously contacted. Total annual burden for this requirement is 375 hours.

	Respondent Universe:
	26,000
	candidates
Burden time per response:	2 hours + 60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	125 notices + 125 requests
Annual Burden:	375 hours
Annual Cost:	\$20,719
	(\$55.25 x 375 hrs.)

Calculation: 125 notices x 2 hrs. + 125 requests x 60 min. = 375 hours.

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

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

FRA estimates that approximately 1% (260) of the 26,000 annual NDR requests will yield a match and the railroad will receive data concerning a candidate's driving record. It is estimated that it will take the railroad approximately 15 minutes to notify the engineer candidate and another 15 minutes for the candidate/employee to prepare a request and mail it to the State agency holding the relevant data. Total annual burden for this requirement is 130 hours.

Respondent Universe:	696 railroads
Burden time per response:	15 minutes + 15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	260 notifications + 260 requests
Annual Burden:	130 hours
Annual Cost:	\$8,003
	(\$67.88 x 65 hrs. + \$55.25 x 65 hrs.)

Calculation: 260 notices x 15 min + 260 requests x 15 min. = 130 hours

Written response from candidate on driver's license data

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

FRA estimates that in approximately 20 cases annually railroads will receive information concerning a candidate's driving record from the State agency. It is estimated that it will take approximately 30 minutes for the employee to review the information and make any comments necessary concerning the data to the certifying railroad. Total annual burden for this requirement is 10 hours.

Respondent Universe:	696 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	20 cases/comments
Annual Burden:	10 hours
Annual Cost:	\$553 (\$55.25
	x 10 hrs.)

Calculation: 20
 comments x

30
min. =
10
hours

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

Any person who has never obtained a motor vehicle driving license is not required to comply with the provisions of paragraph (b) of this section but shall notify the railroad of that fact in accordance with procedures of the railroad that comply with § 240.109(d).

FRA believes that just about all of the candidates (80,000) will have a driver's license. However, FRA calculates for these purposes that in approximately six (6) cases annually the candidate will never have applied for, or received a driver's license. It is estimated that it will take the candidate approximately 15 minutes to prepare a letter and forward it to the railroad informing it that he/she has never had a driver's license. Total annual burden for this requirement is two (2) hours.

Respondent Universe:	80,000 candidates
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	6 letters
Annual Burden:	2 hours
Annual Cost:	\$136 (\$67.88 x 2 hrs.)
<u>Calculation:</u>	6 letters x 15 min = 2 hours

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

Each certified locomotive engineer or person seeking initial certification shall report motor vehicle incidents described in § 240.115(b)(1) and (2) to the employing railroad within 48 hours of being convicted for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle driver's license for, such violations. For purposes of this paragraph and § 240.115(h), "state action" means action of the jurisdiction that has issued the motor vehicle driver's license, including a foreign country. For the purposes of engineer certification, no railroad shall require reporting earlier than 48 hours after the conviction, or completed state action to cancel, revoke, or deny a motor vehicle driver's license.

FRA estimates that approximately 300 of the approximate 80,000 locomotive engineers will report by phone a conviction or a completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license. FRA estimates that each phone call will take approximately 10 minutes. Total annual burden for this requirement is 50 hours.

Respondent Universe:	696 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	300 phone calls
Annual Burden:	50 hours
Annual Cost:	\$2,763 (\$67.88 x 50 hrs.)

Calculation: 300 x 10 min. = 50 hours

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

(a) Except for persons covered by § 240.109(h), each person seeking certification 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 §§ 240.111, 240.117, and 240.119 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 2% (520) of the 26,000 candidates annually will have worked for another railroad. It is estimated that it will take the employee approximately 15 minutes to prepare his/her written request and another 30 minutes for the railroad to review its files and provide the employee's service record to the railroad that is considering such certification or re-certification. Total annual burden for this requirement is 390 hours.

Respondent Universe:	26,000 candidates
Burden time per response:	15 min. + 30 min.
Frequency of Response:	On occasion
Annual number of Responses:	520 requests + 520 responses
Annual Burden:	390 hours
Annual Cost:	\$24,832 (\$55.25 x 130 hrs. + \$67.88 x 260 hrs.)

Calculation: 520 requests x 15 min. + 520 responses x 30 min. = 390

hours

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

(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 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. **(Revised Requirement)**

The burden for this requirement is already included above under § 240.101/103 above. Consequently, there is no additional burden associated with it.

(b) Except as provided in paragraphs (c), (d), (e), and (f) of this section, each railroad, prior to initially certifying or recertifying any person as a locomotive engineer 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. **(Revised Requirement)**

The burden for driver's license information is already included under that of § 240.111 above. Consequently, there is no additional burden associated with it.

(c) A railroad shall initially certify a person as a locomotive engineer for 60 days if the person: **(Revised Requirement)**

- (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 § 240.109.

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

- (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 § 240.109.

FRA estimates that approximately 25 candidates will be temporarily certified/recertified for 60 days as locomotive engineers after having requested the motor vehicle information specified in paragraph (h) of this section under the above requirement. It is estimated that it will take five (5) minutes to complete the recertification. Total annual burden for this requirement is two (2) hours. *(Note: Again, the burden for requesting driver's license information is already included above under § 240.111 above. Consequently, there is no*

additional burden associated with it.)

Respondent Universe:	696 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	25 certification/recertification documents
Annual Burden:	2 hours
Annual Cost:	\$136 (\$67.88 x 2 hrs.)

Calculation: 25 re-certification documents x 5 min. = 2 hours

(e) Except as provided in paragraph (f) of this section, if a railroad who 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) of this section 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 locomotive engineer 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 § 240.109. **(New Requirement)**

The burden for this requirement is already included under that of § 240.9 above. Consequently, there is no additional burden associated with it.

(g) When evaluating a person's motor vehicle driving record, a railroad must not consider information concerning motor vehicle driving incidents that occurred more than 36 months before the month in which the railroad is making its certification decision or at a time other than that specifically provided for in §§ 240.111, 240.117, 240.119, or 240.205.

(h) 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 driver's 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.

(i) 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;

The burden for this requirement is included under § 240.205. Consequently, there is no additional burden associated with this requirement.

(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 approximately 200 employee records of prior counseling or treatment will be requested by DACs under the above requirement. It is estimated that it will take the DAC approximately two (2) hours to request each record and approximately 60 minutes for each employee to supply the necessary record to the DAC. Total annual burden for this requirement is 600 hours.

Respondent Universe:	26,000 candidates
Burden time per response:	2 hours + 60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	200 records requests + 200 records
Annual Burden:	600 hours
Annual Cost:	\$40,728 (\$67.88 x 600 hrs.)

Calculation: 200 requests x 2 hrs. + 200 records x 60 min. = 600 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 § 240.119(d)(3) of this part.

FRA estimates that approximately 100 recommendations of aftercare/follow-up testing for alcohol or drugs by DACs will be made under the above requirement. It is estimated that it will take the DAC approximately 60 minutes to make each recommendation. Total annual burden for this requirement is 100 hours.

Respondent Universe:	26,000 candidates
Burden time per response:	60 minutes

Frequency of Response:	On occasion
Annual number of Responses:	100 conditional certifications/DAC recommendations
Annual Burden:	100 hours
Annual Cost:	\$6,788
	(\$67.88 x 100 hrs.)

Calculation: 100 conditional certifications/DAC recommendations x 60 min. = 100 hours

(4) If the person is evaluated as currently affected by an active substance abuse disorder, the provisions of § 240.119(b) will apply.

FRA estimates that approximately 100 persons will be evaluated as having an active substance abuse disorder by DACs and have their certifications suspended under the above requirement. It is estimated that it will take the DAC approximately 60 minutes to complete each evaluation/suspension document. Total annual burden for this requirement is 100 hours.

Respondent Universe:	26,000 candidates
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	100 evaluations/suspended certification document
Annual Burden:	100 hours
Annual Cost:	\$6,788
	(\$67.88 x 100 hrs.)

Calculation: 100 evaluation x 60 = 100 hours

Total annual burden for this entire requirement is 802 hours (2 + 600 + 100 + 100).
Criteria for Consideration of Operating Rules Compliance Data (§ 240.117)

(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 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.

Railroads have already completed this requirement. Consequently, there is no additional burden associated with it.

(b) A person who has demonstrated a failure to comply, as described in paragraph (e) of this section, with railroad rules and practices for the safe operation of trains shall not be currently certified as a locomotive engineer.

(c)(1) A certified locomotive engineer 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 Designated Supervisor of Locomotive Engineers, a certified locomotive engineer pilot or instructor engineer who is monitoring, piloting, or instructing a locomotive engineer and fails to take appropriate action to prevent a violation of paragraph (e) of this section shall have his or her certification revoked. Appropriate action does not mean that a supervisor, pilot, or instructor must prevent a violation from occurring at all costs; the duty may be met by warning an engineer of a potential or foreseeable violation. A Designated Supervisor of Locomotive Engineers will not be held culpable under this section when this monitoring event is conducted as part of the railroad's operational compliance tests as defined in § 217.9 and § 240.303 of this chapter.

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

(h) Any or all periods of revocation provided in this section may consist of training.
(Revised requirement)

The burden for this requirement is included below under that of §240.117(i)(4). Consequently, there is no additional burden associated with it.

(i) Future eligibility to hold certificate. A person whose certification has been 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 (g)(3) of this section is for a period of one year or less;

(2) Certification was denied or revoked for reasons other than noncompliance with § 219.101 of this chapter;

(3) The person has been evaluated by a Designated Supervisor of Locomotive Engineers (DSLs) and determined to have received adequate remedial training;

(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 (g)(3) of this section has elapsed.

Training is a usual and customary procedure done by railroads on an ongoing basis. Consequently, there is no burden associated with this requirement.

FRA estimates that approximately 400 railroad crew members will complete mandatory training/retraining under the above requirement. A record will be kept of this training/retraining. It is estimated that it will take approximately five (5) minutes to complete the training/retraining record. Total annual burden for this requirement is 33 hours.

Respondent Universe:	80,000 locomotive engineers
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	400 trained/retrained crew member records
Annual Burden:	33 hours
Annual Cost:	\$1,823 (\$55.25 x 33 hrs.)

Calculation: 400 trained/retrained crew members/records x 5 min. = 33 hours

Total annual burden for this entire requirement is 33 hours.

§ 240.119 Criteria for consideration of data on substance abuse disorders and alcohol/drug rules compliance.

(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 this requirement is included under § 240.101/240.103/105 above. Consequently, there is no additional burden associated with this requirement.

(b) Each railroad, prior to initially certifying or recertifying any person as a locomotive engineer for any type of service, shall determine that the person meets the eligibility requirements of this section.

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

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. **(New Requirement)**

FRA estimates that approximately 400 written documents will be completed/kept on file with railroads, including a written evaluation document from its DAC about the person being evaluated as having or not having a substance abuse disorder, under the above requirement. It is estimated that it will take approximately 60 minutes to complete each document and then file it. Total annual burden for this requirement is 400 hours.

Respondent Universe:	696 railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	400 written DAC documents
Annual Burden:	400 hours
Annual Cost:	\$27,152 (\$67.88 x 400 hrs.)

Calculation: 400 written DAC documents x 60 min. = 400 hours

(d) Fitness requirement. (1) A person who has an active substance abuse disorder shall be denied certification or recertification as a locomotive engineer.

(2) Except as provided in paragraph (g) of this section, a certified locomotive engineer 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

§ 240.115), the employee may, if otherwise eligible, voluntarily self-refer for substance counseling or treatment under the policy required by § 219.1001(b)(1) of this chapter; and the railroad shall then treat the substance abuse evaluation as confidential except with respect to ineligibility for certification. **(Formerly section §240.119(b)(3))**

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

Respondent Universe:	80,000 locomotive engineers
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	50 self-referrals
Annual Burden:	4 hours
Annual Cost:	\$221 (\$55.25 x 4 hrs.)

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

(e) Prior alcohol/drug conduct; Federal rule compliance. (1) In determining whether a person may be or remain certified as a locomotive engineer, 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 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. *(Note: As stated in OMB No. 2130-0526, FRA believes there will be zero (0) refusals to provide breath or body fluid sample for testing. Consequently, there is no burden associated with this requirement.)*

(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 400 written determinations that the most recent incident has occurred will be completed under the above requirement. It is estimated that it will take approximately 30 minutes to complete each written determination. Total annual burden for this requirement is 200 hours.

Respondent Universe:	696 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	400 written determinations
Annual Burden:	200 hours
Annual Cost:	\$13,576 (\$67.88 x 200 hrs.)

(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 200 notifications to persons currently certified will be made under the above requirement. It is estimated that it will take approximately 45 minutes to complete each notification. Total annual burden for this requirement is 150 hours.

Respondent Universe:	696 railroads
Burden time per response:	45 minutes
Frequency of Response:	On occasion
Annual number of Responses:	200 notifications
Annual Burden:	150 hours
Annual Cost:	\$10,182 (\$67.88 x 150 hrs.)

Calculation: 200 notifications x 45 min. = 150 hours

(4) The period of ineligibility described in this section 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, 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 §219.101 of this chapter and the engineer 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, the person shall be ineligible to hold a certificate for a period of five years.

The burden for co-worker reports is already covered under OMB No. 2130-0526, Control of Alcohol and Drugs in Railroad Operations (under § 219.405). Consequently, there is no additional burden associated with this requirement.

FRA estimates that approximately 680 engineers will waive investigation under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each waiver. Total annual burden for this requirement is 23 hours.

Respondent Universe:	80,000 locomotive engineers
Burden time per response:	2 minutes
Frequency of Response:	On occasion
Annual number of Responses:	680 engineer investigation waivers
Annual Burden:	23 hours
Annual Cost:	\$1,271 (\$55.25 x 23 hrs.)

Calculation: 680 engineer investigation waivers x 2 min. = 23 hours

(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;

(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.

The burden for co-worker reports is already covered under OMB No. 2130-526, Control of Alcohol and Drugs in Railroad Operations (under § 219.403/219.405). Consequently, there is no additional burden associated with this requirement.

(g) *Confidentiality protected.* Nothing in this part shall affect the responsibility of the railroad under § 219.1003(f) of this chapter (“Voluntary Referral Policy”) to treat voluntary referrals for substance abuse counseling and treatment as confidential; and the certification status of a locomotive engineer who is successfully assisted under the procedures of that section shall not be adversely affected. However, the railroad shall include in its voluntary referral policy required to be issued pursuant to § § 219.1003(f) of this chapter a provision that, at least with respect to a certified locomotive engineer or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the SAP or 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 Voluntary Referral Policy is already covered under OMB No. 2130-0526, Control of Alcohol and Drugs in Railroad Operations (under § 219.403). Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is 777 hours (400 + 4 + 200 + 150 + 23).

Criteria for Vision and Hearing Acuity Data (§ 240.121)

(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 this requirement is already included above under § 240.101/103/105). Consequently, there is no additional burden associated with this requirement.

(b) Fitness requirement. In order to be currently certified as a locomotive engineer, except as permitted by paragraph (e) of this section, a person's vision and hearing shall meet or exceed the standards prescribed in this section and appendix F 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.

(c) Except as provided in paragraph (e), 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 F to this part.

The burden for this requirement is included under that of § 240.207 below.

Consequently, there is no additional burden associated with this requirement.

(d) Except as provided in paragraph (e) 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 are maintained and used in accordance with ANSI S3.6-2004 "Specifications for Audiometers."

The burden for this requirement is included under that of § 240.207 below.

Consequently, there is no additional burden associated with this requirement.

(e) A person not meeting the thresholds in paragraphs (c) and (d) of this section shall, upon request, be subject to further medical evaluation by a railroad's medical examiner to determine that person's ability to safely operate a locomotive. In accordance with the guidance prescribed in appendix F to this part, a person is entitled to one retest without making any showing and to another retest if the person provides evidence substantiating that circumstances have changed since the last test to the extent that the person could now

arguably operate a locomotive or train safely. The railroad shall provide its medical examiner with a copy of this part, including all appendices. If, after consultation with one of the railroad's designated supervisors of locomotive engineers, the medical examiner concludes that, despite not meeting the threshold(s) in paragraphs (c) and (d) of this section, the person has the ability to safely operate a locomotive, the person may be certified as a locomotive engineer and such certification conditioned on any special restrictions the medical examiner determines in writing to be necessary.

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

Subsequent Years

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

Respondent Universe:	20 new railroads
Burden time per response:	15 minutes
Frequency of Response:	One-time
Subsequent Years # Responses:	20 copies
Subsequent Years Burden:	5 hours
Annual Cost:	\$339 (\$67.88 x 5 hrs.)

Calculation: 20 copies x 15 min. = 5 hours

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

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

Respondent Universe:	696 railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	20 reports
Annual Burden:	20 hours
Annual Cost:	\$1,358 (\$67.88 x 20 hrs.)

Calculation: 20 reports x 1 hr. = 20 hours

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

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

Respondent Universe:	696 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	10 notifications
Annual Burden:	3 hours
Annual Cost:	\$166 (\$55.25 x 3 hrs.)

Calculation: 10 notifications x 15 min. = 3 hours

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

Training (§ 240.123)

(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 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 this requirement is already included above under § 240.101/103/105).

Consequently, there is no additional burden associated with this requirement.

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

The burden for certification is included under that of the certification program in §§ 240.201/209/211/213 and 240.303. Consequently, there is no additional burden associated with this requirement.

(c) A railroad that elects to train a previously untrained person to be a locomotive engineer shall provide initial training which, at a minimum complies with the requirements of § 243.101 of this chapter and:

(1) Is composed of classroom, skill performance, and familiarization with physical characteristics components;

(2) Includes both knowledge and performance skill testing;

(3) Is conducted under the supervision of a qualified class instructor;

(4) Is subdivided into segments or periods of appropriate duration to effectively cover the following subject matter areas: (i) Personal safety, (ii) Railroad operating rules and *procedures*, (iii) Mechanical condition of equipment, (iv) Train handling procedures (including use of locomotive and train brake systems), (v) Familiarization with physical characteristics including train handling, and (vi) Compliance with Federal *safety laws*, regulations, and *orders*; (5) Is conducted so that the performance skill component shall meet the following conditions: (i) Be under the supervision of a qualified instructor engineer located in the same control compartment whenever possible; (ii) Place the student engineer at the controls of a locomotive for a significant portion of the time; and (iii) Permit the student to experience whatever variety of types of trains are normally operated by the railroad. **(Revised Requirement)**

The burden for certification is included under that of the certification program in §§ 240.201/209/211/213 and 240.303. Consequently, there is no additional burden associated with this requirement.

(d) Pursuant to paragraphs (b) and (c) of this section, a person may acquire familiarity with the physical characteristics of a territory through the following methods if the specific conditions included in the description of each method are met. The methods used by a railroad for familiarizing its engineers with new territory while starting up a new

railroad, starting operations over newly acquired rail lines, or reopening of a long unused route, shall be described in the railroad's locomotive engineer qualification program required under this part and submitted according to the procedures described in Appendix B to this part.

(1) If ownership of a railroad is being transferred from one company to another, the engineer(s) of the acquiring company may receive familiarization training from the selling company prior to the acquiring railroad commencing operation; or

(2) Failing to obtain familiarization training from the previous owner, opening a new rail line, or reopening an unused route would require that the engineer(s) obtain familiarization through other methods. Acceptable methods of obtaining familiarization include using hyrail trips or initial lite locomotive trips in compliance with what is specified in the railroad's locomotive engineer qualification program required under this part and submitted according to the procedures described in Appendix B to this part.

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

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

The burden for this requirement is already included above under § 240.101/103/105). Consequently, there is no additional burden associated with this requirement.

(f) A railroad's program shall include the procedures used to qualify or requalify a person on the physical characteristics.

The burden for this requirement is already included above under § 240.101/103/105). Consequently, there is no additional burden associated with this requirement.

Criteria for Testing Knowledge (§ 240.125)

(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 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 this requirement is already included above under § 240.101/103/105). Consequently, there is no additional burden associated with this requirement.

(b) A railroad must have procedures for testing a person being evaluated for qualification

as a locomotive engineer in either train or locomotive service to determine that the person has sufficient knowledge of the railroad's rules and practices for the safe operation of trains.

The burden for this requirement is already included above under § 240.101/103/105). Consequently, there is no additional burden associated with this requirement.

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

Under 5 CFR 1320.3(h)(7), OMB's Implementing Guidance of the 1995 Paperwork Reduction Act (PRA), examinations fall under one of the exemptions pertaining to "information." This section of the Guidance states the following is not considered "information":

. . . examinations designed to test the aptitude, abilities, or knowledge of the persons tested and the collection of information for identification or classification in connection with such examination. Consequently, there is no additional burden associated with it.

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

The burden for these requirements is included under that for the testing requirements listed below, specifically § 240.209/213 under the recordkeeping section. 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. **(New Requirement)**

Under 5 CFR 1320.3(h)(7), OMB's Implementing Guidance of the 1995 Paperwork Reduction Act (PRA), examinations fall under one of the exemptions pertaining to "information." This section of the Guidance states the following is not considered "information":

. . . examinations designed to test the aptitude, abilities, or knowledge of the persons tested and the collection of information for identification or classification in connection with such examination. Consequently, there is no 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 for the testing requirements listed below under § 240.209/213 under the recordkeeping section. Consequently, there is no additional burden associated with this requirement.

Criteria for Examining Skill Performance (§ 240.127)

(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 this requirement is already included above under § 240.101/103/105 above. Consequently, there is no additional burden associated with this requirement.

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

(c) The testing procedures selected by the railroad shall be: (1) Designed to examine a person's skills in safely operating locomotives or trains including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains when performing the most demanding class or type of service that the person will be permitted to perform; (2) Conducted by a Designated Supervisor of Locomotive Engineers, who does not need to be qualified on the physical characteristics of the territory over which the test will be conducted; (3) Cover the following subjects during the test period: (i) Operating practices; (ii) Equipment inspection practices; (iii) Train handling practices; and (iv) Compliance with Federal safety rules; (4) Be of sufficient length to effectively evaluate the person's ability to operate trains; and (5) Conducted when the person either (i) Is at the controls of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification or (ii) Is at the controls of a Type I or Type II simulator programmed to replicate the responsive behavior of the type of train normally operated on that railroad or segment of railroad and which this person might be

permitted or required by the railroad to operate in the normal course of events after certification.

The burden for this requirement is included below under § 240.127(f). Consequently, there is no additional burden associated with this requirement.

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

The burden for this requirement is included under that for the testing requirements listed below, specifically § 240.211/213 under the recordkeeping section. 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 a person fails an initial examination or re-examination of his or her performance skills test in accordance with the procedures required under § 240.211.

The burden for this requirement is included below under § 240.127(f). Consequently, there is no additional burden associated with this requirement.

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

FRA estimates that approximately 25% of the estimated 696 railroads will have to modify their certification programs to comply with the above requirements and the two new requirements spelled out in § 240.129 below. It is estimated that it will take the large/medium railroads (18 Class I and Class II) a total of approximately 48 hours to amend their programs to meet the above requirements and the two new the requirements in § 240.129 below and that it will take the smaller railroads (171 Class III) a total of approximately eight (8) hours to amend their programs to meet the above requirements and the two new requirements in § 240.129 below. Total annual burden for these requirements is 2,232 hours.

Respondent Universe:	696 railroads
Burden time per response:	48 hours; 8 hours
Frequency of Response:	On occasion
Annual number of Responses:	189 amended programs
Annual Burden:	2,232 hours
Annual Cost:	\$151,508
	(\$67.88 x 2,232 hrs.)

Calculation: 18 amended programs x 48 hrs. + 171 amended programs x 8 hrs. = 2,232 hours

Total annual burden for this entire requirement is 2,232 hours.

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

(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 this requirement is already included above under § 240.101/103/105). Consequently, there is no additional burden associated with this requirement.

(b) Each railroad shall have a program to monitor the operational performance of those it has determined as qualified as a locomotive engineer in any class of service. The program shall include procedures to address the testing of certified engineers who are not given both an operational monitoring observation and unannounced compliance test in a calendar year pursuant to paragraph (h) of this section. At a minimum, such procedures shall include the following:

(1) A requirement that operational monitoring observation and an unannounced compliance test must be conducted within 30 days of a return to service as a locomotive engineer; and

The burden for this requirement is already included above under § 240.101/103/105). Consequently, there is no additional burden associated with this requirement.

(2) The railroad must retain a written record indicating the date that the engineer stopped performing service that requires certification pursuant to this part, the date that the engineer returned to performing service that requires certification pursuant to this part, and the dates that the operational monitoring observation and unannounced compliance test were performed. **(New Requirement)**

FRA estimates that approximately 1,000 records per year will be kept by railroads under the above requirement. It is estimated that it will take approximately five (5) minutes to complete and retain the necessary record. Total annual burden for this requirement is 83.3333 or 83 hours (rounded).

Respondent Universe:	80,000 locomotive engineers
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	1,000 records
Annual Burden:	83 hours
Annual Cost:	\$5,634
	(\$67.88 x 83 hrs.)
<u>Calculation:</u>	1,000 records x 5 min. = 83 hours

(c) The procedures for the operational monitoring observation shall:

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

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

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

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

(e) The unannounced compliance test program must:

(1) Be designed so that, except for as provided in paragraph (h) of this section, each locomotive engineer shall be given at least one unannounced test each calendar year;

(2) Designed to test:

(i) Engineer compliance with provisions of the railroad's operating rules that require response to signals that display less than a "clear" aspect, if the railroad operates with a

signal system that must comply with Part 236 of this chapter;

(ii) Engineer compliance with provisions of the railroad's operating rules, timetable or other mandatory directives that require affirmative response by the locomotive engineer to less than favorable conditions than that which existed prior to initiation of the test; or
(iii) Engineer compliance with provisions of the railroad's operating rules, timetable or other mandatory directives violation of which by engineers were cited by the railroad as the cause of train accidents or train incidents in accident reports filed in compliance with part 2225 of this chapter in the preceding calendar year;

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

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

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

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

The burden for this requirement is already included above under § 240.101/03/105 above). Consequently, there is no additional burden associated with this requirement.

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

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

(h) A certified engineer who is not performing a service that requires certification pursuant to this part need not be given an unannounced compliance test or operational monitoring observation. However, when the certified engineer returns to a service that requires certification pursuant to this part, that certified engineer must be tested pursuant to this section and § 240.303 within 30 days of his or her return. **(New Requirement)**

The burden for this requirement is included above under § 240.303 below. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this requirement is 83 hours.

List of Designated Supervisor of Locomotive Engineers and Certified Locomotive Engineers § 240.201/221)

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

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

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

All 696 railroads will have such a list. This list must be updated at least annually. It is estimated that it will take approximately 30 minutes per respondent to update the list. Total annual burden for this requirement is 348 hours.

Respondent Universe:	696 railroads
Burden time per response:	30 minutes
Frequency of Response:	Annually
Annual number of Responses:	696 updates
Annual Burden:	348 hours
Annual Cost:	\$23,622
	(\$67.88 x 348 hrs.)

Calculation: 696 updates x 30 min. = 348 hours

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

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

(2) Each railroad must issue a certificate that complies with § 240.223 to each person that it designates as qualified under the provisions of paragraph (b) of this section.

The burden for this requirement is included under that of § 240.201/217/223/301 below. Consequently, there is no additional burden associated with this requirement.

Each railroad must maintain a written record identifying each person it designates as a certified locomotive engineer. That listing of certified engineers must indicate the class of service the railroad determines each person is qualified to perform and the date of the railroad's certification decision. The listing required by paragraphs (a), (b), and (c) of § 240.221 must be updated at least annually. The record/list required under § 240.221 must be kept at the divisional or regional headquarters of the railroad, and must be available for inspection or copying by FRA during regular business hours.

All 696 railroads are required to prepare a record or list identifying their qualified locomotive engineers. It is estimated that it will take each railroad approximately 60 minutes to annually update its list/record. Total annual burden for updating the list of qualified locomotive engineers is 696 hours.

Respondent Universe:	696 railroads
Burden time per response:	60 minutes
Frequency of Response:	Annually
Annual number of Responses:	696 updated lists/records
Annual Burden:	696 hours
Annual Cost:	\$47,244
	(\$67.88 x 696 hrs.)

Calculation: 696
update
d
lists/re
cords x
60
min. =
696
hours

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

(d) No railroad shall permit or require any person to operate a locomotive in any class of

locomotive or train service unless that person has been certified as a qualified locomotive engineer and issued a certificate that complies with § 240.223.

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

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

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

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

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

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

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

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

Total annual burden for this entire requirement is 1,044 hours (348 + 696).

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

(a) Each railroad must issue a certificate that complies with § 204.223 to each person that it designates as a qualified locomotive engineer under paragraph b of this section. As a minimum, each certificate issued must: (1) Identify the railroad or parent company that is issuing the certificate; (2) Indicate that the railroad, acting in conformity with this part, has determined that the person to whom it is being issued has been determined to be qualified to operate a locomotive; (3) Identify the person to whom it is being issued (including the person's name, date of birth, and employee identification number, and either a physical description or photograph of the person); (4) Identify any conditions or limitations, including the class of service or conditions to ameliorate vision or hearing acuity deficiencies, that restrict the person's operational authority; (5) Show the date of its issuance; (6) Be signed by a supervisor of locomotive engineers or other individual designated in accordance with paragraph (b) of this section; (7) Show the date of the person's last operational compliance test as required by § 240.129(c) and § 240.303(b), unless that information is reflected on supplementary documents which the locomotive engineer has in his/her possession when operating a locomotive; and (8) Be of sufficiently small size to permit being carried in an ordinary pocket wallet.

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

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

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

Thus, the Certification Program was phased-in over a three-year period. FRA estimates that approximately one-third of the 80,000 candidates have their certificates renewed annually. Therefore, approximately 26,000 certificates will be issued annually. It is

estimated that it will take approximately five (5) minutes to prepare each certificate. Total annual burden for this requirement is 2,167 hours.

Respondent Universe:	53,000 candidates
Burden time per response:	5 minutes
Frequency of Response:	Triennially
Annual number of Responses:	26,000 certificates
Annual Burden:	2,167 hours
Annual Cost:	\$147,096 (\$67.88 x 2,167 hrs.)

Calculation: 26,000 certificates x 5 min. = 2,167 hours

Total annual burden for this entire requirement is 2,167 hours.

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

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

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

Determinations Required as a Prerequisite to Certification (§ 240.203)

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

The burden for this requirement is included under that of § 240.115, § 240.117, § 240.119, § 240.121, § 240.123, § 240.125, and § 240.127, respectively. Consequently, there is no additional burden associated with this requirement.

Procedures for Determining Eligibility Based on Prior Safety Conduct (§ 240.205)

(a) Each railroad, prior to initially certifying or re-certifying any person as an engineer for any class of service other than student, shall determine that the person meets the eligibility requirements of § 240.115 involving prior conduct as a motor vehicle operator, § 240.117 involving prior conduct as a railroad worker, and § 240.119 involving substance abuse disorders and alcohol/drug rules compliance.

The burden for this requirement is already included under that of § 240.111 and § 240.115 above. Consequently, there is no additional burden associated with it.

(b) In order to make the determinations required under paragraph (a) of this section, a railroad must have on file documents pertinent to the determinations referred to in paragraph (a) of this section, including a written document from its DAC either reflecting his or her professional opinion that the person has been evaluated as not currently affected by a substance abuse disorder or that the person has been evaluated as affected by an active substance abuse disorder and is ineligible for certification.

Essentially under this section, each railroad must review the available information concerning the locomotive engineer candidate's motor vehicle driving record to determine if it reveals any incident(s) of unsafe conduct; i.e., a conviction for, or state action for cause to cancel, revoke, suspend, or deny a motor vehicle driver's license for the following: (1) operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance; and (2) refusal to undergo such testing as is required by State law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance. Each railroad is required to provide the data to the railroad's Employee Assistance Program (EAP) Counselor along with any information concerning the person's railroad service record, and must refer the person for evaluation to determine if the person has an active substance abuse disorder. The person must cooperate in the evaluation and must provide any requested records of prior counseling or treatment for review exclusively by the DAC in the context of such evaluation. Also, each railroad must review the available information concerning the locomotive engineer candidate's prior conduct as a railroad worker, and any information involving substance abuse disorders and alcohol/drug rules compliance.

FRA estimates that approximately 185 cases annually will be forwarded by the railroads to the DAC for review. FRA believes that, in all of the 185 cases, the candidate will have received some kind of counseling or treatment and must provide the DAC with the requested records. It is estimated that it will take approximately five (5) minutes for the employee to provide the data to the EAP Counselor. Total annual burden for this

requirement is 15 hours.

Respondent Universe:	696 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	185 records
Annual Burden:	15 hours
Annual Cost:	\$829 (\$55.25 x 15 hrs.)

Calculation: 185 records x 5 min. = 15 hours

Procedure for Making Determination on Vision/Hearing Acuity (Medical Certificate)
(§ 240.207)

(a.) Each railroad, prior to initially certifying or re-certifying any person as an engineer for any class of [train or locomotive] service, must determine that the person meets the standards for visual acuity and hearing acuity prescribed in § 240.121.

(b) In order to make the determination required under paragraph (a), 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; or

According to the regulation, a certificate is good for three years and, assuming that the railroads will re-certify 1/3 of the 80,000 candidates annually, approximately 26,000 medical examiner's certificates will be issued annually to the railroads. It is estimated that it will take approximately 60 minutes – 30 minutes each – for the visual and hearing tests and another 10 minutes for the preparation of a medical certificate. Total annual burden for this requirement is 30,333 hours.

Respondent Universe:	80,000 candidates
Burden time per response:	70 minutes
Frequency of Response:	Triennially
Annual number of Responses:	26,000 medical examiner's certificates
Annual Burden:	30,333 hours
Annual Cost:	\$2,059,004 (\$67.88 x 30,333 hrs.)

Calculation: 26,000 medical examiner's certificates x 70 min. = 30,333 hours

(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 20 written documents will be completed by railroad medical examiners that the person can nevertheless be certified under certain conditions under the above requirement. It is estimated that it will take approximately 15 minutes to complete each written document. Total annual burden for this requirement is five (5) hours.

Respondent Universe:	696 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	20 written documents
Annual Burden:	5 hours
Annual Cost:	\$339 (\$67.88 x 5 hrs.)

Calculation: 20 written documents x 15 min. = 5 hours

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

FRA estimates that approximately 20 written documents will be completed by railroad medical examiners that the person cannot safely operate a locomotive even with conditions attached under the above requirement. It is estimated that it will take approximately 15 minutes to complete each written document. Total annual burden for this requirement is five (5) hours.

Respondent Universe:	696 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	20 written documents
Annual Burden:	5 hours
Annual Cost:	\$339 (\$67.88 x 5 hrs.)

Calculation: 20 written documents x 15 min. = 5 hours

(c) Any examination required for compliance with this section shall be performed by or under the supervision of a medical examiner or a licensed physician's assistant such that:

- (1) A licensed optometrist or a technician responsible to that person may perform the portion of the examination that pertains to visual acuity; and
- (2) A licensed or certified audiologist or a technician responsible to that person may perform the portion of the examination that pertains to hearing acuity.
- (d) If the examination required under this section discloses that the person needs corrective lenses or a hearing aid, or both, either to meet the threshold acuity levels established in § 240.121 or to meet the lower threshold determined by the railroad’s medical examiner to be sufficient to safely operate a locomotive or train on that railroad, that fact must be noted on the certificate issued in accordance with the provisions of this part.

The burden for this requirement is included under that of § 240.201/207above. Consequently, there is no additional burden associated with this requirement.

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

FRA believes that the situation referenced above will occur rarely. It is estimated that the railroad’s medical examiner will make such a written determination in approximately 30 cases a year. It is estimated that it will take approximately two (2) hours for the medical examiner to complete the written determination explaining why that the person can safely operate the locomotive or train without using the corrective device. Total annual burden for this requirement is 60 hours.

Respondent Universe:	696 railroads
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	30 written determinations/decisions
Annual Burden:	60 hours
Annual Cost:	\$4,073
	(\$67.88 x 60 hrs.)

Calculation: 30 written determinations x 2 hrs. = 60 hours

Total annual burden for this entire requirement is 30,403 hours (30,333 + 5 + 5 + 60).

Procedures for Making Determination on Completion of Training Program (§ 240.213)

- (a) Each railroad, prior to the initial issuance of a certificate to any person as a train or locomotive service engineer, shall determine that the person has, in accordance with the requirements of §240.123 of this part, the knowledge and skills to safely operate a

locomotive or train in the most demanding class or type of service that the person will be permitted to perform.

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

(1) The person completed a training program that complies with §240.123 of this part;

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

The burden for this requirement is already included above under § 240.123 above. Consequently, there is no additional burden associated with it.

(3) A qualified Designated Supervisor of Locomotive Engineers has determined that the person is familiar with the physical characteristics of the railroad or its pertinent segments.

The burden for this requirement is already included above under § 240.209/213 below. Consequently, there is no additional burden associated with it.

Time limitations for making determinations (§ 240.217)

A railroad shall issue each person designated as a certified locomotive engineer a certificate that complies with § 240.223 no later than 30 days from the date of its decision to certify or recertify that person.

The burden for this requirement is included under that of § 240. 201 above. Consequently, there is no additional burden associated with this requirement.

Denial of certification (§ 240.219)

(a) A railroad must notify a candidate for certification or re-certification of information known to the railroad that forms the basis for denying the person certification and provide the person a reasonable opportunity to explain or rebut that adverse information in writing prior to denying certification. A railroad shall provide the locomotive engineer 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.

(Revised Requirement)

(b) This section does not require further opportunity to comment if the railroad's denial is based solely on factors addressed by §§240.115, 240.117, and 240.119 and the opportunity to comment afforded by those sections has been provided.

FRA currently estimates that there will be approximately 45 certification or re-certification cases annually where the candidate will be denied a certificate. It is further

estimated that it will take the railroad approximately one (1) hour to prepare and forward a letter to the employee, and approximately one (1) additional hour for the employee to prepare and forward a rebuttal response back to the railroad. Total annual burden for this requirement is 90 hours.

Respondent Universe:	26,000 candidates
Burden time per response:	1 hour + 1 hour
Frequency of Response:	On occasion
Annual number of Responses:	45 notification letters + 45 written rebuttal responses
Annual Burden:	90 hours
Annual Cost:	\$5,541 (\$67.88 x 45 hrs. + \$55.25 x 45 hrs.)

Calculation: 45 notification letters x 1 hr. + 45 written rebuttal responses x 1 hr. = 90 hours

Additionally, FRA estimates that approximately 45 written documents/records will be provided to locomotive engineer candidates under the above requirement. It is estimated that it will take approximately two (2) minutes to provide the written document/record. Total annual burden for this requirement is two (2) hours. (**New Requirement**)

Respondent Universe:	696 railroads
Burden time per response:	2 minutes
Frequency of Response:	On occasion
Annual number of Responses:	45 written documents/records
Annual Burden:	2 hours
Annual Cost:	\$136 (\$67.88 x 2 hrs.)

Calculation: 45 written documents/records x 2 min. = 2 hours

(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 locomotive engineer 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. (**Revised Requirement**)

FRA estimates that approximately 45 notifications/written explanations will be sent annually under the above requirement. It is estimated that it will take approximately one (1) hour to collect the necessary information, prepare the written documentation, and

serve the denial notification to the employee. Total annual burden for this requirement is 45 hours.

Respondent Universe:	696 railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	45 notifications/written explanations
Annual Burden:	45 hours
Annual Cost:	\$3,055
	(\$67.88 x 45 hrs.)

Calculation: 45 written explanations/notification x 1 hr. = 45 hours

(d) A railroad shall not deny the person's certification for failing to comply with a railroad operating rule or practice which constitutes a violation under § 240.117(e)(1) through (5) of this part if sufficient evidence exists to establish that an intervening cause prevented or materially impaired the engineer's ability to comply with that railroad operating rule or practice. **(New Requirement)**

The burden for this requirement is included under that of § 240.219(a) above. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is 137 hours (90 + 2 + 45).

Identification of qualified persons (§240.221)

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

(b) A railroad shall maintain a written record identifying each person designated as a certified locomotive engineer. That listing of certified engineers shall indicate the class of service the railroad determines each person is qualified to perform and date of the railroad's certification decision.

The burden for this requirement is included under that of § 240.201 above. Consequently, there is no additional burden associated with this requirement.

(c) If a railroad employs locomotive engineers working in joint operations territory, the list shall include person(s) determined by that railroad to be certified as locomotive engineer(s) and possessing the necessary territorial qualifications for the applicable territory in accordance with § 240.229.

The burden for this requirement is included under that of §§ 240.201/229. Consequently, there is no additional burden associated with this requirement.

(d) The listing required by paragraphs (a), (b), and (c) 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.

The burden for this requirement is included under that of § 240.201/229. Consequently, there is no additional burden associated with this requirement.

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

- (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 information technology security programs and data storage is included above under § 240.215(j). Consequently, there is no further burden associated with it.

FRA estimates that approximately 125 railroad record copies will be provided to FRA representatives upon agency request under the above requirement. It is estimated that it will take approximately two (2) hours to provide the record copies. Total annual burden for this requirement is 250 hours.

Respondent Universe:	696 railroads
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	125 record copies
Annual Burden:	250 hours
Annual Cost:	\$16,970
	(\$67.88 x 250 hrs.)

Calculation: 125 record copies x 2 hrs. = 250 hours

Total annual burden for this entire requirement is 250 hours.

Criteria for the certificate (§240.223)

(a) As 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 qualified to operate a locomotive;
- (3) Identify the person to whom it is being issued (including the person's name, *year of birth* and employee identification number, and either a physical description or photograph of the person);
- (4) Identify any conditions or limitations, including the class of service or conditions to ameliorate vision or hearing acuity deficiencies, that restrict the person's operational authority;
- (5) Show the *effective date* of each certification held;
- (6) Be signed by a supervisor of locomotive engineers or other individual designated in accordance with paragraph (b) of this section;
- (7) Show the date of the person's last operational monitoring event as required by §240.129(c) and §240.303(b), unless that information is reflected on supplementary

documents which the locomotive engineer has in his or her possession when operating a locomotive; and

(8) Be of sufficiently small size to permit being carried in an ordinary pocket wallet.

The burden for this requirement is included under that of § 240.201/217/223/301. Consequently, there is no additional burden associated with this requirement.

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

FRA estimates that approximately 100 written designations will be made by railroad under the above requirement. It is estimated that it will take approximately 15 minutes make each designation. Total annual burden for this requirement is 25 hours.

Respondent Universe:	696 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	100 written designations
Annual Burden:	25 hours
Annual Cost:	\$1,697 (\$67.88 x 25 hrs.)

Calculation: 100 written designations x 15 min. = 25 hours

(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.

FRA estimates that approximately 100 notations (e.g., as qualified for joint operations) will be made by railroads on locomotive engineer certificates under the above requirement. It is estimated that it will take approximately 15 minutes make each notation. Total annual burden for this requirement is 25 hours.

Respondent Universe:	321 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	100 notations
Annual Burden:	25 hours
Annual Cost:	\$1,697 (\$67.88 x 25 hrs.)

Calculation: 100 designations x 15 min. = 25 hours

Total annual burden for this entire requirement is 50 hours (25 + 25).

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

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

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

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

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

Reliance on Qualification Requirements of Other Countries (Canadian Certification Data) (§ 240.227)

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

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

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

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

Requirements for Joint Operations Territory (§ 240.229)

(a) Except for minimal joint operations provided for in paragraph (f) of this section, a railroad that employs locomotive engineers working in joint operations shall not permit or require any person to operate a locomotive in any class of train or engine service unless that railroad determines that the person has been certified as a qualified locomotive engineer for the purposes of joint operations and issued a certificate that complies with § 240.223.

(b) Each railroad that employs locomotive engineers working in joint operations shall certify a person as a qualified locomotive engineer for the purposes of joint operations either by making the determinations required under subpart C of this part or by relying on the certification issued by another railroad under this part.

(c)(3) Each locomotive engineer who is called to operate on another railroad must be qualified on the segment of track upon which he/she will operate in accordance with the requirements set forth by the controlling railroad, and must immediately notify the railroad upon which he or she is employed if he/she is not qualified to perform that service.

FRA estimates that approximately 321 railroads operate jointly over territory. FRA estimates that 1% (260) of the 26,000 locomotive engineers working for these railroads will notify their employer annually that they are not qualified to perform on a given segment of track in accordance with the controlling railroad's requirements. FRA estimates that each call (radio/phone) will take approximately five (5) minutes. Total annual burden for this requirement is 22 hours.

Respondent Universe:

321 railroads

Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	260 calls (radio/phone)
Annual Burden:	22 hours
Annual Cost:	\$1,216
	(\$67.88 x 22 hrs.)

Calculation: 260 calls x 5 min. = 22 hours

(d) A railroad that controls joint operations and certifies locomotive engineers from a different railroad may comply with the requirements of paragraph (a) of this section by noting its supplemental certification decision on the original certificate as provided for in §240.223(c).

The burden for this requirement is included under that of § 240.223(c) above. Consequently, there is no additional burden associated with this requirement.

Replacement of certificates (§ 240.301)

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

FRA estimates that approximately 2,000 certificates will be lost, stolen, or mutilated and thus will need to be replaced under the above requirement. It is estimated that it will take approximately 30 minutes to replace each certificate. Total annual burden for these requirements is 1,000 hours.

Respondent Universe:	696 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	2,000 replacement certificates
Annual Burden:	1,000 hours
Annual Cost:	\$67,880
	(\$67.88 x 1,000 hrs.)

Calculation: 2,000 replacement certificates x 30 min. = 1,000 hours

(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 supervisor of locomotive engineers or other individual designated in accordance with § 240.223(b). Temporary replacement

certificates may be delivered electronically and are valid for a period no greater than 30 days. **(New Requirement)**

As noted above, FRA estimates that approximately 2,000 certificates will be lost, stolen, or mutilated, and thus approximately 2,000 temporary replacement certificates will be issued by railroads under the above requirement. It is estimated that it will take approximately 30 minutes to issue each replacement certificate. Total annual burden for these requirements is 1,000 hours.

Respondent Universe:	696 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	2,000 temporary replacement certificates
Annual Burden:	1,000 hours
Annual Cost:	\$67,880 (\$67.88 x 1,000 hrs.)

Calculation: 2,000 temporary replacement certificates x 30 min. =
1,000 hours

Total annual burden for these requirements is 2,000 hours (1,000 + 1,000).

Operational Monitoring Requirements (§ 240.303)

(a) Each railroad to which this part applies shall, prior to FRA approval of its program in accordance with §240.201, have a program to monitor the conduct of its certified locomotive engineers by performing both operational monitoring observations and by conducting unannounced operating rules compliance tests.

The burden for certification programs, including a program to monitor the conduct of its certified locomotive engineers by performing both operational monitoring observations and by conducting unannounced operating rules compliance tests, is covered under §§ 240.101/103 above. Consequently, there is no additional burden associated with this requirement.

(b) The program shall be conducted so that each locomotive engineer, except for as provided in § 240.129(h), shall be given at least one operational monitoring observation by a qualified supervisor of locomotive engineers in each calendar year.

The burden for this requirement is included under that of § 240.303. Consequently, there is no additional burden associated with it.

(c) The program shall be conducted so that each locomotive engineer, except for as provided in § 240.129(h), shall be given at least one unannounced, compliance test each calendar year.

(d) The unannounced test program shall:

(1) Test engineer compliance with:

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

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

(iii) Provisions of the railroad's operating rules, timetable or other mandatory directives the violations of which by engineers were cited by the railroad as the cause of train accidents or train incidents in accident reports filed in compliance with part 225 of this chapter for the preceding year;

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

(3) Be conducted so that individual tests are administered without prior notice to the locomotive engineer being tested; and

(4) Be conducted so that the results of the test are recorded on the certificate and entered on the record established under §240.215 within 30 days of the day the test is administered.

The burden for annual operational monitoring observations and annual unannounced operating rules compliance tests is included under the testing requirements of §§ 240.301/303 below. Consequently, there is no additional burden associated with this requirement.

Prohibited Conduct (§ 240.305)

Each locomotive engineer who has received a certificate required under this part shall:

(1) Have that certificate in his or her possession while on duty as an engineer; 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, (**New Requirement**)

(iii) An officer of the issuing railroad, or

(iv) An officer of another railroad when operating a locomotive or train in joint operations territory.

FRA estimates that approximately 2,500 locomotive engineer certificates will display their certificates after being requested to do so under the above requirement. It is estimated that it will take approximately five (5) minutes to display each certificate. Total annual burden for these requirements is 208 hours.

Respondent Universe:	696 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	2,500 displayed certificates
Annual Burden:	208 hours
Annual Cost:	\$11,492 (\$55.25 x 208 hrs.)

Calculation: 2,500 displayed certificates x 5 min. = 208 hours

Railroad Oversight Responsibilities (§ 240.309)

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

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

Respondent Universe:	15 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	6 annotations
Annual Burden:	2 hours

Annual Cost: \$136 (\$67.88
x 2 hrs.)

Calculation: 6 annotations x 15 minutes = 2 hours

TESTING REQUIREMENTS

Procedures for Making Determination on Knowledge (§ 240.209/213) (Written Test)

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

(b) In order to make the determination required by paragraph (a) of this section, a railroad must have written documentation showing that the person either: (1) exhibited his or her knowledge by achieving a passing grade in testing that complies with this part; or (2) did not achieve a passing grade in such testing.

Under 5 CFR 1320.3(h)(7), OMB's Implementing Guidance of the 1995 Paperwork Reduction Act (PRA), examinations fall under one of the exemptions pertaining to "information." This section of the Guidance states the following is not considered "information": . . . examinations designed to test the aptitude, abilities, or knowledge of the persons tested and the collection of information for identification or classification in connection with such examination. Consequently, there is no additional burden associated with this requirement.

However, there is a burden for the required written documentation.

FRA estimates that approximately 26,000 written documents or records of tests (1/3 of the total of 80,000 candidates tested) will be kept annually under the above requirement. It is estimated that it will take approximately five (5) minutes to prepare the required written documentation or record. Total annual burden for this requirement is 2,167 hours.

Respondent Universe:	80,000 candidates
Burden time per response:	5 minutes
Frequency of Response:	Triennially
Annual number of Responses:	26,000 written documents/records
Annual Burden:	2,167 hours
Annual Cost:	\$119,727 (\$55.25 x 2167 hrs.)

Calculation: 26,000 written documents/records x 5 min. = 2,167 hours

(c) If a person fails to achieve a passing score under the testing procedures required by this part, no railroad shall permit or require that person to operate a locomotive as a locomotive or train service engineer prior to that person's achieving a passing score during a re-examination of his/her knowledge.

Again, as stipulated above, there is a burden for the written record/documentation of the re-examination passing score.

FRA estimates that approximately 26 persons will fail to achieve a passing score and will need to take a retest showing he/she demonstrated the necessary knowledge under the above requirement. A written document or record will be kept. It is estimated that it will take approximately five (5) minutes complete the written document or record. Total annual burden for this requirement is two (2) hours.

Respondent Universe:	696 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	26 retest records
Annual Burden:	2 hours
Annual Cost:	\$111 (\$55.25 x 2 hrs.)

Calculation: 26 retest records x 5 min. = 2 hours

Total annual burden for this requirement is 2,169 hours (2,167 + 2).

Procedures for Making Determination on Performance Skills (§ 240.211/ 213)
(Performance Test)

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

(b) In order to make this determination, a railroad must have written documentation showing the person either: (1) exhibited his/her knowledge by achieving a passing grade in testing that complies with this part; or (2) did not achieve a passing grade in such

testing.

Under 5 CFR 1320.3(h)(7), OMB’s Implementing Guidance of the 1995 Paperwork Reduction Act (PRA), examinations fall under one of the exemptions pertaining to “information.” This section of the Guidance states the following is not considered “information”: . . . examinations designed to test the aptitude, abilities, or knowledge of the persons tested and the collection of information for identification or classification in connection with such examination.

FRA estimates that approximately 26,000 (1/3 of 80,000 candidates tested) written documents or records of tests will be kept annually under the above requirement. It is estimated that it will take a total of approximately five (5) minutes to prepare the required written documentation/records. Total annual burden for this requirement is 2,167 hours.

Respondent Universe:	80,000 candidates
Burden time per response:	5 minutes
Frequency of Response:	Triennially
Annual number of Responses:	26,000 written documents/records
Annual Burden:	2,167 hours
Annual Cost:	\$119,727 (\$55.25 x 2,167 hrs.)

Calculation: 26,000 tests x 5 min. = 2,167 hours

(c) If a person fails to achieve a passing score under the testing procedures required by this part, no railroad shall permit or require that person to operate a locomotive as a locomotive or train service engineer prior to that person’s achieving a passing score during a re-examination of performance skills. No railroad shall permit a designated supervisor of locomotive engineers to test, examine or evaluate his/her own performance skills when complying with this section.

Again, stipulated in the requirement above, there is a burden for the written documentation.

FRA estimates that approximately 26 persons will fail to achieve a passing score and will need to take a retest showing he/she demonstrated the necessary knowledge under the above requirement. A written document or record will need to be kept. It is estimated that it will take approximately five (5) minutes to complete the written document. Total annual burden for this requirement is two (2) hours.

Respondent Universe:	696 railroads
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Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	26 retests/written documents
Annual Burden:	2 hours
Annual Cost:	\$111 (\$55.25 x 52 hrs.)

Calculation: 26 written documents/records x 5 min. = 2 hours

Total annual burden for this requirement is 2,169 hours (2,167 + 2).

Annual Operational Monitor Observation (§ 240.303)

(a) Each railroad to which this part applies must, prior to FRA approval of its program in accordance with § 240.201, have a program to monitor the conduct of its certified locomotive engineers by performing both operational monitoring observations and by conducting unannounced operating rules compliance tests.

(b) The program must be conducted so that each locomotive engineer, except for as provided in § 240.129(h), must be given at least one operational monitoring observation by a qualified supervisor of locomotive engineers in each calendar year.

Under 5 CFR 1320.3(h)(7), OMB’s Implementing Guidance of the 1995 Paperwork Reduction Act (PRA), examinations fall under one of the exemptions pertaining to “information.” This section of the Guidance states the following is not considered “information”: . . . examinations designed to test the aptitude, abilities, or knowledge of the persons tested and the collection of information for identification or classification in connection with such examination.

Approximately 80,000 operational monitoring observation tests will be performed annually. A record will need to be kept. FRA estimates that it will take approximately five (5) minutes to prepare the record of the test. Total annual burden for this requirement is 6,667 hours.

Respondent Universe:	80,000 candidates
Burden time per response:	5 minutes
Frequency of Response:	Annually
Annual number of Responses:	80,000 tests/records
Annual Burden:	6,667 hours
Annual Cost:	\$368,352 (\$55.25 x 6,667hrs.)

Calculation: 53,000 tests/documents x 5 min. = 6,667 hours

Annual Operating Rules Compliance Test/Observation (§ 240.303)

The program must be conducted so that each locomotive engineer, except for as provided in § 240.129(h), shall be given at least one unannounced, compliance test each calendar year.

The unannounced test program shall:

(1) Test engineer compliance with:

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

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

(iii) Provisions of the railroad's operating rules, timetable or other mandatory directives the violations of which by engineers were cited by the railroad as the cause of train accidents or train incidents in accident reports filed in compliance with part 225 of this chapter for the preceding year;

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

(3) Be conducted so that individual tests are administered without prior notice to the locomotive engineer being tested; and

(4) Be conducted so that the results of the test are recorded on the certificate and entered on the record established under §240.215 within 30 days of the day the test is administered.

Under 5 CFR 1320.3(h)(7), OMB's Implementing Guidance of the 1995 Paperwork Reduction Act (PRA), examinations fall under one of the exemptions pertaining to "information." This section of the Guidance states the following is not considered "information": . . . examinations designed to test the aptitude, abilities, or knowledge of the persons tested and the collection of information for identification or classification in connection with such examination.

Approximately 80,000 compliance tests will be performed annually. A record will be kept under the above requirement. It is estimated that it will take approximately five (5) minutes to prepare the written documentation of the test. Total annual burden for this requirement is 6,667 hours.

Respondent Universe:	80,000 candidates
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	80,000 test records
Annual Burden:	6,667 hours
Annual Cost:	\$368,352 (\$55.25 x 6,667hrs.)

Calculation: 80,000 test records x 5 min. = 6,667 hours

RECORDKEEPING REQUIREMENTS

Retaining Information Supporting Determinations (§ 240.215)

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

(b) The information concerning eligibility that the railroad must retain includes: (1) Any relevant data from the railroad's records concerning the person's prior safety conduct;

(2) any relevant data furnished by another railroad; (3) any relevant data furnished by a governmental agency concerning the person's motor vehicle driving record; (4) any relevant data furnished by the person seeking certification concerning his or her eligibility.

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

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

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

locomotive operations simulator to conduct the performance skills testing required under this part, the relevant data from the railroad's records concerning the person's success or failure on the performance skills test(s) that documents the relevant operating facts on which the determination was based including the observations and evaluation of the designated supervisor of locomotive engineers; and (3) the relevant data from the railroad's records concerning the person's success or failure on tests the railroad performed to monitor the engineer's operating performance in accordance with § 240.129.

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

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

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

Approximately 26,000 (1/3 of 80,000) individual records will be established and maintained annually by the railroads. It is estimated that it will take approximately 30 minutes per employee to prepare a file folder and place in it all the required information. Total annual burden for this requirement is 13,000 hours.

Respondent Universe:	696 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	26,000 records
Annual Burden:	13,000 hours
Annual Cost:	\$882,440
	(\$67.88 x 13,000 hrs.)

Calculation: 26,000 records x 30 min. = 13,000 hours

(j) 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; **(Revised Requirement)**

(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: **(Revised Requirement)**

(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 record;

(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 a 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

Railroads already established such information technology security and data storage systems years ago when the Conductor Certification Rule (Part 242) was finalized and published in November 2011. Consequently, there is no burden associated with this requirement.

(6) Information retrieved from the system can be easily produced in a printed format which can be readily provided to FRA representatives and authenticated by a designated representative of the railroad as a true and accurate copy of the railroad's records if requested to do so by FRA representatives. **(Current Requirement)**

Any agency requests for copies of information from railroads are already included in previous requirements listed throughout this document. Consequently, there is no additional burden associated with this requirement.

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

I. (c) Any locomotive engineer, who is notified or called to operate a locomotive or train and such operation would cause the locomotive engineer to exceed certificate limitations

set forth in accordance with subpart B of this part, must immediately notify the railroad that he or she is not qualified to perform that anticipated service and it shall be unlawful for the railroad to require such service.

FRA estimates that this will occur approximately 150 times a year. It is estimated that it will take approximately five (5) minutes for the employee to notify the railroad (this is done verbally rather than in writing) that the employee believes that he/she is not qualified to perform an anticipated service. Total annual burden for this requirement is 13 hours.

Respondent Universe:	80,000
	engineers/candidates
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	150 notifications
Annual Burden:	13 hours
Annual Cost:	\$718 (\$55.25
	x 13 hrs.)

Calculation: 150 notifications x 5 min. = 13 hours

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

FRA estimates that approximately 2% (1,600) of the 80,000 engineers will hold certificates from two or more railroads. It is estimated that approximately three (3) engineers will lose their certificate from at least one of the railroads. It is calculated that it will take the engineer approximately 30 minutes to prepare and forward his letter to the railroad informing them of his/her loss of certification from another railroad. Total annual burden for this requirement is one (1) hour.

Respondent Universe:	1,060 locomotive
	engineers
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	3 letters
Annual Burden:	2 hours
Annual Cost:	\$111 (\$55.25
	x 2 hrs.)

Calculation: 3

letters
x 30
min. =
2 hours

Total burden for this entire requirement is 15 hours (13 + 2).

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

(a) Except as provided in § 240.119(e), a railroad that certifies or re-certifies a person as a qualified locomotive engineer and, during the period that certification is valid, acquires reliable information regarding violations of § 240.117(e) or § 240.119(c) of this chapter, shall revoke the person's certificate as a qualified locomotive engineer.

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

(1) Upon receipt of reliable information regarding violations of § 240.117(e) or § 240.119(c) of this chapter immediately suspend the person's certificate;

(2) Prior to or upon suspending the person's certificate, provide notice of the reason for the suspension, the pending revocation, and an opportunity for a hearing before a presiding officer other than the investigating officer. The notice may initially be given either orally, or in writing. If given orally, it must be confirmed in writing and the written confirmation must be made promptly. Written confirmation which conforms to the notification provisions of an applicable collective bargaining agreement shall be deemed sufficient to satisfy the written confirmation requirements of this section. In the absence of an applicable collective bargaining agreement provision, the written confirmation must be made within 96 hours;

FRA estimates that this will occur 1,358 times a year (1.698% of 80,000 times a year). It is calculated that it will take approximately one (1) hour to prepare and forward the notification letter to the employee, for the employee to respond to the written notification with a request for a hearing, and for the railroad to make a file folder and file any pertinent data concerning the hearing. Total annual burden for this requirement is 1,358 hours.

Respondent Universe:	696 railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	1,358 notification letters/employee

Annual Burden:	responses	1,358 hours
Annual Cost:		\$92,181(\$67.88 x 1,358 hrs.)

Calculation: 1,358 notification letters/employee responses
x 1 hr. = 1,358 hours

(3) Convene the hearing within the deadline prescribed by either paragraph (c)(1) of this section or the applicable collective bargaining agreement as permitted under paragraph (d) of this section;

(4) 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. **(Revised/New Requirement)**

FRA estimates that approximately 690 copies of written information and list of witnesses the railroad will present at the hearing will be provided to the railroad employee under the above requirement. It is estimated that it will take approximately five (5) minutes/hours to provide the required documents. Total annual burden for these requirements is 58 hours. **(Revised/New Requirement)**

Respondent Universe:	696 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	690 copies of documents
Annual Burden:	58 hours
Annual Cost:	\$3,937
	(\$67.88 x 58 hrs.)

Calculation: 690 documents x 5 min. = 58 hours

(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;

FRA estimates that approximately 690 hearings will be held annually and thus 690 hearing records will be completed under the above requirement. It is estimated that it will take approximately four (4) hours to complete the hearing and accompanying record. Total annual burden for this requirements is 2,760 hours.

Respondent Universe:	696 railroads
Burden time per response:	4 hours
Frequency of Response:	On occasion
Annual number of Responses:	690 hearings/records of hearings
Annual Burden:	2,760 hours
Annual Cost:	\$187,349 (\$67.88 x 2,760 hrs.)

Calculation: 690 hearings/records of hearings x 4 hrs. = 2,760 hours

Additionally, FRA estimates that approximately 1,600 explicit (written) determinations that the person no longer meets the certification requirements of this part will be completed under the above requirement. It is estimated that it will take approximately 60 minutes to complete each explicit (written) determination. Total annual burden for this requirements is 1,600 hours.

Respondent Universe:	696 railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	1,600 explicit (written) determinations
Annual Burden:	1,600 hours
Annual Cost:	\$108,608 (\$67.88 x 1,600 hrs.)

Calculation: 1,600 explicit (written) determinations x 60 min. = 1,600 hours

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

(7) Retain the record of the hearing for 3 years after the date the decision is rendered. *The burden for hearing records is included above under that § 240.307(b)(4) above. Consequently, there is no additional burden associated with this requirement.*

(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 locomotive engineer 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. **(Revision)**

(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 hearings is included above under that § 240.307(b)(4) above. 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 *and citations to all applicable railroad rules and practices*; and **(Revision)**

(ii) State whether the railroad official found that a revocable event occurred *and the applicable period of revocation with a citation to § 240.117 or § 240.119*; and **(Revision)**

(iii) Be served on the employee *and the employee's representative, if any, with the railroad to retain proof of that service*. **(Revision)**

(12) The railroad shall have the burden of proving that the locomotive engineer's conduct was not in compliance with the applicable railroad operating rule or practice or part 219 of this chapter.

FRA estimates that approximately 690 written decisions after the close of the hearing record will be completed by railroad officials in keeping with the above requirement. It is estimated that it will take approximately two (2) hours to prepare and sign each written decision. Total annual burden for these requirements is 1,380 hours. **(Revised Requirement)**

Respondent Universe:	696 railroads
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	690 written decisions
Annual Burden:	1,380 hours
Annual Cost:	\$93,675
	(\$67.88 x 1,380 hrs.)

Calculation: 690 written decisions x 2 hrs. = 1,380 hours

Additionally, FRA estimates that approximately 3,750 copies of the written decision will be served on the employee and employee's representative under the above requirement. It is estimated that it will take approximately 30 minutes to serve each written decision copy. Total annual burden for this requirement is 1,875 hours. **(Revised Requirement)**

Respondent Universe:	696 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	3,750 written decision copies
Annual Burden:	1,875 hours
Annual Cost:	\$127,275

(\$67.88 x 1,875 hrs.)

Calculation: 3,750 written decisions x 30 min. = 1,875 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.

(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.

FRA estimates that approximately 750 employees will waive their right to a hearing under the above requirement. It is estimated that it will take approximately 15 minutes to complete and sign each written waiver.

Total annual burden for this requirement is 188 hours.

Respondent Universe:	696 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	750 written waivers
Annual Burden:	188 hours
Annual Cost:	\$10,387
	(\$55.25 x 188 hrs.)

Calculation: 750 written waivers x 15 min. = 188 hours

(g) A railroad that has relied on the certification by another railroad under the provisions of §240.227 or §240.229 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 50 railroads will revoke their certification after acquiring information which convinces it that another railroad has revoked its certification under the above requirement. It is estimated that it will take approximately two (2) hours to review the received information and revoke each certification. Total annual burden for this requirement is 100 hours.

Respondent Universe:	696 railroads
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	50 revoked certifications/certificates
Annual Burden:	100 hours
Annual Cost:	\$6,788
	(\$67.88 x 100 hrs.)

Calculation: 50 revoked certifications x 2 hrs. =
100 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 §240.117.

(i) A railroad:

- (1) Shall not revoke the person's certification as provided for in paragraph (a) of this section if sufficient evidence exists to establish that an intervening cause prevented or materially impaired the locomotive engineer's ability to comply with the railroad operating rule or practice which constitutes a violation under § 240.117(e)(1) through (e) (5) of this part; or
- (2) May decide not to revoke the person's certification as provided for in paragraph (a) of this section if sufficient evidence exists to establish that the violation of § 240.117(e)(1) through (e)(5) of this part was of a minimal nature and had no direct or potential effect on rail safety.

(j) The railroad shall place the relevant information in the records maintained in compliance with §240.309 for Class I (including the National Railroad Passenger Corporation) and Class II railroads, and §240.215 for Class III railroads if sufficient evidence meeting the criteria provided in paragraph (i) of this section, becomes available either:

- (1) Prior to a railroad's action to suspend the certificate as provided for in paragraph (b) (1) of this section; or
- (2) Prior to the convening of the hearing provided for in this section.

FRA estimates that approximately 50 records will be updated to ensure compliance with §240.309 and §240.215 under the above requirement. It is estimated that it will take approximately 10 minutes to update each record. Total annual burden for this requirement is eight (8) hours.

Respondent Universe:	696 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	50 updated records
Annual Burden:	8 hours
Annual Cost:	\$543 (\$67.88 x 8 hrs.)

Calculation: 50 updated records x 10 min. = 8
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 locomotive engineer's certification, as provided for in paragraph (a) of this section, is not in violation of paragraph (a) of this section.

FRA estimates that approximately 50 good faith determinations will be made under the above requirement. It is estimated that it will take approximately 60 minutes to complete each good faith determination. Total annual burden for this requirement is 50 hours.

Respondent Universe:	696 railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	50 good faith determinations
Annual Burden:	50 hours
Annual Cost:	\$3,394 (\$67.88 x 50 hrs.)

Calculation: 50 good faith determinations x 60
min. = 50 hours

Total annual burden for this entire requirement is 9,377 hours (1,358 + 58 + 2,760 + 1,600 + 1,380 + 1,875 + 188 + 100 + 8 + 50).

Multiple certifications (§ 240.308) (New Requirements)

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

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

(c) Except as provided in paragraph (d) of this section, a locomotive engineer, including a remote control operator, who is operating a locomotive without an assigned certified conductor must either be:

(1) Certified as both a locomotive engineer under this part and as a conductor under part 242 of this chapter; or

(2) Accompanied by a person certified as a conductor under part 242 of this chapter but who will be attached to the crew in a manner similar to that of an independent assignment.

FRA estimates that approximately 8,666 employees will be issued certificates as both a locomotive engineer and conductor by railroads under the above requirement. It is estimated that it will take approximately five (5) minutes to issue each multiple certificate. Total annual burden for this requirement is 722 hours.

Respondent Universe:	696 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	8,666 multiple certificates
Annual Burden:	722 hours
Annual Cost:	\$49,009 (\$67.88 x 722 hrs.)

Calculation: 8,666 multiple certificates x 5 min. =
722 hours

(d) *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.

FRA estimates that this will occur in approximately 200 instances and the locomotive engineer will be informed that there is no certified conductor on the train prior to any movement. It is estimated that it will take approximately 15 minutes to communicate the necessary information to the locomotive engineer. Total annual burden for this requirement is 50 hours.

Respondent Universe:	696 railroads
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	200 communications/messages
Annual Burden:	50 hours
Annual Cost:	\$3,394 (\$67.88 x 50 hrs.)

Calculation: 200 communications x 15 min. = 50 hours

(e) 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 § 240.219 or § 242.401 of this chapter or has his or her conductor or locomotive engineer certification revoked under § 240.307 or § 242.407 of this chapter by another railroad.

FRA estimates that this will occur in approximately 100 instances and thus approximately 100 notifications will be made by railroad employees to the other certifying railroad(s) under the above requirement. It is estimated that it will take approximately 30 minutes to complete each notification. Total annual burden for this requirement is 50 hours.

Respondent Universe:	696 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	100 notifications
Annual Burden:	50 hours
Annual Cost:	\$2,763 (\$55.25 x 50 hrs.)

Calculation: 100 notifications x 30 min. = 50 hours

(f) A person who holds a current conductor and locomotive engineer certificate and who has had his or her conductor certification revoked under § 242.407 of this chapter for a violation of § 242.403(e)(1) through (5) or (e)(12) may not work as a locomotive engineer during the period of revocation. However, a person who holds a current conductor and locomotive engineer certificate and who has had his or her conductor certification revoked under § 242.407 of this chapter for a violation of § 242.403(e)(6) through (11) may work as a locomotive engineer during the period of revocation.
(1) For purposes of determining the period for which a person may not work as a certified locomotive engineer due to a revocation of his or her conductor certification, only

violations of § 242.403(e)(1) through (5) or (e)(12) will be counted. Thus, a person who holds a current conductor and locomotive engineer certificate and who has had his or her conductor certification revoked three times in less than 36 months for two violations of § 242.403(e)(6) and one violation of § 242.403(e)(1) would have his or her conductor certificate revoked for 1 year, but would not be permitted to work as a locomotive engineer for one month (*i.e.*, the period of revocation for one violation of § 242.403(e)(1)).

The burden for this requirement is included under OMB No. 2130-0596 (§ 242.407). Consequently, there is no additional burden associated with this requirement.

(g) A person who holds a current conductor and locomotive engineer certificate and who has had his or her locomotive engineer certification revoked under § 240.307 of this chapter may not work as a conductor during the period of revocation.

The burden for this requirement is included that of § 240.307 above. Consequently, there is no additional burden associated with this requirement.

(h) A person who has had his or her locomotive engineer certification revoked under § 240.307 of this chapter may not obtain a conductor certificate pursuant to part 242 of this chapter during the period of revocation.

The burden for this requirement is included that of § 240.307 above. Consequently, there is no additional burden associated with this requirement.

(i) A person who had his or her conductor certification revoked under § 242.407 of this chapter for violations of § 242.403(e)(1) through (5) or (e)(12) may not obtain a locomotive engineer certificate pursuant to part 240 of this chapter during the period of revocation.

The burden for this requirement is included under OMB No. 2130-0596 (§ 242.407). Consequently, there is no additional burden associated with this requirement.

(j) A railroad that denies a person conductor certification or recertification under § 242.401 of this chapter shall not, solely on the basis of that denial, deny or revoke that person's locomotive engineer certification or recertification.

The burden for this requirement is included under OMB No. 2130-0596 (§ 242.401). Consequently, there is no additional burden associated with this requirement.

(k) A railroad that denies a person locomotive engineer certification or recertification under § 240.219 shall not, solely on the basis of that denial, deny or revoke that person's conductor certification or recertification.

The burden for this requirement is included that of § 240.219 above. Consequently, there is no additional burden associated with this requirement.

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

The burden for this requirement is included that of § 240.308(c) above. Consequently, there is no additional burden associated with this requirement.

(m) A person who holds a current conductor and locomotive engineer certification and who is involved in a revocable event under § 242.407 or § 240.307 of this chapter may only have one certificate revoked for that event. The determination by the railroad as to which certificate to revoke for the revocable event must be based on the work the person was performing at the time the event occurred.

The burden for this requirement is included under OMB No. 2130-0596 (§ 242.407) and § 240.307 above. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is 822 hours (722 + 50 + 50).

Railroad Oversight Responsibilities - Railroad Annual Review (§ 240.309)

- (a.) No later than March 31st of each year, each Class I railroad (including the National Railroad Passenger Corporation and a railroad providing commuter service) and Class II railroad must conduct a formal annual review and analysis concerning the administration of its program for responding to detected instances of poor safety conduct by certified locomotive engineers during the prior calendar year.
- (b.) Each review and analysis must involve the following:
- (1) The number and nature of the instances of detected poor safety conduct including the nature of the remedial action taken in response thereto;
 - (2) The number and nature of FRA reported train accidents attributed to poor safety performance by locomotive engineers;
 - (3) The number and type of operational monitoring test failures and observations of inadequate skill performance recorded by supervisors of locomotive engineers; and

- (4) If the railroad conducts joint operations with another railroad, the number of locomotive engineers 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.

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

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

Respondent Universe:	51 railroads
Burden time per response:	40 hours
Frequency of Response:	Annually
Annual number of Responses:	51 reviews/analyses
Annual Burden:	2,040 hours
Annual Cost:	\$138,475
	(\$67.88 x 2,040 hrs.)

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

- (d.) If requested in writing by FRA, the railroad shall provide a report of the findings and conclusions reached during such annual review and analysis effort.
- (e.) For reporting purposes, information about the nature of detected poor safety conduct shall be capable of segregation for study and evaluation purposes into the following categories: (1) Incidents involving non-compliance with Part 218 of this chapter; (2) Incidents involving non-compliance with Part 219 of this chapter; (3) Incidents involving non-compliance with the procedures for the safe use of train or engine brakes when the procedures are required for compliance with the Class I, Class IA, Class II, Class III, or transfer train brake test provisions of 49 CFR Part 232 or when the procedures are required for compliance with Class I, Class IA, Class II, or running brake test provisions of 49 CFR Part 238; (4) Incidents involving non-compliance with the railroad's operating rules involving operation of a locomotive or train to operate at a speed that exceeds the maximum authorized limit; (5) Incidents involving non-compliance with the railroad's operating rules resulting in the operation of a locomotive or train past any signal, excluding a hand or a radio signal indication or a switch, that requires

a complete stop before passing it; (6) Incidents involving non-compliance with the provisions of restricted speed, and the operational equivalent thereof, that must be reported under the provisions of Part 225 of this chapter; (7) Incidents involving occupying main track or a segment of main track without proper authority or permission; (8) Incidents involving the failure to comply with prohibitions against tampering with locomotive mounted safety devices, or knowingly operating or permitting to be operated a train with an unauthorized or disabled safety device in the controlling locomotive; and (9) Incidents involving non-compliance with the railroad's operating practices (including train handling procedures) resulting in excessive in-train force levels; and

- (f.) For reporting purposes, an instance of poor safety conduct involving a person who holds both conductor certification pursuant to part 242 of this chapter and locomotive engineer certification pursuant to this part need only be reported once (either under 49 CFR 242.215 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. **(New/Revised 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.
- (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.

- (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 the total which reflect incidents requiring an FRA accident/incident report under Part 225; and (3) The number of incidents within that total which were detected as a result of a scheduled operational monitoring effort.

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

Respondent Universe:		51 railroads
Burden time per response:		1 hour
Frequency of Response:		Annually
Annual number of Responses:	12 reports	
Annual Burden:		12 hours
Annual Cost:		\$815 (\$67.88
	x 12 hrs.)	

Calculation: 12 reports x 1 hr. = 12 hours

Total annual burden for this entire requirement is 2,052 hours (2,040 + 12).

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

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

(b.) To obtain review of a railroad's decision to deny certification, deny re-certification, or revoke certification, a person must file a petition that complies this section (§ 240.403). Each petition must: (1) be in writing; (2) Be 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 name and address of the railroad; and (v) the facts that the petitioner believes constitute the improper action by the railroad, specifying the locations, dates, and identities of all persons who were present or involved in the railroad's actions (to the degree known by the petitioner); (4) explain the nature of the remedial action sought; (5) be supplemented by a copy of all written documents in the petitioner's possession that document that railroad's decision; and (6) be filed in a timely manner. A petition seeking review of a railroad's decision to deny certification or recertification filed with FRA more than 180 days after the date of the railroad's denial decision will be denied as untimely; (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.

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 ..."

(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 § 240.307 filed with FRA more than 120 days after the date of 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.

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.

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

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

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

Each petition must be acknowledged in writing by FRA. The acknowledgment must contain the docket number assigned to the petition and a statement of FRA’s intention that the Board will render a decision on this petition within 180 days from the date that the railroad’s response is received or from the date upon which the railroad’s response period has lapsed pursuant to paragraph (c) of this section.

Upon receipt of the petition, FRA will notify the railroad that it has received the petition and where the petition may be accessed. 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 be only be considered to the extent practicable.

A railroad that submits such information must: (1) Identify the petitioner by name and the docket number of the review proceeding and provide the railroad’s e-mail address (if available); (2) Serve a copy of the information being submitted to FRA to the petitioner; 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, DC 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>.

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

action/investigation, there is no burden associated with these requirements.

Request for a Hearing (§ 240.407)

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

To exercise that right, the adversely affected party shall, 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, 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>.

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

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

Hearings (§ 240.409)

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

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

(m) Testimony by witnesses at the hearing shall be given under oath and the hearing shall be recorded verbatim. The presiding officer shall give the parties to the proceeding adequate opportunity during the course of the hearing for the presentation of arguments in support of or in opposition to motions, and objections and exceptions to rulings of the presiding officer. The presiding officer may permit oral argument on any issues for which the presiding officer deems it appropriate and beneficial. Any evidence or argument received or proffered orally shall be transcribed and made a part of the record. Any physical evidence or written argument received or proffered shall be made a part of the record, except that the presiding officer may authorize the substitution of copies, photographs, or descriptions, when deemed to be appropriate.

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

(o) The presiding officer may: (1) administer oaths and affirmations; (2) issue subpoenas as provided for in § 209.7 of part 209 in this chapter; (3) adopt any needed procedures for the submission of evidence in written form; (4) examine witnesses at the hearing;

(5) convene, recess, adjourn or otherwise regulate the course of the hearing; and (6) take any other action authorized by or consistent with the provisions of this part and permitted by law that may expedite the hearing or aid in the disposition of the proceeding.

(p) The petitioner before the 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. Between the petitioner before the Operating Crew Review Board and the railroad involved in taking the certification action, the party who is not the hearing petitioner will be a respondent.

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

(s) The record in the proceeding shall be closed at the conclusion of the evidentiary hearing unless the presiding officer allows additional time for the submission of additional evidence. In such instances, the record shall be left open for such time as the presiding officer grants for that purpose.

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

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

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

The requirements of this provision are exempted from the Paperwork Reduction Act under 5 CFR 1320.4(2) which states: “The requirements of this Part ... shall not apply to

collections of information ... during the conduct of a civil action to which the United States or any official or agency thereof is a party, or during the conduct of an administrative action, investigation, or audit involving an agency against specific individuals or entities ...” Since this provision pertains to an administrative action/investigation, there is no burden associated with these requirements.

Appeals (§ 240.411)

(a) Any party aggrieved by the presiding officer's decision may file an appeal. The appeal must be filed within 35 days of issuance of the decision with the 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, DC 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 § 240.403(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, DC 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 240—PROCEDURES FOR SUBMISSION AND APPROVAL OF LOCOMOTIVE ENGINEER QUALIFICATION PROGRAMS

Submission by a Railroad

As provided for in § 240.101, each railroad must have a program for determining the qualifications of each person it permits or requires to operate a locomotive. In designing its program a railroad must take into account the trackage and terrain over which it operates, the system(s) for train control that are employed, the operational design characteristics of the track and equipment being operated including train length, train makeup, and train speeds. Each railroad must submit its individual program to FRA for approval as provided for in § 240.103. 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 (8-1/2×11) 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.

The burden for this requirement is included under § 240.101/103 above. Consequently, there is no additional burden associated with this requirement.

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: **(New Language/Burden)**

(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.

FRA estimates that approximately 170 requests for electronic submission with the required information will be made by railroads under the above requirement. It is estimated that it will take approximately 60 minutes to complete each request. Total annual burden for this requirement is 170 hours.

Respondent Universe:	696 railroads
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	170 requests for electronic submission
Annual Burden:	170 hours
Annual Cost:	\$11,540 (\$67.88 x 170 hrs.)

Calculation: 170 requests for electronic submission x 60 min. = 170 hours

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 qualified locomotive engineers or recertify only engineers previously certified by other railroads. See § 240.103(b).

If a railroad elects not to provide initial locomotive engineer training, the railroad is obligated to state so in its submission. A railroad that makes this election will be limited to recertifying persons initially certified by another railroad. A railroad that makes this election can rescind it by obtaining FRA approval of a modification of its program. See § 240.103(e).

If a railroad elects to accept responsibility for training persons not previously trained to be locomotive engineers, 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 class or classes of service the railroad will employ. See § 240.107.

Section 2 of the Submission: Selection of Supervisors of Locomotive Engineers

The second section of the request must contain information concerning the railroad's procedure for selecting the person or persons it will rely on to evaluate the knowledge, skill, and ability of persons seeking certification or recertification. As provided for in § 240.105, each railroad must have a procedure for selecting supervisors of locomotive engineers which assures that persons so designated can appropriately test and evaluate the knowledge, skill, and ability of individuals seeking certification or recertification. Section 240.105 provides a railroad latitude to select the criteria and evaluation methodology it will rely on to determine which person or persons have the required capacity to perform as a supervisor of locomotive engineers. The railroad must describe in this section how it will use that latitude and evaluate those it designates as supervisors of locomotive engineers so as to comply with the performance standard set forth in § 240.105(b). The railroad must identify, in sufficient detail to permit effective review by FRA, the criteria for evaluation it has selected. For example, if a railroad intends to rely on one or more of the following, a minimum level of prior experience as an engineer, successful completion of a course of study, or successful passage of a standardized testing program, the submission must state which criteria it will employ.

Section 3 of the Submission: Training Persons Previously Certified

The third section of the request must contain information concerning the railroad's program for training previously certified locomotive engineers. As provided for in § 240.123(b) each railroad must have a program for the ongoing education of its locomotive engineers to assure that they maintain the necessary knowledge concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics), and relevant Federal safety rules.

Section 240.123(b) 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 engineers remain knowledgeable concerning the safe discharge of their train operation responsibilities so as to comply with the performance standard set forth in § 240.123(b). 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 simulators, use of film or slide presentations, use of on-job-training) and which aspects of the program are voluntary or mandatory.

Without assistance from automation, safe train handling involves both abstract knowledge about the appropriate use of engine controls and the application of that knowledge to trains of differing composition traversing varying terrain. 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, locomotive engineers need to have their fundamental knowledge of train operations 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 ensure that engineers remain knowledgeable about safe train handling procedures if the territory over which a locomotive engineer is authorized to operate is territory from which the engineer 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 engineers are authorized to operate over.

Section 4 of the Submission: Testing and Evaluating Persons Previously Certified

The fourth section of the request must contain information concerning the railroad's program for testing and evaluating previously certified locomotive engineers. As provided for in § 240.125 and § 240.127, each railroad must have a program for the ongoing testing and evaluating of its locomotive engineers to ensure that they have the necessary knowledge and skills concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics), and relevant Federal safety rules. Similarly, each railroad must have a program for ongoing testing and evaluating to ensure that its locomotive engineers have the necessary vision and hearing acuity as provided for in § 240.121.

Sections 240.125 and 240.127 require 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 operation of a locomotive or train. Section 240.125 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) Personal safety practices; (ii) operating practices; (iii) equipment inspection practices; (iv) train handling practices (including familiarity with the physical characteristics of the territory); and (v) compliance with relevant Federal safety rules. The test must accurately measure the person's knowledge of all of these areas.

Section 240.125 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 ensure that its engineers will demonstrate their knowledge concerning the safe discharge of their train operation responsibilities so as to comply with the performance standard set forth in § 240.125.

Section 240.127 directs that, when seeking a demonstration of the person's skill, a railroad must employ a test and evaluation procedure conducted by a designated supervisor of locomotive engineers that contains an objective evaluation of the person's skills at applying the railroad's rules and practices for the safe operation of trains. The

test and evaluation procedure must examine the person's skills in terms of all of the following subject matters: (i) Operating practices; (ii) equipment inspection practices; (iii) train handling practices (including familiarity with the physical characteristics of the territory); and (iv) compliance with relevant Federal safety rules. The test must be sufficient to effectively examine the person's skills while operating a train in the most demanding type of service which the person is likely to encounter in the normal course of events once he or she is deemed qualified.

Section 240.127 provides a railroad latitude in selecting the design of its own testing and evaluation procedures (including the duration of the evaluation process, how each required subject matter will be covered, weighing (if any) to be given to particular subject matter response, selection of passing scores, and the manner of presenting the test information). However, the railroad must describe the scoring system used by the railroad during a skills test administered in accordance with the procedures required under § 240.211. The description shall include the skills to be tested and the weight or possible score that each skill will be given. The section should also provide information concerning the procedures which the railroad will follow that achieve the objectives described in FRA's recommended practices (see appendix E) for conducting skill performance testing. The section also gives a railroad the latitude to employ either a Type 1 or a Type 2 simulator (properly programmed) to conduct the test and evaluation procedure. A railroad must describe in this section how it will use that latitude to assure that its engineers will demonstrate their skills concerning the safe discharge of their train operation responsibilities so as to comply with the performance standard set forth in § 240.127.

Section 240.121 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 operate a locomotive. The railroad must describe in this section how it will ensure 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 operate a train.

Section 5 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 locomotive engineers, the fifth section of the request must contain information concerning the railroad's program for educating, testing, and evaluating persons not previously trained as locomotive engineers. As provided for in § 240.123(c), a railroad that is issuing an initial certification to a person to be a locomotive engineer must have a program for the training, testing, and evaluating of its locomotive engineers to ensure that they acquire the necessary knowledge and skills concerning personal safety, operating rules and practices, mechanical condition of equipment,

methods of safe train handling (including familiarity with physical characteristics), and relevant Federal safety rules.

Section 240.123 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 ensure that its engineers will acquire sufficient knowledge and skill and demonstrate their knowledge and skills concerning the safe discharge of their train operation 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 locomotive engineers 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 ensuring 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.

Section 6 of the Submission: Monitoring Operational Performance by Certified Engineers

The final section of the request must contain information concerning the railroad's program for monitoring the operation of its certified locomotive engineers. As provided for in § 240.129, each railroad must have a program for the ongoing monitoring of its locomotive engineers to ensure that they operate their locomotives in conformity with the railroad's operating rules and practices including methods of safe train handling and relevant Federal safety rules.

Section 240.129 requires that a railroad annually observe each locomotive engineer demonstrating his or her knowledge of the railroad's rules and practices and skill at applying those rules and practices for the safe operation of a locomotive or train. Section 240.129 directs that the observation be conducted by a designated supervisor of locomotive engineers but provides a railroad latitude in selecting the design of its own observation procedures (including the duration of the observation process, reliance on tapes that record the specifics of train operation, and the specific aspects of the engineer's performance to be covered). The section also gives a railroad the latitude to employ either a Type 1 or a Type 2 simulator (properly programmed) to conduct monitoring observations. A railroad must describe in this section how it will use that latitude to assure that the railroad is monitoring that its engineers demonstrate their skills concerning the safe discharge of their train operation responsibilities. A railroad must also describe the scoring system used by the railroad during an operational monitoring observation or unannounced compliance test administered in accordance with the procedures required under § 240.303. A railroad that intends to employ train operation event recorder tapes to

comply with this monitoring requirement shall indicate in this section how it anticipates determining what person was at the controls and what signal indications or other operational constraints, if any, were applicable to the train's movement.

Section 7 of the Submission: Procedures for Routine Administration of the Engineer 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 locomotive engineers. At a minimum this section needs to address the procedural aspects of the rule's provisions identified in the following paragraph.

Section 240.109 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 240.115, 240.117 and 240.119 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 240.203, 240.217, and 240.219 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 is or is not qualified; and how it will communicate adverse decisions. Documentation of the factual basis the railroad relied on in making determinations under §§ 240.205, 240.207, 240.209, 240.211, and 240.213 is required, but these sections permit the railroad to select the procedures it will employ to accomplish compliance with these provisions. Sections 240.225 and 240.227 permit reliance on qualification determinations made by other entities and permit a railroad latitude in selecting the procedures it will employ to ensure compliance with these provisions. Similarly, § 240.229 permits use of railroad selected procedures to meet the requirements for certification of engineers performing service in joint operations territory. Sections 240.301 and 240.307 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 preceding paragraph.

The burden for these requirements is included under that of § 240.101/103/105/109/115/117/119/123/ 125/127/129 above. Consequently, there is no additional burden associated with these requirements.

APPENDIX C TO PART 240—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 section 4(a) of the Railroad Safety Improvement Act of 1988 and §§ 240.109, 240.111 and 240.205 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 locomotive engineer. 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. In addition, the railroad must determine whether the certification candidate is listed in the National Driver Register and, if so listed, to review the data that caused the candidate to be so listed.

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 locomotive engineers to request that their current state drivers licensing agency or agencies furnish such data directly to the railroad considering certifying them as a locomotive operator. 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.

The National Driver Register

In addition to seeking an individual state's data, each engineer candidate is required to request that a search and retrieval be performed of any relevant information concerning his or her driving record contained in the National Driver Register (NDR). The NDR is a system of information created by Congress in 1960. In essence it is a nationwide repository of information on problem drivers that was created in an effort to protect motorists. It is a voluntary State/Federal cooperative program that assists motor vehicle driver licensing agencies in gaining access to data about actions taken by other state agencies concerning an individual's motor vehicle driving record. The NDR is designed

to address the problem that occurs when chronic traffic law violators, after losing their license in one State travel to and receive licenses in another State. Today, each State and the District of Columbia are required to send information on all revocations, suspensions, and license denials within 31 days of receipt of the convictions from the courts to the NDR and each of these driver licensing agencies have the capability to provide NDR's data. 49 U.S.C. 30304. The NDR data can also be obtained by contacting the National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation directly.

The information submitted to NHTSA contains, at a minimum, three specific pieces of data: the identification of the state authority providing the information, the name of the person whose license is being affected, and the date of birth of that person. It may be supplemented by data concerning the person's height, weight, color of eyes, and social security account number, if a State collects such data.

Access to NDR Data

Essentially only individuals and state licensing agencies can obtain access to the NDR data. Since railroads have no direct access to the NDR data, FRA requires that individuals seeking certification as a locomotive engineer request that an NDR search be performed and direct that the results be furnished to the railroad. FRA requires that each person request the NDR information directly from NHTSA unless the prospective operator has a motor vehicle driver license issued by a state motor vehicle licensing agency that is "participating" under the provisions of the National Driver Register Act of 1982. Participating states can directly access the NDR data on behalf of the prospective engineer.

Requesting NHTSA To Perform the NDR Check

The procedures for requesting NHTSA performance of an NDR check are as follows:

1. Each person shall submit a written request to National Highway Traffic Safety Administration at the following address: Chief, National Driver Register, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.
2. The request must contain:
 - (a) The full legal name;
 - (b) Any other names used by the person (*e.g.*, nickname or professional name);
 - (c) The date of birth;
 - (d) Sex;
 - (e) Height;
 - (f) Weight;

- (g) Color of eyes;
- (h) Driver's license number (unless that is not available).

3. The request must authorize NHTSA to perform the NDR check and to furnish the results of the search directly to the railroad.
4. The request must identify the railroad to which the results are to be furnished, including the proper name of the railroad, and the proper mailing address of the railroad.
5. The person seeking to become a certified locomotive engineer shall sign the request, and that signature must be notarized.

FRA requires that the request be in writing and contain as much detail as is available to improve the reliability of the data search. Any person may supply additional information to that being mandated by FRA. Furnishing additional information, such as the person's Social Security account number, will help to more positively identify any records that may exist concerning the requester. Although no fee is charged for such NDR checks, a minimal cost may be incurred in having the request notarized. The requirement for notarization is designed to ensure that each person's right to privacy is being respected and that records are only being disclosed to legally authorized parties.

Requesting a State Agency to Perform the NDR Check

As discussed earlier in connection with obtaining data compiled by the state agency itself, a person can either write a letter to that agency asking for the NDR check or can use the agency's forms for making such a request. If a request is made by letter the individual must follow the same procedures required when directly seeking the data from NHTSA. Since it would be more efficient for a prospective locomotive engineer to make a single request for both aspects of the information required under this rule, FRA anticipates that state agency inquiry will eventually become the predominant method for making these NDR checks. Requests to state agencies may involve payment of a nominal fee established by the state agency for such a records check.

State agencies normally will respond in approximately 30 days or less and advise whether there is or is not a listing for a person with that name and date of birth. If there is a potential match and the inquiry state was not responsible for causing that entry, the agency normally will indicate in writing the existence of a probable match and will identify the state licensing agency that suspended, revoked or canceled the relevant license or convicted the person of one of the violations referenced earlier in this appendix.

Actions When a Probable NDR Match Occurs

The response provided after performance of an NDR check is limited to either a notification that no potential record match was identified or a notification that a potential record match was identified. If the latter event occurs, the notification will include the identification of the state motor vehicle licensing authority which possesses the relevant record. If the NDR check results indicate a potential match and that the state with the relevant data is the same state which furnished detailed data (because it had issued the person a driving license), no further action is required to obtain additional data. If the NDR check results indicate a potential match and the state with the relevant data is different from the state which furnished detailed data, it then is necessary to contact the individual state motor vehicle licensing authority that furnished the NDR information to obtain the relevant record. FRA places responsibility on the railroad to notify the engineer candidate and on the candidate to contact the state with the relevant information. FRA requires the certification candidate to write to the state licensing agency and request that the agency inform the railroad concerning the person's driving record. If required by the state agency, the person may have to pay a nominal fee for providing such data and may have to furnish written evidence that the prospective operator consents to the release of the data to the railroad. FRA does not require that a railroad or a certification candidate go beyond these efforts to obtain the information in the control of such a state agency, and a railroad may act upon the pending certification without the data if an individual state agency fails or refuses to supply the records.

If the non-issuing state licensing agency does provide the railroad with the available records, the railroad must verify that the record pertains to the person being considered for certification. It is necessary to perform this verification because in some instances only limited identification information is furnished for use in the NDR and this might result in data about a different person being supplied to the railroad. Among the available means for verifying that the additional state record pertains to the certification candidate are physical description, photographs and handwriting comparisons.

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

The burden for these requirements is included under that of § 240.111/113/115 above. Consequently, there is no additional burden associated with these requirements.

APPENDIX D TO PART 240—IDENTIFICATION OF STATE AGENCIES THAT PERFORM NATIONAL DRIVER REGISTER CHECKS

Under the provisions of § 240.111 of this part, each person seeking certification or recertification as a locomotive operator must request that a check of the National Driver Register (NDR) be conducted and that the resulting information be furnished to his or her employer or prospective employer. Under the provisions of paragraphs (d) and (e) of § 240.111, each person seeking certification or recertification as a locomotive engineer must request that National Highway Traffic Safety Administration conduct the NDR check, unless he or she was issued a motor vehicle driver license by one of the state agencies that perform such checks. If the certification candidate received a license from one of the designated state agencies, he or she must request the state agency to perform the NDR check. In accordance with the National Driver Register Act of 1982, state motor vehicle licensing agencies may participate in a program that authorizes the state agencies to obtain information from the NDR on behalf of individuals seeking data about themselves. Since these state agencies can more efficiently supply the desired data and, in some instances, can provide a higher quality of information, FRA requires that certification candidates make use of this method in preference to directly contacting NHTSA.

The burden for this requirement is included under that of § 240.111/113/115 above. Consequently, there is no additional burden associated with these requirements.

Total annual **burden requested** for this entire information collection is **93,408 hours**, and the **352,054 responses**. The total **dollar equivalent cost requested** for these requested burden hours is **\$6,088,598**.

13. Estimate of total annual costs to respondents.

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

\$130,000	Notary (26,000 requests @ \$5 ea.)
130,000	Fee for NDR data (26,000 requests @ \$5 ea.)
12,000	Postage
<u>12,000</u>	Miscellaneous
\$ 284,000	Total

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 Qualification for Locomotive Engineers 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 accompanying the proposed rule, it would also

result in cost savings from reduced paper and mailing costs. FRA intends to create a secure document submission site for Part 240 to conform the Part 240 program submission process to that of the Part 242 program submission process. FRA anticipates being able to approve or disapprove all or part of a program and generate automated notifications by e-mail to a railroad's points of contact. The use of electronic communication will reduce FRA's cost in sending written material to petitioners and railroads. As previously mentioned in section 6, FRA expects to receive on average 54 locomotive engineer certifications petitions each year; the average locomotive engineer petition is 300 pages, and the cost of a printed piece of paper is 5 cents. FRA estimates mailing costs at \$15 for a general mailing and \$40 to send a copy of a petition to the railroad. The annual cost to send an acknowledgement of receipt of petition is \$815. The annual cost to notify a railroad of a petition and send a copy of the petition to the railroad is \$2,165. Lastly, the annual cost of sending both the railroad and the petitioner a copy of FRA's decision is \$1,642. Collectively, the annual governmental administrative printing and mailing costs are **\$4,622**

Additionally, the proposed rule would result in cost savings from reduced space usage, as FRA no longer would need space to maintain a physical locomotive engineer petition docket. The Department of Transportation's current lease agreement costs \$49.4 million and provides 1.35 million rentable square feet of space.⁶ The annual square foot cost is \$36.59 per square foot. FRA currently stores paper copies of locomotive engineer petitions and maintains two filing cabinets that occupy 50 square feet of rentable space for an annual cost of \$1,830. While FRA is not able to renegotiate the lease agreement to lease 50 square feet less space, the office space devoted to cabinets for petitions could be used for other purposes. For the 20-year period of analysis, the proposed rule would result in government administrative cost savings from reduced space storage usage of \$36,593 (undiscounted); so, the estimated annual cost savings would amount to **\$1,829.65**. So, the total cost to the Government deducting the aforesaid cost savings would amount to \$409,548.35 or **\$409,548** rounded.

15. Explanation of program changes and adjustments.

This information collection request is a revision. As noted in the Summary on page 1, FRA is requesting a total burden of **93,408 hours** and **352,054 responses**. The total burden for this information collection submission reflects a decrease of **179,264 hours** and an increase of **135,191 responses** from the last approved submission. The burden increase is due both to **adjustments and program changes**, which are completely delineated in the tables below.

⁶ "Prospectus Building Acquisition Department of Transportation Headquarters", General Service Administration, February 12, 2018. https://www.gsa.gov/cdnstatic/FY2019_Washington_DC_Department_of_Transporation_Headquarters.pdf (Accessed July 5, 2018).

TABLE FOR ADJUSTMENTS

CFR Section	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	FRA Burden Hours (This Submission)	Difference (plus/minus)
240.9 – Waivers	3 waivers 1 hour	54 waivers 1.5 hours	5 hours	81 hours	+ 76 hours + 51 responses
240.101/103 – Amended railroad certification program	50 programs 1 hour	150 programs 1 hour	50 hours	150 hours	+ 100 hours + 100 resp.
240.103(f) – Revised railroad certification program due to found deficiency after FRA review	0 programs 0 hours	25 programs 4 hours	0 hours	100 hours	+ 100 hours + 25 responses
240.103(g) – RR resubmitted certification program after FRA disapproval	0 programs 0 hours	5 programs 4 hours	0 hours	20 hours	+ 20 hours + 5 responses
240.103(h) – Railroad material modification to certification program	30 programs 45 minutes	75 programs 45 minutes	23 hours	56 hours	+ 33 hours + 45 responses
240.109/App. C – Candidate’s review & written comment on prior safety conduct	25 comments 60 minutes	40 comments 60 minutes	25 hours	40 hours	+ 15 hours + 15 responses
240.111 – RR notice of NDR match and employee request to State agency for relevant data	177 notices 15 minutes + 177 requests 15 minutes	260 notices 15 minutes + 260 requests 15 minutes	89 hours	130 hours	+ 41 hours + 166 resp.
240.111(g) – Candidate notice to RR of absence of driver’s license	4 letters 1 hour	6 letters 1 hour	4 hours	6 hours	+ 1 hour + 2 responses
240.111(h) – Phone calls by locomotive engineer to RR to report a conviction or	200 calls 10 minutes	200 calls 10 minutes	33 hours	50 hours	+ 17 hours + 100 resp.

state action to cancel, revoke, suspend, or deny driver's license					
240.113– Candidate for certification request to former employing railroad of service record and railroad response concerning compliance or non-compliance with §§240.111/117/119	353 requests 15 minutes + 353 responses 30 minutes	520 requests 15 minutes + 520 responses 30 minutes	265 hours	390 hours	+ 125 hours + 334 resp.
240.115(i)(2) – RR drug and alcohol counselor request of employee's record of prior counseling or treatment	0 requests + 0 records	200 records requests 2 hours + 200 records 60 minutes	0 hours	600 hours	+ 600 hours + 400 resp.
240.115(i)(3) – Conditional certification based on recommendation by DAC of employee aftercare and/or follow-up testing for alcohol/drugs	0 directions/ instructions 0 hours	100 directions/ instructions/ recommendations 1 hour	0 hours	100 hours	+ 100 hours + 100 resp.
240.115(i)(4) – RR employee is evaluated by DAC as having an active substance abuse disorder	0 evaluations 0 hours	1000 evaluations 1 hour	0 hours	100 hours	+ 100 hours + 100 resp.
240.117(i)(4) – RR employee completion of training/retraining prior to return to service records	0 tr. crew members 0 minutes	400 tr. crew members 5 minutes	0 hours	33 hours	+ 33 hours + 400 resp.
240.119(e)(3)(i) – RR Determination that the most recent incident occurred	0 reviews/ determinations 0 minutes	400 decisions/ determinations 30 minutes	0 hours	200 hours	+ 200 hours + 400 resp.
240.119(e)(3)(ii) – RR notification to person that recertification has been denied or revoked	0 notification 0 hours	200 notifications 45 minutes	0 hours	150 hours	+ 150 hours + 200 resp.
240.119(e)(4)(iii) –	0 waivers	680 waivers	0 hours	23 hours	+ 23 hours

Locomotive engineer waiver of investigation in case of one violation of section 219.101	0 hours	2 minutes			+ 680 resp.
240.127 – Amended locomotive engineer certification program to indicate action railroad will take if person fails skills test	11 amended programs 48 hours + 180 amended prog. 8 hours	18 amended programs 48 hours + 171 amended prog. 8 hours	1,968 hours	2,232 hours	+ 264 hours - 2 responses
240.201/221 – List of Designated Supervisor of Locomotive Engineers (DSLEs)	763 updated lists/records 30 minutes	696 updated lists/records 30 minutes	382 hours	348 hours	- 34 hours - 67 responses
240.201/221 – List of Designated Qualified Locomotive Engineers	733 updated lists/records 60 minutes	696 updated lists/records 60 minutes	763 hours	696 hours	- 67 hours - 67 responses
240.201/217/223/301- Renewal of locomotive engineer certificate	17,667 certs 5 minutes	26,000 certs 5 minutes	1,472 hours	2,167 hours	+ 695 hours + 8,333 resp.
240.205 – RR forwarding of employee prior safety conduct for review	177 records 5 minutes	185 records 5 minutes	15 hours	15 hours	0 hours + 8 responses
240.207(a/b)(1) – RR medical examiner certificate that person has been examined & meets vision/hearing acuity standards	17,667 certs 70 minutes	26,000 certs 70 minutes	20,612 hours	30,333 hours	+ 9,721 hours + 8,333 resp.
240.207(a/b)(2) – Medical examiner written document/ determination that person can be certified even though not meeting one or both acuity standards	0 written documents determinations 0 hours	20 written documents determinations 15 minutes	0 hours	5 hours	+ 5 hours + 20 responses
240.207(a/b)(2)(ii) – RR medical examiner written document/ determination that person cannot meet acuity standards even w/conditions attached	0 written documents determinations 0 hours	20 written documents determinations 15 minutes	0 hours	5 hours	+ 5 hours + 20 responses
240.219 – RR notification letter to	30 letters 60 minutes +	45 letters 60 minutes +	60 hours	90 hours	+ 30 hours + 30 responses

employee of certification denial + employee written rebuttal	30 responses 60 minutes	45 responses 60 minutes			
240;.221 – Copy to FRA of RR records/ list of engineers	0 copies 0 hours	125 copies 2 hours	0 hours	250 hours	+ 250 hours + 125 resp.
240.223(b) – Additional information included on locomotive engineer’s certificate	0 designations 0 hours	100 designations 15 minutes	0 hours	25 hours	+ 25 hours + 100 resp.
240.223(c) – RR inclusion of additional info. on locomotive engineer certificate	0 notations 0 hours	100 notations 15 minutes	0 hours	25 hours	+ 25 hours + 100 resp.
240.229 (c)(3)– Notification by engineer as not qualified to operate train on track segment	184 notices/ notifications 5 minutes	260 notices/ notifications 5 minutes	15 hours	22 hours	+ 7 hours + 76 resp.
240.301(a) – Loco. engineer replacement certificates	0 certificates 0 minutes	2,000 certificates 30 minutes	0 hours	1,000 hours	+ 1,000 hours + 2,000 resp.
<u>Testing Requirements</u> 240.209(a/b)/213 – Written test on railroad’s rules & practices prior to certification/ recertification	17,667 tests 2 hours	26,000 tests 5 minutes	35,334 hours	2,167 hours	- 33,167 hours + 8,333 resp.
240.209(c)//213 – Test failures & retest records of persons	0 retests 0 hours	26 retest records 5 minutes	0 hours	2 hours	+ 2 hours + 26 responses
240.211(a/b)/213 – Performance test prior to certification/ recertification	17,667 tests 2 hours	26,000 tests 5 minutes	35,334 hours	2,167 hours	- 33,167 hours + 8,333 resp.
240.211(c)//213 – Test failures & performance retests of persons	0 retests 0 hours	26 retests 5 minutes	0 hours	2 hours	+ 2 hours + 26 responses
240.303(b) – Annual operational monitoring test of locomotive engineer prior to certification/	53,000 tests 2 hours	80,000 tests 5 minutes	106,000 hours	6,667 hours	- 99,333 hours + 27,000 resp.

recertification					
240.303(c) – Annual unannounced operational rules compliance test of locomotive engineer	53,000 tests 1 hour	80,000 tests 5 minutes	53,000 hours	6,667 hours	- 46,333 hours + 27,000 resp.
<u>Recordkeeping Requirements</u> 240.215 – RR retaining information supporting decision on certification/recertification	17,667 records 30 minutes	26,000 records 30 minutes	8,834 hours	13,000 hours	+ 4,166 hours + 8,333 resp.
240.305(c)– Engineer notification to RR that he/she is not qualified to perform anticipated service	100 notices 5 minutes	150 notices 5 minutes	8 hours	13 hours	+ 5 hours + 50 responses
240.305(d)–Notice by engineer holding two/more certificates to RR that he/she has been denied certification by another railroad	2 letters 30 minutes	3 letters 30 minutes	1 hour	2 hours	+ 1 hour + 1 response
240.307(a & b))/– Written notice to engineer by RR of its reason for suspending or revoking certification and mention of opportunity for hearing before impartial hearing officer	900 letters 60 minutes	1,358 letters 60 minutes	900 hours	1,358 hours	+ 458 hours + 458 resp.
240.307(b)(4) – RR Hearings/hearing records	0 hearings 0 hours	690 hearings 4 hours	0 hours	2,760 hours	+ 2,760 hours + 690 resp.
240.307(b)(5) – RR determination on hearing record whether person no longer meets certification requirements of this Part	0 determination 0 minutes	1,600 railroad determinations 60 minutes	0 hours	1,600 hours	+ 1,600 hours + 1,600 resp.
240.307(f) – Person waiver of right to hearing under this	0 waivers 0 minutes	750 waivers 15 minutes	0 hours	188 hours	+ 188 hours + 750 resp.

section					
240.307(g) – RR revocation of certification that relied on another railroad after acquiring information that another RR has revoked person’s certification	0 revocations 0 minutes	50 revocations 2 hours	0 hours	100 hours	+ 100 hours + 50 responses
240.307(j) – RR Update of record with relevant information	0 records 0 minutes	50 records 10 minutes	0 hours	8 hours	+ 8 hours + 50 responses
240.307(k) – RR good faith determination that course of conduct is appropriate	0 determination 0 minutes	50 determination 60 minutes	0 hours	50 hours	+ 50 hours + 50 responses

Adjustments above decreased above the burden by *189,050 hours* and increased the number of *responses* by *104,832*.

TABLE FOR PROGRAM CHANGES

CFR Section	Responses & Avg. Time (Previous Submission)	Responses & Avg. Time (This Submission)	Burden Hours (Previous Submission)	FRA Burden Hours (This Submission)	Difference (plus/minus)
240.103(b)(1) – RR Copy of certification program submission/resubmission/material modification to president of each labor organization	0 copies 0 minutes	750 copies 5 minutes	0 hours	63 hours	+ 63 hours + 750 resp.
240.103(b)(2) – RR Affirmative statement that it has served a copy of program submission/resubmission/material modification on president of each labor organization	0 statements 0 minutes	750 statements 20 minutes	0 hours	250 hours	+ 250 hours + 750 resp.
240.103(c)- RR Employee comment on submission, resubmission or material modification	0 comments 0 hours	25 comments 40 hours	0 hours	1,000 hours	+ 1,000 hours + 25 responses

of RR certification program					
240.111/App. C – Driver’s license data requests from chief of driver licensing agency of any jurisdiction, including foreign countries	17,667 request 15 minutes	26,000 requests 15 minutes	4,417 hours	6,500 hours	+ 2,083 hours + 8,333 resp.
240.111(f) – RR Employee written request for a copy of available information after being advised by RR that additional information on person’s driving history may exist in files of a State agency or foreign government	0 notices + 0 requests 0 hours	125 notices + 125 requests 2 hours + 1 hour	0 hours	375 hours	+ 375 hours + 250 resp.
240.115(d) - RR temporary certification or recertification of locomotive engineer for 60 days after having requested the motor vehicle information specified in paragraph (h) of this section	0 recertificaton 0 minutes	25 recertificatons 5 minutes	0 hours	2 hours	+ 2 hours + 25 responses
240.119(c) – RR Documents on file regarding determination made regarding fitness, including DAC written document	0 reviews/ documents 0 minutes	400 written DAC documents 60 minutes	0 hours	400 hours	+ 400 hours + 400 resp.
240.129(b) - Written records indicating dates that the engineer stopped performing or returned to certification service + compliance/	0 records 0 minutes	1,000 records 5 minutes	0 hours	83 hours	+ 83 hours + 1,000 resp.

observation test					
240.219(a) – RR Notice/written documents/records to candidate that support its pending denial decision	0 written documents/ records 0 minutes	45 written documents/ records 2 minutes	0 hours	2 hours	+ 2 hours + 45 responses
240.219(c) – RR Notification of adverse decision to person explaining RR basis for denial which addresses any explanation or rebuttal information provided by employee	30 notices/ explanations 60 minutes	45 notices/ explanations 60 minutes	30 hours	45 hours	+ 15 hours + 15 responses
240.301(b) – Temporary replacement certificates valid for no more than 30 days	0 replacement certificates 0 minutes	2,000 replacement certificates 30 minutes	0 hours	1,000 hours	+ 1,000 hours + 2,000 resp.
240.305(b) – Display of certificate upon request of authorized representatives of: FRA, State Part 212 inspectors, issuing railroad, or officer of another railroad during joint train operations	0 requests/ displays 0 minutes	2,500 requests/ displays 5 minutes	0 hours	208 hours	+ 208 hours + 2,500 resp.
240.307(b)(4) – RR provision to employee of copy of written information and list of witnesses that it will present at hearing	0 copies/lists 0 minutes	690 copies/lists 5 minutes	0 hours	58 hours	+ 58 hours + 690 resp.
240.307(c)(11)(i)(ii) – RR written decision after close of hearing containing findings of fact & whether a revocable event occurred	0 decisions 0 minutes	690 decisions 2 hours	0 hours	1,380 hours	+ 1,380 hours + 690 resp.
240.307(c)(11)(iii) – RR service of written decision on employee	0 copies 0 minutes	3,750 copies 30 minutes	0 hours	1,875 hours	+ 1,875 hours + 3,750 resp.

and employee's representative					
240.308 (a/b/c) - Person must be certified as both conductor and locomotive engineer when operating locomotive without an assigned certified conductor	0 dual certifications 0 minutes	8,666 dual certifications 5 minutes	0 hours	722 hours	+ 722 hours + 8,666 resp.
240.308(d) – Communication to locomotive engineer on passenger railroad that certified conductor has been removed for a medical, police, or other such emergency after train departs from initial terminal	0 messages 0 minutes	200 messages 15 minutes	0 hours	50 hours	+ 50 hours + 200 resp.
240.308(e) – Notification to railroad by person holding more than one current conductor and/or locomotive certificate that another RR had denied recertification	0 notices 0 minutes	100 notices 30 minutes	0 hours	50 hours	+ 50 hours + 100 resp.
Appendix B – RR request to FRA for electronic submission of required materials	0 requests 0 minutes	170 requests 60 minutes	170 hours	170 hours	+ 170 hours + 170 resp.

Program changes above increased the burden by *9,736 hours* and *30,529 responses*.

The current OMB agency inventory exhibits a total burden of *272,672 hours*, while the present submission reflects a total burden of *93,408 hours*. Hence, there is a total decrease in burden of **179,264 hours** and an increase of **135,191 responses**.

The estimated cost to respondents listed above amounts to \$284,000, which is an increase of **\$83,330** from the last approved submission. The increase is due solely to **adjustments**, which result from the change in the number of requests for notary service (from 17,667 notary requests at \$5 per request to 26,000 notary requests at \$5 per request and the number of requests for NDR data 17,667 notary requests at \$5 per request to 26,000 NDR requests at \$5 per request). This raised the total cost from **\$200,670** to **\$284,000**. Hence, the difference of **\$83,330** results.

16. Publication of results of data collection.

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

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

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

18. Exception to certification statement.

No exceptions are taken at this time.

Meeting Department of Transportation (DOT) Strategic Goals

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

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

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

In sum, all the information gathered in this collection furthers the first and main DOT strategic goal by reducing the likelihood that unfit or unqualified people will operate trains and become involved in accidents/incidents that result in injuries, deaths, and property damage.

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

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

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

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