

**11111FEDERAL RAILROAD ADMINISTRATION**  
**U.S. Locational Requirement for Dispatching of U.S. Rail Operations**  
**(Title 49 Code of Federal Regulations Part 241)**  
**SUPPORTING JUSTIFICATION**  
**OMB Control No. 2130-0556**

Summary of Submission

- This submission is a request for an extension without change to the last approval granted by OMB on April 2, 2018, which expires on April 30, 2021.
- The Federal Railroad Administration (FRA) published the required 60-day *Federal Register* Notice on September 16, 2018. See 85 FR 57932. FRA received no comments in response to this Notice.
- The total number of burden hours requested for this information collection is 8 hours. The total number of burden hours previously approved by OMB was 8 hours.
- The total number of responses requested for this information collection is one. The total number of responses previously approved by OMB was one.
- There is no change in the number of burden hours and burden responses.
- The answer to question number 12 itemizes information collection requirements.

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

Background

Proper dispatching is essential to conducting safe railroad operations. Freight trains can be more than a mile in length, typically carry hazardous materials, and require a mile or more to stop. Freight trains sometimes transport ammunition and implements of war as well as spent nuclear fuel or other high level nuclear material. Shipments of spent nuclear fuel or other high-level nuclear materials are currently transported by rail on a limited basis as national security or operational situations dictate, but shipments are expected to dramatically increase once a permanent central storage location is approved. Also, the possibility exists that one or more temporary storage locations could be designated that would prompt an increase in the rail transport of this type of nuclear material prior to a permanent central storage location becoming operational.

Dispatchers can direct the train course by remotely aligning switches. They determine whether the train should stop or move and, if so, at what speed, by operating signals and issuing train orders and other forms of movement authority or speed restriction. Also, dispatchers protect track gangs and other roadway workers from passing trains by issuing authorities for working limits. Train crews on board locomotives carry out the

dispatchers' instructions and are responsible for moving the train, but dispatchers make it possible to do so safely.

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

FRA can also influence non-regulated aspects of dispatching operations through safety advisories published in the Federal Register, and through its visits to dispatching centers to ensure that dispatching is being safely conducted whether or not specific federal standards are being violated. FRA may also issue emergency orders to eliminate or mitigate an unsafe condition or practice, identified through testing, inspecting, investigation, or research, that causes an emergency situation involving a hazard of death or injury to persons. See 49 U.S.C. 20104.

Congress has established hours of service standards for safety-sensitive domestic railroad employees, including railroad dispatchers. In order to prevent fatigue which could adversely affect job performance, 49 U.S.C. 21105 mandates that dispatchers in the United States may not work more than nine hours during a 24-hour period in a location where two or more shifts are employed, or 12 hours during a 24-hour period where only one shift is employed. Part 228 requires railroads to retain written hours of service records for dispatchers and allows for access to those records by FRA inspectors.

Additionally, domestic railroad dispatchers are subject to the minimum FRA safety standards to safeguard railroad dispatching. Under Part 217, railroads operating in the United States are required to have operating rules and to periodically instruct employees (including dispatchers) on those rules, to periodically conduct operational tests and inspections on employees (including dispatchers) to determine the extent of compliance with the rules, and to keep records of the individual tests and inspections for review by FRA.

Under Part 219, dispatchers located in the United States are subject to random, reasonable suspicion, return-to-duty, follow-up, and post-accident drug and alcohol testing, as well as pre-employment testing for drugs. Post-accident testing is required for a dispatcher who is directly and contemporaneously involved in the circumstances of any train accident meeting FRA testing thresholds. A dispatcher found to have violated

FRA's drug and alcohol rules, or who refuses to submit to testing, is required to be immediately removed from dispatching service for a nine-month period, and the railroad must follow specified procedures including return-to-duty and follow-up requirements before returning the dispatcher to dispatching service. Moreover, domestic-based employers must provide self-referral and co-worker reporting (self-policing) programs for their employees; must submit random alcohol and drug testing plans for approval by FRA; must conduct random testing under Part 219 and DOT procedures found in Part 40; and must submit annual reports and maintain program records.

Extraterritorial dispatching means the act of dispatching a railroad operation that occurs on trackage in the United States by a dispatcher located outside of the United States. Previously, FRA had no safety standards applicable to extraterritorial dispatchers. Furthermore, the possibility that extraterritorial dispatchers may not be adequately regulated by the countries in which the dispatchers are located became an important FRA concern. An extraterritorial dispatcher who controls United States rail operations while under the influence of alcohol or drugs, who is exhausted because of working excessive hours, or who is not properly tested on railroad operating rules could issue incorrect directions, thereby jeopardizing the safety of American railroad employees and the communities through which the trains operate.

Specifically, this could cause a train collision or derailment in the United States with resulting injuries or death to train crews, passengers, or both, and possibly serious harm to surrounding communities if the train were carrying hazardous materials. Because problems such as fatigue, drug and alcohol abuse, and lack of effective job training seriously compromise the safety-critical performance of employees who dispatch trains, FRA is concerned that foreign railroads, or domestic railroads that may employ or enter into a contract for services of a foreign-based dispatcher who would control domestic train movement, may not comply with the applicable requirements of American Hours of Service laws, FRA Hours of Service regulations, FRA drug and alcohol testing regulations, or FRA operational testing regulations.

To avoid the considered safety and security threats posed by extraterritorial dispatching, FRA issued an Interim Final Rule (IFR) that barred extraterritorial dispatching, subject to limited exceptions, while FRA gathered public comments on the issue. The IFR was scheduled to terminate on January 10, 2003, in the absence of further FRA action. After considering the public comments, FRA decided to issue a final rule to continue the general bar on extraterritorial dispatching, with two minor exceptions.

Under the first exception, a railroad would be allowed to conduct "extraterritorial dispatching" in an *emergency situation* for the duration of the emergency, if it promptly notified, in writing, the FRA Regional Administrator of each region where the operation was conducted of its actions.

Under the second exception, railroads would be permitted to continue very limited "extraterritorial dispatching" for a transitional period of 90 days while they file a petition

for waiver under the special “*fringe border*” waiver provision. (The fringe border provision is discussed in more detail under #2 below.) If a waiver request is filed within the transitional period, the railroad may continue to conduct “extraterritorial dispatching” until FRA acts on the waiver petition. The fringe border provision would also apply to new “extraterritorial dispatching” of operations that do not extend more than five route miles into the United States from the Canadian or Mexican border. FRA believes that the approach that it adopted is necessary to ensure the safety and security of United States railroad operations.

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

This is an extension without change to a current collection of information associated with FRA’s Part 241. The information collected is used by FRA to ensure that “extraterritorial dispatchers” comply with the conditions stated in the exceptions of Part 241 for “extraterritorial dispatching” of United States railroad operations relating to emergency situations and “fringe border” operations. FRA reviews information submitted in petitions for waiver to determine if current or proposed “extraterritorial dispatching” is consistent with railroad safety and is in the public interest.

Specifically, in cases of emergency “extraterritorial dispatching,” FRA reviews the information provided in the petition for waiver to determine whether the dispatching in fact fell within the exception, and, if not, to consider whether enforcement action should be taken to deter future violations. FRA personnel review the required notifications to monitor the frequency and specifics of these types of train movements in order to ensure that railroad safety is not endangered in their territory.

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

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

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

FRA highly encourages the use of advanced information technology, wherever possible, to reduce burden on respondents. The exception permitting “extraterritorial dispatching” during emergency situations requires electronic or written notification to FRA.

**4. Efforts to identify duplication.**

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

Similar data are not available from any other source.

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

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

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

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

If this information were not collected or collected less frequently, railroad safety throughout the United States might be seriously jeopardized. Specifically, the number of rail accidents/incidents and related severity of injuries to train crews and passengers might increase because an “extraterritorial dispatcher,” who was not subject to and did not comply with the substantive requirements of United States Hours of Service laws, FRA Hours of Service regulations, FRA drug and alcohol testing regulations, or FRA operational testing regulations, controlled a railroad operation in the United States during what was not in fact an emergency situation. Any dispatcher, wherever located, who controls rail operations while under the influence of alcohol or drugs, who is exhausted because of working excessive hours, or who is not properly trained and tested on railroad operating rules could issue incorrect directions, or could fail to issue directions altogether. That dispatcher would therefore be jeopardizing the safety of railroad employees or increasing the chance of a train collision or derailment, resulting in injuries/deaths to crews, passengers, or both, and possible severe environmental harm to surrounding communities if the train were carrying hazardous materials.

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

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

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

**7. Special circumstances.**

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

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

As required by the Paperwork Reduction Act of 1995, FRA published a notice in the Federal Register on September 16, 2020, soliciting comment on this particular information collection.<sup>1</sup> FRA received no comments pertaining to this collection of information in response to this notice.

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

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

**10. Assurance of confidentiality.**

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

**11. Justification for any questions of a sensitive nature.**

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

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

The estimates for the respondent universe, annual responses, and average time per responses are based on the experience and expertise of FRA's Office of Railroad Infrastructure and Mechanical Equipment.

FRA is including the dollar equivalent cost for each of the itemized hours below using STB's Full-Year Wage A&B data series as the basis for each cost calculation. For

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<sup>1</sup> 85 FR 57932.

professional/administrative staff employees, the hourly wage rate is \$77 per hour (\$44.27 times 1.75 = \$77).

### Section 241.7 Waivers

(a) **General.** A person subject to a requirement of this Part may petition the Administrator for a waiver of compliance with such requirement. Except as provided in paragraph (b) of this section, the filing of such petition does not affect the person's responsibility for compliance with that requirement while the petition is being considered. Each petition for waiver under this section must be filed in the manner and contain the information required by Part 211 of this chapter.

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

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

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

### Section 241.9 - Prohibition against extraterritorial dispatching: exceptions<sup>2</sup>

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

FRA estimates that approximately 1 notification per year will be sent to FRA regarding dispatching under the circumstances described above. It is estimated that it will take the dispatching railroad approximately 8 hours to prepare each notification letter and send it to FRA.

Respondent Universe:	4 railroads
Burden time per response:	8 hours

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<sup>2</sup> The burdens associated with §§ 241.11 and 241.13 are covered under § 241.9.

Frequency of Response:	Annually
Annual number of Responses:	1 notification
Annual Burden:	8 hours
Annual Cost:	\$616 (\$77 x 8 hours)

Calculation: 1 notification x 8 hours = 8 hours

#### Section 241.15 - Penalties and other consequences for non-compliance

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

*FRA estimates that it will receive zero (0) falsified records or reports that are required by this Part. Consequently, there is no burden associated with this requirement.*

The total burden for this entire information collection is 8 hours.

#### **13. Estimate of total annual costs to respondents.**

There is no additional cost to respondents associated with this collection of information.

#### **14. Estimate of Cost to Federal Government.**

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

#### **15. Explanation of program changes and adjustments.**

FRA believes that the burden hour estimates and burden response estimates that it submitted previously are still valid. Therefore, there are no program changes or adjustments at this time.

The total burden requested for this information collection is 8 hours and the total number of responses requested is 1. The total burden previously approved for this information collection was eight 8 hours and the total number of responses previously approved was 1. Hence, nothing has changed.

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

#### **16. Publication of results of data collection.**

There are no plans for publication of this submission. The information will be used



exclusively for purposes of determining compliance with United States laws and FRA safety regulations.

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

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

**18. Exception to certification statement.**

No exceptions are taken at this time.

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