

111FEDERAL RAILROAD ADMINISTRATION
Qualification and Certification of Locomotive Engineers
(Title 49 Code of Federal Regulations (CFR) Part 240)
SUPPORTING JUSTIFICATION
RIN 2130-AC40; 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 October 31, 2019, and which expires October 31, 2022.
- FRA is publishing this Final rule titled Qualification and Certification of Locomotive Engineers; Miscellaneous Revisions (49 CFR Part 240) in the Federal Register on December 15, 2020. See 85 FR 81290. FRA has responded to all comments received under question 8.
- Total number of burden hours requested is 23,964 hours and the total number of responses requested is 224,566.
- Total number of burden hours previously approved by OMB for this collection is 18,668 hours and total number of responses previously approved is 216,630.
- The change in burden from the last approved submission increased the burden by 5,296 hours and by 7,936 responses.
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- Total program changes increased the burden by 1,387 hours and 4,326 responses.
- The adjustments increased the burden by 3,909 hours and 3,610 responses.
- The answer to question number 12 itemizes information collection requirements.
- The tables in answer to question number 15 itemize adjustments.

1. Circumstances that make collection of the information necessary.

The Rail Safety Improvement Act of 1988, Public Law 100-342, § 4, 102 Stat. 624, 625-27 (June 22, 1988) (recodified 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). Exercising these delegated authorities, in 1991, FRA issued a final rule for certification of locomotive

engineers. Since the 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.

In 2008, over 17 years after FRA's promulgation of the locomotive engineer certification rule, Congress required the Secretary to prescribe regulations establishing a program requiring the certification of train conductors. To implement this statutory provision, FRA established a Railroad Safety Advisory Committee (RSAC) Conductor Certification Working Group (Working Group) to make recommendations regarding the certification of train conductors. In 2011, FRA published a conductor certification final rule.

FRA's locomotive engineer certification regulation (part 240) provided a starting point for discussions on what requirements could be appropriate for the conductor certification regulation (part 242). Thus, FRA organized part 242 to be comparable to part 240, but deviated to improve processes and procedures. In addition, the part 242 final rule, published in 2011, 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." 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 the consensus recommendations. Instead, the Working Group decided that it would be more efficient to discuss changes to part 240 after finalizing the part 242 rulemaking and after FRA provided written recommendations to rule text changes. The Working Group did not reconvene to consider amendments to part 240. However, after considering the Working Group's prior discussions related to amending part 240, FRA determined that it has sufficient information to publish a proposed rule amending part 240, which it did on May 9, 2019.¹

Overall, the final rule will conform the locomotive engineer certification regulation to the conductor certification regulation. In doing so, the final rule will add clarity and make processes within the locomotive engineer certification regulation more efficient, while reducing each railroad's reporting burden and adding flexibility to certain requirements.

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 revising 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 is revising § 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

¹ See 84 FR 20472 (May 9, 2019).

represents the railroad's certified locomotive engineers. The revision will also allow any designated representative of certified locomotive engineers to submit comments to FRA on the railroad's submission within 45 days of the railroad's filing with FRA.

The revisions under § 240.115 incorporate the same temporary certification provisions included in the corresponding § 242.111. The amendments to § 240.115 would allow for a temporary certification lasting 60 days for individuals who have properly requested motor vehicle operator information needed to certify or recertify as a locomotive engineer.

The revision under § 240.119 would require railroads to 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 the unannounced compliance test were performed.

The revision under § 240.129 would require railroads to 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 the unannounced compliance test were performed.

The 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. Additionally, railroads 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.

The revisions under § 240.219(c) would require a railroad's denial decision to 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.

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.

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.

Under § 240.105, railroads are to evaluate the qualifications of individuals seeking to be a locomotive engineer, or a DSLE 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 qualification.

Additionally, each railroad reviews 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. In addition, the railroad must determine whether the certification candidate is listed in the National Driver Register (NDR) and, if so listed, to review the data that caused the candidate to be so listed.

Moreover, 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.

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 endorses and 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, 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 (DSLEs) electronically (§§ 240.201/240.223). Railroads are presently keeping these lists electronically. 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. Approximately 74% of the entire number of estimated responses is now kept electronically.

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.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities.

“Small entity” is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses and stipulates in its size standards that a “small entity” in the railroad industry is a for profit “line-haul railroad” that has fewer than 1,500 employees, a “short line railroad” with fewer than 500 employees, or a “commuter rail system” with annual receipts of less than seven million dollars.²

² Size Eligibility Provisions and Standards, 13 CFR part 121, subpart A.

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 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.³

¹The \$20 million limit is based on the Surface Transportation Board’s revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. The current threshold is \$39.2 million or less.⁴

The final rule will impact 741 railroads of which 93 percent (690) are small entities. Therefore, FRA has determined that this final rule will have an impact on a substantial number of small entities.

However, FRA has determined that the impact on entities affected by the final rule will not be significant as the final rule is deregulatory. Therefore, the impact on entities will be positive, taking the form of costs savings that are greater than any new costs imposed on the entities.

For the railroad industry over a 20-year period, FRA estimates that issuing the final rule will result in new costs of \$171,764 (PV 7%) and \$200,775 (PV 3%). Based on information currently available, FRA estimates that \$97,905 (PV 7%) and \$114,442 (PV 3%) of the total costs associated with implementing the final rule will be borne by small entities. Therefore, less than 60 percent of the final rule’s total cost will be borne by small businesses. In addition, FRA estimates that the final rule will result in cost savings over 20 years of \$6.9 million (PV 7%), and \$9.4 million (PV 3%). For the 20-year period of analysis, the final rule will result in a net cost savings of \$12.0 million (undiscounted), \$6.8 million (PV 7%), and \$9.2 million (PV 3%). FRA expects that small entities will accrue 94 percent of the cost savings associated with implementing the final rule.

Thus, pursuant to the RFA, 5 U.S.C. 601(b), the FRA Administrator hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

It should be noted that this final rule applies to all railroads except the following: (1) “plant railroads”; (2) tourist, scenic, historic or excursion operations that are not part of

³ 68 FR 24891 (May 9, 2003) (codified at appendix C to 49 CFR part 209).

⁴ The Class III revenue threshold is \$39,194,876 or less, last updated in 2018. (The Class II threshold is between \$39,194,876 and \$489,935,956; and the Class I threshold is \$489,935,956 or more.)

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 railroad 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 an increase in the number of train accidents/incidents. Such an increase in train accidents/incidents could cause significant increase 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 DSLEs during the prior calendar year. By collecting the required information from the nation's railroads, FRA seeks to minimize the potentially risks posed when unqualified persons operate locomotives and other locomotive vehicles.

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, recertification, denial or revocation decision and shall be made available to FRA representatives upon request during normal business hours (§ 240.215). 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.

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 Final rule in the **Federal Register**, titled Qualification and Certification of Locomotive Engineers; Miscellaneous Revisions (Part 240). On May 9, 2019, FRA issued a Notice of Proposed Rulemaking (NPRM). *See* 84 FR 20472. In response to that NPRM, FRA received three written comments pertaining to the rule.

The Association of American Railroads and the American Short Line and Regional Railroad Association submitted one set of joint comments (collectively referred to as “Railroad Commenters”). A second set of joint comments was submitted by a group of seven labor organizations (collectively referred to as “Labor Commenters”). The American Association of Nurse Practitioners submitted the third comment.

This final rule responds to those comments and amends part 240 by: making part 240 more consistent with the language in 49 CFR part 242, Qualification and Certification of Conductors (part 242); creating two provisions under which railroads may issue temporary locomotive engineer certifications; merging FRA’s locomotive engineer and conductor review boards; adopting aspects of part 242 for locomotive engineer certification; providing labor representatives with the ability to provide input on a railroad’s part 240 program; and allowing for and encouraging the use of electronic document submission of a railroad’s part 240 program.⁵

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 §219.403 of this chapter (“Voluntary Referral Policy”) to treat voluntary referrals for substance abuse counseling and treatment as confidential; and the certification status of 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 §219.403 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

⁵ Some of the specific comments are discussed in the Section-by-Section Analysis or in the Regulatory Impact and Notices portion of this final rule directly with the provisions and statements to which they specifically relate. *See* 85 FR 81290.

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.

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 Executives, Officials, and Staff Assistants, this cost amounts to \$115 per hour. For Professional/Administrative staff, this cost amounts to \$76 per hour. For Maintenance of Way and Structure employees, this cost amounts to \$57 per hour. For Maintenance of Equipment and Stores employees, this cost amounts to \$57 per hour. For Transportation other than Train and Engine employees, this cost amounts to \$68 per hour. For Transportation Train and Engine employees, this cost amounts to \$58 per hour. All cost estimates include 75% overhead.

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 two (2) waivers will be received annually. It is calculated that it will take approximately 60 minutes to collect the necessary data, prepare a letter, and forward it to FRA.

Respondent Universe:	741 railroads
Burden time per response:	60 minutes

Frequency of Response:	On occasion
Annual number of Responses:	2 waivers
Annual Burden:	2 hours
Annual Cost:	\$152 (2 hrs. x \$76 p/hr.)

Calculation: 2 waivers x 60 min. = 2 hours

Penalties and Consequences for Non-Compliance (§ 240.11)

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

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

Certification Program Required

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

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

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 25 railroads will have to amend their certification programs and resubmit them to FRA in order to comply with the above requirements. It is estimated that it will take each railroad approximately five (5) minutes to make the necessary changes.

Respondent Universe:	741 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	25 amended certification programs
Annual Burden:	2 hours
Annual Cost:	\$152 (2 hrs. x \$76 p/hr.)

Calculation: 25 amended certification programs x 5 min. = 2 hours

Additionally, as indicated by the change in the total number of railroads, FRA estimates approximately five (5) new railroads will commence operations annually that will be required to submit certification programs to FRA. It is estimated that it will take each respondent approximately one (1) hour to modify the short-line generic certification program.

Respondent Universe:	5 new railroads
Burden time per response:	1 hour
Frequency of Response:	Annually
Annual number of Responses:	5 modified generic short-line certification programs
Annual Burden:	5 hours
Annual Cost:	\$380 (5 hrs. x \$76 p/hr.)

Calculation: 5 certification programs x 1 hr. = 5 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 five (5) hours.

Respondent Universe:	5 new railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	5 reviews
Annual Burden:	5 hours
Annual Cost:	\$380 (5 hrs. x \$76 p/hr.)

Calculation: 5 reviews x 1 hr. = 5 hours

(b) Each railroad shall: *(Revised Requirement)*

(1) Simultaneous with its filing with FRA, provide 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 to

the president of each labor organization that represents the railroad's employees subject to this part; and

FRA estimates approximately 62 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.

Respondent Universe:	62 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	62 copies of certification program submissions /resubmissions/material modifications
Annual Burden:	5 hours
Annual Cost:	\$380 (\$76 x 5 hrs.)

Calculation: 62 certification program submissions/resubmissions/ material modifications x 5 min. = 5 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 provided a copy to 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 provided a copy. (*New Requirement*)

FRA estimates approximately 62 affirmative statements/lists of labor organization persons served will be completed under the above requirement. It is estimated that it will take approximately 5 minutes to complete each affirmative statement list.

Respondent Universe:	62 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	62 affirmative copies
Annual Burden:	5 hours
Annual Cost:	\$380 (\$76 x 5 hrs.)

Calculation: 62 affirmative copies x 5 min. = 5 hours.

(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*)

FRA estimates approximately 62 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.

Respondent Universe:	62 railroads
Burden time per response:	8 hours
Frequency of Response:	On occasion
Annual number of Responses:	62 comments
Annual Burden:	496 hours
Annual Cost:	\$37,696 (\$76 x 496 hrs.)

Calculation: 62 comments x 8 hrs. = 496 hours

(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.

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

(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.

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

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

FRA estimates that approximately 10 railroads will materially modify their certification programs after receiving initial FRA approval. It is estimated that it will take each railroad approximately 10 minutes to modify its program and submit it to FRA.

Respondent Universe:	741 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	10 modified certification programs
Annual Burden:	2 hours
Annual Cost:	\$152 (2 hrs. x \$76 p/hr.)

Calculation: 10 modified certification program x 10 min. = 2 hours

Total annual burden for this requirement is 522 hours (2 + 2 + 5 + 5 + 5 + 5 + 496 + 2).

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

(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 DSLE.

Under 5 CFR 1320.3(h)(7), 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 examinations are not considered” information.” 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 DSLE 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.

FRA estimates that approximately 10 reports will be written per year under this requirement. FRA estimates that it will take approximately 30 minutes to write each report.

Respondent Universe:	741 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	10 reports
Annual Burden:	5 hours
Annual Cost:	\$575 (5 hrs. x \$115 p/hr.)

Calculation: 10 reports x 30 min. = 5 hours

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

These designations have already been made. Consequently, there is no burden associated with this requirement.

Types of Service (§ 240.107)

(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.

The locomotive engineers are certified or re-certified on an ongoing basis so that approximately one-third of these employees or 17,667 locomotive engineers go through this process each year. Of these 17,667 candidates, FRA estimates that approximately 25 candidates will respond in writing to records containing prior safety conduct information. It is estimated that it will take approximately five (5) 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 two (2) hours.

Respondent Universe:	17,667 candidates
Burden time per response:	5 minutes
Frequency of Response:	Annually
Annual number of Responses:	25 responses
Annual Burden:	2 hours
Annual Cost:	\$116 (2 hrs. x \$58 p/hr.)

Calculation: 25 responses x 5 min. = 2 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)

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 one-third or 17,667 locomotive engineers. It is estimated that it will take approximately 10 minutes for each request.

Respondent Universe:	17,667 candidates
Burden time per response:	10 minutes
Frequency of Response:	Triennially
Annual number of Responses:	17,667 requests
Annual Burden:	2,945 hours
Annual Cost:	\$223,820 (2,945 hrs. x \$76 p/hr.)

Calculation: 17,667 requests x 10 min. = 2,945 hours

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 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.

The paperwork burden associated with a request for National Driver Register data is currently approved by OMB under NHTSA's information collection OMB No. 2127-0001.

Request for NDR data from a State Agency

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

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

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

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

FRA estimates that approximately 1% (177) of the 17,667 annual NDR requests will yield a match and the railroad will receive data concerning a candidate's driving record.

It is estimated that it will take the railroad approximately five (5) minutes to notify the engineer candidate and another five (5) minutes for the candidate/employee to prepare a request and mail it to the State agency holding the relevant data.

Respondent Universe:	741 railroads
Burden time per response:	5 minutes + 5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	177 notifications + 177 requests
Annual Burden:	30 hours
Annual Cost:	\$2,010 (15 hrs. x \$76 p/hr. + 15 hrs. x \$58 p/hr.)

Calculation: 177 notifications x 5 min + 177 requests x 5 min. = 30 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 10 minutes for the employee to review the information and make any comments necessary concerning the data to the certifying railroad.

Respondent Universe:	741 railroads
Burden time per response:	10 minutes
Frequency of Response:	On occasion
Annual number of Responses:	20 cases/comments
Annual Burden:	3 hours
Annual Cost:	\$174 (3 hrs. x \$58 p/hr.)

Calculation: 20 comments x 10 min. = 3 hours

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

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

fact in accordance with the procedures of the railroad that comply with § 240.109(d).

FRA believes that just about all of the candidates (53,000) will have a driver's license. However, FRA calculates for these purposes that in approximately four (4) cases annually the candidate will never have applied for, or received a driver's license. It is estimated that it will take the candidate approximately five (5) minutes to prepare a letter and forward it to the railroad informing it that he/she has never had a driver's license.

Respondent Universe:	53,000 candidates
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	4 letters
Annual Burden:	0.3 hour
Annual Cost:	\$19 (.3333 hr. x \$58 p/hr.)

Calculation: 4 letters x 5 min = 0.3 hour

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

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

FRA estimates that approximately 100 of the approximate 53,000 locomotive engineers will report by phone a conviction or a completed state action to cancel, revoke, suspend, or deny a motor vehicle driver's license. FRA estimates that each phone call will take approximately five (5) minutes.

Respondent Universe:	741 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	100 phone calls
Annual Burden:	8 hours
Annual Cost:	\$464 (8 hrs. x \$58 p/hr.)

Calculation: 100 phone calls x 5 min. = 8 hours

Total annual burden for this requirement is 3,045 hours (2,945 + 30 + 3 + 0.3 + 8).

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

(a)-(b) Except for persons covered by § 240.109(h), each person seeking certification or re-certification must request, in writing, that the chief operating officer or other appropriate person of the former employing railroad provide a copy of that railroad's available information concerning his or her service record to the railroad that is considering such certification or re-certification.

FRA estimates that approximately 2% (353) of the 17,667 candidates annually will have worked for another railroad. It is estimated that it will take the employee approximately five (5) minutes to prepare his/her written request and another five (5) 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.

Respondent Universe:	17,667 candidates
Burden time per response:	5 min. + 5 min.
Frequency of Response:	On occasion
Annual number of Responses:	353 requests + 353 responses
Annual Burden:	59 hours
Annual Cost:	\$4,130 (29.5 hrs. x \$58 p/hr. + 29.5 hrs. x \$76 p/hr.)

Calculation: 353 requests x 5 min. + 353 responses x 5 min. = 59 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 that 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) through (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: (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. *(Revised Requirement)*

(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: (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. *(Revised Requirement)*

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:	741 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:	\$152 (\$76 x 2 hrs.)

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

(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.

(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 five (5) hours to request each record and approximately five (5) minutes for each employee to supply the necessary record to the DAC.

Respondent Universe:	17,667 candidates
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	200 records requests + 200 records
Annual Burden:	33 hours
Annual Cost:	\$1,914 (\$58 x 33 hrs.)

Calculation: 200 requests x 5 min. + 200 records x 5 min. = 33 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.

Respondent Universe:	17,667 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:	\$5,800 (\$58 x 100 hrs.)

Calculation: 100 conditional certifications 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.

Respondent Universe:	17,667 candidates
Burden time per response:	60 minutes
Frequency of Response:	On occasion
Annual number of Responses:	100 evaluations/suspended certification documents
Annual Burden:	100 hours
Annual Cost:	\$5,800 (\$58 x 100 hrs.)

Calculation: 100 evaluation x 60 = 100 hours

Total annual burden for this entire requirement is 235 hours (2 + 33 + 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 that 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.

(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 DSLE, 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 DSLE 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.

Since this requirement 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 DSLEs 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.

Based on FRA's interpretation of the PRA's implementing regulations, specifically the definition of "information" within 5 C.F.R. § 1320.3(h), FRA considers training/testing to be an excepted category of information under the PRA.

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.

Respondent Universe:	53,000 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:	\$1,914 (\$58 x 33 hrs.)

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

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

(a) Program requirement. 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) Determination requirement. 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) Recordkeeping requirement. 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 five (5) minutes to complete each document and then file it.

Respondent Universe:	741 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	400 written DAC documents
Annual Burden:	33 hours
Annual Cost:	\$1,914 (\$58 x 33 hrs.)

Calculation: 400 written DAC documents x 5 min. = 33 hours

(d) Fitness requirement. (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 abuse 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 150 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.

Respondent Universe:	53,000 locomotive engineers
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	150 self-referrals
Annual Burden:	13 hours
Annual Cost:	\$754 (\$58 x 13 hrs.)

Calculation: 150 self-referrals x 5 min. = 13 hours

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

FRA estimates 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

The burden for this requirement is included under § 240.119(c) above. Consequently, there is no additional burden associated with this requirement.

(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 30 minutes to complete each notification.

Respondent Universe:	741 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	200 notifications
Annual Burden:	100 hours
Annual Cost:	\$5,800 (\$58 x 100 hrs.)

Calculation: 200 notifications x 30 min. = 100 hours

(4) The period of ineligibility described in this section shall be determined in accordance with the following standards: (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. Consequently, there is no additional burden associated with this requirement.

FRA estimates that approximately 200 engineers will waive investigation under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each waiver.

Respondent Universe:	53,000 locomotive engineers
Burden time per response:	2 minutes
Frequency of Response:	On occasion
Annual number of Responses:	200 engineer investigation waivers
Annual Burden:	7 hours

Annual Cost: \$1,406 (\$58 x 7 hrs.)

Calculation: 200 engineer investigation waivers x 2 min. = 7 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.

The burden for co-worker reports is already covered under OMB No. 2130-0526. 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 to treat qualified 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 referral policy, as required pursuant to § 219.1003(j) 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 co-worker reports is already covered under OMB No. 2130-0526. Consequently, there is no additional burden associated with this requirement.

Total annual burden for this entire requirement is 153 hours (33 + 13 + 100 + 7).

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 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 the person's ability to safely operate a locomotive. In accordance with the guidance prescribed in Appendix F to this Part, a person is entitled to one retest without making any showing and to another retest if the person provides evidence substantiating that circumstances have changed since the last test to the extent that the person could now arguably operate a locomotive or train safely. The railroad must provide its medical examiner with a copy of this part, including all appendices.

FRA adheres to its previous estimate that approximately five (5) new railroads will be formed each year. FRA estimates that all five (5) railroad medical examiners will need a copy of the required part, including the appendices, and that it will take approximately five (5) minutes for each railroad to provide them a copy.

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

Subsequent Years Burden: .4 hour
Annual Cost: \$32 (.4 hr. x \$76 p/hr.)

Calculation: 5 copies x 5 min. = .4 hour

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 five (5) 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 DSLEs. FRA estimates that it will take approximately five (5) minutes for each railroad to provide them a copy.

Respondent Universe: 741 railroads
Burden time per response: 5 minutes
Frequency of Response: One-time
Subsequent Years # Responses: 5 copies
Subsequent Years Burden: .4 hour
Annual Cost: \$48 (.4 hr. x \$115 p/hr.)

Calculation: 5 copies x 5 min. = .4 hour

(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.

Respondent Universe: 741 railroads
Burden time per response: 15 minutes
Frequency of Response: On occasion
Annual number of Responses: 10 notifications
Annual Burden: 3 hours

Annual Cost: \$174 (3 hrs. x \$58 p/hr.)

Calculation: 10 notifications x 15 min. = 3 hours

Total annual burden for this entire requirement is about four (4) hours (.4 + .4 + 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 that 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 DSLE), 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 that, at a minimum, complies with the program requirements of § 243.101 of this chapter. *(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.

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 requalification 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.

(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.

(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)*

Based on FRA's interpretation of the PRA's implementing regulations, specifically the definition of "information" within 5 C.F.R. § 1320.3(h), FRA considers training/testing to be an excepted category of information under the PRA.

(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.

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.

The burden for this requirement is included under that of railroad certification/amended certification programs under § 240.101/103 above. Consequently, there is no additional burden associated with this requirement.

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)(1) A requirement that an 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 the 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.

Respondent Universe:	53,000 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:	\$6,308 (\$76 x 83 hrs.)

Calculation: 1,000 records x 5 min. = 83 hours

(e) The unannounced compliance test program.

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.

List of Designated Supervisor of Locomotive Engineers (§ 240.201/221)

(a) Each railroad must designate in writing any person(s) it deems qualified as a DSLE. 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 DSLE.

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 741 railroads will have such a list. This list must be updated at least annually. It is estimated that it will take approximately five (5) minutes per respondent to update the list.

Respondent Universe:	741 railroads
Burden time per response:	5 minutes
Frequency of Response:	Annually
Annual number of Responses:	741 updates
Annual Burden:	62 hours
Annual Cost:	\$4,712 (62 hrs. x \$76 p/hr.)

Calculation: 741 updates x 5 min. = 62 hours

List of Designated Qualified Locomotive Engineers (§ 240.201/221)

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

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

All 741 railroads are required to prepare a record or list identifying their qualified

locomotive engineers. It is estimated that it will take each railroad approximately five (5) minutes to annually update its list/record.

Respondent Universe:	741 railroads
Burden time per response:	5 minutes
Frequency of Response:	Annually
Annual number of Responses:	741 updated lists/records
Annual Burden:	62 hours
Annual Cost:	\$4,712 (62 hrs. x \$76 p/hr.)

Calculation: 741 updated lists/records x 5 min. = 62 hours

(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 DSLE or initially certify or re-certify a person as a locomotive engineer in either locomotive or train service unless that person has been tested, evaluated, and determine to be qualified in accordance with procedures that comply with Subpart C.

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

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

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

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

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

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

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.

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

Respondent Universe:	53,000 candidates
Burden time per response:	5 minutes
Frequency of Response:	Triennially
Annual number of Responses:	17,667 certificates
Annual Burden:	1,472 hours
Annual Cost:	\$111,872 (1,472 hrs. x \$76 p/hr.)

Calculation: 17,667 certificates x 5 min. = 1,472 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 for this task. Consequently, there is no additional burden associated with this requirement.

Determinations Required as a Prerequisite to Certification (§ 240.203)

Except as provided in paragraph (b), each railroad, prior to initially certifying or re-certifying any person as an engineer for any class of service, must, in accordance with its FRA-approved program, determine in writing.

The burden for this requirement is included under § 240.117, § 240.205, § 240.209/213, § 240.211/213, and § 240.303. Consequently, there is no additional burden associated with this requirement.

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

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

conduct as a railroad worker, and § 240.119 involving substance abuse disorders and alcohol/drug rules compliance.

The burden for this requirement is included in the section for recordkeeping below. Consequently, there is no additional burden associated with it.

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

A third of the 53,000 candidates, about 17,667, will be re-certified by the railroads. It is estimated that it will take approximately 30 minutes for the visual and hearing tests for the preparation of a medical certificate.

Respondent Universe:	53,000 candidates
Burden time per response:	30 minutes
Frequency of Response:	Triennially
Annual number of Responses:	17,667 certificates
Annual Burden:	8,834 hours
Annual Cost:	\$1,015,910 (8,834 hrs. x \$115 p/hr.)

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

(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 a lower threshold determined by the railroad's medical examiner to be sufficient to safely operate a locomotive or train on that railroad, that fact must be noted on the certificate issued in accordance with the provisions of this part.

The burden for this is included under § 240.201/217/223/301. 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 five (5) minutes 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.

Respondent Universe:	741 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	30 written determinations
Annual Burden:	3 hours
Annual Cost:	\$345 (3 hrs. x \$115 p/hr.)

Calculation: 30 written determinations x 5 minutes. = 3 hours

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

(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 DSLE 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 § 240.20/221 above. Consequently, there is no additional burden associated with this requirement.

Denial of certification (§ 240.219)

(a) A railroad shall notify a candidate for certification or recertification of information known to the railroad that forms the basis for denying the person certification and provide the person a reasonable opportunity to explain or rebut that adverse information in

writing prior to denying certification. A railroad shall provide the 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.
(Revised Requirement)

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 30 minutes to prepare and forward a letter to the employee, and approximately an additional 30 minutes for the employee to prepare and forward a response back to the railroad.

Respondent Universe:	17,667 candidates
Burden time per response:	30 minutes + 30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	45 letters + 45 responses
Annual Burden:	45 hours
Annual Cost:	\$3,420 (45 hrs. x \$76 p/hr.)

Calculation: 45 letters x 30 min + 45 responses x 30 min. = 45 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.
(New Requirement)

Respondent Universe:	741 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:	\$152 (\$76 x 2 hrs.)

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

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

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

(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 47 hours (45 + 2).

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 burden for this requirement is included under §§ 240.101, 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. 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)

(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% (184) of the 18,400 locomotive engineers working for these railroads will notify their employer annually that they are not qualified to perform on a given segment of track in accordance with the controlling railroad's requirements. FRA estimates that each call (radio/phone) will take approximately five (5) minutes.

Respondent Universe:	321 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	184 calls (radio/phone)
Annual Burden:	15 hours
Annual Cost:	\$870 (15hrs. x \$58 p/hr.)

Calculation: 184 calls x 5 min. = 15 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)

(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 600 certificates will be lost, stolen, or mutilated, and thus approximately 600 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.

Respondent Universe:	741 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	600 temporary replacement certificates
Annual Burden:	300 hours
Annual Cost:	\$22,800 (\$76 x 300 hrs.)

Calculation: 600 temporary replacement certificates x 30 min. = 200 hours

Prohibited Conduct (§ 240.305)

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

Any burden incurred by the DSLE pertaining to an appeal would be exempt for the reason cited under § 240.117. Consequently, there is no burden associated with this requirement.

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

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

Respondent Universe:	53,000 engineers/candidates
Burden time per response:	5 minutes

Frequency of Response:	On occasion
Annual number of Responses:	100 notifications
Annual Burden:	8 hours
Annual Cost:	\$464 (8 hrs. x \$58 p/hr.)

Calculation: 100 notifications x 5 min. = 8 hours

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

FRA estimates that approximately 2% (1,060) of the 53,000 engineers will hold certificates from two or more railroads. It is estimated that approximately two (2) engineers will lose their certificate from at least one of the railroads. It is calculated that it will take the engineer approximately 15 minutes to prepare and forward his letter to the railroad informing them of his/her loss of certification from another railroad.

Respondent Universe:	1,060 locomotive engineers
Burden time per response:	15 minutes
Frequency of Response:	On occasion
Annual number of Responses:	2 letters
Annual Burden:	1 hour (rounded)
Annual Cost:	\$58 (1 hr. x \$58 p/hr.)

Calculation: 2 letters x 15 min. = 1 hour

Revocation of Certification (§ 240.307)

(b)(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 1,100 times a year (2.075% of 53,000 times a year). It is calculated that it will take approximately one (1) hour to prepare and forward the notification letter to the employee, for the employee to respond to the written notification

with a request for a hearing, and for the railroad to make a file folder and file any pertinent data concerning the hearing.

Respondent Universe:	741 railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	1,100 notification letters
Annual Burden:	1,100 hours
Annual Cost:	\$73,700 (550 hrs. x \$58 p/hr.550 + hrs. x \$76 p/hr.)

Calculation: 1,100 notification letters x 1 hr. = 1,100 hours

(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; (*Revised/New Requirement*)

Respondent Universe:	741 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:	\$4,408 (\$76 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 one (1) hour to complete the hearing and accompanying record.

Respondent Universe:	741 railroads
Burden time per response:	1 hour
Frequency of Response:	On occasion
Annual number of Responses:	690 hearings/records of hearings
Annual Burden:	690 hours
Annual Cost:	\$52,440 (\$76 x 690 hrs.)

Calculation: 690 hearings/records of hearings x 1 hour = 690 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:

(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

(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

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

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 30 minutes to prepare and sign each written decision. (*Revised Requirement*)

Respondent Universe:	741 railroads
Burden time per response:	30 minutes
Frequency of Response:	On occasion
Annual number of Responses:	690 written decisions
Annual Burden:	345 hours
Annual Cost:	\$26,220 (\$76 x 345 hrs.)

Calculation: 690 written decisions x 30 minutes = 345 hours

Additionally, FRA estimates that approximately 690 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 5 minutes to serve each written decision copy. (*Revised Requirement*)

Respondent Universe:	741 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	690 written decision copies
Annual Burden:	58 hours
Annual Cost:	\$4,408 (\$76 x 58 hrs.)

Calculation: 690 written decisions x 5 min. = 58 hours

(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.

(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 750 employees will waive their right to a hearing under the above requirement. It is estimated that it will take approximately 5 minutes to complete and sign each written waiver.

Respondent Universe:	741 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	750 written waivers
Annual Burden:	63 hours
Annual Cost:	\$3,654 (\$58 x 63 hrs.)

Calculation: 750 written waivers x 5 min. = 63 hours

(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.

Respondent Universe:	741 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:	\$608 (\$76 x 8 hrs.)

Calculation: 50 updated records x 10 min. = 8 hours

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.

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

(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.

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

(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.

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

(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. 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. 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. 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 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 and § 240.307 above. Consequently, there is no additional burden associated with this requirement.

Railroad Oversight Responsibilities (§ 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.

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 three (3) hours per railroad for this review and analysis.

Respondent Universe:	51 railroads
Burden time per response:	3 hours
Frequency of Response:	Annually
Annual number of Responses:	51 reviews
Annual Burden:	153 hours
Annual Cost:	\$11,628 (153 hrs. x \$76 p/hr.)

Calculation: 51 reviews x 3 hrs. = 153 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.

FRA estimates that it will zero (0) reports under the above requirement. Consequently, there is no additional burden associated with it.

(f) For reporting purposes, each category of detected poor safety conduct identified in paragraph (d) of this section shall be capable of being annotated to reflect.

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.

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:	\$116 (2 hrs. x \$58 p/hr.)

Calculation: 6 annotations x 15 minutes = 2 hours

Engineer's appeal to FRA when a certification is denied, revoked, or suspended (§240.401/403), Processing qualifications review petitions/Railroad's Response to Appeal (§ 240.405), Request for a Hearing (§ 240.407), Hearings (§ 240.409), and Appeals (§ 240.411)

The requirements of this provision are exempted from the Paperwork Reduction Act under 5 CFR 1320.4(2). Since this provision pertains to an administrative action/investigation, there is no burden associated with these requirements.

RECORDKEEPING REQUIREMENTS

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

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

alcohol/drug rules compliance.

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

Respondent Universe:	741 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	177 records
Annual Burden:	15 hours
Annual Cost:	\$1,725 (15 hrs. x \$115 p/hr.)

Calculation: 177 records x 5 min. = 15 hours

Written Test (§ 240.209/213)

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

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

Under 5 CFR 1320.3(h)(7), 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 examinations are not considered "information." Consequently, there is no burden associated with this requirement.

FRA estimates that approximately 17,667 test records (1/3 of the total of 53,000) will be kept annually under the above requirement. It is estimated that it will take approximately one (1) minute to administer complete the written record.

Respondent Universe:	53,000 candidates
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Burden time per response:	1 minute
Frequency of Response:	Triennially
Annual number of Responses:	17,667 test records
Annual Burden:	294 hours
Annual Cost:	\$22,344 (294 hrs. x \$76 p/hr.)

Calculation: 17,667 test records x 1 min. = 294 hours

Performance Test (§ 240.211/ 213)

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

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

Under 5 CFR 1320.3(h)(7), 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 examinations are not considered "information." Consequently, there is no burden associated with this requirement.

FRA estimates that approximately 17,667 test records (1/3 of the total of 53,000) will be kept annually under the above requirement. It is estimated that it will take approximately one (1) minute to administer complete the written record.

Respondent Universe:	53,000 candidates
Burden time per response:	1 minute
Frequency of Response:	Triennially
Annual number of Responses:	17,667 test records
Annual Burden:	294 hours
Annual Cost:	\$22,344 (294 hrs. x \$76 p/hr.)

Calculation: 17,667 test records x 1 min. = 294 hours

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.

About 17,667 (1/3 of 53,000) individual records will be established and maintained annually by the railroads. It is estimated that it will take approximately 5 minutes per employee to prepare a file folder and place in it all the required information.

Respondent Universe:	741 railroads
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	17,667 records
Annual Burden:	1,472 hours
Annual Cost:	\$111,872 (1,472 hrs. x \$76 p/hr.)

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

Annual Operational Monitor Observation (§ 240.303)

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

Under 5 CFR 1320.3(h)(7), 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 examinations are not considered "information." Consequently, there is no burden associated with this requirement.

Under the above requirement, all 53,000 candidates will be tested and an individual record will be maintained annually by the railroads. It is estimated that it will take approximately one (1) minute per employee to prepare a file folder and place in it all the required information.

Respondent Universe: 53,000 candidates
 Burden time per response: 1 minute
 Frequency of Response: On occasion
 Annual number of Responses: 53,000 records
 Annual Burden: 883 hours
 Annual Cost: \$67,108 (883 hrs. x \$76 p/hr.)

Calculation: 53,000 records x 1 min. = 883 hours

Annual Operating Rules Compliance Test/Observation (§ 240.303)

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

Under 5 CFR 1320.3(h)(7), 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 examinations are not considered” information.” Consequently, there is no burden associated with this requirement.

Under the above requirement, all 53,000 candidates will be tested and an individual record will be maintained annually by the railroads. It is estimated that it will take approximately one (1) minute per employee to prepare a file folder and place in it all the required information.

Respondent Universe: 53,000 candidates
 Burden time per response: 1 minute
 Frequency of Response: On occasion
 Annual number of Responses: 53,000 records
 Annual Burden: 883 hours
 Annual Cost: \$67,108 (883 hrs. x \$76 p/hr.)

Calculation: 53,000 records x 1 min. = 883 hours

The total annual burden requested under this entire information collection is 23,964 hours and 224,566 responses.

Summary Table

CFR Section	Respondent Universe	Total Annual Responses	Average Time per Response	Total Annual Burden Hours	Total Annual Dollar Cost Equivalent
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240.9 – Waivers	741 railroads	2 waiver petitions	1 hour	2 hours	\$152
240.101/103 – Certification program: written program for certifying qualifications of locomotive engineers -- amendments	741 railroads	25 amendments	5 minutes	2 hours	\$152
– Certification programs for new railroads	5 new railroads	5 programs	1 hour	5 hours	\$380
– Final review and submission of certification programs for new railroads	5 new railroads	5 reviews	1 hour	5 hours	\$380
(b)(1) – RR provision of copy of certification program submission or resubmission to president of each labor union representing employees simultaneously with filing with FRA (See footnote 11)	62 railroads	62 copies	5 minutes	5 hours	\$380
(b)(2) – RR affirmative statement that it has served certification program copy to each labor union president (See footnote 11)	62 railroads	62 copies	5 minutes	5 hours	\$380
(c) – RR employee comment on submission, resubmission or material modification of RR certification program (See footnote 11)	62 railroads	62 comments	8 hours	496 hours	\$37,696
(h) – RR material modifications to program after initial FRA approval (formerly under (e))	741 railroads	10 modified programs	10 minutes	2 hours	\$152
240.105(b) - (c) Written reports/determinations of DSLE performance skills	741 railroads	10 reports	30 minutes	5 hours	\$575
240.109/App. C – Prior safety conduct	17,667 candidates	25 responses	5 minutes	2 hours	\$116
240.111/App C – Driver’s license data requests from chief of driver licensing agency of any jurisdiction, including foreign countries	17,667 candidates	17,667 requests	10 minutes	2,945 hours	\$223,820
– NDR match – notifications and requests for data	741 railroads	177 notices + 177 requests	5 mins. + 5 mins.	30 hours	\$2,010

– Written response from candidate on driver’s license data	741 railroads	20 cases/comments	10 minutes	3 hours	\$174
240.111(g) – Notice to RR of absence of license	53,000 candidates	4 letters	5 minutes	0.3 hours	\$19
240.111(h) – Duty to furnish data on prior safety conduct as motor vehicle operator	741 railroads	100 communications	5 minutes	8 hours	\$464
240.113 – Duty to furnish data on prior safety conduct as an employee of a different RR	17,667 candidates	353 requests + 353 responses	5 mins. + 5 mins.	59 hours	\$4,130
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 (See footnote 11)	741 railroads	25 recertifications	5 minutes	2 hours	\$152
(i)(2) – RR drug and alcohol counselor request of employee’s record of prior counseling or treatment (See footnote 11)	17,667 candidates	200 requests + 200 records	5 minutes	33 hours	\$1,914
(i)(3) – Conditional certification based on recommendation by DAC of employee aftercare and/or follow-up testing for alcohol/drugs (See footnote 11)	17,667 candidates	100 conditional certifications/DAC recommendations	1 hour	100 hours	\$5,800
(i)(4) – RR employee evaluation by DAC as having an active substance abuse disorder (See footnote 11)	17,667 candidates	100 DAC evaluations	1 hour	100 hours	\$5,800
240.117(i)(4) – RR employee completion of training/retraining prior to return to service -- records (See footnote 11)	53,000 locomotive engineers	400 trained/retrained records	5 minutes	33 hours	\$1,914
240.119(c) – Written records indicating dates that the engineer stopped performing or returned to certification service + compliance/observation test (See footnote 11)	741 railroads	400 records	5 minutes	33 hours	\$1,914

240.119(d) – Self-referral to EAP re: active substance abuse disorder	53,000 locomotive engineers	150 self-referrals	5 minutes	13 hours	\$754
240.119(e)(3)(ii) – RR notification to person that recertification has been denied or revoked (See footnote 11)	741 railroads	200 notifications	30 minutes	100 hours	\$5,800
240.119(e)(4)(iii) – Locomotive engineer waiver of investigation in case of one violation of § 219.101 (See footnote 11)	53,000 locomotive engineers	200 waivers	2 minutes	7 hours	\$406
240.121 – Criteria – vision/hearing acuity data – new railroads	5 railroads	5 copies	5 minutes	0.4 hours	\$32
– Conditioned certification	741 railroads	5 reports	5 minutes	0.4 hours	\$48
– Not meeting standards – Notice by employee	741 railroads	10 notifications	15 minutes	3 hours	\$174
240.129(b) – RR documents on file regarding determination made regarding fitness, including DAC written document (See footnote 11)	53,000 locomotive engineers	1,000 records	5 minutes	83 hours	\$6,308
240.201/221 – List of qualified DSLEs	741 railroads	741 updates	5 minutes	62 hours	\$4,712
– List of qualified loco. engineers	741 railroads	741 updated lists	5 minutes	62 hours	\$4,712
240.201/223/301 – Loco. engineer certificates	53,000 candidates	17,667 certificates	5 minutes	1,472 hours	\$111,872
240.207 – Medical certificate showing hearing/vision standards are met:	53,000 candidates	17,667 certificates	30 minutes	8,834 hours	\$1,015,910
– Written determinations waiving use of corrective device	741 railroads	30 determinations	5 minutes	3 hours	\$345
240.219(a) – RR notification letter to employee of certification denial + employee written rebuttal (See footnote 11)	17,667 candidates	45 letters + 45 responses	30 minutes + 30 minutes	45 hours	\$3,420
– RR notice/written documents/records to candidate that support its pending denial decision (See footnote 11)	741 railroads	45 documents/ records	2 minutes	2 hours	\$152

240.229 – Joint operations – notice – not qualified	321 railroads	184 employee calls	5 minutes	15 hours	\$870
240.301(b) – Temporary replacement certificates valid for no more than 30 days (See footnote 11)	741 railroads	600 replacement certificates	30 minutes	300 hours	\$22,800
(c) – Engineer’s notice of non-qualification to RR	53,000 engineers or candidates	100 notifications	5 minutes	8 hours	\$464
(d) – Relaying certification denial or revocation status to other certifying railroad	1,060 engineers	2 letters	15 minutes	1 hour	\$58
240.307(a-b) – Notice to engineer of disqualification	741 railroads	1,100 letters	1 hour	1,100 hours	\$73,700
240.307(b)(4) – RR provision to employee of copy of written information and list of witnesses that it will present at hearing (See footnote 11)	741 railroads	690 copies/list	5 minutes	58 hours	\$4,408
240.307(b)(5) – RR determination on hearing record whether person no longer meets certification requirements of part 240 (See footnote 11)	741 railroads	690 hearing determinations	1 hour	690 hours	\$52,440
240.307(c)(11)(i)(ii) – RR written decision after close of hearing containing findings of fact & whether a revocable event occurred (See footnote 11)	741 railroads	690 written decisions	30 minutes	345 hours	\$26,220
240.307(c)(11)(iii) – RR service of written decision on employee and employee’s representative (See footnote 11)	741 railroads	690 copies	5 minutes	58 hours	\$4,408
240.307(f) – Person’s waiver of right to hearing under this section (See footnote 11)	741 railroads	750 written waivers	5 minutes	63 hours	\$3,654
240.307(j) – RR update of record with relevant information (See footnote 11)	741 railroads	50 updated records	10 minutes	8 hours	\$608
240.309 – RR oversight resp.: detected poor safety conduct - annotation	15 railroads	6 annotations	15 minutes	2 hours	\$116
– Railroad annual review	51 railroads	51 reviews	3 hours	153 hours	\$11,628

Recordkeeping					
240.205 – Data to EAP counselor	741 railroads	177 records	5 minutes	15 hours	\$1,725
240.209/213 – Written tests	53,000 candidates	17,667 testing record retention	1 minute	294 hours	\$22,344
240.211/213 – Performance test	53,000 candidates	17,667 testing record retention	1 minute	294 hours	\$22,344
240.215 – Retaining info. supporting determination	741 railroads	17,667 records	5 minutes	1,472 hours	\$111,872
240.303 – Annual operational monitoring observation	53,000 candidates	53,000 testing record retention	1 minute	883 hours	\$67,108
240.303 – Annual operating rules compliance test	53,000 candidates	53,000 testing record retention	1 minute	883 hours	\$67,108
240.307(b)(4) – RR hearings/hearing records (See footnote 11)	741 railroads	690 hearings/records	4 hours	2,760 hours	\$209,760
TOTAL	741 railroads	224,566 responses	N/A	23,964 hours	\$2,146,751

13. Estimate of total annual costs to respondents.

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

\$88,833	Notary (17,667 requests @ \$5 ea.)
\$88,833	Fee for NDR data (17,667 requests @ \$5 ea.)
\$12,000	Postage
<u>\$12,000</u>	Miscellaneous
\$200,670	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 this final 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

After deducting cost savings, the total cost to the Government would amount to \$411,378.

15. Explanation of program changes and adjustments.

Currently, the OMB inventory for this collection of information shows a total burden of 18,668 hours and 216,630 responses, while this updated submission reflects a total burden of 23,964 hours and 224,566 responses. Overall, the adjustments increased the burden by 5,296 hours and 7,936 responses due to program change and conforming language in Part 240 to Part 242 as shown in the two tables below.

Table for Program Change

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	62 copies 5 minutes	0 hours	5 hours	+ 5 hours + 62 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	62 statements 5 minutes	0 hours	5 hours	+ 5 hours + 62 resp.

240.103(c) – RR Employee comment on submission, resubmission or material modification of RR certification program	0 comments 0 hours	62 comments 8 hours	0 hours	496 hours	+ 496 hours + 62 responses
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 recertifications 0 minutes	25 recertifications 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 5 minutes	0 hours	33 hours	+ 33 hours + 400 resp.
240.129(b) - Written records indicating dates that the engineer stopped performing or returned to certification service + compliance/ observation test	0 records 0 minutes	1,000 records 5 minutes	0 hours	83 hours	+ 83 hours + 1,000 resp.
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
240.301(b) – Temporary replacement certificates valid for no more than 30 days	0 replacement certificates 0 minutes	600 replacement certificates 30 minutes	0 hours	300 hours	+ 300 hours + 600 resp.
240.307(b)(4) – RR provision to	0 copies/lists 0 minutes	690 copies/lists 5 minutes	0 hours	58 hours	+ 58 hours + 690 resp.

employee of copy of written information and list of witnesses that it will present at hearing					
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 30 minutes	0 hours	345 hours	+ 345 hours + 690 resp.
240.307(c)(11)(iii) – RR service of written decision on employee and employee’s representative	0 copies 0 minutes	690 copies 5 minutes	0 hours	58 hours	+ 58 hours + 690 resp.

The **program changes** above increased the burden by *1,387 hours* and *4,326 responses*.

Table for Adjustments

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 5 minutes 200 records 5 minutes	0 hours	33 hours	+ 33 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)(ii) –	0 notification	200 notifications	0 hours	100 hours	+ 100 hours

RR notification to person that recertification has been denied or revoked	0 hours	30 minutes			+ 200 resp.
240.119(e)(4)(iii) – Locomotive engineer waiver of investigation in case of one violation of section 219.101	0 waivers 0 hours	200 waivers 2 minutes	0 hours	7 hours	+ 7 hours + 200 resp.
240.219 – RR notification letter to employee of certification denial + employee written rebuttal	30 letters 30 minutes + 30 responses 30 minutes	45 letters 30 minutes + 45 responses 30 minutes	30 hours	45 hours	+ 15 hours + 30 responses
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	690 railroad determinations 60 minutes	0 hours	690 hours	+ 690 hours + 690 resp.
240.307(f) – Person waiver of right to hearing under this section	0 waivers 0 minutes	750 waivers 5 minutes	0 hours	63 hours	+ 63 hours + 750 resp.
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

The **adjustments** above increased the burden by 3,909 hours and 3,610 responses are due to adding conforming language in Part 240 to Part 242.

There is no change in cost to respondents.

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.