

1111FEDERAL RAILROAD ADMINISTRATION
Disqualification Proceedings
(Title 49 Code of Federal Regulations (CFR) Part 209)
SUPPORTING JUSTIFICATION
OMB Control No. 2130-0529

Summary of Submission

- This submission is a request for an extension without change (with changes in estimates) of the last three-year approval granted by the Office of Management and Budget (OMB) on May 23, 2019, which expires May 30, 2022.
- The Federal Railroad Administration (FRA) published the required 60-day Federal Register Notice on February 2, 2022. See 87 FR 5933. FRA received no comments in response to this Notice.
- Overall, the adjustments increased the burden by 36 hours and increased responses by 19 after a thorough review of the data.
- The answer to question number 12 itemizes all information collection requirements.
- The answer to question number 15 itemizes all adjustments.

1

1. Circumstances that make collection of the information necessary.

Section 3(a) of the Rail Safety Improvement Act of 1988 authorizes FRA to disqualify individuals who are shown to be unfit to perform safety-sensitive functions, based on the individual's violation of an FRA safety rule, regulation, order or standard. These procedures are intended to assure the prompt and efficient conduct of disqualification proceedings under the Act while affording administrative due process to those against whom such proceedings are initiated.

Under 49 U.S.C. 20103, the Secretary of Transportation (Secretary) has broad authority to issue regulations governing every area of railroad safety. The Secretary has delegated rulemaking responsibility under section 20103 to the Administrator of FRA, 49 CFR 1.89(a). Pursuant to its general statutory rulemaking authority, FRA promulgates and enforces rules as part of a comprehensive regulatory program to address all areas of railroad safety. In the area of Disqualification Procedures, FRA issued regulations under 49 CFR part 209, subpart D (§§ 209.301 – 209.337).

On October 18, 1989, FRA published in the Federal Register a final rule that added a new Subpart D—Disqualification Procedures prescribing procedures for disqualifying railroad employees, including managers, supervisors, and other agents from performing safety-

sensitive functions in the rail industry.¹

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

FRA regulations at 49 CFR part 209, subpart D, explain FRA's responsibilities, and the rights and responsibilities of railroads and railroad employees, regarding disqualification procedures.

FRA uses the information collected to promote and maintain rail safety by ensuring that disqualified individuals do not serve in safety-sensitive positions. Employees who demonstrate unfitness may be disqualified temporarily or permanently from performing safety-sensitive functions. FRA, through its Chief Counsel's Office, begins a disqualification by serving notice of the proposed disqualification on the individual charging him/her with having violated one or more rules, regulations, orders, or standards promulgated by FRA which render the individual unfit to perform safety-sensitive functions.

FRA also uses the information collected to ensure that railroad employees' rights are fully protected so that safety-sensitive workers are not disqualified without sufficient cause and due process. Employees can only be disqualified under specified terms and conditions.

Individuals facing disqualification may include in the informal written response a request for a conference. Written explanations, information, or materials submitted by individuals facing disqualification and relevant information presented during any conference held in response to such an individual's request are used by FRA's Chief Counsel's Office in reviewing the notice of proposed disqualification, including the question of the individual's fitness and the conditions of any disqualification which may be imposed. After careful consideration of the informal response, FRA's Chief Counsel's Office will take one of the following actions: (1) It will dismiss all the charges and terminate the notice of proposed disqualification; (2) It will dismiss some of the charges and mitigate the proposed disqualification; (3) It will mitigate the proposed disqualification; or (4) It will sustain the charges and proposed disqualification. Individuals facing disqualification who make an informal response do not waive their right to a hearing.

Railroads also use the information to prevent individuals serving under a disqualification order from retaining and obtaining employment in a safety-sensitive position in the rail industry. Individuals subject to a disqualification order must inform their employer of the order and provide a copy within five (5) days after receipt of the order. Such an individual must likewise inform any prospective employer who is considering hiring the individual to perform safety sensitive functions of the order and provide a copy within

¹ 54 FR 42907.

five (5) days after receipt of the order or upon application for the position, whichever occurs first.

3. Extent of automated information collection.

FRA strongly encourages the use of advanced information technology, wherever possible, to reduce burden on respondents.

4. Efforts to identify duplication.

The information collected to FRA's knowledge is not duplicated anywhere. Similar data is not available from any other source.

5. Efforts to minimize the burden on small businesses.

FRA receives few disqualification proceedings in any given year; thus, the burden is minimal. Consequently, the collection of information has no impact on small businesses.

6. Impact of less frequent collection of information.

The collection of information facilitates the accomplishment of FRA's primary mission, which is to promote and enhance railroad safety throughout the nation. Specifically, if this information collection were not collected, unsuitable or unqualified individuals might perform safety-sensitive jobs or might continue to serve in these positions, especially as locomotive engineers. By not performing safety-sensitive functions capably, there could be an increase in the number and severity of accident/incidents.

Additionally, without this information collection, railroads would not have necessary data to determine the qualifications of current employees or prospective employees to be placed in very important safety-sensitive positions, especially as locomotive engineers.

Furthermore, without this collection of information, railroad workers might unfairly or erroneously be disqualified from safety-sensitive positions and earning their livelihood without full due process.

Finally, without this collection of information, FRA would not have another tool for monitoring and enforcing Federal safety regulations and applicable Federal laws.

7. Special circumstances.

All other information collection requirements are in compliance with this section.

8. Compliance with 5 CFR 1320.8.

As required by the Paperwork Reduction Act of 1995 (PRA) and 5 CFR 1320, FRA published a notice in the Federal Register on February 2, 2022, soliciting comments.² FRA received no comments in response to this notice.

Consultations with representatives of the affected population:

Individuals from the railroad industry are generally in direct contact with FRA and can provide any comments or concerns to FRA.

9. Payments or gifts to respondents.

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

10. Assurance of confidentiality.

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

11. Justification for any questions of a sensitive nature.

There are no sensitive questions, and no sensitive information is requested.

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 Systems and Technology and Office of Chief Counsel.

FRA is including the dollar equivalent cost for each of the itemized hours below using the 2020 Surface Transportation Board's (STB) Full-Year Wage A&B data series as the basis for each cost-equivalent calculation.

- For professional and administrative staff, the hourly wage rate is \$77.47 per hour (\$44.27 * 75-percent overhead charge).
- For transportation (train and engine) employees, the hourly wage is \$61.79 per hour (\$35.31 * 75-percent overhead charge).

² 87 FR 5933.

CFR Section ³	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C) = A * B	Wage rates (D)	Total cost equivalent (E) = C * D	PRA Analyses and Estimates
209.307(a)—Reply— Within 30 days after receipt of the notice of proposed disqualification issued under § 209.305, the respondent shall reply in writing to the charges	86,000 employees	12 replies	3 hours	36.00 hours	\$61.79	\$2,224.44	<p>Within 30 days after receipt of the notice of proposed disqualification issued under § 209.305, the respondent shall reply in writing to the charges. The respondent may furnish affidavits and any other documentary evidence in support of the reply. Further, the respondent may elect to: (1) Stipulate to the charges and consent to the imposition of the disqualification order under the conditions set forth in the notice; (2) Make an informal response as provided in § 209.309; or (3) Request a hearing as provided in § 209.311.</p> <p>It is estimated that it will take on average 3 hours to reply in writing, assemble documents in support of the reply, and send them to FRA.</p>
—(b) Reply—Request for an extension	86,000 employees	2 requests	30 minutes	1.00 hour	\$61.79	\$61.79	<p>The Chief Counsel may extend the reply period for good cause shown, provided the request for extension is served before the expiration of the period provided in paragraph (a) of this section.</p> <p>It is estimated that it will take on average 30 minutes to request an extension.</p>
209.309(a)-(b)—Informal response by railroad employee to a notice of proposed disqualification	The estimated paperwork burden associated with this regulatory requirement is covered under § 209.307.						

³ The requirements under §§ 209.311 through 209.327 are exempted from the PRA under 5 CFR 1320.4(a)(2). Since these provisions pertain to an administrative action or investigation, there is no PRA burden associated with these requirements.

—(h) Informal response— Request for an extension	86,000 employees	4 requests	30 minutes	2.00 hours	\$61.79	\$123.58	The Chief Counsel may extend the period for requesting a hearing for good cause shown, provided the request for extension is served before the expiration of the period provided in paragraph (g) of this section. It is estimated that it will take on average 30 minutes to request an extension.
209.331(a)—Enforcement of disqualification order— A railroad that employs or formerly employed an individual serving under a disqualification order must inform other prospective employers	754 railroads	1 notification letter + 1 information letter	30 minutes + 30 minutes	1 hour	\$77.44	\$77.44	A railroad that employs or formerly employed an individual serving under a disqualification order shall inform prospective or actual employers of the terms and conditions of the order upon receiving notice that the disqualified employee is being considered for employment with or is employed by another railroad to perform any of the safety-sensitive functions described in § 209.303. It is estimated that it will take on average 30 minutes to complete and send each letter.
—(b) Enforcement of disqualification order— Personnel background check	This is a common practice for the railroad industry to do routine personnel checks on individuals whom they are planning on hiring. Thus, there is no burden associated with this requirement.						
—(c) Enforcement of disqualification order— Individual subject to disqualification order to inform employer and provide copy to employer within 5 days after receipt of such order	86,000 employees	1 disqualification letter + 1 copy of disqualification letter	30 minutes + 30 minutes	1 hour	\$61.79	\$61.79	An individual subject to a disqualification order shall inform his or her employer of the order and provide a copy thereof within 5 days after receipt of the order. Such an individual shall likewise inform any prospective employer who is considering hiring the individual to perform any of the safety-sensitive functions described in § 209.303 of the order and provide a copy thereof within 5 days after receipt of the order or upon application for the position, whichever first occurs.

							It is estimated that it will take the individual on average 30 minutes to notify orally and/or in writing, and provide a copy of the order to the employer.
Total	86,000 employees + 754 railroads	22 responses	N/A	41.00 hours	N/A	\$2,549	N/A

13. Estimate of total annual costs to respondents.

There are no additional costs outside of the burden hour costs.

14. Estimate of Cost to Federal Government.

FRA estimates that it will take about 3.5 hours to review each disqualification order at the GS-15 step 5 level (2022 OPM Pay Schedule for the locality pay area of Washington-Baltimore-Arlington, DC-MD-VA-WV-PA). This excludes time spent doing routine compliance and enforcement activities.

Number of submissions (annual)	Average time per review	Hourly wage	75-percent overhead cost	Federal cost (annual)
12	3.5	80.63	1.75	\$5,926

15. Explanation of program changes and adjustments.

This is an extension without change (with changes in estimates) to a current collection of information. The current OMB inventory for this information collection shows a total burden of 5 hours and 4 responses, while the requesting inventory estimates a total burden of 41 hours and 22 responses. Overall, the burden for this submission has increased by 36 hours and increased by 19 responses. There is no change in the method of the collection. The increase in burden is solely the result of adjustments.

As noted in the PRA table below, the PRA burden slightly increased for example due to increased number of submissions anticipated to be received by FRA.

CFR Section	Total Annual Responses			Total Annual Burden Hours			PRA Analyses and Estimates
	Previous submission (average time per submission)	Current submission (average time per submission)	Difference	Previous submission	Current submission	Difference	
209.307(a)—Reply— Within 30 days after receipt of the notice of proposed disqualification issued under § 209.305, the respondent shall reply in writing to the charges	1 reply (3 hours)	12 replies (3 hours)	11 replies	3.00 hours	36.00 hours	33.00 hours	FRA anticipates increased submissions in this 3-year ICR period and the burden hours are increased accordingly.
—(b) Reply—Request for an extension	0	2 requests (30 minutes)	2 requests	0	1.00 hour	1.00 hour	FRA expects to receive requests for an extension in this 3-year ICR period and the burden hours are increased accordingly.
209.309(a)-(b)—Informal response by railroad employee to a notice of proposed disqualification	1 response (1 hour)	0	-1 response	1.00 hour	0	-1.00 hour	The estimated paperwork burden associated with this regulatory requirement is covered under § 209.307.
—(h) Informal response—Request for an extension	0	4 requests (30 minutes)	4 requests	0	2.00 hours	2.00 hours	FRA expects to receive requests for an extension in this 3-year ICR period and the burden hours are increased accordingly.

209.331(a)—Enforcement of disqualification order—A railroad that employs or formerly employed an individual serving under a disqualification order must inform other prospective employers	1 notification letter (15 minutes) + 1 informational letter (15 minutes)	1 notification letter (30 minutes) + 1 informational letter (30 minutes)	0	.50 hours	1.00 hour	.50 hour	The average time per submission is now more accurate in terms of the time necessary to prepare this type of document. The increase in burden hours reflects this increase in the average time per submission.
—(c) Enforcement of disqualification order— Individual subject to disqualification order to inform employer and provide copy to employer within 5 days after receipt of such order	1 disqualification letter (15 minutes) + copy of disqualification letter (15 minutes)	1 disqualification letter (30 minutes) + copy of disqualification letter (30 minutes)	0	.50 hours	1.00 hour	.50 hour	The average time per submission is now more accurate in terms of the time necessary to prepare this type of document. The increase in burden hours reflects this increase in the average time per submission.

16. Publication of results of data collection.

FRA does not plan to publish the information collected.

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

FRA is not seeking approval to not display the expiration date.

18. Exception to certification statement.

No exceptions are taken at this time.