

of this section, any designated representative of railroad employees subject to this part may comment on the submission, resubmission, or material modification.

* * * * *

■ 5. Revise § 240.217(a)(3) to read as follows:

§ 240.217 Time limitations for making determinations.

(a) * * *

(3) Demonstrated knowledge and the knowledge examination being relied on was conducted more than 366 days before the date of the railroad's certification decision except as provided for in paragraph (a)(4) of this section;

* * * * *

■ 6. Revise § 240.223(a)(3) and (8) to read as follows:

§ 240.223 Criteria for the certificate.

(a) * * *

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

* * * * *

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

* * * * *

■ 7. Revise § 240.307(d) to read as follows:

§ 240.307 Revocation of certification.

* * * * *

(d) A hearing required by this section which is conducted in a manner that conforms procedurally to the applicable collective bargaining agreement shall be deemed to satisfy the procedural requirements of this section except that the railroad's decision must comply with the requirements in paragraph (c)(11) of this section.

* * * * *

■ 8. Revise § 240.409(q) and (r) to read as follows:

§ 240.409 Hearings.

* * * * *

(q) Regardless of the prevailing party before the Operating Crew Review Board, the railroad involved in taking the certification action shall be the "hearing petitioner" and shall have the burden of proving its case by a preponderance of the evidence. The impacted locomotive engineer or locomotive engineer candidate shall be the "hearing respondent."

(r) FRA will be a mandatory party to the administrative hearing.

* * * * *

Issued in Washington, DC.

Kyle D. Fields,

Chief Counsel.

[FR Doc. 2025-12172 Filed 6-27-25; 4:15 pm]

BILLING CODE 4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 240 and 242

[Docket No. FRA-2025-0131]

RIN 2130-AD32

Qualification and Certification of Locomotive Engineers and Conductors: Incorporation of Longstanding C³RS Waivers

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA proposes to amend its regulations governing the qualification and certification of locomotive engineers and conductors, to codify longstanding waivers that have granted relief from certain certification requirements for railroads that participate in the FRA-sponsored Confidential Close Call Reporting System (C³RS). FRA does not intend this NPRM to be a disincentive to railroads implementing alternative close call reporting programs outside C³RS, which the agency believes can still positively impact safety culture. FRA would still entertain waiver requests to implement alternative close call reporting programs, as necessary.

DATES: Comments on the proposed rule must be received by September 2, 2025. FRA may consider comments received after that date, but only to the extent practicable.

ADDRESSES:

Comments: Comments related to Docket No. FRA-2025-0131 may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket number (FRA-2025-0131), and Regulatory Identification Number (RIN) for this rulemaking (2130-AD32). All comments received will be posted without change to <https://www.regulations.gov>; this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act

information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT:

Mike Long, Director of Railroad Operations and Outreach, FRA, telephone: (202) 770-8203, email: Mike.Long@dot.gov; or Elizabeth A. Gross, Attorney Adviser, FRA, telephone: (202-253-6281), email: Elizabeth.Gross@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Consistent with the deregulatory agenda of President Donald J. Trump and Secretary of Transportation Sean P. Duffy, which seeks to unleash America's economic prosperity without compromising transportation safety, FRA is reviewing its regulatory requirements in parts 200 through 299 of title 49, Code of Federal Regulations (CFR). The requirements for FRA-regulated entities to establish programs for certifying the qualifications of locomotive engineers and conductors are established in 49 CFR part 240, Qualification and Certification of Locomotive Engineers, and part 242, Qualification and Certification of Conductors, respectively. FRA proposes to amend parts 240 and 242 to codify longstanding waivers that have granted relief from certain certification requirements for railroads that participate in the FRA-sponsored C³RS.

The History of C³RS and the Waiver Process

C³RS is a partnership between FRA and an independent third party (currently, the National Aeronautics and Space Administration (NASA)), in conjunction with participating railroads and labor organizations, that allows participating railroads and their employees to report close calls voluntarily and confidentially.¹ A close call is an event or sequence of events having a potential for more serious adverse consequences to railroad safety,² and close call reports provide an opportunity to improve safety in support of railroad operations.³

¹ See generally <https://c3rs.arc.nasa.gov/information/summary.html>.

² See C³RS Frequently Asked Questions, available at https://c3rs.arc.nasa.gov/docs/C3RS_FAQ.pdf ("A close call is any condition or event that may have the potential for more serious safety consequences.")

³ See *id.* ("C³RS de-identified reports may be used by the railroad community and/or government

Employees of participating railroads can report close calls to NASA, which protects the identity of both the reporting employee and the railroad by generalizing or removing all identifying information. C³RS thereby allows railroads to gain railroad safety information about why close calls occur. Without C³RS, many close calls would go unreported, which would deprive railroads of this important information.

C³RS is established at participating railroads through Implementing Memoranda of Understanding (IMOU) that are developed and signed by all stakeholders, including the participating railroad, FRA, and any participating non-profit employee labor organization. While development of a C³RS IMOU typically begins with a template provided by FRA, C³RS stakeholders can modify the template to contain provisions specific to their program that they have agreed upon. Nothing in the proposed rule would limit stakeholders' ability to modify the template IMOU to fit their specific program, except that no IMOU may provide protection from revocation of certification in certain specified situations that have traditionally been excluded from C³RS, such as violations involving the prohibited use of alcohol or controlled substances, as discussed below in the section-by-section analysis for §§ 240.307 and 242.407.

All C³RS IMOUs provide that employees who report close calls in accordance with the IMOU's provisions are protected from railroad discipline, FRA enforcement, and revocation of a locomotive engineer or conductor certification under part 240 or 242, respectively. To effectuate an IMOU's protections against revocation of certification, a railroad wishing to participate in C³RS must request relief from the provisions in parts 240 and 242 that require the railroad to revoke an employee's certification for certain violations of the railroad's operating rules and practices. A railroad requests this relief by submitting a waiver request to FRA in accordance with 49 CFR part 211, subpart C—Waivers. Once granted, this relief allows the railroad to honor the commitment it made in the IMOU not to revoke an employee's certification for a close call that has been reported in accordance with all applicable provisions of an IMOU.

As of February 28, 2025, a total of 25 railroads were participating in C³RS, including passenger railroads, Class III short line freight railroads, and Class I

freight railroads.⁴ Because the relief provided by the waivers expires, railroads must submit a new waiver request approximately every five years, even when there have been no significant changes to the provisions of the IMOU or the relief requested. FRA's Railroad Safety Board must similarly review and respond to each waiver request pursuant to the procedures in part 211. Because C³RS has been established for approximately 20 years, the waiver process has essentially become a *pro forma* paperwork exercise, with railroads submitting template waiver requests that are routinely granted by FRA. Several C³RS waivers have been in effect for numerous years, having been renewed multiple times.⁵ As such, requiring railroads to go through the waiver process impedes a more streamlined and efficient implementation of C³RS at participating railroads.

Because C³RS has proven to be a valuable tool for improving railroad safety, FRA is proposing to codify these longstanding C³RS waivers by revising parts 240 and 242 to provide that a railroad may not revoke an engineer's or conductor's certification for a close call event that has been reported in accordance with all applicable provisions of a C³RS IMOU. FRA is not currently proposing to amend recently published rules at 49 CFR part 245, Qualification and Certification of Dispatchers, and part 246, Certification of Signal Employees in this rule, but may consider similar amendments to these rules in the future.⁶ Further, no C³RS waivers for dispatchers or signal employees have yet been granted.⁷

The proposed revisions would reduce burdens on C³RS-participating railroads in two ways. First, a railroad would no longer have to apply for a waiver from the implicated provisions in part 240 or 242 to participate in C³RS and be protected from FRA enforcement for failing to revoke a certification for a

close call event that has been reported in accordance with all applicable provisions of a C³RS IMOU. Second, the railroad would be relieved from the associated burden of revoking a certification for a close call event, including burdens associated with suspending a person's certificate; providing notice of the reason for the suspension, the pending revocation, and an opportunity for a hearing before a president officer other than the investigating officer; convening a hearing; and issuing a decision in the proceeding after the hearing.⁸ The proposed revisions would also relieve FRA of the burden of reviewing and approving a unending series of nearly-identical C³RS waiver requests.

Nothing in this proposed rule changes the voluntary and cooperative nature of C³RS, as participating stakeholders retain the ability to terminate their participation in the program in accordance with the provisions of the applicable C³RS IMOU.

Railroad Safety Advisory Committee (RSAC) Task No. 2022–03

On October 17, 2022, the RSAC voted to adopt Task No 2022–03: Confidential Close Call Reporting System (C³RS Task Statement), with a stated purpose of “consider[ing] how FRA could promote rail safety through regulation, voluntary standards, or guidance for voluntary, non-punitive railroad safety reporting system industry-wide.” After a series of RSAC C³RS Working Group meetings, it became apparent that stakeholders generally agreed that FRA should engage in a rulemaking that would streamline C³RS participation by relieving railroads of the burden associated with submitting waivers and recurrent waiver extension requests. FRA presented draft rule text to the C³RS Working Group in May 2024, soliciting stakeholder feedback. The feedback received generally supported the goal of the rule text, although some stakeholders suggested revisions or alternative approaches. FRA subsequently withdrew Task No. 2022–03 from the RSAC in March 2025, in part with the view to begin a rulemaking that would propose amending parts 240 and 242 to remove the need for C³RS waivers. The rule text FRA is proposing in this NPRM is substantially the same as that shared with the C³RS Working Group in May 2024.⁹

⁴ See 49 CFR 240.307 and 242.407.

⁴ See <https://railroads.dot.gov/railroad-safety/divisions/safety-partnerships/c3rs/participating-railroads>.

⁵ For example, Amtrak has had a waiver from part 240 since 2010 and from part 242 since 2013. See Docket Nos. FRA–2010–0152 and FRA–2012–0054. Similarly, New Jersey Transit has had a part 240 waiver since 2009 and a part 242 waiver since 2012. See Docket Nos. FRA–2009–0096 and FRA–2012–0056.

⁶ FRA is exercising enforcement discretion on the current compliance deadlines in these two regulations. See FRA Follow-up Response to Petitions for Reconsideration (March 14, 2025), Document ID Nos. FRA–2022–0020–0049 and FRA–2022–0019–0058.

⁷ FRA has a pending C³RS waiver request, submitted by the Association of American Railroads on behalf of its members, for dispatchers. See Docket No. FRA–2024–0089.

⁹ FRA will also be placing the draft rule text shared with the C³RS Working Group in the docket for this rulemaking.

II. Section-by-Section Analysis

FRA is proposing to amend parts 240 and 242 to codify longstanding waivers that have granted relief from certain certification requirements for railroads that participate in the FRA-sponsored C³RS. FRA would codify these longstanding C³RS waivers by revising parts 240 and 242 to provide that a railroad may not revoke an engineer's or conductor's certification for a close call event that has been reported in accordance with all applicable provisions of a C³RS IMOU.

Section 240.7—Definitions

FRA is proposing to amend this section to add the below definitions to part 240.

C³RS Implementing Memorandum of Understanding or C³RS IMOU

FRA proposes to define “C³RS Implementing Memorandum of Understanding” or “C³RS IMOU” as a voluntary written agreement that implements C³RS on a participating railroad and is signed by FRA, the participating railroad, and any non-profit employee labor organization(s) representing participating employees. The proposed definition would clarify that if the participating employees are not represented by a non-profit labor organization, or if the non-profit labor organization is not a stakeholder to the program, a C³RS IMOU may be signed only by FRA and the participating railroad. Further, when contractor employees are participating in C³RS, the C³RS IMOU must also be signed by the contractor for the railroad and can be signed by any non-profit employee labor organization representing the contractor employees. The proposed definition states that FRA will post all C³RS IMOUs to the Federal Docket Management System's website at <https://www.regulations.gov>.

Close Call

FRA proposes to define “close call” as an unsafe event or sequence of unsafe events that had a potential for more serious adverse consequences to railroad safety and has been reported to C³RS and accepted by both the independent third party and the peer review team (PRT) as a reportable close call, in accordance with all applicable provisions of a C³RS IMOU. The proposed definition has been adapted from C³RS IMOUs that are currently in effect.

Confidential Close Call Reporting System or C³RS

FRA proposes to define “Confidential Close Call Reporting System” or “C³RS”

as an FRA-sponsored voluntary program designed to improve the safety of railroad operations by allowing railroad workers to confidentially report currently unreported or underreported unsafe events without the repercussions of suspension or revocation of certification under 49 CFR part 240 or 242.

Electronic Device

FRA proposes to define “electronic device” by referencing the definition in § 220.5 for purposes of FRA regulations establishing prohibitions, restrictions, and requirements that apply to the use of personal and railroad-supplied cellular telephones and other electronic devices. Section 220.5 currently states that an electronic device is an electronic or electrical device used to conduct oral, written, or visual communication; place or receive a telephone call; send or read an electronic mail message or text message; look at pictures; read a book or other written material; play a game; navigate the internet; navigate the physical world; play, view, or listen to a video; play, view, or listen to a television broadcast; play or listen to a radio broadcast other than a radio broadcast by a railroad; play or listen to music; execute a computational function; or, perform any other function that is not necessary for the health or safety of the person and that entails the risk of distracting the employee or another railroad operating employee from a safety-related task. The definition in § 220.5 further clarifies that the term “electronic device” does not include (1) electronic control systems and information displays within the locomotive cab (whether the displays or systems be fixed or portable) or on a remote control transmitter necessary to operate a train or conduct switching operations; or (2) a digital watch whose only purpose is as a timepiece.

FRA proposes to include a definition of “electronic device” in part 240 to define the term as used in the proposed definition of “personal electronic device.” By using the same definition as found in § 220.5, FRA would promote consistency across its regulations and enhance compliance because the railroad industry is already familiar with the definition. Referencing the § 220.5 definition also removes the need for FRA to make conforming revisions to § 240.5 if the § 220.5 definition is revised in the future.

Hazardous Material

FRA proposes to define “hazardous material” as a commodity designated as a hazardous material by 49 CFR part 172—Hazardous Materials Table,

Special Provisions, Hazardous Materials Communications, Emergency Response Information, Training Requirements, and Security Plans. The term “hazardous material” would be used in proposed § 240.307(i)(3)(ii)(C)(6), which states that an employee is not protected from certification revocation for any alleged violation of a railroad operating rule or practice that involves an event resulting in the identifiable release of a hazardous material. The proposed definition also appears in C³RS IMOUs that are currently in effect.

ID Strip

FRA proposes to define “ID strip” as the identification strip the independent third party issues to an employee who has reported a close call to C³RS to indicate that the independent third party has accepted the close call.

Independent Third Party

FRA proposes to define “independent third party” to mean the non-FRA organization that manages C³RS, accepts close call reports, and protects the confidentiality of both a reporting employee and a participating railroad.

Peer Review Team (PRT)

FRA proposes to define “peer review team” or “PRT” as a problem-solving team consisting of representatives for the primary stakeholders to a C³RS IMOU, including FRA, the participating railroad, and any participating non-profit employee labor organization(s). The proposed definition has been adapted from C³RS IMOUs that are currently in effect.

Personal Electronic Device

FRA proposes to define “personal electronic device” by referencing the definition established in § 220.5 for purposes of FRA regulations establishing prohibitions, restrictions, and requirements that apply to the use of personal and railroad-supplied cellular telephones and other electronic devices. Section 220.5 currently states that “personal electronic device” means an electronic device that was not provided to the railroad operating employee by the employing railroad for a business purpose.

FRA is proposing to include a definition of “personal electronic device” in part 240 to define the term as used in proposed § 240.307(i)(3)(ii)(C)(8), which states that an employee is not protected from certification revocation for any alleged violation of a railroad operating rule or practice that involves use of a personal electronic device prohibited by a Federal railroad safety law or railroad

operating rule. By using the same definition as § 220.5, FRA would promote consistency across its regulations and enhance compliance because the railroad industry is already familiar with the definition. Referencing the § 220.5 definition also removes the need for FRA to make conforming revisions to § 240.5 if the § 220.5 definition is revised in the future.

Section 240.117—Criteria for Consideration of Operating Rules Compliance Data

FRA proposes to amend § 240.117 to add a new paragraph (f)(5) that references proposed § 240.307(i)(3) to provide that a railroad shall not deny or revoke an employee's certification based on an alleged violation of the railroad's operating rules or practices that the employee reported to C³RS and that was accepted as a close call by both the independent third party and the PRT in accordance with all applicable provisions of a C³RS IMOU. FRA also proposes to add references to new paragraph (f)(5) in paragraphs (b) and (c)(1) to clarify that those paragraphs' requirements regarding certification do not apply to reported close calls.

Section 240.307—Revocation of Certification

FRA proposes to amend § 240.307 by revising paragraph (i) to include a new paragraph (i)(3)(i) providing that a railroad shall not revoke a person's certification for an alleged violation of a railroad operating rule or practice that was reported to C³RS and accepted as a close call by both the independent third party and the PRT in accordance with all applicable provisions of a C³RS IMOU and proposed new language in paragraphs (i)(3)(ii), as described below. FRA also proposes minor technical revisions to paragraphs (i)(1) and (i)(2) that would accommodate new paragraph (i)(3) by replacing the current punctuation marks at the end of each paragraph with a period.

Proposed paragraph (i)(3)(ii)(A) would provide that if a railroad initiates certification suspension or revocation and the person indicates the event was reported to C³RS as a close call, all time limits in § 240.307 are put in abeyance until the employee (or the employee's representative) provides an ID strip to the investigating officer or charging officer and confirmation is received from the PRT regarding whether the alleged violation was reported and accepted as a close call. The proposed language is adapted from C³RS IMOU currently in effect that put time limits for pursuing revocation of certification into abeyance until an ID strip is

delivered, with additional language clarifying that the PRT must also determine that the alleged violation was reported and accepted as a close call.

Proposed paragraph (i)(3)(ii)(B) would provide that a determination made by the independent third party or the PRT regarding whether a report was accepted as a close call may not be overturned pursuant to the administrative hearing and dispute resolution procedures in subpart E of part 240. The cooperative and voluntary nature of C³RS requires that these important stakeholder determinations—particularly PRT determinations, which are generally made by consensus pursuant to the applicable C³RS IMOU—are not subject to the administrative review procedures of part 240. Not only would such review be inconsistent with the nature of C³RS, but it would create an unfair situation where locomotive engineers and conductors covered by a C³RS IMOU would have an avenue to appeal a determination made by the independent third party or the PRT that was not available to other employees who did not possess a certification, but who would still be potentially subject to railroad discipline and FRA enforcement as a result of a reported event that was not accepted by either the independent third party or the PRT.

Proposed paragraph (i)(3)(ii)(B) further provides, however, that such determinations can be included as a finding of fact for purposes of determining whether a railroad impermissibly revoked a person's certification for an alleged violation that was reported and accepted as a close call by both the independent third party and the PRT. In other words, if a railroad suspends or revokes a person's certification even though the alleged violation was reported and accepted as a close call by both the independent third party and the PRT, the existence of that acceptance determination can be a factual finding introduced during a subpart E proceeding to demonstrate that the railroad impermissibly revoked the person's certification under proposed paragraph (i)(3)(i).

Proposed paragraph (i)(3)(ii)(C) establishes that an employee is not protected from decertification for an alleged violation of a railroad's operating rules or practices that involves any of the following, even if the employee reported the event to C³RS:

- An event that caused or is alleged to have caused death, injury, illness, or medical treatment of any kind to any person (including a passenger) involved in the event;

- An event that results in damages above the current monetary rail equipment accident/incident reporting threshold described in 49 CFR part 225—Railroad Accidents/Incidents and published annually by FRA;

- An event that results in a highway-rail grade crossing accident/incident, as described in 49 CFR 225.19(b);

- A willful violation of a Federal railroad safety law or railroad operating rule or practice, including the prohibited use of alcohol or a controlled substance;

- A substance abuse disorder;

- An event resulting in the identifiable release of a hazardous material;

- An act of sabotage or other criminal offense; or

- An event involving use of a personal electronic device that is prohibited by a Federal railroad safety law or railroad operating rule.

Because there is longstanding consensus among C³RS stakeholders that events involving the above situations are ineligible to be reported to C³RS, FRA proposes to memorialize them in part 240. Doing would assure all railroad safety stakeholders, including the public, that violations involving a heightened or willful degree of risk to the safety of railroad operations, or which resulted in casualties or significant property damage, are ineligible for the C³RS protections against decertification.

Further, all C³RS IMOU currently in effect contain the above exclusions, with the exception of the prohibited use of personal electronic devices. Some C³RS IMOU predate FRA's personal electronic device regulations in part 220 (which went into effect on March 28, 2011),¹⁰ and therefore these earlier IMOU did not state that the prohibited use of a personal electronic device could not be reported to C³RS. However, FRA interprets these IMOU to exclude prohibited use of a personal electronic device from C³RS because such uses are willful violations of a railroad operating rule or practice or Federal railroad safety law, as the prohibited use of a personal electronic device can be presumed to be willful. More recent C³RS IMOU specifically exclude prohibited use of electronic devices, including IMOU establishing C³RS

¹⁰ Before issuing the part 220 regulations governing the use of personal electronic devices, FRA had published Emergency Order (E.O.) 28 on October 7, 2008. E.O. 28 restricted on-duty railroad operating employees from improperly using cellular telephones and other distracting electronic and electrical devices. 73 FR 58702.

pilot programs for certain Class I freight railroads, which helps improve clarity.

For these reasons, FRA proposes to exclude prohibited use of personal electronic devices from C³RS decertification protections in part 240, especially since it would be antithetical to the railroad safety purposes of the program to permit an employee to escape consequences for prohibited use of a personal electronic device simply by reporting such use.

In addition to these identified exclusions, C³RS stakeholders would retain the flexibility they currently have to develop IMOU provisions establishing other limits or exclusions to C³RS reporting.

Section 242.7—Definitions

FRA is proposing to amend this section to add the definitions to part 242 for “close call”; “Confidential Close Call Reporting System” or “C³RS”; “C³RS Implementing Memorandum of Understanding” or “C³RS IMOU”; “electronic device”; “hazardous material”; “ID strip”; “independent third party”; “Peer Review Team” or “PRT”; and “personal electronic device.” Because these are the same definitions FRA is proposing to add to § 240.7, please refer to the above section-by-section analysis for § 240.7 for discussion of FRA’s rationale for the proposed definitions.

Section 242.403—Criteria for Revoking Certification

FRA proposes to amend § 242.403 to add a new paragraph (f)(5) that references proposed § 242.407(i)(3) to provide that a railroad shall not deny or revoke an employee’s certification based on an alleged violation of the railroad’s operating rules or practices that the employee reported to C³RS and that was accepted as a close call by both the independent third party and the PRT in accordance with all applicable provisions of a C³RS IMOU. FRA also proposes to add references to new paragraph (f)(5) in paragraphs (b) and (c)(1) to clarify that those paragraphs’ requirements regarding certification do not apply to reported close calls. These are substantively the same revisions FRA is proposing to § 240.117.

Section 242.407—Process for Revoking Certification

FRA proposes to amend § 242.407 to include new language in paragraph (i)(3)(i) stating that a railroad shall not suspend or revoke a person’s certification if the violation was reported to C³RS and accepted by both the independent third party and the PRT in accordance with all applicable

provisions of a C³RS IMOU and additional criteria contained in paragraphs (i)(3)(ii). Because these are substantively the same revisions FRA is proposing to § 240.307, please refer to the above section-by-section analysis for § 240.307 for discussion of FRA’s rationale for the proposed revisions.

III. Regulatory Impact and Notices

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FRA has considered the impact of this NPRM under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, and DOT Regulatory Policies and Procedures. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) determined that this NPRM is not a significant regulatory action under section 3(f) of E.O. 12866.

This rule proposes to amend its regulations governing the qualification and certification of locomotive engineers and conductors and codifies longstanding waivers that have granted relief from certain certification requirements for railroads that participate in the FRA-sponsored C³RS program, reducing burdens on C³RS-participating railroads. Nothing in this proposed rule changes the voluntary and cooperative nature of C³RS, as participating stakeholders retain the ability to terminate their participation in the program in accordance with the provisions of the applicable C³RS IMOU. Moreover, this rule would provide some qualitative benefits to regulated entities and the U.S. government, by clarifying, simplifying, and updating the language of part 240 and 242. The proposed rule would also promote more efficient use of government resources by reducing the time spent by FRA on reviewing and approving these types of waivers.

B. E.O. 14192 (Unleashing Prosperity Through Deregulation)

E.O. 14192 (90 FR 9065, Jan. 31, 2025), Unleashing Prosperity Through Deregulation, requires that for “each new [E.O. 14192 regulatory action] issued, at least ten prior regulations be identified for elimination.”¹¹ Implementation guidance for E.O. 14192 issued by OMB (Memorandum M–25–20, Mar. 26, 2025) defines two different types of E.O. 14192 actions: an E.O.

14192 deregulatory action, and an E.O. 14192 regulatory action.¹²

An E.O. 14192 deregulatory action is defined as “an action that has been finalized and has total costs less than zero.” This proposed rulemaking is expected to have total costs less than zero, and therefore it would be considered an E.O. 14192 deregulatory action upon issuance of a final rule. While FRA affirms that each amendment proposed in this NPRM has a cost that is negligible or “less than zero” consistent with E.O. 14192, FRA requests comment on the extent of the cost savings for the changes proposed in this NPRM.

C. Regulatory Flexibility Act and E.O. 13272

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,¹³ requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. The term *small entities* comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 (5 U.S.C. 601(6)).

No regulatory flexibility analysis is required, however, if the head of an Agency or an appropriate designee certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would not preclude small entities from continuing existing practices that comply with part 240 or 242; it merely offers flexibilities that could result in cost savings, if a small entity or other regulated entity chooses to utilize those flexibilities. By extending this regulatory relief, many regulated entities, including small entities, would experience a cost savings. Consequently, FRA certifies that the proposed action would not have a significant economic impact on a substantial number of small entities.

¹² Executive Office of the President. Office of Management and Budget. Guidance Implementing Section 3 of Executive Order 14192, Titled “Unleashing Prosperity Through Deregulation.” Memorandum M–25–20. Mar. 26, 2025.

¹³ Public Law 104–121, 110 Stat. 857 (Mar. 29, 1996).

¹¹ Executive Office of the President. *Executive Order 14192 of January 31, 2025. Unleashing Prosperity Through Deregulation.* 90 FR 9065–9067. Feb. 6, 2025.

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FRA wants to assist small entities in understanding this proposed rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed above under **FOR FURTHER INFORMATION CONTACT**.

D. Paperwork Reduction Act

This proposed rule offers regulatory flexibilities, and it contains no new information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), therefore an information collection submission to OMB is not required. The recordkeeping and reporting requirements contained in parts 240 and 242 became effective when they were approved by OMB in 2024. The OMB approval numbers are OMB No. 2130–0533, which expires on July 31, 2027, and OMB No. 2130–0596, which expires on October 31, 2027.

E. Environmental Assessment

FRA has analyzed this rule for the purposes of the National Environmental Policy Act of 1969 (NEPA). In accordance with 42 U.S.C. 4336 and DOT NEPA Order 5610.1C, FRA has determined that this rule is categorically excluded pursuant to 23 CFR 771.118(c)(4), “[p]lanning and administrative activities that do not involve or lead directly to construction, such as: [p]romulgation of rules, regulations, and directives.” This rulemaking is not anticipated to result in any environmental impacts, and there are no unusual or extraordinary circumstances present in connection with this rulemaking.

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties. FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by Section 4(f).

F. Federalism Implications

This proposed rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in

accordance with E.O. 13132, “Federalism” (64 FR 43255, Aug. 10, 1999), preparation of a Federalism Assessment is not warranted.

G. Unfunded Mandates Reform Act of 1995

This proposed rule would not result in the expenditure, in the aggregate, of \$100,000,000 or more, adjusted for inflation, in any one year by State, local, or Indian Tribal governments, or the private sector. Thus, consistent with section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1532), FRA is not required to prepare a written statement detailing the effect of such an expenditure.

H. Energy Impact

E.O. 13211 requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.”¹⁴ FRA has evaluated this proposed rule in accordance with E.O. 13211 and determined that this proposed rule is not a “significant energy action” within the meaning of E.O. 13211.

I. E.O. 13175 (Tribal Consultation)

FRA has evaluated this proposed rule in accordance with the principles and criteria contained in E.O. 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. The proposed rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal laws. Therefore, the funding and consultation requirements of E.O. 13175 do not apply, and a tribal summary impact statement is not required.

J. International Trade Impact Assessment

The Trade Agreement Act of 1979¹⁵ prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

¹⁴ 66 FR 28355 (May 22, 2001).

¹⁵ 19 U.S.C. ch. 13.

K. Privacy Act Statement

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to <http://www.regulations.gov>, as described in the system of records notice, DOT/ALL–14 FDMS, accessible through www.transportation.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

L. Rulemaking Summary

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found at [regulations.gov](http://www.regulations.gov), Docket No. FRA–2025–0131, in the **SUMMARY** section of this proposed rule.

List of Subjects

49 CFR Part 240

Administrative practice and procedures, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 242

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend parts 240 and 242 of chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 240—QUALIFICATION AND CERTIFICATION OF CONDUCTORS

- 1. The authority citation for part 240 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461 note; and 49 CFR 1.89.

- 2. Amend § 240.7 by adding definitions in alphabetical order for “C³RS Implementing Memorandum of Understanding (C³RS IMOU)”, “Close call”, “Confidential Close Call Reporting System (C³RS)”, “Electronic device”, “Hazardous material”, “ID strip”, “Independent third party”, “Peer Review Team (PRT)”, and “Personal electronic device” to read as follows:

§ 240.7 Definitions.

* * * * *

C³RS Implementing Memorandum of Understanding (C³RS IMOU) means a voluntary written agreement that implements C³RS on a participating railroad and is signed by FRA, the participating railroad, and any non-profit employee labor organization(s) representing participating employees for purposes of the C³RS IMOU. If the participating employees are not represented by a non-profit labor organization, or if a non-profit employee labor organization representing employees covered by a C³RS IMOU is not a stakeholder to the program, a C³RS IMOU may be signed only by FRA and the participating railroad. When contractor employees are participating in C³RS, the C³RS IMOU must also be signed by the contractor for the railroad and can be signed by any non-profit employee labor organization representing the contractor employees for purposes of the C³RS IMOU. FRA will post all C³RS IMOUs to the Federal Docket Management System's website at <https://www.regulations.gov>.

Close call means an unsafe event or sequence of unsafe events that had a potential for more serious adverse consequences to railroad safety and has been reported to C³RS and accepted by both the independent third party and the Peer Review Team (PRT) as a reportable close call in accordance with all applicable provisions of a C³RS IMOU.

* * * * *

Confidential Close Call Reporting System (C³RS) means an FRA-sponsored voluntary program designed to improve the safety of railroad operations by allowing railroad workers to confidentially report currently unreported or underreported unsafe events without the repercussions of suspension or revocation of certification.

* * * * *

Electronic device has the meaning assigned by § 220.5 of this chapter.

* * * * *

Hazardous material means a commodity designated as a hazardous material by part 172 of this title.

ID strip means the identification strip the independent third party issues to an employee who has reported a close call to C³RS to indicate that the independent third party has accepted the close call.

Independent third party means the non-FRA organization that manages C³RS, accepts close call reports, and protects the confidentiality of both a

reporting employee and a participating railroad.

* * * * *

Peer Review Team (PRT) is a problem-solving team consisting of representatives for the primary stakeholders to a C³RS IMOU, including FRA, the participating railroad, and any participating non-profit employee labor organization(s).

* * * * *

Personal electronic device has the meaning assigned by § 220.5.

■ 3. Amend § 240.117 by revising paragraph (b) and paragraph (c)(1) and adding a new paragraph (f)(5) to read as follows:

§ 240.117 Criteria for consideration of operating rules compliance data.

* * * * *

(b) Except as provided in paragraph (f)(5) of this section, a person who has demonstrated a failure to comply, as described in paragraph (e) of this section, with railroad rules and practices for the safe operation of trains shall not be currently certified as a locomotive engineer.

(c)

(1) Except as provided in paragraph (f)(5) of this section, 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.

* * * * *

(f) * * *

(5) In accordance with § 240.307(i)(3), a railroad shall not deny or revoke an employee's certification based on an alleged violation of the railroad's operating rules or practices that the employee reported to C³RS as a close call and was accepted as a close call by both the independent third party and the PRT in accordance with all applicable provisions of a C³RS IMOU.

* * * * *

■ 4. Amend § 240.307 by revising paragraph (i) to read as follows:

§ 240.307 Revocation of certification.

* * * * *

(i) A railroad:

(1) Shall not revoke the person's certification as provided for in paragraph (a) of this section if sufficient evidence exists to establish that an intervening cause prevented or materially impaired the locomotive engineer's ability to comply with the railroad operating rule or practice that constitutes a violation under § 240.117(e)(1) through (5).

(2) May decide not to revoke the person's certification as provided for in

paragraph (a) of this section if sufficient evidence exists to establish that the violation of § 240.117(e)(1) through (5) was of a minimal nature and had no direct or potential effect on rail safety.

(3)(i) Shall not suspend or revoke the person's certification as provided for in paragraph (a) of this section if the person reported the alleged violation of the railroad's operating rule or practice that constitutes a violation under § 240.117(e)(1) through (5) to C³RS as a close call; and if the person's report was accepted as a close call by both the independent third party and the PRT in accordance with all applicable provisions of a C³RS IMOU.

(ii)(A) If a railroad initiates suspension or revocation of the person's certification and the person indicates the alleged violation was reported to C³RS as a close call, the time limits prescribed in this section for pursuing certificate suspension or revocation will be put in abeyance, pending provision of an ID strip from the reporting employee, or the employee's designated representative, to the investigating officer or presiding officer and confirmation from the PRT that the alleged violation was reported and accepted as a close call.

(B) A determination made by the independent third party or the PRT regarding whether a report was accepted as a close call may not be overturned pursuant to the administrative hearing and dispute resolution procedures in subpart E of this part, but may be included as a finding of fact for purposes of determining whether the railroad impermissibly revoked a person's certification for an alleged violation that was reported and accepted as a close call by both the third party and the PRT.

(C) Paragraph (i)(3) of this section will not apply to any alleged violation of a railroad's operating rules or practices that constitutes a violation under § 240.117(e)(1) through (5) that involves:

(1) An event that caused or is alleged to have caused death, injury, illness, or medical treatment of any kind to any person (including a passenger) involved in the event;

(2) An event that results in damages above the current monetary rail equipment accident/incident reporting threshold described in part 225 of this chapter and published annually by FRA;

(3) An event that results in a highway-rail grade crossing accident/incident, as described in § 225.19(b) of this chapter;

(4) A willful violation of a Federal railroad safety law or railroad operating rule or practice, including the prohibited use of alcohol or a controlled substance;

(5) A substance abuse disorder;
 (6) An event resulting in the identifiable release of a hazardous material;

(7) An act of sabotage or other criminal offense; or

(8) An event involving use of a personal electronic device that is prohibited by a Federal railroad safety law or railroad operating rule.

PART 242—QUALIFICATION AND CERTIFICATION OF CONDUCTORS

■ 5. The authority citation for part 242 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 20138, 20162, 20163, 21301, 21304, 21311; 28 U.S.C. 2461 note; and 49 CFR 1.89.

■ 6. Amend § 242.7 by adding definitions in alphabetical order for “C³RS Implementing Memorandum of Understanding (C³RS IMOU)”, “Close call”, “Confidential Close Call Reporting System (C³RS)”, “Electronic device”, “Hazardous material”, “ID strip”, “Independent third party”, “Peer Review Team (PRT)”, and “Personal electronic device” to read as follows:

§ 242.7 Definitions.

C³RS Implementing Memorandum of Understanding (C³RS IMOU) means a voluntary written agreement that implements C³RS on a participating railroad and is signed by FRA, the participating railroad, and any non-profit employee labor organization(s) representing participating employees for purposes of the C³RS IMOU. If the participating employees are not represented by a non-profit labor organization, or if a non-profit employee labor organization representing employees covered by a C³RS IMOU is not a stakeholder to the program, a C³RS IMOU may be signed only by FRA and the participating railroad. When contractor employees are participating in C³RS, the C³RS IMOU must also be signed by the contractor for the railroad and can be signed by any non-profit employee labor organization representing the contractor employees for purposes of the C³RS IMOU. FRA will post all C³RS IMOUs to the Federal Docket Management System’s website at <https://www.regulations.gov>.

Close call means an unsafe event or sequence of unsafe events that had a potential for more serious adverse consequences to railroad safety and has been reported to C³RS and accepted by both the independent third party and the Peer Review Team (PRT) as a reportable close call in accordance with

all applicable provisions of a C³RS IMOU.

Confidential Close Call Reporting System (C³RS) means an FRA-sponsored voluntary program designed to improve the safety of railroad operations by allowing railroad workers to confidentially report currently unreported or underreported unsafe events without the repercussions of suspension or revocation of certification.

Electronic device has the meaning assigned by § 220.5 of this chapter.

Hazardous material means a commodity designated as a hazardous material by part 172 of this title.

ID strip means the identification strip the independent third party issues to an employee who has reported a close call to C³RS to indicate that the independent third party has accepted the close call.

Independent third party means the non-FRA organization that manages C³RS, accepts close call reports, and protects the confidentiality of both a reporting employee and a participating railroad.

Peer Review Team (PRT) is a problem-solving team consisting of representatives for the primary stakeholders to a C³RS IMOU, including FRA, the participating railroad, and any participating non-profit employee labor organization(s).

Personal electronic device has the meaning assigned by § 220.5 of this chapter.

■ 7. Amend § 242.403 by revising paragraph (b) and paragraph (c)(1) and adding a new paragraph (f)(5) to read as follows:

§ 242.403 Criteria for revoking certification.

(b) Except as provided in paragraph (f)(5) of this section, it shall be unlawful to fail to comply with any of the railroad rules and practices described in paragraph (e) of this section.

(c) (1) Except as provided in paragraph (f)(5) of this section, a certified conductor who has demonstrated a failure to comply with railroad rules and practices described in paragraph (e) of this section shall have his or her certification revoked.

(f) (5) In accordance with § 242.407(i)(3), a railroad shall not deny or revoke an

employee’s certification based on an alleged violation of the railroad’s operating rules or practices that the employee reported to C³RS as a close call and was accepted as a close call by both the independent third party and the PRT in accordance with all applicable provisions of a C³RS IMOU.

■ 8. Amend § 242.407 by revising paragraph (i) to read as follows:

§ 242.407 Process for revoking certification.

(i) A railroad:

(1) Shall not revoke the person’s certification as provided for in paragraph (a) of this section if sufficient evidence exists to establish that an intervening cause prevented or materially impaired the conductor’s ability to comply with the railroad operating rule or practice which constitutes a violation under § 242.403(e)(1) through (e)(11).

(2) May decide not to revoke the person’s certification as provided for in paragraph (a) of this section if sufficient evidence exists to establish that the violation of § 242.403(e)(1) through (e)(11) was of a minimal nature and had no direct or potential effect on rail safety.

(3)(i) Shall not suspend or revoke the person’s certification as provided for in paragraph (a) of this section if the person reported the alleged violation of the railroad’s operating rule or practice that constitutes a violation under § 242.403(e)(1) through (11) to C³RS as a close call; and if the person’s report was accepted as a close call by both the independent third party and the PRT in accordance with all applicable provisions of a C³RS IMOU.

(ii)(A) If a railroad initiates suspension or revocation of the person’s certification and the person indicates the alleged violation was reported to C³RS as a close call, the time limits prescribed in this section for pursuing certificate suspension or revocation will be put in abeyance, pending provision of an ID strip from the reporting employee, or the employee’s designated representative, to the investigating officer or presiding officer and confirmation from the PRT that the alleged violation was reported and accepted as a close call.

(B) A determination made by the independent third party or the PRT regarding whether a report was accepted as a close call may not be overturned pursuant to the administrative hearing and dispute resolution procedures in subpart F of this part, but may be included as a finding of fact for

purposes of determining whether the railroad impermissibly revoked a person's certification for an alleged violation that was reported and accepted as a close call by both the third party and the PRT.

(C) Paragraph (i)(3) of this section will not apply to any alleged violation of a railroad's operating rules or practices that constitutes a violation under § 242.403(e)(1) through (11) that involves:

(1) An event that caused or is alleged to have caused death, injury, illness, or medical treatment of any kind to any person (including a passenger) involved in the event;

(2) An event that results in damages above the current monetary rail equipment accident/incident reporting threshold described in part 225 of this chapter and published annually by FRA;

(3) An event that results in a highway-rail grade crossing accident/incident, as described in § 225.19(b) of this chapter;

(4) A willful violation of a Federal railroad safety law or railroad operating rule or practice, including the prohibited use of alcohol or a controlled substance;

(5) A substance abuse disorder;

(6) An event resulting in the identifiable release of a hazardous material;

(7) An act of sabotage or other criminal offense; or

(8) An event involving use of a personal electronic device that is prohibited by a Federal railroad safety law or railroad operating rule.

Issued in Washington, DC.

Kyle D. Fields,

Chief Counsel.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 242

[Docket No. FRA–2025–0133]

RIN 2130–AD61

Miscellaneous Revisions to the Qualification and Certification of Conductors

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would update FRA's conductor certification requirements by reducing the

information that is required on a conductor's certificate and allowing certificates to be electronic. FRA is also proposing changes to the certification revocation process and the Administrative Hearing Officer (AHO) process. Lastly, FRA is proposing other administrative updates including revising definitions and correcting errors in the regulatory text.

DATES: Comments on the proposed rule must be received by September 2, 2025. FRA may consider comments received after that date, but only to the extent practicable.

ADDRESSES:

Comments: Comments related to Docket No. FRA–2025–0133 may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket number (FRA–2025–0133), and Regulatory Identification Number (RIN) for this rulemaking (2130–AD61). All comments received will be posted without change to <https://www.regulations.gov>; this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT:

Christian Holt, Staff Director-Operating Practices Division, Federal Railroad Administration, telephone: 202–366–0978, email: christian.holt@dot.gov; or Michael C. Spinnicchia, Attorney Adviser, Federal Railroad Administration, telephone: 202–713–7671, email: michael.spinnicchia@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Consistent with the deregulatory agenda of President Donald J. Trump and Secretary of Transportation Sean P. Duffy, which seeks to unleash America's economic prosperity without compromising transportation safety, FRA is reviewing its regulatory requirements in parts 200 through 299 of Title 49, Code of Federal Regulations (CFR). The requirements for FRA-regulated entities to certify conductors are established in 49 CFR part 242,

“Qualification and Certification of Conductors.” Some of the requirements contained in part 242 could be updated to reduce burdens, make technical or conforming changes, ensure due process or constitutionality, or otherwise adjust to advancing technology without any adverse effect on railroad safety. Please review the SECTION-BY-SECTION ANALYSIS below for the relevant information related to each proposed change.

II. Section-by-Section Analysis

§ 242.7 Definitions

To be consistent with 49 CFR 209.5, FRA is proposing to amend this section by adjusting the definitions for “File, filed and filing” and “Serve or service.” In this rule, FRA would amend the definition of “File, filed and filing” to mean submission of a document under this part on the date when the DOT Docket Clerk or FRA receives it, or if served as that term is defined under 49 CFR 209.5, the date of service. FRA also proposes adding a comma after the word “filed.” Further, FRA proposes amending the definition of “Serve or service,” in the context of serving documents, to have the meaning given in § 209.5.

§ 242.11 Penalties and Consequences for Noncompliance

FRA is proposing to amend paragraph (a) of this section by replacing references to specific penalty amounts with general references to the minimum civil monetary penalty, ordinary maximum civil monetary penalty, and aggravated maximum civil monetary penalty. FRA is proposing to add language to this section referring readers to 49 CFR part 209, appendix A, where FRA specifies statutorily provided civil penalty amounts updated for inflation. FRA is also proposing to amend this section to update the web address from www.fra.dot.gov to <https://railroads.dot.gov/>.

Section 242.201 Time Limitations for Certification

Paragraph (a) of this section currently lists four scenarios where a railroad shall not certify or recertify a person as a conductor. Paragraph (a)(3) states railroads cannot make certification decisions based on a knowledge examination that was conducted more than 366 days before the date of the railroad's certification decision. Paragraph (a)(4) is intended to provide an exception to paragraph (a)(3) that allows for railroads to rely on knowledge examinations performed in the 24 months prior to the certification