4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 240

[Docket No. FRA-2025-0132]

RIN 2130-AD60

Miscellaneous Revisions to the Qualification and Certification of Locomotive Engineers

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would update FRA's locomotive engineer certification requirements by reducing the information that is required on an engineer'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 [**INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**]. FRA may consider comments received after that date, but only to the extent practicable.

ADDRESSES: *Comments*: Comments related to Docket No. FRA-2025-0132 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-2025-0132), and Regulatory Identification Number (RIN) for this rulemaking (2130-AD60). 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 locomotive engineers are established in 49 CFR part 240, "Qualification and Certification of Locomotive Engineers." Some of the requirements contained in part 240 could be updated to reduce burdens, make technical or conforming changes, ensure due process and 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

Section 240.7 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.

Section 240.11 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 240.103 Approval of design of individual railroad programs by FRA.

This section explains the approval process for a railroad's locomotive engineer certification program. Paragraphs (b)(1) and (b)(2) and the introductory text of paragraph (c) currently refer to resubmissions filed pursuant to paragraph (f) of this section and material modifications filed pursuant to paragraph (g) of this section. However, these cross-references are incorrect as paragraph (g) of this section discusses the process for resubmitting a certification program and paragraph (h) addresses material modifications. Therefore, FRA is proposing to correct these cross-references in paragraphs (b)(1) and (b)(2) and the introductory text of paragraph (c).

Section 240.217 Time limitations for making determinations.

Paragraph (a) of this section currently lists five scenarios where a railroad shall not certify or recertify a person as a locomotive engineer. 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 decision *if* the railroad administers its knowledge testing program at intervals that do not exceed 24 months.[1] However, the way this section is written, a railroad that conducts its knowledge testing exams on a two-year cycle would still be prohibited from relying on a knowledge exam performed more than 366 days before the certification decision under paragraph (a)(3). This is a clear drafting error that does not conform with the intent of the regulation and makes paragraph (a)(4) superfluous. Therefore, FRA is proposing to amend paragraph (a)(3) to add "except as provided for in paragraph (a)(4) of this section" at the end of the paragraph to clarify that paragraph (a)(4) provides an exception to the limitation in paragraph (a)(3).

Section 240.223 Criteria for the certificate.

As part of the requirement that locomotive engineers be certified, railroads must issue certificates to those individuals that they certify. This section details what information must be included in these certificates.

Paragraph (a)(3) of this section states that the certificate must identify the person to whom the certificate is being issued. This must include the person's name, employee identification number, the year of birth, and either a physical description or photograph of the person. FRA is proposing to remove the requirement that the certificate include the person's year of birth.

In 2023, FRA issued NPRMs proposing the establishment of certification requirements for dispatchers and signal employees.[2] The Association of American

[1] 84 FR 20472, 20485 (May 9, 2019).
[2] 88 FR 35574 (May 31, 2023); 88 FR 35632 (May 31, 2023).

Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) submitted joint comments to both NPRMs requesting that FRA remove the year of birth requirement from dispatcher and signal employee certificates.[3] In support of their comment, AAR and ASLRRA noted that a person's birth year provides little to no assistance in confirming a person's identity and there are other ways, such as a physical description or photograph that better serve this purpose. When FRA issued the final rules establishing dispatcher and signal employee certification, the agency agreed with AAR and ASLRRA's rationale that it was unnecessary to include the year of birth on the certificates and this requirement was removed from the final rules.[4] For similar reasons, FRA is proposing removing the requirement that a person's year of birth be included on their locomotive engineer certificate.

Paragraph (a)(8) of this section states the certificate must be sufficiently small to permit being carried in an ordinary pocket wallet. FRA is proposing amending this paragraph to allow railroads to issue electronic certificates. Section 240.301(b) already provides for railroads to issue temporary replacement certificates electronically and FRA does not find any safety concerns with extending this allowance to the certificates issued under this section. Electronic certificates will allow for railroads to issue certificates more efficiently while also making it much less likely that a railroad would have to issue a replacement certificate under § 240.301. Lastly, while FRA is not proposing any revisions to paragraph (a)(6) of this section, which requires that a certificate be signed by a supervisor of locomotive engineers or other designated individual, based on the proposed revision to paragraph (a)(8), it logically follows that FRA would allow for electronic signatures under this proposed rule.

Section 240.307 Revocation of certification.

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[3] FRA-2022-0019-0041; FRA-2022-0020-0035.
[4] 89 FR 44766, 44789 (May 21, 2024); 89 FR 44830, 44859 (May 21, 2024).

Many railroads issue their written decisions to revoke a person's certification without findings of fact and a clear application of the regulation. That approach conflicts with an existing requirement in paragraph (c)(11) of this section which requires that each railroad decision must include "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." Although paragraph (d) allows a railroad to use hearing procedures under an applicable collective bargaining agreement, and such an agreement might not contain the same or similar requirements as in paragraph (c)(11), including findings of fact is normally what would be expected in such a decision. Thus, a railroad's failure to include such basic information in a decision has led to an inefficient and more complicated process. For instance, a railroad's failure to include findings of fact in its revocation decision means that the person who is challenging the decision cannot quickly and effectively pinpoint whether the basis for the parties' disagreement is based on a misunderstanding or material disagreement of the facts.

FRA's Operating Crew Review Board (OCRB), which is delegated the authority to review a person's challenge to a railroad's revocation decision, has similarly been less efficient in its review because it must spend an inordinate amount of time dissecting the evidentiary record in a way that exceeds the appropriate, accelerated consideration of a case envisioned by this certification review. Railroads often include findings of fact in their responses to petitions filed with the OCRB, but that is too late in the process to give the affected engineer an opportunity to consider the findings of fact and respond. To obviate this inefficient process, FRA proposes to revise paragraph (d) of this section to clarify that written findings of fact and application of the regulation must always be provided in a railroad's written decision prior to consideration of a case before the OCRB, regardless of any alternative requirement provided in a collective bargaining agreement. This amendment would be deregulatory insofar as it provides required

information to the affected person earlier in the certification revocation process, ensuring due process for locomotive engineers subject to the certification requirements in part 240, and increasing efficiency of the process.

Section 240.409 Hearings.

Executive Order (E.O.) 14219, Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative (90 FR 10583, Feb. 19, 2025), requires agencies to review regulations for a variety of concerns and rescind or modify such regulations identified. This section raises concerns due to its potential shifting of the burden of proof. The existing regulation grants a party adversely affected by an OCRB decision the right to a *de novo* hearing before an AHO with more robust evidentiary and procedural protections than the expedited OCRB proceeding but shifts the burden of proof at this AHO hearing stage to the party that was adversely affected by the OCRB decision. In cases where the locomotive engineer or locomotive engineer candidate was the party adversely affected by the preceding OCRB decision, the burden of proof at the AHO hearing stage currently shifts to the impacted engineer/engineer candidate.

To correct for this concern, FRA proposes to amend paragraph (q) of this section to clarify that the railroad taking a certification action is always the hearing petitioner at the AHO hearing stage and always bears the burden of proof by a preponderance of the evidence. FRA acknowledges that while this approach provides additional protections for a locomotive engineer or locomotive engineer candidate who has been subject to a denial or revocation of certification with related impacts on his or her livelihood, this burden could now shift to railroads. However, FRA expects the burden to be negligible. FRA requests comments on the extent of this shift in burden and any potential impacts.

Paragraph (r) of this section notes that FRA will be a mandatory party to the administrative hearing and will be a respondent at the start of the hearing. FRA is

proposing to delete the requirement that FRA be a respondent at the start of each proceeding. Under the proposed revisions to paragraph (q) of this section, the hearing respondent would always be the engineer or engineer candidate. FRA is more likely to align with the party who received a favorable decision before the OCRB, which could be, with the proposed changes to paragraph (q), either the petitioner or respondent at the AHO hearing stage. Therefore, it would no longer make sense for FRA to always be the respondent at the AHO hearing stage.

FRA is also requesting comments on whether it should remove paragraph (r) in its entirety and no longer require that FRA be a mandatory party to the administrative hearing.

Lastly, under these proposed changes, if FRA is a mandatory party and agrees with the railroad, FRA would be considered a hearing petitioner. However, in such circumstances, FRA would not be responsible for presenting any evidence, through witness testimony or exhibits, in support of the railroad's case. That responsibility would remain with the railroad.

III. Regulatory Impact and Notices

A. 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.

FRA expects this NPRM would update FRA's locomotive engineer certification requirements by reducing the information that is required on an engineer's certificate and by allowing certificates to be electronic and proposes other administrative updates

including revising definitions and correcting errors in the regulatory text. While some additional burdens may be added from the proposed changes to the revocation of certification requirements, FRA estimates that the overall benefits of this proposed rule would outweigh any potential burdens. Moreover, this proposed rule would provide additional benefits to regulated entities and the U.S. government, by clarifying, simplifying, and updating the language of part 240. This rule would also decrease the information requested on an engineer's certificate. FRA requests any comments from the public on the impacts of this proposed rule.

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

E.O. 14192, Unleashing Prosperity Through Deregulation (90 FR 9065, Jan. 31, 2025), requires that for "each new [E.O. 14192 regulatory action] issued, at least ten prior regulations be identified for elimination."[5] Implementation guidance for E.O. 14192 issued by OMB (Memorandum M-25-20, Mar. 26, 2025) defines an E.O. 14192 deregulatory action as "an action that has been finalized and has total costs less than zero."[6] This proposed rulemaking is expected to have total costs less than zero, and therefore, if finalized, it would be considered an E.O. 14192 deregulatory action. 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 still 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,[7] requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and

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[5] Executive Office of the President. *Executive Order 14192 of January 31, 2025. Unleashing Prosperity Through Deregulation*. 90 FR 9065-9067. Feb. 6, 2025.
[6] 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. March 26, 2025.
[7] Pub. L. 104–121, 110 Stat. 857 (Mar. 29, 1996).

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; it merely offers clarity and updates that could result in benefits, 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 some benefits. Consequently, FRA certifies that the proposed action would not have a significant economic impact on a substantial number of small entities.

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 under FOR FURTHER INFORMATION CONTACT.

D. Paperwork Reduction Act

This proposed rule offers regulatory flexibilities, and there is no new information collection requirement, in accordance with the Paperwork Reduction Act of 1995 U.S.C. 3501 *et seq.,* therefore, an information collection submission to OMB is not required. The

recordkeeping and reporting requirements already contained in Part 240 became effective when it was approved by OMB on July 12, 2024. The OMB approval number is 2130-0533, which expires on July 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.

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."[8] 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 1979[9] 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.

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

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[8] 66 FR 28355 (May 22, 2001).
[9] 19 U.S.C. Ch. 13.

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, Docket No. FRA-2025-0132, in the SUMMARY section of this proposed rule.

List of Subjects in 49 CFR Part 240

Administrative practice and procedure, Locomotive engineer, Penalties, Railroad employees, Railroad operating procedures, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

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

PART 240—QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE ENGINEERS

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. In § 240.7, revise the definitions of "File, filed and filing" and "Serve or service" to read as follows:

§ 240.7 Definitions.

* * * * *

File, filed, and filing 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.

* * * * *

Serve or service, in the context of serving documents, has the meaning given in 49 CFR 209.5. The computation of time provisions in Rule 6 of the Federal Rules of Civil Procedure as amended are also applicable in this part. *See also* the definition of "file, filed, and filing" in this section.

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3. Revise § 240.11(a) to read as follows:

§ 240.11 Penalties and consequences for noncompliance.

(a) A person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least the minimum civil monetary penalty and not more than the ordinary maximum civil monetary penalty per violation. However, penalties may be assessed against individuals only for willful violations, and a penalty not to exceed the aggravated maximum civil monetary penalty per violation may be assessed, where: (1) a grossly negligent violation, or a pattern of repeated violations, has created an imminent hazard of death or injury to persons, or (2) a death or injury has occurred. See 49 CFR part 209, appendix A. Each day a violation continues shall constitute a separate offense. See FRA's website at *https://railroads.dot.gov/* for a statement of agency civil penalty policy.

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4. Revise § 240.103(b)(1), (b)(2), and (c) introductory text to read as follows:

§ 240.103 Approval of design of individual railroad programs by FRA.

* * * * *

(b) * * *

(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 (g) of this section, or a material modification filed pursuant to paragraph (h) of this section to the president of each labor organization that represents the railroad's employees subject to this part; and

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

(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 (g) of this section, or a material modification pursuant to paragraph (h) of this section, any designated representative of railroad employees subject to this part may comment on the submission, resubmission, or material modification.

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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.

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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.

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

§ 240.409 Hearings.

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(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.

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Issued in Washington, DC.

Kyle D. Fields,
Chief Counsel.

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