



## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Parts 240 and 242

[Docket No. FRA-2025-0131; Notice No. 2]

RIN 2130-AD32

### **Qualification and Certification of Locomotive Engineers and Conductors: Incorporation of Longstanding C<sup>3</sup>RS Waivers**

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends FRA 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 (C<sup>3</sup>RS).

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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### **SUPPLEMENTARY INFORMATION:**

#### **I. Background**

Consistent with Executive Order (E.O.) 14192, Unleashing Prosperity Through Deregulation (90 FR 9065, Feb. 6, 2025), and E.O. 14219, Ensuring Lawful Governance and Implementing the President’s “Department of Government Efficiency” Deregulatory Initiative (90 FR 10583, Feb. 25, 2025), FRA is reviewing its regulatory requirements in

49 CFR parts 200 through 299 and updating requirements to reduce unnecessary burdens without compromising transportation safety.

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. On July 1, 2025, FRA published a notice of proposed rulemaking (NPRM) that proposed 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 C<sup>3</sup>RS program. *See* 90 FR 28676-28684. Interested persons can read more about the history of C<sup>3</sup>RS and the waiver process in the NPRM preamble. *Id.* at 28676-28677.

## **II. Discussion of Comments Received on the NPRM and FRA's Response**

FRA received five comments on the NPRM. Four of the comments were received from the following non-profit employee labor organizations: (1) the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference of the International Brotherhood of Teamsters (BLET);<sup>1</sup> (2) the Brotherhood of Maintenance of Way Employees Division of the International Brotherhood of Teamsters (BMWED-IBT);<sup>2</sup> (3) the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART-TD);<sup>3</sup> and (4) the Transportation Trades Department, AFL-CIO (TTD).<sup>4</sup> One comment was received from the New York State Metropolitan Transportation Authority (MTA).<sup>5</sup>

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<sup>1</sup> Docket No. FRA-2025-0131-0005.

<sup>2</sup> Docket No. FRA-2025-0131-0002.

<sup>3</sup> Docket No. FRA-2025-0131-0004.

<sup>4</sup> FRA-2025-0131-0006. TTD's comment indicates it consists of 39 affiliated unions who represent members across the freight rail industry, and TTD included a list of member labor organizations represented by TTD as part of its comment.

<sup>5</sup> Docket No. FRA-2025-0131-0003.

All comments expressed general support for C<sup>3</sup>RS and FRA's goal of implementing the program nationwide but also raised some concerns. After thoroughly considering the comments, FRA has decided to finalize the rule as proposed, except for minor clarifying revisions to the definitions of "C<sup>3</sup>RS Implementing Memorandum of Understanding (C<sup>3</sup>RS IMOU)," "Close call," and "Peer Review Team (PRT)."

#### **A. Concerns Regarding Labor Organization Exclusion**

All labor organization commenters expressed concerns that the NPRM contemplated implementing C<sup>3</sup>RS programs through an Implementing Memorandum of Understanding (IMOU) that had only been signed by FRA and the participating railroad, in certain circumstances. These comments focused primarily on FRA's proposed definition for "C<sup>3</sup>RS Implementing Memorandum of Understanding (C<sup>3</sup>RS IMOU)," which stated, in part, that if participating employees are not represented by a non-profit employee labor organization, or if a non-profit employee labor organization representing employees covered by a C<sup>3</sup>RS IMOU is not a stakeholder to the program, a C<sup>3</sup>RS IMOU may be signed only by FRA and the participating railroad. The labor organizations generally asserted that excluding labor organizations as a stakeholder to a C<sup>3</sup>RS IMOU would undermine employees' trust in the program and result in fewer close calls being reported. TTD also specifically asserted that employees would not feel comfortable reporting if a Peer Review Team (PRT) did not have labor representatives. Overall, these comments asked FRA to issue a final rule that requires labor organizations to be signatory stakeholders to a C<sup>3</sup>RS IMOU.

FRA agrees that having labor organization stakeholders strengthens C<sup>3</sup>RS and promotes employee trust in the program. FRA has expended significant time and resources in promoting labor organization participation in C<sup>3</sup>RS and will continue to do so. However, for the following reasons, FRA is declining to require that a C<sup>3</sup>RS IMOU be signed by a labor organization stakeholder. To reflect the important stakeholder role

that labor organizations play in C<sup>3</sup>RS overall, and as discussed in the Section-by-Section Analysis below, FRA is replacing language in the proposed definition about a labor organization not being a stakeholder to a particular C<sup>3</sup>RS IMOU with language about a labor organization not being a signatory party. FRA is otherwise finalizing the definition of “C<sup>3</sup>RS Implementing Memorandum of Understanding (C<sup>3</sup>RS IMOU)” as proposed.

First, requiring each C<sup>3</sup>RS IMOU to be signed by a labor organization representative could exclude non-represented employees from the program, including non-represented employees who are currently covered through C<sup>3</sup>RS programs that have been implemented on railroads where some or all employees are not represented by a labor organization.<sup>6</sup> In these cases, some C<sup>3</sup>RS IMOUs have been signed by an employee of the covered craft,<sup>7</sup> while others have been signed by only FRA and the railroad.<sup>8</sup> Except for railroads that have joined C<sup>3</sup>RS through the Short Line Safety Institute (SLSI),<sup>9</sup> these C<sup>3</sup>RS IMOUs also provide that the railroad will appoint employees to participate in the PRT, which ensures that an employee’s perspective is heard when the PRT reviews and analyzes reports.<sup>10</sup> The success of these C<sup>3</sup>RS programs shows that the program can be implemented without a signatory labor organization representative, and

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<sup>6</sup> FRA has posted signed C<sup>3</sup>RS IMOUs on its website at <https://railroads.dot.gov/railroad-safety/divisions/safety-partnerships/c3rs/participating-railroads> (last accessed Apr. 20, 2026).

<sup>7</sup> For example, the C<sup>3</sup>RS IMOU for the Buffalo & Pittsburgh Railroad covers non-represented car department employees (in addition to represented crafts), and the IMOU is signed by the Lead Carman. *See* <https://railroads.dot.gov/elibrary/buffalo-and-pittsburgh-c3rs-imou> (last accessed Apr. 20, 2026). Similarly, the C<sup>3</sup>RS IMOU covering non-represented employees for the Strasburg Rail Road Company is signed by multiple PRT members. *See* <https://railroads.dot.gov/elibrary/strasburg-imou> (last accessed Apr. 20, 2026).

<sup>8</sup> For example, the C<sup>3</sup>RS IMOU for Denton County Transportation Authority/Rio Grande Pacific Transit Group/Stadler is signed exclusively by FRA and management representatives from the participating railroad and contract operators. *See* <https://railroads.dot.gov/elibrary/dcta-train-c3rs-imou> (last accessed Apr. 20, 2026).

<sup>9</sup> SLSI is a non-profit corporation that conducts safety culture assessments and is an education and training source for short line and regional railroads concerning safety culture. *See* <https://www.shortlinesafety.org/>. Railroads that have joined C<sup>3</sup>RS through SLSI include the D&I Railroad Company (<https://railroads.dot.gov/elibrary/di-railroad-c3rs-imou>); the Delaware Lackawanna Railroad (<https://railroads.dot.gov/elibrary/delaware-lackawanna-railroad-c3rs-imou>); the Goose Lake Railway, LLC (<https://railroads.dot.gov/elibrary/c3rs-implementing-memorandum-understanding-goose-lake-railway>); and St. Mary’s Railway West (<https://railroads.dot.gov/elibrary/st-marys-railway-west-c3rs-imou>).

<sup>10</sup> For railroads participating in C<sup>3</sup>RS through the SLSI, the SLSI PRT is comprised of a group of SLSI representatives.

railroads should not be excluded from the railroad safety benefits of C<sup>3</sup>RS simply because they have non-represented employees. Further, except for railroads that join C<sup>3</sup>RS through the SLSI, FRA does not intend to sign a C<sup>3</sup>RS IMOU that does not provide for employee participation in the PRT, regardless of whether the participating employees are represented by a labor organization that has signed the C<sup>3</sup>RS IMOU. To reflect the importance of employee participation in a PRT, and as discussed further in the Section-by-Section Analysis below, FRA is adding language to the definition of “Peer Review Team (PRT)” noting that a PRT can include employees who are not represented by a labor organization that has signed the C<sup>3</sup>RS IMOU (as well as other types of representatives).

In addition, there is currently no requirement for C<sup>3</sup>RS to be implemented through an IMOU signed by a labor organization representative, and establishing one when none has existed is unnecessary and could hinder the further expansion of C<sup>3</sup>RS. While FRA always strives to get consensus from all potential parties to a C<sup>3</sup>RS IMOU, even a C<sup>3</sup>RS IMOU without a labor organization as a signatory party still provides employees an opportunity to report close calls confidentially to an independent third party and to receive protection from discipline and revocation of certification for accepted reports that did not exist before.

#### **B. BLET Comment Regarding the Railroad Safety Advisory Committee Process**

Related to concerns about labor organization exclusion, BLET commented that it believes a C<sup>3</sup>RS IMOU that has been agreed upon by all stakeholders could be reached through the Railroad Safety Advisory Committee (RSAC) process, requesting that FRA hold the NPRM as a proposal until all involved stakeholders could agree upon such an IMOU. FRA understands BLET’s comment to be referencing RSAC Task No. 2022-03: Confidential Close Call Reporting System, which had involved a series of C<sup>3</sup>RS Working

Group meetings. As explained in the NPRM, FRA withdrew Task No. 2022-03 from the RSAC in March 2025, in part to begin a rulemaking that would propose amending parts 240 and 242 to remove the need for C<sup>3</sup>RS waivers. BLET also commented that the ongoing reconstitution of the RSAC would set back progress made by the C<sup>3</sup>RS Working Group.

FRA is declining BLET's suggestion to wait to finalize this rulemaking until there is a standard C<sup>3</sup>RS IMOU agreed upon by all stakeholders. FRA appreciates BLET's support for RSAC and agrees that RSAC may be the appropriate forum for the agency's various stakeholders to exchange information relating to the safety of rail operations. However, FRA does not believe it should delay finalizing this rulemaking until a standard C<sup>3</sup>RS IMOU is agreed upon, whether through the RSAC process or otherwise. As explained in the NPRM, after a series of RSAC C<sup>3</sup>RS Working Group meetings, it became apparent that stakeholders generally agreed that FRA should engage in a rulemaking that would streamline C<sup>3</sup>RS participation by relieving railroads of the burden associated with submitting waivers and recurrent waiver extension requests. *See* 90 FR 28677. Even if no additional railroads join C<sup>3</sup>RS, whether in accordance with a standard C<sup>3</sup>RS IMOU template or not, FRA believes streamlining the process to participate in C<sup>3</sup>RS is a meaningful burden reduction, both for FRA and the current participants. While BLET also questions whether granting C<sup>3</sup>RS waivers should be a *pro forma* exercise, FRA notes that no railroad request for a C<sup>3</sup>RS waiver has ever been denied. Further, FRA notes that though it publishes a *Federal Register* notice providing an opportunity for public comment on all C<sup>3</sup>RS waiver petitions, few comments expressing blanket opposition to a C<sup>3</sup>RS waiver have been received on any of the dozens of waiver and waiver extension requests FRA has granted (though some comments have expressed concerns about various specific aspects of the program or advocated for greater

communication between railroad and labor organization parties to the program).<sup>11</sup> FRA also notes that BLET, SMART-TD, and TTD all commented in support of FRA granting a C<sup>3</sup>RS waiver submitted by the Association of American Railroads (AAR) on behalf of Class I freight railroads (though SMART-TD and TTD also urged FRA to ensure that the Class I railroads joined C<sup>3</sup>RS in accordance with standards contained in C<sup>3</sup>RS IMOU for current participants).<sup>12</sup>

Further, while BLET is concerned that the reconstitution of the RSAC will hinder the C<sup>3</sup>RS Working Group's progress, FRA notes that it had disbanded the Working Group in March 2025, after concluding that further meetings were not likely to produce meaningful results. This was several months before the RSAC reconstitution process began in August 2025, meaning that the reconstitution will have no additional effect on the C<sup>3</sup>RS Working Group.

### **C. MTA Comment Requesting Clarity on C<sup>3</sup>RS Report Acceptance**

MTA commented that while it generally supports incorporating waivers to streamline the ongoing operation of C<sup>3</sup>RS, it thought the final rule should clarify that the PRT plays no role in determining whether a C<sup>3</sup>RS report is accepted, as that decision is made by the independent third party alone. Specifically, MTA suggested revising the proposed definition of "Close call" to remove the reference to PRT acceptance and to make conforming changes throughout the proposed rule to remove references to the PRT accepting a report.

FRA understands MTA's concern, as there are different understandings of what it means for a close call to be accepted among current C<sup>3</sup>RS stakeholders. The purpose of the proposed definition was to reflect that a PRT's review and analysis of a reported close call may uncover information that was not reported to the independent third party that

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<sup>11</sup> See, e.g., Docket No. FRA-2023-0065-0003.

<sup>12</sup> See Docket Nos. FRA-2023-0042-0003; FRA-2023-0042-0004; and FRA-2023-0042-0005.

makes the close call ineligible for the C<sup>3</sup>RS IMOU's protections against suspension or revocation of certification. For example, a PRT may discover that even though the current independent third party, the National Aeronautics and Space Administration (NASA), accepted a close call, the underlying event was not eligible for the C<sup>3</sup>RS IMOU's protections because it was visually observed by a railroad manager in real-time.<sup>13</sup> FRA emphasizes that it is unusual for a PRT to determine that an event reported to and accepted by NASA is not eligible for a C<sup>3</sup>RS IMOU's protections, but it does happen occasionally. Further, because PRTs have an FRA representative, any such determination is made with FRA's advice and assistance, in addition to being a consensus decision made by all PRT stakeholders (including labor organization representatives).

The proposed definition of "Close call" also prevents an employee from receiving C<sup>3</sup>RS protections in the (highly unlikely) situation that the employee deliberately withheld information from the report that would indicate the underlying event was not a reportable close call (such as information indicating the event involved prohibited use of alcohol or a controlled substance or a willful violation of Federal railroad safety laws of railroad operating rules). To prevent such bad faith misuse of C<sup>3</sup>RS, FRA believes it is important to allow a PRT, when it has access to additional information that was not available to the independent third party, to determine that a close call reported to and accepted by the independent third party may still be ineligible for a C<sup>3</sup>RS IMOU's protections. If the PRT did not have this authority, the primary alternative remedy for bad faith misuse of C<sup>3</sup>RS would be for a railroad participant or FRA to terminate its participation in that C<sup>3</sup>RS program, which would unfairly deprive railroad employees

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<sup>13</sup> All current C<sup>3</sup>RS IMOU's provide that employees do not receive the protections of the C<sup>3</sup>RS IMOU when a reported event is a "Real-Time Observation." While the definition of "Real-Time Observation" differs slightly among the different C<sup>3</sup>RS IMOU's, it is always defined to include an event that was visually observed in real-time by an FRA inspector or railroad manager.

adhering to the C<sup>3</sup>RS IMOU's reporting criteria of the opportunity to improve railroad safety by reporting close calls.

FRA has been working to clarify what it means for a close call to be accepted by both NASA and the PRT in recent C<sup>3</sup>RS IMOU's. For example, in the C<sup>3</sup>RS IMOU signed by Norfolk Southern Railway, FRA, BLET, and SMART-TD in February 2024,<sup>14</sup> Section 6.2 (“Conditions Under Which a Reporting Employee Is Not Protected from Railroad Discipline, Railroad Revocation of Certification, or FRA Civil Enforcement”) specifies seven conditions under which employees do not receive the C<sup>3</sup>RS IMOU's protections and affirmatively states that the PRT shall determine whether any of the conditions exist.<sup>15</sup> FRA acknowledges, however, that there remains some uncertainty among C<sup>3</sup>RS participants regarding the PRT's role in determining whether a reported close call is eligible for the protections of a C<sup>3</sup>RS IMOU.

To address this uncertainty, and in response to MTA's request for additional clarity, FRA is adding language to the proposed definition of “Close call” stating that “For purposes of this definition, a close call is accepted by a PRT when the PRT determines that the close call is eligible for the protections against suspension or revocation of certification established by the applicable C<sup>3</sup>RS IMOU.” FRA believes this additional language clarifies what it means for a PRT to “accept” a close call report, both in the definition of “Close call” and elsewhere in the rule. FRA is otherwise finalizing the definition as proposed.

### **III. Section-by-Section Analysis**

FRA is amending parts 240 and 242 to codify longstanding waivers that have granted relief from certain certification requirements for railroads that participate in the

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<sup>14</sup> See <https://railroads.dot.gov/elibrary/norfolk-southern-pilot-program-smarttd-blet-c3rs-imou>.

<sup>15</sup> *Id.*

FRA-sponsored C<sup>3</sup>RS program.<sup>16</sup> FRA is codifying these longstanding C<sup>3</sup>RS 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 C<sup>3</sup>RS IMOU. Except as otherwise noted below, FRA has adopted the rule text as proposed, and readers may refer to the NPRM's Section-by-Section Analysis for extensive discussion of FRA's rationale for the revisions.

*Section 240.7—Definitions and Section 242.7—Definitions*

“C<sup>3</sup>RS Implementing Memorandum of Understanding (C<sup>3</sup>RS IMOU)”

For the reasons discussed above in Section II.C, FRA is finalizing the definition of “C<sup>3</sup>RS Implementing Memorandum of Understanding (C<sup>3</sup>RS IMOU)” in both sections 240.7 and 242.7 as proposed, except that FRA is replacing language in the proposed definition about a labor organization not being a stakeholder to a particular C<sup>3</sup>RS IMOU with language about a labor organization not being a signatory party to a C<sup>3</sup>RS IMOU. The new language reflects that labor organizations can be important stakeholders to the overall C<sup>3</sup>RS program, even if they are not signatory parties to a particular C<sup>3</sup>RS IMOU.

“Close call”

For the reasons discussed above in Section II.C, FRA is finalizing the definition of “Close call” in both sections 240.7 and 242.7 as proposed, except that FRA is including additional language clarifying that a close call is accepted by a PRT when the PRT determines that the close call is eligible for the protections against suspension or revocation of certification established by the applicable C<sup>3</sup>RS IMOU.

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<sup>16</sup> FRA does not intend this final rule to be a disincentive to railroads implementing alternative close call reporting programs outside C<sup>3</sup>RS, 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.

“Peer Review Team (PRT)”

FRA is adopting the definition of “Peer Review Team (PRT)” as proposed, except for two clarifications. First, FRA is replacing the term “primary stakeholders” with “signatory parties” to reflect that not all C<sup>3</sup>RS stakeholders may be a signatory party to a particular C<sup>3</sup>RS IMOU. Second, FRA is adding language noting that a PRT may also include the following persons: a representative from the independent third party; employees covered by the C<sup>3</sup>RS IMOU who are not represented by a non-profit employee labor organization that has signed the C<sup>3</sup>RS IMOU; and other subject matter experts on an ad hoc basis when their expertise would assist the PRT in developing recommendations. This additional language reflects that most C<sup>3</sup>RS IMOUs provide for NASA and other subject matter experts to participate in a PRT when requested, and that C<sup>3</sup>RS IMOUs that cover non-represented employees generally provide that a railroad will appoint employees to participate in the PRT. FRA also notes that the intent of this definition is to describe PRT composition, not to regulate it, as PRT composition is subject to the provisions of a signed C<sup>3</sup>RS IMOU. This definition does not, for example, override IMOUs for railroads that participate in C<sup>3</sup>RS through the SLSI, which provide that the PRT is comprised of FRA and SLSI representatives.

#### **IV. 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 final rule 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 OMB determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866.

FRA analyzed the potential costs and benefits of this final rule. This rule amends FRA’s 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 C<sup>3</sup>RS program. This final rule will reduce the burden on C<sup>3</sup>RS-participating railroads. Nothing in this final rule changes the voluntary and cooperative nature of C<sup>3</sup>RS, as participants retain the ability to terminate their participation in the program in accordance with the provisions of the applicable C<sup>3</sup>RS IMOU. Moreover, this rule will provide some qualitative benefits to regulated entities and the U.S. Government, by clarifying, simplifying, and updating the language of parts 240 and 242. This final rule will also promote more efficient use of Government resources by reducing the time spent by FRA on reviewing and approving these types of waivers.

**B. Executive Order 14192 (Unleashing Prosperity Through Deregulation)**

E.O. 14192, Unleashing Prosperity Through Deregulation, requires that for “each new [E.O. 14192 regulatory action] issued, at least ten prior regulations be identified for elimination.”<sup>17</sup> 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.<sup>18</sup>

An E.O. 14192 deregulatory action is defined as “an action that has been finalized and has total costs less than zero.” This rulemaking will have total costs less than zero, and therefore will be considered an E.O. 14192 deregulatory action upon issuance of this final rule.

**C. Regulatory Flexibility Act and Executive Order 13272**

The Regulatory Flexibility Act of 1980 ((RFA), 5 U.S.C. 601 *et seq.*) and E.O. 13272 (67 FR 53461, Aug. 16, 2002) require an agency to prepare and make available to

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<sup>17</sup> Executive Office of the President, *Executive Order 14192 of January 31, 2025, Unleashing Prosperity Through Deregulation*, 90 FR 9065-9067 (Feb. 6, 2025).

<sup>18</sup> 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).

the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). 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, 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)).

In the NPRM, FRA certified that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received on this certification.

This final rule will not preclude small entities from continuing practices that comply with parts 240 and 242. By extending this regulatory relief, many regulated entities, including small entities, will experience cost savings in terms of reduced burden on C<sup>3</sup>RS-participating railroads. This final rule will also promote more efficient use of Government resources by reducing the time spent by FRA on reviewing and approving these types of waivers. The impact to small entities is not expected to be significant. Consequently, FRA holds to its previous certification that the final rule will not have a significant economic impact on a substantial number of small entities.

#### **D. Paperwork Reduction Act**

This final 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 5610.1D, FRA has determined that this rule is categorically excluded pursuant to 23 CFR 771.116(c)(15). 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 final 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 final rule will 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. No. 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.”<sup>19</sup> FRA has evaluated this final rule in accordance with

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<sup>19</sup> 66 FR 28355 (May 22, 2001).

E.O. 13211 and determined that this final rule is not a “significant energy action” within the meaning of E.O. 13211.

**I. Executive Order 13175 (Tribal Consultation)**

FRA has evaluated this final rule in accordance with the principles and criteria contained in E.O. 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, Nov. 6, 2000). The final rule will not have a substantial direct effect on one or more Indian tribes, will not impose substantial direct compliance costs on Indian tribal governments, and will 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 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 final rule 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.

**List of Subjects**

**49 CFR Part 240**

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

**49 CFR Part 242**

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

## **The Final Rule**

For the reasons discussed in the preamble, FRA amends parts 240 and 242 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. Amend § 240.7 by adding definitions in alphabetical order for “C<sup>3</sup>RS Implementing Memorandum of Understanding (C<sup>3</sup>RS IMOU)”, “Close call”, “Confidential Close Call Reporting System (C<sup>3</sup>RS)”, “Electronic device”, “Hazardous material”, “ID strip”, “Independent third party”, “Peer Review Team (PRT)”, and “Personal electronic device” to read as follows:

#### **§ 240.7 Definitions.**

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*C<sup>3</sup>RS Implementing Memorandum of Understanding (C<sup>3</sup>RS IMOU)* means a voluntary written agreement that implements C<sup>3</sup>RS 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 C<sup>3</sup>RS 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 C<sup>3</sup>RS is not a signatory party to the C<sup>3</sup>RS IMOU, a C<sup>3</sup>RS IMOU may be signed only by FRA and the

participating railroad. When contractor employees are participating in C<sup>3</sup>RS, the C<sup>3</sup>RS 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 C<sup>3</sup>RS IMOU. FRA will post all C<sup>3</sup>RS 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 C<sup>3</sup>RS 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 C<sup>3</sup>RS IMOU. For purposes of this definition, a close call is accepted by a PRT when the PRT determines that the close call is eligible for the protections against suspension or revocation of certification established by the applicable C<sup>3</sup>RS IMOU.

\* \* \* \* \*

*Confidential Close Call Reporting System (C<sup>3</sup>RS)* means an FRA-sponsored voluntary program designed to improve the safety of railroad operations by allowing railroad workers to report currently unreported or underreported unsafe events confidentially 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 C<sup>3</sup>RS to indicate that the independent third party has accepted the close call.

*Independent third party* means the non-FRA organization that manages C<sup>3</sup>RS, 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 signatory parties to a C<sup>3</sup>RS IMOU, including FRA, the participating railroad, and any participating non-profit employee labor organization(s). A PRT may also include a representative from the independent third party; employees covered by the C<sup>3</sup>RS IMOU who are not represented by a non-profit employee labor organization that has signed the C<sup>3</sup>RS IMOU; or other subject matter experts, on an ad hoc basis, when the supplemental expertise would assist the PRT in developing recommendations.

\* \* \* \* \*

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

\* \* \* \* \*

3. Amend § 240.117 by revising paragraphs (b) and (c)(1) and adding 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 C<sup>3</sup>RS 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 C<sup>3</sup>RS 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 C<sup>3</sup>RS 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 C<sup>3</sup>RS 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 C<sup>3</sup>RS 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) This paragraph (i)(3) 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 “C<sup>3</sup>RS Implementing Memorandum of Understanding (C<sup>3</sup>RS IMOU),” “Close call,” “Confidential Close Call Reporting System (C<sup>3</sup>RS),” “Electronic device,” “Hazardous material,” “ID strip,” “Independent third party,” “Peer Review Team (PRT),” and “Personal electronic device” to read as follows:

**§ 242.7 Definitions.**

\* \* \* \* \*

*C<sup>3</sup>RS Implementing Memorandum of Understanding (C<sup>3</sup>RS IMOU)* means a voluntary written agreement that implements C<sup>3</sup>RS 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 C<sup>3</sup>RS 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 C<sup>3</sup>RS is not a signatory party to the C<sup>3</sup>RS IMOU, a C<sup>3</sup>RS IMOU may be signed only by FRA and the participating railroad. When contractor employees are participating in C<sup>3</sup>RS, the C<sup>3</sup>RS 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 C<sup>3</sup>RS IMOU. FRA will post all C<sup>3</sup>RS 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 C<sup>3</sup>RS 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 C<sup>3</sup>RS IMOU. For purposes of this definition, a close call is accepted by a PRT when the PRT determines that the close call is eligible for the protections against suspension or revocation of certification established by the applicable C<sup>3</sup>RS IMOU.

\* \* \* \* \*

*Confidential Close Call Reporting System (C<sup>3</sup>RS)* means an FRA-sponsored voluntary program designed to improve the safety of railroad operations by allowing railroad workers to report currently unreported or underreported unsafe events confidentially 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 C<sup>3</sup>RS to indicate that the independent third party has accepted the close call.

*Independent third party* means the non-FRA organization that manages C<sup>3</sup>RS, 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 signatory parties to a C<sup>3</sup>RS IMOU, including FRA, the participating railroad, and any participating non-profit employee labor organization(s). A PRT may also include a representative from the independent third party; employees covered by the C<sup>3</sup>RS IMOU who are not represented by a non-profit employee labor organization that has signed the C<sup>3</sup>RS IMOU; or other subject matter experts, on an ad hoc basis, when the supplemental expertise would assist the PRT in developing recommendations.

\* \* \* \* \*

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

\* \* \* \* \*

7. Amend § 242.403 by revising paragraphs (b) and (c)(1) and adding 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 C<sup>3</sup>RS 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 C<sup>3</sup>RS 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 (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 (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 C<sup>3</sup>RS 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 C<sup>3</sup>RS 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 C<sup>3</sup>RS 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) This paragraph (i)(3) 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, D.C., under authority delegated in 49 CFR 1.89.

**David A. Fink,**

*Administrator.*

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