



## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 242

[Docket No. FRA-2025-0133; Notice No. 2]

RIN 2130-AD61

### Miscellaneous Revisions to the Qualification and Certification of Conductors

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

**ACTION:** Final rule.

**SUMMARY:** This rule updates FRA's conductor certification requirements to reduce the information required on a conductor's certificate and allowing certificates to be electronic. This rule also changes the certification revocation process and the Administrative Hearing Officer (AHO) process. Lastly, this rule makes administrative updates, including revising definitions and correcting errors in the regulatory text.

**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 revising requirements to reduce unnecessary regulatory burdens without compromising transportation safety.

On July 1, 2025, FRA published a notice of proposed rulemaking (NPRM) that proposed various changes to 49 CFR part 242 (part 242).<sup>1</sup> Specifically, the NPRM proposed: (1) reducing the information required on a conductor’s certificate and allowing certificates to be electronic; (2) requiring railroads to include findings of fact in support of their certification revocation decisions; (3) changing the administrative hearing process so railroads always carry the burden of proof; and (4) making miscellaneous administrative updates to part 242. FRA also requested comments on whether to remove the requirement that FRA is a mandatory party in the administrative hearing process.

FRA received two comments. The International Association of Sheet Metal, Air, Rail, and Transportation Workers – Transportation Division (SMART-TD) and the Transportation Trades Department, AFL-CIO (TTD) (collectively, “the labor organizations”) each submitted a comment supporting some of the changes proposed in the NPRM and opposing other changes. The labor organizations generally supported FRA’s proposal to require railroads to provide findings of fact when issuing their revocation decisions and placing the burden of proof on railroads during administrative hearings. However, they opposed allowing railroads to use electronic certificates exclusively and removing FRA as a mandatory party to administrative hearings.

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<sup>1</sup> 90 FR 28684 (July 1, 2025).

In response to this feedback, FRA is proceeding with the changes it proposed in the NPRM. In addition, FRA has decided to amend 49 CFR 242.509(p) and (r) to remove FRA as a mandatory party in the administrative hearing process described in section 242.509, and instead, provides FRA the option of participating.

## **II. Section-by-Section Analysis**

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 242.11 Penalties and Consequences for Noncompliance*

FRA's proposed revisions to this section included replacing references to specific penalty amounts with a reference to 49 CFR part 209, appendix A. FRA is amending section 242.11, as proposed, with some minor formatting edits.

### *Section 242.207 Certificate Components*

This section details what information must be included on a conductor's certificate. FRA proposed removing the requirement found in paragraph (a)(3) of this section that these certificates include the conductor's year of birth. SMART-TD described this change as "a positive step for privacy and data protection," as putting the year of birth on a certificate needlessly exposes conductors to identity theft.<sup>2</sup> Based on this positive comment, FRA is proceeding with removing the year of birth requirement from conductor certificates.

FRA also proposed amending paragraph (a)(7) of this section to allow certificates to be electronic. SMART-TD and TTD<sup>3</sup> advocated for conductors to have both electronic and paper certificates. Both organizations acknowledged that electronic certificates could reduce administrative delays by preventing lost or damaged certificates. However, they

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<sup>2</sup> FRA-2025-0133-0002.

<sup>3</sup> FRA-2025-0133-0003.

expressed concern that not all conductors have equal access to digital devices or reliable connectivity. If the railroad only provides electronic certificates, certain conductors could be at a disadvantage or face discipline for circumstances beyond their control. SMART-TD added that if a railroad is hacked or a conductor's information is linked to a particular train, that could constitute a security threat to conductors assigned to high value or strategically sensitive freight.

In response to the labor organizations' concerns, FRA first clarifies that its proposed revision to paragraph (a)(7) does not prohibit the use of paper certificates. It simply gives railroads the option of issuing paper certificates, electronic certificates, or both. Despite the arguments from SMART-TD and TTD, FRA does not find a need to mandate that railroads issue both paper and electronic certificates. If a conductor does not have a railroad-issued electronic device, the railroad will need to ensure that he or she has a physical copy of their certificate to comply with 49 CFR 242.209(a), which requires conductors to have their certificate in their possession while on duty. For conductors that have a railroad-issued electronic device, they can still print a paper copy of their certificate if they desire. They can also save a copy of their certificate to their device, which would protect against any connectivity concerns.

With respect to SMART-TD's concerns that electronic certificates could create security threats to conductors in the event of a hack, the purpose of the certificate, whether paper or electronic, is to document certification status under part 242. It does not contain or link to operational data such as train numbers or assignments. Any such information resides within a railroad's internal crew management system, which is separate from certification records. FRA's change to allow electronic certificates is intended only to provide administrative flexibility and does not create any new vulnerabilities or tracking mechanisms.

In summary, FRA has determined to allow, but not require, railroads to issue certificates electronically. This will provide railroads with greater flexibility while decreasing the likelihood of certificates getting lost or damaged and having to be replaced.

*Section 242.407 Process for Revoking Certification*

FRA proposed clarifying in this section that railroad revocation decisions must contain findings of fact, and the basis for those findings, regardless of what is required under the applicable collective bargaining agreement (CBA). Both labor organizations wrote in support of this change, stating that it would provide transparency, ensure due process, and allow conductors to understand the reasoning behind the railroad's decision. They requested that FRA establish timelines for railroads to produce these findings of fact, as delays in the revocation process can cause significant harm to conductors. They also requested that FRA adopt enforceable penalties to ensure compliance with this requirement.

Findings of fact must be included in a railroad's revocation decision. Railroads with applicable CBAs must comply with any timelines in those agreements for issuing such decisions. FRA declines to override the timelines established in those agreements, especially since the applicable labor organization has already agreed to those terms. When there is no applicable CBA, paragraph (c)(10) of this section requires that a railroad's revocation decision, containing findings of fact, be prepared and signed no later than 10 days after the close of the record. Therefore, the requested timelines have already been established, and FRA does not need to make further changes to this section beyond what was proposed in the NPRM.

For railroads that fail to comply with this revised section by not providing conductors with adequate findings of fact, FRA may exercise its enforcement authority

pursuant to 49 CFR part 209. In addition, any alleged occurrence of a railroad's non-compliance with this section may be reported to FRA for further investigation.

*Section 242.509 Hearings*

Both SMART-TD and TTD supported FRA's proposed change to paragraph (q) of this section making the railroad the "hearing petitioner" in the administrative hearing regardless of who the prevailing party was at the Operating Crew Review Board. SMART-TD noted it was fundamentally unfair to require a conductor to prove their innocence against a corporation with substantial resources. While SMART-TD and TTD support this change, they expressed concern that it could lead railroads to retaliate against conductors by using the certification process as a disciplinary weapon. SMART-TD referenced a recent inquiry by the Occupational Safety and Health Administration into "the culture of abusive labor practices in railroading regarding the treatment of whistleblowers" and claimed that this change to paragraph (q) will trigger "a strong and predictably vindictive response." Both organizations asked FRA to guard against, and to penalize, railroads that act in bad faith and attempt to revoke certifications illegitimately for retaliatory purposes.

FRA finds that SMART-TD and TTD may be overstating the likelihood that the revision to paragraph (q) will lead to railroads taking retaliatory action. Over the last several years, an administrative hearing has been requested in fewer than one percent of all conductor certification revocations. Thus, this change will have no effect on most cases where a conductor's certification is revoked. Therefore, FRA is unclear why this change would motivate railroads to retaliate against conductors. However, if such retaliation occurs, FRA encourages that it be reported for further investigation.

Existing paragraph (r) of this section states that FRA is a mandatory party to the administrative hearing and will be a respondent at the start of the hearing. FRA requested comment on whether this paragraph should be removed in its entirety, to no longer

require the agency to be a mandatory party. The labor organizations strongly opposed removing the requirement that FRA be a mandatory party. SMART-TD and TTD argued that FRA serves as an independent check on railroad overreach, and if FRA were to step back from this role, administrative hearings would become railroad-dominated proceedings and conductors would be significantly disadvantaged. They implored FRA to remain fully engaged in these certification disputes to preserve fairness and legitimacy.

The labor organizations' comments appear to be imputing the responsibilities of the AHO onto FRA. It is the AHO (or presiding officer), not FRA, who ensures a fair hearing.<sup>4</sup> Also, their comments presume that FRA would always be aligned with the conductor or conductor candidate in these disputes. However, in some cases, FRA would be aligned with the railroad, which presumably would work to the railroad's benefit and the conductor or conductor candidate's disadvantage.

FRA acknowledges that in some cases, it may be able to provide important insights, which is why, after consideration of these comments, instead of requiring FRA to be a party in these proceedings, it will revise this section to state that FRA *may* be a party to the administrative hearing. This preserves the agency's ability to participate in disputes where it believes it has important insights to provide. FRA may also decide to participate in cases where it thinks its participation will prevent an injustice from occurring. However, this also gives FRA flexibility not to participate in matters where FRA's participation would be unnecessary, waste agency resources, or not serve the agency's best interests. This change will allow FRA to maximize its allocation of resources, while also participating in matters of significant importance to the agency. Therefore, FRA is revising paragraph (p) to state that FRA *may* be a party at the hearing.

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<sup>4</sup> See, e.g., 49 CFR 242.509(b) ("The presiding officer may exercise the powers of the Administrator to regulate the conduct of the hearing for the purpose of achieving a prompt and fair determination of all material issues in controversy."); 49 CFR 242.509(d) ("The presiding officer may authorize discovery of the types and quantities which in the presiding officer's discretion will contribute to a fair hearing without unduly burdening the parties.").

As there is no need to repeat this statement in paragraph (r), FRA is also removing existing paragraph (r) and redesignating paragraphs (s) through (u) as paragraphs (r) through (t).

### **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 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 the Office of Management and Budget (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. In this final rule, FRA makes several revisions and clarifications to improve clarity, efficiency, and the allocation of agency resources. These include revisions to specify the appropriate information to be included in required documents, clarification of alternatives for issuance of such documents, and the clarification of provisions that were not clear. In addition, these revisions reduce administrative burden. The revisions to section 242.207 on conductor's certificates will provide railroads with greater flexibility and will reduce the time and resources spent replacing lost or damaged certificates. These revisions will also have the qualitative benefit of enhancing privacy and data protection for workers. The revisions to section 242.407 on revocation decisions will impose a small cost by requiring some railroads to provide information that they do not currently provide. However, these revisions will also provide qualitative benefits to workers, including enhanced transparency, fairness, and understanding. Finally, revisions to section 242.509 grant FRA the discretion to determine its level of participation in administrative hearings. This modification provides qualitative benefits by enhancing fairness for workers, as the railroad will assume the role

of “hearing petitioner.” In addition, the Government will realize cost savings from no longer being required to participate as a mandatory party in each administrative hearing. Overall, FRA finds that this will result in net costs less than zero.

**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>5</sup> Implementation guidance for E.O. 14192 issued by OMB (Memorandum M-25-20, March 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>6</sup>

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

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

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,<sup>7</sup> 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)).

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<sup>5</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>6</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).

<sup>7</sup> Pub. L. No. 104–121, 110 Stat. 857 (Mar. 29, 1996).

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. The regulatory relief provided by this rule will result in cost savings for many regulated entities, including small entities. The impact to small entities is not expected to be significant. Consequently, FRA certifies that this 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 there is no new information collection requirement, in accordance with the Paperwork Reduction Act of 1995 (44 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 242 became effective when they were approved by OMB on October 24, 2024. The OMB approval number is OMB No. 2130-0596, and OMB approval 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>8</sup> FRA has evaluated this final rule in accordance with 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

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<sup>8</sup> 66 FR 28355 (May 22, 2001).

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 in 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 part 242 of chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

### **PART 242—QUALIFICATION AND CERTIFICATION OF CONDUCTORS**

1. 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.

2. In § 242.7, revise the definitions of “File, filed and filing” and “Serve or service” to read as follows:

#### **§ 242.7 Definitions.**

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*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 § 242.11(a) to read as follows:

**§ 242.11 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 a grossly negligent violation, or a pattern of repeated violations, has created an imminent hazard of death or injury to persons, or 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 § 242.201(a)(3) to read as follows:

**§ 242.201 Time limitations for certification.**

(a) \* \* \*

(3) A determination concerning 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;  
or

\* \* \* \* \*

5. Revise § 242.207(a)(3) and (7) to read as follows:

**§ 242.207 Certificate components.**

(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);

\* \* \* \* \*

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

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6. Revise § 242.407(d) to read as follows:

**§ 242.407 Process for revoking 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.

\* \* \* \* \*

7. Amend § 242.509 by removing paragraph (r), redesignating paragraphs (s) through (u) as paragraphs (r) through (t), and revising paragraphs (p) and (q) to read as follows:

**§ 242.509 Hearings.**

\* \* \* \* \*

(p) The petitioner before the Operating Crew Review Board and the railroad involved in taking the certification action shall be parties at the hearing. FRA may also be a party at the hearing. All parties may participate in the hearing and may appear and be

heard on their own behalf or through designated representatives. All parties may offer relevant evidence, including testimony, and may conduct such cross-examination of witnesses as may be required to make a record of the relevant facts.

(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 conductor or conductor candidate shall be the “hearing respondent.”

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Issued in Washington, D.C., under authority delegated in 49 CFR 1.89.

**David A. Fink,**

*Administrator.*

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