

**DEPARTMENT OF TRANSPORTATION  
FEDERAL RAILROAD ADMINISTRATION**

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**DOCKET NO. FRA-2022-0020  
CERTIFICATION OF SIGNAL EMPLOYEES  
NOTICE OF PROPOSED RULEMAKING**

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**COMMENT SUBMITTED BY  
THE ASSOCIATION OF AMERICAN RAILROADS AND  
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION**

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The Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) (jointly, the Associations), on behalf of themselves and their member railroads, submits the following comments in response to the Federal Railroad Administration's (FRA's) May 31, 2023, Notice of Proposed Rulemaking (NPRM) proposing to amend Federal Railroad Safety regulations by adding a new requirement that railroads develop and implement programs for the certification of signal employees.

**Statement of Interest**

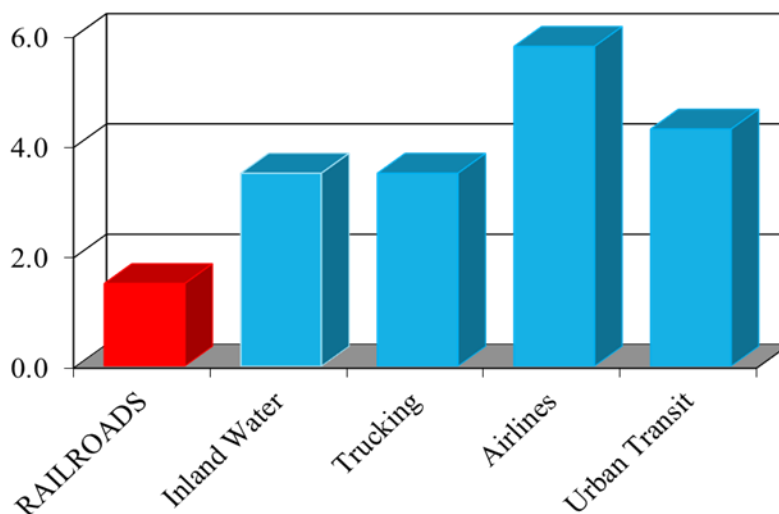
AAR is a non-profit trade association whose membership includes freight railroads that operate 83% of the line-haul mileage, employ 95% of the workers, and account for 97% of the freight revenues of all railroads in the United States; and passenger railroads that operate intercity passenger trains and provide commuter rail service. ASLRRA is a non-profit trade association representing the approximately 600 owners and operators of short line and regional freight railroads throughout North America. The members of the Associations will be directly affected by the proposed changes because they will be required to develop and implement new programs for the certification of signal employees if the NPRM is finalized.

### **There Is Not a Safety Justification for the Rulemaking.**

There is simply not a safety justification for the proposed rulemaking. The last decade was the safest on record for railroads. Mainline accidents per million mainline train-miles have dropped 44% since 2000 and 5% since 2021. Train accidents as a result of false proceeds or activation failures are very rare. Train collisions per million train-miles have dropped 48% since 2000 and 17% since 2013. In 2022, there were 0.17 train collisions per million train-miles. The average annual number of activation failures from 2018 to 2021 was 22, which is less than half the average of 55 from 2014 to 2017. This is in an environment where, although the number of public crossings has decreased, the number of active warning devices has increased. Indeed, since 2005, there has been a 10% decrease in public crossings while the number of crossings with gates has increased by 40%.

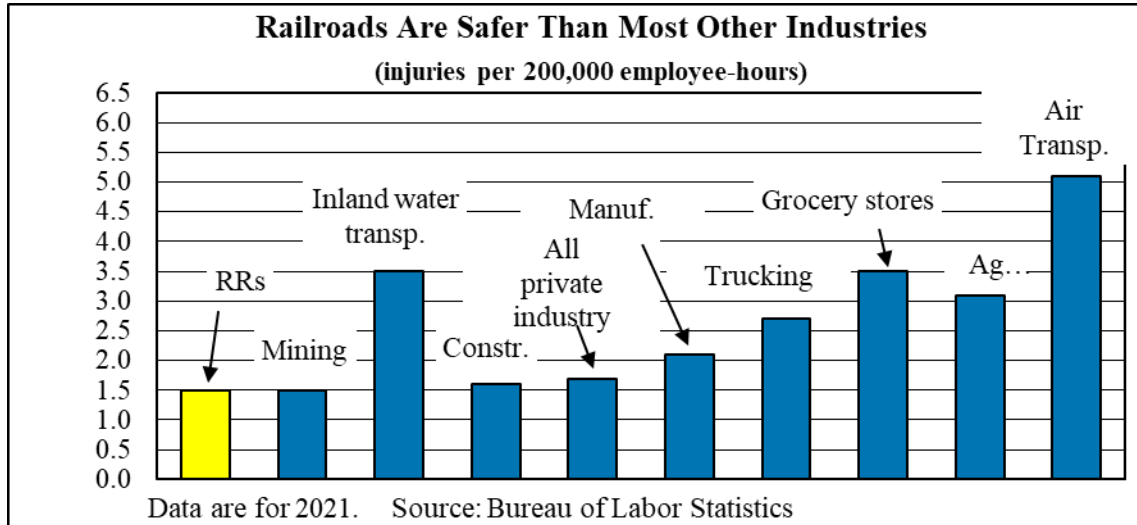
Railroads also have reduced employee casualty rates by 47% since 2000 and 9% since 2010. The safety record for railroads compares favorably with other transportation modes and industries. According to the Bureau of Labor Statistics, railroads have lower employee injury rates than other modes of transportation.

**Lost Workday Injuries & Illnesses per 100 Full Time Employees, 2021**



Source: [https://www.bls.gov/iif/oshwc/osh/os/summ1\\_00\\_2021.xlsx](https://www.bls.gov/iif/oshwc/osh/os/summ1_00_2021.xlsx)

Data from the Bureau of Labor Statistics also demonstrates that railroad employee safety is amongst the lowest across a broad swath of industries.



This safety record is the result of railroads investing in numerous effective technological improvements and company-wide safety programs that have driven safety improvements. Railroads have invested billions of dollars in positive train control (PTC) systems, which are designed to prevent train-to-train collisions, over-speed derailments, incursions into established work zones, and movements of trains through switches left in the wrong position. PTC is now operational on operation on approximately 58,000 freight and passenger railroad route miles.<sup>1</sup> Railroads also have developed and implemented sophisticated programs related to training, qualification, and oversight; system safety; risk reduction; and fatigue risk management programs both voluntarily and in response to new FRA regulations. Further, short line railroads participate in the Short Line Safety Institute’s safety culture assessments and hazardous material instructor and leadership development programs. In short, railroads have implemented strong

<sup>1</sup> <https://railroads.dot.gov/research-development/program-areas/train-control/ptc/positive-train-control-ptc#>.

training programs and robust safety management systems and programs that contribute to the overall safety improvements in the railroad industry.

FRA has not identified any gaps in safety that justify imposing a new rule that would require railroads to implement costly certification programs that will not improve safety. Indeed, FRA's own analysis suggests that there is no reason to think that this rulemaking would prevent future incidents if implemented. FRA conducted a review of railroad accidents over the past 10 years and does not point to a single incident where it is more likely than not that the proposed signal employee certification rule would have prevented the incident. Instead, FRA groups accidents into two separate categories, one where it estimates that there is a 20% likelihood that a certification program would have prevented the accident and a separate group of accidents where FRA estimates that there is only a 10% percent likelihood that a signal certification program would have prevented any particular accident. While the Associations contend that FRA overstates the likelihood that a signal employee certification program will have any impact on safety and note that FRA overcounts the accident/incident history, it is clear that FRA's analysis does not support finalizing this rule.

**The Rail Safety Improvement Act of 2008 Does Not Support the Issuance  
of Signal Employee Certification Regulations.**

FRA relies on section 402 of the Rail Safety Improvement Act (RSIA) of 2008 in issuing the proposed rule.<sup>2</sup> Section 402 required the Secretary of Transportation (Secretary or DOT) to publish regulations establishing a program for the certification of conductors, but Congress did not establish a similar mandate for signal employees. Instead, the RSIA directed DOT to submit a report to Congress "about whether the certification of certain crafts or classes of railroad carrier

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<sup>2</sup> The Secretary has delegated to FRA the authority to carry out the functions and exercise the authority of the Secretary for the RSIA as well as other statutory provisions, including 49 USC Subtitle V, Part A (Safety, chapter 201, *et seq.*). 49 CFR 1.89.

or railroad carrier contractor or subcontractor employees is necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.”<sup>3</sup> Further, DOT is authorized—not mandated—to regulate only if the Secretary determines in the report to Congress that the regulations are “necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.”

On November 4, 2015, Secretary Anthony R. Foxx submitted DOT’s report to Congress in the form of a letter detailing FRA’s “preliminary research.” The letter report from Secretary Foxx does not make a determination that signal-repair employee certification regulations are “necessary to reduce the number and rate of accidents and incidents or to improve railroad safety,” which is the essential first step in implementing new certification regulations for signal repair and maintenance employees. The letter merely states that “dispatching and signal-repair employees are potentially the most viable candidates for certification.” It is clear from this language that the Secretary has not determined that regulations are necessary. The letter, at most, suggests that certification programs for signal repair employees may warrant additional research based on the implementation of PTC technology. Indeed, if Secretary Foxx had made a determination of necessity, FRA would have pursued signal repair employee certification regulations in 2015, rather than waiting until 2023.<sup>4</sup>

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<sup>3</sup> Section 402(c) identifies the following crafts or classes of employees for consideration: (1) car repair and maintenance employees; (2) onboard service workers; (3) rail welders; (4) dispatchers; (5) signal repair and maintenance employees; and (6) any other craft or class of employees that the Secretary determines appropriate.

<sup>4</sup> The Associations recognize that FRA’s Rail Safety Advisory Committee (RSAC) voted to accept a task in April 2019 entitled “Certification of Railroad Signal Employees,” but FRA quickly withdrew the task from consideration in December 2019 at the request of the American Train Dispatchers Association, BRS, and the International Brotherhood of Electrical Workers. The withdrawal request came after FRA provided the Working Group with a list of scenarios, and the labor unions did not point to a single scenario that would be mitigated by certification. As a result, FRA’s initiation of the RSAC process does not support a claim that certification programs are necessary for safety.

FRA seems to recognize this legal deficiency and states in the preamble to the NPRM that “the Federal Railroad Administrator has determined that it is necessary to require the certification of signal employees to improve railroad safety.” 88 Fed. Reg. 35632, 35634. However, this is insufficient to cure the statutory defect because DOT has not made that decision pursuant to a report that has been submitted to Congress, which is a necessary precondition to pursuing a rulemaking. The Associations note that this step is not purely procedural, as the reporting process gives Congress the opportunity to weigh in on the determination before FRA initiates the rulemaking process. The Associations also note that the Administrator’s recent determination—15 years after the RSIA was enacted, 8 years after issuing a report to Congress, and nearly 4 years after withdrawing the issue from RSAC consideration—does not demonstrate that a signal employee certification program “is necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.” This is because FRA simply does not present any data to support such a conclusion.

DOT’s general authority to issue safety regulations under 49 USC 20103 does not exempt FRA from the requirement to comply with section 402 of the RSIA. Congress was clearly aware of this provision when it passed the RSIA. If Congress intended for DOT to rely solely on its general authority to issue rail safety regulations in addressing the potential certification of certain classes and crafts of railroad employees, it would not have included the requirement for DOT to report to Congress on the necessity of such certification procedures before issuing regulations. It is impermissible to skip over the requirements in section 402 just because Congress has previously delegated a general authority to regulate railroad safety to DOT.

### **The Cost-Benefit Analysis Does Not Support Finalizing the Proposed Rule.**

This proposed rule adds to FRA's recent history of disregarding the economic impacts of proposed rulemaking actions. *See* Emergency Escape Breathing Apparatus Supplemental Notice of Proposed Rulemaking, 88 Fed. Reg. 17302 (March 22, 2023), and Dispatcher Certification Notice of Proposed Rulemaking, 88 Fed. Reg. 35574 (May 31, 2023). FRA's Regulatory Impact Analysis (RIA) for Signal Employee Certification estimates the 10-year cost of the proposed rule to be more than \$8.3 million (7% discount rate), while the quantified benefits are estimated to be about \$2.9 million (7% discount rate). In other words, the quantified costs exceed the quantified benefits by almost 3 to 1. The RIA points to various unquantified benefits but there is no suggestion that these unquantified benefits would offset the overwhelming difference between estimated costs and benefits.

Executive Order 12866 states that "agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach." 58 Fed. Reg. 51735 (Oct. 4, 1993). The proposed rule unambiguously results in negative net benefits. There is no statutory requirement for FRA to implement signal employee certification regulations, which means that the agency alternatives include not issuing a final rule. In this instance, the no action alternative does more to maximize societal benefits than the proposed rule. Therefore, FRA should select that approach and withdraw the rulemaking or revise the proposed rule to ensure the benefits exceed the costs.

### **The Cost-Benefit Analysis Overstates Benefits and Understates Costs.**

FRA's accident data does not support the benefits analysis in the RIA. FRA relies on some incidents that were not caused by signal employee activities and some incidents where it is

impossible to draw the conclusion that a signal certification program would have prevented the accident. Indeed, the FRA analysis seems to simply select cause codes such as, "S-011, Power Switch Failure", without further consideration about the circumstances of the accident or incident. Many of the incidents cited appear to have involved worn switch points or other deficiencies that would tend to fall within the purview of maintenance of way personnel rather than employees conducting signal maintenance or repair. Moreover, FRA's reliance in its benefits analysis on the September 25, 2014, in Galva, Kansas, is misplaced.<sup>5</sup> That accident was not caused by a signal failure or a maintenance issue that would be addressed signal employee. The accident was investigated by NTSB, which found that the signal had been installed and tested in compliance with all applicable industry standards. NTSB further stated that "[t]he postaccident signal examination did not find any defects, and the signal system or the associated signal equipment functioned as designed. Maintenance, inspection, and test records were reviewed and were found to be in accordance with FRA requirements."<sup>6</sup> The Associations' review of the existing data also reveals that FRA double-counted accidents, and mistakenly applied a higher rate than claimed for prevention to some accidents. By its own admission, FRA double counted accidents in its benefit pool, and it calculated benefits using an effectiveness rate of 20% for Amtrak accidents instead of the 10% it claimed to have applied. Correcting these errors and reducing the pool of accidents that FRA relies on its benefits analysis will reduce the benefits assessment significantly.

Another error in FRA's benefits analysis relates to its assessment of "activation failures," which include "the failure of an active highway-rail grade crossing warning system to indicate the approach of a train at least 20 seconds prior to the train's arrival at the crossing, or to indicate

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<sup>5</sup> See Incident #0914KC012.

<sup>6</sup> <https://www.nts.gov/investigations/AccidentReports/Reports/RAB1508.pdf>.



the presence of a train occupying the crossing.” 49 CFR 234.5. FRA claims that over the past 10 years there have been an average of 45 human factor-caused activation failures. However, the Associations were not able to replicate these numbers based on publicly available information on FRA’s website. The publicly available data suggest that there was an average of under 36 human factor-caused activation failures for that 10-year period, which indicates that FRA’s RIA over-reports this type of activation failures by 20%.<sup>7</sup> Additionally, as noted above, the average annual number of activation failures was 22 from 2018 to 2021, which is less than half the average of 55 from 2014 to 2017. FRA’s analysis does not take into account the falling trend in activation failures. As a result, FRA artificially inflates the number of failures estimated to occur and thus the benefits.

FRA also understates the costs of implementing a new signal employee certification program. It does not account for the apparent efforts in the proposed requirement to cover employees who are currently outside the scope of the statutory definition of signal employees at 49 USC 21101(4). FRA also underestimates wage-related costs because the 2020 railroad wage rates do not take into account the 24% wage increase that railroad employees received as part of the 2022 collective bargaining process or the 10.7% increase in Federal government employee pay rates. With respect to railroad employee wages, the pay increases were effective retroactively and cover the period 2020 through 2024.

FRA’s estimates for developing certification programs, employee monitoring, and FRA’s review of plans are too low, as well. Class I railroads estimate that it will take each railroad 2-3 years build out the entire certification program, which includes creating a new technology platform, bringing on additional personnel resources, and at least 600 person-hours per Class I

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<sup>7</sup> The FRA database shows 358 human factors-caused activation failures, which averages to approximately 35.8 per year.

railroad to develop a new certification program. ASLRRA estimates that it will take 550 person-hours to develop a template for Class II and Class III railroad members to use as a basis to develop a plan and an additional 19 person-hours for an individual railroad to develop a plan from the template.<sup>8</sup> A short line or small railroad that is not an ASLRRA member would not have access to the template and would have to spend hundreds of hours developing a plan from scratch. For monitoring employee performance, proposed § 246.123 requires “at least one unannounced compliance test each calendar year on the railroad’s signal system standards, test procedures, and Federal regulations concerning signal systems.” FRA assumes each supervisor will spend a total of 2 hours annually on 10 employees to accomplish this task. This translates to 12 minutes per employee being monitored (10 minutes spent monitoring and 2 minutes recording the test results). This is clearly inadequate given the breadth of testing required by proposed § 246.123 and the time-consuming nature of some signal employee activities. Indeed, in some cases, signal employees must take apart equipment before they can even begin to perform maintenance and repair activities. Many activities would far exceed the 12 minutes allotted per employee.<sup>9</sup> The Associations estimate that the average annual performance monitoring for each employee to comply with certification requirements would be approximately eight hours per employee, which would be a total of 85,600 person-hours (or 80 hours per supervisor) per year. This does not include an estimate of the feasibility or time to monitor contractors. Moreover, at least five minutes would be needed to adequately document the event in a system. Unfavorable assessments would take even longer, as those would require additional documentation and

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<sup>8</sup> ASLRRA bases this estimate upon its recent experience in the creation and FRA approval of its part 271 Risk Reduction Program template that can be used by member railroads. The actual number of hours to develop a plan will vary greatly by railroad.

<sup>9</sup> An individual observation for a specific task is expected to take approximately 60 minutes, on average, with some taking approximately 30 minutes and others requiring 90 minutes to more than 160 minutes. This estimate does not include travel time required to monitor a dispersed workforce that primarily travels to remote locations to perform their work.

comments on the insufficiencies. The Associations do not attempt to estimate the time needed for FRA to conduct its own reviews related to approval. However, it is simply not practicable to suggest that FRA can complete the reviews in 20 hours. Indeed, FRA builds its own buffer because it anticipates that its staff will not be able complete its reviews of individual railroad plans within 90 days.

FRA's cost analysis for dispute resolution hearings underestimates the burdens of such proceedings. Any person testifying at a hearing or deposition may be accompanied, represented, and advised by an attorney or other representative, and may be examined by that person. This additional consultation and representation cost should be included in the overall cost assessment of hearings. The costs for the parties would be expected to be comparable to FRA's cost for general oversight and program review as well as petitions and hearings. FRA estimates that its own costs for these activities will total \$1.2 million (7% discount rate), which amounts to 20% of the total estimated costs of the proposed rule.

### **Widespread PTC Implementation Eliminates Any Potential Rationale for Signal Employee Certification.**

FRA suggests that the widespread implementation of PTC supports the need for signal employee certification programs. FRA's argument relies on statements from the 2015 report to Congress, which, as noted above, is based on preliminary research. It is important to note that Secretary Fox's report was issued at the early stages of PTC implementation as railroads were still working through challenges related to the development of system components and identifying and fixing issues that were discovered during the testing process.<sup>10</sup> In 2023, we know that FRA's argument misapprehends how signal employees interact with PTC systems.

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<sup>10</sup> GAO report, [Positive Train Control: Most Passenger Railroads Expect to Request an Extension, and Substantial Work Remains beyond 2018](#), pg. 8.

PTC implementation has not increased the complexity of the work for signal employees. PTC system development is ultimately secured through a well-documented system safety plan carried out by the railroads and its vendors. Railroads are able to leverage PTC's modern technology architecture to collect and analyze data for incident resolution and to inform further PTC system enhancements. However, that information is processed through railroads' back-office operations that perform different functions than signal employees. The work of signal employees (i.e., signal maintainers, signalmen, signal inspectors, etc.) has actually become less complex as installing, repairing, and maintaining has become simplified and more efficient as microprocessors monitor the health of the system and provide automated alerts. It is only at legacy locations where employees are required to find errors by tracing wires, observing relays, and by measuring voltage and current levels on vital circuits.

**The Proposed Definition of "Signal Employee" Is Inconsistent with the RSIA and 49 USC 21101(4).**

As noted above, section 402 of the RSIA mandates that FRA establish a certification program for conductors. However, it also allows FRA to establish other certification programs for particular classes if there is a safety necessity. Section 402(c) identifies the specific crafts and classes of employees. For signal employees, section 402(c) specifically calls out "signal repair and maintenance employees." This statutory language implies that Congress was concerned about a subset of employees covered by the Federal hours of service laws; specifically, those employees engaged in signal maintenance and repair, which are tasks that are explicitly listed in the Federal hours of service laws for signal employees. 49 USC ch. 211. As a result, FRA should be clear that the proposed regulation does not apply to employees who are not subject to the existing hours of service laws.

*The RSIA Limits Certification to “Signal Repair and Maintenance Employees.”*

As noted above, Congress uses a specific term in section 402(c) in directing the Secretary to consider certain classes and crafts of employees for certification, “signal repair and maintenance employees.” FRA states that this term is undefined in the RSIA, and, therefore, proposes to use the “streamlined term” of “signal employee,” which it defines in proposed § 246.7. In doing so, FRA’s expands the scope of proposed rule beyond the authority granted in the RSIA. The fact that the RSIA uses the term “signal repair and maintenance employees” is a clear indication that Congress did not intend for a potential rulemaking to cover all signal employees. The Federal hours of service laws define a signal employee as “an individual who is engaged in installing, repairing, or maintaining signal systems.” 49 USC 21101(4). In the RSIA, Congress only authorized covering those employees who repair or maintain signal equipment. Congress did not authorize DOT to pursue certification of persons performing installation (or, as discussed below, troubleshooting) activities. This makes practical sense because railroad signal and grade crossing signal installation require engineering, construction, technological solutions, often performed by third party contractors, that require functionally different expertise than is necessary for repair and maintenance. For example, grade crossing design and installation often requires collaboration with the road owner and interaction with traffic control devices, in the case of signal pre-emption. Signal design engineers program and test the vital and non-vital software programs that perform the functions for a signal system. Such work is very specific, not related to repair or maintenance, and not performed by signal employees. FRA ignores this

fact in the proposed rule in favor of a broad sweeping definition that exceeds the RSIA's authority.

*FRA's Definition of Signal Employee Exceeds the Statutory Definition at 49 USC 21101(4).*

FRA's proposed definition of "signal employee" is also unmoored from the existing statutory definition of "signal employee" in 49 USC 21101(4). The statutory definition, which describes those employees that are covered by Federal hours of service laws, only applies to employees who are "engaged in installing, repairing, or maintaining signal systems." FRA acknowledges that its proposed definition expands the types of activities to also include troubleshooting and testing. FRA states that the addition of these activities is not intended to capture a broader group of employees. It also contends that "troubleshooting" and "testing" are implied terms that are captured under "installing, repairing, or maintaining." In other words, FRA seems to be suggesting that these new words have no meaning beyond what is already in the text of the statute. If that is accurate, then FRA should strike the terms from the proposed definition to avoid confusion. If that is not accurate, and the words expand the scope of definition of signal employee (as one would expect additional text to do), then it is incumbent upon FRA to remove "troubleshooting" and "testing" to be consistent with the definition of "signal employee" used by Congress in 49 USC 21101(4).

The Associations also note that FRA's proposed regulatory text repeatedly uses the terms "troubleshooting" and "testing" as part of the list of descriptive terms used to define the scope of a signal employee's work and describe the type of training a signal employee needs to be certified. FRA should do a complete review of the rule and remove those terms where they are intended to define a signal employee's scope of work or where the certification would require

training in such areas to receive certification. This includes, but is not limited to, removing references in proposed §§ 246.5, 246.7, 246.106, 246.119, 246.121, and 246.125.

*Back-office Personnel Are Not Signal Employees.*

Railroads employ back-office employees, such as PTC help desk personnel, who manage and analyze a variety of data. Some back-office employees have limited ability to remotely access onboard and wayside systems for research purposes, but they do not have the ability to modify any safety-critical component of the PTC systems. Back-office employees have never been considered signal employees and there is no basis for treating them as signal employees for purposes of certification. The requirements of the signal employee certification program would not be applicable to the regular job functions performed by back-office employees. These employees do not meet the definition of signal employee in 49 USC 21101(4), and they are not subject to the alcohol and drug testing program requirements under 40 CFR part 219. While FRA does not explicitly call out these employees in its definition of signal employees, the Associations want to be clear that there is no basis for FRA expanding the definition of signal employee to capture back-office employees.

*FRA Needs to Clarify it Does Not Intend to Sweep in Tasks Related to Signal System Disabling.*

Proposed section 246.121 includes a requirement that the signal employee have knowledge of the railroad's rules and standards for disabling and removing signal systems from service. While proposed section 246.7 provides a definition for "disable," this term does not appear in FRA's proposed definition of a "signal employee."<sup>11</sup> FRA needs to clarify that it does

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<sup>11</sup> "Disable" is defined at 246.7 as "to render a device [or system] incapable of proper and effective action or to materially impair the functioning of that device. The proposed definition of a "signal employee" "a person who is engaged in installing troubleshooting, testing, repair, or maintenance of railroad signal systems, highway-rail and pathway grade crossing warning systems, unusual contingency detection devices, power assisted switches, broken rail detection systems, and switch-point indicators, as well as other safety-related devices, appliances, and systems installed on the railroad in signaled or non-signaled territory."

not intend to restrict tasks related to disabling a signal system to signal employees with this rulemaking. For example, many short line railroads have procedures in place for non-signal employees to perform signal deactivation work. Section 234.103 requires a timely response to a reported grade crossing signal malfunction, which usually entails disabling the malfunctioning system until a signal contractor can evaluate and repair the malfunction. The disabling of a signal is not only required for a malfunction but can be necessary regarding everyday track maintenance, e.g., a surfacing gang working within a crossing approach or a broken rail within a crossing approach. In these situations, safety is enhanced by the timely performance of track repairs, which can involve a non-signal employee disabling the signal, especially if a signal employee is not available. FRA should clarify that it does not intend to sweep tasks related to disabling a signal system into the definition of a signal employee with this rulemaking.

**The Proposed Definition of “Signal System” Is Inconsistent with 49 USC 20501 and Will Require Changes to Existing Collective Bargaining Agreements.**

*FRA Ignores the Statutory Definition of Signal System in 49 USC 20501.*

In defining “signal system”, FRA again shuns the statutory text in favor of a definition that does not match what is already in the Federal rail safety statutes. Section 20501 of title 49 defines a signal system as follows—

In this chapter, “signal system” means a block signal system, an interlocking, automatic train stop, train control, or cab-signal device, or a similar appliance, method, device, or system intended to promote safety in railroad operations.

In proposed § 246.7, FRA proposes to define a “signal system” as follows—

*Signal system*, for purposes of this part, includes the following: block signal systems, cab signal systems, train control systems, positive train control systems, highway-rail and pathway grade crossing warning systems, unusual contingency detection devices, power-assisted switches, broken rail detection systems, switch point indicators, as well as other safety-related devices, appliances, technology, and systems installed on the railroad in signaled or non-signaled territory.



This proposed definition exceeds the authority delineated in the longstanding statutory definition of a signal system in the Federal rail safety statutes. FRA is not justified in proposing an alternative definition.

*FRA's Proposed Definition of Signal System Creates Implementation Problems.*

FRA's definition of "signal system" creates practical problems because of its impact on existing collective bargaining agreements. One problem is that the description of a signal system as including equipment installed in "non-signaled territory," which could have the effect of overriding existing collective bargaining agreements to include work that is not currently within the scope of the agreements. FRA does not explain why it believes that equipment in "non-signal territory" should be included as part of signal system, but the effect of its inclusion in the definition runs counter to the statement about the proposed rule's effect and construction in proposed § 246.5. In that proposed section, FRA states that it does not intend for its definition of signal employee "to alter the terms, conditions, or interpretation of existing collective bargaining agreements." However, the proposed definition of signal employee incorporates the term "signal system" and FRA's proposed definition of "signal system" will directly impact existing collective bargaining agreements. As a result, FRA should remove the reference to non-signaled territory in the definition and elsewhere in the rule text.

A second problem is that FRA includes in its definition of signal system virtually all types of detection equipment (see discussion below). Detectors are sometimes, but not always integrated into signal systems. FRA's definition fails to make this distinction. FRA needs to clarify that signal system includes only those detectors that are integrated into the signal system.

Finally, FRA also needs to clarify that the term signal system does not include signal equipment that is not in service. In addition to the potential impact on existing collective

bargaining agreements, FRA has no authority to regulate equipment prior to entering or after it has been taken out of service.

**FRA Fails to Understand that the Proposed Rule Will Alter Existing Collective Bargaining Agreements.**

Class I and other railroads incorporate their testing programs into their collective bargaining agreements (CBAs). Therefore, any changes required pursuant to the new regulation will necessarily result in altering existing CBAs. However, FRA states in proposed § 246.5 that it does not intend to change the terms, conditions, or interpretation of existing CBAs by use of the term “signal employee.”

**The Definition of “Unusual Contingency Detection Device” Inappropriately Includes Wayside Detection Devices that Are Not Integrated into Signal Systems.**

FRA seeks to sweep all wayside detection devices into signal service creating a definition of “unusual contingency detection device” in proposed § 246.7 that captures all devices used to detect defective conditions on locomotives and rolling stock—this would include high-wide load, hot or defective bearing, defective wheel detectors—or other unsafe conditions (such as high-water, high wind, sliding or slumping soil, rock or snow slide detectors) even if the devices are not integrated into a signal system. Treating wayside detection equipment in non-signaled territory as part of the signal system for certification purposes is a significant change that would alter the terms and conditions of existing collective bargaining agreements, which contravenes the principle espoused in proposed § 246.5. Moreover, FRA proposes this change without even attempting to make a legal or factual case for treating such wayside detection equipment in non-signaled territory as part of the signal system.

Section 402 of the RSIA requires DOT to determine that there is a safety necessity to implement a signal employee certification. That statutory requirement applies equally to a

component of the rule as it does to the entire rule. In proposing to include detection equipment in non-signaled territory, it is incumbent on FRA to present a factual basis to support the decision to include wayside detection in non-signaled territory in this rulemaking. However, FRA does not point to a single accident in the RIA that was caused by a failure of wayside detection equipment in non-signaled territory.

FRA also proposes this change without providing a legal justification for treating detection equipment in non-signaled territory as a signal system. FRA's existing regulations in part 236 do not apply to such equipment in non-signaled territory. The statutory definition of "signal systems" cannot be read to include wayside equipment in non-signaled territory because it does not act as a "block signal system, an interlocking, automatic train stop, train control, or cab-signal device, or a similar appliance, method, device, or system." 49 USC 20501.

The Associations also note that FRA's position in this proposed rule pre-judges the outcome of the Rail Safety Advisory Committee Working Group on wayside detectors, which recently held its kickoff meeting on August 31, 2023. According to the task statement, the purpose of the Working Group is "[t]o consider and review issues related to wayside detectors, including analyzing existing regulations and guidance, accident, incident, and performance data, safety complaints, and existing best practices."<sup>12</sup> Any matters impacting how FRA treats wayside detection equipment should be reserved for that group because it consists of multi-disciplinary team of subject matter experts across several fields of practice.

**There is No Evidence that Certification Requirements Would Minimize Job Hopping.**

FRA makes the argument that certification will reduce the risk of "job hopping" by signal employees who have their certifications revoked, particularly as it relates to signal employees

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<sup>12</sup> <https://rsac.fra.dot.gov/radcms.rsac/task/GetDocument/71>.

with substance abuse problems. However, FRA presents no evidence that signal employees switch jobs more frequently than other crafts, including those that are subject to certification requirements.

FRA's argument is not entirely clear, but the agency seems to suggest that higher rates of positive drug and alcohol tests for signal employees contribute to the purported job hopping. FRA relies on a comparison of the rates of positive drug and alcohol testing for signal employees, train and engine (T&E) employees, and dispatchers to support the rulemaking.<sup>13</sup> The historical drug testing data comes from the letter report from Secretary Foxx, which cites to positive test rates as part of its preliminary research identifying signal employees as being potentially viable candidates for certification. Specifically, the Foxx letter states that signal-repair employees had a positive drug testing rate that was higher than T&E employees. The Associations question the accuracy of FRA's drug testing data, but the two-year rates for 2012-2013 cited by the Foxx letter actually suggest that signal employees have a lower rate of positive test rates than T&E employees (0.48 vs. 0.49 for random testing, and 0.46 vs. 0.55 for pre-employment testing). The Associations note that there are wild, unexplained swings in the positive test rates cited in the Foxx letter that seem highly unlikely to be accurate.<sup>14</sup> FRA does not explain in the preamble how such wild swings occurred or provide any raw data to support the rates cited in the Foxx letter, and the apparent inconsistencies in the positive test rates cited by FRA would suggest that there is a high potential for error.

Setting aside these apparent errors, FRA has not demonstrated that the proposed rule will decrease the likelihood that signal employees, particularly those with substance abuse problems,

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<sup>13</sup> FRA effectively updated the preamble language by posting a "Clarification and Record of Public Contact" in the docket. <https://www.regulations.gov/document/FRA-2022-0020-0024>.

<sup>14</sup> See the Associations' joint comment on Dispatcher Certification, FRA-2022-0019, for additional explanation.

job hop between railroads. FRA does not point to a single example where someone was hired as a signal employee, but would not have been if a certification program was in place. Such a scenario is highly unlikely because the hiring process is already thorough. Prospective signal employees undergo pre-employment drug and alcohol testing. Moreover, once they are hired, they are subject to random and reasonable basis testing (as well as post-accident/incident testing). Given this environment, railroads are well-positioned to identify signal employees with substance abuse problems, and FRA's proposed certification program does not improve the railroads' ability to address such issues, whether with existing employees or new employees.

#### **FRA Should Revise the Preamble Description of Signal Maintainers.**

In the preamble, FRA describes signal maintainers as being tasked with performing minor and emergency repairs. However, FRA does not explain what is meant by "minor". The description serves to limit the scope of a signal employee's work, which could have implications for existing CBAs. Moreover, as discussed below, there are several minor tasks performed by people who are not signal employees, and FRA should avoid an overlap in terms when differentiating between these employees.

#### **Railroads Are Not Properly Situated to Implement Certification Programs for Contractors and Subcontractors.**

FRA states that it proposes to make railroads responsible for the certification of its contractors because the railroads "are ultimately held responsible for the actions (or failure to act) of their employees, contractors, and subcontractors when engaged in railroad operations." While FRA's statement about who is held responsible may be true, it does not support making railroads responsible for certification of contractors. Railroads are equally incentivized to ensure safety of its signal systems no matter which party is responsible for implementing and managing the signal employee certification program.

FRA suggests that its experience with contractors in the context of locomotive engineer and conductor certification supports the position that railroads should be responsible for certifying contractors. However, on this issue, locomotive engineer and conductor certification requirements are not a useful comparison. Class I railroad engineers and conductors are almost uniformly company employees. Class I railroads make far greater use of contractors in the context of signal systems. Railroads typically engage contractors to perform temporary or intermittent signal work, such as manufacturing signal bungalows in a shop environment and for field work like installing signal mast foundations. Often the work is project-oriented and once the project is completed, the contractor and the contractor's employees will move on to a new project, possibly on a different railroad. As a result, railroads are not well-situated to implement and manage a certification program for contractors. Requiring railroads to perform this task would be inefficient and add significant administrative burdens for railroads.

Many short line railroads use contractors extensively for signal work. In most cases, the short line railroad utilizes a contractor for this purpose because the railroad does not have the in-house expertise to otherwise manage signal maintenance. Often, a contractor will provide signal maintenance for dozens of short lines at the same time. Not only would it be infeasible for short lines to certify employees of contractors, given the lack of in-house expertise, but it also creates an inefficient waste of resources for dozens of railroads to certify the same individual in any given period.

If FRA is going to require contractors to be certified, then FRA should authorize contractors and subcontractors to certify their own employees. The contractor company is in the best position to implement, track, and manage the certification of its own employees. As FRA acknowledges, contractors perform highly specialized work, and the contractors are expected to

have a high-level of knowledge pertaining to FRA’s signal and grade crossing signal regulations. Contractors also have an expertise in the equipment that they install and maintain, so they are well-situated to develop a training program that addresses particular safety issues that may arise in the course of their work.

**The Proposal Is Duplicative of Parts 243, 270, and 271 and Harmful to Safety.**

FRA contends that the proposed signal employee certification program requirements would fill gaps associated with the training, qualification, and oversight regulations in part 243 as well as the system safety/risk reduction programs (SSP/RRP) in parts 270 and 271.<sup>15</sup>

However, the gaps that FRA cites to are either non-existent or immaterial. These are wide-ranging comprehensive programs that FRA is responsible for reviewing and approving after ensuring that the programs meet the minimum safety standards of the applicable laws.<sup>16</sup> There is no safety basis for layering new certification requirements on top of these existing requirements and the proposed rule would reduce safety by causing confusion and diverting resources from higher priority safety risks.

FRA created part 243 in response to a mandate in the RSIA of 2008. Part 243 requires railroads and contractors to ensure that safety-related railroad employees are trained and qualified for the work they are performing. Despite FRA’s claims, there is significant overlap between the proposed rule and part 243. For example, in proposed § 246.119, FRA would require railroads to design, develop and deploy training and delivery methods. This provision would overlap and potentially conflict with § 243.101(c)(5), which states that the employer must “[d]etermine how training shall be structured, developed, and delivered.” Additionally, in

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<sup>15</sup> The Associations include Fatigue Risk Management Programs (FMRPs) with SSP/RRP for the purpose of this discussion.

<sup>16</sup> See 49 USC 20156 and 49 USC 20162.

proposed § 246.119(h), FRA states the certification program training must be “comprehensive training on the installation, operation, testing, maintenance, and repair of the signal systems and related technology deployed on their territory,” which overlaps and is potentially in conflict with the stated purpose of part 243 “to ensure that any person employed by a railroad or a contractor of a railroad as a safety-related railroad employee is trained and qualified to comply with any relevant Federal railroad safety laws, regulations, and orders, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.” The purpose of part 243 is reinforced throughout part 243, including in the requirement for experienced employees to receive recurrent training to ensure that they are “trained and qualified on the application of any Federal railroad safety laws, regulations, and orders the person is required to comply with, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.” 49 CFR §§ 243.101(c)(5) and 243.201(e)(1) and (2).

Parts 270 and 271 were also mandated by the RSIA of 2008. The regulations require railroads to implement safety management systems to identify hazards and establish policies to prioritize and minimize those risks. Railroads are required to submit their SSP/RRPs for review and approval by FRA. However, the proposed rule would cast aside the carefully considered risk analysis conducted through the SSP/RRP in favor of an approach that would have railroads potentially focus on lower priority risks associated with signal employees, not because it is an effective safety management tool, but solely because this rulemaking would require it.

FRA is correct that not every railroad operates under an SSP/RRP, but that distinction is immaterial. All Class I railroads have submitted RRP and received approval from FRA. Likewise, it is the Associations’ understanding that those railroads with passenger rail operations



that operate intercity or commuter service have submitted SSPs and received approval by FRA as well. This would mean that the RRP/SSP requirements currently cover more than 83% of the line-haul mileage and 95% of the workers in the rail industry. Further, FRA staff worked extensively with ASLRRA to create a template program for the use of short line railroads who will comply with part 271 either as a volunteer or as a railroad that FRA has deemed to have inadequate safety performance. This template, coupled with the cooperative agency guidance provided by FRA, has set up for success any short line that will comply with part 271 in 2023 and beyond.

**The Knowledge Testing Requirements Do Not Fit Daily Activities.**

Proposed § 246.121(b)(6) states that knowledge testing must be “[c]onducted without open reference books or other materials except to the degree the person is being tested on their ability to use such reference books or materials.” The Associations understand that this provision is consistent with part 240 and 242 but recommends an alternative approach. FRA’s proposed approach is anachronistic because it encourages guessing rather than inquiring, investigating, and reviewing. Railroads currently train, teach, and encourage their employees to use reference materials in their daily activities. Railroad safety would be better served if FRA adopted the same approach for knowledge testing.

**FRA Should Create an Exception for Minor and Routine Corrections.**

There are a wide variety of circumstances where a railroad employee performs a minor or routine correction to a signal system. A train crew may operate a dual control switch that is not shown properly lined up and locked on a dispatcher's screen. Back-office employees may be tasked with implementing device software upgrades or wayside device calibrations. Additionally, some railroads have maintenance-of-way personnel disable signals, especially

regarding surfacing gangs, which FRA does not consider covered by hours service, recognizing that a signal employee covered by the Federal hours of service law will perform the work necessary to put the signal back in service. Such activities should not trigger signal employee certification requirements. To do so would be costly and inefficient, and there is no evidence that certification would advance safety in such circumstances. Moreover, such a requirement could trigger changes to existing collective bargaining agreements, which FRA states is not the intent of the proposed regulation.

**FRA’s 90-day “Goal” for Approval or Denial is Arbitrary and Capricious.**

FRA’s existing certification programs for locomotive engineers and conductors establish an approval process that considers the program approved and allows a railroad to implement its certification program 30 days after the program is filed with FRA unless the FRA Administrator notifies the railroad in writing that the program does not meet the criteria required under the regulations. 49 CFR 240.103(f) and 242.103(g).<sup>17</sup> FRA proposes scrapping the approach used in parts 240 and 242 in favor of a new process for signal employee certification that would allow FRA to indefinitely withhold approval without any reasonable basis. Proposed § 246.103(f) establishes an “aspirational goal [for FRA] to decide on whether to approve a program within 90 days of the date that the program is submitted,” but FRA emphasizes that this is not a deadline that FRA must meet. Moreover, FRA does not establish any procedures to ensure that the decision-making process functions expeditiously, instead noting that it will not always be possible for it to meet the 90-day goal especially during the initial implementation period. If finalized, the approval process should be the same as in parts 240 and 242. This would allow railroads to begin implementing their programs unless FRA’s Administrator notifies the railroad

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<sup>17</sup> Sections 240.103(a) and 242.103(b) state that the railroad must submit the written certification program to FRA at least 60 days before commencing operations.

in writing that the certification program has not been approved. However, FRA's approach in the current rulemaking is to require that FRA issue a formal decision before a railroad can begin implementation. As a result, FRA establishes a process that allows it to arbitrarily hold railroads in limbo for an indefinite time period even if their programs are fully compliant with the requirements in the new part 246.

**Requiring Union Approval on Program Submission Is Arbitrary and Capricious and Not Tied to Railroad Safety.**

The proposed approval process in § 246.103(d) is flawed and unworkable. It would add a new requirement that railroads not only share a copy of the program with the president of each labor organization that represents the railroad's signal employees, but also requires that railroads get the approval of the labor union president and all of the railroad's signal employees who would be subject to part 246. The proposed requirement would also apply to all material modifications of the certification program. This is a substantial change from §§ 240.103(b) and 242.103(c), which require consultation with, but not approval from, labor union leadership. FRA fails to explain why it is proposing this change. Railroads have worked closely with rail labor groups in developing and implementing certification programs for locomotive engineers and conductors. However, the requirement to obtain approval from the respective labor union president(s) is arbitrary and capricious. Labor unions are given the opportunity to comment in part 240 and 242, but FRA's proposed approach in this rulemaking would give labor unions multiple bites at the apple with no reasoning for the deviation. The proposed requirement would cede decision-making responsibilities from the railroads, whom FRA will hold responsible for implementation and management of the program, to labor union presidents, who are outside the exercise of FRA's regulatory authority.

FRA does not explain its rationale for why it believes it is necessary to give a person who is not subject to FRA's regulatory authority responsibility for approval of signal employee certification programs. It cannot be because it is necessary for safety because it is not required in part 240 and 242. Similarly, FRA does not even attempt to explain how such a requirement will result in improved safety, when the rule structure would establish mechanism where the labor union president could potentially hold up approval forcing railroads to miss deadlines. For example, proposed § 246.103(a)(1) would require railroads to submit programs to FRA within 8 months of the effective date of the final rule. This could put a railroad in a situation where it misses the deadline solely because it cannot get approval from a labor union president. The railroad would be subject to potential civil penalties, but the labor union president would not be subject to the same threat of civil penalty. Such a situation is untenable. Additionally, requiring the approval of the labor union president creates an inherent conflict of interest because FRA is putting the union president in the position of approving and exercising control over when and how a railroad uses contractors to perform work on certain signal equipment. Given these factors, the Associations recommend deleting this proposed requirement.

**Vision and Hearing Acuity Testing Should be Tailored to Signal Employee Responsibilities.**

FRA proposes to adopt vision and hearing acuity requirements that mirror those in parts 240 and 242. In proposing these requirements, FRA frames the discussion as whether the vision and hearing acuity requirements should be as stringent as those required for engineers and conductors. In doing so, FRA misframes the issue. The real issue is whether the requirements are tailored to the work performed by signal employees. Signal employees have different responsibilities, and they perform substantially different tasks than conductors and engineers. Prior to implementing vision and hearing acuity requirements, FRA needs to analyze the

components of a signal employee's duties and address how particular vision and acuity requirements impact the ability of signal employees to safely perform their work. Absent such an analysis, FRA has no basis for plucking the vision and hearing acuity requirements from part 240 and 242 and applying them to signal employees.

### **FRA Makes Several Choices that Conflict with Purported Safety Rationale of the Proposed Rule**

While FRA claims that signal employee certification is necessary for safety, it makes several decisions in the rulemaking that are at odds with that claim.

#### **FRA Allows Persons Nearing Retirement to Forego Full Certification Training.**

In proposed § 246.105(f)(1), FRA would allow a person who is within three years of retirement to forego the full certification process. This provision contradicts the safety rationale for the rule. It does not make logical sense for FRA to argue that this rulemaking is necessary for safety and then to suggest that someone within three years of retirement does not need the same safety training that other signal employees would need to be certified. FRA suggests that such an approach is more efficient. However, FRA does not seem to account for the added administrative burden resulting from railroads having to track a special category of employees and establish special protocols for them. It would be more administratively efficient to have a single program for all signal employees who require certification. Additionally, FRA does not seem to have thought through the issue of what happens if an employee decides not to retire within three years. It would appear that an employee nearing retirement age could game the system to forego the full certification process for up to six years.

*FRA Hamstrings the Railroads' Ability Quickly Learn of a Person's Conviction or Other State Action.*

In the preamble discussion, FRA states that proposed § 246.111(k)(2) would preclude railroads “from having a more restrictive company rule requiring certified signal employees or persons seeking signal employee certification to report a conviction or completed State action to cancel, revoke, or deny a motor vehicle driver’s license in less than 48 hours.” As a practical matter, railroads should be able to require notification more quickly than 48 hours as a matter of company policy if they determine it is in the safety interests of the railroad. There is no safety reason to prevent railroads from doing so. In fact, one can easily envision a scenario where safety is decreased because an employee takes advantage of the 48-hour grace period after being convicted. FRA regulations are consistently treated as a floor, not a ceiling, and there is no reason for FRA to interpret this specific proposed regulation differently.

*FRA Artificially Limits Consideration Prior Safety Conduct.*

In proposed §§ 246.111 and 246.113, FRA proposes to prevent railroads from considering information about a person’s prior driving record for incidents that occurred prior to the effective date of the final rule or that are more than three years old. A similar restriction applies to prior safety conduct with another railroad that occurred prior to the effective date of the final rule. FRA frames the issue as one of fairness, but it is actually an issue of safety. If FRA believes that signal employee certification is necessary for safety, then it should allow railroads to consider a person’s prior safety conduct from before the rule is effective as well as after. Likewise, a three-year limitation on driving records would make it difficult to establish a pattern of safety abuses. Railroads need to be able to consider someone’s past actions when making hiring decisions, and there is no safety reason to prevent railroads from making

determinations based on prior conduct that occurred prior to this rule becoming effective or limiting the review of driving record information to three years.

*FRA Allows Decertified Signal Employee to Work in Another Craft if Certified in that Craft.*

Proposed § 246.213 would allow a person who has been decertified as a signal employee for a reason not involving alcohol or drugs to still be able to work as a conductor or engineer if the person holds a certification in one of those crafts. The alternative would also be true in that an employee who has been decertified as a conductor or locomotive engineer may work as a signal employee if that person holds certification in that craft. FRA asserts that the tasks are so inherently different that it does not follow that a revocable event in one area makes it more likely that an employee will conduct a revocable event in another area.

In §§ 240.308(f) and 242.213(h), FRA does not allow a decertified conductor to shift into a locomotive engineer position or vice versa. FRA should adopt the same approach in part 246, if finalized. If a safety sensitive violation is committed this should be considered regardless of craft. For example, if a signal employee acts in a way that creates an interference with the functioning of a highway-rail grade crossing resulting in activation failure that conduct tends to show a disregard for process and there should not be an assumption that the employee's disregard is function or craft specific.

*FRA Excludes Serious Safety Situations from the Revocation Process.*

In proposed § 246.303, FRA identifies the types of occurrences that would result in decertification. However, FRA is overly restrictive in identifying types of revocable events. For example, paragraph (e)(5) only allows for revocation if the violation results in an activation failure. The better safety approach would be to proactively address the employee's misconduct before an activation failure occurs. Indeed, FRA's signal regulations do not require FRA to wait

for an activation failure before citing a railroad for a violation. Additionally, paragraph (e)(7) only allows railroads to consider violations where a signal employee fails to ascertain if on-track safety was provided before fouling a track. The Associations agree that this is extremely dangerous conduct, but the text of paragraph (e)(7) would not allow decertification for an employee who does ascertain that on-track safety needs to be provided and fails to do so. This is equally dangerous, but FRA proposes to treat these situations differently.

*The Period of Ineligibility Is Too Lenient for Persons with Multiple Revocations.*

Proposed § 246.305(b) would establish a tiered system for handling persons with one or more decertifying events within a 36-month period. The Associations ask FRA to clarify that the 36-month period is on a rolling basis such that each new revocation has the potential to extend the 36-month clock. Otherwise, the clock would reset for an employee who continues to commit serious violations warranting revocation. Moreover, the Associations recommend that FRA revise paragraph (b)(4), if finalized, to state that a person can no longer hold certification after committing four violations within a 36-month period.

**FRA’s Definition of Material Modification is Too Vague.**

FRA seeks comment on its proposed 246.103(g)(1), which defines the term “material modification.” FRA’s proposed definition would treat any change that “would affect the program’s conformance with this part” as a material modification. The vagueness of the definition makes it difficult to comment with specificity. The Associations are concerned that the vagueness of the proposed definition will result in stifling innovations in safety systems. FRA should allow railroads to use different delivery methods and to incorporate new technology without treating those changes as material modifications. Likewise, FRA should limit material



modifications to significant content-based changes that are likely to impact safety and not treat edits to test questions, structure, and timelines as material modifications.

**FRA Unnecessarily Limits Who Can Serve as a Mentor.**

Proposed § 246.124 would establish a mentor system. According to the proposed definition in § 246.7, the mentor must have at least one year of experience as a certified signal employee. Part 242 allows for exceptions for a similar requirement related to qualified instructors. Part 246 also creates an exception under its proposed definition of qualified instructor. However, FRA does not create the same exception for mentors, which makes the mentor requirement more stringent than the requirements for qualified instructor. FRA presents no safety data to support the 1-year requirement for mentors. If a person is certified, that should be sufficient. The Associations recommend eliminating the 1-year requirement or creating a similar exception from the 1-year requirement for mentors as what applies to qualified instructors.

**A Signal Employee's Date of Birth is Irrelevant for Purposes of Certification.**

Proposed § 246.207 would require railroads to issue a certificate in electronic or paper form to each person who becomes a certified signal employee. Paragraph (a)(3) states that the certificate must contain certain information, including the year of birth of the certified signal employee. The Associations understand that a similar requirement is included in §§ 240.223 and 242.207, but the birth date of the person provides no relevant data. It is not a reliable indicator of knowledge, skill, or experience. For instance, you could have a 50-year-old signal employee with no prior experience and 30-year-old signal employee with 10 years of experience. Nor is it required to identify or track the person, as there are other reliable means of identification that do not require sharing of birth date information. Additionally, railroads are concerned about adding

the year of birth to the signal employee certificate because it is considered personally identifying information (PII) that railroads seek to avoid releasing unnecessarily. The Associations recommend deleting the year of birth requirement, but if FRA feels that additional information is necessary for tracking and identification purposes, then the Associations would suggest using hire date rather than year of birth.

**Minor Errors in Compliance Testing Do Not Undermine the Legitimacy of the Testing.**

Proposed §246.303(i) states that a compliance test will not be considered a legitimate skills or knowledge test for revocation purposes if the test does not comply with 49 CFR 217.9. If finalized, FRA should adopt a more balanced, safety-reinforcing approach that factors in the type of error and the harm to the signal employee. For instance, if there was a minor procedural error that did not substantially harm the signal employee, then the railroad is getting valid and helpful information from the test and there would be no safety basis to preclude a railroad from relying on the test.

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Thank you for your consideration of these comments.

Respectfully submitted,



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