

BEFORE THE
FEDERAL RAILROAD ADMINISTRATION

DOCKET NO. FRA-2022-0020:
CERTIFICATION OF SIGNAL EMPLOYEES

PETITION FOR RECONSIDERATION OF
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

Pursuant to 49 C.F.R. § 211.29, the American Short Line and Regional Railroad Association (“ASLRRA”), on behalf of itself and its member railroads, petitions the Federal Railroad Administration (“FRA”) for reconsideration of the final rule establishing new certification requirements for signal employees.¹

ASLRRA is a non-profit trade association representing the interests of approximately 600 short line and regional railroad members in legislative and regulatory matters. Short lines operate 47,500 miles of track in the United States, or approximately 29% of the national freight network, touching in origin or destination one out of every five cars moving on the national railroad system, serving customers who otherwise would be cut off from the national railroad network. ASLRRA also endorses the petition for reconsideration submitted by the Association of American Railroads and the petition for reconsideration by the Commuter Rail Coalition in this docket.

¹ 89 Fed. Reg. 44830 (May 21, 2024).

The final rule requires railroads to develop new certification programs for signal employees. Each railroad’s certification program must have a formal process or training employees covered by the final rule and for verifying that each subject employee “has the requisite knowledge, skills, safety record, and ability to safely perform assigned tasks mandated by railroad rules and safety standards and Federal law and regulations prior to certification.”² The final rule requires Class II and III railroads to submit their programs to FRA for approval by November 12, 2025. Additionally, railroads are required to develop and implement a formal process for revoking the certification of employees covered by the final rules “who violate specified minimum requirements.”³

FRA Should Amend the Rule to Allow for Changes in Railroad Ownership

Section 246.103(b), *Certification program for new railroads*, states that “for each railroad that commences operations after July 22, 2024, the railroad shall submit its written signal employee certification program to, and obtain approval from, FRA in accordance with the procedures and requirements contained in § 245.106, prior to installing, implementing, or operating a signal system subject to part 245. The regulation further states in § 103(f) that FRA will either issue a letter notifying the railroad that its program has been approved or issue a letter notifying the railroad that its program has been disapproved; both options typically issued within 120 days of the date the program was submitted to FRA.

Short line railroads change ownership much more frequently than Class I railroads. Some examples include a new owner purchasing a short line and continuing its existing operations, a new owner purchasing a short line and combining its operations with another existing short line, or a new owner purchasing only a portion of a short line. Often, a railroad

² *Id.*

³ *Id.*

that is obtained by a new owner, or combined in whole or in part into an existing railroad will be considered a new entity. Read very strictly, the final rule text in § 246.103 would mean that a railroad in this situation, with an existing and approved signal employee certification program, would have to re-submit its program and wait for FRA approval, resulting in an unnecessary disruption to railroad operations. ASLRRA recommends that FRA remedy this confusion by modifying the text to specify, “for each railroad that commences new operations after July 22, 2024,” be required to comply with the section. This would clarify that existing, approved signal employee certification programs would transfer with the rail line to the new ownership, avoiding an unnecessary disruption to railroad operations.

FRA Should Simplify the Certification Management Process for Employees of Contractors

During the comment period, ASLRRA stated that the rule would result in an inefficient waste of resources as dozens of railroads would have to certify the same individual, as many short line railroads utilize the same signal contractor(s). In the final rule, § 246.125 provides a streamlined process allowing a railroad or a parent company to rely on certain certification determinations made by another railroad or parent company. Unfortunately, § 246.125 does not fully resolve the issue.

Section 246.123 mandates that each railroad monitor the operational performance of its certified signal employees by including procedures for giving each certified signal employee at least one unannounced compliance test each year that covers either the railroad’s signal system standards and test procedures or Federal regulations concerning signal systems. This section does not permit a railroad to rely upon another railroad’s determination of a certified signal employee’s operational performance. ASLRRA is aware of at least one entity that provides signal contractors to 20 short line railroads. Read very strictly, this provision would mean that

an individual employee from this entity certified to perform work as a signal employee on each of the 20 short line railroads would spend 20 days out of the year on operational testing. This would result in an operationally inefficient situation for the short line railroads that depend upon the services of contracted signal employees. FRA should resolve this issue by modifying § 246.123 to allow a railroad to rely on operational testing performed by another railroad, similar to the flexibility granted by § 246.125.

FRA Should Establish a *De Minimis* Exception for Limited Circumstances

Short line railroads often use contractors to perform limited work, such as for the expedited repair and testing of a grade crossing to comply with the mandate at 49 CFR § 234.207 that any failing essential component of a highway-rail grade crossing warning system be adjusted, repaired or replaced without undue delay. Prior to the promulgation of part 246, short line railroads have been able to expeditiously hire individuals on a very short-term basis, at times simply for several hours, to expertly perform quick repairs at grade crossings. Not only has the work of these type of contractors allowed short line railroads to quickly repair any issues, but it has also promoted public safety by quickly returning the grade crossing apparatus to a functional capacity.

If a short line has a grade crossing signal that has been struck by vehicular traffic and requires the installation of new mast and lights, part 246 now mandates that the railroad is required to certify the construction crew before they can begin work on the needed repair. The certification process could take days, which would ironically be longer than the time needed to perform the actual repair. This delays the signal being placed back in service and creates an unnecessary safety hazard to the public. Further, the entities typically retained for this type of work may only be used by a particular short line railroad once every 5-10 years – meaning that the railroad would have to re-certify the individuals before any particular incident, as 49 CFR

§ 246.201 says that a person cannot be certified as a signal employee for an interval of more than three years.

FRA should establish a *de minimis* exception from the requirements of part 246 that covers limited work to facilitate the adjustment, repair, or replacement of essential components of a highway-rail grade crossing warning system. Without this exception, FRA risks contributing to delays and a decrease in public safety at highway-rail grade crossings.

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Respectfully submitted,



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July 12, 2024