



Transportation Trades Department, AFL-CIO

September 14, 2023

Amitabha Bose  
Administrator  
Federal Railroad Administration  
1200 New Jersey Avenue, SE  
Washington DC, 20590

**RE: Certification of Dispatchers  
Docket No. FRA-2022-0019**

Dear Administrator Bose,

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Federal Railroad Administration's (FRA) notice of proposed rulemaking concerning the certification of train dispatchers. TTD consists of 37 affiliated unions, including those representing train dispatchers, and we therefore have a vested interest in this rulemaking.<sup>1</sup> We applaud the FRA for proposing this rule and strongly support the implementation of certification requirements for train dispatchers. We ask the FRA to consider the recommended changes to the proposed rule outlined below and urge the agency to expeditiously finalize this regulation. Additionally, we endorse the comments of our affiliates, the American Train Dispatchers Association (ATDA), the International Brotherhood of Electrical Workers (IBEW), and the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART-TD).

### **Background on Congressional and FRA Action on Dispatcher Certification**

Certification of certain rail crafts or classes of employees is not a new concept in the rail industry. In fact, the FRA has been discussing certification requirements for the past few decades. As the FRA notes in section III, paragraph 2 of the NPRM, Congress mandated in the Rail Safety Improvement Act of 1988 that anyone operating a train, including locomotive engineers, be certified. The FRA subsequently finalized the necessary regulations for locomotive engineers in 1991, over three decades ago, and those regulations are now contained in Part 240 of Title 49, Code of Federal Regulations.

Following the Metrolink collision in Chatsworth, California, in September 2008, Congress passed the Rail Safety Improvement Act of 2008 (RSIA), which directed the Secretary of Transportation to require the certification of train conductors. The FRA subsequently finalized those regulations more than a decade ago in November 2011 and those regulations were based on earlier locomotive engineer certification requirements. These regulations are now contained in Part 242 of Title 49, Code of Federal Regulations.

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<sup>1</sup> Attached is a list of TTD's affiliated unions

The 2008 RSIA also directed the FRA to submit a report to Congress addressing whether certification of certain crafts or classes of employees, including dispatchers, was necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.<sup>2</sup> In response to Congress's mandate in the 2008 RSIA, the Secretary submitted a report to Congress on November 4, 2015, stating that based on FRA's preliminary research, dispatchers and signal employees were potentially the most viable candidate railroad crafts for certification. The FRA subsequently issued a task to the Rail Safety Advisory Committee (RSAC) in 2017, which was presented again and accepted in 2019, to consider whether rail safety would be enhanced by developing guidance, voluntary standards, and/or draft regulatory language for the certification of train dispatchers.<sup>3</sup> The FRA has rightly recognized the need for dispatchers to be certified, and we appreciate the agency's attention to fulfilling this important directive from Congress.

### **Need for Dispatcher Certification**

Certification requirements reflect the basic principle that certain railroad crafts need minimum training and proficiency requirements and persons holding those positions must show that they can meet those minimum requirements. Certification requirements for locomotive engineers and train conductors have undoubtedly wrought safety improvements since they went into effect. We shudder to think how much worse the recent safety problems and derailments in the freight rail industry would be if those requirements were not in effect. The success of certification for locomotive engineers and train conductors further underscores the need for signal employees to be certified.

The widespread deployment of Positive Train Control (PTC) on both freight and passenger rail systems has provided an increased level of safety to the railroading industry and has in turn increased the complexity of a number of crafts, including train dispatching. While this correlation is understandable, training programs and skills standards for dispatchers have been unable to meet increased demands. In fact, no current uniform standards exist for training programs or mandatory minimum skills that allow workers to qualify to serve as train dispatchers. Our affiliates' experiences have been that the railroads, especially the Class I railroads, are not providing a sufficient quality or amount of training for new train dispatchers to learn how to do their jobs and so dispatchers are having to train themselves.

Given the ever growing demands that come with technological advancements, lack of standardization for training and skills qualifications presents a glaringly obvious safety concern. Train dispatchers deserve comprehensive, adequate training that not only allows them to feel confident in their day-to-day duties, but provides a critical safeguard in our rail system. As technology continues to advance, the train dispatcher's role in facilitating a safe freight rail system will only increase. Certification has proven to successfully achieve this goal for other crafts, including engineers and conductors, and it is time these benefits are extended to dispatchers as well.

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<sup>2</sup> Public Law 110-432, sec. 402, 122 Stat. 4884 (Oct. 16, 2008)

<sup>3</sup> <https://rsac.fra.dot.gov/radcms.rsac/task/GetDocument/62>

### **Railroads, Especially Shortlines, Will Be Able to Comply with Certification Requirements**

Some industry groups, including the Association and American Railroads (AAR) and the American Short Line Railroad Association (ASLRRA), have expressed concerns about the railroads' ability to comply with the proposed regulations. These concerns are not new as both organizations expressed concern over previous certification requirements, including the requirement that conductors be certified.<sup>4</sup> We unequivocally argue that the railroads will be able to comply with this regulation based on their previous compliance with other safety and certification requirements. For example, they were able to successfully comply with previous locomotive engineer (Part 240) and conductor certification requirements (Part 242), regulations notably similar to those proposed in this NPRM. The FRA notes in this proposed rule that its inherent similarity to previously implemented regulations should mean that additional compliance will be of a minimum burden to the railroads, especially Class Is. Furthermore, the shortline railroads have access to the Short Line Safety Institute, which can assist with the development of certification programs. In addition to the numerous industry resources available to assist railroads in their compliance with this regulation, rail unions also stand ready to help.

### **Comments on Specific Parts of the Notice of Proposed Rulemaking (NPRM)**

While we fully support the FRA's efforts to regulate the certification of train dispatchers, we respectfully request revisions to this NPRM as outlined below. As previously explained, TTD and our affiliates strongly believe that the certification of train dispatchers is a prudent step toward ensuring the safety of railroad employees, passengers, and our rail network more broadly. These recommended revisions would strengthen the proposed rule and ensure that railroad certification programs are as robust and effective as possible.

### **Definition of Dispatch (245.7)(1)(iii)**

In the section-by-section analysis accompanying this NPRM, the FRA notes its intention to include anyone who is controlling movements by the issuance of a written or verbal authority or permission that affects a railroad operation, such as through movement authorities and speed restrictions under the definition of "dispatch." The narrative further specifies that dispatching activities include the issuance of Track Warrants, Track Bulletins, Track and Time Authority, Direct Traffic Control Authorities, and any other methods of conveying authority for trains and engines to operate on a main track, controlled siding, or other track controlled by a dispatcher.<sup>5</sup> However, the actual definition of "dispatch" contained in the proposed regulation does not achieve the same level of necessary specificity. The FRA should consider amending the language in section (iii) under the definition of "dispatch" to more accurately convey its intent with regard to dispatching activities. Our affiliate ATDA proposes in its comments amending section (iii) to read as follows: "Issuance of any other mandatory directives, including, but not limited to, speed restrictions, highway-rail grade crossing protections, or the establishment of working limits of roadway workers." We support ATDA's recommendation and ask FRA to adopt it.

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<sup>4</sup> <https://www.regulations.gov/document/FRA-2009-0035-0019>

<sup>5</sup> <https://www.regulations.gov/docket/FRA-2022-0019>

### **Qualified Instructors (245.7(4))**

For the purposes of dispatcher certification, qualified instructors would oversee on-the-job training and facilitate skills transfer. The FRA defines a qualified instructor as, “a person who has demonstrated, pursuant to the railroad’s written program, an adequate knowledge of the subjects under instruction and, where applicable, has the necessary dispatching experience to effectively instruct in the field.” An additional qualification listed in this definition states, “If the railroad has designated employee representation, has been selected by a designated railroad officer, in concurrence with the designated employee representative, or has a minimum of one year of service working as a certified dispatcher.”

While we certainly support the involvement of qualified instructors in railroad training programs, train dispatchers often lack the necessary dispatching experience to effectively instruct in the field after only one year of service. In fact, most collective bargaining agreements include a five-year rate progression scale for newly hired dispatchers, which the carriers frequently justify by insisting that most train dispatchers are not fully proficient until they have a minimum of five years of experience. We respectfully request that the FRA require that qualified instructors have a minimum of two years of experience, instead of one year, and are selected in concurrence with the designated employee representative, where applicable.

Currently, some Class I railroads are having newly-certified conductors train prospective conductors; this has resulted in dangerous safety conditions because newly-certified conductors don’t have the necessary experience to train other conductors. This requested change for train dispatchers would avoid this serious safety issue for conductors.

### **Review of Certification Programs**

#### **FRA Review of Certification Programs (245.103)**

We respectfully request that the FRA require Class II railroads to submit their dispatcher certification programs for agency review after a period of eight months, rather than 16 months as proposed in the regulation. Class II railroads such as Florida East Coast Railway, Montana Rail Link, the Alaska Railroad, and the Buffalo and Pittsburgh Railroad have the resources necessary to comply with the eight-month timeframe. In addition, 16 months is frankly excessive for implementing an important safety requirement. As our affiliate ATDA notes in its comments, it is in the best interests of the industry and the general public to implement train dispatcher certification without unnecessary delay.

In addition, we urge the FRA to extend the period of public comment on railroads’ dispatcher certification programs beyond the 45 days proposed in the regulation. The allotted time is not sufficient to provide detailed, substantive comments, especially given that the notices are often posted to the Federal Register days or weeks after PTC Safety Plan (PTCSP) Requests for Information (RFAs) are submitted to the FRA by the carrier. In recent months, we’ve been rushed to provide comments on amendments to the critical safety systems of various railroads in fewer than three weeks. We don’t believe the current 45-day window works for any stakeholder, including the FRA, since the FRA gets rushed stakeholder input and more requests to deny PTC RFAs than it otherwise would if more time was allocated for stakeholders to have necessary conversations about the details of the RFAs.

Furthermore, we expect a number of carriers to submit their dispatcher certification programs on or about the same date, which will all require close review. To that end, we request that the FRA extend the period of public comment to 90 days.

### **Resubmissions (245.103(h)(3))**

Paragraph (h) of this section specifies that dispatcher certification programs submitted pursuant to paragraph (a) of this section that are disapproved by the FRA must be resubmitted within 30 days of the date that FRA notified the railroad of the deficiencies in its program. TTD strongly supports this provision given the deficiencies in railroads' conductor training and certification programs.<sup>6</sup> FRA Administrator Bose sent a letter earlier this year to the Class I railroads noting that the carriers have made little to no effort to address deficiencies in their engineer and conductor training programs.

One notable example is Norfolk Southern. Norfolk Southern has had a non-compliant Part 242 certification program for nearly two years. In October 2021, the FRA noted that Norfolk Southern had a number of certified conductors suffer amputations and crushing injuries on the job in recent years, in addition to other safety-related incidents.<sup>7</sup> These instances clearly point to deficiencies in Norfolk Southern's training program, which should provide locomotive engineers and conductors the knowledge, skill, and ability to discharge their responsibilities safely. Despite repeated requests from the FRA, Norfolk Southern still has not brought their program into compliance.

Unfortunately, the FRA's repeated requests to the Class I railroads, most notably Norfolk Southern, to fix their conductor training and certification programs has not yet led to a resolution or alleviation of these issues. We recommend that the FRA amend this section to propose fines for railroads that repeatedly are not compliant with the certification requirements in this proposed rule. It is clear from Norfolk Southern's flagrant and repeated violation of the Part 242 conductor certification requirements that stronger measures are necessary to ensure compliance.

### **Implementation Schedule for Certification Programs (245.105)**

Similar to the requirements under §245.103(d) that carriers submit their certification program for approval to the president of each labor organization that represents the railroad's dispatchers and to all of the railroad's dispatchers that are subject to this part, we support our affiliate ATDA's request that carriers also provide a comprehensive list of those authorized by the railroad to perform the duties of a train dispatcher to the respective labor organization president(s) and the railroad's dispatcher employees for concurrence. These lists will serve as the basis for determining initial certification for all current train dispatchers, ensuring that they are accurate and complete. We suggest a 60-day review period with the ability to dispute any inaccuracies, which would allow for sufficient review and correction of these documents.

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<sup>6</sup>[https://www.progressiverailroading.com/federal\\_legislation\\_regulation/news/FRA-warns-Class-Is-to-correct-training-program-deficiencies--68416](https://www.progressiverailroading.com/federal_legislation_regulation/news/FRA-warns-Class-Is-to-correct-training-program-deficiencies--68416)

<sup>7</sup><https://www.trains.com/trn/news-reviews/news-wire/fra-letter-warns-norfolk-southern-about-conductor-training-safety-deficiencies/>

## **Testing and Evaluation**

### **Prior Safety Conduct as Motor Vehicle Operator (245.111)**

The FRA proposes requiring candidates for dispatcher certification or recertification to obtain a copy of their driving records from the appropriate state agency and provide them to their employing railroad for review. TTD notes that it is often difficult for conductors and engineers certified under Parts 240 and 242 to obtain required driving records from state agencies, and that these employees often experience delays in obtaining their records. The FRA does not sufficiently account for such prospective delays in its proposed rule. Train dispatchers should not be penalized for delays that are beyond their control. In order to address this issue, we urge the FRA to consider modifying section 245.111(c) to require all railroads to recertify dispatchers for a period of 120 days, instead of 60 days, from the expiration of their certification if they meet the requirements outlined in subparagraphs (1) and (2) under paragraph (b).

### **Vision Acuity (245.117)**

The FRA notes in its narrative accompanying this NPRM that the proposed vision and hearing acuity evaluations and requirements are identical to those contained in Parts 240 and 242. As our affiliate, the ATDA, notes in its comments, “While engineers and conductors may need to identify signals and switch alignment at somewhat significant distances, a train dispatcher’s duties do not have any requirements that would require minimum distant vision standards to be met.” In fact, train dispatchers are primarily required to manipulate, input, and monitor control functions on computer screens located at their workstation and as such, an intermediate vision standard would be more applicable should the FRA determine that vision standards are necessary for certification under this Part. Specifically, we request that the FRA consider evaluating vision acuity at approximately 24 to 40 inches, which is the typical distance between a user and their computer monitor. This change would ensure that otherwise qualified train dispatchers are not excluded by a vision requirement that is not necessary to perform the associated job duties.

### **Knowledge Testing (245.121)**

The NPRM proposes that after the FRA has approved a railroad's dispatcher certification program, the railroad shall determine that candidates have demonstrated sufficient knowledge of the railroad's rules and practices for the safe movement of trains. For the purposes of knowledge testing, dispatchers should only be tested on the physical characteristics of the territory on which they currently work or on which they are training to qualify. The FRA notes in section (b)(4)(iv) with respect to knowledge requirements, a dispatcher must be tested on the “Physical characteristics of the territory on which a person will be or is currently working as a dispatcher.” This language lacks specificity and could allow railroads to test dispatchers on the physical characteristics of a territory with which they have no familiarity. We suggest that the FRA clarify this language in section (b)(4)(iv) to clearly limit required physical characteristics testing to only that territory on which the dispatcher is presently qualified or are in the process of training on.

Furthermore, language in this section utilizes a pass/fail standard. We support this method of testing, but ask that the FRA set the standard at which a candidate for certification passes or fails the knowledge testing portion of their qualification. Given that railroads will be proposing their own testing and certifications can be transferred if a dispatcher changes jobs, it is important that the FRA clearly define a passing grade to provide some level of standardization among the

railroads so there are not a large number of instances where a train dispatcher's mark would pass one railroad's test but fail another railroad's test, or vice versa.

### **Monitoring Operational Performance (245.123)**

Proposed section 245.123 specifies that railroads must include procedures for the monitoring of operational compliance within their dispatcher certification programs, including unannounced compliance testing. We do not take issue with unannounced compliance testing, but request that the FRA include additional clarification in the final regulation. With the exception of the revocable offenses listed under part 245.303(e), the FRA should consider prescribing additional coaching, counseling, and/or additional training for deficiencies discovered during unannounced compliance testing. We further urge the FRA to stipulate that such violations should not result in disciplinary action by the railroad.

### **Training**

#### **Initial Certification Requirements (245.119)**

As mentioned previously, proposed section 245.125 would allow one railroad to rely upon the certification determination made by another railroad. In light of this provision, TTD and our affiliate, the ATDA, suggest that the FRA define a minimum standard of curriculum in the final regulation so there is consistency between what a train dispatcher learns on one railroad versus another railroad. The curriculum should include training with field personnel including, but not limited to, time spent with roadway workers from both the signal and maintenance of way departments, train crews, and terminal personnel such as yardmasters and car inspectors. Train dispatchers have direct interaction with these workers over the course of their day-to-day activities, and as such, it is imperative that they have a proper understanding of the duties and responsibilities of other crafts.

In addition, the ATDA notes in its comments that on-the-job training with a certified dispatcher is of particular importance to the proper certification of train dispatcher candidates. We strongly agree with this statement and therefore request that the FRA consider including a minimum requirement of 160 hours of on-the-job training for all candidates seeking initial certification. On-the-job training provides an unparalleled understanding of the fundamentals of train dispatching. Furthermore, hands-on experience performing the functions of a train dispatcher while under the observation of a qualified professional is essential to a candidate's skills development. This experience cannot be replicated in a virtual environment as TTD has explained before.<sup>8</sup> As specified above, all certified train dispatchers providing on-the-job training for certification candidates should have at least two years of service as a certified train dispatcher.

#### **Territorial Qualification Requirements (245.120)**

In addition to the initial certification on-the-job training requirements detailed above, we urge the FRA to consider requiring at least an additional 80 hours of on-the-job training for each territorial qualification under both sections 245.119 and 245.120. As the ATDA explains in its comments, on-the-job training is not only a critical element of initial dispatcher training, but also a necessary component of continuing education that ensures train dispatchers receive proper instruction on the territory for which they are responsible.

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<sup>8</sup> <https://ttd.org/policy/federal-comments/fra-must-not-compromise-on-rail-training-safety/>

### **Familiarity with Physical Characteristics of Territory (245.119(h)(1))**

Proposed section 245.119(h)(1) stipulates that dispatcher certification programs must provide a dispatcher with familiarity with the physical characteristics of a territory. We support this requirement and ask that the FRA consider further delineating the allowable methods carriers can utilize to provide candidates with territorial familiarity. We urge the FRA to require carriers to allow train dispatchers the ability to physically review the territory in-person by riding over the territory in the cab of a locomotive, passenger train, hi-rail vehicle, or other reasonable means. Only providing individuals with video recordings of the territory or printed maps as a means of acquiring familiarity with their assigned territory should be prohibited as they fail to provide a sufficient understanding of the physical elements of the territory. Given the importance of a train dispatcher being able to safely dispatch trains, the dispatcher needs to have a full understanding of these physical elements and only an in-person viewing of the territory can provide that level of understanding. One would not say they fully experienced the Grand Canyon if they viewed a video or looked at a map of it. Therefore, we respectfully request that the FRA require that such physical review of the territory be conducted prior to initial qualification on the territory, and a minimum of once every two years thereafter in order to maintain territorial qualifications.

### **Maximum Time Period to Retain Territorial Qualifications**

In order to maintain proficiency and the necessary familiarity with a specific territory, train dispatchers must be required to work a minimum of eight hours in a period of six months in order to retain their qualification on said territory. Although FRA initially proposed a period of no greater than 12 months under 245.119(h)(3) and 245.120(c), our affiliate ATDA finds that absences of greater than six months often lead to a loss of familiarity with the specifics of a territory such as locations of crossing, wayside defect detectors, and emergency response access points.

In the event a dispatcher is absent from a territory for greater than six months, ATDA also proposes a graduated manner in which to requalify. Should the dispatcher be absent from the territory for greater than six months, but less than 12 months, a minimum of 16 hours of on-the-job training would be necessary to requalify on the territory. If the dispatcher was absent from the territory for a period of 12 months but less than 24 months, a minimum of 24 hours of on-the-job training would be required to requalify on the territory. For those absent for a period of 24 months or greater, requalification would be conducted under the same requirements as those obtaining initial territorial qualification as proposed above. We endorse our affiliate ATDA's proposals and urge the FRA to adopt them.

### **Railroad Oversight Responsibilities (245.215)**

We strongly support the proposal submitted by our affiliate, the ATDA, which recommends that in addition to the reporting requirements identified under 245.215, carriers should be required to provide the same data provided to the FRA to the president of each labor organization that represents the railroad's dispatchers. As stakeholders with a vested interest in the safety of rail operations, each labor organization should have the opportunity to review the results of the carriers' analyses and work in consultation with carriers to address any possible deficiencies where appropriate. This change would promote collaboration between the relevant labor organization and the relevant railroad to address safety issues before they result in death or injury and is also consistent with the best practices of safety management systems.



### **Criteria for Revoking Certification (245.303)**

Our affiliate, the ATDA, proposes a number of revisions with regard to the criteria for revoking a dispatcher's certification. We strongly support these proposals and urge the FRA to take them into consideration.

First, the language included in this section does not account for instances when it is necessary for a dispatcher to authorize on-track equipment or a work train to occupy out-of-service limits, which is not inherently improper or unsafe. This language should be revised to specify improper authorization, which does constitute a safety issue.

Second, the language in this section should also be revised to specify that the removal of blocking devices or established protection of Roadway Workers in Charge (RWICs), which does not result in workers being left unprotected, should not constitute an event requiring revocation of certification. Similarly, incidents which do not result in trains or on-track equipment occupying limits without proper protection should not constitute an event requiring revocation of certification. Those events which do not result in roadway workers, trains, or on track equipment being left unprotected should not constitute an event requiring revocation of certification.

Third, incidents resulting from a failure to issue a speed restriction should be considered under the same criteria as established under 240.305(a) and 242.403(e) – speed in excess of 10 mph. Most operating rules, including the General Code of Operating Rules and Norfolk Southern's Operating Rules, identify the train dispatcher as the individual who issues approval to trains to operate with inoperative PTC or Cab Signals in those respective territories. However, it is our impression that the intent of the provision is to identify incidents in which proper protection is not established under the applicable operating rules, which results in trains occupying PTC or Cab Signal limits operating with inoperative PTC or Cab Signal equipment. If that impression is accurate, then considering incidents resulting from a failure to issue a speed restriction under the same criteria as speed in excess of 10 mph is more consistent with the FRA's intent of this section.

### **Process for Revoking Certification (245.307)**

We urge the FRA to consider the time and effort required to fully develop the facts surrounding an alleged incident which may result in the revocation of a dispatcher's certification and to protect the individual's right to defend his or herself against such charges. It is therefore imperative that the individual, and the representing labor organization if applicable, receive a copy of all information and a list of witnesses sufficiently in advance of the hearing in order to properly develop a defense. The current proposal in paragraph (4) of this section that the railroad only has to provide a copy of the information and the witness list before the start of the hearing is patently unfair to the train dispatcher since it does not allow them any time to prepare their defense or interview witnesses before the start of the hearing. Moreover, the FRA should require that all witnesses relied upon by the carrier must be present at the hearing for questioning by the dispatcher and/or their representative. These changes are necessary to ensure that the process for revoking certification is fair and just, and not biased toward the railroad.

**Request for a Hearing (245.407)**

The FRA stipulates that either the employee or the railroad involved shall have a right to an administrative hearing if adversely affected by the outcome of the revocation of an employee's certification. In order to provide sufficient time for the adversely affected party to file a written request for an administrative hearing, we recommend that the time period to file such a request be extended from 20 days to 60 days.

**Conclusion**

We again applaud the FRA for following Congress's directive in proposing this rule and we strongly support the implementation of certification requirements for train dispatchers. We respectfully request that the FRA consider our recommended revisions to this NPRM noted above and work expeditiously to finalize a robust regulation. We appreciate the opportunity to comment on this vital rulemaking and look forward to working with the FRA in the future.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg Regan', with a stylized flourish at the end.

Greg Regan  
President