



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 Signal Employees  
Docket No. FRA-2022-0020**

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 governing the certification of rail signal employees. TTD consists of 37 affiliated unions, including those representing signal employees, 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 signal employees. We respectfully 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 Brotherhood of Railroad Signalmen (BRS), 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 Signal Employee Certification**

Certification of certain rail crafts or classes of employees has been a topic of discussion within the FRA for several 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 signal employees, was necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.<sup>2</sup> In response to the RSIA, the Secretary submitted a report to Congress on November 4, 2015, stating that based on FRA's preliminary research, signal employees were potentially the most viable candidate for certification within railroad crafts. 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 signal employees.<sup>3</sup> The FRA has rightly recognized the need for signal employees to be certified, and we appreciate the agency's attention to fulfilling this important directive from Congress.

### **Need for Signal Employee 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.

As the FRA is aware, signal systems are critical to the operation of every railroad. Congress clearly agreed on the safety importance of signal systems when it mandated the installation of Positive Train Control (PTC) on the vast majority of railroads in the 2008 RSIA. It is vital that these systems function properly, which is impossible without signal employees. The widespread deployment of 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 signal work.

Railroads are deploying new technology with critical safety functions, including wayside detectors, for which signal employees are responsible for installing and maintaining. Following the Norfolk Southern derailment in East Palestine, Ohio, the freight rail industry has indicated that it plans to increasingly rely on such technologies going forward.<sup>4</sup> The lack of any current federal regulations or standards for wayside detectors magnifies the role that signal employees play in making sure that these technologies are functioning properly and the necessity of proper training to successfully fulfill this role.

While the rail industry ramps up its use of these technologies, training programs and skills standards for signal employees 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 signal employees. Our affiliates' experiences have been that the railroads,

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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/63>

<sup>4</sup> <https://www.aar.org/news/freight-railroads-announce-key-safety-measures-in-drive-to-zero-accidents/>

especially the Class I railroads, are not providing a sufficient quality or amount of training for signal employees. Signal employees often have to train themselves, in some cases using YouTube videos to learn information and skills vital to their jobs.

Given ever growing demands that come with technological advancements, the lack of standardization for training and skills qualifications presents a glaringly obvious safety concern. Signal employees 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. Certification has successfully helped achieve this goal for other crafts, including engineers and conductors, and it is time these benefits are extended to signal employees.

### **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 railroads' ability to comply with the proposed regulation. These concerns are not new as both organizations expressed concern over previous certification requirements, including the requirement that conductors be certified.<sup>5</sup> We unequivocally argue that the railroads will be able to comply with this regulation, just as they have complied with other safety and certification requirements. For example, they complied with previous locomotive engineer (Part 240) and conductor (Part 242) certification requirements, regulations notably similar to those proposed in this NPRM. The FRA notes in the 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.

### **Certification and Training (246.119)**

The FRA rightly recognizes in its proposed rule that certification programs for signal employees must include a training component. As previously mentioned, our affiliates have noted that many railroads, especially the Class Is, are not providing an acceptable level of training to employees. Signal employees in particular have had to *train themselves* in some cases, sometimes relying on YouTube videos to learn critical information and teach themselves skills necessary to perform their jobs. One example of a railroad's complete disregard for adequate training is Norfolk Southern. The FRA stated in its safety assessment of Norfolk Southern earlier this year, "FRA observed inconsistencies in the skill levels of signal employees in testing, installing, and maintaining wayside detectors. The lack of consistency strongly suggests inadequacy in either training materials or opportunities to take the training."<sup>6</sup>

The FRA further notes in its safety assessment that frontline supervisors at Norfolk Southern appeared to lack general signal knowledge and the ability to consistently apply railroad signal testing and maintenance procedures. If Norfolk Southern is unwilling or unable to equip its supervisors with even general signal knowledge, clearly training is not the railroad's top priority. This rulemaking process will provide an important opportunity for the FRA to address the

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<sup>5</sup> <https://www.regulations.gov/document/FRA-2009-0035-0019>

<sup>6</sup> <https://railroads.dot.gov/elibrary/norfolk-southern-safety-assessment>

significant safety risk posed by the railroads' inability to provide substantive and comprehensive training to their employees. The FRA must require that railroads include a robust training component as part of their signal employee certification programs in order to address this safety gap and ensure signal employees are well equipped to confidently execute the functions of their jobs.

### **Testing and Evaluation**

#### **Vision Acuity (246.117(c)(3))**

TTD recognizes the importance of vision testing with regard to certification of signal employees. The FRA proposes that candidates for certification must meet the standard of at least 20/40 (Snellen) vision in each eye. This is an appropriate level of visual acuity given the tasks signal employees perform on the job. However, testing of color recognition for railroad signals is impractical and unnecessary after an employee is first hired and certified. As our affiliate, BRS, explains in its comments, signal employees quickly become familiar with blueprints, enabling them to determine the intended aspect of the signal to be illuminated without solely relying on color identification. Retesting color distinction as part of the recertification process is counterproductive.

Furthermore, we believe that the FRA must consider an alternative testing procedure for signal employees who have or develop color blindness to ensure their retention and the expertise of the skilled signal workforce. This alternative assessment should focus on evaluating an employee's knowledge of signal aspects and their ability to interpret blueprints accurately, rather than solely relying on color recognition. The suggested changes in this section will have no negative impact on safety and will ensure that otherwise qualified color-blind signal employees are not excluded by a vision requirement that is not necessary to perform the associated job duties.

#### **Knowledge Testing (246.121)**

Section 246.121 stipulates that after the FRA has approved a railroad's signal employee certification program, the railroad shall determine that the employee has demonstrated sufficient knowledge of the railroad's signal standards, test procedures, and instructions for the installation, operation, testing, maintenance, troubleshooting, and repair of the railroad's signal systems. This section does not take into consideration employees that may have learning challenges, disabilities, or test anxiety. We urge the FRA to address this gap by requiring railroads to provide accommodations for employees who require them, including additional time to prepare, access to reference materials, extended time for testing, or the option to have questions read aloud to the employee. Our affiliate, the BRS, notes in its comments that providing accommodations ensures fair assessment and shows the full potential of certification candidates.

#### **Monitoring Operational Performance (246.123(c)(1))**

Our affiliate, the BRS, strongly advocates for an extension of the time period allocated for a compliance test when a signal worker returns to perform service that requires certification. The proposed duration of 30 days falls short in allowing sufficient time for employees to reacquaint themselves with the environment and equipment prior to being subjected to a compliance test by railroad management. It is important to acknowledge that individuals who have previously performed the duties under certification have not necessarily lost their expertise in their respective craft by not performing these duties within the 30-day timeframe.

To address this issue, the BRS suggests that the timeline for an unannounced compliance test be extended to a more reasonable period, such as six months. We agree with this recommendation given that it would allow returning signal workers to adequately prepare themselves for the test and ensure they are acquainted with the surrounding environment. In certain situations, workers might find themselves in a position where they have lost their previous territory due to an absence, potentially placing them in a new and unfamiliar environment. It is worth noting that certain Collective Bargaining Agreements have already established specific timelines for return-to-work compliance tests. Therefore, the proposed rule should either refer to the existing agreement or adopt the recommended six-month timeframe, selecting the shorter duration between the two. By doing so, there is a fair balance between ensuring compliance and providing ample opportunity for workers to demonstrate their competence.

### **Eligibility**

#### **Prior Safety Conduct as a Motor Vehicle Operator (246.111)**

The FRA proposes to require candidates for signal employee 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 frequently experience delays in obtaining their records. The FRA does not sufficiently account for such prospective delays in its proposed rule. In order to address this issue, we urge the FRA to consider extending the 60 day timeframe for recertification candidates to 120 days. Signal employees should not be penalized for delays that are beyond their control.

Furthermore, our affiliate, the BRS, notes in its comments that not all signal positions require the operation of a company vehicle. We endorse the BRS' recommendation that the FRA should differentiate requirements for driving records based on the position a signal employee occupies and whether they are required to operate a company vehicle. By implementing a more targeted approach, the certification process can better align with the actual responsibilities and job requirements, ensuring that skilled workers are not needlessly excluded or discouraged from signal employee positions due to unnecessary driver's license restrictions. This change is especially important to attract young people into the railroad industry who otherwise may not yet have a driver's license, and who may choose other industries if they face an unnecessary barrier to get a driver's license for positions that don't need them. Given the number of rail workers scheduled to retire over the next decade, it is vital that we do everything we can to attract the next generation of rail workers.

### **Denial/Revocation of Certification and Appeal Procedure**

#### **Criteria for Revoking Certification (246.303(e))**

The section of the proposed rule delineates violations of specific procedures, railroad rules, signal standards, and practices that can be considered when determining whether or not to revoke a signal employee's certification. We respect the emphasis placed on safety in this section and agree with the majority of section (e). We note, however, that revocable offenses listed in numbers 8, 9, and 10 do not apply to signal employees and therefore recommend that the FRA remove those numbers.

### **Process for Revoking Certification (246.307(b)(5))**

TTD and our affiliate, the BRS, strongly oppose the language included in this section that states, *“No later than the start of the hearing, the railroad shall provide the signal employee with a copy of the written information and a list of witnesses the railroad will present at the hearing.”* This language is patently unfair to the signal employee since it does not allow them any time to prepare their defense or interview witnesses before the start of the hearing.

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 signal employee’s certification and to protect the individual’s right to defend themselves 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. Moreover, all witnesses relied upon by the carrier proffering such allegations must be present at the hearing for questioning by the employee and/or their representative.

### **Request for a Hearing (246.407)**

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 request that the time period to file such a request be extended from 20 days to 60 days.

### **Mentor Program**

#### **Definitions**

Section 246.7 defines a mentor as, “a certified signal employee who has at least one year of experience as a certified signal employee.” One year of experience does not provide enough time for an employee to demonstrate real proficiency in the signal craft, especially given the ongoing deficiencies with railroads’ training programs as mentioned above. An employee mentor should be able to demonstrate proficiency in their craft in order to foster skill development and growth among their employee mentees and also to maintain a safe working environment.

The FRA’s recent interpretation that allows railroads to have newly-certified conductors or locomotive engineers mentor trainees has made this situation much worse. Norfolk Southern is therefore having newly-certified conductors mentor trainees, leading to safety problems that are exacerbated by the railroad’s non-compliant Part 242 train conductor certification program. In the last few months, CSX has had two deaths involving conductor trainees and the FRA consequently issued a safety advisory. Those instances, among others, highlight the need for the railroads to re-examine their training programs.<sup>7</sup> In response to these tragic but preventable deaths, our affiliate, SMART-TD, has requested that the FRA determine the amount of experience and level of instruction a conductor or trainmen must have before being tasked with training a new hire trainee and we endorse SMART-TD’s request.<sup>8</sup>

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<sup>7</sup> [https://railroads.dot.gov/sites/fra.dot.gov/files/2023-08/Safety%20Bulletin%202023-05\\_.pdf](https://railroads.dot.gov/sites/fra.dot.gov/files/2023-08/Safety%20Bulletin%202023-05_.pdf)

<sup>8</sup> <https://smart-union.org/smart-td-seeks-enforcement-of-fra-safety-bulletin/>

Ensuring that new signal employees receive the proper mentorship is of vital importance to ensuring these employees get the proper training and skills as they begin their careers. Like any occupation, it takes a certain amount of time before a person has truly mastered their job. Therefore, we request the FRA lengthen the time required to become a mentor beyond one year, especially for signal maintainers, which could require up to three to five years to demonstrate complete proficiency. The FRA should likewise require railroads to determine, as part of their certification programs, which measures will be used to evaluate proficiency in order to allow an employee to serve as a mentor and the FRA should review those measures to ensure that they are appropriate.

### **Signal Service Classifications (246.107(c))**

Our affiliate, the BRS, raises concerns in its comments regarding the wording used to describe the involvement of a certified signal employee when working with equipment that the signal employee is not certified on. The current subpart states, “...*unless the certified signal employee works under the direct oversight and supervision...*” We agree with the BRS that the use of the terms “oversight” and “supervision” in the same sentence may cause confusion. We therefore recommend clarifying the language so that *oversight* can be provided by a mentor or supervisor. This revision ensures that the roles of both mentor and supervisor are explicitly acknowledged and provides a clearer understanding of the certified signal employee’s responsibilities when working with equipment they are not certified on.

### **Record Keeping (246.205)**

Proposed section 246.205 stipulates that a railroad must maintain a list of certified employees following the FRA’s approval of its certification program. In order to facilitate accurate recordkeeping, the FRA should specify that this information must also be shared with the designated labor organization representing the railroad’s employees. As the BRS notes in its comments, this type of information-sharing facilitates a collaborative approach to safety and reinforces the collective goal of accident prevention.

### **Timeline for Implementation and Comments (246.103)**

We respectfully request that the FRA consider requiring Class II railroads to submit their signal employee 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 access to the resources necessary to comply with the eight month timeframe as proposed for Class I railroads, and frankly, 16 months is excessive. As the BRS notes in its comments, the development of a certification program for smaller railroads should not entail greater complexity or consistency than that of Class I railroads and commuter railroads.

In addition, we urge the FRA to extend the period of public comment on railroads’ signal employee certification programs beyond the 45 days proposed in the regulation. As we’ve seen with numerous PTC dockets, 45 days is not sufficient time 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 Application (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. Furthermore, we expect a number of

carriers to submit their signal employee certification programs on or about the same date, which will all require close review. The certification of signal employees is another critical safety measure, and stakeholders must have adequate time to review railroads' proposed certification programs before they are approved by the FRA. To that end, we request that the FRA consider extending the period of public comment to 90 days.

### **Resubmissions (246.103(h)(3))**

Paragraph (h) of this section specifies that signal employee 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>9</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.

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>10</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 has not yet brought their program into compliance.

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.

### **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 signal employees. 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 rulemaking and look forward to working with the FRA in the future.

Sincerely,



Greg Regan  
President

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<sup>9</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>10</sup><https://www.trains.com/trn/news-reviews/news-wire/fra-letter-warns-norfolk-southern-about-conductor-training-safety-deficiencies/>