



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 246

[Docket No. FRA-2022-0020, Notice No. 4]

RIN 2130-AC92

Certification of Signal Employees

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

ACTION: Final rule.

SUMMARY: FRA is prescribing regulations for certification of signal employees, pursuant to the authority granted in section 402 of the Rail Safety Improvement Act of 2008 (RSIA).

DATES: *Effective Date:* The rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

AANP—American Association of Nurse Practitioners

AAR—Association of American Railroads

ADA—Americans with Disabilities Act

APTA—American Public Transportation Association

ASLRRA—American Short Line and Regional Railroad Association

BRS—Brotherhood of Railroad Signalmen

CE—Categorical Exclusion

CFR—Code of Federal Regulations

CRB—Certification Review Board

DAC—Drug and alcohol counselor

DOT—United States Department of Transportation

EA—Environmental Assessment

EIS—Environmental Impact Statement

FRA—Federal Railroad Administration

IBEW—International Brotherhood of Electrical Workers

IRFA—Initial Regulatory Flexibility Analysis

ITLC—International Transportation Learning Center

MTA—New York State Metropolitan Transportation Authority

NEPA—National Environmental Policy Act

NPRM—Notice of Proposed Rulemaking

NRC—Network Rail Consulting Inc.

NRCMA—National Railroad Construction and Maintenance Association

NRM—Northwest Railway Museum

OCSR—Oregon Coast Scenic Railroad

OMB—United States Office of Management and Budget

PRA—The Paperwork Reduction Act

PTC—Positive Train Control

PV—Present Value

RIA – Regulatory Impact Analysis

RIN – Regulatory Identification Number

RSAC – Railroad Safety Advisory Committee

RSIA – Rail Safety Improvement Act of 2008

SAP—Substance Abuse Professional

SMART-TD—Transportation Division of the International Association of Sheet Metal,

Air, Rail and Transportation Workers

STB—The Surface Transportation Board

TTD—Transportation Trades Department, AFL-CIO

U.S.C.—United States Code

UTC—Washington Utilities and Transportation Commission

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I. Executive Summary

Purpose of the Regulatory Action

FRA is requiring railroads to develop FRA-approved programs for certifying signal employees who work on signal systems and signal-related technology on their networks. Pursuant to this rule, railroads are required to have formal processes for training signal employees, as well as verifying that each signal 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. In addition, railroads will be required to have formal processes for revoking certification

(either temporarily or permanently) for signal employees who violate specified minimum requirements.

FRA is promulgating this regulation in response to section 402 of the RSIA, Public Law 110-432, 122 Stat. 4848, 4884 (Oct. 16, 2008), which required the Secretary of Transportation (Secretary) to submit a report to Congress addressing whether certification of “certain crafts or classes” of railroad employees or contractors, including signal employees, was necessary to “reduce the number and rate of accidents and incidents or to improve railroad safety.” Section 402 further provides that the Secretary may prescribe regulations requiring the certification of certain crafts or classes if the Secretary determined, pursuant to the report to Congress, that such regulations are necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.

The Secretary submitted a report to Congress on November 4, 2015,¹ stating that, based on FRA’s preliminary research, signal employees were one of the most viable candidate railroad crafts for certification, particularly with the introduction of Positive Train Control (PTC) technology. Given the safety critical role of signal employees in facilitating safe railroad operations, FRA determined that the number and rate of accidents and incidents would be expected to decrease and railroad safety would be expected to improve if signal employees are required to satisfy certain standards and be certified by each railroad whose signal systems they install, troubleshoot, repair, test, or maintain.

Summary of Major Provisions

This rule requires railroads to develop written programs for certifying individuals who work as signal employees on their territories, and to submit those written

¹ A copy of this November 4, 2015 Report to Congress has been posted in the rulemaking docket at: <https://www.regulations.gov/document/FRA-2022-0020-0001>.

certification programs to FRA for approval prior to implementation. FRA will issue a letter to the railroad when it approves a certification program that explains the basis for approval, and a program will not be considered approved until FRA issues the approval letter. Subpart A of this rule contains general provisions, including a formal statement of the rule's purpose and scope.

Subpart B of this rule covers the review and approval process of certification programs, the implementation schedule for this rule, the certification program requirements, and the eligibility determinations a railroad must make to certify a person as a signal employee. Class I railroads (including the National Railroad Passenger Corporation), and railroads providing commuter service, are required to submit their written certification programs to FRA no later than eight (8) months after this rule's effective date. Class II and Class III railroads are required to submit their written certification plans sixteen (16) months after this rule's rule effective date. New railroads that begin operation after the effective date are required to submit their written certification programs to FRA and obtain FRA approval before installing their signal systems and commencing operations. In addition, railroads seeking to materially modify their FRA-approved certification programs must obtain FRA approval prior to modifying their programs.

Railroads are required to evaluate certification candidates in multiple areas, including prior safety conduct as a motor vehicle operator, prior safety conduct as an employee of a different railroad, substance abuse disorders and alcohol/drug rules compliance, and visual and hearing acuity.

The rule also contains minimum requirements for the training provided to candidates for signal employee certification. These requirements are intended to ensure certified signal employees have received sufficient training before they are hired to work on signal systems and signal-related technology. These requirements are also intended to

ensure that certified signal employees periodically receive recurring training on Federal laws, regulations, and orders and railroad safety and operating rules, as well as comprehensive training on new signal systems and signal-related technology before they are introduced on the railroads where they work.

Subpart C of this rule addresses how railroads are to administer their signal employee certification programs. With the exception of individuals designated as certified signal employees prior to FRA approval of the railroad's signal employee certification program, this rule prohibits railroads from certifying signal employees for intervals longer than three (3) years. This three-year limitation, which is consistent with the 36-month maximum period for certifying locomotive engineers in 49 CFR 240.217(c) and the 36-month maximum period for certifying conductors in 49 CFR 242.201(c), allows for periodic re-evaluation of certified signal employees to verify their continued compliance with FRA's minimum safety requirements.

Subpart D of this rule addresses the process and criteria for denying and revoking certification. Before a railroad denies an individual certification or recertification, it must provide the certification candidate with the information that forms the basis for the denial decision and give the candidate an opportunity to rebut such evidence. The rule also requires that a railroad make any decision to deny an individual certification or recertification in writing and meet certain requirements.

A railroad can only revoke a signal employee's certification if one of eleven events occurs. Generally, for the first revocable event that is not related to a signal employee's use of drugs or alcohol, the person's certification would be revoked for 30 days. If a person accumulates more of these violations in a given time period, the revocation period (period of ineligibility) becomes longer.

If a railroad acquires reliable information that a certified signal employee has violated an operating rule or practice requiring decertification under this rule, the railroad

must suspend the signal employee's certification immediately, while it determines whether revocation is warranted. In such circumstances, signal employees are entitled to a hearing. Similar to a railroad's decision to deny certification, a railroad's decision to revoke a signal employee's certification must satisfy certain requirements. Finally, if an intervening cause prevented or materially impaired a signal employee's ability to comply with a railroad operating rule or practice, the railroad must not revoke the signal employee's certification.

Subpart E of this rule describes the dispute resolution process for individuals wishing to challenge a railroad's decision to deny certification, deny recertification, or revoke certification. This dispute resolution process mirrors the process used for locomotive engineers and conductors under 49 CFR parts 240 and 242, respectively.

Finally, this final rule contains two appendices. Appendix A discusses the procedures that a person seeking certification or recertification should follow to furnish a railroad with information concerning their motor vehicle driving record. Appendix B provides guidance on the procedures railroads should employ in administering the vision and hearing requirements under §§ 246.117 and 246.118.

Benefits and Costs

FRA analyzed the economic impact of this final rule. FRA estimated the benefits of fewer signal employee-caused accidents, and the costs anticipated to be incurred by railroads and the Government.

This rule will help ensure that signal employees are properly trained, are qualified to perform their duties, and meet Federal safety standards. This rule will reduce the likelihood of an accident occurring due to signal employee error. FRA has analyzed accidents over the past 10 years to categorize those where signal employee training and certification would have impacted the accident. FRA then estimated benefits based on that analysis.

The following table shows the estimated 10-year quantifiable benefits of the final rule. The total 10-year estimated benefits would be \$2.9 million (PV, 7%) and annualized benefits would be \$0.4 million (PV, 7%).

Total 10-Year Discounted Benefits (2020 Dollars)

Category	Present Value 7% (\$)	Present Value 3% (\$)	Annualized 7% (\$)	Annualized 3% (\$)
Grade Crossing Accidents	1,766,028	2,064,676	251,443	242,043
Train Accidents/Incidents	960,671	1,123,127	136,778	131,665
Business Benefits (Railroad Industry)	53,817	62,917	7,662	7,376
Business Benefits (Government)	87,985	102,863	12,527	12,059
Total	2,868,501	3,353,584	408,410	393,142

This final rule will also provide unquantifiable benefits. FRA has quantified the monetary impact from accidents which is reported on FRA accident forms. However, some accident costs are not required to be reported on FRA accident forms (e.g., environmental impact). That impact may account for additional benefits not quantified in this analysis. If these costs were realized, accidents affected by this rulemaking could have much greater economic impact than estimated quantitative benefit estimates.

There is also a chance of a high impact event due to signal employee error. This could involve fatalities, injuries, and environmental damage, as well as impact railroads, communities, and the public. FRA has not estimated the likelihood of such an event, but this final rule is expected to reduce the risk of an accident of that magnitude.

FRA estimates the 10-year costs of the final rule to be \$9.4 million, discounted at 7 percent. The estimated annualized costs are \$1.3 million discounted at 7 percent. The following table shows the total costs of this final rule, over the 10-year analysis period.

Total 10-Year Discounted Costs (2020 Dollars)²

² Numbers in this table and subsequent tables may not sum due to rounding.

Category	Present Value 7% (\$)	Present Value 3% (\$)	Annualized 7% (\$)	Annualized 3% (\$)
Development of Certification Program	1,504,135	1,541,874	214,155	180,755
Certification Eligibility Requirements	202,952	227,006	28,896	26,612
Recertification Eligibility Requirements	243,632	310,417	34,688	36,390
Training	2,079,835	2,379,911	296,122	278,998
Knowledge Testing	746,865	898,884	106,337	105,377
Vision and Hearing	1,097,523	1,320,891	156,263	154,849
Monitoring Operational Performance	1,178,812	1,408,753	167,836	165,149
Railroad Oversight Responsibilities	267,530	326,714	38,090	38,301
Certification Card	103,175	124,175	14,690	14,557
Petitions and Hearings	181,733	217,183	25,875	25,460
Government Administrative Cost	1,780,113	2,065,541	253,448	242,144
Total	9,386,306	10,821,350	1,336,399	1,268,592

II. Legal Authority

Pursuant to the Rail Safety Improvement Act of 2008, Pub. L. 110-432, sec. 402, 122 Stat. 4884 (Oct. 16, 2008) (hereinafter “RSIA”), the Secretary of Transportation (Secretary) was required to submit a report to Congress addressing whether certification of certain crafts or classes of employees, including signal repair and maintenance employees, was necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.³ If the Secretary determined it was necessary to require the certification of certain crafts or classes of employees to reduce the number and rate of accidents and incidents or to improve railroad safety, section 402 of the RSIA stated the Secretary may prescribe such regulations. The Secretary delegated this authority to the Federal Railroad Administrator. 49 CFR 1.89. In response to the RSIA, the Secretary submitted a report to Congress on November 4, 2015, stating that, based on FRA’s

³ See also 49 U.S.C. 20103 (providing FRA’s general authority to “prescribe regulations and issue orders for every area of railroad safety”).

preliminary research, dispatchers and signal employees were potentially the most viable candidate railroad crafts for certification. Based on the analysis in Section III below, the Federal Railroad Administrator has determined that it is necessary to require the certification of signal employees to improve railroad safety.

III. Background

A. Roles and Responsibilities of Signal Employees

Railroad signal employees play an integral role in ensuring the safety of railroad operations, as well as the safety of highway motorists. As noted in comments submitted by the Transportation Trades Department of the AFL-CIO (TTD), signal systems are critical to the operation of every railroad. Signal employees are responsible for the installation, testing, troubleshooting, repair, and maintenance of signal systems, as defined in § 246.7, which railroads utilize to direct train movements. Signal employees must also use specialized test and maintenance equipment to complete safety critical tasks on mechanical, electrical, and electronic signal equipment.

The work performed by signal employees can generally be divided into two categories: construction and maintenance. On larger railroads, some signal employees work in groups (often referred to as “gangs”) under the direct supervision of an experienced signal employee to construct, install, and upgrade signal systems and signal system subsystems and components. Some signal employees also work in “gangs” under the direct supervision of an experienced signal employee to make repairs to the signal system, while other signal employees (often referred to as “signal maintainers”) are primarily tasked with inspecting, testing, troubleshooting, and maintaining signal systems and performing emergency repairs as needed.

The definition of “signal employee” for purposes of this rulemaking may differ from the conventional definition of this term. As stated in § 246.1(c), the signal

employee certification requirements contained in this part apply to any person who meets the definition of signal employee contained in § 246.7, even if the person has a job classification title other than that of signal employee.

The term “signal employee” is defined in § 246.7 as an individual who is engaged in installing, troubleshooting, testing, repair, or maintenance of railroad signal systems or related technology. FRA acknowledges that this definition is expansive, as an employee of a railroad (or railroad contractor or subcontractor) may be considered a signal employee for purposes of this rule if they engage in the installation, troubleshooting, testing, repair, or maintenance of railroad signal systems or related technology, even if such tasks are not the primary focus of the employee’s job. Railroads and other interested parties seeking additional guidance on how the term, “signal employee,” has been defined for purposes of this part may find it helpful to review FRA’s Technical Bulletin S-19-01, entitled “Application of the Hours of Service Laws to Positive Train Control Systems” (TB S-19-01). This technical bulletin provides a general framework for evaluating whether individuals engaged in certain types of tasks are subject to the Federal hours of service law for signal employees (49 U.S.C. 21104).

For example, as noted in FRA’s Technical Bulletin S-19-01, employees who are engaged in testing signal system components (even so-called “self-tests” of cab signal equipment installed on locomotives) that require the employee to interact with the signal system component, monitor the progress of the test, or interpret the results of the test are considered to be “signal employees” who are subject to the Federal hours of service law (49 U.S.C. 21104). Accordingly, even employees of the railroad’s mechanical department are considered “signal employees” for purposes of this part if they test signal system components that require employee interaction, monitor the progress of the test, or interpret the results of the test.

B. FRA History of Certification

On January 4, 1987, an Amtrak train and Conrail train collided in Chase, Maryland, resulting in 16 deaths and 174 injuries. At the time, it was the deadliest train accident in Amtrak's history. The subsequent investigation by the National Transportation Safety Board concluded that the probable cause of the accident was the impairment of the Conrail engineer who was under the influence of marijuana at the time of the collision.⁴

Following this accident, Congress passed the Rail Safety Improvement Act of 1988, Pub. L. 100-342, 4, 102 Stat. 624, 625 (1988), which instructed the Secretary to “issue such rules, regulations, orders, and standards as may be necessary to establish a program requiring the licensing or certification of any operator of a locomotive, including any locomotive engineer.” On June 19, 1991, FRA published a final rule establishing a certification system for locomotive engineers and requiring railroads to ensure that they only certify individuals who met minimum qualification standards.⁵ FRA prescribed a certification system where the railroads issue the certificates as opposed to a government-run licensing system. This final rule, published in 49 CFR part 240 (part 240), created certification requirements for engineers that addressed various areas including vision and hearing acuity; training, knowledge, and performance skills; and prior safety conduct.

Seventeen years later, in 2008, Congress passed the RSIA, which mandated the creation of a certification system for conductors. On November 9, 2011, FRA published a final rule requiring railroads to have certification programs for conductors and to ensure that all certified conductors satisfy minimum Federal safety standards.⁶ The conductor certification rule, published in 49 CFR part 242 (part 242), was largely modeled after part 240 with some deviations based on the different job classifications. Part 242 also

⁴ Railroad Accident Report: Rear-end Collision of Amtrak Passenger Train 94, the Colonial and Consolidated Rail Corporation Freight Train ENS-121, on the Northeast Corridor, Chase, Maryland, January 4, 1987 (144 Nat'l Transp. Safety Bd. 1988).

⁵ 56 FR. 28227 (June 19, 1991).

⁶ 76 FR 69801 (Nov. 9, 2011).

included some organizational improvements which made the regulation more streamlined than part 240.

C. Statutory Background for Signal Employee Certification

In addition to requiring certification for conductors, the RSIA required the Secretary to submit a report to Congress addressing whether certain other railroad crafts or classes of employees would benefit from certification. Specifically, section 402 of the RSIA required the Secretary to issue a report to Congress “about whether the certification of certain crafts or classes of railroad carrier or railroad carrier contractor or subcontractor employees is necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.” As part of that report, section 402 specifically required the Secretary to consider “signal repair and maintenance employees” as one of the railroad crafts for certification.

After identifying a railroad craft or class for which certification is necessary, pursuant to the report to Congress discussed above, section 402 authorized the Secretary to “prescribe regulations requiring the certification of certain crafts or classes of employees that the Secretary determines ... are necessary to reduce the number and rate of accidents and incidents or to improve railroad safety.”

D. Report to Congress

On November 4, 2015, the Secretary submitted the report to Congress required by section 402(b) of the RSIA. The report stated that, based on FRA’s preliminary research, dispatchers and signal repair employees were the most viable candidates for certification, particularly with the introduction of Positive Train Control (PTC) technology. In reaching this determination with respect to signal employees, the Secretary cited a variety of factors.

The report noted that signal employees perform safety-sensitive work as shown by signal employees being covered under the hours of service laws. The report also

noted that the greatest proportion of contractors covered under the hours of service laws are signal employees and noted that they tend to switch employers more frequently than other crafts of employees.

FRA did not include data to support the position in its 2015 report to Congress that signal employees of railroad contractors tend to switch jobs more frequently than other crafts of employees. However, given the lack of regulations requiring prior employment background checks, it is relatively easy for signal employees to leave their current employer after committing a rules violation and find work on another railroad.

Another important factor noted in the 2015 report was the nature of the work signal employees perform on wayside signal and train control systems, which are safety-critical for freight and passenger rail operations. The report noted that, in the coming decade, the rail industry will likely lose many experienced signal employees to retirement, while growth in freight, commuter, and intercity passenger rail will require that more signal employees are hired and trained.

The report also summarized the challenges posed by PTC system implementation, while noting the “increasingly sophisticated work” involved in the implementation of complex PTC system technology by signal employees.⁷ In particular, the report noted that “signal employees will be required to differentiate between a vital and non-vital PTC system⁸ and to address the technicalities of using standalone or overlay PTC systems.”⁹

⁷ See 2015 DOT Report to Congress on Certification of Railroad Crafts at 3.

⁸ PTC systems vary widely in complexity and sophistication based on the level of automation and functionality they implement, the system architecture used, the wayside system upon which they are based (i.e., non-signaled, block signal, cab signal, etc.), and the degree of train control they are capable of assuming. Vital systems are reliable and built upon failsafe principles, while non-vital systems are reliable but not guaranteed to provide failsafe operation.

⁹ See 2015 DOT Report to Congress on Certification of Railroad Crafts at 3. An overlay system relies upon and supplements an existing wayside signal system or redundant method of operation. A standalone system replaces the existing method of operation.

This combination of factors led to the report's conclusion that signal employees are a potentially viable candidate craft for certification.

E. RSAC Working Group

In March 1996, FRA established the Railroad Safety Advisory Committee (RSAC), which provides a forum for collaborative rulemaking and program development. RSAC includes representatives from all of the agency's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If accepted, RSAC establishes a Working Group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task.

On April 21, 2017, a task statement regarding certification of signal employees was presented to the RSAC by email but no vote was taken. On April 24, 2019, the RSAC accepted a task (No. 19-03) entitled, "Certification of Railroad Signal Employees."¹⁰ The purpose of the task was "[t]o consider whether rail safety would be enhanced by developing guidance, voluntary standards, and/or draft regulatory language for the certification of railroad signal installation, repair, and maintenance workers."

The Working Group, which included representatives from the Association of American Railroads (AAR), American Public Transportation Association (APTA), American Short Line and Regional Railroad Association (ASLRRA), Brotherhood of Railroad Signalmen (BRS), Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART-TD), International Brotherhood of Electrical Workers (IBEW), Commuter Rail Coalition, and National Railroad Construction and Maintenance Association (NRCMA), held its first and only

¹⁰ At the same meeting, the RSAC also accepted a task (No. 19-02) titled "Certification of Train Dispatchers." A separate RSAC Working Group was formed to address this task, and FRA plans to issue a related rule that would establish certification requirements for dispatchers.

meeting on September 5, 2019 in Washington, D.C. At this meeting, the Working Group reviewed the task statement from the RSAC, discussed some of the safety-critical tasks performed by signal employees, and debated whether certification of signal employees would be beneficial to railroad safety. At the end of the meeting, action items were assigned, and the next meeting was tentatively scheduled for January 2020.

However, on December 16, 2019, the presidents of the American Train Dispatchers Association, BRS, and IBEW (collectively the “Unions”) requested that both the dispatcher and signal certification RSAC tasks be withdrawn from consideration. The Unions stated that they were involved in numerous activities and were not able to give the task proper attention. AAR and ASLRRA advised the unions that they were not opposed to this request. In response, FRA withdrew the tasks from the RSAC, and the Working Groups became inactive.

F. Public Outreach

In 2021, FRA revisited the issue of establishing certification requirements for signal employees. The agency assembled subject matter experts from FRA, IBEW and BRS to exchange facts or information regarding the tasks performed by signal employees. Those parties met virtually several times between May 5, 2021 and June 30, 2021.

As part of FRA’s outreach, a list of tasks performed by signal employees was developed. These tasks generally involved: vital equipment design validation, installation, calibration, testing, maintenance, and repair (interlockings, grade crossings, wayside signal systems, PTC, etc.). FRA reviewed each task to determine whether correctly performing the task was critical to railroad safety; the potential consequences if errors were made while performing the task; and whether there were any recent examples of issues or concerns with respect to the task. After performing this analysis, FRA concluded that the vast majority of tasks performed by signal employees (80-90% of the

listed tasks) were critical to railroad safety with potentially catastrophic consequences, such as accidents, injuries, and/or deaths, if the tasks were not performed properly.

During FRA's outreach, the benefits of certification based on the experience of stakeholders with engineer and conductor certification under 49 CFR parts 240 and 242 were also discussed. Some of the main benefits of certification that were identified include:

- Creating a minimum standard for training to ensure that the training encompasses all skills and proficiencies necessary to properly perform all safety-related signal employee functions;

- Establishing a record of safety compliance that will follow a signal employee if the employee wishes to become certified by another railroad, and that can be used to review a signal employee's performance and potential training needs;

- Requiring certain safety checks, which can help identify active substance abuse disorders; and

- Establishing a system for individuals to dispute a railroad's decision to deny or revoke certification with the aim of creating a fair and consistent process for all parties.

Based on these meetings, FRA concluded that requiring certification for signal employees would be an important tool to ensure signal employees performing safety-sensitive tasks are adequately trained and qualified and have a documented record of performance that is accessible to prospective employers.

Following this initial outreach, FRA held a follow-up conversation with BRS and IBEW, on March 3, 2022, and individuals from BRS and IBEW informed FRA of elements that they believed would be beneficial in a signal employee certification program. During this conversation, which was held in videoconference format, FRA asked the attendees to provide individualized feedback on how similar or different a

signal employee certification rule should be to FRA's locomotive engineer and conductor certification rules found in 49 CFR parts 240 and 242.

In response to that request, FRA heard that the agency needs to ensure that comprehensive training is provided to signal employees, as the current training is inadequate. FRA also heard that railroads are not providing enough training on new equipment and new technology for signal employees. It was also noted that, in some cases, signal employees are being required to use new equipment and new technology without having received any prior training on the equipment or technology.

On March 7, 2022, FRA met with the railroad industry, including Norfolk Southern Railway Company (NS), ASLRRA, and AAR. During this conversation, which was conducted in a videoconference format, FRA also asked for individualized feedback on how FRA's locomotive engineer and conductor certification regulations in 49 CFR parts 240 and 242 could be improved upon with respect to signal employee certification. Specifically, FRA asked for feedback on any regulatory provisions in 49 CFR parts 240 and 242 that, in their experience, may have been difficult to implement, as well as whether FRA should explore any changes to these regulatory provisions.

AAR expressed opposition to FRA's proposal to issue regulations requiring certification of signal employees, arguing that there was not a safety benefit to certification. In addition, NS questioned the need for certification regulations in the absence of any identified gaps in coverage by existing railroad training programs.

ASLRRA expressed concern that FRA's proposal to issue regulations requiring certification of dispatchers and signal employees would result in a big paperwork burden with little benefit. In addition, ASLRRA asserted that most short line railroads do not have signal systems. With respect to grade crossings, ASLRRA asserted that most short line railroads rely on contractors to maintain their grade crossing warning systems.

After this conversation, FRA provided a short list of written questions to AAR and ASLRRA. While AAR did not provide additional feedback in response to FRA's list of questions, ASLRRA responded to FRA's list of written questions by email on April 13, 2022, a copy of which has been placed in the docket.¹¹

On March 8, 2022, FRA staff had a follow-up conversation with BRS and IBEW to receive information on the types of errors and grade crossing and signal violations that should result in a railroad revoking a signal employee's certification. During this conversation, which was conducted in a videoconference format, FRA heard that it might be appropriate to revoke a signal employee's certification in response to willful violations.

G. Notice of Proposed Rulemaking

On May 31, 2023, FRA published an NPRM proposing the establishment of signal employee certification and provided commenters 60 days to file comments.¹² On July 5, 2023, FRA extended the comment period by an additional 30 days.¹³ On August 22, 2023, FRA extended the comment period again, this time by an additional 15 days until September 14, 2023.¹⁴

IV. Discussion of General Comments and FRA's Conclusions

FRA received 24 comments on the NPRM and the related Regulatory Impact Analysis (RIA) from State agencies, labor organizations, trade associations, tourist, historic, and excursion railroads, railway museums, consulting firms, a transportation learning center, and a public-interest law firm and policy center. The order of the topics or comments discussed in this document does not reflect the significance of the comment raised or the standing of the commenter. Additionally, this summary of comments

¹¹ A record of public contact summarizing this meeting has been posted in the rulemaking docket at: <https://www.regulations.gov/document/FRA-2022-0020-0003>.

¹² 88 FR 35632 (May 31, 2023).

¹³ 88 FR 42907 (July 5, 2023).

¹⁴ 88 FR 57044 (Aug. 22, 2023).

provides a general understanding of the overall scope and themes raised by the commenters and gives some specific descriptions to provide context. Not every comment is described in this summary. Comments addressing specific sections of this rule are discussed in the section-by-section analysis below. Comments regarding the proposed RIA are addressed in the RIA to the final rule.

A. Cost-Benefit Analysis/Safety Justification

FRA received several comments related to the costs and benefits of the proposed rule. Comments were received from AAR, ASLRRA, and the Washington Legal Foundation (WLF), each of whom commented that the costs of the proposed rule outweigh the benefits.

AAR and ASLRRA commented on several of FRA's cost estimates for provisions in the proposed rule. AAR and ASLRRA commented that FRA's estimates for the time to develop the certification programs were low. ASLRRA commented that it would take 550 hours to develop a model program and 19 hours per small railroad to implement. For unannounced compliance tests (monitoring operational performance), AAR and ASLRRA estimated that the time per supervisor would be much more than the two hours per year that FRA estimated. Regarding dispute resolution hearings, AAR and ASLRRA commented that the cost assessments for hearings are underestimated and that the actual cost would amount to 20 percent of the total estimated costs of the proposed rule. AAR and ASLRRA also contend that FRA underestimated wage-related costs by using the 2020 railroad wage rates which "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."¹⁵

FRA also received comments pertaining to the estimated benefits in the RIA associated with the proposed rule. AAR and ASLRRA contend that FRA relied on some

¹⁵ FRA-2022-0020-0035.

incidents that were not caused by signal employee activities and some incidents for which AAR and ASLRRA assert that it would be impossible to draw the conclusion that the incident would have been prevented by a signal employee certification program.

AAR and ASLRRA also contend that there is no safety justification for this rulemaking and asserted, in their comments, that “the last decade was the safest on record for railroads.”¹⁶ In support of this assertion, AAR and ASLRRA provided statistics reflecting a reduction in rail accidents since 2000.

Based on ASLRRA’s comment regarding the time to develop a certification program, FRA has revised the estimated time for ASLRRA to develop a model program to 550 hours and increased the estimated time for small railroads to implement a program from 8 hours to 15 hours. FRA has now accounted for only one template program produced by ASLRRA. Holding companies will likely use the template program developed by ASLRRA, instead of producing their own template, as discussed in the RIA associated with the NPRM.

FRA also reassessed the costs for petitions and hearings based on comments from AAR and ASLRRA. The categories of employees have been revised and estimates have been increased. FRA determined these estimates by looking at the number of petitions and hearings associated with the conductor and engineer certification programs. This baseline was then adjusted for the population size of signal employees. Additionally, Government costs for petitions and hearings have been increased and now include more categories of employees involved in the process.

With respect to AAR and ASLRRA’s comment that the time estimate for unannounced compliance tests is too low, FRA has revised its estimate for monitoring operational performance. FRA estimates that each signal employee will require 17 minutes per year for unannounced compliance tests. This revised estimate reflects 15

¹⁶ Ibid.

minutes of additional tasks that would not have been performed otherwise and 2 minutes for documentation.

As for AAR and ASLRRA's comments on the 2020 wage rates used in the NPRM, FRA notes that the wage rates used during NPRM drafting were the most recently available data, as provided by the Surface Transportation Board's (STB) wage data series and General Schedule (GS) pay scales.

With respect to AAR and ASLRRA's comments on FRA's estimate of benefits in the RIA on the proposed rule, FRA has decreased the number of activation failures from 45 (as stated in the NPRM RIA) to 41.5. In addition, FRA adjusted the number of train accidents from 77 to 75 to align with the FRA supplemental data report to the NPRM RIA.¹⁷

Turning to the contention from AAR and ASLRRA that there is no safety justification for this rule, FRA disagrees with the premise that because railroad safety has improved over the last 20 years, the agency does not need to take actions that could further improve safety. Moreover, the associations neglected to mention in their comments that one of the changes in the railroad industry over the past few decades has been the introduction of certification requirements. The locomotive engineer certification requirements in part 240 went into effect in 1991,¹⁸ and the conductor certification requirements in part 242 became effective just over a decade ago in 2012.¹⁹ Thus, it stands to reason that certification has been one of the factors that has improved railroad safety in recent decades and instituting such requirements for signal employees could lead to similar improvements in the future.

A more detailed response to these comments is, however, provided in the RIA.

¹⁷ FRA, "Certification of Signal Employees Notice of Proposed Rulemaking: Supplemental Data to the Regulatory Impact Analysis," July 2023, <https://www.regulations.gov/document/FRA-2022-0020-0010>.

¹⁸ 56 FR 28227, 28228 (June 19, 1991).

¹⁹ 76 FR 69802 (Nov. 9, 2011).

B. *RSIA Authority*

In their comments on the proposed rule, AAR and ASLRRA challenge FRA's assertion that section 402 of the RSIA authorized the Secretary to prescribe regulations requiring the certification of signal employees. AAR and ASLRRA assert that Congress only authorized the Department to issue regulations requiring certification if the Secretary determined in a report to Congress that regulations are "necessary to reduce the number and rate of accidents and incidents or to improve railroad safety."²⁰ AAR and ASLRRA contend the Secretary failed to make such a determination in the 2015 report to Congress.

While section 402 of the RSIA required the Secretary to issue a report to Congress "about whether the certification of certain crafts or classes of railroad carrier or railroad carrier contractor or subcontractor employees is necessary to reduce the number and rate of accidents and incidents or to improve railroad safety," it did not require the Secretary to make an official determination in this report that the issuance of signal employee certification regulations was necessary to reduce the number and rate of accidents and incidents or to improve railroad safety, as a necessary precondition to the initiation of this rulemaking.

Section 402 of the RSIA authorizes the Secretary (and by delegation, FRA) to prescribe regulations requiring the certification of certain crafts or classes of railroad carrier employees (or railroad carrier contractor or subcontractor employees) "pursuant to" the report to Congress that was required by section 402(b) of the RSIA. The phrase, "pursuant to," is defined to mean "in a way that agrees with or follows (something)."²¹ Thus, in section 402 of the RSIA, Congress authorized FRA to prescribe regulations that are consistent with the 2015 report to Congress. Moreover, FRA notes that it has broad

²⁰ Rail Safety Improvement Act of 2008, Pub. L. 110-432, section 402, 122 Stat. 4848, 4884 (2008).

²¹ www.britannica.com.

authority to “prescribe regulations and issue orders for every area of railroad safety,” including this regulation.²²

C. Role of Third Parties

Consistent with FRA’s engineer and conductor certification regulations, this final rule requires railroads to develop and submit certification programs to FRA for approval and then implement their FRA-approved certification programs. However, FRA received multiple comments urging FRA to clarify how signal employee certification programs will be implemented for the employees of signal contractors.

The International Transportation Learning Center (ITLC) urged FRA to implement a process that allows railroads to use model programs in a manner similar to the existing process established pursuant to FRA’s training regulations in part 243 of this chapter. In contrast, AAR and ASLRRA submitted comments asserting that FRA should authorize contractors and subcontractors to certify their own employees. AAR and ASLRRA asserted that locomotive engineers and conductors are not a useful comparison when considering this issue because Class I railroad engineers and conductors are almost uniformly company employees. AAR and ASLRRA asserted that Class I railroads make far greater use of contractors in the context of signal systems, as 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. Then, once the project is complete, AAR and ASLRRA asserted that the contractor and the contractor’s employees will move on to a new project, possibly on a different railroad. Therefore, AAR and ASLRRA concluded that requiring railroads to certify signal employees employed by signal contractors will be inefficient and result in significant administrative burdens for railroads.

²² 49 U.S.C. 20103. The Secretary delegated this authority to the Federal Railroad Administrator. 49 CFR 1.89.

With respect to short line railroads, AAR, ASLRRA, and the National Railroad Construction and Maintenance Association (NRCMA) submitted comments asserting that many short line railroads use contractors extensively for signal work because they do not have the in-house expertise to otherwise manage signal maintenance. AAR and ASLRRA noted that signal contractors often provide signal maintenance for dozens of short lines at the same time. Therefore, AAR and ASLRRA asserted that it would be infeasible and an inefficient waste of resources for dozens of railroads to potentially certify the same individual in any given period. In addition, NRCMA asserted that, while many of FRA's regulations hold a railroad responsible for the actions of an individual performing tasks in accordance with the regulation, no other FRA regulation requires railroads to determine whether a non-employee has the stated qualifications to perform such tasks.

As noted in the proposed rule, especially with respect to Class I, Class II, and commuter railroads, the railroad is generally most knowledgeable about the signal systems and signal-related technology that have been deployed on their territories. Therefore, Class I, Class II, and commuter railroads are best suited to develop certification programs to ensure signal employees tasked with installing, testing, repair, or maintenance of their signal systems and signal-related technology have been properly trained and qualified on such systems and technology. However, railroads are encouraged to work with any signal contractors they hire to obtain records for the contractor's employees that will assist the railroad in making the signal employee certification determinations required by this part.

There are a number of provisions in this final rule which are intended to reduce the burdens associated with developing signal employee certification programs. As noted in the section-by-section analysis of § 246.207, parent companies can assist subsidiary railroads with compliance with this final rule by developing and submitting signal

employee certification programs for one or more of their subsidiary railroads to FRA for review and approval. For example, a parent company can submit one signal employee certification program to FRA for multiple subsidiary railroads. In this scenario, the parent company must identify and address all variances associated with each subsidiary railroad that will be covered by the certification program developed by the parent company and submitted by the parent company to FRA for approval. After FRA approves the signal employee certification program, § 246.207 allows either the parent company or the subsidiary railroad to issue signal employee certificates to the signal employees of each subsidiary railroad that is covered by the parent company's certification program.

In addition, to ease the burden of developing signal employee certification programs, especially with respect to Class III railroads, this final rule allows railroads to choose between conducting their own training for signal employees, hiring a third party to provide training to the railroad's signal employees, or using a training program developed by a third party (including a parent company). NRCMA asserted in their comments that signal contractors have expertise in the equipment they install and maintain and that they are well-situated to develop a training program to address particular safety issues that may arise in the course of their work. FRA acknowledges that some signal contractors may, in fact, be well-situated to develop training programs for their signal employees. Therefore, some railroads may choose to hire signal contractors who have their own in-house signal employee training programs. Railroads that adopt this approach should, however, keep in mind that most, if not all, existing signal employee training programs which have been approved by FRA pursuant to 49 CFR part 243 will need to be revised to comply with the training and knowledge testing requirements in this part that specifically apply to signal employees. In addition, the

operational performance monitoring requirements in this part must be performed by the certifying railroad.

However, if a railroad chooses to hire a third party to provide training or use a training program developed by a third party, the third-party training program must fit the railroad's specific operating environment and address any unique signal system equipment or signal-related technology (or any unique deployment of signal system equipment or signal-related technology) on the railroad's territory.

Ultimately, with respect to railroads who hire signal contractors to perform work on their signal systems and signal-related technology, employees of signal contracting companies must be certified by the railroad before the railroad allows them to work on its signal systems and signal-related technology, unless they are assigned to work under the direct and immediate supervision of a mentor or qualified instructor. As stated in § 246.124(b), railroads are responsible for ensuring that certified signal employees install, test, maintain, and repair their signal systems and signal-related technology.

D. Interaction with Other FRA Regulations

As stated in the 2015 DOT Report to Congress on the Certification of Railroad Employees, the purpose of certification is to document and verify that the holder of the certificate has achieved certain training and proficiency and to create a record of safety compliance infractions that prospective employers can review when hiring experienced employees. While developing this rule, FRA has been mindful of other regulations that may touch upon topics covered in this rule, including FRA's training, qualification, and oversight regulations in 49 CFR part 243 (part 243); railroad safety risk reduction programs (SSP/RRP) in 49 CFR parts 270 and 271 (parts 270 and 271); and fatigue risk management programs (FRMP) in parts 270 and 271. However, FRA finds that this rule would complement, rather than duplicate, those regulations.

AAR and ASLRRRA disagree. In their comments on the proposed rule, AAR and ASLRRRA contend that the gaps in FRA's regulations which this rule is trying to fill are either non-existent or immaterial. AAR and ASLRRRA assert that there is no safety basis for layering new certification requirements on top of FRA's training, qualification, and oversight requirements in part 243 and the railroad safety risk reduction program requirements in parts 270 and 271. In addition, AAR and ASLRRRA specifically assert that there is significant overlap between this rule and part 243.

In support of their argument, AAR and ASLRRRA point to § 246.119, which requires railroads to provide training on railroad safety and operating rules, as well as training on the signal systems and signal-related technology deployed on their networks to their signal employees. AAR and ASLRRRA assert that this provision overlaps and potentially conflicts with § 243.101(c)(5), which states that the employer must determine how training "shall be structured, developed, and delivered." AAR and ASLRRRA also assert that § 246.119 overlaps and potentially conflicts with the stated purpose of part 243 of this chapter "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."

As an initial matter, AAR and ASLRRRA's narrative that this rule is duplicative of parts 243, 270, and 271 appears to be contradicted by congressional direction. As they note in their joint comment, FRA issued the training regulations in part 243, the SSP regulations in part 270, and the RRP regulations in part 271 because of a statutory mandate in the RSIA. However, in the same law, Congress explicitly permitted requiring the certification of certain crafts if the Secretary determined it was necessary to improve railroad safety. Had Congress determined that certification requirements were

duplicative of what was already mandated by the RSIA, it would not have required the Secretary to study whether other crafts or classes of employees could benefit from certification or given the Secretary the statutory authority to issue additional certification regulations.

Turning to any overlap between this rule and part 243, FRA stands by its position proffered in the NPRM that this rule complements, and does not duplicate, part 243. This rule builds off the initial performance skill evaluations required in part 243 by mandating that certified signal employees also receive an unannounced compliance test each calendar year to ensure that signal employees continue to safely perform their duties after their initial certification. Part 243 has no such continuing compliance testing requirement. While 49 CFR 243.205 requires employers to perform periodic oversight tests and inspections to determine whether their employees are complying with Federal railroad safety laws and regulations, the rule does not require that all employees receive such tests and inspections. In fact, under part 243, an employee could work for decades without being tested or inspected. Therefore, § 246.123 fills a significant gap in FRA's training regulations.

Also, as noted in the NPRM, part 243 does not require railroads to have formal processes in place for promptly removing signal employees from service if they violate one or more basic regulatory standards that could have a significant negative impact on the safety of rail operations. AAR and ALSRRA failed to address this fact in their comment. Part 246 complements part 243 by mandating that railroads remove signal employees from service if they commit one of the safety violations enumerated in § 246.303(e). This rule also requires railroads to perform certain safety checks before certifying a person as a signal employee. These safety checks pertain to a person's prior safety conduct, both working on railroads and as a motor vehicle operator; their history of substance abuse disorders; and their visual and hearing acuity. These are basic safety

requirements that are not addressed in part 243. Thus, FRA does not find significant overlap between this rule and part 243.

AAR and ASLRRA also contend “the proposed rule would cast aside the carefully considered risk analysis conducted through the [system safety/risk reduction programs] 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.”²³ AAR and ASLRRA assert that all Class I railroads have submitted RRP and received approval from FRA. If all railroads with passenger rail operations that operate intercity or commuter service have also submitted SSP and received FRA approval, AAR and ASLRRA estimate that SSP/RRPs could cover more than 83% of the line-haul mileage and 95% of workers in the rail industry.

However, even if a railroad has a railroad safety risk reduction program through which it identifies the risks associated with installing, testing, maintaining, and repairing signal systems, the railroad can decide not to implement mitigations to eliminate or reduce those specific risks. Whether a railroad is required to have a program that mitigates risks associated with signal systems will depend on how the railroad prioritizes risks for mitigation and how effectively that mitigation would promote continuous safety improvement, as compared to mitigation of other identified hazards and risks. Even if signal systems are identified as a risk, a railroad may not be required by its risk reduction program to implement mitigations to eliminate or reduce that risk.

Moreover, FRA disagrees with AAR and ASLRRA’s assertion that this rulemaking “cast[s] aside the carefully considered risk analysis conducted through the [system safety/risk reduction programs]”²⁴ Nothing in this rule obviates a railroad’s

²³ Comment submitted by the AAR and ASLRRA, Docket no. FRA-2022-0020-0035, p. 24.

²⁴ Ibid.

responsibilities under parts 270 and 271. Railroads are expected to continue to perform the risk analysis and the necessary mitigations to comply with parts 270 and 271, while also implementing a signal employee certification program. This final rule does not duplicate existing FRA regulations or hinder railroads from complying with them. To the contrary, part 246 complements FRA's existing regulations and will help promote railroad safety.

E. Confidential Close Call Reporting System

APTA and MTA each commented on the potential interaction between part 246 and the Confidential Close Call Reporting System (C³RS), an FRA-sponsored program that allows railroad employees reporting close calls to receive certain protections, which currently includes protection from decertification for locomotive engineers and conductors. Each C³RS program is established through an Implementing Memorandum of Understanding (IMOU) signed by FRA and the participating railroad and labor organization(s). Under the current process, the participating railroad submits to FRA a petition to waive specific part 240 and/or part 242 requirements necessary to implement the IMOU's decertification protections. A waiver granted by FRA then incorporates the IMOU's protections by reference. APTA and MTA request that FRA add language to this regulation which would state that those railroads with existing C³RS programs with part 240 and 242 waivers do not have to similarly apply for a waiver of part 246, as their C³RS protections should automatically be applied to part 246 revocable events. APTA and MTA also request that FRA identify in the rule whether any revocable events for signal employees will not be afforded C³RS protections.

While FRA appreciates the commenters' desire for a more streamlined C³RS process, their request is beyond the scope of the NPRM in this proceeding and risks introducing inconsistency and confusion into the C³RS implementation process. Specifically, addressing C³RS in this rule would treat signal employees differently than

locomotive engineers and conductors, who receive C³RS decertification protection only pursuant to part 240/242 waivers. The proposed approach would also treat signal employees at new C³RS programs differently, as railroads joining C³RS after the publication of the rule would still have to file a part 246 waiver petition. This inconsistency could create confusion and lead to signal employees at C³RS-participating railroads being uncertain about whether they were protected by the terms of a waiver or by C³RS-related provisions in part 246 (particularly signal employees hired after the date of this final rule who would not necessarily know when their railroad implemented C³RS for signal employees). Such confusion would be compounded if this rule specified which decertifiable events were not afforded C³RS protections, as any such regulatory provision could differ substantively from the provisions of an applicable IMOU and waiver.

Confusion is further risked because only some existing C³RS IMOUs cover signal employees, not all. Using part 246 to provide C³RS decertification protection to signal employees at railroads with “existing” C³RS programs could therefore be particularly confusing for signal employees at railroads with existing C³RS programs that do not currently include signal employees. Such signal employees may mistakenly believe that they are covered by C³RS simply through the action of part 246, not realizing that they lack protection due to the absence of an IMOU that applies to them.

Overall, FRA believes that to promote signal employee confidence in C³RS reporting, signal employees must be certain about the decertification protection they will receive. Such confidence is best promoted by a clear understanding that all signal employees may only report pursuant to an IMOU and waiver that specifically apply to their railroad, rather than having some signal employees protected by separate provisions in part 246, depending on whether they were covered by a C³RS program at the time the final rule is published.

FRA also notes that RSAC has established a C³RS Working Group tasked, in part, with examining how C³RS could be expanded industry-wide without a separate waiver required for each participating railroad.²⁵ Instead of addressing C³RS in this rule, FRA finds it preferable to allow the RSAC C³RS Working Group to perform its work and to apply any RSAC-recommended improvements consistently to locomotive engineers, conductors, signal employees, and any other certified craft through a future rulemaking or some other means. In the meantime, any railroad that already has a C³RS program that applies to signal employees will need to file a request to modify its waiver if the railroad would like the program's decertification protections to apply to its signal employees. Likewise, a railroad that is not currently participating in C³RS (or a railroad that has a C³RS program, but one that does not apply to its signal employees) will need to file a petition for relief if the railroad decides to implement a C³RS program covering signal employees.

F. *PTC*

Positive train control (PTC) systems provide an additional layer of safety to existing signal systems, many of which have been in place for many decades. PTC systems are also interoperable with each other, as well as with existing signal systems. In their comments on the proposed rule, AAR and ASLRRA assert that PTC implementation has not increased the complexity of the work performed by signal employees. Instead, AAR and ASLRRA assert that the work of signal employees has become less complex because installing, repairing, and maintaining signal systems has become more simplified and more efficient as microprocessors monitor the health of the system and provide automated alerts. Accordingly, AAR and ASLRRA assert that the implementation of PTC systems does not provide a justification for this rule.

²⁵ See Task No. 2022-03.

FRA disagrees with this assertion. Signal employees need to understand the relationship between signal and PTC systems and the communication medium and how these systems operate, function, and react to a myriad of circumstances. Signal systems and PTC systems are also continually upgraded, so the development and implementation of these increasingly complex systems need to be properly understood by signal employees who install, troubleshoot, test, maintain, and repair them.

V. Section-by-Section Analysis

This section responds to public comments and identifies changes made from the regulatory provisions as proposed in the NPRM. Accordingly, provisions that received no comment and are otherwise being finalized as proposed are not discussed below.

Subpart A – General

Subpart A of this rule contains general provisions, including a formal statement of the rule's purpose and scope. This subpart also provides that the rule does not constrain the ability of a railroad to prescribe additional or more stringent requirements for its signal employees that are not inconsistent with this final rule.

Section 246.3 Application and Responsibility for Compliance

The extent of FRA's jurisdiction, and the agency's exercise of that jurisdiction, is well-established. *See* 49 CFR part 209, app. A. This application and responsibility for compliance section is consistent with FRA's *Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws* in appendix A to 49 CFR part 209 (Policy Statement).

This section, derived from 49 CFR 240.3 and 242.3, provides that this final rule applies to all railroads with four exceptions. Paragraph (a)(1) of this section notes that this rule does not apply to railroads that do not have a signal system, as defined in § 246.7.

The second and third exceptions apply to rail operations on tracks that are not part of the general railroad system of transportation. Paragraph (a)(2) contains an exception for rail operations that occur within the confines of industrial installations commonly referred to as “plant railroads” and typified by operations such as those in steel mills that do not go beyond the plant’s boundaries and that do not involve the switching of rail cars for entities other than themselves.

Paragraph (a)(3) contains an exception for “tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation,” as defined in § 246.7. This reflects a change from the proposed rule, in which paragraph (a)(3) would have excluded tourist, scenic, historic, and excursion operations that are not part of the general railroad system of transportation, if they are deemed to be “insular.”

As explained in FRA’s *Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws* in appendix A to 49 CFR part 209 (Policy Statement), FRA considers a railroad to be “insular” if its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public (except a business guest, a licensee of a tourist operation or an affiliated entity, or a trespasser) would be affected by the operation. A railroad is not considered insular if one or more of the following exists on its line: (a) A public highway-rail grade crossing that is in use; (b) an at-grade crossing that is in use; (c) a bridge over a public road or waters used for commercial navigation; or (d) a common corridor with a railroad (*i.e.*, its operations are within 30 feet of those of any railroad). Therefore, for example, a tourist railroad that operates outside the general railroad system of transportation yet operates over one or more public highway-rail grade crossings, would have been required by the proposed rule to comply with these regulatory requirements for signal employees.

FRA received multiple comments on paragraph (a)(3) in the proposed rule from tourist, scenic, historic, and excursion operations, including the Monticello Railway

Museum, the Colorado Railroad Museum, the Oregon Coast Scenic Railroad, the Durango and Silverton Narrow Gauge Railroad, the Great Smoky Mountains Railroad, and the Northwest Railway Museum, as well as an association (HeritageRail Alliance, Inc.) and a consultant (George Hardy Consulting). All commenters expressed support for excluding all tourist, scenic, historic and excursion operations that operate outside the general railroad system from the scope of this rule - regardless of whether the tourist, scenic, historic, and excursion operation is deemed to be insular or not.

Therefore, FRA took a closer look at tourist, scenic, historic, and excursion operations that operate outside the general railroad system of transportation. According to FRA's records, out of 818 railroads nationwide, there are 34 tourist, scenic, historic, and excursion operations operating outside the general railroad system of transportation. FRA's records also indicate that these tourist, scenic, historic, and excursion operations maintain active warning devices at approximately 105 grade crossings (a small percentage of the 70,289 highway-rail grade crossings nationwide that are equipped with active warning devices).

Asserting that excursion and heritage railways have traditionally relied on volunteer and part-time workers located in their host community to perform signal work, the Northwest Railway Museum commented that the added burden of medical exams, drug testing, certification training, and the review of signal employee driving records may result in smaller entities having to transition to contract signal maintainers. The Northwest Railway Museum and the Oregon Coast Scenic Railroad commented that the transition to contract signal maintainers may result in the unintended consequence of reducing the timeliness of repairs, as contract signal maintainers could be located two or more hours away. The Oregon Coast Scenic Railroad asserted that a highway-rail grade crossing could remain out of service for a lengthy period of time while a tourist railroad

arranges to bring in an expensive outside contractor for a repair that previously would have had the crossing back in service within an hour.

Therefore, after taking a closer look at tourist, scenic, historic, and excursion operations that operate outside the general railroad system of transportation, and considering the comments that were submitted to FRA by tourist, scenic, historic, and excursion operations that may be affected by this rulemaking, FRA has excluded these operations from the scope of this final rule. This is consistent with FRA's Policy Statement, which excludes tourist, scenic, historic, and excursion operations from all but a limited number of Federal railroad safety laws, regulations, and orders (including FRA regulations governing alcohol and drug testing in 49 CFR part 219 and employee training plans in 49 CFR part 243).

The fourth exception, in paragraph (a)(4), applies to rapid transit operations in an urban area that are not connected to the general railroad system of transportation. It should, however, be noted that FRA does exercise jurisdiction over some rapid transit type operations, given their links to the general railroad system of transportation, such as rapid transit operations conducted on track used for freight, intercity passenger, or commuter passenger railroad operations during a block of time when a general system railroad is not operating (temporal separation). FRA specifically intends to have this rule apply to those rapid transit operations.

Paragraph (b) is intended to clarify that any person, as defined in § 246.7 (including a railroad employee or employee of a railroad contractor or subcontractor) who performs a function required by this part will be held responsible for compliance.

Section 246.5 Effect and Construction

This section is derived from 49 CFR 240.5 and 242.5. While FRA has not revised the language in this section that was proposed in the NPRM, FRA would like to provide clarification in response to comments from the AAR and ASLRRA asserting that FRA

fails to understand this final rule will require the altering of existing collective bargaining agreements. Paragraph (a) does not state that collective bargaining agreements will not be altered as a result of this new rule. To the contrary, FRA understands that, due to new requirements in this rule, collective bargaining agreements may need to be modified to reflect the training and qualification requirements of the rule. FRA acknowledges this fact, but this rule allows for mentoring so individuals can obtain new signal employee positions and be mentored until they become qualified on the railroad's signal system and signal-related technology. Paragraph (a) of this section simply acknowledges that the term "signal employee" is defined in this final rule to cover persons who engage in certain tasks that affect railroad signal systems and signal-related technology as defined in § 246.7. However, railroads and labor organizations may use job classification titles other than "signal employee" for persons who engage in installing, troubleshooting, testing, repairing, or maintaining railroad signal systems and signal-related technology as defined in § 246.7, and this final rule does not affect the use of such job classification titles in collective bargaining agreements.

Section 246.7 Definitions

This section defines a number of terms that have specific meaning in this part. However, consistent with FRA's approach in drafting this section-by-section analysis, definitions that received no comment and are being finalized as proposed are not discussed in this section.

The American Association of Nurse Practitioners (AANP) submitted comments on the definition of "medical examiner" in the proposed rule. Noting that approximately 70% of all nurse practitioner graduates deliver primary care, AANP requested that FRA revise the definition of "medical examiner" to include nurse practitioners and thereby authorize them to make determinations on signal employees' certification, recertification, vision acuity and hearing acuity. AANP asserted that the definition of "medical

examiner” in the proposed rule was based on FRA’s locomotive engineer certification regulations in 49 CFR part 240, which are now 32 years old, and not reflective of the current practice environment where nurse practitioners provide a substantial portion of care.

While FRA has not revised the definition of “medical examiner” to specifically include nurse practitioners, FRA clarifies that if a nurse practitioner is a licensed or certified technician, FRA’s regulations in 49 CFR parts 240 and 242 (and this final rule) allow the nurse practitioner to perform the vision and hearing examinations required in those parts (and in this rule). However, given the complex nature of this issue and FRA’s lack of regulatory requirements for medical examiners, the question of whether nurse practitioners should be allowed to serve as medical examiners (and if so, whether they should be required to comply with specific regulatory or industry standards) is best addressed in a future rulemaking during which comments can be solicited specifically on this issue. Accordingly, only a doctor of medicine or doctor of osteopathy is authorized by this final rule to conduct a medical evaluation to determine whether a person can safely work as a certified signal employee if the person fails the vision or hearing acuity examination. FRA has, however, revised the last sentence of this definition by changing “employee” to “individual” to reflect the fact that railroad medical examiners will be asked to conduct medical evaluations of railroad employees, as well as other individuals seeking signal employee certification or recertification.

In this part, *mentor* is defined as a certified signal employee who has at least one year of experience as a certified signal employee. For purposes of this part, a mentor provides direct and immediate supervision over the work of one or more signal employees. In other words, FRA views a mentor as a certified signal employee with current, relevant experience who can be counted on to impart knowledge and demonstrate

safety-related tasks through on-the-job training. Unlike qualified instructors, mentors are generally not directly involved in testing or making certification decisions.

BRS and the SMART-TD commented on the definition of “mentor” in the proposed rule and recommended that, after the first year of implementing this final rule, mentors should be required to have at least three years of experience working with sophisticated signal systems. TTD and IBEW submitted similar comments. TTD expressed concern that one year of experience does not provide enough time for an employee to demonstrate real proficiency in the signal craft, while IBEW commented that mentors should have no less than three years of experience working as a certified signal employee and should be chosen in concurrence with the applicable designated employee representative. In contrast, AAR and ASLRRA commented that FRA should only require signal employee certification, instead of requiring mentors to be certified signal employees and also have at least one year of experience as a certified signal employee. Otherwise, AAR and ASLRRA point out that the experience requirements for mentors are more stringent than the experience requirements for qualified instructors.

FRA agrees that it would, in most cases, be beneficial for mentors to have more than one year of signal employee experience and encourages the selection of mentors with additional years of experience in such cases. FRA believes it is important to have individuals who are comfortable with the signal systems and signal-related technology deployed on the railroad provide direct and immediate supervision of the tasks performed by uncertified persons on such systems and devices.

However, FRA does not have sufficient data to quantify the potential impact on rail safety of having signal employees with at least three years of signal employee experience serve as mentors, as opposed to having signal employees with between one to three years of signal employee experience, serve in this role. Accordingly, FRA has retained the requirement that mentors have at least one year of certified signal employee

experience in this final rule. FRA has not, however, revised the definition of mentor to require concurrence by labor organizations in the selection of individuals to serve as mentors. Concurrence by labor organizations is beneficial for qualified instructors because qualified instructors participate in the certification process by confirming that on-the-job proficiency and qualification on the railroad's signal system and signal-related technology has been demonstrated. FRA does not, however, anticipate that mentors will be tasked by railroads with evaluating certification candidates. Therefore, concurrence by labor organizations in the selection of mentors seems unnecessary.

BRS and TTD also commented that use of the terms "oversight" and "supervision" in the same sentence in the definition of "mentor" in the proposed rule may cause confusion. To avoid confusion, BRS and TTD recommended that FRA clarify that oversight can be provided by a mentor or supervisor. BRS and TTD explained that, by making this change, the roles of both mentor and supervisor will be explicitly acknowledged and there will be clearer understanding of the certified signal employee's responsibilities when working on unfamiliar equipment.

However, after considering BRS and TTD's comments on this issue, FRA revised the definition of "mentor" to clarify that mentors are required to provide direct and immediate supervision of the person(s) they are mentoring. As reflected in § 246.124, mentors are held responsible for the work performed by the person(s) working under their direct and immediate supervision. While the verb "oversee" is defined in the Britannica Dictionary as "to watch and direct (an activity, a group of workers, etc.) in order to be sure that a job is done correctly,"²⁶ mentors are held responsible in this final rule for closely supervising the work performed by the person(s) they are mentoring. Therefore, the definition of "mentor" has been revised in the final rule to provide this clarification.

²⁶ Britannica.com.

A definition of “qualified” has been added to this final rule, which is similar to definition of this term in parts 240 and 242 of this chapter. Use of “qualified” as defined in this section is intended to reflect that the railroad’s instruction and training program not only imparted knowledge of how to perform a task, but also sufficiently prepared the person to perform the task proficiently. For example, a signal employee qualified on a specific type of signal system equipment should have received classroom training on how to perform required tasks on the signal system equipment, as well as on-the-job training on how to perform those required tasks proficiently. Without both instruction and hands-on practice performing required tasks on the signal system equipment, the signal employee cannot be considered qualified on the equipment.

In this final rule, the definition of “qualified instructor” has been revised to make it more consistent with the definition of “qualified instructor” in 49 CFR 242.7. APTA submitted comments on the definition of “qualified instructor” in the proposed rule, asserting that the selection of qualified instructors is inherently the responsibility of railroad management and that discharge of this duty should not be subject to the consent of another party. APTA also expressed concern that some current instructors may not be able to be “qualified instructors” because they are not engaged in installing, troubleshooting, testing, repairing, or maintaining railroad signal systems or signal-related technology and would not be considered “signal employees,” as defined in this rule. Network Rail Consulting Inc. (NRC) commented that the person providing supervision should have at least two years of experience and no safety-related incidents in the previous two years, while IBEW commented that qualified instructors should have no less than three years of experience working as a certified signal employee.

The definition of “qualified instructor” has not, however, been revised in this final rule to remove the required concurrence of the designated employee representative when selecting a qualified instructor or the requirement for the qualified instructor to be a

certified signal employee. The required concurrence of the designated employee representative has been retained to facilitate input by designated employee representatives, specifically in situations involving qualified instructor candidates with minimal experience (*i.e.*, less than 12 months experience working as a signal employee) or questionable experience who may be under consideration by railroad management for employment as qualified instructors.

While FRA agrees that it would be beneficial for qualified instructors to have more than one year of signal employee experience, the definition of “qualified instructor” has not been revised to require that qualified instructors have at least two years of experience with no safety-related incidents in the previous two years. FRA does not have sufficient data to quantify the potential impact on rail safety of having signal employees with at least two years of signal employee experience serve as qualified instructors, as opposed to having signal employees with between one to two years of signal employee experience, serve in this role. Therefore, FRA has retained the requirement that qualified instructors have at least one year of signal employee experience in this final rule.

With respect to the concern expressed by APTA regarding current instructors who may not be able to work as “qualified instructors” because they are not “signal employees” as this term is defined in this rule, FRA notes that a new term “signal instructor” has been added to this section in the final rule. To accommodate current instructors who may not be able to comply with the definition of “qualified instructor,” signal instructors are not required to be certified signal employees or even employees of a railroad. However, if authorized by the railroad’s certification program, signal instructors may provide signal employee training.

Although the RSIA required FRA to issue a report to Congress on whether the certification of certain crafts or classes of railroad carrier or railroad carrier contractor or subcontractor employees, including “signal repair and maintenance employees,” is

necessary to reduce the number and rate of accidents and incidents or to improve railroad safety, the RSIA did not define the term, “signal repair and maintenance employees.” In the absence of such a definition in the RSIA, FRA is using the streamlined term, “signal employee” in this part. This streamlined term, “signal employee,” is defined in this final rule as a person who is engaged in installing, troubleshooting, testing, repairing, or maintaining railroad signal systems or related technology. This definition is generally consistent with the definition of “signal employee” in the hours of service laws but includes the terms “troubleshooting” and “testing” which are not found in the statutory definition.²⁷

In their comments on the proposed rule, AAR and ASLRRRA asserted the final rule should be clear that it does not apply to employees who are not subject to the Federal hours of service law. As noted earlier, the term “signal employee” as used in this part is intended to cover all individuals who are currently subject to the Federal hours of service law for signal employees (49 U.S.C. 21104). However, should questions arise as to whether a specific group of employees are considered signal employees for purposes of this rule, FRA will examine the tasks performed by the employees to determine whether they are engaged in the installation, troubleshooting, testing, repair, or maintenance of railroad signal systems or related technology (even if such tasks are not the primary focus of the employees’ job). If FRA determines that the employees engage in the installation, troubleshooting, testing, repair, or maintenance of railroad signal systems or related technology, FRA will then examine whether the employees are covered by the Federal

²⁷ 49 U.S.C. 21101(4). The hours of service law defines “signal employee” as “an individual who is engaged in installing, repairing, or maintaining signal systems.” 49 U.S.C. 21101(4). While FRA believes “troubleshooting” and “testing” would fall under the terms “installing, repairing, or maintaining” in the hours of service law definition, FRA wanted to make explicit in this rule that “troubleshooting” and “testing” are included in the definition of “signal employee.” The addition of “troubleshooting” and “testing” in the definition in this final rule is not intended to capture a broader group of employees than provided in the hours of service law.

hours of service law for signal employees to determine whether they are signal employees for purposes of this part.

AAR and ASLRRA also commented on the definition of “signal employee”, asserting that the definition in the proposed rule was unmoored from the definition of “signal employee” in the Federal hours of service law (49 U.S.C. 21101(4)), while noting FRA’s acknowledgement in the proposed rule that troubleshooting and testing are activities that were not listed in the definition. AAR and ASLRRA asserted that these tasks should be removed from the definition of “signal employee” to avoid confusion. However, troubleshooting and testing signal systems has always been considered signal covered service for purposes of the Federal hours of service law. Accordingly, FRA has not revised the definition of “signal employee” to remove these tasks.

In the proposed rule, while describing the roles and responsibilities of signal employees, FRA stated that signal maintainers are tasked with inspecting and testing signal systems and performing minor and emergency repairs as needed. AAR and ASLRRA objected to this statement, asserting that FRA did not explain what was meant by “minor repairs.” AAR and ASLRRA also asserted that this description limits the scope of a signal employee’s work, which could have implications for existing collective bargaining agreements. In addition, AAR and ASLRRA asserted that 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. After considering these concerns, FRA revised its description of the work performed by signal employees in the “Roles and Responsibilities of Signal Employees” section above to more accurately reflect the work typically performed by signal maintainers.

In their comments on the proposed rule, AAR and ASLRRA also objected to FRA’s assertion that a signal employee certification program which includes background checks and disqualification from safety-sensitive service for specified alcohol and drug

violations and for refusing alcohol and drug testing could help prevent employees with active substance abuse disorders from “job hopping.” AAR and ASLRRRA contend FRA presented no evidence that signal employees switch jobs more frequently than other crafts, including those that are subject to certification requirements.

FRA’s statements on this issue in the proposed rule were based on FRA’s finding in the 2015 report to Congress that the greatest proportion of contractors covered under the hours of service laws are signal employees and that they tend to switch employers more frequently than other crafts of employees. The 2015 report to Congress did not, however, include data showing the frequency with which the employees of signal contractors switch employers, as compared to other crafts of employees. Therefore, FRA has removed statements from this final rule comparing the frequency with which signal employees switch jobs to the frequency with which other crafts of railroad employees switch jobs.

AAR and ASLRRRA also contend that the hiring process for signal employees is already thorough. AAR and ASLRRRA noted that prospective signal employees undergo pre-employment drug and alcohol testing. Then, once they are hired, AAR and ASLRRRA noted that signal employees are subject to random and reasonable basis testing, as well as post-accident/incident testing. FRA agrees that railroads are well positioned to identify signal employees with substance abuse disorders, given existing drug and alcohol testing programs conducted by railroads in accordance with 49 CFR part 219. However, signal employee certification will make it difficult for employees who commit certain safety violations (including violations related to prohibited drug and alcohol use) to continue performing safety-sensitive work on railroad signal systems. By issuing this final rule requiring signal employee certification, FRA is taking a proactive approach to minimize (and hopefully eliminate) such occurrences in the future.

In their comments on the definition of “signal employee,” APTA requested clarification on how FRA defines “related technology.” APTA noted that railroads may have electric traction department employees performing railhead bonding and contractors performing non-vital work such as running direct burial cable. However, APTA asserted that neither the electric traction department employees nor the contractors engaged in running direct burial cable should be considered signal employees for purposes of this part. In addition, APTA asserted that mechanical department employees working on a locomotive’s onboard cab signal/PTC equipment might be considered signal employees for purposes of this part.

FRA agrees that individuals who engage in electric traction work, such as railhead bonding, and the running of direct burial cable (without permanently landing or splicing the cable) should not be considered signal employees for purposes of this part. As noted in FRA’s Technical Bulletin S-19-01, “Application of the Hours of Service Laws to Positive Train Control Systems,” digging trenches for laying signal cable and running cable without permanently landing or splicing the cable are not considered to be signal covered service.

However, employees who test signal system components (even so-called “self-tests” of cab signal equipment installed on locomotives) that require the employee to interact with the signal system component, monitor the progress of the test, or interpret the results of the test are considered to be “signal employees” who are subject to the Federal hours of service law (49 U.S.C. 21104). Therefore, employees of the railroad’s mechanical department are considered “signal employees” for purposes of this part if they test signal system components that require the employee to interact with the component, monitor the progress of the test, or interpret the results of the test.

Network Rail Consulting Inc. (NRC) noted in their comments that employees engaged in signal design have not been included in the definition of “signal employee” in

§ 246.7. However, NRC contends that competence management is needed for these employees as well. In contrast, AAR and ASLRRA commented that the work performed by signal design engineers (who program and test the vital and non-vital software programs that perform the functions for a signal system) is very specific and not related to the repair or maintenance of railroad signal systems.

NRC is correct in noting that employees engaged in signal design have not been included in the definition of “signal employee,” as they are not considered signal employees for purposes of this part. While competence management would likely be beneficial, as indicated in FRA’s Technical Bulletin S-19-01, individuals engaged in the production and design of signal system hardware and software outside railroad property are not generally covered by the Federal hours of service law.

NRC also asserted that the maintenance of signal technology in the operations control center should be covered by this final rule. FRA agrees that the maintenance of signal technology in the operations control center plays an important role in signal system safety. Accordingly, individuals who maintain signal technology in the operations control center (such as electronic control system technicians and centralized traffic control (CTC) maintainers) are considered “signal employees” for purposes of this part. As stated in FRA’s Technical Bulletin S-19-01, FRA considers work affecting the proper functioning of software to be signal covered service, for purposes of the Federal hours of service law, whether in the field or in an office location. Therefore, in general, individuals engaged in loading, verifying, or testing software or configurations into PTC system hardware are considered to be “signal employees” for purposes of this part.

With respect to back-office employees, AAR and ASLRRA noted that these employees are not considered to be signal employees for purposes of the Federal hours of service law (49 U.S.C. 21101(4)). While AAR and ASLRRA acknowledge that some back-office employees have limited ability to remotely access onboard and wayside

systems for research purposes, AAR and ASLRRA assert that they do not have the ability to modify any safety-critical component of PTC systems. Therefore, AAR and ASLRRA assert that back-office employees should not be considered signal employees for purposes of this part.

FRA agrees that back-office employees, such as PTC help desk personnel, who do not have the ability to modify any safety-critical component of the PTC system are not considered “signal employees” for purposes of this part. However, back-office employees, such as the centralized traffic control (CTC) maintainers, who engage in the installation, troubleshooting, testing, repair, or maintenance of systems that connect the dispatching system to the wayside or onboard train control systems are considered signal employees for purposes of this rule. These employees have historically been subject to the Federal hours of service law for signal employees.

As noted earlier, FRA is adding a definition of “signal instructor” to the final rule to facilitate the continued use of third-party training organizations by railroads. Unlike qualified instructors, signal instructors are not required to be certified signal employees. However, as stated in the definition, signal instructors must demonstrate adequate knowledge of the subject matter they are teaching and have the necessary experience to provide formal training of the subject matter. Therefore, even though the signal instructor may not be employed by the railroad, FRA expects railroads to verify that the signal instructors who are providing training on signal systems and signal-related technology have adequate knowledge and the necessary experience to do so.

A slight revision has been made to the definition of “signal system” to clarify that this term refers to signal system software and equipment. NRC commented on the proposed definition of “signal system” in the proposed rule and asked FRA to clarify whether this definition includes operations control center signal equipment, while also recommending that FRA revise the definition of “signal system” in § 246.7 to include a

reference to “train control and detection systems.” As noted earlier, FRA considers individuals who maintain signal technology in the operations control center (such as electronic control system technicians and CTC maintainers) to be signal employees for purposes of this rulemaking. Therefore, even though the definition of “signal system” has not been revised to include a specific reference to “train control and detection systems,” FRA is clarifying that operations control center signal equipment falls under the definition of “signal system” for purposes of this part.

AAR and ASLRRA also commented on the definition of “signal system,” asserting that FRA’s definition of “signal system” is inconsistent with the definition of this term in the Federal hours of service law (49 U.S.C. 20501). The Federal hours of service law defines “signal system” as 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.”²⁸ However, AAR and ASLRRA fail to mention that this definition of “signal system” was issued on July 5, 1994 and covers most of the signal system components that were regulated by FRA’s signal regulations in 49 CFR part 236 at that time. In the 30 years that have elapsed since this definition of “signal system” was issued in 49 U.S.C. 20501, FRA promulgated regulations that specifically address PTC systems, as well as pathway grade crossings. Therefore, if FRA limited the definition of “signal system” to a definition of this term that was promulgated 30 years ago, FRA would have overlooked recent developments in signal system technology and might have inadvertently failed to require certification and related training for signal employees who are tasked with working on recently developed signal system components and signal-related technology.

²⁸ 49 U.S.C. 20501.

AAR and ASLRRA also assert FRA needs to clarify that the term, “signal system,” does not include signal equipment that is not in service. AAR and ASLRRA assert that FRA has no authority to regulate equipment before or after it has been taken out of service. However, this final rule does not directly regulate signal system equipment. This final rule is intended to ensure that signal employees who install (and remove from service) signal system components and signal-related technology receive sufficient training to perform these tasks in a safe manner. Given the importance of properly installing signal system components that have not yet been placed in service, FRA does not agree with AAR and ASLRRA that persons tasked with installing signal system components which have not yet been placed in service should be exempt from the signal employee certification requirements in this part.

Finally, AAR and ASLRRA commented that the definition of “signal system” should not include wayside detection devices used to detect defective conditions on locomotives and rolling stock (such as 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 detectors) in non-signaled territory, especially if the devices are not integrated into a signal system. AAR and ASLRRA also noted that RSAC Working Group on wayside detectors recently held its kickoff meeting on August 31, 2023. AAR and ASLRRA note that, according to the RSAC Working Group’s task statement, the purpose of the Working Group is to 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. Therefore, AAR and ASLRRA assert that any matters impacting how FRA treats wayside detection equipment should be reserved for this RSAC Working Group (which consists of a multi-disciplinary team of subject matter experts.)

As noted earlier, FRA’s definition of the term “signal employee” is based on FRA’s longstanding interpretation of what constitutes signal covered service, as explained in FRA’s Technical Bulletin S-19-01. As stated in FRA’s Technical Bulletin S-19-01, FRA considers “installing, repairing, or maintaining locomotive and wayside equipment that encodes or decodes transmissions (*e.g.*, a wayside messaging server) to be signal covered service.”²⁹ This final rule does not directly regulate signal system equipment or signal-related technology (such as wayside detection devices). Instead, the signal employee certification regulations in this part are intended to ensure that signal employees who install, troubleshoot, test, repair, or maintain signal system components and signal-related technology (such as wayside detection devices) receive sufficient training to perform these tasks in a safe manner. Therefore, FRA disagrees with AAR and ASLRRA that the signal certification requirements in this final rule should not apply to signal employees who work on wayside detection equipment because an RSAC Working Group has been created to consider and review issues related to wayside detectors.

Given changes that have been made to the scope of this rulemaking since the proposed rule stage (see the section-by-section analysis for § 246.3 above), this final rule contains a definition for the phrase “tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation.” This phrase means a tourist, scenic, historic, or excursion operation (“tourist operation”) conducted only on track used exclusively for that purpose. However, even if a tourist operation has a switch connecting it to the general railroad system of transportation (general railroad system), FRA does not consider the tourist operation part of the general railroad system if the tourist operation’s trains do not enter the general railroad system and general system

²⁹ FRA Technical Bulletin S-19-01, page 5.

railroads do not use the tourist operation's tracks for any purpose other than delivering or picking up shipments from the tourist operation.

Section 246.11 Penalties and Consequences for Noncompliance

This section, derived from 49 CFR 240.11 and 242.11, explains that FRA may impose civil penalties on any person, including a railroad or a contractor (or a subcontractor) providing goods or services to a railroad, who violates any requirement of this rule. IBEW expressed support for the language in this section which states that individuals should only be subject to civil penalties for willful violations.

In their comments on this section, NRC suggested that violations of FRA regulations involving gross negligence, a pattern of repeated violations, or death or injury should be grounds for permanent revocation of signal employee certification. However, as indicated by paragraph (c) of this section, FRA reserves the right to take enforcement action against any person who causes or contributes to non-compliance with FRA's rail safety regulations by assessing a civil penalty or issuing an order prohibiting an individual from temporarily or permanently performing safety-sensitive functions in the rail industry. Therefore, FRA finds it unnecessary to revise this provision.

Subpart B – Program and Eligibility Requirements

Section 246.101 Certification Program Required

This section, derived from 49 CFR 240.101 and 242.101, requires railroads to have written certification programs comprised of multiple elements, each of which comports with specific regulatory provisions in the rule related to that element. This section has been revised in the final rule to include a reference to § 246.120, which was added in this final rule and requires railroads to qualify persons who work on their signal systems and signal-related technology.

Paragraph (c) requires version control for certification programs. Therefore, railroads (and parent companies, if applicable) are required to maintain an up-to-date,

detailed list or index tracking every change made to their FRA-approved certification programs. FRA encourages railroads and parent companies to maintain “redlined” versions, clearly reflecting revisions and indicating the year of the version against which the revisions appear, of their certification programs to reflect changes that have been made over the years.

Section 246.103 FRA Review of Certification Programs

This section, derived from 49 CFR 240.103 and 242.103, describes FRA’s process for reviewing and approving signal employee certification programs.

BRS and TTD submitted comments contending that the deadlines in paragraph (a) of this section should be revised. BRS asserted that Class II and Class III railroads should be required to adhere to the same deadline for submitting their certification programs to FRA as the Class I railroads. Since Class I railroads and commuter service railroads are required to submit their certification programs to FRA within eight months of the effective date of this rule, BRS asserted that aligning the certification program submission deadlines would promote regulatory consistency, while sending a clear message that all railroads, regardless of their size, are equally responsible for meeting the certification requirements within a defined timeframe.

TTD commented that FRA should require Class II railroads to submit their certification programs to FRA within eight months of the effective date of this rule. IBEW submitted a similar comment asserting that several Class II railroads have the capability and resources to develop certification programs within eight months and those Class II railroads should do so to avoid unnecessary delays in implementing this rule.

Despite these comments, FRA has decided to retain the program submission schedule in the proposed rule. In the eight months between the deadlines referenced in paragraphs (a)(1) and (a)(2) of this section, FRA will be devoting its resources to

reviewing approximately 40 certification programs from Class I and commuter railroads³⁰ and is unlikely to have the capacity to begin its review of programs submitted by Class II railroads until after the 16-month deadline. Also, FRA is concerned that the eight-month deadline proposed by the unions may put too much of a strain on some Class II and III railroads. Thus, while FRA shares the unions' desire for speedy implementation of this rule, FRA does not believe that giving Class II and III railroads 16 months to develop and submit their certification programs to FRA will delay implementation.

Paragraph (c) of this section requires railroads (and parent companies, if applicable) to submit their certification programs and their requests for FRA approval (which are described in greater detail in § 246.106(a)) by emailing them to FRASIGNALCERTPROG@dot.gov. Paragraph (c) has been revised in the final rule to allow parent companies to submit certification programs on behalf of one or more of their subsidiary railroads. Paragraph (c) has also been revised to require railroads and parent companies to submit their certification programs and requests for FRA approval to a specified email address. In the NPRM, this paragraph stated that signal employee certification programs should be uploaded to a secure document submission site. However, after further consideration, FRA determined that it would be easier for both railroads and the agency if certification programs and requests for FRA approval are submitted to a dedicated FRA email address.

When a railroad or parent company submits its certification program to FRA, paragraph (d) of this section also requires the railroad or parent company to submit a copy of the program and the request for FRA approval to the president of each labor organization that represents the railroad's signal employees and to all of the railroad's signal employees who would be subject to this part. In their comments, AAR and

³⁰ Regulatory Impact Analysis of the Certification of Signal Employees Final Rule, Docket No. FRA-2022-0020, p. 15.

ASLRRA assert that railroads should not have to have their certification programs approved by the labor union president and all of the railroad's signal employees. AAR and ASLRRA claim such a requirement would be a substantial change from FRA's locomotive engineer and conductor certification rules and would be arbitrary and capricious. AAR and ASLRRA also expressed concern that a labor union president could potentially hold up approval forcing the railroad to miss deadlines. In addition, AAR and ASLRRA contend that requiring approval of the labor union president creates an inherent conflict of interest because FRA is allowing the labor union president to approve and exercise control over when and how the railroad uses contractors to perform work on certain signal equipment.

AAR and ASLRRA's concern with respect to paragraph (d) of this section is unwarranted. This rule does not require railroads to obtain approval of their certification programs from labor union presidents or their signal employees. Paragraph (d) only provides these individuals with the opportunity to review and comment on these programs. FRA believes the source of AAR and ASLRRA's confusion was the reference to a "request for approval" in paragraph (d)(1) of this section in the proposed rule. However, this document, which is described in greater detail in § 246.106, is a request for approval from FRA, not from a union president or signal employee. To avoid further confusion, FRA has revised references to "request for approval" in this section to "request for FRA approval."

Several labor organizations, including BRS, IBEW, and TTD expressed concern about the 45-day comment period for railroad certification programs in paragraph (e). They are particularly concerned about the initial influx of programs they will have to review after this rule takes effect, especially if multiple railroads submit their signal employee certification programs on or about the same date, and contend that 45 days will not be enough time to thoroughly review and assess each railroad's certification program.

TTD specifically noted its experience with FRA’s PTC dockets, asserting that it has been rushed to provide comments on amendments to the critical safety systems described in PTC Safety Plan Requests for Application in fewer than three weeks, due to delays in posting notices in the Federal Register that announce the submission of these documents to FRA. Therefore, these labor organizations request that the comment period be extended to 90 days.

Based on these comments from labor organizations, FRA has extended the comment period from 45 days to 60 days. This change will provide commenters with additional time to draft and submit meaningful comments to assist FRA in its review of these programs. However, in an effort to avoid further delays to the implementation of this rule, FRA is declining to extend the comment period to 90 days. FRA understands that labor organizations are particularly concerned about the initial influx of programs they will need to review when this rule first goes into effect, but once the effective date of this rule is established, labor organizations will have several months to plan how to efficiently allocate their resources when they anticipate receiving a large number of programs to review. Also, FRA will consider late-filed comments to the extent practicable and will extend comment periods on a case-by-case basis if circumstances warrant (especially during these initial periods where there is a high volume of programs to review).

AAR and ASLRRA are also opposed to FRA’s review and approval process in paragraph (f) of this section. Specifically, AAR and ASLRRA contend that the proposed process allows FRA “to arbitrarily hold railroads in limbo for an indefinite time period even if their programs are fully compliant”³¹ and does nothing to ensure that FRA’s review process is handled expeditiously. Instead, AAR and ASLRRA recommend that FRA implement the same review and approval process found in parts 240 and 242,

³¹ FRA-2022-0020-0035.

whereby a certification program or material modification is considered approved 30 days after it was submitted unless FRA notifies the railroad in writing that its program has been disapproved.

FRA is, however, declining to adopt this suggestion as it is untenable following a 2020 decision from the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit). In *Brotherhood of Locomotive Engineers and Trainmen v. Federal Railroad Administration*, the D.C. Circuit invalidated FRA's passive approval of a modification to Kansas City Southern Railway's locomotive engineer certification program. In its decision, the court noted that the Administrative Procedure Act "requires agencies to reasonably explain to reviewing courts the bases for the actions they take and the conclusions they reach."³² The court found FRA's passive approval system allowed for a "complete absence of any accompanying explanation for the agency's approval" of the certification program.³³ Since the administrative record did not contain any explanation or reasoning for the determinations made by FRA in approving the program, the court vacated and remanded the case for FRA to provide a more complete explanation of the agency's action or to take new agency action altogether.³⁴

Given the D.C. Circuit's criticism of the passive approval system in part 240, it would be ill-advised for FRA to include a similar system in this rule. Therefore, paragraph (f) of this section creates a new system in which a certification program is not considered approved by FRA until the agency issues an approval letter to the railroad or parent company. Contrary to AAR and ASLRRA's comment, FRA will not *arbitrarily* hold railroads in limbo for an indefinite period of time. FRA will make every effort to meet its goal of issuing a decision on a program within 120 days of submission. (This

³² *Brotherhood of Locomotive Engineers & Trainmen v. Fed. R.R. Admin.*, 972 F.3d 82, 115 (D.C. Cir. 2020).

³³ *Brotherhood of Locomotive Engineers & Trainmen*, 972 F.3d at 116-17.

³⁴ *Brotherhood of Locomotive Engineers & Trainmen*, 972 F.3d at 117.

goal was 90 days in the NPRM.) However, as noted above, FRA is extending the comment period on signal employee certification programs to 60 days in this final rule. Accordingly, 120 days for FRA to complete its review of these programs is a more realistic goal. As FRA acknowledged in the NPRM, meeting this goal will not always be feasible and will be especially difficult during the initial implementation of this rule when FRA will receive several programs to review at the same time. During this time, railroads will be able to continue to operate as they did before this rule went into effect so it is unclear how railroads will be harmed by such delays.

Paragraph (g) of this section addresses the process for railroads and parent companies that wish to make a material modification to their previously approved programs. AAR and ASLRRA assert that the definition of “material modification” in paragraph (g)(1) of this section is vague and should be revised to avoid stifling innovations in safety systems. In particular, AAR and ASLRRA recommend that FRA “allow railroads to use different delivery methods and to incorporate new technology without treating those changes as material modifications.” AAR and ASLRRA also contend that FRA should limit material modifications to significant content-based changes that are likely to impact safety, as opposed to treating edits to test questions, structure, and timelines as material modifications.³⁵

However, the term “material modification” is intended to cover any change in an approved certification program that significantly affects the certification process. This may include alterations to the training curriculum; modifications to testing or assessment methods; changes to the duration of the program or program components (such as training); changes to the number of test questions or the scoring system; or any other change that would substantially impact the way signal employees are trained, evaluated, and certified. It is vital that FRA and stakeholders have the opportunity to review these

³⁵ FRA-2022-0020-0035.

proposed changes to a certification program to ensure they align with the overall goals of maintaining safety and compliance.

There are significant safety concerns at play when incorporating new technologies. If new technologies do not receive an appropriate level of oversight, safety risks can be introduced into the system which could also undermine public confidence in railroad safety. Therefore, FRA and stakeholders must be engaged in the review of modifications to certification programs as provided in paragraph (g) of this section. Railroads and parent companies should not introduce new signal technologies without considering them to be material modifications to their signal employee certification programs.

Paragraph (h) of this section describes the process to resubmit a program or material modification that was previously disapproved by FRA. TTD expressed support for paragraph (h)(3) of this section which states that railroads with operational signal systems as of the effective date of this final rule must resubmit their certification program within 30 days, if notified by FRA that their program has been disapproved. TTD cited to instances of railroads not bringing their certification programs into compliance with parts 240 and 242 of this chapter, specifically referencing recent accidents involving Norfolk Southern Railway Company as support for their position. TTD also recommended that FRA amend this section to authorize the issuance of fines against railroads that “repeatedly are not compliant with the certification requirements.”³⁶ FRA appreciates TTD’s comment; however, such an amendment is unnecessary, as § 246.11 authorizes FRA to issue civil penalties for violations of this part. FRA will publish a civil penalty schedule for this part on its website.

Section 246.105 Implementation Schedule for Certification Programs

³⁶ FRA-2022-0020-0032, p.8.

This section, derived from 49 CFR 240.201 and 242.105, contains the timetable for implementation of this final rule. APTA commented that railroads should be allowed to designate individuals who are in an initial training program when this rule goes into effect so that they can become certified signal employees upon completion of the training program. APTA contends that implementing certification requirements in the middle of a training program would be disruptive to the participants and instructors.

In response to APTA's comment, paragraph (d) of this section allows railroads to continue to designate as certified signal employees those individuals who have been authorized by the railroad to perform the duties of a signal employee until FRA approves the railroad's certification program. Therefore, railroads will be able to continue to designate individuals as certified signal employees for several months after the effective date of this rule, which should include any person who is in a signal employee training program on the effective date of this rule. However, railroads will no longer be able to designate persons as certified signal employees under paragraph (d) once FRA approves the railroad's program. FRA understands that some individuals will likely be in the middle of a training program when this occurs, but railroads will have several months to prepare for this occurrence and to figure out the best way to minimize any disruption.

FRA is revising paragraph (d) from the proposed rule to clarify that railroads are only allowed to "designate" persons as certified signal employees in accordance with paragraph (d) between **[INSERT DATE 300 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** and the date FRA approves the railroad's certification program. Once FRA approves a railroad's certification program, the designation system described in paragraph (d) will no longer be allowed and individuals will be required to obtain certification pursuant to the railroad's certification program.

AAR and ASLRRA submitted comments recommending that FRA create an exception for circumstances in which non-certified railroad employees perform minor or routine corrections to signal systems. In support of this recommendation, AAR and ASLRRA pointed to circumstances in which maintenance of way personnel are tasked with disabling signals. AAR and ASLRRA assert that activities of this nature should not require signal employee certification.

FRA would like to clarify that tasks associated with disabling signal systems, which are performed outside the signal bungalow, are not considered to be signal covered service for purposes of the Federal hours of service law. Therefore, maintenance of way employees engaged in tasks performed outside the signal bungalow to disable the signal system are not considered to be performing signal system work that requires signal employee certification. However, tasks associated with disabling signal systems that are performed inside the signal bungalow are considered to be signal covered service under the Federal hours of service law and, therefore, signal system work that requires signal employee certification pursuant to this part.

To address the issue of designated signal employees who will be eligible to retire within three years of the date FRA approves their railroad's certification program, paragraphs (f)(1) through (3) allow signal employees who are eligible to receive a retirement pension to submit a request to their railroad that they not be certified, in accordance subpart B of this part, until three years from the date FRA approves the railroad's program.

AAR and ASLRRA recommended, however, that FRA eliminate paragraphs (f)(1) through (3), as they contend these provisions are contrary to FRA's safety rationale for this rule and would allow a signal employee to forego certification for up to six years. AAR and ASLRRA also assert that these provisions will be burdensome on railroads, as

they will have to keep track of a special category of employees and establish special protocols for them.

However, after considering those comments, FRA is retaining paragraphs (f)(1) through (3) in this final rule. These paragraphs simply allow signal employees who meet the requirements of paragraph (f)(1) to request that their employing railroad not make them go through the full certification process until their designated certification expires (three years after FRA approves the railroad's certification program). From FRA's perspective, it does not appear to be an efficient use of railroad resources to require designated signal employees who are going to retire before the end of their designation period to complete the full certification process. However, except as provided in paragraph (f)(2), railroads are not required to grant these requests. Paragraph (f)(2) of this section states that, if a railroad grants *any* such request, the railroad must grant all other requests from eligible persons "to every extent possible." In addition, this paragraph does not create a loophole where a signal employee could continue to work on railroad signal systems and signal-related technology for up to six years without a mentor and forego certification. Paragraph (f) plainly states that no person shall be allowed to perform service as a certified signal employee more than three years after their railroad's certification program is approved by FRA without being tested and evaluated in accordance with procedures that comply with subpart B of this part.

Section 246.106 Requirements for Certification Programs

This section contains the organizational requirements and a narrative description of what must be included in a railroad's (or parent company's) certification program. This section has been revised in the final rule to address the submission of certification programs by parent companies. The International Transportation Learning Center (ITLC) submitted comments recommending that FRA authorize the use of model signal employee certification programs, which could be transferable between railroads. FRA

anticipates that a non-profit industry association will likely develop a model signal employee certification program template, which can be adopted for use by Class III railroads. However, after considering ITLC's comment, FRA has decided to authorize the submission of signal employee certification programs by parent companies on behalf of one or more of their subsidiary railroads. Therefore, the requirements in this part that apply to railroads subject to this part also apply to parent companies who submit signal employee certification programs to FRA for approval on behalf of one or more of their subsidiary railroads.

Paragraph (a) of this section addresses what must be included in a certification program submission to FRA. The railroad or parent company must include two documents in its submission: (1) a request for FRA approval; and (2) the certification program. If a railroad is submitting its initial certification program, the request for FRA approval can be a brief document that simply states the railroad is submitting its initial signal employee certification program to FRA for approval. However, if a parent company is submitting a certification program on behalf of one or more of its subsidiary railroads, the parent company must provide a list of the railroads that will utilize the certification program. Also, as stated in paragraph (a)(1)(iii), by submitting a certification program on behalf of one or more subsidiary railroads, the parent company assumes responsibility for compliance with this part for all railroads identified on its list that will utilize the parent company's certification program.

If a railroad or parent company would like to make a material modification to a signal employee certification program that has previously been approved by FRA, the request for FRA approval must include a copy of the modified certification program that identifies all of the proposed changes from the last FRA-approved version of the program.

Paragraph (b) of this section requires that signal employee certification programs identify the appropriate person to be contacted in the event FRA needs to discuss an aspect of the railroad's program. Paragraph (b)(1) also requires that railroads (and parent companies, if applicable) submit a statement electing either to accept responsibility for training persons not previously certified as signal employees ("initial signal employee training") or to not accept this responsibility.

If the railroad or parent company elects to not accept responsibility for providing initial signal employee training, the railroad or parent company will be limited to certifying signal employees previously certified by another railroad. Prior to certifying these signal employees, however, the railroad or parent company is required by § 246.125 to determine that the signal employee: (a) is qualified on the signal system equipment and signal-related technology deployed on the railroad territory where the signal employee is expected to work; and (b) has demonstrated sufficient knowledge of the certifying railroad or parent company's signal standards, test procedures, and instructions for the installation, operation, testing, maintenance, troubleshooting, and repair of the certifying railroad or parent company's signal system equipment and signal-related technology.

On the other hand, if the railroad or parent company elects to accept responsibility for providing initial signal employee training to persons not previously certified as signal employees, paragraph (b)(1)(iii) requires the railroad or parent company to submit information in their certification program explaining how such persons will be trained. The railroad or parent company has two options. The first option is to provide training through a program developed by the railroad or through a training program adopted by the railroad. The second option is to authorize another railroad or non-railroad entity (which may include a railroad association or rail-labor organization) to provide training. However, if the railroad or parent company chooses the second option, the railroad or

parent company will be responsible for ensuring that the training provider adheres to the training program submitted in the railroad or parent company's FRA-approved certification program. A railroad or parent company that chooses to authorize another railroad or non-railroad entity to provide the training must also provide the name of the training provider in its certification program.

For railroads and parent companies that elect to classify their certified signal employees into more than one occupational category or subcategory by class, task, location, or other suitable terminology, paragraph (b)(1)(iv) requires the railroad or parent company to provide detailed information about each occupational category (and subcategory, if applicable) of certified signal employee service in Section One of its certification program.

Paragraph (b)(2) requires railroads (and parent companies, if applicable) to address in Section Two of their certification programs how they will provide training for previously certified signal employees. A matter of particular concern to FRA is how each railroad will ensure previously certified signal employees receive sufficient training on the signal systems and signal-related technology deployed on the railroad's territory. Railroads have the latitude to select the specific subject matters to be covered, the duration of continuing education sessions, the methods of presenting the information, and the frequency with which continuing education will be provided. However, railroads (and parent companies, if applicable) must describe in this section how they will ensure their certified signal employees maintain the necessary knowledge and skills and receive up-to-date and comprehensive training on their signal system equipment and signal-related technology (including new or modified equipment and software modifications) so as to ensure their certified signal employees are qualified on the equipment and technology and compliant with the training standards set forth in § 246.119.

Time and circumstances can diminish both abstract knowledge and the proper application of that knowledge to discrete events. Time and circumstances can also alter the value of previously obtained knowledge and the application of that knowledge. Therefore, certified signal employees also need to have their fundamental knowledge of applicable Federal railroad safety laws and regulations, as well as railroad signal system safety rules and practices, refreshed periodically. Therefore, railroads (and parent companies, if applicable) must also describe in Section Two how they will ensure their certified signal employees remain knowledgeable about the safe discharge of their responsibilities, in accordance with § 246.119. In addition, railroads (and parent companies, if applicable) must explain in Section Two how training will be administered for previously certified signal employees who have had their certification expire. (This requirement was included in § 246.125(b) in the NPRM.) If the railroad or parent company fails to address in Section Two of its certification program how training will be administered to these signal employees, the railroad or parent company must require completion of its entire training program by previously certified signal employees who have had their certification expire.

Section Three of the certification program must address requirements for the testing and evaluation of previously certified signal employees. Paragraph (b)(3)(i) requires railroads (and parent companies, if applicable) to address how their certification programs will comply with the standards found in § 246.121. Section 246.121 requires railroads to employ a written or electronic test containing objective questions that address the following subject matters: (i) compliance with all applicable Federal railroad safety laws, regulations, and orders governing signal systems and signal-related technology; (ii) compliance with all applicable railroad safety and operating rules; and (iii) compliance with all applicable railroad standards, procedures, and instructions for the installation, operation, testing, maintenance, troubleshooting, and repair of the railroad's signal

systems and related technology. In addition, the test must include a practical demonstration component. Paragraph (b)(3)(ii) requires railroads (and parent companies, if applicable) to explain their procedures for testing visual and hearing acuity and for ensuring that their medical examiners have sufficient information to make determinations on whether candidates for signal employee certification or recertification can safely work as certified signal employees.

Section Four of the certification program addresses the requirements for training, testing, and evaluating persons not previously certified as signal employees. Railroads and parent companies that elect, in Section One of the certification program, to not accept responsibility for providing initial signal employee training can skip this section.

Paragraph (b)(4) requires railroads and parent companies that elect to provide training to persons who have not been previously certified as signal employees to provide details in Section Four of their certification programs on how they will train, test, and evaluate these individuals to ensure they acquire and demonstrate sufficient knowledge and skills to safely perform the job of a certified signal employee.

Railroads and parent companies can authorize non-railroad entities (including signal contractors) to provide the required training. Railroads and parent companies that choose to authorize non-railroad entities to provide the required training will likely find that most, if not all, existing signal employee training programs approved by FRA pursuant to part 243 of this chapter will need to be revised to comply with the additional training and knowledge testing requirements in this part that specifically apply to signal employees.

Railroads (and parent companies, if applicable) are also required by paragraph (b)(4)(iv) to explain how training will be administered to previously uncertified signal employees who have extensive signal experience. This requirement was previously contained in § 246.125(b) in the proposed rule. If a railroad or parent company elects to

provide training to persons who have not been previously certified as signal employees, but fails to specify how it will train these signal employees, the railroad or parent company must require previously uncertified signal employees with extensive signal experience to complete its entire training program.

Paragraph (b)(5) requires railroads (and parent companies, if applicable) to discuss in Section Five of their certification programs how they monitor the operational performance of their certified signal employees in accordance with § 246.123. In particular, the railroad or parent company must discuss the processes and procedures it will use for ensuring that such monitoring and testing is performed. This must include a description of the scoring system the railroad or parent company will employ during monitoring observations and unannounced tests.

Finally, paragraph (b)(6) requires Section Six of a railroad or parent company's certification program to address how the railroad or parent company will perform routine administration of the program. This section must include a summary of how the program will comply with each of the regulatory provisions listed in paragraph (b)(6).

Section 246.107 Signal Service Classifications

This section allows, but does not require, railroads to issue certificates for one or more occupational categories or subcategories of certified signal employee service. While some railroads with only one type of signal employee service might not have any interest in certifying multiple types of signal employee service, larger railroads that have already established multiple categories of signal employee service (such as signal maintainers, signal inspectors, locomotive signal/electrical technicians, etc.) on their territories may find it beneficial to issue certificates for multiple types of signal employee service. Therefore, by allowing railroads to classify their certified signal employees into multiple occupational categories or subcategories, railroads will have the flexibility to shape the structure of their certification programs to highlight the specific tasks and

responsibilities for each category and subcategory of certified signal employee working on their territories.

A railroad that classifies its certified signal employees into separate categories, such as signal maintainers, signal inspectors, and locomotive signal/electrical technicians, can issue specific certificates for each category of signal employee service. This section also permits railroads to certify signal employees for signal system work on specific railroad divisions or subdivisions, as opposed to issuing one universal signal employee certificate that would certify the signal employee to perform signal system work anywhere on the certifying railroad's territory. As further explained in the section-by-section analysis of § 246.106(b), railroads that choose to classify their certified signal employees into multiple occupational categories and subcategories are required by § 246.106(b)(1)(iv) to provide detailed information about each occupational category (and subcategory, if applicable) of its certified signal employees.

The Washington Utilities and Transportation Commission (UTC) recommended, in their comments, that FRA require railroads to have multiple classifications of signal employees. Noting that there are many technical differences in signal job categories, as well as varying signal employee experience and skill levels, UTC asserted that requiring signal employee classification will ensure signal employees are trained to work only on the signal system for which they are certified. FRA shares UTC's concern with railroad practices that result in signal employees working on signal systems on which they have not been sufficiently trained.

Accordingly, paragraph (b) of this section requires individuals to immediately notify the railroad (or their employer, if they are not employed by a railroad) if they are called to work on a signal system or signal-related technology on which they have not been certified. However, even more importantly, when notified that a person has been called to work on a signal system or signal-related technology on which they have not

been certified, paragraph (c) prohibits the railroad from requiring the person to work on the signal system or signal-related technology unless the person is allowed to work under the direct and immediate supervision of a mentor or qualified instructor in accordance with § 246.124. FRA believes these requirements, in addition to the overarching requirement that railroads develop signal employee certification programs with training, knowledge testing, and operational performance monitoring components for FRA approval, will address UTC's concern regarding signal employees who are instructed to work on signal systems on which the signal employee has not been sufficiently trained.

With respect to paragraph (c), BRS expressed concern that the wording in this paragraph may cause confusion. FRA has therefore revised paragraph (c) to provide clarification. After a railroad's signal employee certification program has been approved by FRA, paragraph (c) prohibits the railroad from requiring any person to work on a signal system or signal-related technology on which the person has not been certified and qualified, unless the person works under the direct and immediate supervision of a mentor or qualified instructor.

Section 246.109 Determinations Required for Certification and Recertification

This section lists the determinations that railroads are required to make when evaluating a candidate's eligibility to be certified or recertified as a signal employee. This section has been revised in the final rule by including a reference to the qualification requirements in § 246.120. An additional minor revision has also been made to replace the reference to "vision ... acuity standards" in paragraph (a)(3) of the NPRM with a reference to "visual ... acuity standards" in this final rule.

Section 246.111 Prior Safety Conduct as Motor Vehicle Operator

This section, derived from 49 CFR 240.111, 240.115, and 242.111, contains the requirements and procedures that railroads are required to follow when evaluating the motor vehicle driving records of a candidate for signal employee certification or

recertification. BRS, IBEW, and TTD submitted comments on this section expressing concern that a 60-day time period may not allow enough time to request and obtain driving records as part of the recertification process, due to administrative delays outside the recertification candidate's control. However, paragraph (c) requires candidates for signal employee recertification to request their driving records at least 60 days prior to the date on which their certification expires. Therefore, at least 120 days will elapse between the date on which candidates for recertification requests their driving records and the end of the 60-day period "grace period" authorized by paragraph (c). However, if a candidate for signal employee certification or recertification is unable to obtain their driving records, despite the grace period provided in paragraph (c), paragraph (e) authorizes either the railroad or the candidate for signal employee certification or recertification to submit a waiver petition for regulatory relief.

BRS and TTD recommended that FRA differentiate requirements for obtaining driving records based on the position a signal employee occupies and whether the signal employee is required to operate a motor vehicle. In addition to BRS and TTD, IBEW and NRC expressed concern that requiring railroads to include a review of driving records in their certification programs may inadvertently result in barring certified signal employees and otherwise perfect candidates for signal employee certification who have unsatisfactory driving records from obtaining signal employee certification and recertification.

The intent of this section is not to ensure that every certified signal employee can operate company vehicles, if required to do so. Instead, the intent of this section is to obtain and review motor vehicle records to identify candidates for signal employee certification and recertification who have either been convicted of (or subject to the cancellation, revocation, suspension, or denial of a motor vehicle driver's license for) operating a motor vehicle while under the influence of, or impairment by, alcohol or a

controlled substance. By identifying these individuals, they can be referred for evaluation (and potentially treatment) for an active substance abuse disorder, given the safety sensitive nature of certified signal employee work on railroad signal systems and other signal-related technology. Accordingly, as explained in paragraph (m) of this section, the only motor vehicle incidents railroads may consider are related to being under the influence of, or impaired by, alcohol or a controlled substance. This means railroads are not allowed to consider a person's speeding violations or other aspects of their motor vehicle driving record that are not related to alcohol or drug use when making a determination for signal employee certification.

In the NPRM, paragraph (h)(2) of this section required all persons seeking certification or recertification to request driving records from the chief of the driver licensing agency of any jurisdiction, including states or foreign countries, that issued or reissued that person a driver's license in the past five years. This paragraph mirrored 49 CFR 240.111(c)(2).³⁷ However, FRA determined that a five-year lookback period was unnecessary in this final rule because paragraph (l)(2) of this section only allows railroads to consider motor vehicle driving incidents that occurred within the three years prior to the date of the railroad's certification decision. Thus, FRA changed the lookback period to three years. Furthermore, rather than focusing on when a jurisdiction *issued* or *reissued* a driver's license, FRA thinks the more appropriate inquiry is whether a person *held* a driver's license from the jurisdiction within the previous three years. Therefore, this paragraph has been revised in accordance with these changes.

Paragraph (k) of this section requires certified signal employees and candidates seeking signal employee certification to notify their certifying railroad of motor vehicle incidents described in paragraphs (m)(1) and (2) (i.e., drug and alcohol offenses) of this

³⁷ The Rail Safety Improvement Act of 1998 required the five-year lookback period for persons seeking locomotive engineer certification. Pub. L. 100-342, sec. 4, 102 Stat. 624, 625 (1988). However, no such requirement applies to this rule.

section within 48 hours of conviction or completed state action to cancel, revoke, suspend, or deny the employee or candidate's motor vehicle driver's license for operating a motor vehicle while under the influence of, or impairment by, alcohol or a controlled substance or refusal to undergo such testing. Paragraph (k) also provides that, for purposes of signal employee certification, a railroad cannot have a more restrictive company rule requiring a signal employee to report a conviction or completed state action to cancel, revoke, suspend, or deny a motor vehicle driver's license in less than 48 hours. AAR and ASLRRA criticized the language in this provision that precludes railroads from having more restrictive company rules requiring signal employees to report a conviction or completed State action to cancel, revoke, or deny a motor vehicle driver's license in less than 48 hours. AAR and ASLRRA assert that, as a practical matter, railroads should be able to request notification in less than 48 hours as a matter of company policy if they determine notification is in the safety interest of the railroad. AAR and ASLRRA further assert that they could easily envision a scenario where safety would be decreased because an employee takes advantage of the 48-hour grace period after being convicted to delay notification. After considering these concerns, FRA is declining to adopt this requested change. By keeping this requirement in paragraph (k), a railroad cannot revoke, deny, or otherwise make a person ineligible for certification until that person has received due process from the state agency taking action against their motor vehicle driver's license. However, this 48-hour restriction only applies to actions taken against a person's signal employee certification and has no effect on a person's right to be employed by that railroad. By keeping this restriction, paragraph (k) maintains conformity with 49 CFR 240.111(h) and 242.111(l).³⁸

³⁸ This issue was also addressed and discussed 25 years ago when FRA was amending its locomotive engineer certification rule. *See* 63 FR 50626, 50639 (Sept. 22, 1998).

Paragraph (l) of this section prohibits railroads from considering motor vehicle driving incidents that occurred prior to the effective date of this rule or more than three years before the date of the railroad's certification decision. AAR and ASLRRA commented that there is no safety reason to limit the review of motor vehicle records to three years as this limitation makes it difficult to establish a pattern of safety abuses.

However, the three-year limit on motor vehicle driving records that can be reviewed for purposes of this rule is based on practical considerations. The three-year limit in paragraph (l) is intended to be consistent with minimum record retention practices of state driver licensing agencies. The three-year limit is also consistent with 49 CFR parts 240 and 242.

With respect to FRA's decision to prohibit railroads from considering safety conduct that occurred prior to the effective date of this rule, FRA is guided both by fairness and by the law. While retroactive effects are not completely prohibited by the Administrative Procedure Act, the U.S. Supreme Court has stated that "[r]etroactivity is not favored in the law."³⁹ Moreover, even if there were a substantial justification for the retroactive application of a rulemaking, "courts should be reluctant to find such authority absent an express statutory grant."⁴⁰ Given that there is no express statutory grant of authority for this rule to have retroactive effects, FRA has decided not to allow railroads to consider safety conduct that occurred prior to the effective date of this rule.

Section 246.117 Visual Acuity

This section, derived from 49 CFR 240.121, 240.207, and 242.117, contains requirements for visual acuity testing that railroads must incorporate in their signal employee certification programs. As an initial matter, in the NPRM, FRA used the terms "visual acuity" and "vision acuity." In the interest of consistency, FRA is using the term

³⁹ *Bowen v. Georgetown University Hosp.*, 488 U.S. 204, 208 (1988).

⁴⁰ *Bowen*, 488 U.S. at 208-09.

“visual acuity” throughout this final rule, which includes changing the title of this section to “visual acuity.”⁴¹

FRA solicited comments in the NPRM on whether visual acuity standards are necessary for certified signal employees and if so, whether they should be as stringent as existing standards for locomotive engineers and conductors. Multiple comments were submitted, including comments from labor organizations and railroad industry associations. Most commenters, including BRS and TTD, expressed support for requiring individuals to meet the distant visual acuity standard of at least 20/40 (Snellen) in each eye when initially hired to work as a signal employee. Noting that vision and hearing standards are critical to job performance, NRC commented that the visual and hearing acuity standards for certified signal employees should be the same as FRA’s visual and hearing acuity standards for certified locomotive engineers and conductors.

In contrast, AAR and ASLRRA submitted comments urging FRA to consider whether the visual acuity requirements are tailored to the work performed by signal employees. AAR and ASLRRA recommended that, prior to implementing visual and hearing acuity requirements, FRA should analyze the components of a signal employee’s duties and address how particular visual and hearing acuity requirements impact the ability of signal employees to safely perform their work.

In response to these comments, FRA closely reviewed the tasks performed by signal employees and determined that a signal employee’s visual acuity is a critical component of a signal employee’s roles and responsibilities. In recent years the equipment on which signal employees work has significantly evolved. Historically, employees were required to interpret circuit plans, manuals, railroad standards, relay

⁴¹ “Visual acuity” appears to be the term used in the medical field. *See* Visual Acuity, American Optometric Association, found at <https://www.aoa.org/healthy-eyes/vision-and-vision-correction/visual-acuity?sso=y>.

positions, and the color of signals. North American signals generally fall into three categories of multi-head electrically lit units. These are the searchlight, color light, position light/color position light. Each of these units requires a colored lens or roundel to be installed in front of the light. Visual acuity is therefore critical to a person performing signal employee work. Being able to distinguish the color of signal lenses/roundels utilized in the industry signals is critical to ensure the correct signal aspect is presented as intended to the train crew. In the past, the color of a signal lens/roundel was often embossed on the lens itself, which helped signal employees ensure the correct lens was placed in the proper position within a signal head. However, some lenses/roundels are not marked in a manner to indicate their color. So, it is incumbent on the signal employee installing the lenses/roundels to be able to distinguish its color.

With the introduction of light emitting diodes (LED), a signal employee must be able to distinguish the actual color the LED emits. When testing, this must be accomplished a significant distance away from the signal. LED technology also allows a signal head to display a variety of signal colors. Therefore, it is critical for signal employees to distinguish the color of signals and not simply the position of the signal head being lit. When testing earlier versions of signals or the current LED versions, this must be accomplished a significant distance away from the signal.

With the introduction of microprocessor equipment, signal employees need to see the position of micro-switches and the color of micro-indicators located on circuit boards. These items, which are often very small (sometimes less than an 1/8-inch in size), are prevalent on microprocessor equipment used within both signal and highway-rail grade crossing warning systems. In addition, signal employees need to be able to distinguish the correct color of proposed circuit changes on circuit plans. Proposed circuit changes are often indicated by lines of different colors on a circuit plan.

Therefore, after taking a closer look at the safety-sensitive tasks performed by signal employees, FRA decided to retain the visual acuity standards proposed in the NPRM. These visual acuity standards are consistent with the visual acuity standards for other modal professionals throughout the transportation industry, such as air traffic controllers and pilots.⁴²

FRA also received comments that were critical of FRA's proposal in paragraph (b)(3) in the proposed rule to periodically test signal employees seeking recertification on their ability to recognize and distinguish between the colors of railroad signals. BRS explained that after the first year of employment, the emphasis on color distinction becomes less relevant. BRS asserted that signal workers quickly become familiar with blueprints, enabling them to determine the intended aspect to be illuminated without solely relying on color identification. IBEW expressed concern that FRA's proposal to test both initial hires and signal employees seeking recertification on their ability to recognize and distinguish between the colors of railroad signals would unnecessarily penalize and disqualify signal workers who are colorblind.

To accommodate signal employees who develop color vision deficiencies during the course of their employment, BRS, IBEW, and TTD recommended that FRA establish an alternative assessment. More specifically, BRS and TTD recommended FRA establish an alternative assessment that evaluates an employee's knowledge of signal aspects and their ability to interpret blueprints accurately to help ensure railroads retain a skilled signal workforce.

FRA acknowledges that some individuals may not be able to meet the threshold visual acuity standards in this section but may be able to compensate in other ways that will allow them to safely perform their duties as a certified signal employee. However,

⁴² 14 CFR 67.303.

FRA has determined that the flexibility afforded by paragraph (d) of this section is preferable to establishing an alternative assessment.

Paragraph (d) of this section permits a railroad to have procedures whereby doctors can evaluate individuals who cannot meet the threshold visual acuity standards in this section and make discrete determinations about the individual's ability to compensate in ways that will allow them to safely perform their tasks as a signal employee. If the railroad's medical examiner concludes that the individual could safely serve as a certified signal employee, the railroad can certify that person after the railroad obtains the medical examiner's professional medical opinion to that effect. If necessary, medical examiners can condition their opinion on certain circumstances or restrictions, such as the use of corrective lens.

APTA expressed support for the flexibility provided by paragraph (d) and asserted this flexibility should be maintained so that signal employees who have the ability to recognize and distinguish the different aspects of railroad signals can remain eligible for certification. While IBEW expressed concern that paragraph (d) gives too much discretion to railroad medical examiners, FRA disagrees. Whether a person meets the standards for visual acuity in this final rule is a medical determination. Therefore, it is appropriate for a medical professional to determine whether a person can safely perform as a certified signal employee. Second, a medical examiner will only exercise discretion pursuant to this section if a person does not satisfy the objective visual acuity criteria in paragraph (c) of this section. Finally, railroad medical examiners have been handling these issues for over 30 years for locomotive engineer certification and for over 10 years for conductor certification. To date, FRA is unaware of any significant problems involving the exercise of this discretion.

Section 246.118 Hearing Acuity

This section, derived from 49 CFR 240.121, 240.207, and 242.117, contains requirements for hearing acuity testing that railroads must incorporate in their signal employee certification programs.

Paragraph (c) of this section contains the general hearing standards that a person must satisfy to be certified as a signal employee unless they are determined to have sufficient hearing acuity under paragraph (d) of this section. The standards in paragraph (c) mirror the hearing acuity standards for locomotive engineers and conductors in 49 CFR parts 240 and 242.

In the proposed rule, FRA solicited comments on whether hearing acuity standards are necessary for certified signal employees and if so, whether they should be as strict as the standards for locomotive engineers and conductors. FRA received a range of comments in response to these questions. BRS noted in their comments that railroaders encounter high noise levels during their day-to-day work, due to a variety of sources of noise in their work environment, including locomotive engines, train horns, heavy equipment operations, and rail grinding. While the use of earplugs is common practice to mitigate noise exposure, BRS asserted that earplugs can only provide a certain level of protection against hearing loss throughout a railroader's career. Accordingly, BRS acknowledged the value of hearing acuity tests for monitoring and detecting hearing loss.

BRS and IBEW contended, however, that hearing acuity tests should be limited to testing candidates for signal employee certification and recertification to verify that they can accurately differentiate important auditory cues or signals. In addition, IBEW expressed concern that this section gives too much discretion to railroad medical examiners. On the other hand, NRC contended that vision and hearing standards are critical to job performance. NRC commented that the visual and hearing acuity standards

for certified signal employees should be the same as FRA’s visual and hearing acuity standards for certified locomotive engineers and conductors.

AAR and ASLRRA recommended that FRA consider whether the hearing acuity requirements are tailored to the work performed by signal employees. AAR and ASLRRA also asserted that, prior to implementing vision and hearing requirements, “FRA needs to analyze the components of a signal employee’s duties and address how particular vision and [hearing] acuity requirements impact the ability of signal employees to safely perform their work.”⁴³

Given the range of comments on this issue, FRA closely reviewed the tasks performed by signal employees and determined that a signal employee’s hearing acuity is critical to their personal safety and the safety of others. A signal employee must be able to communicate with a dispatcher to ensure on-track safety has been properly established for themselves or others. Signal employees often rely on the sound of a locomotive horn when they utilize train approach warning as a form of protection for tasks that are performed near the track. On-track safety is a key item covered in the required job briefings. Signal employees must be able to understand the job briefing prior to fouling the track.

Signal employees must also communicate safety sensitive instructions to the dispatcher to obtain protection for defective signal system equipment, such as a stop and flag order to protect a malfunctioning highway-rail grade crossing warning system. In addition, signal employees need to hear other signal employees when they perform signal tests. Employees are often called upon to call out signal aspects while locking tests are performed. With the evolution of microprocessor equipment, signal employees also need to be able to hear the distinct codes being transmitted by the equipment, such as micro-

⁴³ FRA-2022-0020-0035, pp. 28-29.

lock or electrocode. Signal employees listen for unusual sounds while inspecting signal system equipment, such as switch machines and gate mechanisms, as such sounds can indicate a need for additional investigation or maintenance.

FRA acknowledges that some individuals may not be able to meet the threshold hearing acuity standards in this section but may be able to compensate in other ways that will allow them to safely perform their duties as a certified signal employee. However, FRA has determined that the flexibility afforded by paragraph (d) of this section is preferable to limiting hearing acuity tests to verifying that the individual can accurately differentiate between auditory cues or signals.

Therefore, after close review of the safety-sensitive tasks performed by signal employees, FRA decided to retain the hearing acuity standards proposed in the NPRM. For the reasons explained in the section-by-section analysis for § 246.117 above, FRA does not share IBEW's concern that this section gives too much discretion to a railroad medical examiner.

Section 246.119 Training Requirements

This section requires railroads to provide initial, periodic, and qualification training to certified signal employees. Such training is necessary to ensure certified signal employees have the knowledge, skills, and abilities necessary to safely perform all of the safety-related duties mandated by Federal law, regulations, and orders.

As an initial matter, FRA deleted paragraph (b) of this section in the proposed rule. In the proposed rule, paragraph (b) would have required the railroad to state in its certification program whether the railroad elects to accept responsibility for training persons who have not been previously certified as signal employees or only certify persons who have been previously certified by other railroads. FRA removed this language from this section because it is duplicative of what is already required under § 246.106(b)(1). Accordingly, paragraph (b) in this final rule focuses on training

requirements that apply to railroads or parent companies that elect to accept responsibility for training persons who have not been previously certified as signal employees.

NRC commented that FRA should set minimum standards for training program design and issue those standards in a circular or other supplemental guidance. However, FRA does not plan to issue a circular or supplemental guidance (such as an appendix to this part) at this time because § 246.106 addresses NRC's concern. Section 246.106, which is derived from appendix B to part 240 and appendix B to part 242, provides railroads with more information on how to design and structure their programs. Section 246.106 provides a description of what information should be included in each section of the program. FRA has found through its experience with locomotive engineer and conductor certification that issuing a separate circular or appendix is unnecessary as railroads can look to the appendices in parts 240 and 242 for guidance on how to satisfy the requirements of those rules. Thus, FRA does not see a need for issuing a separate circular or appendix with respect to signal employee certification.

If a railroad (or parent company) accepts responsibility for training persons who have not been previously certified as signal employees, paragraph (b) of this section requires the railroad or parent company to state in its certification program whether it will conduct the training or whether it will authorize a third party to provide the training on its behalf.

This section gives railroads (and parent companies, if applicable) the latitude to design and develop the training and delivery methods they will employ. Pursuant to paragraph (c), a railroad or parent company that elects to accept responsibility for training persons who have not been previously certified as signal employees is required to explain how training will be structured, developed, and delivered, including an appropriate combination of classroom, simulator, computer-based, correspondence, practical demonstration, on-the-job training, or other formal training. Paragraph (c)(3) also

requires railroads (and parent companies, if applicable) to review and modify their training programs whenever new safety-related railroad laws, regulations, orders, and procedures are issued, as well as whenever new signal system equipment or signal-related technology are introduced into the workplace.

TTD submitted comments expressing concern that many railroads are not providing an acceptable level of training to employees. IBEW expressed a similar concern and asserted that § 246.125 allows one railroad to rely upon a signal employee's certification awarded by another railroad. Accordingly, IBEW recommended that FRA require 160 hours of on-the-job training, at least half of which should be in the field.

FRA acknowledges these concerns and suggestions and is taking this opportunity to clarify some of the requirements of this subpart. FRA agrees that recent industry trends have resulted in declining quality and/or quantity of training and testing, a concern FRA has voiced to the industry on multiple occasions including recent disapproval of conductor certification programs. These instances reveal that some railroads have misinterpreted the discretion provided to them in parts 240 and 242 as permission to submit certification programs that are sparse on details. Such railroads are mistaken as to what is required under parts 240 and 242, and FRA audits have highlighted significant issues with these programs and underscored the critical need for railroads to provide detailed and comprehensive submissions.

While FRA believes railroads should be provided some flexibility in the design of their certification programs to address specific signal-related risks and unique needs, FRA's review and approval process outlined in § 246.103 is meant to ensure that railroads do not abuse this discretion with respect to their signal employee certification programs. This rule requires a railroad to document the details of its training and testing program and § 246.106 mandates that each certification program include sufficient detail

for effective evaluation. FRA will disapprove programs that are vague or insufficiently detailed, in accordance with § 246.103(f)(2).

While every railroad is different and the training needed to be certified signal employee for a Class I railroad may vary significantly from the training needed to be a certified signal employee for a short line railroad, FRA will review each signal employee certification program and determine, on a case-by-case basis, whether the program contains sufficient on-the-job training. Railroads are required to provide enough detail in their certification programs to allow for effective evaluation of the training that will be provided (including on-the-job training) to ensure that their certified signal employees can safely perform their assigned duties.

Also, as will be discussed further in the section-by-section analysis of § 246.125, this final rule does not allow railroads to rely completely on the signal employee certification awarded by another railroad. Each railroad is required to certify the signal employees who will be working on their signal systems and signal-related technology (or require that non-certified persons perform work on their signal systems and signal-related technology under the direct and immediate supervision of a mentor).

Paragraph (e) of this section contains the requirements a person, not previously certified as a signal employee, has to satisfy in order to become a certified signal employee. Paragraph (e)(2) states that the person must successfully complete on-the-job training and demonstrate on-the-job proficiency by successfully completing the tasks and using the signal system equipment and signal-related technology necessary to be a certified signal employee on the certifying railroad. The paragraph has been revised in this final rule to clarify that, if the railroad has elected to classify its certified signal employees into more than one occupational category or subcategory, the person must successfully complete the tasks applicable to the signal employee occupational category or subcategory in which the person is seeking to be certified.

NRC asked for clarification on whether railroads that accept responsibility for providing initial signal employee training are required by paragraph (e) to structure their training programs to ensure candidates for initial signal employee certification demonstrate on-the-job proficiency using wayside signal equipment, as well as signal technology in the operations control center. However, the type of equipment used by candidates for initial signal employee certification to demonstrate on-the-job proficiency will vary depending upon the nature of the work each candidate will be assigned to perform. As discussed earlier, FRA considers individuals who maintain signal technology in the operations control center (such as electronic control system technicians and CTC maintainers) to be signal employees for purposes of this part. Therefore, FRA expects that railroads who accept responsibility for providing initial signal employee training and have employees or contractors maintain signal technology in their operations control centers will require candidates for signal employee certification to demonstrate on-the-job proficiency using signal technology in the operations control center if there is a reasonable possibility that the candidate may be assigned to work there.

Paragraph (g) requires railroads, regardless of their election in paragraph (b) of this section, to provide comprehensive training on the installation, operation, testing, maintenance, and repair of the signal systems and signal-related technology deployed on their territory. This training must include training on both signal software and signal equipment. To implement this requirement, paragraph (g) requires railroads to address in their certification program how such training will be provided and how the railroad will ensure that each certified signal employee is qualified on the signal system equipment and signal-related technology deployed on the railroad's territory before the employee is required to install, operate, test, maintain, or repair that equipment or technology.

UTC staff and NRC expressed support for this requirement in their comments on the proposed rule. UTC staff contended that comprehensive training should include all

new and existing signal systems and signal-related technologies. NRC recommended that comprehensive training include common principles, in addition to the specifics of the equipment that the railroad's certified signal employees will work on. As reflected in this section, railroads must provide comprehensive training that includes detailed training on the specific signal system equipment and signal-related technology that the signal employee will be required to use, as well as detailed training on any new signal system equipment and signal-related technology that will be deployed on the railroad's territory before the employee is required to install, operate, test, maintain, or repair the equipment or technology.

NRC recommended that comprehensive training for certified signal employees include some level of design knowledge as a functional role. NRC also recommended that installation staff and maintenance staff not be trained on tasks that they will not perform as part of their job duties. While FRA agrees that it would be beneficial for certified signal employees to understand the functional role of the design of the signal systems and signal-related technology on which they are assigned to work, FRA has not incorporated this recommendation as an explicit requirement in this final rule. In addition, this rule allows railroads the flexibility to decide whether to classify their certified signal employees into multiple categories (and subcategories), as well as the flexibility to decide which tasks will be performed by their employees. Therefore, while FRA has not included a regulatory provision that would prohibit railroads from training installation and maintenance staff on tasks they are unlikely to perform as part of their job duties, railroads are only required by § 246.119(g) to ensure that each certified signal employee is qualified on the signal system equipment and signal-related technology deployed on their territory before the certified signal employee is required to install, operate, test, maintain, or repair it.

Paragraph (g)(3) requires railroads to discuss, in their training programs, the maximum amount of time that a certified signal employee can be absent from performing work on signal systems or signal-related technology that requires certification before requalification will be required. This time period cannot exceed 12 months. However, railroads may choose a shorter time period if they desire.

IBEW commented on this provision in the proposed rule, recommending that FRA reduce the maximum period of time during which signal employees can be absent from performing safety-sensitive work on signal systems before refresher training will be required to six months. IBEW also recommended that FRA require railroads to provide 16 hours of on-the-job training, as part of the required refresher training. IBEW recommended that FRA increase the number of required hours of on-the-job training to 24 hours, if the signal employee is absent from performing safety-sensitive work for 12-23 months. In addition, for signal employees who are absent from performing safety-sensitive work for 24 months or more, IBEW recommended that FRA require recertification. FRA strongly recommends that railroads provide refresher on-the-job training to signal employees who fail to successfully complete the unannounced compliance test required by § 246.123 after returning to work on the railroad's signal systems and signal-related technology that requires certification. However, if a certified signal employee has not performed work on signal system equipment or signal-related technology that requires certification for more than 12 months, they will no longer be qualified on signal system equipment or signal-related technology as set forth in § 246.120(c). Therefore, when the certified signal employee returns to work on the railroad's signal systems and signal-related technology that requires certification, they will be required to work under the direct and immediate supervision of a mentor until they become qualified on signal system equipment and signal-related technology pursuant to § 246.106(b)(2)(v). In addition, railroads are required to submit their signal

employee certification programs to FRA for approval. Therefore, FRA will evaluate railroad plans to provide refresher training as discussed in their signal employee certification programs on a railroad-by-railroad basis.

Paragraph (h) of this section (which was paragraph (i) in the proposed rule) addresses transfers of railroad ownership. NRC commented on paragraph (i) in the proposed rule, and suggested that instead of saying signal employees of the acquiring company “may receive familiarization training” from the selling company, the paragraph should state that signal employees of the acquiring company “will receive training from the selling company”.⁴⁴ Whether a selling company will provide familiarization training to the acquiring company’s signal employees is, however, a decision that should be made by both parties. If FRA were to make the permissive language in this paragraph mandatory, it would essentially entangle itself in the contract negotiations between the two parties which is not FRA’s role. FRA’s main concern with respect to this issue is that the training is performed properly, not who performs the training. FRA does not see a compelling reason for mandating that the selling company provide this training and since NRC did not provide a rationale for this suggested change, FRA is not adopting this suggestion. By not adopting this suggestion, paragraph (h) in this final rule will remain consistent with the analogous provisions found at 49 CFR 240.123(d)(1) and 242.119(i).

NRC also contends paragraph (h) should apply when there is a change in the private operator of a commuter railroad. Since NRC did not provide a rationale for why such a change would be necessary or beneficial, FRA is not adopting this suggestion. However, FRA notes that in situations involving a change in the operator of a commuter railroad, there is nothing in part 246 that would prohibit the prior operator from providing familiarization training to the signal employees of the new operator.

⁴⁴ FRA-2022-0020-0027.

Paragraph (i) of this section requires each railroad to provide for the continuing education of its certified signal employees to ensure each certified signal employee maintains the necessary knowledge concerning compliance with all applicable Federal railroad safety laws, regulations, and orders; compliance with all applicable railroad safety and operating rules; and compliance with all applicable standards, procedures, and instructions for the installation, operation, testing, maintenance, troubleshooting, and repair of new and existing signal systems and new and existing signal-related technology deployed on its territory.

Section 246.120 Requirements for Qualification

Section 246.120 has been added to the final rule to clarify that railroads are required to provide sufficient training on the signal system equipment and signal-related technology that have been deployed on their territories to ensure their certified signal employees are qualified on the railroad's signal systems and signal-related technology, and, therefore, may reasonably be expected to be proficient on their operation and use. Prior to attaining qualification, all individuals assigned to work on the railroad's signal system equipment and signal-related technology are required by paragraph (a)(2) of this section to work under the direct and immediate supervision of a mentor or qualified instructor.

Section 246.121 Knowledge Testing

This section, derived from 49 CFR 240.125, 240.209, and 242.121, requires railroads to include procedures for the initial and periodic testing of certified signal employees in their certification programs. Paragraph (b) of this section outlines the general requirements for such testing. This testing must effectively examine a signal employee's knowledge of: (a) all applicable Federal railroad safety laws, regulations, and orders governing signal systems and signal-related technology; (b) all applicable railroad safety and operating rules; and (c) all applicable railroad standards, procedures, and

instructions for the installation, operation, testing, maintenance, troubleshooting, and repair of the railroad's signal systems and related technology.

With respect to written tests used by railroads to determine whether candidates for certification have sufficient knowledge of their signal systems and signal-related technology, BRS, ITLC and TTD recommended that FRA require railroads provide accommodations to employees who require them, including giving candidates for signal employee certification the option to request having the test questions read aloud to them. TTD also recommended that railroads be required to provide additional time to prepare, access to reference materials, and extended time for testing, to employees who require these accommodations. IBEW requested language advising that all employees subject to tests required by this part are covered by all applicable facets of the Americans with Disabilities Act (ADA).

In this subpart, FRA is establishing general parameters for the testing that must be conducted to determine whether candidates for certification have the skills and knowledge necessary to perform the tasks that are assigned to certified signal employees by the certifying railroad. FRA has determined that, in general, a person needs to be able to read and comprehend written instructions to safely perform the job of a certified signal employee. FRA is not, however, creating or administering the tests required by this part. Railroads continue to have the flexibility to determine how to develop and administer testing in accordance with Federal anti-discrimination laws, including Title I of the ADA. Therefore, FRA finds it unnecessary to include language in this final rule to remind railroads that they need to comply with Federal anti-discrimination laws.

In their joint comments on paragraph (b)(1) of this section, AAR and ASLRRRA noted the requirement to test knowledge of "[t]he railroad's rules and standards for disabling and removing signal systems from service." AAR and ASLRRRA recommended FRA clarify that it does not intend to restrict tasks related to the disabling of signal

systems to signal employees with this rulemaking. Therefore, FRA clarifies that those tasks associated with disabling signal systems that are performed outside the signal bungalow are not considered signal covered service for purposes of the Federal hours of service law. Therefore, employees engaged in tasks performed outside the signal bungalow are not performing signal system work that requires signal employee certification. However, tasks associated with disabling signal systems that are performed inside the signal bungalow are considered signal covered service under the Federal hours of service law and, therefore, signal system work that requires signal employee certification pursuant to this part.

This section allows railroads the discretion to design the tests that will be employed. For most railroads, this will entail modifying their existing “book of rules” examination to include new subject areas. This section does not specify the minimum number of questions to be asked or the passing score to be obtained. IBEW submitted comments on this provision, recommending that FRA require railroads to establish 80% as the minimum passing grade on tests required by the railroad’s signal employee certification program. However, FRA has decided to refrain from requiring railroads to establish 80% as the minimum passing grade on tests required by their signal employee certification programs. Under this final rule, the testing procedures and requirements selected by railroads will be discussed in the certification programs, which the railroads must submit to FRA for approval and provide a copy of to the president of each labor organization representing its signal employees and to all of the railroad’s signal employees subject to this part. Therefore, labor organizations and signal employees may comment on proposed tests, and FRA will monitor the exercise of discretion being afforded to railroads by this section.

Paragraph (b)(6) in the proposed rule would have required that tests be conducted without open reference books unless use of such materials is part of a test objective. BRS

commented on this provision, noting that some railroads allow open book testing per existing agreements. TTD and NRC also commented on this paragraph and recommended that FRA require railroads to provide access to reference materials during knowledge testing. In addition, AAR and ASLRRA recommended that FRA allow for greater use of open reference books and other materials. Therefore, FRA re-evaluated its position on open book testing, as reflected in the final rule. Unlike locomotive engineers who cannot refer to reference materials while actively operating trains, signal employees are often encouraged to refer to reference materials when they have a question about the relevant standard or threshold that needs to be met during maintenance or testing of a signal system or signal-related technology. Accordingly, unlike §§ 240.125 and 242.121 in this chapter which limit the use of open book testing for locomotive engineers and conductors, this final rule has been revised to allow railroads the flexibility to administer open book knowledge tests. However, railroads are required by paragraph (b)(6) to address in their certification programs how they will use open book knowledge tests. In extending this flexibility to railroads, FRA expects that open book tests will be used for the primary purpose of testing certification candidates' ability to use written materials. Nonetheless, since the testing procedures and requirements selected by railroads will be submitted to FRA for approval, FRA will monitor the exercise of discretion being afforded to railroads by this section.

Paragraph (c) of this section has been revised to require the railroad to provide the person(s) being tested with an opportunity to consult with a mentor, signal instructor, or qualified instructor to explain one or more test questions. This revision has been made to expand the scope of individuals who are authorized to explain test questions to persons being tested.

If a person fails a test administered in accordance with this section, paragraph (d) of this section prohibits the railroad from allowing that person to work as a certified

signal employee until they achieve a passing score on reexamination. The railroad will decide how much time, if any, must pass after a test failure before a certification candidate can be reexamined. Furthermore, the railroad will decide what additional training, if any, a candidate will receive after a test failure. The railroad will also have discretion to decide whether there should be a limit on the number of times a candidate can retake a test, and if so, the number of test retakes the railroad will allow.

Section 246.123 Monitoring Operational Performance

This section, derived from 49 CFR 240.129 and 242.123, requires railroads subject to this part to describe in their certification programs how they will monitor the operational performance of their certified signal employees.

Paragraph (a) of this section requires railroads to include procedures in their certification programs for giving each certified signal employee at least one unannounced compliance test each calendar year on the railroad's signal standards and test procedures or Federal regulations concerning signal systems. Paragraph (a)(3) requires railroads to describe the actions they will take if they find deficiencies in a certified signal employee's performance during an unannounced compliance test. IBEW commented on this provision, recommending that FRA prohibit railroads from assessing discipline if such deficiencies are found (with the exception of violations of § 246.303(e)), so that railroads will focus on providing the signal employee with coaching, counseling, and/or additional training, if needed. However, FRA believes it is up to each railroad to decide the appropriate action to take in light of various factors, including collective bargaining agreements.

To avoid restricting the options available to railroads and employee representatives to develop processes for handling test failures, FRA designed this regulation to be as flexible as possible. There are a variety of actions and approaches that a railroad can take, such as developing and providing formal remedial training for

certified signal employees who fail tests or have deficiencies in their performance.

Railroads can also implement formal procedures whereby certified signal employees are given the opportunity to explain, in writing, the factors that they believe caused their test failure or performance deficiency. These explanations could help railroads identify areas on which to focus training or perhaps discover that the reason for the failure/deficiency was due to something other than a lack of skills. FRA believes there are numerous approaches that could be considered and evaluated by railroads and their certified signal employees. Railroads have the ability to adopt an approach that is best for their organizations.

Paragraph (a)(4) requires railroads to describe how they will monitor the performance of signal-related tasks by their certified signal employees. For example, railroad monitoring could include unaccompanied, post-installation inspections of signal cut-overs (conducted within three days of the installation) to verify that the certified signal employee properly installed and tested the signal system, in accordance with the railroad's signal standards.

Paragraph (b) of this section requires railroads to have certified signal employees administer the unannounced compliance tests required by this section once a railroad's certification program has been approved by FRA. Thus, at the latest, FRA expects railroads to perform these unannounced compliance tests on their certified signal employees during the calendar year immediately following the year their certification program is first approved by FRA. For example, if FRA approves one railroad's program in January 2025 and another railroad's program in December 2025, both railroads would be required to perform unannounced compliance tests on their certified signal employees in 2026. While FRA encourages these railroads to perform unannounced tests after their programs are approved in 2025, FRA recognizes it may not be practical to perform

unannounced tests by the end of 2025, especially for the railroad whose program was not approved until December 2025.

Paragraph (d) of this section reflects FRA's recognition that some certified signal employees may not be performing tasks that require certification. Therefore, railroads would not be required to give those certified signal employees an unannounced compliance test. For example, a certified signal employee may be on furlough, in military service, off with an extended illness, or working in another craft. In situations like these where a certified signal employee is not performing tasks that require certification, the railroad would not have to give an unannounced compliance test. However, when the certified signal employee resumes work on signal systems that requires certification, the railroad is required to provide an unannounced compliance test within 30 days, if the certified signal employee has not been given an unannounced compliance test each calendar year pursuant to the railroad's procedures as described in the railroad's certification program. Moreover, the railroad is required to retain a written record documenting the dates on which the certified signal employee stopped performing work requiring certification, the date the certified signal employee resumed signal system work requiring certification, and the date the certified signal employee received their unannounced compliance test following their resumption of signal system work requiring certification.

BRS recommended that FRA extend this 30-day period to six months (and TTD expressed support for this recommendation) to allow more time for signal employees to reacquaint themselves with the environment and signal system equipment before being subjected to a compliance test by railroad management. In addition, IBEW recommended that FRA revise this provision to prohibit railroads from conducting unannounced compliance tests within 15 days of the signal employee's return to signal system work that requires certification. However, FRA anticipates that this 30-day

period will only apply to a small number of certified signal employees – namely, certified signal employees who have not performed work that requires certification on signal systems and signal-related technology for an extended period and who have not been given an unannounced compliance test each calendar year.

In addition, if a certified signal employee has not performed work that requires certification on signal system equipment or signal-related technology for more than 12 months, they will no longer be qualified on signal system equipment or signal-related technology as set forth in § 246.120(c). Therefore, when the certified signal employee returns to signal system work that requires certification, they will be unable to work on the railroad's signal system equipment and signal-related technology unless they work under the direct and immediate supervision of a mentor or qualified instructor. The certified signal employee must continue to work under the direct and immediate supervision of a mentor or qualified instructor until they become qualified on signal system equipment and signal-related technology pursuant to § 246.106(b)(2)(v). Thus, even without revising paragraph (d) of this section, a returning certified signal employee will perform work on signal system equipment and signal-related technology under the direct and immediate supervision of a mentor or qualified instructor which should help reacquaint the employee prior to the unannounced compliance test.

FRA's conductor certification regulations in 49 CFR part 242 contain a similar 30-day period within which the railroad must conduct an unannounced compliance test for conductors who have not performed work requiring certification for an extended period, and FRA is not aware of any significant hardship caused by this requirement. Therefore, given the availability of FRA's waiver process to address any hardship that could potentially be caused by administering an unannounced compliance test within 30 days of a certified signal employee's return to signal system work, FRA has not extended the 30-day unannounced compliance testing requirement in paragraph (d) of this section

or limited railroads to conducting the unannounced compliance test within 15-30 days of the signal employee's return to signal system work requiring certification.

Section 246.124 Mentoring

This section requires railroads to include in their certification programs procedures for mentoring persons who have not been certified by the railroad (such as employees of a signal contractor who have not been certified by the railroad). Paragraph (a) of this section also requires railroads to identify potential scenarios in which non-certified persons may work on the railroad's signal system and signal-related technology in their certification programs. In addition, paragraph (e) of this section requires railroads to address in their certification programs how mentoring will be provided to each person or persons they are mentoring to allow the mentor to take immediate action to prevent a violation of § 246.303(e) from occurring.

These requirements to identify potential scenarios in which non-certified persons may perform work on the railroad's signal system and signal-related technology and to explain how mentoring will be provided were added in response to comments submitted by APTA, BRS, and TTD. APTA noted that the proposed rule might inadvertently prevent contractors from installing signal system equipment until the railroad trains the contractor's employees on the signal system. While APTA expressed concern that requiring qualified instructors to have at least one year of experience might lead to this unintended result, railroads can have their own certified signal employees serve as mentors to uncertified signal contractors who are hired to work on the railroad's signal system or signal-related technology. In addition, depending on the length of the project and the frequency with which the signal contractor is hired to work on the railroad's signal system and signal-related technology, the signal contractor and railroad may decide to have one or more of the signal contractor's employees complete the railroad's certification program and become certified to work on the railroad. In this scenario, the

signal contractor's employees, who are certified to work on the railroad, could serve as mentors to the signal contractor's uncertified signal employees. Nonetheless, as stated in paragraph (b) of this section, after FRA has approved the railroad's certification program, the railroad is prohibited from allowing uncertified persons to work on its signal system and signal-related technology unless the uncertified person works under the direct and immediate supervision of a mentor or qualified instructor.

TTD expressed concern that one year of experience does not provide enough time for an employee to demonstrate real proficiency in the signal craft and foster skill development by their mentees. As noted earlier, BRS commented that, after the first year of implementing this final rule, mentors should be required to have at least three years of experience working with sophisticated signal systems. While FRA agrees that it would, in most cases, be beneficial for mentors to have more than one year of certified signal employee experience, FRA does not have sufficient data to determine the potential impact on rail safety of requiring signal employees to have at least three years of certified signal employee experience to serve as mentors. However, to ensure that a signal mentor is not assigned to supervise multiple work groups scattered over a job site, FRA is requiring railroads to explain in their certification programs how mentoring will be provided to ensure each mentor is located in close proximity to each person or persons they are mentoring to allow the mentor to take immediate action to prevent a violation of § 246.303(e) from occurring.

ITLC and BRS would have FRA exert more oversight over railroad mentors, as they expressed support in their comments for requiring railroads to establish structured mentorship programs. ITLC noted in its comments that just because someone knows how to do a job does not mean they have the skillset necessary to reinforce lessons and learning objectives in a supportive way for another employee.

This rule establishes minimum requirements to ensure, among other things, that signal employees receive sufficient training before they are certified to work on signal systems and signal-related technology. As noted above, FRA revised this section to require railroads to identify scenarios in which uncertified persons would work on the railroad's signal system and signal-related technology and to explain how mentoring will be provided to ensure each mentor is located in close proximity to each person or persons they are mentoring to allow the mentor to take immediate action to prevent a violation of § 246.303(e) from occurring.

FRA also revised the definition of "mentor" in this final rule to require mentors to exercise "direct and immediate supervision" over the work performed by the signal employees they mentor. This approach is consistent with the approach taken in FRA's regulations on the Training, Qualification, and Oversight for Safety-Related Railroad Employees (codified in 49 CFR part 243). As noted in the preamble to FRA's final rule on training and qualification standards, on-the-job training should include instruction and hands-on experience, as well as "sufficient opportunity for practice and feedback."⁴⁵

FRA encourages railroads to utilize structured mentorship programs to help train their mentors, in addition to the training that they provide to their signal employees. However, FRA declines to require railroads to establish structured mentorship programs, in addition to signal employee certification programs. FRA has determined that requiring railroads to establish structured mentorship programs falls outside the scope of this rulemaking, given the lack of currently available data illustrating the effect of structured mentorship programs on signal system safety.

After a railroad's certification program has been approved by FRA, paragraph (b) of this section prohibits the railroad from allowing uncertified persons to work on signal

⁴⁵ 79 FR 66460, 66479 (Nov. 7, 2014).

systems or signal-related technology that requires certification unless the person is working under the direct and immediate supervision of a mentor or qualified instructor.

Paragraph (c) of this section applies to railroads who elect to classify their certified signal employees into more than one occupational category or subcategory, in accordance with § 246.107. These railroads are required by paragraph (c) to address in their certification programs how mentoring will be provided for certified signal employees who move into a different occupational category or subcategory of certified signal service. This paragraph has also been revised in the final rule to require that the mentor be certified within the occupational category or subcategory for the tasks being performed by the person or persons working under their direct and immediate supervision.

Paragraph (d) has been revised to state that, if allowed by the railroad's certification program, any work on a signal system performed by a person whose signal employee certification has been revoked shall be performed under the direct and immediate supervision of a mentor or qualified instructor. The proposed rule referred to mentors providing direct oversight and supervision of signal employees whose certification had been revoked.

Paragraph (e) of this section reflects FRA's intent that mentors are held accountable for the work performed by the persons working under their direct and immediate supervision. Therefore, in addition to requiring railroads to address how mentoring will be provided to ensure each mentor is located in close proximity to each person or persons they are mentoring to allow the mentor to take immediate action to prevent a violation of § 246.303(e) from occurring, paragraph (e) also requires railroads to address in their certification programs how they will hold mentors accountable for the work performed by persons working under their direct and immediate supervision. This paragraph has been revised in the final rule to require that tests performed by persons

working under the direct and immediate supervision of a mentor reflect the mentor's name.

Section 246.125 Certification Determinations Made by Other Railroads

This section of the rule, derived from 49 CFR 240.225 and 242.125, contains requirements that apply when a certified signal employee is about to begin work for a different railroad. This section allows a railroad or parent company to rely on determinations made by another railroad or parent company concerning a person's signal employee certification.

This section has been revised in the final rule to reflect that parent companies are authorized to certify signal employees if they submit and obtain FRA approval of a signal employee certification program on behalf of their subsidiary railroads. In addition, the requirements in paragraph (b) of this section in the proposed rule, which pertain to specific training for previously uncertified signal employees with extensive signal experience and for previously certified signal employees whose certification has expired, have been moved to § 246.106(b).

Paragraph (c) in the proposed rule is now paragraph (b) in the final rule. This paragraph has been revised to require the certifying railroad or parent company to determine that the person is qualified on the signal system equipment and signal-related technology deployed on the railroad territory on which the person is expected to work. This change has been made to incorporate the newly-added regulatory requirements in § 246.120, which require a railroad to make the determination that a person is qualified on the signal system equipment and signal-related technology deployed on the railroad territory on which the person is expected to work prior to certifying them.

Subpart C – Administration of the Certification Program

Section 246.201 Time Limitations for Certification

This section contains various time constraints to preclude railroads from relying on stale information when evaluating a candidate for certification or recertification.

Paragraph (a)(3) in the NPRM stated that railroads could not rely on knowledge tests that were conducted more than one year before the date of the railroad's certification decision and paragraph (a)(4) stated that the knowledge test must have been conducted no more than two years prior to the certification decision if the railroad administers knowledge tests at intervals that do not exceed two years. For the final rule, FRA decided to combine these two paragraphs into paragraph (a)(3).

Section 246.205 List of Certified Signal Employees and Recordkeeping

This section, derived from 49 CFR 240.221 and 242.205, requires each railroad subject to this part to maintain a list of its certified signal employees.

NRC submitted comments on this section asserting that FRA should require each railroad to maintain a list of active certified signal employees and their competencies. FRA agrees that railroads who classify their certified signal employees into occupational categories or subcategories by class, task, location, or other suitable terminology pursuant to § 246.107 should be required to indicate the occupational categories and subcategories in which each certified signal employee is certified to perform service. Therefore, paragraph (a) of this section has been revised accordingly. However, Class III railroads generally do not classify their signal employees into occupational categories and subcategories, as these signal employees generally perform whatever signal work is needed. Therefore, this section has not been revised to require all railroads subject to this part to maintain a list of the occupational categories and subcategories in which each of their certified signal employee is certified to perform service.

Paragraph (b) of this section requires railroads to update their lists of certified signal employees at least annually, and to make their lists of certified signal employees available, upon request, to FRA representatives in a timely manner. In their comments,

BRS and TTD recommended that the final rule require railroads to share their lists of certified signal employees with the national office of each designated labor organization representing their signal employees. Similarly, IBEW recommended that FRA require railroads to share their lists of certified signal employees with labor organizations upon request. BRS, TTD, and IBEW contend that requiring railroads to share their lists of certified signal employees with the designated labor organizations that represent their signal employees would create a collaborative approach to safety, as well as a level of transparency and communication that would contribute significantly to the overall safety culture and reinforce the collective goals of supporting accident prevention and the well-being of signal employees.

While FRA has no objection to railroads providing these lists to their employees and their designated employee representatives, it is unclear how this proposed requirement would advance the safety interests of this rule. Sharing the lists of certified signal employees is an internal matter that should be resolved between railroads and their designated employee representatives. Thus, FRA does not see a compelling reason to mandate a particular approach.

Section 246.207 Certificate Requirements

This section contains requirements for the certificate that railroads are required to issue to each certified signal employee. The requirements in paragraphs (a) through (d) of this section, which pertain to the minimum content for certificates and authorization of each person who would be designated to sign the certificates, are derived from 49 CFR 240.223 and 242.207.

Paragraph (a) of this section specifies that railroads have the option of issuing certificates electronically or in paper form. FRA is making a minor change to paragraph (a)(1) in the proposed rule, by allowing the signal employee certificate to identify either the railroad or the parent company issuing the certificate. This change acknowledges

that, in some cases, a parent company may have one signal employee certification program for one or more of the parent company's subsidiary railroads. In this scenario, the certificate must identify the parent company as having issued the certificate, as well as each of the parent company's subsidiary railroads on which the person has been certified as a signal employee. This change brings this paragraph into conformity with parts 240 and 242.

Individuals who are certified by multiple railroads that are not owned by the same parent company must receive a signal employee certificate from each railroad that certifies them (or each parent company of the railroad that certifies them). For railroads who choose to classify their certified signal employees into occupational categories or subcategories, pursuant to § 246.107, paragraph (a)(2) requires the railroad to list the specific signal employee category(ies) or subcategory(ies) in which the person has been certified.

AAR and ASLRRRA commented that railroads should not be required to include a person's year of birth on a signal employee certificate. After consideration of this comment, FRA agrees that including the year of birth on the signal employee certificate is unnecessary and is removing this requirement in the final rule. The purpose of the requirements in paragraph (a)(3) is to identify a certified signal employee, and, as AAR and ASLRRRA stated, the birth year provides little to no assistance in confirming a person's identity, and there are other ways, such as a physical description or photograph of the certified signal employee, which is already included in paragraph (a)(3), that better serve this goal. AAR and ASLRRRA added that, instead of the birth year, FRA could add a person's hire date to the list of requirements on the certificate. However, the hire date provides even less relevant information than the birth year in terms of identification. Thus, FRA sees no reason to require the hire date on a signal employee certificate.

Paragraph (f), derived from 49 CFR 240.301 and 242.211, requires a railroad to promptly replace a person's signal employee certificate, at no cost to the person, if the certificate is lost, stolen, mutilated, or becomes unreadable. However, unlike § 242.211(b), this section does not contain detailed requirements for temporary replacement certificates. Temporary replacement certificates generally contain most of the information provided on official certificates. Therefore, it does not appear to be especially burdensome for railroads to issue temporary certificates to replace certificates that have been lost, stolen, mutilated, or become unreadable. Nonetheless, by refraining from proposing a formal process for the issuance of temporary replacement certificates, FRA is allowing railroads to decide how and when to issue temporary replacement certificates.

APTA commented that paragraph (f) could create a situation in which an employee regularly loses their certificate. Accordingly, APTA recommended that FRA clarify that this provision does not preclude use of the railroad's progressive disciplinary process for accountability purposes. FRA agrees that paragraph (f) is not intended to preclude the use of reasonable discipline by railroads, in response to signal employees who frequently lose their certificates.

Section 246.213 Multiple Certifications

This section addresses various issues involving persons who have, or are seeking to obtain, multiple certifications.

Paragraph (d) discusses how the revocation of a person's signal employee certification would affect a person's ability to work in another railroad craft that requires certification, and vice versa. The general rule articulated in paragraph (d) is that if a person's signal employee certification is revoked for an alcohol or drug violation, they may not work in another certified craft during the period of revocation, and vice versa. However, if a person's signal employee certification is revoked for a violation that does

not involve alcohol or drugs, the person may work in another certified craft during the revocation period, and vice versa.

AAR and ASLRRA commented that if a person's signal employee certificate is revoked for any reason, that person should not be allowed to work in another certified craft during the period of revocation, and vice versa. Their stated rationale is that if a person commits a safety violation in one craft, that shows "a disregard for process, and there should not be an assumption that the employee's disregard is function or craft specific."⁴⁶ The associations also contend that 49 CFR 240.308(f) and 49 CFR 242.213(h) do not allow a decertified conductor to work as a locomotive engineer or vice versa.

As an initial matter, the assertion by AAR and ASLRRA that parts 240 and 242 do not allow a decertified conductor to work as a locomotive engineer is not accurate. Under 49 CFR 240.308(f) and 49 CFR 242.213(h), if a person's conductor certification is revoked for a violation described in 49 CFR 242.403(e)(6) through (11), they may still work as a locomotive engineer during the revocation period. FRA's rationale for this distinction is that 49 CFR 242.403(e)(6) through (11) involve violations of 49 CFR part 218, subpart F, and since locomotive engineers cannot have their certifications revoked for such violations, "it would be unfair to prohibit a person from working as an engineer for a violation that currently would not result in the revocation of his or her engineer certificate."⁴⁷ For similar reasons, FRA finds that it would be unfair to prohibit a person from working as a certified signal employee because they passed a stop signal while working as a locomotive engineer, or because they committed some other violation that would not otherwise result in the revocation of their signal employee certificate. AAR and ASLRRA's proposal would lead to unfair treatment between persons with a single

⁴⁶ FRA-2022-0020-0035.

⁴⁷ 76 FR 69802, 69825 (Nov. 9, 2011).

certification and persons who are certified in multiple crafts. For the reasons stated above, FRA believes that the proposed rule adopted the same approach taken in parts 240 and 242 and does not see a reason to make any changes to this section in the final rule.

Furthermore, as noted in the NPRM,⁴⁸ the tasks performed by a certified signal employee are so inherently different from the tasks performed by persons in other certified crafts that it does not automatically follow that a person's revocable event as a signal employee indicates they are more likely to have a revocable event while performing another certified craft, and vice versa. Therefore, under this final rule, a certified signal employee may continue to work as a certified signal employee if their certification is revoked for any of the violations described in 49 CFR 240.117(e) or 49 CFR 242.403(e) that do not involve use of alcohol or drugs. Similarly, a person can continue to work in another certified craft if their signal employee certification has been revoked for a violation described in § 246.303(e)(1) through (10).

Section 246.215 Railroad Oversight Responsibilities

This section, derived from 49 CFR 240.309 and 242.215, requires each Class I railroad (including the National Railroad Passenger Corporation), each railroad providing commuter service, and each Class II railroad to conduct an annual review and analysis of its program for responding to detected instances of poor safety conduct by certified signal employees. FRA has formulated the information collection requirements of this section to ensure that railroads collect data on signal employee safety behavior and feed that information into their operational monitoring efforts, thereby enhancing safety.

FRA has, however, also revised paragraph (d) of this section to facilitate sharing of this information and to promote communication and collaboration between railroads and labor organizations to improve railroad safety. Paragraph (d) has been revised in the final rule to allow for the president of a labor organization that represents the railroad's

⁴⁸ 88 FR 35654.

signal employees to request that the railroad provide them a report of the findings and conclusions reached during the railroad's annual review and analysis required under this section. In the interest of fairness, FRA is also allowing the railroad's certified signal employees who are not represented by a labor organization to make such a request.

Paragraph (e)(7) has also been revised in the final rule to include a reference to incidents involving noncompliance with FRA's blue signal regulations in part 218 of this chapter, in addition to noncompliance with FRA's roadway worker regulations in part 214 of this chapter. This change has been made to more accurately reflect the list of revocable events in § 246.303(e).

Subpart D – Denial and Revocation of Certification

This subpart parallels part 240 and part 242's approach to adverse decisions concerning certification (i.e., decisions to deny certification or recertification and revoke certification). With respect to denials, the approach of this rule is predicated principally on the theory that decisions to deny certification or recertification will come at the conclusion of a prescribed evaluation process conducted in accordance with the provisions set forth in this subpart. Thus, this rule contains specific procedures designed to ensure that a person in jeopardy of being denied signal employee certification or recertification will be given a reasonable opportunity to examine and respond to negative information that may serve as the basis for being denied certification or recertification.

When considering revocation, this rule mandates that decisions to revoke certification will only occur for the reasons specified in this subpart. Since revocation decisions by their very nature involve a clear potential for factual disagreement, this subpart is structured to ensure that such decisions will only be made after a certified signal employee has been afforded an opportunity for an investigatory hearing at which the presiding officer determines whether there is sufficient evidence to establish that the person's conduct warranted revocation of their signal employee certification.

This subpart also provides for certificate suspension in certain circumstances. Certificate suspension will be employed in instances where there is reason to think the certificate should be revoked or made conditional, but time is needed to resolve the situation. Certificate suspension will be applicable in instances where a person is awaiting an investigatory hearing to determine whether that person violated certain provisions of FRA's alcohol and drug control rules, or committed a violation of certain signal standards, procedures, or practices, and situations in which the person is being evaluated or treated for an active substance abuse disorder.

Section 246.303 Criteria for Revoking Certification

This section, derived from 49 CFR 240.117, 240.305, and 242.403, identifies the circumstances in which certified signal employees may have their certification revoked.

Paragraph (c) has been revised in the final rule to reiterate that a certified signal employee who is assigned to monitor, mentor, or instruct a person is responsible for the work performed by that person. (For purposes of this part, the definition of the term "person" in § 246.7 includes railroad employees, as well as employees of a railroad contractor or subcontractor.) Accordingly, a certified signal employee who is monitoring, mentoring, or instructing a person and fails to take appropriate action to prevent a violation of paragraph (e) of this section will have their certification revoked. FRA expects each mentor to be actively involved in the tasks that are performed by the person(s) they are mentoring, as these tasks must be performed under the direct and immediate supervision of the mentor. Mentors must be located in close proximity to each person or persons they are mentoring to allow the mentor to take immediate action to avert a violation of paragraph (e) of this section from occurring. Similarly, qualified instructors who are engaged in evaluating or monitoring a person performing signal employee tasks must also pay close attention to the work being performed and be located in close proximity to the person performing signal employee tasks to allow the qualified

instructor to take immediate action to avert a violation of paragraph (e) of this section from occurring. Thus, FRA anticipates that a verbal warning provided by a mentor or qualified instructor without any other action will not, in most cases, be sufficient to allow the mentor or qualified instructor to avoid responsibility for a violation of paragraph (e) of this section caused by the work performed by the person(s) being monitored, mentored, or instructed. Therefore, paragraph (c) has been revised in the final rule by removing language in the proposed rule which indicated that, in general, a verbal warning would constitute appropriate action.

Paragraph (e) provides the eleven types of rule infractions that could result in certification revocation. The infractions listed in paragraphs (e)(1) through (11) are derived in part from the revocable events provided in 49 CFR 242.117(e) but have been modified to account for the duties and responsibilities of a certified signal employee.

AAR and ASLRRA commented on the rule infractions in paragraphs (e)(5) and (e)(7). Paragraph (e)(5) refers to a certified signal employee's failure to restore power to a train detection or highway-rail or pathway grade crossing warning device or system after manual interruption of the power source. For violations of this nature, railroads are directed to consider only those violations that result in activation failure. AAR and ASLRRA assert that it would be better to proactively address the certified signal employee's misconduct before an activation failure occurs. AAR and ASLRRA also assert that FRA regulations do not require FRA to wait for an activation failure before citing the railroad in such a scenario. However, FRA disagrees. A situation involving failure to restore power to a grade crossing warning system does not constitute a violation of FRA's grade crossing regulations in part 234 of this chapter, in the absence of an activation failure, unless the standby source of power was also insufficient. Therefore, paragraph (e)(5) has not been revised.

AAR and ASLRRA also commented on the rule infractions in paragraph (e)(7), which refers to a certified signal employee's failure to comply with FRA's Roadway Worker Protection regulations in 49 CFR part 214. AAR and ASLRRA noted that, given the language in paragraph (e)(7) in the proposed rule, revocation of signal employee certification for a person who ascertains that on-track safety needs to be provided but fails to do so would not be allowed. FRA has revised paragraph (e)(7) in the final rule to close this inadvertent loophole and require railroads to consider violations involving a person who failed to obtain proper on-track safety before fouling the railroad track.

NRC also commented on paragraph (e)(7), recommending revocation of the person's roadway worker certification (instead of revoking signal employee certification) in response to a violation of FRA's Roadway Worker Protection regulations in 49 CFR part 214. However, a person, whose signal employee certification is revoked, loses their ability to perform work as a certified signal employee for the duration of the revocation period, not just their ability to perform the specific task or activity in which they were engaged when the revocable incident occurred. In addition, railroads generally do not have roadway worker certification programs, so this recommendation was not adopted.

Paragraphs (e)(8) through (10) refer to a certified signal employee's failure to comply with FRA's Railroad Operating Practices regulations related to work performed on, under, or between rolling equipment. BRS and TTD asserted that the regulatory provisions cited in paragraphs (e)(8) through (10) do not apply to signal employees and recommended that FRA remove references to these regulatory provisions.

However, as discussed earlier, the signal employee certification requirements in this part apply to any person who meets the definition of signal employee contained in § 246.7, regardless of the fact that the person may have a job classification title other than

that of signal employee.⁴⁹ Therefore, electricians who are engaged in testing locomotive cab signal equipment are considered to be signal employees (when engaged in this task) for purposes of this part. Accordingly, railroads must address electricians who test locomotive cab signal equipment in their signal employee certification programs, if applicable. Also, electricians who are engaged in testing locomotive cab signal equipment will be subject to revocation of their signal employee certification if they fail to comply with § 218.25, 218.27, or 218.29 during such testing.

APTA noted that the revocable offenses listed in paragraphs (e)(7) through (10) are related to an individual's personal safety, as opposed to the safety of the railroad system, and therefore should be removed. TTD submitted similar comments, asserting that the revocable offenses listed in paragraphs (e)(8) through (10) do not apply to signal employees. However, most signal employees are required to work on or near the railroad tracks to perform their assigned tasks. Therefore, FRA does not view compliance with its roadway worker regulations in 49 CFR part 214 as being solely related to an individual's personal safety. Similar to the revocable offense for conductors who fail to take appropriate action to prevent the locomotive engineer of the train to which the conductor is assigned from occupying a segment of main track without proper authority or permission, failure to comply with FRA's roadway worker regulations in 49 CFR part 214 could impact not only the safety of the individual whose actions are non-compliant, but the safety of each member of a signal work gang who is relying on the roadway worker protection obtained by the designated roadway worker-in-charge.

Human factors are also one of the leading causes of train accidents and incidents. Therefore, the revocable offenses listed in paragraphs (e)(8) through (10), which involve non-compliance with FRA's blue signal protection requirements in subpart B of part 218

⁴⁹ See § 246.1(c).

of this chapter, are intended to reduce the number of human factor-caused accidents and incidents involving individuals who work on cab signal and PTC equipment. In sum, the revocable offenses listed in paragraphs (e)(7) through (10) are intended to reduce fatalities and injuries caused by non-compliance with FRA's roadway worker and operating practice regulations.

Paragraph (i) of this section prohibits a railroad from revoking a person's signal employee certification if the revocable event occurred during an operational test that was not conducted in conformance with part 246, the railroad's operating rules, or the railroad's program under 49 CFR 217.9. AAR and ASLRRA commented that FRA should take into consideration the type of error that occurred and whether it harmed the certified signal employee. If the error was a minor procedural error that did not cause substantial harm to the certified signal employee, AAR and ASLRRA contend there is no safety basis to preclude railroads from revoking the person's signal employee certification if the person committed a revocable offense during such test. FRA disagrees. When railroads perform operational tests, they have a duty to ensure the tests are done properly under both Federal law and the railroad's own rules. Keeping paragraph (i) in its current form will incentivize railroads to fulfill this duty. If FRA adopted the associations' suggestion, it would create a gray area where one did not previously exist. It would also complicate the job of the Certification Review Board (CRB) as some individuals would presumably raise this issue in their petitions to the CRB. The CRB would then have to determine whether an error on an operational test caused the person substantial harm. FRA finds that with respect to this issue, a bright-line rule is preferable. It should not be a heavy burden for railroads to properly perform these operational tests. Thus, FRA is not making any changes to this paragraph from the proposed rule.

Section 246.305 Periods of Ineligibility

In this section FRA describes how a railroad must determine a person's period of ineligibility if they have their signal employee certification revoked. For certified signal employees, paragraph (a) explains that the period of revocation will begin on the date of the railroad's written notification to the person that recertification has been denied or certification has been suspended.

Paragraph (b) of this section provides that the revocation period will be based on the number of revocable violations a person has committed over a certain period of time. AAR and ASLRRA requested that FRA "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."⁵⁰ The 36-month period in paragraphs (b)(3) and (4) is a lookback period from the most recent violation. For example, if a certified signal employee committed a violation described in § 246.303(e)(1) through (11) on January 1, 2028, the railroad would have to determine how many revocable violations the certified signal employee committed from January 1, 2025, to January 1, 2028. If the certified signal employee had two additional revocable events during this time period (making the violation on January 1, 2028 the third such violation), then paragraph (b)(3) would apply and the railroad would have to revoke the person's certification for one year.

In their joint comment, AAR and ASLRRA also criticized the periods of ineligibility in this section for being too lenient and recommended that FRA revise paragraph (b)(4) so that if a certified signal employee has four revocable events in a 36-month period, they are no longer eligible to be certified. As an initial matter, this section only addresses how long a person is ineligible to work as a certified signal employee following an incident described in § 246.303(e). This section does not limit the discipline a railroad can issue in response to a revocable event, other than limiting the amount of time the railroad can revoke the person's signal employee certification. For example, if a

⁵⁰ FRA-2022-0020-0035.

certified signal employee commits a violation described in § 246.303(e)(1) and the certified signal employee has no prior history of committing a revocable event, paragraph (b)(1) of this section prohibits the railroad from revoking the person's signal employee certification for more than 30 days. However, the railroad can choose to hold the person out of service for longer than 30 days or can terminate its employment of the person, if the railroad thinks such discipline is warranted.

FRA is declining to adopt AAR and ASLRRA's recommendation to revise paragraph (b)(4) so that four revocable events in a 36-month period would render a person permanently ineligible to hold certification. FRA thinks a three-year revocation period is a reasonable penalty and it aligns with the discipline structure found in parts 240 and 242. Furthermore, FRA already has an established process in place for disqualifying persons from performing safety-sensitive work on either a temporary or permanent basis. If a railroad finds a person's actions are so egregious that they warrant disqualification, the railroad can refer the case to FRA, and the agency can determine whether to initiate the disqualification procedures proscribed in 49 CFR part 209, subpart D. FRA believes the process outlined in part 209 is preferable to creating a blanket requirement in this rule that would permanently disqualify a person from working as a certified signal employee.

Section 246.307 Process for Revoking Certification

This section, derived from 49 CFR 240.307 and 242.407, covers the procedures a railroad must follow to revoke a person's signal employee certification.

Paragraphs (a) and (b) of this section have been revised in the final rule to include references to violations of Federal regulatory provisions when discussing actions by a certified signal employee that could result in revocation of signal employee certification. FRA would also like to clarify that if the certifying railroad determines a certified signal employee violated a Federal regulatory provision, railroad test procedure, signal standard or practice described in § 246.303(e), the railroad is required to revoke signal employee

certification even if the person's employment by the railroad is terminated during the certification revocation process, so that the person will be unable to work as a certified signal employee for another railroad during the period of revocation.

Paragraph (b)(1) of this section requires a railroad to immediately suspend a person's signal employee certification upon receipt of reliable information regarding a violation of § 246.303(e). Prior to, or upon suspending, the signal employee certificate, paragraph (b)(3) requires railroad to provide either verbal or written notice of the reason for the suspension, the pending revocation, and an opportunity for a hearing. If the initial notice was verbal, then the notice would have to be promptly confirmed in writing. The amount of time the railroad has to confirm the verbal notice in writing depends on whether or not a collective bargaining agreement is in effect and applicable. In the absence of such an agreement, a railroad has four days to provide written notice. If a notice of suspension is amended after a hearing is convened, or does not contain citations to all Federal regulatory provisions, railroad test procedures, signal standards, and practices that may apply to the potentially revocable event, the CRB, if asked to review the revocation decision, might subsequently find that this constitutes procedural error pursuant to § 246.405.

Paragraph (b)(5) of this section in the NPRM provided that no later than the start of the hearing, the railroad would be required to provide the certified signal employee with a copy of the written information and a list of witnesses that the railroad would present at the hearing. BRS and TTD submitted comments criticizing this paragraph, contending that it put the certified signal employee in a disadvantaged position, unable to adequately prepare their case or mount a proper defense. BRS strongly recommended that the language in this provision be modified to require the railroad to provide the certified signal employee with the necessary written information and a comprehensive list of witnesses upon request. Similarly, TTD requested that this provision be revised to

require that the certified signal employee and their labor representative, 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.”⁵¹

After considering these concerns, FRA is amending paragraph (b)(5) to require railroads to provide certified signal employees with a copy of the written information and a list of witnesses they will present at the hearing at least 72 hours before the start of the hearing. FRA thinks this change promotes fairness and will provide a certified signal employee and their representative with sufficient time to prepare a proper defense. However, if an applicable collective bargaining agreement allows for railroads to provide this information less than 72 hours before the start of the hearing, the railroad will be in compliance with this paragraph as long as it satisfies the requirements of the applicable collective bargaining agreement.

Paragraph (b)(5) in the NPRM also stated that if an employee of the railroad provided information that will be presented at the hearing, the railroad must make that employee available for examination at the hearing. TTD commented that this provision should be modified to require any witness upon which the railroad is relying to support its allegations against the certified signal employee to be present at the hearing for questioning by the certified signal employee and/or their representative. However, FRA is declining to make this change, as FRA recognizes that railroads are limited in their ability to compel non-employees to testify at these hearings. FRA is, however, adding language to paragraph (b)(5) to clarify that railroads must make an employee available for examination at the hearing if the employee provided information that will be used by the railroad at the hearing, regardless of whether an applicable collective bargaining agreement addresses this issue.

⁵¹ FRA-2022-0020-0032.

FRA is also making some other changes to this section, from what appeared in the proposed rule, to align with parts 240 and 242. Paragraph (b)(6) of this section states that after the hearing, the railroad must determine, based on the hearing record, whether certificate revocation is warranted. FRA is adding language from 49 CFR 240.307(b)(5) and 242.407(b)(5) to this paragraph noting that the railroad must also state the basis for its decision which is discussed in more detail in paragraph (e). Similarly, FRA added language to paragraph (d)(8) stating that while a railroad can consolidate a revocation hearing with a disciplinary hearing, it must still make a separate finding regarding revocation and it must ensure that the railroad official making the finding(s) is not the investigating officer. This new language, found in 49 CFR 240.307(e) and 242.407(e), clarifies for railroads that the requirements in paragraph (d)(1) of this section still apply when the revocation hearing is consolidated with a disciplinary hearing.

In addition, FRA added language not found in the NPRM to clarify what is required under paragraph (j) of this section. Paragraph (j) requires railroads to keep records of evidence that lead the railroad to not revoke a person's signal employee certification in accordance with paragraph (h) or (i). In this final rule, FRA is acknowledging that this requirement does not just apply if this information comes to light during a revocation hearing. Railroads must also retain this evidence if it becomes available before the railroad suspends the person's signal employee certification or before the revocation hearing is convened. The language FRA added to this final rule mirrors language found in 49 CFR 240.307(j) and 242.407(j).

Subpart E – Dispute Resolution Procedures

This subpart details the opportunities and procedures for a person to challenge a railroad's decision to deny certification or recertification or to revoke a signal employee's certification. While the dispute resolution process for signal employees largely mirrors the processes for engineers under part 240 and conductors under part 242, FRA has

undertaken efforts to simplify these regulations to make them clear and comprehensible to all interested parties.

Section 246.403 Petition Requirements

This section contains requirements for obtaining FRA review of a railroad's decision to deny or revoke certification or deny recertification.

Paragraph (b) of this section requires petitioners to seek review in a timely fashion once the adverse decision is served on them. In the interest of consistency and uniformity with parts 240 and 242, petitioners have 120 days from the date the adverse decision was served upon them to file a petition for review by the CRB.

Paragraph (b)(6) requires petitioners or their representatives to state the facts and arguments in support of their petition. In other words, they need to explain to the CRB why they think the railroad was incorrect in denying or revoking the petitioner's certification. Paragraph (b)(7) requires petitioners to submit all documents related to the railroad's decision that are in their possession or reasonably available to them. This may include the transcript and exhibits from the petitioner's denial or revocation hearing. In most cases, these documents will be essential to the Board's ability to make an informed decision on the petition.

IBEW commented that FRA should add language to this section requiring railroads to produce all records requested by the petitioner. However, FRA does not think such a change is necessary because IBEW's concern is already addressed by § 246.405(b) which requires a railroad to supplement the record with any relevant documents in its possession that were not provided by the petitioner. This helps ensure the CRB will have a complete record when the case is ready for their review.

Section 246.405 Processing Certification Review Petitions

This section, derived from 49 CFR 240.405 and 242.505, details how petitions for review by the CRB will be handled. Paragraph (a) of this section notes that, when FRA

receives a CRB petition, FRA will send a written notification to the parties involved in the petition. FRA will send these acknowledgments via email. If a representative files a petition on behalf of a petitioner, the petition must include the petitioner's email address if the petitioner also wants to receive the acknowledgment email and any other correspondence (including the Board's decision) from FRA. The acknowledgment email will include the docket number for the petition, so that both parties can access the documents in the case on <https://www.regulations.gov>. FRA will not send a copy of the petition to the railroad.

Paragraph (b) of this section provides railroads with the opportunity to respond to a petition. While it is always optional for a railroad to respond to a petitioner's arguments, if the petitioner did not include relevant documents in their petition, such as hearing transcripts or exhibits, the railroad is required to provide FRA with those documents, even if it does not respond to the arguments in the petition. Railroads have 60 days, from the date FRA sends the acknowledgment email, to file a response to the petition in the docket on <https://www.regulations.gov>. Railroads are permitted to submit responses after the 60-day deadline, but the Board will only review such late filings if practicable. In other words, there is no guarantee that the Board will review a late response prior to issuing a decision. Thus, if a railroad wishes to respond to a petition, it should meet the 60-day filing deadline. The railroad will fulfill its requirement to serve a copy of its response on the other parties by sending its response via email to petitioner, and the petitioner's representative (if any).

Paragraph (c) of this section explains when a case will be referred to the Board, and the Board's authority. If a railroad files a response before the 60-day deadline in paragraph (b) of this section, the petition will be referred to the Board upon receipt of the response. Otherwise, the petition will be referred to the Board 60 days after the date FRA sends the acknowledgment email. The Board has the authority to grant a petition (rule in

favor of the petitioner), deny a petition (rule in favor of the railroad), or dismiss a petition. An example of when the Board would dismiss a petition would be if the respondent railroad did not deny or revoke the petitioner's certification, and thus, there was no case or controversy before the Board. If there is insufficient evidence in the record for the Board to decide on the merits of a petition, the Board may choose to remand a petition or issue an interim order, so that additional fact-finding can occur.

Paragraphs (d), (e), and (f) of this section provide the standards of review that the Board will employ for procedural issues, factual issues, and legal issues, respectively. These standards mirror the standards of review used to review locomotive engineer and conductor petitions. The Board will not correct all procedural errors committed by a railroad. Instead, in such cases, the Board will only grant a petition if the respondent railroad's procedural error caused substantial harm to the petitioner. For factual issues, the petitioner is required to show that the respondent railroad did not have substantial evidence to support its decision to deny or revoke the petitioner's certification. If the Board must decide a legal issue, it will conduct *de novo* review, meaning that it would not give deference to any decision or interpretation made by the railroad.

Paragraph (g) of this section acknowledges that the Board's decision-making power is limited to granting or denying a petition. In other words, the Board is only empowered to make determinations concerning qualifications under this regulation. The Board is not empowered to mitigate the consequences of a railroad decision if the decision is valid under this regulation. The contractual consequences, if any, of these determinations will have to be resolved under dispute resolution mechanisms that do not directly involve FRA. For example, FRA cannot order a railroad to alter its seniority rosters or make an award of back pay, in the event of a finding that a railroad wrongfully denied certification.

Paragraph (h) of this section requires the Board to issue a written decision that will be served on all affected parties. FRA will send the decision to the parties by email and it will also be posted in the case's docket on <https://www.regulations.gov>.

Section 246.407 Request for a Hearing

This section, derived from 49 CFR 240.407 and 49 CFR 242.507, discusses the process for requesting an administrative hearing after a party has been adversely affected by a CRB decision. Paragraph (b) of this section provides that the adversely affected party must file their request for a hearing within 20 days of service of the CRB's decision. Just like CRB petitions, parties must file hearing requests electronically. To file a hearing request, the adversely affected party must upload the request to the docket on <https://www.regulations.gov> that was used while the case was before the Board. This docket will also be used to file documents while the case is before the hearing officer.

BRS, TTD, and IBEW commented on paragraph (b) and recommended that FRA increase the 20-day period for filing a request for hearing. BRS recommended increasing the filing period to 90 days, while TTD and IBEW recommended a 60-day filing period. In support of their recommendations, these labor organizations asserted that 20 days is an inadequate amount of time for the aggrieved party to confer with their representative, determine the best course of action, and then compile the information required in paragraph (c) to complete a request.

However, the required contents for hearing requests, as set forth in paragraph (c) of this section, are minimal, and are similar to the requirements in § 246.403(b) for filing a petition with the CRB. Thus, if the certified signal employee is the aggrieved party, most of the information needed for the hearing request can be found in their CRB petition. FRA does not foresee any major hinderance that would prevent a certified signal employee or railroad from completing a hearing request within the 20 days currently allotted. Moreover, a similar 20-day deadline has been in effect for over a

decade for conductors and for over 30 years for locomotive engineers. FRA is unaware of any major issues parties have had with meeting this deadline, and therefore disagrees with the recommendation to change this deadline for certified signal employees.

Appendices

This final rule has two appendices. Appendix A, derived from appendix C to part 240 and appendix C to part 242, provides a narrative discussion of the procedures that a person seeking signal employee certification or recertification should follow to furnish a railroad with information concerning their motor vehicle driving record. Appendix B, derived from appendix D to part 240 and appendix D to part 242, provides a narrative discussion of the procedures that a railroad will be required to employ when administering the vision and hearing requirements of §§ 246.117 and 246.118.

FRA made minor revisions to appendix A from what appeared in the proposed rule. In paragraph (2), FRA added language noting that the information in a certification candidate's motor vehicle driving records that the railroad should consider is described in § 246.111(m). FRA also added language to paragraph (4) to clarify that under § 246.301, a railroad is only required to provide a candidate for signal employee certification or recertification with a copy of their motor vehicle driving records if the records contain information that could be the basis for denying certification (or recertification). If no such adverse information exists, the railroad is not required to provide the candidate with a copy of these records.

V. Regulatory Impact and Notices

A. Executive Order 12866 as Amended by Executive Order 14094

This final rule is not a significant regulatory action within the meaning of Executive Order 12866 as amended by Executive Order 14094, Modernizing Regulatory Review. Details on the estimated costs of this final rule can be found in the Regulatory

Impact Analysis (RIA), which FRA has prepared and placed in the docket (FRA-2022-0020).

FRA is issuing regulations establishing a formal certification process for railroad signal employees. As part of that process, railroads will be required to develop a program for training current and prospective signal employees, documenting and verifying that the holder of the certificate has achieved certain training and proficiency, and creating a record of safety compliance infractions that other railroads can review when considering individuals for certification. This final rule will ensure that signal employees are properly trained, are qualified to perform their duties, and meet Federal safety standards. Additionally, this regulation is expected to improve railroad safety by reducing the rate of accidents/incidents.

The RIA presents estimates of the costs likely to occur over the first 10 years of the final rule. The analysis includes estimates of costs associated with development of certification programs, initial and periodic training, knowledge testing, and monitoring of operational performance. Additionally, costs are estimated for vision and hearing tests, review of certification determinations made by other railroads, and Government administrative costs.

FRA estimated 10-year costs of \$9.4 million discounted at 7 percent. The annualized cost will be approximately \$1.3 million discounted at 7 percent. The following table shows the estimated 10-year costs of the final rule.

Total 10-Year Discounted Costs (2020 Dollars)

Category	Present Value 7% (\$)	Present Value 3% (\$)	Annualized 7% (\$)	Annualized 3% (\$)
Development of Certification Program	1,504,135	1,541,874	214,155	180,755
Certification Eligibility Requirements	202,952	227,006	28,896	26,612
Recertification Eligibility Requirements	243,632	310,417	34,688	36,390

Training	2,079,835	2,379,911	296,122	278,998
Knowledge Testing	746,865	898,884	106,337	105,377
Vision and Hearing	1,097,523	1,320,891	156,263	154,849
Monitoring Operational Performance	1,178,812	1,408,753	167,836	165,149
Railroad Oversight Responsibilities	267,530	326,714	38,090	38,301
Certification Card	103,175	124,175	14,690	14,557
Petitions and Hearings	181,733	217,183	25,875	25,460
Government Administrative Cost	1,780,113	2,065,541	253,448	242,144
Total	9,386,306	10,821,350	1,336,399	1,268,592

The primary benefit of this final rule is that it will ensure that railroads properly train and monitor signal employee performance to reduce the risk of accidents caused by signal employee error. This rule will allow railroads to revoke certification of signal employees who make serious safety-related violations.

This rule is expected to reduce the likelihood of an accident occurring due to signal employee error. FRA has analyzed accidents over the past 10 years to categorize those where signal employee training and certification would have impacted the accident. FRA estimated benefits from fewer train accidents, grade crossing accidents, and activation failures.

The following table shows the estimated 10-year benefits of the final rule. The total 10-year estimated benefits will be \$2.9 million (PV, 7%) and annualized benefits will be \$0.4 million (PV, 7%).

Total 10-Year Discounted Benefits (2020 Dollars)

Category	Present Value 7% (\$)	Present Value 3% (\$)	Annualized 7% (\$)	Annualized 3% (\$)
Grade Crossing Accidents	1,766,028	2,064,676	251,443	242,043
Train Accidents/Incidents	960,671	1,123,127	136,778	131,665
Business Benefits from Fewer Activation Failures (Railroad Industry)	53,817	62,917	7,662	7,376
Business Benefits from Fewer Activation Failures (Government)	87,985	102,863	12,527	12,059
Total	2,868,501	3,353,584	408,410	393,142

FRA has quantified the monetary impact from accidents reported on FRA accident forms. However, some accident costs are not required to be reported on FRA accident forms (e.g., environmental impact). For example, the cost of property damage represents a portion of the total cost of train accidents, such as, the cost of direct labor and damage to on-track equipment, track, track structures, and roadbed. Other direct accident costs, such as accident clean up, third-party property damage, lost lading, environmental damage, loss of economic activity to the community, and train delays are not included in FRA's accident/incident reportable damages from the railroads. That impact may account for additional benefits not quantified in this analysis. If these costs not covered by FRA data were realized, accidents affected by this rulemaking could have much greater economic impact than the quantitative benefit estimates provided here.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980⁵² and Executive Order 13272⁵³ require agency review of proposed and final rules to assess their impacts on small entities. FRA prepared this FRFA to evaluate the impact of the final rule on small entities and describe the effort to minimize the adverse impact. The estimated costs on small entities is not significant as it represents less than one percent of average annual revenue of affected entities. Accordingly, the FRA Administrator hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

1. Statement of the Need for, and Objectives of, the Rule

FRA perceives the potential for signal employee error to cause accidents, and an existing lack of means to evaluate and address this risk. Railroads' signal employee training programs may not be covering all aspects of a signal employee's job

⁵² 5 U.S.C. 601 *et seq.*

⁵³ 67 FR 53461 (Aug. 16, 2002).

responsibility. Additionally, railroads may not be testing signal employees and ensuring that their knowledge is maintained continuously.

DOT's general authority states, in relevant part, that the Secretary "as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970."⁵⁴ The Secretary delegated this authority to the Federal Railroad Administrator.⁵⁵ The RSIA required the Secretary to submit a report to Congress addressing whether certification of certain crafts or classes of railroad employees or contractors was necessary to reduce the number and rate of accidents and incidents or to improve railroad safety. If the Secretary determined certification of certain crafts or classes was necessary to meet these goals, Congress also authorized the Secretary to promulgate regulations requiring certification. In the report to Congress, the Secretary noted that signal repair employees, along dispatchers, were the most viable candidates for certification. This final rule will require railroads to develop a signal employee certification program. The final rule will help ensure that signal employees are properly trained, qualified to perform their duties, and meet Federal safety standards.

2. Significant Issues Raised by Public Comments

FRA received several comments related to the costs of the proposed rule. ASLRRRA and AAR submitted comments related to the proposed rule. Issues not concerning the economics of the rule have been discussed above in the discussion of comments and conclusions. Comments were received from ASLRRRA relating to the cost estimates for developing the certification programs, petitions and hearings, and annual monitoring. FRA has revised costs for developing certification programs, estimating 550 hours for ASLRRRA to develop a model or template program, as suggested by ASLRRRA

⁵⁴ 49 U.S.C. 20103.

⁵⁵ 49 CFR 1.89(a).

in their comment. Additionally, FRA has increased the time for individual railroads to develop their plan based on the template. The estimated time per railroad has been increased to 15 hours (from 8 hours in the RIA for the proposed rule).

Further, FRA has revised the cost for petitions and hearings, adding additional job categories and slightly increasing the time estimated per petition and hearing.

3. Response to Comments filed by the Chief Counsel for Advocacy of the Small Business Administration

FRA did not receive any comments from the Small Business Administration.

4. Description and Estimate of the Number of Small Entities to which the Rule will Apply

The Regulatory Flexibility Act of 1980 requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. “Small entity” is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a “small entity” in the railroad industry is a for profit “line-haul railroad” that has fewer than 1,500 employees, a “short line railroad” with fewer than 1,500 employees, a “commuter rail system” with annual receipts of less than \$47.0 million dollars, or a contractor that performs support activities for railroads with annual receipts of less than \$34.0 million.⁵⁶

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Under that authority,

⁵⁶ U.S. Small Business Administration, “Table of Small Business Size Standards Matched to North American Industry Classification System Codes, March 27, 2023. https://www.sba.gov/sites/sbagov/files/2023-06/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%282%29.pdf.

FRA has published a proposed statement of agency policy that formally establishes “small entities” or “small businesses” as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR part 1201, General Instruction 1-1, which is \$20 million or less in inflation-adjusted annual revenues,⁵⁷ and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less.⁵⁸ FRA is using this definition for the final rule.

When developing the rule, FRA considered the impact that the rule would have on small entities. FRA has provided additional time for Class III railroads to comply with the final rule as compared to Class I railroads.

The final rule would be applicable to all railroads with signal systems. However, some small railroads do not have a signal system as part of their operations. FRA estimates there are 744 Class III railroads, of which 704 operate on the general system. These railroads are of varying size, with some belonging to larger holding companies. Approximately 490 Class III railroads will be impacted by this rulemaking because they have a signal system. The remaining Class III railroads do not have a signal system, thus will have no need for signal employee certification program.

5. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule

The final rule requires Class III railroads to develop and implement a Signal Employee Certification Program. This includes certifying and recertifying signal employees, vision and hearing tests, training, knowledge testing, and monitoring operational performance.

The following table shows the annualized costs for all provisions of the final rule. The total annualized cost for all Class III railroads is \$434,884 (PV, 7 percent).

⁵⁷ The Class III railroad revenue threshold is \$46.3 million or less, for 2022. <https://www.ecfr.gov/current/title-49/subtitle-B/chapter-X/subchapter-C/part-1201>.

⁵⁸ See 68 FR 24891 (May 9, 2003) (codified at appendix C to 49 CFR part 209).

Annualized Costs for Class III Railroads

Category	Annualized 7% (\$)
Development of Certification Program	110,011
Certification Eligibility Requirements	7,224
Recertification Eligibility Requirements	8,672
Training	74,030
Knowledge Testing	26,584
Vision and Hearing	156,263
Monitoring Operational Performance	41,959
Certification Card	3,672
Petitions and Hearings	6,469
Total	434,884

The industry trade organization representing small railroads, ASLRRRA, reports the average freight revenue per Class III railroad is \$4.75 million.⁵⁹ The following table summarizes the average annual cost and revenue for Class III railroads.

Annual Class III Railroads' Cost and Revenue

Total Costs for All Class III Railroads, Annualized 7 percent (\$)	Number of Class III Railroads Impacted by Final Rule	Average Annual Cost per Class III Railroad (\$)	Average Class III Railroad Annual Revenue (\$)	Average Annual Cost as Percent of Revenue
a	b	c = a ÷ b	d	e = c ÷ d
434,884	535	813	4,750,000	0.02%

The estimated average annual cost for a Class III railroad is \$813. This represents a small percentage (0.02%) of the average annual revenue for a Class III railroad.

6. A Description of the Steps the Agency has Taken to Minimize the Economic Impact on Small Entities

This final rule requires railroads to develop a signal employee certification program. Small railroads may use a template of a certification program developed by ALSRRA to comply with the final rule. Therefore, the burden on small entities is mostly for certifying signal employees. Many small railroads contract signal employee service

⁵⁹ American Short Line and Regional Railroad Association, *Short Line and Regional Railroad Facts and Figures*, p. 10 (2017 pamphlet).

to a third party. Signal employees will be required to be certified by each railroad that they work for, but the contractor may be involved in the process which would lessen the burden on individual short line railroads.

FRA has allowed Class III railroads additional time to develop their certification programs. Class III railroads will have 16 months after the effective date of the final rule to submit a certification program, whereas Class I railroads must submit a plan within 8 months. FRA will also not require Class III railroads to conduct annual reporting as required by § 246.215 Railroad Oversight Responsibilities.

C. Paperwork Reduction Act

The information collection requirements for part 246 are being submitted for approval to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.⁶⁰ This submission reflects adjustments in response to comments on program development costs discussed above. These changes impacted the paperwork burden under 49 CFR §§ 246.101 and 246.103. The adjustments increased the burden from 7,682 hours to 10,726 hours since the NPRM publication. This table contains new information collection requirements, and the estimated time to fulfill each requirement is as follows:

⁶⁰ 44 U.S.C. 3501 *et seq.*

CFR Section	Respondent universe	Total annual responses (A)	Average time per responses (B)	Total annual burden hours (C) = A * B	Wage rate (D) ¹	Total cost equivalent (E) = C * D
246.9—Waivers—Petitions	553 railroads	10.00 petition	3 hours	30.00 hour	\$77.44	\$2,323.20
246.101/.103—Certification program required and FRA review of certification program—Development of signal employee certification program in accordance with this part and procedures contained under § 246.106 (Note: Each certification program includes procedure requirements under § 246.111 through § 246.124.)	553 railroads + ASLRRA and holding companies	182.66 plans (14 Class I and commuter railroads plans + 0.33 generic program developed by ASLRRA and holding companies plans + 168.33 Class II and III railroads plans)	120 hours + 550 hours + 15 hours	6,204.78 hours	\$115.24	\$715,038.85
—(d)(1) Signal employees certification submission—Copies of the program provided to the president of each rail labor organization (RLO) that represents the railroad's employees that are subject to this part	553 railroads	2 copies	15 minutes	.50 hours	\$77.44	\$38.72
—(d)(2) Affirmative statements that the railroad has provided a copy of the program to RLOs	553 railroads	2 affirmative statements	15 minutes	.50 hours	\$77.44	\$38.72
—(e) Comment Period—Affirmed comments on a railroad's program by any designated representative of employees subject to this part or any directly affected employee who does not have a	553 railroads	31 comments	4 hours	124.00 hours	\$77.44	\$9,602.56

designated representative						
—(g) Material Modifications of FRA-approved program—Railroad to submit a description of how it intends to modify the program and a copy of the modified program to FRA	The paperwork burden for this requirement is outside the scope of the 3-year PRA review period.					
—(h) Resubmission— Railroad can resubmit its program or material modification as described in paragraph (f)(2) of this section after addressing all of the deficiencies noted by FRA and the resubmission must conform with the procedures and requirements contained in § 246.106	553 railroads	3.67 revised plans Class I and commuter railroads	20 hours	73.40 hours	\$77.44	\$5,684.10
—(i) Rescinding Prior Approval of Program—Railroad to resubmit its certification program and the program must conform with the procedures and requirements contained in § 246.106	The paperwork burden for this requirement is outside the scope of the 3-year PRA review period.					
246.105(c)(1) and (d)(1)— Implementation schedule for certification programs— Designation of certified signal employee	553 railroads	3,781 designated lists	5 minutes	315.08 hours	\$77.44	\$24,399.80

<p>—(c)(2) and (d)(2) Issue a certificate that complies with § 246.207 to each person that it designates</p>	553 railroads	3,781 issued certificates	3 minutes	189.05 hours	\$77.44	\$14,640.03
<p>—(f) Written requests for delayed certification— Railroad may wait to recertify the person making the request until the end of the three-year period after FRA has approved the railroad's certification program</p>	FRA anticipates zero submissions.					
<p>—(g) Testing and evaluation— Railroad shall only certify or recertify a person as a signal employee if that person has been tested and evaluated in accordance with procedures that comply with subpart B of this part</p>	The paperwork burden for testing and evaluation is included in the economic burden and the burden for certificates is included under § 246.105.					
<p>246.106— Requirements for Certification Programs— Procedures for Submission and Approval of Signal Employee Certification Programs</p>	The paperwork requirements described in this section are accounted for throughout this table.					
<p>246.109(a)— Determinations required for certification and recertification— Eligibility requirements</p>	The paperwork burden for this requirement is covered under § 246.111 through § 246.121 and § 246.303.					
<p>246.111(a) through (c)—Prior safety conduct as motor vehicle operator— Eligibility requirements of this section involving prior conduct as a motor vehicle operator</p>	553 railroads	1,706 motor vehicle records	5 minutes	142.17 hours	\$77.44	\$11,009.64

—(e) If driver information is not obtained as required pursuant to paragraph (g) of this section, that person or the railroad certifying or recertifying that person may petition for a waiver in accordance with the provisions of part 211 of this chapter	553 railroads	2 waivers	2 hours	4.00 hours	\$77.44	\$309.76
—(f) Individual's duty—Consent to make information concerning driving record available to that railroad	This is usual and customary procedure. The consent form is signed at the time of hiring to make driving information available to the railroad.					
—(g) and (h) Request to obtain driver's license information from licensing agency	553 railroads	1,706 written requests	5 minutes	142.17 hours	\$59.00	\$8,388.03
—(i) Requests for additional information from licensing agency	The paperwork burden for this requirement is included under § 246.111(g)-(h).					
—(j) Notification to railroad by persons of never having a license	553 railroads	2 notices	10 minutes	.33 hours	\$77.44	\$25.56
—(k) Report of motor vehicle incidents described in paragraphs (m)(1) and (2) of this section to the employing railroad within 48 hours	553 railroads	40 self-reports	10 minutes	6.67 hours	\$77.44	\$516.52
—(l) and (m) Evaluation of person's driving record by railroad	553 railroads	1,706 motor vehicle record evaluations	5 minutes	142.17 hours	\$71.89	\$10,220.60
—(n)(1) DAC referral by railroad after report of driving drug/alcohol incident	553 railroads	36 DAC referrals	5 minutes	3.00 hours	\$115.24	\$345.72
—(n)(2) DAC request and supply by persons of prior counseling or treatment	553 railroads	1 request and supplied record	30 minutes	.50 hours	\$115.24	\$57.62
—(n)(3) Conditional certifications	553 railroads	3 conditional certification recommendations	4 hours	12.00 hours	\$115.24	\$1,382.88

recommended by DAC						
246.113(b)—Prior safety conduct as an employee of a different railroad— Certification candidate has not been employed by any other railroad in the previous five years, they do not have to submit a request in accordance with paragraph (d) of this section, but they must notify the railroad of this fact in accordance with procedures established by the railroad in its certification program	This is usual and customary procedure and therefore there is no paperwork burden.					
—(c) Person seeking certification or recertification under this part shall submit a written request to each railroad that employed the person within the previous five years	553 railroads	43.00 requests	15 minutes	10.75 hours	\$77.44	\$832.48
—(e) Railroad shall provide the information requested to the railroad designated in the written request	553 railroads	43.00 records	15 minutes	10.75 hours	\$77.44	\$832.48
—(f) An explanation shall state why the railroad cannot provide the information within the requested time frame or cannot provide the requested information	FRA anticipates zero submissions.					

246.115(a)— Substance abuse disorders and alcohol drug rules compliance— Determination that person meets eligibility requirements	553 railroads	1,535 determinations	2 minutes	51.17 hours	\$77.40	\$3,960.56
—(b) Written documents from DAC that person is not affected by a disorder	553 railroads	79 filed documents	30 minutes	39.50 hours	\$115.24	\$4,551.98
—(c)(3) Fitness requirement— Voluntary self-referral by signal employee for substance abuse counseling or treatment under the policy required by § 219.1001 of this chapter	553 railroads	2 self-referrals	10 minutes	.33 hours	\$115.24	\$38.03
—(d)(1) and (2) Prior alcohol/drug conduct; Federal rule compliance	553 railroads	1,535 certification reviews	10 minutes	255.83 hours	\$115.24	\$29,481.85
—(d)(3)(i) Written determination that most recent incident has occurred	553 railroads	30 written determinations	1 hour	30.00 hours	\$115.24	\$3,457.20
—(d)(3)(ii) Notification to person that recertification has been denied or certification suspended	553 railroads	30 notifications	30 minutes	15.00 hours	\$77.44	\$1,161.60
—(d)(4) Persons/conductors waiving investigation/de-certifications	553 railroads	20 waived investigations	10 minutes	3.33 hours	\$77.44	\$257.88
246.117(a) through (c)—Visual acuity— Determination visual acuity standards met— Medical examiner certificate/record	553 railroads	400 records	2 minutes	13.33 hours	\$71.89	\$958.29
—(d)(1) Request for retest and another medical evaluation— Medical examiner certificate/record	553 railroads	10 records	2 minutes	.33 hours	\$71.89	\$23.72

—(d)(2) Railroad to provide a copy of this part to medical examiner	553 railroads	400 copies	5 minutes	33.33 hours	\$71.89	\$2,396.09
—(d)(3) Consultations by medical examiners with railroad officer and issue of conditional certification	553 railroads	5 consultations + 5 conditional certifications	30 minutes + 10 minutes	3.33 hours	\$71.89	\$239.39
—(g) Notification by certified signal employee of deterioration of vision	553 railroads	1 notification	10 minutes	.17 hours	\$71.89	\$12.22
246.118(a) through (c)—Hearing acuity—Determination hearing standards met—Medical records	553 railroads	400 medical records	2 minutes	13.33 hours	\$71.89	\$958.29
—(d)(1) Request for retest and another medical evaluation—Medical examiner certificate/record	553 railroads	10 records	2 minutes	.33 hours	\$71.89	\$23.72
—(d)(2) Railroad to provide a copy of this part to medical examiner	553 railroads	400 copies	5 minutes	33.33 hours	\$71.89	\$2,396.09
—(d)(3) Consultations by medical examiners with railroad officer and issue of conditional certification	553 railroads	5 consultations + 5 conditional certifications	30 minutes + 10 minutes	3.33 hours	\$71.89	\$239.39
—(g) Notification by certified signal employee of deterioration of hearing	553 railroads	25 notifications	10 minutes	4.17 hours	\$71.89	\$299.78
246.119(b)—Training requirements—A railroad's election for the training of signal employees shall be stated in its certification program	The paperwork burden for this requirement is covered under § 246.101/.103.					
—(c) Initial training program for previously untrained person to be a signal employee	553 railroads	184 training programs	3 hours	553.00 hours	\$115.24	\$63,727.72
—(c)(3) Modification to	The paperwork burden for this requirement is outside the scope of the 3-year PRA review period.					

training program when new safety-related railroad laws, regulations and etc. are introduced into the workplace						
—(d) Relevant information or materials on safety or other rules made available to certification candidates	The paperwork burden for this requirement is covered under § 246.101/.103.					
—(e) Completion of initial training program by a previously untrained person being certified as a signal employee— Written documentation showing person completed training program and demonstrated qualification	553 railroads	3,781 written documents or records	10 minutes	630.17 hours	\$77.44	\$48,800.36
—(f) Completion of training program, demonstration of knowledge, on-the-job proficiency, and qualification— Written documentation for each signal employee certified by the railroad	The paperwork burden for this requirement is covered under § 246.119.					
—(h) Familiarization training for signal employees of acquiring railroad from selling company/railroad prior to commencement of new operation	FRA anticipates zero submissions.					
—(i) Continuing education of certified signal employees	553 railroads	2,000 training records	15 minutes	500.00 hours	\$71.89	\$35,945.00
246.120— Requirements for qualification — Determining eligibility	The paperwork burden for this requirement is covered under § 246.119.					

—(b) Notification by persons not qualified on the signal system	The paperwork burden for this requirement is covered under § 246.119.					
246.121(a) through (c)—Knowledge testing—Determining eligibility	553 railroads	2,000 test records	5 minutes	166.67 hours	\$77.44	\$12,906.92
—(d) Reexamination of the failed test	553 railroads	20 examination records	5 minutes	1.67 hours	\$77.44	\$129.32
246.123(d)—Monitoring operational performance—Unannounced compliance tests—Retention of a written record	553 railroads	7,348 records	2 minutes	244.93 hours	\$77.44	\$18,967.38
246.124—Mentoring	The paperwork burden for this requirement is covered under § 246.101/.103.					
246.125—Certification determinations made by other railroads	553 railroads	11.00 determinations	30 minutes	5.50 hours	\$77.44	\$425.92
246.203(b)—Retaining information supporting determination—Records	553 railroads	2,000 record retentions	15 minutes	500.00 hours	\$77.44	\$38,720.00
—(g) Electronic records	553 railroads	2 amended record	15 minutes	.50 hours	\$77.44	\$38.72
246.205—List of certified signal employees and recordkeeping.	The paperwork requirement for this burden is covered under § 246.105(c)(1)-(d)(1).					
246.207 (a) through (e)—Certificate requirements	The paperwork requirement for this burden is covered under § 246.105(c)(2)-(d)(2).					
—(f) and (g) Replacement of certificates	553 railroads	45 replacement certificates	5 minutes	3.75 hour	\$77.44	\$290.40
—(h) Notification by signal employees that railroad request to serve exceeds certification	553 railroads	110 notifications	30 seconds	.92 hours	\$71.89	\$66.14
246.213(c) through (h)—Multiple Certificates—Notification of denial of certification or recertification by individuals holding	553 railroads	3 notifications	10 minutes	.50 hour	\$77.44	\$38.72

multiple certifications						
—(i) In lieu of issuing multiple certificates, a railroad may issue one certificate to a person who is certified in multiple crafts	The paperwork requirement for this burden is covered under § 246.105.					
246.215—Railroad oversight responsibilities— Review and analysis of administration of certification program	553 railroads	17.33 annual reviews and analyses	8 hours	138.64 hours	\$115.24	\$15,976.87
—(d) Report of findings and conclusions reached during annual review by railroad (if requested in writing by FRA, RLO president, or certified signal employee not represented by a labor organization) review and analysis effort.	553 railroads	2 reports	4 hours	8.00 hours	\$115.24	\$921.92
246.301(a)— Denial of certification— Notification to candidate of information and provision of documents that form basis for denying certification and candidate response	553 railroads	6 notices + 3 responses	1 hour	9.00 hours	\$77.44	\$696.96
—(b) Denial Decision Requirements— Written notification of denial of certification or recertification by railroad to candidate	553 railroads	6 notifications	1 hour	6.00 hours	\$77.44	\$464.64

246.307(b)(1) through (5)— Process for revoking certification— Immediate suspension of signal employee’s certification, notifications, and provision of written information and list of witnesses	553 railroads	15 suspended certification letters and documentations	30 minutes	7.50 hours	\$77.44	\$580.80
—(b)(6) Determinations based on the record of the hearing, whether revocation of the certification is warranted	The paperwork requirement for this burden is covered under § 246.307(e).					
—(b)(8) Retention of record of the hearing for three years after the date the decision is rendered	553 railroads	15 records	15 minutes	3.75 hours	\$77.44	\$290.40
—(d)(9) Hearing Procedures— Written waiver of right to hearing	553 railroads	3 written waivers	10 minutes	.50 hours	\$59.00	\$29.50
—(e) Revocation Decision Requirements— Written decisions by railroad official	553 railroads	15 written decisions and service of decisions	2 hours	30.00 hours	\$115.24	\$3,457.20
—(g) Revocation of certification based on information that another railroad has done so	553 railroads	3 revoked certifications	10 minutes	.50 hours	\$115.24	\$57.62
—(j) Placing relevant information in record if sufficient evidence meeting the criteria in paragraph (h) or (i) of this section becomes available	The paperwork requirement for this burden is covered under § 246.307(b)(7).					
—(k) Good faith determination	553 railroads	3 good faith determinations	1 hour	3.00 hour	\$77.44	\$232.32
Subpart E— Dispute Resolution Procedures—§ 246.401 through § 246.411	The requirements under these provisions are exempted from the PRA under 5 CFR 1320.4(a)(2). Since these provisions pertain to an administrative action or investigation, there is no PRA burden associated with these requirements.					

Appendix A to Part 246 – Procedures for Obtaining and Evaluating Motor Vehicle Driving Record Data	The paperwork requirements described in this appendix are accounted for throughout this table.					
Appendix B to Part 246 – Medical Standards Guidelines	The paperwork requirements described in this appendix are accounted for throughout this table.					
Totals ²	553 railroads + ASLRRRA and holding companies	35,571 responses	N/A	10,726 hours	N/A	\$1,098,908

¹ Throughout the tables in this document, the dollar equivalent cost is derived from the 2020 Surface Transportation Board’s Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes 75-percent overhead charges.

² Totals may not add due to rounding.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Ms. Arlette Mussington, Information Collection Clearance Officer, at email: arlette.mussington@dot.gov or telephone: 571-609-1285, or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: joanne.swafford@dot.gov or telephone: at 757-897-9908.

OMB is required to decide concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this document. FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. The current OMB control number for this rule is 2130-0638.

D. Federalism Implications

Executive Order 13132, Federalism,⁶¹ requires FRA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” are defined in the executive order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, to the extent practicable and permitted by law, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless

⁶¹ 64 FR 43255 (Aug. 10, 1999).

the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. National action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance. Where there are significant uncertainties as to whether national action is authorized or appropriate, agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other means.

FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that this final rule has no federalism implications, other than the possible preemption of State laws under 49 U.S.C. 20106. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply, and preparation of a federalism summary impact statement for the rule is not required.

E. International Trade Impact Assessment

The Trade Agreements Act of 1979⁶² prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This final rule is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

F. Environmental Assessment

⁶² 19 U.S.C. Ch. 13.

FRA has evaluated this final rule consistent with the National Environmental Policy Act⁶³ (NEPA), the Council of Environmental Quality's NEPA implementing regulations,⁶⁴ and FRA's NEPA implementing regulations⁶⁵ and determined that it is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing regulations that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS.⁶⁶ Specifically, FRA has determined that this rule is categorically excluded from detailed environmental review.⁶⁷

The main purpose of this rulemaking is to establish certification requirements for signal employees. This final rule will not directly or indirectly impact any environmental resources and will not result in significantly increased emissions of air or water pollutants or noise. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review.⁶⁸ FRA has concluded that no such unusual circumstances exist with respect to this regulation and the final rule meets the requirements for categorical exclusion.⁶⁹

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties.⁷⁰ FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by Section 4(f).⁷¹ Further, FRA

⁶³ 42 U.S.C. 4321 *et seq.*

⁶⁴ 40 CFR parts 1500 through 1508.

⁶⁵ 23 CFR part 771.

⁶⁶ 40 CFR 1508.4.

⁶⁷ *See* 23 CFR 771.116(c)(15) (categorically excluding “[p]romulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise”).

⁶⁸ 23 CFR 771.116(b).

⁶⁹ 23 CFR 771.116(c)(15).

⁷⁰ *See* 54 U.S.C. 306108.

⁷¹ *See* DOT Act of 1966, as amended (Pub. L. 89-670, 80 Stat. 931); 49 U.S.C. 303.

reviewed this rule and found it consistent with Executive Order 14008, “Tackling the Climate Crisis at Home and Abroad.”

G. Environmental Justice

Executive Order 14096, “Revitalizing Our Nation's Commitment to Environmental Justice for All,” which expands on Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” requires DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionate and adverse human health or environmental effects, including those related to climate change and cumulative impacts of environmental and other burdens on communities with environmental justice concerns. DOT Order 5610.2C (“U.S. Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”) instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order 5610.2C in rulemaking activities, as appropriate, and also requires consideration of the benefits of transportation programs, policies, and other activities where minority populations and low-income populations benefit, at a minimum, to the same level as the general population as a whole when determining impacts on minority and low-income populations.⁷² FRA has evaluated this final rule under Executive Orders 14096 and 12898 and DOT Order 5610.2C and has determined it will not cause disproportionate and adverse human health and environmental effects on communities with environmental justice concerns.

H. Unfunded Mandates Reform Act of 1995

Under section 201 of the Unfunded Mandates Reform Act of 1995,⁷³ each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory

⁷² Executive Order 14096 is not currently referenced in DOT Order 5610.2C.

⁷³ Pub. L. 104-4, 2 U.S.C. 1531.

actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).”

Section 202 of the Act⁷⁴ further requires that “before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement” detailing the effect on State, local, and tribal governments and the private sector. This final rule will not result in the expenditure, in the aggregate, of \$100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

I. Energy Impact

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.”⁷⁵ FRA evaluated this final rule under Executive Order 13211 and determined that this regulatory action is not a “significant energy action” within the meaning of Executive Order 13211.

J. Executive Order 13175 (Tribal Consultation)

FRA has evaluated this rule in accordance with the principles and criteria contained in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. This rule will not have a substantial direct effect on one or more Indian Tribes, will not impose substantial direct compliance costs on Indian Tribal governments, and will not preempt Tribal laws. Therefore, the funding and

⁷⁴ 2 U.S.C. 1532.

⁷⁵ 66 FR 28355 (May 22, 2001).

consultation requirements of Executive Order 13175 do not apply, and a Tribal summary impact statement is not required.

List of Subjects in 49 CFR Part 246

Administrative practice and procedure, Signal Employee, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

The Rule

For the reasons discussed in the preamble, FRA amends chapter II, subtitle B, of title 49 of the Code of Federal Regulations, by adding part 246 to read as follows:

PART 246—CERTIFICATION OF SIGNAL EMPLOYEES

Sec.

Subpart A—General

- 246.1 Purpose and scope.
- 246.3 Application and responsibility for compliance.
- 246.5 Effect and construction.
- 246.7 Definitions.
- 246.9 Waivers.
- 246.11 Penalties and consequences for noncompliance.

Subpart B—Program and Eligibility Requirements

- 246.101 Certification program required.
- 246.103 FRA review of certification programs.
- 246.105 Implementation schedule for certification programs.
- 246.106 Requirements for certification programs.
- 246.107 Signal service classifications.
- 246.109 Determinations required for certification and recertification.
- 246.111 Prior safety conduct as motor vehicle operator.
- 246.113 Prior safety conduct with other railroads.
- 246.115 Substance abuse disorders and alcohol drug rules compliance.
- 246.117 Visual acuity.
- 246.118 Hearing acuity.
- 246.119 Training requirements.
- 246.120 Requirements for qualification.
- 246.121 Knowledge testing.
- 246.123 Monitoring operational performance.
- 246.124 Mentoring.
- 246.125 Certification determinations made by other railroads.

Subpart C—Administration of the Certification Program

- 246.201 Time limitations for certification.

- 246.203 Retaining information supporting determinations.
- 246.205 List of certified signal employees and recordkeeping.
- 246.207 Certificate requirements.
- 246.213 Multiple certifications.
- 246.215 Railroad oversight responsibilities.

Subpart D— Denial and Revocation of Certification

- 246.301 Process for denying certification.
- 246.303 Criteria for revoking certification.
- 246.305 Periods of ineligibility.
- 246.307 Process for revoking certification.

Subpart E— Dispute Resolution Procedures

- 246.401 Review board established.
- 246.403 Petition requirements.
- 246.405 Processing certification review petitions.
- 246.407 Request for a hearing.
- 246.409 Hearings.
- 246.411 Appeals.

Appendix A to Part 246—Procedures for Obtaining and Evaluating Motor Vehicle Driving Record Data

Appendix B to Part 246—Medical Standards Guidelines

Authority: 49 U.S.C. 20103, 20107, 20162, 21301, 21304, 21311; 28 U.S.C. 2461 note; 49 CFR 1.89; and Pub. L. 110-432, sec. 402, 122 Stat. 4884.

Subpart A—General

§ 246.1 Purpose and scope.

(a) The purpose of this part is to ensure that only those persons who meet minimum Federal safety standards serve as certified signal employees, to reduce the rate and number of accidents and incidents, and to improve railroad safety.

(b) This part prescribes minimum Federal safety standards for the eligibility, training, testing, certification and monitoring of all signal employees to whom it applies. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements consistent with this part.

(c) The signal employee certification requirements prescribed in this part apply to any person who meets the definition of signal employee contained in § 246.7, regardless

of the fact that the person may have a job classification title other than that of signal employee.

§ 246.3 Application and responsibility for compliance.

(a) This part applies to all railroads, except:

(1) Railroads that do not have a signal system as defined in § 246.7;

(2) Railroads that operate only on track inside an installation that is not part of the general railroad system of transportation (*i.e.*, plant railroads, as defined in § 246.7);

(3) Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation as defined in § 246.7; or

(4) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(b) Although the duties imposed by this part are generally stated in terms of the duty of a railroad, each person, as defined in § 246.7, who performs any function required by this part must perform that function in accordance with this part.

§ 246.5 Effect and construction.

(a) FRA does not intend, by use of the term signal employee in this part, to alter the terms, conditions, or interpretation of existing collective bargaining agreements that employ other job classification titles when identifying a person who is engaged in installing, troubleshooting, testing, repair, or maintenance of railroad signal systems and signal-related technology.

(b) FRA does not intend by issuance of these regulations to alter the authority of a railroad to initiate disciplinary sanctions against its employees, including managers and supervisors, in the normal and customary manner, including those contained in its collective bargaining agreements.

(c) Except as provided in § 246.213, nothing in this part shall be construed to create or prohibit an eligibility or entitlement to employment in other service for the railroad as a result of denial, suspension, or revocation of certification under this part.

(d) Nothing in this part shall be deemed to abridge any additional procedural rights or remedies not inconsistent with this part that are available to the employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law with respect to removal from service or other adverse action taken as a consequence of this part.

§ 246.7 Definitions.

As used in this part:

Administrator means the Administrator of the FRA or the Administrator's delegate.

Alcohol means ethyl alcohol (ethanol) and includes use or possession of any beverage, mixture, or preparation containing ethyl alcohol.

Contractor means a person under contract with a railroad, including but not limited to, a prime contractor or a subcontractor.

Controlled substance has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR parts 1301 through 1316).

Disable means to render a device or system incapable of proper and effective action or to materially impair the functioning of that device or system.

Drug means any substance (other than alcohol) that has known mind or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.

Drug and alcohol counselor (DAC) means a person who meets the credentialing and qualification requirements of a “Substance Abuse Professional” (SAP), as provided in 49 CFR part 40.

File, filed, and filing mean submission of a document under this part on the date when the Docket Clerk receives it, or if sent by mail, the date mailing was completed.

FRA means the Federal Railroad Administration.

FRA representative means the FRA Associate Administrator for Railroad Safety/Chief Safety Officer and the Associate Administrator's delegate, including any safety inspector employed by the Federal Railroad Administration and any qualified State railroad safety inspector acting under part 212 of this chapter.

Ineligible or ineligibility means that a person is legally disqualified from serving as a certified signal employee. The term covers a number of circumstances in which a person may not serve as a certified signal employee. Revocation of certification pursuant to § 246.307 and denial of certification pursuant to § 246.301 are two examples in which a person would be ineligible to serve as a certified signal employee. A period of ineligibility may end when a condition or conditions are met, such as when a person meets the conditions to serve as a certified signal employee following an alcohol or drug violation pursuant to § 246.115.

Knowingly means having actual knowledge of the facts giving rise to the violation or that a reasonable person acting in the circumstances, exercising due care, would have had such knowledge.

Medical examiner means a person licensed as a doctor of medicine or doctor of osteopathy. A medical examiner can be a qualified full-time salaried employee of a railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified practitioner designated by the railroad to perform functions in connection with medical evaluations of employees. As used in this rule, the medical

examiner owes a duty to make an honest and fully informed evaluation of the condition of an individual.

Mentor means a certified signal employee who has at least one year of experience as a certified signal employee. For purposes of this part, a mentor provides direct and immediate supervision over the work of one or more signal employees.

On-the-job training means job training that occurs in the workplace, *i.e.*, the employee learns the job while doing the job.

Person means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor or subcontractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor.

Physical characteristics means the actual track profile of and physical location for points within a specific yard or route that affect the movement of a locomotive or train. Physical characteristics includes how signal systems and related technology are deployed within the territory, for purposes of this part.

Plant railroad means a plant or installation that owns or leases a locomotive, uses that locomotive to switch cars throughout the plant or installation, and is moving goods solely for use in the facility's own industrial processes. The plant or installation could include track immediately adjacent to the plant or installation if the plant railroad leases the track from the general system railroad and the lease provides for (and actual practice entails) the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant. A plant or installation that operates a locomotive to switch or move cars for other entities, even if solely within the confines of the plant or installation, rather than for its own purposes or

industrial processes, will not be considered a plant railroad because the performance of such activity makes the operation part of the general railroad system of transportation.

Qualified means a person who has successfully completed all instruction, training and examination programs required by the railroad, and the applicable parts of this chapter and that the person therefore may reasonably be expected to be proficient on all safety related tasks the person is assigned to perform.

Qualified instructor means 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 signal experience to effectively instruct in the field, and has the following qualifications:

- (1) Is a certified signal employee under this part; and
- (2) Has been selected as such by a designated railroad officer, in concurrence with the designated employee representative, where present; or
- (3) In the absence of concurrence provided in paragraph (2) of this definition, has a minimum of 12 months service working as a signal employee.

If a railroad does not have designated employee representation, then a person employed by the railroad need not comply with paragraph (2) or (3) of this definition to be a *qualified instructor*.

Railroad means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including:

- (1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and
- (2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with

traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Railroad officer means any supervisory employee of a railroad.

Serve or service, in the context of serving documents, has the meaning given in Rule 5 of the Federal Rules of Civil Procedure as amended. Similarly, the computation of time provisions in Rule 6 of the Federal Rules of Civil Procedure as amended are also applicable in this part. *See also* the definition of “filing” in this section.

Signal employee means, for purposes of this part, a person who is engaged in installing, troubleshooting, testing, repairing, or maintaining railroad signal systems or related technology.

Signal instructor means, for purposes of this part, a person who has demonstrated, pursuant to the railroad’s written signal employee certification program, an adequate knowledge of the subject matter under instruction and has the necessary experience to effectively provide formal training of the subject matter.

Signal system, for purposes of this part, includes software and equipment for 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.

Substance abuse disorder refers to a psychological or physical dependence on alcohol or a drug, or another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation. A substance abuse disorder is “active” within the meaning of this part if the person is currently using alcohol or other drugs, except under medical supervision consistent with the restrictions

described in § 219.103 of this chapter or has failed to successfully complete primary treatment or successfully participate in aftercare as directed by a DAC or SAP.

Substance Abuse Professional (SAP) means a person who meets the qualifications of a substance abuse professional, as provided in 49 CFR part 40.

Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation means a tourist, scenic, historic, or excursion operation conducted only on track used exclusively for that purpose (*i.e.*, there is no freight, intercity passenger, or commuter passenger railroad operation on the track).

Unusual contingency detection device means a device used in the detection of defective conditions on locomotives and rolling stock (*e.g.*, high-wide load, hot or defective bearing, defective wheel detectors) or other unsafe environmental conditions (*e.g.*, high-water, high wind, sliding or slumping soil, rock or snow slide detectors). These devices need not be connected to a signal system for this part to apply.

§ 246.9 Waivers.

(a) A person subject to a requirement of this part may petition FRA for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If FRA finds that a waiver of compliance is in the public interest and is consistent with railroad safety, FRA may grant the waiver subject to any conditions FRA deems necessary.

§ 246.11 Penalties and consequences for noncompliance.

(a) Any person, as defined in § 246.7, who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least the

minimum civil monetary penalty and not more than the ordinary maximum civil monetary penalty per violation. However, penalties may be assessed against individuals only for willful violations, and a penalty not to exceed the aggravated maximum civil monetary penalty per violation may be assessed, where:

(1) A grossly negligent violation, or a pattern of repeated violations, has created an imminent hazard of death or injury to persons, or

(2) A death or injury has occurred. *See* 49 CFR part 209, appendix A.

(b) Each day a violation continues constitutes a separate offense.

(c) A person who violates any requirement of this part or causes the violation of any such requirement may be subject to disqualification from all safety-sensitive service in accordance with part 209 of this chapter.

(d) A person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

(e) In addition to the enforcement methods referred to in paragraphs (a) through (d) of this section, FRA may address violations of this part by use of the emergency order, compliance order, and/or injunctive provisions of the Federal rail safety laws.

(f) FRA's website at <https://railroads.dot.gov/> contains a schedule of civil penalty amounts used in connection with this part.

Subpart B—Program and Eligibility Requirements

§ 246.101 Certification program required.

(a) Each railroad subject to this part shall have a written signal employee certification program.

(b) Each certification program shall include all of the following:

(1) If applicable, an explanation and discussion of the occupational categories and subcategories of certified signal service that comply with the requirements in § 246.107;

(2) A procedure for evaluating prior safety conduct as a motor vehicle operator that complies with the criteria established in § 246.111;

(3) A procedure for evaluating prior safety conduct as an employee or certified signal employee with other railroads that complies with the criteria established in § 246.113;

(4) A procedure for evaluating potential substance abuse disorders and compliance with railroad alcohol and drug rules that complies with the criteria established in § 246.115;

(5) A procedure for evaluating visual and hearing acuity that complies with the criteria established in §§ 246.117 and 246.118;

(6) A procedure for training that complies with the criteria established in § 246.119;

(7) A procedure for qualifying persons on its signal system and signal-related technology that complies with the criteria established in § 246.120;

(8) A procedure for knowledge testing that complies with the criteria established in § 246.121;

(9) A procedure for monitoring operational performance that complies with the criteria established in § 246.123; and

(10) A procedure for mentoring uncertified signal employees that complies with the criteria established in § 246.124.

(c) Each certification program shall be version controlled. Any change from the previous FRA-approved version of the certification program must be tracked.

§ 246.103 FRA review of certification programs.

(a) *Certification program submission schedule for railroads with signal systems in operation.* With the exception of railroads exempted by § 246.3(a), each railroad with a signal system in operation as of **[INSERT DATE 60 DAYS AFTER DATE OF**

PUBLICATION IN THE *FEDERAL REGISTER*], shall submit its signal employee certification program to FRA, in accordance with the procedures and requirements contained in § 246.106, according to the following schedule:

(1) All Class I railroads (including the National Railroad Passenger Corporation) and railroads providing commuter service shall submit their programs to FRA no later than **[INSERT DATE 300 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

(2) All Class II railroads and Class III railroads (including a switching, terminal, or other railroad not otherwise classified) shall submit their programs to FRA no later than **[INSERT DATE 540 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

(b) *Certification program submission for new railroads.* Each railroad that commences operations after **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** shall submit to FRA, and obtain FRA approval of, its written signal employee certification program, in accordance with the procedures and requirements contained in § 246.106, prior to installing, implementing, or operating a signal system subject to this part.

(c) *Method for submitting certification programs to FRA.*

(1) Railroads must submit their written certification programs and their requests for FRA approval (described in § 246.106(a)) by emailing the program and the request for FRA approval to FRASIGNALCERTPROG@dot.gov.

(2) A parent company may submit a written certification program on behalf of one or more subsidiary railroads in accordance with § 246.106(a).

(d) *Notification requirements.* Each railroad or parent company that submits a certification program to FRA must:

(1) Simultaneously with its submission, provide a copy of the program and the request for FRA approval to the president of each labor organization that represents the railroad's signal employees and to all of the railroad's signal employees who are subject to this part; and

(2) Include in its submission to FRA, a statement affirming that the railroad or parent company has provided a copy of the program and request for FRA approval to the president of each labor organization that represents the railroad's signal employees and to all of the railroad's signal employees who are subject to this part, along with a list of the names and email addresses of each president of a labor organization who was provided a copy of the program.

(e) *Comment period.* Any designated representative of signal employees subject to this part or any directly affected person who does not have a designated representative may comment on a railroad's or parent company's program provided that:

(1) The comment is submitted no later than 60 days after the date the program was submitted to FRA;

(2) The comment includes a concise statement of the commenter's interest in the matter;

(3) The commenter affirms that a copy of the comment was provided to the railroad or parent company; and

(4) The comment was emailed to FRASIGNALCERTPROG@dot.gov.

(f) *FRA review period.* Upon receipt of a complete certification program, FRA will commence a thorough review of the program to ensure that it satisfies all of the requirements under this part.

(1) If FRA determines that the program satisfies all of the requirements under this part, FRA will issue a letter notifying the railroad or parent company that its program has

been approved. Such letter will typically be issued within 120 days of the date the program was submitted to FRA.

(2) If FRA determines that the program does not satisfy all of the requirements under this part, FRA will issue a letter notifying the railroad or parent company that its program has been disapproved. Such letter will typically be issued within 120 days of the date the program was submitted to FRA and will identify the deficiencies found in the program that must be corrected before the program can be approved. After addressing these deficiencies, railroads and parent companies can resubmit their programs in accordance with paragraph (h) of this section.

(3) If a railroad or parent company does not receive an approval or disapproval letter from FRA within 120 days of the date the program was submitted to FRA, FRA's decision on the program will remain pending until such time that FRA issues a letter either approving or disapproving the program. A certification program is not approved until FRA issues a letter approving the program.

(g) *Material modifications.* A railroad or parent company that intends to make one or more material modifications to its FRA-approved program must submit a request for approval (as described in § 246.106(a)(3)) of how it intends to modify the program and a copy of the modified program which indicates changes from the last approved version.

(1) A modification is material if it would affect the program's conformance with this part.

(2) The description of the modification and the modified program must conform with the procedures and requirements contained in § 246.106.

(3) The process for submission and review of material modifications shall conform with paragraphs (c) through (f) of this section.

(4) A railroad or parent company shall not implement a material modification to its program until FRA issues its approval of the material modification in accordance with paragraph (f)(1) of this section.

(h) *Resubmissions.* If FRA disapproves a railroad or parent company's program or material modification, as described in paragraph (f)(2) of this section, the railroad or parent company may resubmit its program or material modification after addressing all of the deficiencies noted by FRA.

(1) The resubmission must conform with the procedures and requirements contained in § 246.106.

(2) The process for submission and review of resubmitted programs and resubmitted material modifications shall conform with paragraphs (c) through (f) of this section.

(3) The following deadlines apply to railroads and parent companies that have their programs or material modifications disapproved by FRA:

(i) For a railroad that submitted its program pursuant to paragraph (a) of this section or a parent company that submitted a program on behalf of one or more subsidiary railroads pursuant to the submission deadline in paragraph (a) of this section, the railroad or parent company must resubmit its program within 30 days of the date that FRA notified the railroad of the deficiencies in its program. If a railroad or parent company fails to resubmit its program within this timeframe and continues its rail operations, FRA may consider such actions to be a failure to implement a program.

(ii) For a railroad that submitted its program pursuant to paragraph (b) of this section, there is no FRA-imposed deadline for resubmitting its program. However, pursuant to § 246.105(b), the railroad shall not install, implement, or operate signal systems subject to this part until its program has been approved by FRA.

(iii) For a railroad or parent company that submitted a material modification to its FRA-approved program, there is no FRA-imposed deadline for resubmitting the material modification. However, pursuant to paragraph (g)(4) of this section, the railroad or parent company cannot implement the material modification until it has been approved by FRA.

(i) *Rescinding prior approval of program.* FRA reserves the right to revisit its prior approval of a railroad or parent company's program at any time.

(1) If upon such review FRA discovers deficiencies in the program, FRA shall issue the railroad or parent company a letter rescinding its prior approval of the program and notifying the railroad or parent company of the deficiencies in its program that must be addressed.

(2) Within 30 days of FRA notifying the railroad or parent company of the deficiencies in its program, the railroad or parent company must address these deficiencies and resubmit its program to FRA. The resubmitted program must conform with the procedures and requirements contained in § 246.106.

(3) The process for submission and review of resubmitted programs under this paragraph (i) shall conform with paragraphs (c) through (f) of this section.

(4) If a railroad or parent company fails to resubmit its program to FRA within the timeframe prescribed in paragraph (i)(2) of this section and the railroad continues its rail operations, FRA may consider such actions to be a failure to implement a program.

(5) If FRA issues a letter disapproving the railroad or parent company's resubmitted program, the railroad or parent company shall resubmit its program in accordance with this paragraph (i).

(6) A program that has its approval rescinded under paragraph (i)(1) of this section may remain in effect until whichever of the following happens first:

(i) FRA approves the railroad or parent company's resubmitted program; or

(ii) FRA disapproves the railroad or parent company's second attempt at resubmitting its program.

(7) If FRA disapproves a railroad or parent company's second attempt at resubmitting its program under this paragraph and the railroad or parent company continues its rail operations, FRA may consider such actions to be a failure to implement a program.

(j) *Availability of Certification Program Documents.* The following documents will be available on FRA's website (railroads.dot.gov):

(1) A railroad or parent company's originally submitted program, a resubmission of its program, or a material modification of its program;

(2) Any comments, submitted in accordance with paragraph (e) of this section, to a railroad or parent company's originally submitted program, a resubmission of its program, or a material modification of its program; and

(3) Any approval or disapproval letter issued by FRA in response to a railroad or parent company's originally submitted program, a resubmission of its program, or a material modification of its program.

§ 246.105 Implementation schedule for certification programs.

(a) Each railroad that submits its signal employee certification program to FRA in accordance with § 246.103(a), may continue rail operations while it awaits approval of its program by FRA. However, if FRA disapproves a railroad's program on two occasions and the railroad continues rail operations, FRA may consider such actions to be a failure to implement a program.

(b) Each railroad that submits its signal employee certification program to FRA in accordance with § 246.103(b), must have its program approved by FRA prior to installing, implementing, or operating signal systems subject to this part. If a railroad

installs, implements, or operates a signal system before its program is approved by FRA, FRA may consider such actions to be a failure to implement a program.

(c) By **[INSERT DATE 300 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, each railroad shall:

(1) In writing, designate as certified signal employees all persons authorized by the railroad to perform the duties of a certified signal employee as of **[INSERT DATE 300 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**;

and

(2) Issue a certificate that complies with § 246.207 to each person that it designates.

(d) Between **[INSERT DATE 300 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** and the date FRA approves the railroad's certification program, each railroad shall:

(1) In writing, designate as a certified signal employee any person who has been authorized by the railroad to perform the duties of a certified signal employee between **[INSERT DATE 300 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]** and the date FRA approves the railroad's certification program;

and

(2) Issue a certificate that complies with § 246.207 to each person that it designates.

(e) After **[INSERT DATE 300 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, no railroad shall permit or require a person to perform service as a certified signal employee unless that person is a certified signal employee.

(f) No railroad shall permit or require a person, designated as a certified signal employee under the provisions of paragraph (c) or (d) of this section, to perform service as a certified signal employee for more than three years after the date FRA approves the

railroad's certification program unless that person has been tested and evaluated in accordance with procedures that comply with subpart B of this part.

(1) Except as provided in paragraph (f)(3) of this section, a person who has been designated as a certified signal employee under the provisions of paragraph (c) or (d) of this section and who is eligible to receive a retirement pension in accordance with the terms of an applicable agreement or in accordance with the terms of the Railroad Retirement Act (45 U.S.C. 231) within three years from the date the certifying railroad's program is approved, may request, in writing, that a railroad not recertify that person, pursuant to subpart B of this part, until three years from the date the certifying railroad's program is approved.

(2) Upon receipt of a written request pursuant to paragraph (f)(1) of this section, a railroad may wait to recertify the person making the request until the end of the three-year period after FRA has approved the railroad's certification program. If a railroad grants any request, it must grant the request of all eligible persons to every extent possible.

(3) A person who is subject to recertification under part 240 or 242 of this chapter may not make a request pursuant to paragraph (f)(1) of this section.

(g) After a railroad's certification program has been approved by FRA, the railroad shall only certify or recertify a person as a signal employee if that person has been tested and evaluated in accordance with procedures that comply with subpart B of this part.

§ 246.106 Requirements for certification programs.

(a) *Railroad and parent company certification program submission.* (1)(i) A railroad's certification program submission must include a copy of its certification program and a request for FRA approval.

(ii) Any parent company that submits a single certification program for one or more subsidiary railroads shall provide a list of its railroads that will utilize the program.

(iii) If a parent company submits a certification program on behalf of one or more of its subsidiary railroads, the parent company shall assume responsibility for compliance with this part for all railroads identified on the list required by paragraph (a)(1)(ii) of this section.

(2) For a railroad or parent company's initial certification program submission, the request for FRA approval can be in letter or narrative format and shall include a statement that the railroad or parent company is seeking approval of its program from FRA.

(3) If a railroad or parent company is making a material modification to a program that has been previously approved by FRA, the request for FRA approval can be in letter or narrative format and shall include a copy of the modified certification program that identifies all proposed changes from the last FRA-approved version of the program.

(4) A railroad or parent company will receive approval or disapproval notices from FRA by email.

(5) FRA may electronically store any materials required by this part.

(b) *Organization of the certification program.* Each certification program must be organized to present the required information in paragraphs (b)(1) through (6) of this section. Each section of the certification program must begin with the name, title, telephone number, and email address of the person to be contacted concerning the matters addressed by that section. If a person is identified in a prior section, it is sufficient to merely repeat the person's name in a subsequent section.

(1) *Section One of the certification program: General information and elections.*

(i) The first section of the certification program must contain the name of the railroad or parent company submitting the program, the person to be contacted

concerning the request for FRA approval (including the person's name, title, telephone number, and email address), and a statement electing either to accept responsibility for training persons not previously certified as signal employees ("initial signal employee training") or to not accept this responsibility.

(ii) If a railroad or parent company elects to not provide initial signal employee training, the railroad or parent company shall make the determinations required by § 246.125. The railroad or parent company will be limited to certifying signal employees previously certified by another railroad. A railroad or parent company can change its election by obtaining FRA approval of a material modification to its program, in accordance with § 246.103(g).

(iii) If a railroad or parent company elects to accept responsibility for providing initial signal employee training to persons not previously certified as signal employees, the railroad or parent company must submit information explaining how such persons will be trained but is not required to perform such training. A railroad or parent company that elects to accept responsibility for providing initial signal employee training may authorize another railroad or non-railroad entity to perform the training. A railroad or parent company that authorizes another railroad or non-railroad entity to perform such training must provide the name of the training provider in its certification program but shall remain responsible for ensuring that the training provider adheres to the training program submitted in the railroad or parent company's certification program.

(iv) If a railroad or parent company elects to classify its certified signal employees into more than one occupational category or subcategory by class, task, location, or other suitable terminology, the railroad or parent company shall include the following in the first section of its certification program:

(A) An up-to-date list and description of each occupational category or subcategory of certified signal employee;

(B) A statement of the roles and responsibilities of each occupational category or subcategory of certified signal employee; and

(C) A detailed list of the safety-related tasks and subtasks performed by each occupational category or subcategory of certified signal employee.

(2) *Section Two of the certification program: Training previously certified signal employees.* The second section of the certification program must contain information about the railroad or parent company's program for training previously certified signal employees, including all of the following information:

(i) As provided for in § 246.119(i), each railroad must have a program for the ongoing education of its certified signal employees to ensure that they maintain the necessary knowledge concerning applicable Federal railroad safety laws, regulations, and orders; railroad signal system safety and operating rules; and applicable standards, procedures, and instructions for the installation, operation, testing, maintenance, troubleshooting, and repair of signal systems and signal-related technology deployed on the railroad. The railroad or parent company must describe in this section of the program how it will ensure that its certified signal employees maintain the necessary knowledge and skills to safely discharge their responsibilities so as to comply with the standard set forth in § 246.119(i).

(ii) The railroad or parent company must provide sufficient detail in this section of its program to permit effective evaluation of its training program in terms of the subject matters covered, the frequency and duration of training sessions (including the interval between attendance at such training sessions), the training environment employed (for example, use of classroom, use of computer-based training, use of film or slide presentations, and use of on-the-job training), and which aspects of the training program will be voluntary or mandatory.

(iii) The railroad or parent company must explain how the training program will address a certified signal employee's loss of retained knowledge over time.

(iv) The railroad or parent company must explain how the training program will address changed circumstances over time, such as the introduction of new or modified signal system equipment and signal-related technology (including software modifications), to ensure qualification on the railroad's signal system and signal-related technology and compliance with the training standard set forth in § 246.119.

(v) The railroad or parent company must explain how qualification training will be provided, how long a certified signal employee can be absent from performing work on signal systems and signal-related technology before needing to be requalified (a time period that cannot exceed 12 months), and once that threshold is reached, how the signal employee will acquire the needed qualification.

(vi) The railroad or parent company must explain how it will administer training for previously certified signal employees who have had their certification expire. If a railroad or parent company's certification program fails to specify how it will administer training for these signal employees, then the railroad or parent company shall require them to successfully complete the railroad or parent company's entire training program.

(3) *Section Three of the certification program: Testing and evaluating previously certified signal employees.* The third section of the certification program must contain information about the railroad or parent company's program for testing and evaluating previously certified signal employees, including all of the following information:

(i) The railroad or parent company must describe in this section how it will ensure that its previously certified signal employees demonstrate their knowledge concerning the safe discharge of their responsibilities, so as to comply with the standards set forth in § 246.121.

(ii) The railroad or parent company must describe in this section how it will have ongoing testing and evaluation to ensure that its previously certified signal employees have the necessary visual and hearing acuity as provided for in §§ 246.117 and 246.118. This section must also address how the railroad or parent company will ensure that its medical examiners have sufficient information concerning the railroad's operations, as well as the certified signal employee's safety-related tasks, to effectively form appropriate conclusions about the ability of a particular individual to safely perform as a certified signal employee.

(4) *Section Four of the certification program: Training, testing, and evaluating persons not previously certified.* Unless a railroad or parent company has elected to not provide initial signal employee certification training, the fourth section of the certification program must contain information about the railroad or parent company's program for educating, testing, and evaluating persons not previously certified as signal employees, including all of the following information:

(i) As provided for in § 246.119, a railroad or parent company that is issuing an initial signal employee certification to a person must have a program for the training, testing, and evaluation of its signal employee certification candidates to ensure that they acquire the necessary knowledge and skills. A railroad or parent company must describe in this section how it will ensure that its signal employee certification candidates acquire sufficient knowledge and skills and demonstrate their knowledge and skills concerning the safe discharge of their responsibilities. A railroad or parent company must also discuss its procedures for mentoring candidates for signal employee certification, in accordance with § 246.124;

(ii) This section of the certification program must contain the same level of detail about the initial signal employee training program and the testing and evaluation of previously uncertified signal employees as is required for previously certified signal

employees in paragraphs (b)(2) and (3) of this section (Sections Two and Three of the certification program);

(iii) Railroads and parent companies that elect to rely on other entities to conduct signal employee certification training must explain how certification candidates will be provided with the required training on the signal systems and signal-related technology deployed on the railroad or parent company's territory.

(iv) This section of the certification program must explain how the railroad or parent company will administer the training of previously uncertified signal employees with extensive signal experience. If a railroad or parent company's certification program fails to specify how it will train these signal employees, then the railroad or parent company shall require them to successfully complete the railroad or parent company's entire training program.

(5) *Section Five of the certification program: Monitoring operational performance by certified signal employees.* The fifth section of the certification program must contain information about the railroad or parent company's program for monitoring the operational performance of its certified signal employees, including all of the following information:

(i) Section 246.123 requires that a railroad conduct ongoing monitoring of its certified signal employees and that each certified signal employee performing signal work that requires certification have an annual unannounced compliance test. A railroad or parent company must describe in this section of its certification program its ongoing program for monitoring that its certified signal employees demonstrate their skills concerning the safe discharge of their responsibilities.

(ii) A railroad or parent company must describe the scoring system used by the railroad during an operational monitoring observation or unannounced compliance test administered in accordance with the procedures required under § 246.123.

(6) *Section Six of the certification program: Procedures for routine administration of the signal employee certification program.* The final section of the certification program must contain a summary of how the railroad or parent company's program and procedures will implement various aspects of the regulatory provisions in this part that relate to the routine administration of its certification program for signal employees. Specifically, this section must address the procedural aspects of the following provisions and must describe the manner in which the railroad or parent company will implement its program so as to comply with all of the following provisions:

(i) Section 246.301, which provides that each railroad must have procedures for review and comment on adverse information.

(ii) Sections 246.111, 246.113, 246.115, and 246.303, which require a railroad to have procedures for evaluating data concerning prior safety conduct as a motor vehicle operator and as a railroad worker.

(iii) Sections 246.109, 246.201, and 246.301, which place a duty on the railroad to make a series of determinations. When describing how it will implement its certification program to comply with those sections, a railroad or parent company must describe: the procedures it will utilize to ensure that all of the necessary determinations have been made in a timely fashion; who will be authorized to conclude that a person will or will not be certified; and how the railroad or parent company will communicate adverse decisions.

(iv) Sections 246.109, 246.117, 246.118, 246.119, and 246.121, which place a duty on the railroad to make a series of determinations. When describing how it will implement its program to comply with these sections, a railroad or parent company must describe how it will document the factual basis the railroad or parent company relied on in making determinations under these sections.

(v) Section 246.124, which require each railroad to have procedures for mentoring signal employees who have not been certified.

(vi) Section 246.125, which permits reliance on signal employee certification determinations made by other railroads.

(vii) Sections 246.207 and 246.307, which contain the requirements for replacing lost certificates and the conduct of certification revocation proceedings.

§ 246.107 Signal service classifications.

(a) A railroad may classify its certified signal employees in occupational categories or subcategories by class, task, location, or other suitable terminology, in accordance with an FRA-approved certification program that complies with the requirements of this part.

(b) Any person called to work on a signal system or signal-related technology on which they have not been certified shall immediately notify the railroad or their employer that they are not certified to work on the signal system or signal-related technology.

(c) After FRA has approved a railroad's certification program pursuant to this part, no railroad shall permit a person to work on a signal system or signal-related technology on which the person has not been certified and qualified, unless the person works under the direct and immediate supervision of a mentor or qualified instructor in accordance with § 246.124.

§ 246.109 Determinations required for certification and recertification.

(a) After FRA has approved a railroad's signal employee certification program, the railroad, prior to initially certifying or recertifying any person as a signal employee, shall, in accordance with its FRA-approved program, determine in writing that:

(1) The individual meets the prior safety conduct eligibility requirements of §§ 246.111 and 246.113;

(2) The individual meets the eligibility requirements of §§ 246.115 and 246.303;

(3) The individual meets the visual and hearing acuity standards of §§ 246.117 and 246.118;

(4) If applicable, the individual has completed a training program that meets the requirements of § 246.119;

(5) The individual meets the qualification requirements of § 246.120; and

(6) The individual has the necessary knowledge, as demonstrated by successfully completing testing and practical demonstration that meet the requirements of § 246.121.

(b) Nothing in this section, § 246.111, or § 246.113 shall be construed to prevent persons subject to this part from entering into an agreement that results in a railroad obtaining the information needed for compliance with this subpart in a different manner than that prescribed in § 246.111 or § 246.113.

§ 246.111 Prior safety conduct as motor vehicle operator.

(a) Except as provided in paragraphs (b) through (e) of this section, after FRA has approved a railroad's signal employee certification program, the railroad, prior to certifying or recertifying any person as a signal employee, shall determine that the person meets the eligibility requirements of this section involving prior conduct as a motor vehicle operator.

(b) A railroad shall certify a person as a signal employee for 60 days if the person:

(1) Requested the information required by paragraph (g) of this section at least 60 days prior to the date of the decision to certify that person; and

(2) Otherwise meets the eligibility requirements provided in § 246.109(a)(1) through (6).

(c) A railroad shall recertify a person as a signal employee for 60 days from the expiration date of that person's certification if the person:

(1) Requested the information required by paragraph (g) of this section at least 60 days prior to the date of the decision to recertify that person; and

(2) Otherwise meets the eligibility requirements provided in § 246.109(a)(1) through (6).

(d) Except as provided in paragraph (e) of this section, if a railroad who certified or recertified a person for 60 days pursuant to paragraph (b) or (c) of this section does not obtain and evaluate the information requested pursuant to paragraph (g) of this section within those 60 days, that person will be ineligible to perform as a certified signal employee until the information can be evaluated by the railroad.

(e) If a person requests the information required pursuant to paragraph (g) of this section but is unable to obtain it, that person or the railroad certifying or recertifying that person may petition for a waiver of the requirements of paragraph (a) of this section in accordance with the provisions of part 211 of this chapter. A railroad shall certify or recertify a person during the pendency of the waiver request if the person otherwise meets the eligibility requirements provided in § 246.109(a)(1) through (6).

(f) Except for persons designated as signal employees under § 246.105(c) or (d) or for persons covered by paragraph (j) of this section, each person seeking certification or recertification under this part shall, no more than one year prior to the date of the railroad's decision on certification or recertification:

(1) Take the actions required by paragraphs (g) through (i) of this section to make information concerning their driving record available to the railroad that is considering such certification or recertification; and

(2) Take any additional actions, including providing any necessary consent required by State, Federal, or foreign law to make information concerning their driving record available to that railroad.

(g) Each person seeking certification or recertification under this part shall request, in writing, that the chief of each driver licensing agency identified in paragraph

(h) of this section provide a copy of that agency's available information concerning their driving record to the railroad that is considering such certification or recertification.

(h) Each person shall request the information required under paragraph (g) of this section from:

(1) The chief of the driver licensing agency of any jurisdiction, including a State or foreign country, which last issued that person a driver's license; and

(2) The chief of the driver licensing agency of any other jurisdiction, including states or foreign countries, where the person held a driver's license within the preceding three years.

(i) If advised by the railroad that a driver licensing agency has informed the railroad that additional information concerning that person's driving history may exist in the files of a State agency or foreign country not previously contacted in accordance with this section, such person shall:

(1) Request in writing that the chief of the driver licensing agency which compiled the information provide a copy of the available information to the prospective certifying railroad; and

(2) Take any additional action required by State, Federal, or foreign law to obtain that additional information.

(j) Any person who has never obtained a motor vehicle driver's license is not required to comply with the provisions of paragraph (g) of this section but shall notify the railroad of that fact in accordance with procedures established by the railroad in its certification program.

(k) Each certified signal employee or person seeking certification as a signal employee shall report motor vehicle incidents described in paragraphs (m)(1) and (2) of this section to the certifying railroad within 48 hours of being convicted for, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license for, such

violations. For purposes of this paragraph (k) and paragraph (m) of this section, “State action” means action of the jurisdiction that has issued the motor vehicle driver’s license, including a foreign country. For purposes of signal employee certification, no railroad shall require reporting earlier than 48 hours after the conviction, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver’s license.

(1) When evaluating a person’s motor vehicle driving record, a railroad shall not consider information concerning motor vehicle driving incidents that occurred:

(1) Prior to **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**; or

(2) More than three years before the date of the railroad’s certification decision;

or

(3) At a time other than that specifically provided for in § 246.111, § 246.113, § 246.115, or § 246.303.

(m) When evaluating a person’s motor vehicle driving record, a railroad shall only consider information concerning the following types of motor vehicle incidents:

(1) A conviction for, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver’s license for operating a motor vehicle while under the influence of, or impaired by, alcohol or a controlled substance; or

(2) A conviction for, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license for refusal to undergo such testing as is required by State or foreign law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance.

(n) If such an incident, described in paragraph (m) of this section, is identified:

(1) The railroad shall provide the data to the railroad's Drug and Alcohol Counselor (DAC), together with any information concerning the person's railroad service

record, and shall refer the person for evaluation to determine if the person has an active substance abuse disorder.

(2) The person shall cooperate in the evaluation and shall provide any requested records of prior counseling or treatment for review exclusively by the DAC in the context of such evaluation.

(3) If the person is evaluated as not currently affected by an active substance abuse disorder, the subject data shall not be considered further with respect to certification. However, the railroad shall, on recommendation of the DAC, condition certification upon participation in any needed aftercare and/or follow-up testing for alcohol or drugs deemed necessary by the DAC consistent with the technical standards specified in 49 CFR part 219, subpart H, as well as 49 CFR part 40.

(4) If the person is evaluated as currently affected by an active substance abuse disorder, the provisions of § 246.115(c) will apply.

(5) If the person fails to comply with the requirements of paragraph (n)(2) of this section, the person shall be ineligible to perform as a certified signal employee until such time as the person complies with the requirements.

(o) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.113 Prior safety conduct with other railroads.

(a) After FRA has approved a railroad's signal employee certification program, the railroad shall determine, prior to issuing any person a signal employee certificate, that the certification candidate meets the eligibility requirements of this section.

(b) If the certification candidate has not been employed or certified by any other railroad in the previous five years, they do not have to submit a request in accordance with paragraph (c) of this section, but they must notify the railroad of this fact in accordance with procedures established by the railroad in its certification program.

(c) Except as provided for in paragraph (b) of this section, each person seeking certification or recertification under this part shall submit a written request to each railroad that employed or certified the person within the previous five years to provide the following information to the railroad that is considering whether to certify or recertify that person as a signal employee:

(1) Information about that person's compliance with § 246.111 within the three years preceding the date of the request;

(2) Information about that person's compliance with § 246.115 within the five years preceding the date of the request; and

(3) Information about that person's compliance with § 246.303 within the five years preceding the date of the request.

(d) Each person submitting a written request required by paragraph (c) of this section shall:

(1) Submit the request no more than one year before the date of the railroad's decision on certification or recertification; and

(2) Take any additional actions, including providing any necessary consent required by State or Federal law to make information concerning their service record available to the railroad.

(e) Within 30 days after receipt of a written request that complies with paragraph (c) of this section, a railroad shall provide the information requested to the railroad designated in the written request.

(f) If a railroad is unable to provide the information requested within 30 days after receipt of a written request that complies with paragraph (c) of this section, the railroad shall provide an explanation, in writing, of why it cannot provide the information within the requested time frame. If the railroad will ultimately be able to provide the requested information, the explanation shall state approximately how much more time the railroad needs to supply the requested information. If the railroad will not be able to provide the requested information, the railroad shall provide an adequate explanation for why it cannot provide this information. Copies of this explanation shall be provided to the railroad designated in the written request and to the person who submitted the written request for information.

(g) When evaluating a person's prior safety conduct with a different railroad, a railroad shall not consider information concerning prior safety conduct that occurred:

(1) Prior to **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**; or

(2) At a time other than that specifically provided for in § 246.111, § 246.113, § 246.115, or § 246.303.

(h) Each railroad shall adopt and comply with a program that complies with the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program that complies with the requirements of this subject, that person shall be considered to have violated the requirements of this section.

§ 246.115 Substance abuse disorders and alcohol drug rules compliance.

(a) *Eligibility determination.* After FRA has approved a railroad's signal employee certification program, the railroad shall determine, prior to issuing any person a signal employee certificate, that the person meets the eligibility requirements of this section.

(b) *Documentation.* In order to make the determination required under paragraph (c) of this section, a railroad shall have on file documents pertinent to that determination, including a written document from its DAC which states their professional opinion that the person has been evaluated as not currently affected by a substance abuse disorder or that the person has been evaluated as affected by an active substance abuse disorder.

(c) *Fitness requirement.* (1) A person who has an active substance abuse disorder shall be denied certification or recertification as a signal employee.

(2) Except as provided in paragraph (e) of this section, a certified signal employee who is determined to have an active substance abuse disorder shall be ineligible to hold certification. Consistent with other provisions of this part, certification may be reinstated as provided in paragraph (e) of this section.

(3) In the case of a current employee of a railroad evaluated as having an active substance abuse disorder (including a person identified under the procedures of § 246.111), the employee may, if otherwise eligible, voluntarily self-refer for substance abuse counseling or treatment under the policy required by § 219.1001(b)(1) of this chapter; and the railroad shall then treat the substance abuse evaluation as confidential except with respect to ineligibility for certification.

(d) *Prior alcohol/drug conduct; Federal rule compliance.* (1) In determining whether a person may be or remain certified as a signal employee, a railroad shall consider conduct described in paragraph (d)(2) of this section that occurred within a period of five consecutive years prior to the review. A review of certification shall be

initiated promptly upon the occurrence and documentation of any incident of conduct described in this paragraph (d).

(2) A railroad shall consider any violation of § 219.101 or § 219.102 of this chapter and any refusal to provide a breath or body fluid sample for testing under the requirements of part 219 of this chapter when instructed to do so by a railroad representative.

(3) A period of ineligibility described in this section shall begin:

(i) For a person not currently certified, on the date of the railroad's written determination that the most recent incident has occurred; or

(ii) For a person currently certified, on the date of the railroad's notification to the person that recertification has been denied or certification has been suspended.

(4) The period of ineligibility described in this section shall be determined in accordance with the following standards:

(i) In the case of one violation of § 219.102 of this chapter, the person shall be ineligible to hold a certificate during evaluation and any required primary treatment as described in paragraph (e) of this section. In the case of two violations of § 219.102 of this chapter, the person shall be ineligible to hold a certificate for a period of two years. In the case of more than two such violations, the person shall be ineligible to hold a certificate for a period of five years.

(ii) In the case of one violation of § 219.102 of this chapter and one violation of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of three years.

(iii) In the case of one violation of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of nine months (unless identification of the violation was through a qualifying referral program described in § 219.1001 of this chapter and the signal employee waives investigation, in which case the certificate shall

be deemed suspended during evaluation and any required primary treatment as described in paragraph (e) of this section). In the case of two or more violations of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of five years.

(iv) If a person refuses to provide a breath or body fluid sample for testing under the requirements of part 219 of this chapter when instructed to do so by a railroad representative, the person shall be ineligible to hold a certificate for a period of nine months.

(e) *Future eligibility to hold certificate following alcohol/drug violation.* The following requirements apply to a person who has been denied certification or who has had their certification suspended or revoked as a result of conduct described in paragraph (d) of this section:

(1) The person shall not be eligible for grant or reinstatement of the certificate unless and until the person has:

(i) Been evaluated by a Substance Abuse Professional (SAP) to determine if the person currently has an active substance abuse disorder;

(ii) Successfully completed any program of counseling or treatment determined to be necessary by the SAP prior to return to service; and

(iii) In accordance with the testing procedures of 49 CFR part 219, subpart H, has had a return-to-duty alcohol test with an alcohol concentration of less than .02 and a return-to-duty body fluid sample that tested negative for controlled substances.

(2) A certified signal employee placed in service or returned to service under the conditions described in paragraph (e)(1) of this section shall continue in any program of counseling or treatment deemed necessary by the SAP and shall be subject to a reasonable program of follow-up alcohol and drug testing without prior notice for a period of not more than five years following return to service. Follow-up tests shall

include not fewer than six alcohol tests and six drug tests during the first year following return to service.

(3) Return-to-duty and follow-up alcohol and drug tests shall be performed consistent with the requirements of 49 CFR part 219, subpart H.

(4) This paragraph (e) does not create an entitlement to utilize the services of a railroad SAP, to be afforded leave from employment for counseling or treatment, or to employment as a signal employee. Nor does it restrict any discretion available to the railroad to take disciplinary action based on conduct described herein.

(f) *Confidentiality protected.* Nothing in this part shall affect the responsibility of the railroad under § 219.1003(f) of this chapter to treat qualified referrals for substance abuse counseling and treatment as confidential; and the certification status of a signal employee who is successfully assisted under the procedures of that section shall not be adversely affected. However, the railroad shall include in its referral policy a provision that, at least with respect to a certified signal employee or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the SAP or DAC official notice of the substance abuse disorder and shall suspend or revoke the certification, as appropriate) if the person at any time refuses to cooperate in a recommended course of counseling or treatment.

(g) *Complying with certification program.* Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.117 Visual acuity.

(a) After FRA has approved a railroad's signal employee certification program, the railroad shall determine, prior to issuing any person a signal employee certificate, that the person meets the standards for visual acuity prescribed in this section and appendix B to this part.

(b) Any examination required under this section shall be performed by or under the supervision of a medical examiner or a licensed physician's assistant.

(c) Except as provided in paragraph (d) of this section, each certified signal employee shall have visual acuity that meets or exceeds the following thresholds:

(1) For distant viewing, either:

(i) Distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses; or

(ii) Distant visual acuity separately corrected to at least 20/40 (Snellen) with corrective lenses and distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses;

(2) A field of vision of at least 70 degrees in the horizontal meridian in each eye; and

(3) The ability to recognize and distinguish between the colors of railroad signals as demonstrated by successfully completing one of the tests in appendix B to this part.

(d) A person not meeting the thresholds in paragraph (c) of this section shall, upon request of the certification candidate, be subject to further medical evaluation by a railroad's medical examiner to determine that person's ability to safely perform as a certified signal employee. In such cases, the following procedures will apply:

(1) In accordance with the guidance prescribed in appendix B to this part, a person is entitled to:

(i) One retest without making any showing; and

(ii) An additional retest if the person provides evidence that circumstances have changed since the last test to the extent that the person may now be able to safely perform as a certified signal employee.

(2) The railroad shall provide its medical examiner with a copy of this part, including all appendices.

(3) If, after consultation with a railroad officer, the medical examiner concludes that, despite not meeting the threshold(s) in paragraph (c) of this section, the person has the ability to safely perform as a certified signal employee, the railroad may conclude that the person satisfies the visual acuity requirements of this section to be a certified signal employee. Such certification will be conditioned on any special restrictions the medical examiner determines in writing to be necessary.

(e) To make the determination required under paragraph (a) of this section, a railroad shall have on file the following for each certification candidate:

(1) A medical examiner's certificate that the candidate has been medically examined and either does or does not meet the visual acuity standards prescribed in paragraph (c) of this section.

(2) If necessary under paragraph (d) of this section, a medical examiner's written professional opinion which states the basis for their determination that:

(i) The candidate can be certified, under certain conditions if necessary, even though the candidate does not meet the visual acuity standards prescribed in paragraph (c) of this section; or

(ii) The candidate's visual acuity prevents the candidate from being able to safely perform as a certified signal employee.

(f) If the examination required under this section shows that the person needs corrective lenses to meet the standards for visual acuity prescribed in this section and appendix B to this part, that person shall use corrective lenses at all times while

performing as a certified signal employee unless the railroad's medical examiner subsequently determines in writing that the person can safely perform as a certified signal employee without corrective lenses.

(g) When a certified signal employee becomes aware that their vision has deteriorated, they shall notify the railroad's medical department or other appropriate railroad official of the deterioration. Such notification must occur prior to performing any subsequent service as a certified signal employee. The individual cannot return to service as a certified signal employee until they are reexamined and determined by the railroad's medical examiner to satisfy the visual acuity standards prescribed in this section and appendix B to this part.

(h) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.118 Hearing acuity.

(a) After FRA has approved a railroad's signal employee certification program, the railroad shall determine, prior to issuing any person a signal employee certificate, that the person meets the standards for hearing acuity prescribed in this section and appendix B to this part.

(b) Any examination required under this section shall be performed by or under the supervision of a medical examiner or a licensed physician's assistant.

(c) Except as provided in paragraph (d) of this section, each certified signal employee shall have hearing acuity that meets or exceeds the following thresholds with

or without use of a hearing aid: The person does not have an average hearing loss in the better ear greater than 40 decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz. The hearing test or audiogram used to show a person's hearing acuity shall meet the requirements of one of the following:

(1) As required in 29 CFR 1910.95(h) (Occupational Safety and Health Administration);

(2) As required in § 227.111 of this chapter; or

(3) Conducted using an audiometer that meets the specifications of, and is maintained and used in accordance with, a formal industry standard such as American National Standards Institute (ANSI) S3.6, "Specifications for Audiometers."

(d) A person not meeting the thresholds in paragraph (c) of this section shall, upon request of the certification candidate, be subject to further medical evaluation by a railroad's medical examiner to determine that person's ability to safely perform as a certified signal employee. In such cases, the following procedures will apply:

(1) In accordance with the guidance prescribed in appendix B to this part, a person is entitled to:

(i) One retest without making any showing; and

(ii) An additional retest if the person provides evidence that circumstances have changed since the last test to the extent that the person may now be able to safely perform as a certified signal employee.

(2) The railroad shall provide its medical examiner with a copy of this part, including all appendices.

(3) If, after consultation with a railroad officer, the medical examiner concludes that, despite not meeting the threshold(s) in paragraph (c) of this section, the person has the ability to safely perform as a certified signal employee, the railroad may conclude that the person satisfies the hearing acuity requirements of this section to be a certified signal

employee. Such certification will be conditioned on any special restrictions the medical examiner determines in writing to be necessary.

(e) To make the determination required under paragraph (a) of this section, a railroad shall have on file the following for each certification candidate:

(1) A medical examiner's certificate that the candidate has been medically examined and either does or does not meet the hearing acuity standards prescribed in paragraph (c) of this section.

(2) If necessary under paragraph (d) of this section, a medical examiner's written professional opinion which states the basis for their determination that:

(i) The candidate can be certified, under certain conditions if necessary, even though the candidate does not meet the hearing acuity standards prescribed in paragraph (c) of this section; or

(ii) The candidate's hearing acuity prevents the candidate from being able to safely perform as a certified signal employee.

(f) If the examination required under this section shows that the person needs a hearing aid to meet the standards for hearing acuity prescribed in this section and appendix B to this part, that person shall use a hearing aid at all times while performing as a certified signal employee unless the railroad's medical examiner subsequently determines in writing that the person can safely perform as a certified signal employee without a hearing aid.

(g) When a certified signal employee becomes aware that their hearing has deteriorated, they shall notify the railroad's medical department or other appropriate railroad official of the deterioration. Such notification must occur prior to performing any subsequent service as a certified signal employee. The person cannot return to service as a certified signal employee until they are reexamined and determined by the

railroad's medical examiner to satisfy the hearing acuity standards prescribed in this section and appendix B to this part.

(h) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.119 Training requirements.

(a) After FRA has approved a railroad or parent company's certification program, the railroad or parent company shall determine, prior to issuing any person a signal employee certificate, that the person has successfully completed training, in accordance with the requirements of this section.

(b) A railroad or parent company that elects to accept responsibility to provide initial signal employee training to persons who have not been previously certified as signal employees shall state in its certification program whether it will conduct the training or authorize another railroad or non-railroad entity to provide the training.

(c) A railroad or parent company that elects to accept responsibility to provide initial signal employee training to persons not previously certified as signal employees shall submit a training program which, at a minimum, includes the following:

(1) An explanation of how training will be structured, developed, and delivered, including an appropriate combination of classroom, simulator, computer-based, correspondence, practical demonstration, on-the-job training, or other formal training. The curriculum shall be designed to impart knowledge of, and ability to comply with, applicable 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 training shall document a person's knowledge of, and ability to comply with, Federal railroad safety laws, regulations, and orders, as well as railroad rules and procedures.

(2) An on-the-job training component which shall include the following:

(i) A syllabus describing content, required tasks, and related steps the person learning the job shall be able to perform within a specified timeframe. If the railroad or parent company has elected to classify its certified signal employees into more than one occupational category or subcategory, this syllabus shall include all safety-related tasks and subtasks performed by each category or subcategory of certified signal employee;

(ii) A statement of the conditions (*e.g.*, prerequisites, tools, equipment, documentation, briefings, demonstrations, and practice) necessary for learning transfer; and

(iii) A statement of the standards by which proficiency is measured through a combination of task/step accuracy, completeness, and repetition.

(3) A description of the processes to review and modify its training program when new safety-related railroad laws, regulations, orders, procedures, software, or new signal system equipment or signal-related technology are introduced into the workplace, including how it is determined if additional or refresher training is needed.

(d) Prior to beginning the on-the-job exercises discussed in paragraph (c)(2) of this section, each railroad or parent company shall make any relevant information or materials, such as signal standards, test procedures, operating rules, safety rules, or other rules, available for referencing by certification candidates.

(e) Prior to a person not previously certified as a signal employee being certified as a signal employee, a railroad or parent company shall require the person to:

(1) Successfully complete the initial signal employee training program developed pursuant to paragraph (c) of this section and any associated examinations covering the skills and knowledge the person will need to perform the tasks necessary to be a certified signal employee;

(2)(i) Successfully complete on-the-job training and demonstrate on-the-job proficiency by successfully completing the tasks and using the signal system equipment and signal-related technology necessary to be a certified signal employee on the certifying railroad. A certification candidate may only perform such tasks under the direct and immediate supervision of a mentor, signal instructor, or qualified instructor. A qualified instructor must confirm that on-the-job proficiency has been demonstrated.

(ii) If the railroad elects to classify its certified signal employees into more than one occupational category or subcategory, the person must demonstrate on-the-job proficiency by successfully completing the tasks applicable to that occupational category or subcategory in which the person is seeking to be certified. A qualified instructor must confirm that on-the-job proficiency has been demonstrated; and

(3) Demonstrate qualification on the signal system equipment and signal-related technology deployed on the railroad's territory on which the person is expected to work. A qualified instructor must confirm that qualification has been demonstrated.

(f) In making the determination required under paragraph (a) of this section, a railroad shall have written documentation showing that:

(1) The person completed an initial signal employee training program that complies with paragraph (c) of this section (if the person has not been previously certified as a signal employee); and

(2) The person demonstrated their knowledge and on-the-job proficiency by achieving a passing grade under the testing and evaluation procedures of the training program; and

(3) The person achieved a passing score on the qualification exam on the signal system equipment and signal-related technology on which the person will work as a certified signal employee.

(g) The certification program, required under this part and submitted in accordance with the procedures and requirements described in § 246.106, shall include:

(1) How comprehensive training will be provided on the installation, operation, testing, maintenance, and repair of the signal systems and signal-related technology deployed on the railroad's territory; and

(2) How the railroad will ensure that each certified signal employee is qualified on the signal system equipment and signal-related technology (whether existing or new) deployed on the railroad's territory before the certified signal employee is required to install, operate, test, maintain, or repair that signal system equipment or signal-related technology; and

(3) The maximum time period that a certified signal employee can be absent from performing work on signal system equipment or signal-related technology that requires certification pursuant to this part before requalification will be required. In accordance with § 246.120(c), this time period cannot exceed 12 months.

(h) If ownership of a railroad is being transferred from one company to another, the signal employees of the acquiring company may receive familiarization training from the selling company prior to the acquiring railroad commencing operation.

(i) A railroad shall provide for the continuing education of its certified signal employees to ensure that each certified signal employee maintains the necessary knowledge concerning:

(1) Railroad safety and operating rules;

(2) Compliance with all applicable Federal railroad safety laws, regulations, and orders; and

(3) Compliance with all applicable standards, procedures, and instructions for the installation, operation, testing, maintenance, troubleshooting, and repair of new and existing signal systems and new and existing signal-related technology deployed on the railroad.

(j) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.120 Requirements for qualification.

(a) After FRA has approved a railroad's certification program, a railroad shall not permit or require a person to serve as a signal employee, as defined in § 246.7, unless that railroad determines that:

(1) The person is a certified signal employee; and

(2) The person either:

(i) Is qualified, as defined in § 246.7, on the signal system equipment and signal-related technology (whether existing or new) and therefore may reasonably be expected to be proficient on all safety related tasks the person is assigned to perform; or

(ii) Is working under the direct and immediate supervision of a mentor or qualified instructor.

(b) If a person is called to perform work on signal system equipment or signal-related technology that they are not qualified on, the person must immediately notify the railroad that they are not qualified on the signal system equipment or signal-related technology.

(c) A person shall no longer be considered qualified on signal system equipment or signal-related technology if they have not performed work that requires certification pursuant to this part on signal system equipment or signal-related technology in the previous 12 months.

(d) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.121 Knowledge testing.

(a) After FRA has approved a railroad's signal employee certification program, the railroad shall determine, prior to issuing any person a signal employee certificate and in accordance with the requirements of this section, that the person 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 system equipment and signal-related technology.

(b) To make the knowledge determination required by paragraph (a) of this section, a railroad shall have procedures for testing a person being evaluated for certification as a signal employee that:

(1) Are designed to examine a person's knowledge of:

(i) All applicable Federal railroad safety laws, regulations, and orders governing signal systems and signal-related technology;

(ii) All applicable railroad safety and operating rules; and

(iii) All applicable railroad standards, procedures, and instructions for the installation, operation, testing, maintenance, troubleshooting, and repair of the railroad's signal systems and signal-related technology, including:

(A) The railroad's rules and standards for disabling and removing signal systems from service; and

(B) The railroad's rules and standards for placing signal systems back in service;

(2) Are objective in nature;

(3) Include a practical demonstration component;

(4) Are in written or electronic form;

(5) Are sufficient to accurately measure the person's knowledge of the subjects listed in paragraph (b)(1) of this section; and

(6) Allow for testing conducted with reference to books and other written materials, as addressed in the railroad's certification program.

(c) The railroad shall provide the certification candidate with an opportunity to consult with a mentor, signal instructor or qualified instructor to explain one or more test questions.

(d) If a person fails the test, no railroad shall permit or require that person to work as a certified signal employee prior to that person's achieving a passing score during a reexamination of the test.

(e) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.123 Monitoring operational performance.

(a) Each railroad's certification program shall describe how it will monitor the operational performance of its certified signal employees by including procedures for:

(1) Giving each certified signal employee at least one unannounced compliance test each calendar year in one of the following areas: the railroad's signal system standards and test procedures, or Federal regulations concerning signal systems, except as provided for in paragraph (d) of this section;

(2) Giving unannounced compliance tests to certified signal employees who return to signal work that requires certification pursuant to this part, as described in paragraph (d) of this section;

(3) What actions the railroad will take if it finds deficiencies in a certified signal employee's performance during an unannounced compliance test; and

(4) Monitoring the performance of signal-related tasks.

(b) An unannounced compliance test shall:

(1) Be performed by a certified signal employee; and

(2) Be given to each certified signal employee at least once each calendar year, except as provided for in paragraph (d) of this section.

(c) If the railroad's certification program classifies signal employees pursuant to § 246.107, the unannounced compliance test shall be within scope of the certified signal employee's classification.

(d) A certified signal employee who is not performing signal work that requires certification pursuant to this part does not need to be given an unannounced compliance test. However, when the certified signal employee returns to signal work that requires certification pursuant to this part, the railroad shall:

(1) Give the certified signal employee an unannounced compliance test within 30 days of their return to signal work that requires certification; and

(2) Retain a written record that includes the following information:

(i) The date the certified signal employee stopped performing work that required certification pursuant to this part;

(ii) The date the certified signal employee returned to signal work that required certification pursuant to this part; and

(iii) The date and the result of the unannounced compliance test was performed following the signal employee's return to signal work requiring certification.

(e) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.124 Mentoring.

(a) Each railroad's certification program shall include procedures for the mentoring of persons who have not been certified by the railroad. Each railroad shall identify potential scenarios in which mentoring of non-certified persons will be provided.

(b) After FRA has approved a railroad's certification program pursuant to this part, the railroad shall not permit or require any person to perform work on a signal system or signal-related technology on its territory that requires certification unless the railroad first determines that:

(1) The person is a certified signal employee who has been certified by the railroad and qualified on all applicable signal system equipment and signal-related technology deployed on the railroad; or

(2) The person is working under the direct and immediate supervision of a mentor or qualified instructor.

(c) If the railroad elects to classify its certified signal employees into more than one occupational category or subcategory pursuant to § 246.107:

(1) The railroad shall address in its certification program how mentoring will be provided for certified signal employees who move into a different occupational category or subcategory of certified signal service; and

(2) Mentors shall be certified within the occupational category or subcategory of the task being performed by the person or persons working under their direct and immediate supervision.

(d) If allowed by the railroad's certification program, any work on a signal system performed by a person whose signal employee certification has been revoked shall be performed under the direct and immediate supervision of a mentor or qualified instructor.

(e) Each railroad's certification program shall address how mentoring will be provided to ensure that mentors are located in close proximity to each person or persons they are mentoring to allow the mentor to take immediate action to prevent a violation of § 246.303(e) from occurring. Each railroad's certification program shall also address how mentors will be held accountable for the work performed by persons working under the mentor's direct and immediate supervision. Any records of tests performed by persons working under the direct and immediate supervision of a mentor shall reflect the mentor's name.

(f) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner,

manufacturer, lessor, lessee, or independent contractor or subcontractor) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.125 Certification determinations made by other railroads.

(a) A railroad or parent company that is considering certification of a person as a signal employee (“certifying railroad or parent company”) may rely on certain determinations made by another railroad or parent company concerning that person’s certification.

(b) A certifying railroad or parent company that relies on the certification determinations made by another railroad shall be responsible for making the following determinations:

(1) The person’s signal employee certification is still valid under §§ 246.201 and 246.307;

(2) The person has been qualified on the signal system equipment and signal-related technology deployed on the railroad territory on which the person is expected to work in accordance with § 246.119; and

(3) The person has demonstrated the necessary knowledge concerning the certifying railroad or parent company’s signal standards, test procedures, and instructions for the installation, operation, testing, maintenance, troubleshooting, and repair of the certifying railroad or parent company’s signal system equipment and signal-related technology in accordance with § 246.121.

Subpart C—Administration of the Certification Program

§ 246.201 Time limitations for certification.

(a) After FRA approves a railroad’s signal employee certification program, that railroad shall not certify or recertify a person as a signal employee if the railroad is making:

(1) A determination concerning eligibility under §§ 246.111, 246.113, 246.115, and 246.303 and the eligibility data being relied on was furnished more than one year before the date of the railroad's certification decision;

(2) A determination concerning vision or hearing acuity and the medical examination being relied on was conducted more than 450 days before the date of the railroad's certification decision; or

(3) A determination concerning demonstrated knowledge and the knowledge examination being relied on was conducted more than one year before the date of the railroad's certification decision, or more than two years before the date of the railroad's certification decision if the railroad administers knowledge testing pursuant to § 246.121 at intervals that do not exceed two years.

(b) The time limitations of paragraph (a) of this section do not apply to a railroad that is making a certification decision in reliance on determinations made by another railroad in accordance with § 246.125.

(c) Except if a person is designated as a certified signal employee under § 246.105(c) or (d), no railroad shall certify a person as a signal employee for an interval of more than three years.

(d) Each railroad shall issue each certified signal employee a certificate that complies with § 246.207 no later than 30 days from the date of its decision to certify or recertify that person.

§ 246.203 Retaining information supporting determinations.

(a) After FRA approves a railroad's signal employee certification program, any time the railroad issues, denies, or revokes a certificate after making the determinations required under § 246.109, it shall maintain a record for each certified signal employee and certification candidate. Each record shall contain the information, described in

paragraph (b) of this section, that the railroad relied on in making the determinations required under § 246.109.

(b) A railroad shall retain the following information:

(1) Relevant data from the railroad's records concerning the person's prior safety conduct and eligibility;

(2) Relevant data furnished by another railroad;

(3) Relevant data furnished by a governmental agency concerning the person's motor vehicle driving record;

(4) Relevant data furnished by the person seeking certification concerning their eligibility;

(5) The relevant test results data concerning visual and hearing acuity;

(6) If applicable, the relevant data concerning the professional opinion of the railroad's medical examiner on the adequacy of the person's visual or hearing acuity;

(7) Relevant data from the railroad's records concerning the person's success or failure on knowledge test(s) under § 246.121;

(8) A sample copy of the written knowledge test or tests administered; and

(9) The relevant data from the railroad's records concerning the person's success or failure on unannounced tests the railroad performed to monitor the person's performance in accordance with § 246.123.

(c) If a railroad is relying on successful completion of a training program conducted by another entity, the relying railroad shall maintain a record for each certification candidate that contains the relevant data furnished by the training entity concerning the person's demonstration of knowledge relied on by the railroad in making its determinations.

(d) If a railroad is relying on a certification decision initially made by another railroad, the relying railroad shall maintain a record for each certification candidate that

contains the relevant data furnished by the other railroad which it relied on in making its determinations.

(e) All records required under this section shall be retained by the railroad for a period of six years from the date of the certification, recertification, denial, or revocation decision and shall, upon request, be made available to FRA representatives in a timely manner.

(f) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on the record(s) required by this section; or

(2) Otherwise falsify such records through material misstatement, omission, or mutilation.

(g) Nothing in this section precludes a railroad from maintaining the information required to be retained under this section in an electronic format provided that:

(1) The railroad maintains an information technology security program adequate to ensure the integrity of the electronic data storage system, including the prevention of unauthorized access to the program logic or individual records;

(2) The program and data storage system must be protected by a security system that utilizes an employee identification number and password, or a comparable method, to establish appropriate levels of program access meeting all of the following standards:

(i) No two individuals have the same electronic identity; and

(ii) A record cannot be deleted or altered by any individual after the record is certified by the employee who created the record;

(3) Any amendment to a record is either:

(i) Electronically stored apart from the record that it amends; or

(ii) Electronically attached to the record as information without changing the original record;

(4) Each amendment to a record uniquely identifies the person making the amendment; and

(5) The system employed by the railroad for data storage permits reasonable access and retrieval of the information which can be easily produced in an electronic or printed format that can be:

(i) Provided to FRA representatives in a timely manner; and

(ii) Authenticated by a designated representative of the railroad as a true and accurate copy of the railroad's records if requested to do so by an FRA representative.

§ 246.205 List of certified signal employees and recordkeeping.

(a) After a railroad's certification program has received its initial approval from FRA, pursuant to § 246.103(f)(1), the railroad must maintain a list of each person who is currently certified as a signal employee by the railroad. The list must include the date of the railroad's certification decision and the date the person's signal employee certification expires. If a railroad classifies its certified signal employees into occupational categories or subcategories by class, task, location, or other suitable terminology, the list must indicate the occupational categories and subcategories in which each certified signal employee is certified to perform service.

(b) The list shall:

(1) Be updated at least annually;

(2) Be made available, upon request, to FRA representatives in a timely manner;

and

(3) Be available either:

(i) In electronic format pursuant to paragraph (c) of this section; or

(ii) At the divisional or regional headquarters of the railroad.

(c) If a railroad elects to maintain its list in an electronic format, it must:

(1) Maintain an information technology security program adequate to ensure the integrity of the electronic data storage system, including the prevention of unauthorized access to the program logic or the list;

(2) Have its program and data storage system protected by a security system that utilizes an employee identification number and password, or a comparable method, to establish appropriate levels of program access meeting all of the following standards:

(i) No two individuals have the same electronic identity; and

(ii) An entry on the list cannot be deleted or altered by any individual after the entry is certified by the employee who created the entry;

(3) Have any amendment to the list either:

(i) Electronically stored apart from the entry on the list that it amends; or

(ii) Electronically attached to the entry on the list as information without changing the original entry;

(4) Ensure that each amendment to the list uniquely identifies the person making the amendment;

(5) Ensure that the system employed for data storage permits reasonable access and retrieval of the information which can be easily produced in an electronic or printed format that can be:

(i) Provided to FRA representatives within a timely manner; and

(ii) Authenticated by a designated representative of the railroad as a true and accurate copy of the railroad's records if requested to do so by an FRA representative.

(d) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on the list required by this section; or

(2) Otherwise falsify such list through material misstatement, omission, or mutilation.

§ 246.207 Certificate requirements.

(a) Each person who becomes a certified signal employee in accordance with this part shall be issued a paper or electronic certificate that:

(1)(i) Identifies the railroad issuing the certificate; or

(ii) Identifies the parent company issuing the certificate, if a parent company submits a certification program for one or more of its subsidiary railroads. The certificate issued by the parent company shall also list each subsidiary railroad on which the person is certified to work as a signal employee;

(2) Indicates it is a signal employee certificate and, if applicable, lists all signal employee occupational categories or subcategories developed pursuant to § 246.107 in which the person is certified;

(3) Provides the following information about the certified signal employee:

(i) Name;

(ii) Employee identification number; and

(iii) Either a physical description or photograph of the person;

(4) Identifies any conditions or limitations, including conditions to ameliorate vision or hearing acuity deficiencies, that restrict, limit, or alter the person's abilities to work as a certified signal employee;

(5) Shows the effective date of the certification;

(6) Shows the expiration date of the certification unless the certificate was issued pursuant to § 246.105(c) or (d);

(7) Has been signed by an individual designated in accordance with paragraph (b) of this section; and

(8) Is electronic or of sufficiently small size to permit being carried in an ordinary pocket wallet.

(b) Each railroad or parent company shall designate in writing any person it authorizes to sign the certificates described in this section. The designation shall identify such persons by name or job title.

(c) Nothing in this section shall prohibit any railroad or parent company from including additional information on the certificate or supplementing the certificate through other documents.

(d) It shall be unlawful for any railroad or parent company to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on a certificate; or

(2) Otherwise falsify a certificate through material misstatement, omission, or mutilation.

(e) Except as provided for in paragraph (g) of this section, each certified signal employee shall:

(1) Have their certificate in their possession while on duty as a signal employee; and

(2) Display their certificate upon request from:

(i) An FRA representative;

(ii) A state inspector authorized under part 212 of this chapter;

(iii) An officer of the issuing railroad; or

(iv) An officer of the person's employer if the certified signal employee is not employed by the issuing railroad.

(f) If a person's signal employee certificate is lost, stolen, mutilated, or becomes unreadable, the railroad shall promptly replace the certificate at no cost to the person.

(g) A certified signal employee is exempt from the requirements of paragraph (e) of this section if:

(1) The railroad made its certification or recertification decision within the last 30 days and the person has not yet received their certificate; or

(2) The person's signal employee certificate was lost, stolen, mutilated, or became unreadable, and the railroad has not yet issued a replacement certificate to the person who reported their lost certificate.

(h) Any person who is notified or called to work as a certified signal employee and such work would cause the person to exceed certificate limitations, set forth in accordance with subpart B of this part, shall immediately notify the railroad that they are not authorized to perform that work and it shall be unlawful for the railroad to require such work.

(i) Nothing in this section shall be deemed to alter a certified signal employee's duty to comply with other provisions of this chapter concerning railroad safety.

§ 246.213 Multiple certifications.

(a) A person who holds a signal employee certificate may:

(1) Hold a signal employee certificate for multiple types of signal service; and

(2) Be certified in other crafts, such as a locomotive engineer or conductor.

(b) A railroad that issues multiple certificates to a person, shall, to the extent possible, coordinate the expiration date of those certificates.

(c) Paragraphs (c)(1) through (3) of this section apply to persons who are currently certified as a signal employee for multiple railroads or are seeking to become certified signal employees for multiple railroads.

(1) A person who holds a current signal employee certificate from more than one railroad shall immediately notify the other certifying railroad(s) if they are denied signal

employee certification or recertification under § 246.301 by a railroad or have their signal employee certification suspended or revoked under § 246.307 by a railroad.

(2) If a person has their signal employee certification suspended or revoked by a railroad under § 246.307, they shall not work as a certified signal employee for any railroad during the period that their certification is suspended or revoked, except as provided for in § 246.124(d).

(3) If a person has their signal employee certification suspended or revoked by a railroad under § 246.307, they shall notify any railroad from whom they are seeking signal employee certification that their signal employee certification is currently suspended or revoked by another railroad.

(d) Paragraphs (d)(1) through (3) of this section apply to persons who are currently certified as a signal employee and also currently certified in another railroad craft, such as a locomotive engineer or conductor:

(1) If a person's signal employee certification is revoked under § 246.307 for a violation of § 246.303(e)(11), they shall not work in another certified railroad craft, such as a locomotive engineer or conductor, during the period of revocation.

(2) If a person's signal employee certification is revoked under § 246.307 for a violation of § 246.303(e)(1) through (10), they may work in another certified railroad craft, such as a locomotive engineer or conductor, during the period of revocation.

(3) If any of a person's non-signal employee certifications are revoked for failure to comply with § 219.101 of this chapter, they shall not work as a certified signal employee for any railroad during the period of revocation.

(4) If any of a person's non-signal employee certifications are revoked for any reason other than a failure to comply with § 219.101 of this chapter, they may work as a certified signal employee during the period of revocation.

(e) A person who has had their signal employee certification revoked for failure to comply with § 219.101 of this chapter shall not obtain any other certification pursuant to this chapter from any railroad during the period of revocation.

(f) A person who has had any of their non-signal employee certifications revoked for failure to comply with § 219.101 of this chapter shall not obtain signal employee certification pursuant to this part from any railroad during the period of revocation.

(g) A railroad that denies a person signal employee certification or recertification under § 246.301 shall not, solely on the basis of that denial, deny or revoke that person's non-signal employee certifications or recertifications.

(h) A railroad that denies a person any non-signal employee certification or recertification pursuant to this chapter shall not, solely on the basis of that denial, deny or revoke that person's signal employee certification or recertification.

(i) In lieu of issuing multiple certificates, a railroad may issue one certificate to a person who is certified in multiple crafts as long as the single certificate complies with all of the certificate requirements for those crafts.

(j) A person who is certified in multiple crafts and who is involved in a revocable event, as described in this chapter, may only have one certificate revoked for that event. The determination by the railroad as to which certificate to revoke must be based on the work the person was performing at the time the revocable event occurred.

§ 246.215 Railroad oversight responsibilities.

(a) No later than March 31 of each year (beginning in calendar year 2027), each Class I railroad (including the National Railroad Passenger Corporation), each railroad providing commuter service, and each Class II railroad shall conduct a formal annual review and analysis concerning the administration of its program for responding to detected instances of poor safety conduct by certified signal employees during the prior calendar year.

(b) Each review and analysis shall involve:

(1) The number and nature of the instances of detected poor safety conduct including the nature of the remedial action taken in response thereto;

(2) The number and nature of FRA reported accidents/incidents attributed to poor safety performance by signal employees; and

(3) The number and type of operational monitoring test failures recorded by certified signal employees conducting compliance tests pursuant to § 246.123.

(c) Based on that review and analysis, each railroad shall determine what action(s) it will take to improve the safety of railroad operations to reduce or eliminate future accidents/incidents of that nature.

(d) If requested in writing by FRA, by the president of a labor organization that represents the railroad's signal employees, or by a railroad's certified signal employee who is not represented by a labor organization, the railroad shall provide a report of the findings and conclusions reached during such annual review and analysis effort.

(e) For reporting purposes, information about the nature of detected poor safety conduct shall be capable of segregation for study and evaluation purposes into the following categories:

(1) Incidents involving noncompliance with railroad rules and procedures governing the removal from service of:

(i) Highway-rail and pathway grade crossing warning devices and systems; and

(ii) Wayside signal devices and systems;

(iii) Other devices or signal systems subject to this part.

(2) Incidents involving noncompliance with railroad rules and procedures governing the restoration of service of:

(i) Highway-rail and pathway grade crossing warning devices and systems; and

(ii) Wayside signal devices and systems;

(iii) Other devices or signal systems subject to this part.

(3) Incidents involving interference with the normal functioning of:

(i) Highway-rail and pathway grade crossing warning devices and systems; and

(ii) Wayside signal devices and systems.

(4) Incidents involving noncompliance with railroad rules and test procedures governing the inspection and testing of grade crossing warning devices and systems after installation, modification, disarrangement, maintenance, testing, and repair.

(5) Incidents involving noncompliance with railroad test procedures on devices or signal systems subject to this part.

(6) Incidents resulting in a signal false proceed, grade crossing activation failure, or accident or personal injury related to the same.

(7) Incidents involving noncompliance with the on-track safety requirements and blue signal requirements in parts 214 and 218 of this chapter.

(8) Incidents involving noncompliance with part 219 of this chapter.

(f) For reporting purposes, each category of detected poor safety conduct identified in paragraph (e) of this section shall be capable of being annotated to reflect the following:

(1) The total number of incidents in that category;

(2) The number of incidents within that total which reflect incidents requiring an FRA accident/incident report under part 225 of this chapter; and

(3) The number of incidents within that total which were detected as a result of a scheduled operational monitoring effort.

(g) For reporting purposes, each instance of detected poor safety conduct identified in paragraph (b) of this section shall be capable of being annotated to reflect the following:

(1) The nature of the remedial action taken, and the number of events subdivided, so as to reflect which of the following actions was selected:

- (i) Imposition of informal discipline;
- (ii) Imposition of formal discipline;
- (iii) Provision of informal training; or
- (iv) Provision of formal training; and

(2) If the nature of the remedial action taken was formal discipline, the number of events further subdivided so as to reflect which of the following punishments was imposed by the railroad:

- (i) The person was withheld from service;
- (ii) The person was dismissed from employment; or
- (iii) The person was issued demerits. If more than one form of punishment was imposed, only the punishment deemed the most severe shall be shown.

(iv) The person's classification or type of signal employee service was removed or reduced.

(h) For reporting purposes, each instance of detected poor safety conduct identified in paragraph (b) of this section which resulted in the imposition of formal or informal discipline shall be annotated to reflect the following:

(1) The number of instances in which the railroad's internal appeals process reduced the punishment initially imposed at the conclusion of its hearing; and

(2) The number of instances in which the punishment imposed by the railroad was reduced by any of the following entities: The National Railroad Adjustment Board, a Public Law Board, a Special Board of Adjustment, or other body for the resolution of disputes duly constituted under the provisions of the Railway Labor Act.

(i) For reporting purposes, an instance of poor safety conduct involving a person who is a certified signal employee and is certified in another craft such as locomotive

engineer or conductor, need only be reported once (*e.g.*, either under this section or § 240.309 or § 242.215 of this chapter). The determination as to where to report the instance of poor safety conduct should be based on the work the person was performing at the time the conduct occurred.

Subpart D—Denial and Revocation of Certification

§ 246.301 Process for denying certification.

(a) A railroad shall notify a candidate for certification or recertification of information known to the railroad that forms the basis for denying the person certification and provide the candidate a reasonable opportunity to explain or rebut that adverse information in writing prior to denying certification. A railroad shall provide the candidate with any documents or records, including written statements, related to failure to meet a requirement of this part that support its pending denial decision.

(b) If a railroad denies a person certification or recertification, it shall issue a decision that complies with all of the following requirements:

- (1) It must be in writing.
- (2) It must explain the basis for the railroad's denial decision.
- (3) It must address any explanation or rebuttal information that the candidate provides pursuant to paragraph (a) of this section.
- (4) It must include the date of the railroad's decision.
- (5) It must be served on the person no later than 10 days after the railroad's decision.

(c) A railroad shall not deny the person's certification for failing to comply with a railroad test procedure, signal standard, or practice which constitutes a violation under § 246.303(e)(1) through (10) if sufficient evidence exists to establish that an intervening cause prevented or materially impaired the person's ability to comply with that railroad test procedure, signal standard, or practice.

§ 246.303 Criteria for revoking certification.

(a) It shall be unlawful to fail to comply with any of the railroad rules or practices described in paragraph (e) of this section.

(b) A certified signal employee who fails to comply with a railroad test procedure, signal standard or practice described in paragraph (e) of this section shall have their certification revoked.

(c) A certified signal employee who is assigned to monitor, mentor, or instruct a signal employee and fails to take appropriate action to prevent a violation of paragraph (e) of this section shall have their certification revoked.

(d) A certified signal employee who is called by a railroad to perform a duty other than that of a signal employee shall not have their signal employee certification revoked based on actions taken or not taken while performing that duty except for violations described in paragraph (e)(11) of this section.

(e) When determining whether to revoke a person's signal employee certification, a railroad shall only consider violations of Federal regulatory provisions or railroad rules, procedures, signal standards, and practices that involve:

(1) Interfering with the normal functioning of a highway-rail grade crossing warning system under § 234.209 of this chapter, or signal system under § 236.4 of this chapter, without providing an alternative means of protection. (Railroads shall only consider those violations that result in an activation failure or false proceed signal.)

(2) Failure to comply with a railroad rule or procedure when removing from service:

- (i) Highway-rail or pathway grade crossing warning devices and systems;
- (ii) Wayside signal devices or signal systems; or
- (iii) Other devices or signal systems subject to this part.

(3) Failure to comply with railroad rule or procedure when placing in service or restoring to service:

- (i) Highway-rail and pathway grade crossing warning devices and systems;
- (ii) Wayside signal devices or signal systems; or
- (iii) Other devices or signal systems subject to this part.

(4) Failure to perform an inspection or test to ensure a highway-rail or pathway grade crossing warning device or system functions as intended, when required by railroad rule or procedure, after:

- (i) Installation, maintenance, testing or repair of the warning device or system;
- (ii) Modification or disarrangement of the warning device or system; or
- (iii) Malfunction or failure of the warning device or system;

(5) Failure to restore power to train detection device or highway-rail or pathway grade crossing warning device or system after manual interruption of the power source.

(Railroads shall consider only those violations that result in activation failures.)

(6) Failure to comply with railroad validation or cutover procedures.

(7) Failure to comply with §§ 214.313, 214.319, 214.321, 214.323, 214.325, 214.327, or 214.329. Railroads shall consider only those violations directly involving a person who failed to obtain proper on-track safety before fouling a track.

(8) Failure to comply with § 218.25 of this chapter (Workers on a main track);

(9) Failure to comply with § 218.27 of this chapter (Workers on other than main track);

(10) Failure to comply with § 218.29 of this chapter (Alternate methods of protection);

(11) Failure to comply with § 219.101 of this chapter. However, such incidents shall be considered as a violation only for the purposes of § 246.305(a)(2) and (b).

(f) In making the determination as to whether to revoke a person's signal employee certification, a railroad shall only consider conduct described in paragraphs (e)(1) through (10) of this section that occurred within the three years prior to the determination.

(g) If in any single incident the person's conduct contravened more than one Federal regulatory provision or railroad rule, procedure, signal standard, or practice, that event shall be treated as a single violation for the purposes of this section.

(h) A violation of one or more railroad rules, procedures, signal standards, or practices described in paragraphs (e)(1) through (10) of this section that occurs during a properly conducted compliance test subject to the provisions of this chapter shall be counted in determining the periods of ineligibility described in § 246.305.

(i) A compliance test that is not conducted in compliance with this part, a railroad's operating rules, or a railroad's program under § 217.9 of this chapter, will not be considered a legitimate test of skill or knowledge, and will not be considered for revocation purposes.

(j) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including, but not limited to, each railroad, railroad officer, supervisor, and employee) violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

§ 246.305 Periods of ineligibility.

(a) The starting date for a period of ineligibility described in this section shall be:

(1) For a person not currently certified, the date of the railroad's written determination that the most recent incident has occurred; or

(2) For a person currently certified, the date of the railroad's notification to the person that recertification has been denied or certification has been suspended.

(b) A period of ineligibility shall be determined according to the following standards:

(1) In the case of a single incident involving a violation of one or more of the Federal regulatory provisions or railroad rules, procedures, signal standards, or practices described in § 246.303(e)(1) through (10), the person shall have their certificate revoked for a period of 30 calendar days.

(2) In the case of two separate incidents involving a violation of one or more of the Federal regulatory provisions or railroad rules, procedures, signal standards, or practices described in § 246.303(e)(1) through (10), that occurred within 24 months of each other, the person shall have their certificate revoked for a period of six months.

(3) In the case of three separate incidents involving violations of one or more of the Federal regulatory provisions or railroad rules, procedures, signal standards, or practices, described in § 246.303(e)(1) through (11), that occurred within 36 months of each other, the person shall have their certificate revoked for a period of one year.

(4) In the case of four separate incidents involving violations of one or more of the Federal regulatory provisions or railroad rules, procedures, signal standards, or practices, described in § 246.303(e)(1) through (11), that occurred within 36 months of each other, the person shall have their certificate revoked for a period of three years.

(5) Where, based on the occurrence of violations described in § 246.303(e)(11), different periods of ineligibility may result under the provisions of this section and § 246.115, the longest period of revocation shall control.

(c) Any or all periods of revocation provided in paragraph (b) of this section may consist of training.

(d) A person whose certification is denied or revoked shall be eligible for grant or reinstatement of the certificate prior to the expiration of the initial period of ineligibility only if:

- (1) The denial or revocation of certification in accordance with the provisions of paragraph (b) of this section is for a period of one year or less;
- (2) Certification is denied or revoked for reasons other than noncompliance with § 219.101 of this chapter;
- (3) The person is evaluated by a railroad officer and determined to have received adequate remedial training;
- (4) The person successfully completes any mandatory program of training or retraining, if that is determined to be necessary by the railroad prior to return to service; and
- (5) At least one half of the pertinent period of ineligibility specified in paragraph (b) of this section has elapsed.

§ 246.307 Process for revoking certification.

(a) If a railroad determines that a person, who is currently certified as a signal employee by the railroad, has violated a Federal regulatory provision, railroad test procedure, signal standard or practice described in § 246.303(e), the railroad shall revoke the person's signal employee certification in accordance with the procedures and requirements of this section.

(b) Except as provided for in § 246.115(f), if a railroad acquires reliable information that a person, who is currently certified as a signal employee by the railroad, has violated a Federal regulatory provision, railroad rule, procedure, signal standard, or practice described in § 246.303(e) or § 246.115(d), the railroad shall undertake the following process to determine whether revocation of the person's signal employee certification is warranted:

- (1) The person's signal employee certification shall be suspended immediately.

(2) The person's employer(s) (if different from the suspending railroad) shall be immediately notified of the certification suspension and the reason for the certification suspension.

(3) Prior to or upon suspending the person's signal employee certification, the railroad shall provide the person with notice of: the reason for the suspension; the pending revocation; and an opportunity for a hearing before a presiding officer other than the investigating officer. This notice may initially be given either orally or in writing. If given orally, the notice must be subsequently confirmed in writing in a manner that conforms with the notification provisions of the applicable collective bargaining agreement. If there is no applicable collective bargaining agreement notification provision, the written notice must be made within four days of the date the certification was suspended.

(4) The railroad must convene the hearing within the time frame required under the applicable collective bargaining agreement. If there is no applicable collective bargaining agreement or the applicable collective bargaining agreement does not include such a requirement, the hearing shall be convened within ten days of the date the certification is suspended unless the person requests or consents to a delay to the start of the hearing.

(5) Except as provided for in paragraph (c) of this section, the railroad shall provide the certified signal employee with a copy of the written information and a list of witnesses the railroad will present at the hearing at least 72 hours before the start of the hearing. If this information was provided by an employee of the railroad, the railroad shall make that employee available for examination during the hearing notwithstanding the terms of an applicable collective bargaining agreement.

(6) Following the hearing, the railroad must determine, based on the record of the hearing, whether revocation of the certification is warranted and state explicitly the basis

for the conclusion reached. The railroad shall have the burden of proving that revocation of the person's signal employee certification is warranted under § 246.303.

(7) If the railroad determines that revocation of the person's signal employee certification is warranted, the railroad shall impose the proper period of revocation provided for in § 246.305 or § 246.115.

(8) The railroad shall retain the record of the hearing for three years after the date the decision is rendered.

(c) A hearing required by this section which is conducted in a manner that conforms procedurally to the applicable collective bargaining agreement shall satisfy the procedural requirements of this section.

(d) Except as provided for in paragraph (c) of this section, a hearing required under this section shall be conducted in accordance with the following procedures:

(1) The hearing shall be conducted by a presiding officer who can be any proficient person authorized by the railroad other than the investigating officer.

(2) The presiding officer shall convene and preside over the hearing and exercise the powers necessary to regulate the conduct of the hearing for the purpose of achieving a prompt and fair determination of all material issues in dispute.

(3) The presiding officer may:

(i) Adopt any needed procedures for the submission of evidence in written form;

(ii) Examine witnesses at the hearing; and

(iii) Take any other action authorized by or consistent with the provisions of this part and permitted by law that may assist in achieving a prompt and fair determination of all material issues in dispute.

(4) All relevant and probative evidence shall be received into the record unless the presiding officer determines the evidence to be unduly repetitive or have such

minimal relevance that its admission would impair the prompt, orderly, and fair resolution of the proceeding.

(5) Parties may appear at the hearing and be heard on their own behalf or through designated representatives. Parties may offer relevant evidence including testimony and may conduct such examination of witnesses as may be required for a full disclosure of the relevant facts.

(6) Testimony by witnesses at the hearing shall be recorded verbatim. Witnesses can testify in person, over the phone, or virtually.

(7) The record in the proceeding shall be closed at the conclusion of the hearing unless the presiding officer allows additional time for the submission of evidence.

(8) A hearing required under this section may be consolidated with any disciplinary action or other hearing arising from the same facts, but in all instances a railroad official, other than the investigating officer, shall make separate findings as to the revocation required under this section.

(9) A person may waive their right to a hearing. That waiver shall:

(i) Be made in writing;

(ii) Reflect the fact that the person has knowledge and understanding of these rights and voluntarily surrenders them; and

(iii) Be signed by the person making the waiver.

(e) Except as provided for in paragraph (c) of this section, a decision, required by this section, on whether to revoke a person's signal employee certification shall comply with the following requirements:

(1) No later than ten days after the close of the record, a railroad official, other than the investigating officer, shall prepare and sign a written decision as to whether the railroad is revoking the person's signal employee certification.

(2) The decision shall:

(i) Contain the findings of fact on all material issues as well as an explanation for those findings with citations to all applicable railroad rules, signal standards and procedures and any applicable Federal regulations;

(ii) State whether the railroad official found that the person's signal employee certification should be revoked;

(iii) State the period of revocation under § 246.305 (if the railroad official concludes that the person's signal employee certification should be revoked); and

(iv) Be served on the person and their representative, if any, with the railroad retaining proof of service for three years after the date the decision is rendered.

(f) The period that a person's signal employee certification is suspended in accordance with paragraph (b)(1) of this section shall be credited towards any period of revocation that the railroad assesses in accordance with § 246.305.

(g) A railroad shall revoke a person's signal employee certification if, during the period that certification is valid, the railroad acquires information that another railroad has revoked the person's signal employee certification in accordance with the provisions of this section. Such revocation shall run concurrently with the period of revocation imposed by the railroad that initially revoked the person's signal employee certification. The requirement to provide a hearing under this section is satisfied when any single railroad holds a hearing. No additional hearing is required prior to a revocation by more than one railroad arising from the same facts.

(h) A railroad shall not revoke a person's signal employee certification if sufficient evidence exists to establish that an intervening cause prevented or materially impaired the person's ability to comply with the railroad test procedure, signal standard, or practice which constitutes a violation under § 246.303.

(i) A railroad may decide not to revoke a person's signal employee certification if sufficient evidence exists to establish that the violation of the railroad test procedure,

signal standard, or practice described in § 246.303(e) was of a minimal nature and had no direct or potential effect on rail safety.

(j) If sufficient evidence meeting the criteria in paragraph (h) or (i) of this section becomes available, including prior to a railroad's action to suspend the certificate as provided for in paragraph (b)(1) of this section or prior to the convening of the hearing provided for in this section, the railroad shall place the relevant information in the records maintained in compliance with:

(1) Section 246.215 for Class I railroads (including the National Railroad Passenger Corporation), railroads providing commuter service, and Class II railroads; and

(2) Section 246.203 for Class III railroads.

(k) If a railroad makes a good faith determination, after performing a reasonable inquiry, that the course of conduct provided for in paragraph (h) or (i) of this section is warranted, the railroad will not be in violation of paragraph (b)(1) of this section if it decides not to suspend the person's signal employee certification.

Subpart E—Dispute Resolution Procedures

§ 246.401 Review board established.

(a) Any person who has been denied certification or recertification, or has had their certification revoked and believes that a railroad incorrectly determined that they failed to meet the certification requirements of this part when making the decision to deny or revoke certification, may petition the Administrator to review the railroad's decision.

(b) The Administrator has delegated initial responsibility for adjudicating such disputes to the Certification Review Board (Board). The Board shall be composed of FRA employees.

§ 246.403 Petition requirements.

(a) To obtain review of a railroad's decision to deny certification, deny recertification, or revoke certification, a person shall file a petition for review that complies with this section.

(b) Each petition shall:

(1) Be in writing;

(2) Be filed no more than 120 days after the date the railroad's denial or revocation decision was served on the petitioner, except as provided for in paragraph (d) of this section;

(3) Be filed on <https://www.regulations.gov>;

(4) Include the following contact information for the petitioner and petitioner's representative (if petitioner is represented):

(i) Full name;

(ii) Daytime telephone number; and

(iii) Email address;

(5) Include the name of the railroad and the name of the petitioner's employer (if different from the railroad that revoked petitioner's certification);

(6) Contain the facts that the petitioner believes constitute the improper action by the railroad and the arguments in support of the petition; and

(7) Include all written documents in the petitioner's possession or reasonably available to the petitioner that document the railroad's decision.

(c) If requested by the Board, the petitioner must provide a copy of the information under 49 CFR 40.329 that laboratories, medical review officers, and other service agents are required to release to employees. The petitioner must provide a written explanation in response to a Board request if written documents, that should be reasonably available to the petitioner, are not supplied.

(d) The Board may extend the petition filing period in its discretion provided the petitioner provides good cause for the extension and:

(1) The request for an extension is filed before the expiration of the period provided for in paragraph (b)(2) of this section; or

(2) The failure to timely file was the result of excusable neglect.

(e) A party aggrieved by a Board decision to deny a petition as untimely or not in compliance with the requirements of this section may file an appeal with the Administrator in accordance with § 246.411.

§ 246.405 Processing certification review petitions.

(a) Each petition shall be acknowledged in writing by FRA. The acknowledgment shall be sent to the petitioner (if an email address is provided), petitioner's representative (if any), the railroad, and petitioner's employer (if different from the railroad that revoked petitioner's certification). The acknowledgment shall contain the docket number assigned to the petition and will notify the parties where the petition can be accessed.

(b) Within 60 days from the date of the acknowledgment provided in paragraph (a) of this section, the railroad may submit to FRA any information that the railroad considers pertinent to the petition and shall supplement the record with any relevant documents in its possession, such as hearing transcripts and exhibits, that were not submitted by the petitioner. Late filings will only be considered to the extent practicable. A railroad that submits such information shall:

(1) Identify the petitioner by name and the docket number for the petition;

(2) Provide the railroad's email address;

(3) Serve a copy of the information being submitted to the petitioner and petitioner's representative (if any); and

(4) Be filed on *<https://www.regulations.gov>*.

(c) The petition will be referred to the Board for a decision after a railroad's response is received or 60 days from the date of the acknowledgment provided in paragraph (a) of this section, whichever is earlier. Based on the record, the Board shall have the authority to grant, deny, dismiss, or remand the petition. If the Board finds that there is insufficient basis for granting or denying the petition, the Board may issue an order affording the parties an opportunity to provide additional information or argument consistent with its findings.

(d) When considering procedural issues, the Board will grant the petition if the petitioner shows:

- (1) That a procedural error occurred; and
- (2) The procedural error caused substantial harm to the petitioner.

(e) When considering factual issues, the Board will grant the petition if the petitioner shows that the railroad did not provide substantial evidence to support its decision.

(f) When considering legal issues, the Board will determine whether the railroad's legal interpretations are correct based on a *de novo* review.

(g) The Board will only consider whether the denial or revocation of certification or recertification was improper under this part and will grant or deny the petition accordingly. The Board will not otherwise consider the propriety of a railroad's decision. For example, the Board will not consider whether the railroad properly applied its own more stringent requirements.

(h) The Board's written decision shall be served on the petitioner and/or petitioner's representative (if any), the railroad, and petitioner's employer (if different from the railroad that revoked petitioner's certification).

§ 246.407 Request for a hearing.

(a) If adversely affected by the Board's decision, either the petitioner before the Board or the railroad involved shall have a right to an administrative proceeding as prescribed by § 246.409.

(b) To exercise that right, the adversely affected party shall file a written request for a hearing within 20 days of service of the Board's decision on that party. The request must be filed in the docket on <https://www.regulations.gov> that was used when the case was before the Board.

(c) A written request for a hearing must contain the following:

(1) The name, telephone number, and email address of the requesting party and the party's designated representative (if any);

(2) The name, telephone number, and email address of the respondent;

(3) The docket number for the case while it was before the Board;

(4) The specific factual issues, industry rules, regulations, or laws that the requesting party alleges need to be examined in connection with the certification decision in question; and

(5) The signature of the requesting party or the requesting party's representative (if any).

(d) Upon receipt of a hearing request complying with paragraph (c) of this section, FRA shall arrange for the appointment of a presiding officer who shall schedule the hearing for the earliest practicable date.

(e) If a party fails to request a hearing within the period provided in paragraph (b) of this section, the Board's decision will constitute final agency action.

§ 246.409 Hearings.

(a) An administrative hearing for a signal employee certification petition shall be conducted by a presiding officer, who can be any person authorized by the Administrator.

(b) The presiding officer shall convene and preside over the hearing. The hearing shall be a *de novo* hearing to find the relevant facts and determine the correct application of this part to those facts. The presiding officer may determine that there is no genuine issue covering some or all material facts and limit evidentiary proceedings to any issues of material fact as to which there is a genuine dispute.

(c) The presiding officer may exercise the powers of the Administrator to regulate the conduct of the hearing for the purpose of achieving a prompt and fair determination of all material issues in controversy.

(d) The presiding officer may authorize discovery of the types and quantities which in the presiding officer's discretion will contribute to a fair hearing without unduly burdening the parties. The presiding officer may impose appropriate non-monetary sanctions, including limitations as to the presentation of evidence and issues, for any party's willful failure or refusal to comply with approved discovery requests.

(e) Every petition, motion, response, or other authorized or required document shall be signed by the party filing the same, or by a duly authorized officer or representative of record, or by any other person. If signed by such other person, the reason therefor must be stated and the power of attorney or other authority authorizing such other person to subscribe the document must be filed with the document. The signature of the person subscribing any document constitutes a certification that they have read the document; that to the best of their knowledge, information, and belief, every statement contained in the document is true and no such statements are misleading; and that it is not interposed for delay or to be vexatious.

(f) After the request for a hearing is filed, all documents filed or served upon one party must be served upon all parties. Each party may designate a person upon whom service is to be made when not specified by law, regulation, or directive of the presiding officer. If a party does not designate a person upon whom service is to be made, then

service may be made upon any person having subscribed to a submission of the party being served, unless otherwise specified by law, regulation, or directive of the presiding officer. Proof of service shall accompany all documents when they are tendered for filing.

(g) If any document initiating, filed in, or served in, a proceeding is not in substantial compliance with the applicable law, regulation, or directive of the presiding officer, the presiding officer may strike or dismiss all or part of such document, or require its amendment.

(h) Any party to a proceeding may appear and be heard in person or by an authorized representative.

(i) 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.

(j) Any party may request to consolidate or separate the hearing of two or more petitions by motion to the presiding officer when they arise from the same or similar facts or when the matters are for any reason deemed more efficiently heard together.

(k) Except as provided in § 246.407(e) and paragraph (s)(4) of this section, whenever a party has the right or is required to take action within a period prescribed by this part, or by law, regulation, or directive of the presiding officer, the presiding officer may extend such period, with or without notice, for good cause, provided another party is not substantially prejudiced by such extension. A request to extend a period which has already expired may be denied as untimely.

(l) An application to the presiding officer for an order or ruling not otherwise specifically provided for in this part shall be by motion. The motion shall be filed with the presiding officer and, if written, served upon all parties. All motions, unless made during the hearing, shall be written. Motions made during hearings may be made orally

on the record, except that the presiding officer may direct that any oral motion be reduced to writing. Any motion shall state with particularity the grounds therefor and the relief or order sought and shall be accompanied by any affidavits or other evidence desired to be relied upon which is not already part of the record. Any matter submitted in response to a written motion must be filed and served within 14 days of the motion, or within such other period as directed by the presiding officer.

(m) Testimony by witnesses at the hearing shall be given under oath and the hearing shall be recorded verbatim. The presiding officer shall give the parties to the proceeding adequate opportunity during the course of the hearing for the presentation of arguments in support of or in opposition to motions, and objections and exceptions to rulings of the presiding officer. The presiding officer may permit oral argument on any issues for which the presiding officer deems it appropriate and beneficial. Any evidence or argument received or proffered orally shall be transcribed and made a part of the record. Any physical evidence or written argument received or proffered shall be made a part of the record, except that the presiding officer may authorize the substitution of copies, photographs, or descriptions, when deemed to be appropriate.

(n) The presiding officer shall employ the Federal Rules of Evidence for United States Courts and Magistrates as general guidelines for the introduction of evidence. Notwithstanding paragraph (m) of this section, all relevant and probative evidence shall be received unless the presiding officer determines the evidence to be unduly repetitive or so extensive and lacking in relevancy that its admission would impair the prompt, orderly, and fair resolution of the proceeding.

(o) The presiding officer may:

- (1) Administer oaths and affirmations;
- (2) Issue subpoenas as provided for in § 209.7 of this chapter;
- (3) Adopt any needed procedures for the submission of evidence in written form;

(4) Examine witnesses at the hearing;

(5) Convene, recess, adjourn, or otherwise regulate the course of the hearing; and

(6) Take any other action authorized by or consistent with the provisions of this part and permitted by law that may expedite the hearing or aid in the disposition of the proceeding.

(p) The petitioner before the Board, the railroad involved in taking the certification action, and FRA shall be parties at the hearing. All parties may participate in the hearing and may appear and be heard on their own behalf or through designated representatives. All parties may offer relevant evidence, including testimony, and may conduct such cross-examination of witnesses as may be required to make a record of the relevant facts.

(q) The party requesting the administrative hearing shall be the “hearing petitioner.” The party that the Board issued its decision in favor of will be a respondent. At the start of each proceeding, FRA will be a respondent as well. The hearing petitioner shall have the burden of proving its case by a preponderance of the evidence.

(r) The record in the proceeding shall be closed at the conclusion of the evidentiary hearing unless the presiding officer allows additional time for the submission of additional evidence. In such instances the record shall be left open for such time as the presiding officer grants for that purpose.

(s) At the close of the record, the presiding officer shall prepare a written decision in the proceeding. The decision:

(1) Shall contain the findings of fact and conclusions of law, as well as the basis for each, concerning all material issues of fact or law presented on the record;

(2) Shall be served on all parties to the proceeding;

(3) Shall not become final for 35 days after issuance;

(4) Constitutes final agency action unless an aggrieved party files an appeal within 35 days after issuance; and

(5) Is not precedential.

§ 246.411 Appeals.

(a) Any party aggrieved by the presiding officer's decision may file an appeal in the presiding officer's docket. The appeal must be filed within 35 days of issuance of the decision. A copy of the appeal shall be served on each party. The appeal shall set forth objections to the presiding officer's decision, supported by reference to applicable laws and regulations and with specific reference to the record. If no appeal is timely filed, the presiding officer's decision constitutes final agency action.

(b) A party may file a reply to the appeal within 25 days of service of the appeal. The reply shall be supported by reference to applicable laws and regulations and with specific reference to the record, if the party relies on evidence contained in the record.

(c) The Administrator may extend the period for filing an appeal or a reply for good cause shown, provided that the written request for extension is served before expiration of the applicable period provided in this section.

(d) The Administrator has sole discretion to permit oral argument on the appeal. On the Administrator's own initiative or written motion by any party, the Administrator may grant the parties an opportunity for oral argument.

(e) The Administrator may remand, vacate, affirm, reverse, alter, or modify the decision of the presiding officer and the Administrator's decision constitutes final agency action except where the terms of the Administrator's decision (for example, remanding a case to the presiding officer) show that the parties' administrative remedies have not been exhausted.

(f) An appeal from a Board decision pursuant to § 246.403(e) must be filed in the Board's docket within 35 days of issuance of the decision. A copy of the appeal shall be

served on each party. The Administrator may affirm or vacate the Board's decision, and may remand the petition to the Board for further proceedings. An Administrator's decision to affirm the Board's decision constitutes final agency action.

Appendix A to Part 246 – Procedures for Obtaining and Evaluating Motor Vehicle Driving Record Data

(1) The purpose of this appendix is to outline the procedures available to individuals and railroads for complying with the requirements of § 246.111. This provision requires that railroads consider the motor vehicle driving record of each person prior to issuing them certification or recertification as a signal employee.

(2) To fulfill that obligation, a railroad is required to review a certification candidate's recent motor vehicle driving record for information described in § 246.111(m). Generally, that will be a single record on file with the state agency that issued the candidate's current motor vehicle driver's license. However, a motor vehicle driving record can include multiple documents if the candidate has been issued a motor vehicle driver's license by more than one state agency or a foreign country.

(3) The right of railroad workers, their employers, or prospective employers to have access to a state motor vehicle licensing agency's data concerning an individual's driving record is controlled by state law. Although many states have mechanisms through which employers and prospective employers, such as railroads, can obtain such data, there are some states where privacy concerns make such access very difficult or impossible. Since individuals are generally entitled to obtain access to their driving record data that will be relied on by a state motor vehicle licensing agency when that agency is taking action concerning their driving privileges, FRA places the responsibility on individuals who want to serve as certified signal employees to request that their current state motor vehicle licensing agency (or agencies) furnish such data directly to the railroad that is considering certification (or recertification) of the individual as a signal

employee. Depending on the procedures established by the state motor vehicle licensing agency, the individual may be asked to send the state agency a brief letter requesting such action or to execute a state agency form that accomplishes the same effect. Requests for an individual's motor vehicle driving record normally involve payment of a nominal fee established by the state agency as well. In rare instances, when a certification (or recertification) candidate has been issued multiple licenses, an individual may be required to submit multiple requests.

(4) Once the railroad has obtained the individual's motor vehicle driving record(s), the railroad is required to afford the certification (or recertification) candidate an opportunity to review and comment on the record(s) in writing pursuant to § 246.301 if the motor vehicle driving records contain information that could form the basis for denying the person certification. This opportunity to review and comment must occur before the railroad renders a certification decision based on information in the record(s). The railroad is required to evaluate the information in the certification (or recertification) candidate's motor vehicle driving record(s) pursuant to the provisions of this part.

Appendix B to Part 246 – Medical Standards Guidelines

(1) The purpose of this appendix is to provide greater guidance on the procedures that should be employed in administering the vision and hearing requirements of §§ 246.117 and 246.118.

(2) For any examination performed to determine whether a person meets the visual acuity requirements in § 246.117, it is recommended that such examination be performed by a licensed optometrist or a technician who reports to a licensed optometrist. It is also recommended that any test conducted pursuant to § 246.117 be performed according to any directions supplied by the test's manufacturer and any ANSI standards that are applicable.

(3) For any examination performed to determine whether a person meets the hearing acuity requirements in § 246.118, it is recommended that such examination be performed by a licensed or certified audiologist or a technician who reports to a licensed or certified audiologist. It is also recommended that any test conducted pursuant to § 246.118 be performed according to any directions supplied by the test's manufacturer and any ANSI standards that are applicable.

(4) In determining whether a person has the visual acuity that meets or exceeds the requirements of this part, the following testing protocols are deemed acceptable testing methods for determining whether a person has the ability to recognize and distinguish among the colors used as signals in the railroad industry. The acceptable test methods are shown in the left hand column and the criteria that should be employed to determine whether a person has failed the particular testing protocol are shown in the right hand column.

Table 1 to Appendix B to Part 246

Accepted tests	Failure criteria
Pseudoisochromatic Plate Tests	
American Optical Company 1965	5 or more errors on plates 1-15.
AOC – Hardy-Rand-Ritter plates – second edition	Any error on plates 1-6 (plates 1-4 are for demonstration - test plate 1 is actually plate 5 in book).
Dvorine – Second edition	3 or more errors on plates 1-15.
Ishihara (14 plate)	2 or more errors on plates 1-11.
Ishihara (16 plate)	2 or more errors on plates 1-8.
Ishihara (24 plate)	3 or more errors on plates 1-15.
Ishihara (38 plate)	4 or more errors on plates 1-21.
Richmond Plates 1983	5 or more errors on plates 1-15.
Multifunction Vision Tester	
Keystone Orthoscope	Any error.
OPTEC 2000	Any error.
Titmus Vision Tester	Any error.
Titmus II Vision Tester	Any error.

(5) In administering any of these protocols, the person conducting the examination should be aware that railroad signals do not always occur in the same sequence and that “yellow signals” do not always appear to be the same. It is not acceptable to use “yarn” or other materials to conduct a simple test to determine whether the certification candidate has the requisite vision. No person shall be allowed to wear chromatic lenses during an initial test of the person's color vision; the initial test is one conducted in accordance with one of the accepted tests in the chart and § 246.117(c)(3).

(6) An examinee who fails to meet the criteria in the chart may be further evaluated as determined by the railroad's medical examiner. Ophthalmologic referral, field testing, or other practical color testing may be utilized depending on the experience of the examinee. The railroad's medical examiner will review all pertinent information and, under some circumstances, may restrict an examinee who does not meet the criteria for serving as a certified signal employee. The intent of §§ 246.117(d) and 246.118(d) is not to provide an examinee with the right to make an infinite number of requests for further evaluation, but to provide an examinee with at least one opportunity to prove that a hearing or vision test failure does not mean the examinee cannot safely perform as a certified signal employee. Appropriate further medical evaluation could include providing another approved scientific screening test or a field test. All railroads should retain the discretion to limit the number of retests that an examinee can request, but any cap placed on the number of retests should not limit retesting when changed circumstances would make such retesting appropriate. Changed circumstances would most likely occur if the examinee's medical condition has improved in some way or if technology has advanced to the extent that it arguably could compensate for a hearing or vision deficiency.

(7) Certified signal employees who wear contact lenses should have good tolerance to the lenses and should be instructed to have a pair of corrective glasses available when on duty.

Issued in Washington, D.C.

Amitabha Bose,
Administrator.

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