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Public Transportation
Association**

September 14, 2023

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Department of Transportation
Docket Operations
M-30, West Building Ground Floor, Room W12-140
1200 New Jersey Avenue S.E.
Washington, DC 20590

Subject: Docket No. FRA-2022-0019, RIN 2130-AC91

Dear Docket Clerk:

The American Public Transportation Association (APTA) represents an \$80 billion industry that directly employs 450,000 people and supports millions of private-sector jobs. APTA writes to you today to submit comments for the notice of proposed rulemaking (NPRM) for Certification of Dispatchers published in the *Federal Register* May 31, 2023, at 88 FR 35574. APTA's membership includes operating railroads, consultants, car builders and suppliers. We appreciate the chance to respond to your proposed rulemaking on behalf of our commuter rail members.

Dispatcher Certification Comments

Cost / Benefit Analysis

In reviewing the cost analysis, it does not appear that it considers the potential for additional "certification pay" for affected employees. For railroads with other certified crafts, certified employees may ultimately receive up to an additional half-hour pay per shift to be certified. One railroad reported 33 certified agreement-level positions across three shifts, during a weekday, that must be filled. On a weekend this number is 32 positions per day. Considering precedent from other certified crafts, this would equate to 16.5 additional hours of pay per day Monday through Friday and 16 additional hours of pay on Saturday and Sunday. Based on a top pay rate for the position at the railroad, this would equate to approximately \$300,000 annually in additional pay to certified employees at this one railroad alone.

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The underestimation of the likely consequences of this proposal requires FRA to revise its cost/benefit analysis to capture the true costs of this certification requirement.

§ 245.7 Definitions.

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 dispatching experience to effectively instruct in the field, and has the following qualifications:

- (1) Has demonstrated, pursuant to the railroad's written program, an adequate knowledge of the subjects under instruction;*
- (2) Where applicable, has the necessary experience to effectively instruct in the field;*
- (3) Is a certified dispatcher under this part; and*
- (4) If the railroad has designated employee representation, has been selected by a designated railroad officer, in concurrence with the designated employee representative, or has a minimum of one year of service working as a certified dispatcher.*

The selection of qualified instructors is inherently the responsibility of railroad management – the railroad itself has a duty to select someone qualified, and discharge of that duty should not be subject to consent of another party. Notwithstanding any other regulations in place at this time with similar requirements, paragraph (4) should be deleted. Alternatively, a railroad could list/describe minimum standards to be considered for a Qualified Instructor position in the railroad's written program.

§ 245.105 Implementation schedule for certification programs.

Since there is no certainty around the effective date of this rule at this time, a provision should be made for designating dispatchers currently enrolled in initial training programs in advance of the effective date of the rule such that they can be certified upon completion of their program in a manner similar to persons performing dispatching duties on the effective date of the rule. The railroad would submit in writing, pursuant to § 245.105(c)(1) its current dispatchers in training it will designate as certified dispatchers upon successful completion of its dispatcher training course. Implementing certification requirements in the middle of a training program would be disruptive to participants and instructors.

§ 245.117 Vision Acuity

A dispatcher's function involves interacting with computer screens, books, or other written/printed materials. A distance vision standard like that required of locomotive engineers and conductors is not necessary for a dispatcher. Additionally, people who may be nearsighted but not farsighted may take off their corrective lenses when reading screens or printed matter up close. This could render them non-compliant with proposed 245.117 (f) as written. For dispatchers, a requirement to have corrective lenses available while on duty would also be more appropriate than requiring them to be always used.

A color vision standard like those applicable to locomotive engineers and conductors is also not necessary. Allowance provided by the proposed 245.117(d)(3) should be maintained if dispatchers are able to reliably distinguish the different indications presented on the computer-aided dispatch system or other control systems used by their railroad.

§ 245.119 Training Requirements

(f)(2) Demonstrate on-the-job proficiency, with input from a qualified instructor, by successfully completing the tasks and using the dispatching systems and technology necessary to be a dispatcher. A certification candidate may perform such tasks under the direct onsite supervision of a person who has the necessary dispatching experience and at least one year of experience as a dispatcher.

Rather than require one year experience as a mandate, we recommend the minimum standards for a dispatcher to be allowed to supervise a trainee should be based on the railroad's written program to allow railroads flexibility to account for the particulars of their workforce.

§ 245.207 Certificate requirements.

49 CFR Part 240 and 242 do not require expiration dates on certificates. The proposal here should be aligned with Parts 240 and 242 because there are other annual requirements that an expiration date greater than annually could cause confusion.

§ 245.303 Criteria for Revoking Certification

Paragraph (c) provides for the potential to revoke certification of a dispatcher monitoring, piloting, or instructing a trainee. There are generally many levels of supervision and management within a control center – all of which have the potential to have to be certified dispatchers as well. For instance, a member railroad may have an assistant chief dispatcher and a chief dispatcher on duty who are present providing higher level oversight to the center. Language in this regulation must be clarified to ensure levels of supervision (which include agreement and management employees) above the dispatcher monitoring, piloting, or instructing of a trainee are not subject to revocation. We suggest this be limited to the dispatcher assigned to instruct the trainee.

Paragraph (e)(1) the nature of “proper protection” must be clarified. In some cases, Railroad Operating Rules specify more stringent levels of protection than federal regulation. With respect to revocation, we ask FRA to clarify whether the standard is based upon “proper protection” as specified in federal regulation or railroad operating rules.

Paragraph (e)(7) should describe where the “prior approval” is expected to come from – or otherwise be altered to account for particulars of each railroad, such as “granting permission for a train to enter PTC or CSS limits with inoperative or malfunctioning PTC or CSS equipment in

Docket Clerk
September 14, 2023
Page 4

a manner not in accordance with applicable railroad operating rules”. Railroads with existing C3RS programs should not be required to apply for waivers for this new regulation if it is expected that C3RS protection will be afforded to the specified de-certifiable events. We request the regulation account for such programs in a manner that the previously required C3RS waivers associated with 240 and 242 or are provided for railroads with C3RS without a waiver application. Also, if there are any de-certifiable events that will not be afforded C3RS protections, such events should be specifically identified in the regulation.

APTA appreciates the opportunity to comment on this NPRM. If there are any questions regarding this letter, please contact APTA’s General Counsel, Linda Ford, at lford@apta.com.

Sincerely,

A handwritten signature in cursive script that reads "Paul P. Skoutelas".

Paul P. Skoutelas
President and CEO

