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## **Title 49 —Transportation**

### **Subtitle B —Other Regulations Relating to Transportation**

#### **Chapter II —Federal Railroad Administration, Department of Transportation**

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## PART 245—QUALIFICATION AND CERTIFICATION OF DISPATCHERS

**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.

**Source:** 89 FR 44806, May 21, 2024, unless otherwise noted.

### Subpart A—General

#### § 245.1 Purpose and scope.

- (a) The purpose of this part is to ensure that only those persons who meet minimum Federal safety standards serve as dispatchers, 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 dispatchers 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 dispatcher certification requirements prescribed in this part apply to any person who meets the definition of dispatcher contained in § 245.7, regardless of the fact that the person may have a job classification title other than that of dispatcher.

#### § 245.3 Application and responsibility for compliance.

- (a) This part applies to all railroads except:
  - (1) Railroads that do not have any dispatch (as defined in § 245.7) tasks performed either by dispatchers employed by the railroad or employed by a contractor or subcontractor;

- (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 § 245.7);
  - (3) Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation as defined in § 245.7; 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 § 245.7, who performs any function required by this part must perform that function in accordance with this part.

### § 245.5 Effect and construction.

- (a) FRA does not intend, by use of the term dispatcher 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 dispatches a train.
- (b) FRA does not intend, by issuance of the regulations in this part, 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 § 245.213, 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.

### § 245.7 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.

**Blocking device** means a method of control that either prohibits the operation of a switch or signal or restricts access to a section of track.

**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).

**Dispatch** means:

- (1) To perform a function that would be classified as a duty of a "dispatching service employee," as that term is defined by the hours of service laws at 49 U.S.C. 21101(2), if the function were to be performed in the United States. The term dispatch includes, but is not limited to, by the use of an electrical or mechanical device:

- (i) Controlling the movement of a train or other on-track equipment by the issuance of a written or verbal authority or permission affecting a railroad operation, or by establishing a route through the use of a railroad signal or train control system but not merely by aligning or realigning a switch; or
  - (ii) Controlling the occupancy of a track by a roadway worker or stationary on-track equipment, or both; or
  - (iii) Issuing a mandatory directive, including, but not limited to, speed restrictions, highway-rail grade crossing protections, or those which establish working limits for roadway workers.
- (2) The term *dispatch* does not include the actions of personnel in the field:
- (i) Effecting implementation of a written or verbal authority or permission for a railroad operation, including an authority for working limits to a roadway worker (e.g., initiating an interlocking timing device, authorizing a train to enter working limits); or
  - (ii) Operating a function of a signal system designed for use by those personnel; or
  - (iii) Sorting and grouping rail cars inside a railroad yard to assemble or disassemble a train.

**Dispatcher** means any individual who dispatches.

**Dispatcher Pilot** means a dispatcher qualified on assigned territory, tasked with overseeing a non-qualified employee who has not successfully completed all instruction, training and examination programs for the physical characteristics of the territory or position.

**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 dispatcher. The term covers a number of circumstances in which a person may not serve as a certified dispatcher. Revocation of certification pursuant to § 245.307 and denial of certification pursuant to § 245.301 are two examples in which a person would be ineligible to serve as a dispatcher. 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 dispatcher following an alcohol or drug violation pursuant to § 245.115.

**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.

**Main track** means a track upon which the operation of trains is governed by one or more of the following methods of operation: Timetable; mandatory directive; signal indication; or any form of absolute or manual block system.

**Mandatory directive** means any movement authority or speed restriction that affects a railroad operation.

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

**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 providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

**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 *main track physical characteristics* (see definition of "main track" in this section) and other than main track physical characteristics.

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

- (1) Is a certified dispatcher 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 absence of concurrence provided in paragraph (2) of this definition, has a minimum of one year of service working as a dispatcher.

If a railroad does not have designated employee representation, then a person 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.

**Roadway worker in charge (RWIC)** means a roadway worker who is qualified under § 214.353 of this chapter to establish on-track safety for roadway work groups, and lone workers qualified under § 214.347 of this chapter to establish on-track safety for themselves.

**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.

**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.

**Territorial qualifications** means possessing the necessary knowledge concerning a railroad's operating rules and timetable special instructions including familiarity with applicable *main track* and other than *main track physical characteristics* of the territory over which the locomotive or train movement will occur as well as the characteristics of the position to include, and not limited to, the operation and capabilities of dispatch control systems.

**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).

## § 245.9 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.

### § 245.11 Penalties and consequences for noncompliance.

- (a) Any person (including a railroad; any manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, or lessee; or any independent contractor or subcontractor of a railroad) 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

### § 245.101 Certification program required.

- (a) Each railroad subject to this part shall have a written dispatcher certification program.
- (b) Each certification program shall include all of the following:
  - (1) A procedure for evaluating prior safety conduct as a motor vehicle operator that complies with the criteria established in § 245.111.
  - (2) A procedure for evaluating prior safety conduct as an employee or certified dispatcher with other railroads that complies with the criteria established in § 245.113.
  - (3) A procedure for evaluating potential substance abuse disorders and compliance with railroad alcohol and drug rules that complies with the criteria established in § 245.115.

- (4) A procedure for evaluating visual and hearing acuity that complies with the criteria established in §§ 245.117 and 245.118.
- (5) A procedure for training that complies with the criteria established in § 245.119.
- (6) A procedure for knowledge testing that complies with the criteria established in § 245.121.
- (7) A procedure for monitoring operational performance that complies with the criteria established in § 245.123.

### § 245.103 FRA review of certification programs.

- (a) **Certification program submission schedule for railroads with current dispatching operations.** Each railroad with current dispatching operations, as of July 22, 2024, shall submit its dispatcher certification program to FRA, in accordance with the procedures and requirements contained in § 245.107, 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 March 17, 2025.
  - (2) All Class II railroads and Class III railroads (including a switching and terminal or other railroad not otherwise classified) shall submit their programs to FRA no later than November 12, 2025.
- (b) **Certification program submission for new dispatching railroads.** For each railroad that commences dispatching operations after July 22, 2024, the railroad shall submit its written dispatcher certification program to, and obtain approval from, FRA in accordance with the procedures and requirements contained in § 245.107, prior to commencing dispatching operations.
- (c) **Method for submitting certification programs to FRA.** Railroads must submit their written certification programs and their requests for approval (described in § 245.107(a)) by emailing the documents to [FRADISPATCHCERTPROG@dot.gov](mailto:FRADISPATCHCERTPROG@dot.gov).
- (d) **Notification requirements.** Each railroad that submits a program to FRA must:
  - (1) Simultaneously with its submission, provide a copy of the program and the request for approval (as described in § 245.107(a)) to the president of each labor organization that represents the railroad's dispatchers and to all of the railroad's dispatchers that are subject to this part; and
  - (2) Include in its submission to FRA, a statement affirming that the railroad has provided a copy of the program and the request for approval to the president of each labor organization that represents the railroad's dispatchers and to all of the railroad's dispatchers that are subject to this part, 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 dispatchers subject to this part or any directly affected person who does not have a designated representative may comment on a railroad'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; and
  - (4) The comment was emailed to [FRADISPATCHCERTPROG@dot.gov](mailto:FRADISPATCHCERTPROG@dot.gov).



- (f) **FRA review period.** Upon receipt of a 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 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 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 can resubmit their programs in accordance with paragraph (h) of this section.
  - (3) If a railroad 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 that intends to make one or more material modifications to its FRA-approved program must submit a request for approval (as described in § 245.107(a)(3)) of how it intends to modify the program and a copy of the modified program.
  - (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 shall conform with the procedures and requirements contained in § 245.107.
  - (3) The process for submission and review of material modifications shall conform with paragraphs (c) through (f) of this section.
  - (4) A railroad 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's program or material modification, as described in paragraph (f)(2) of this section, the railroad can 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 § 245.107.
  - (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 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, the railroad must resubmit its program within 30 days of the date that FRA notified the railroad of the deficiencies in its program. If a railroad fails to resubmit its program within this timeframe and it continues its dispatching 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 § 245.105(b), the railroad cannot begin dispatching operations until its program has been approved by FRA.
- (iii) For a railroad 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 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's program at any time.
  - (1) If upon such review, FRA discovers deficiencies in the program such that the program does not comply with subpart B of this part, FRA shall issue the railroad a letter rescinding its prior approval of the program and notifying the railroad of the deficiencies in its program that must be addressed.
  - (2) Within 30 days of FRA notifying the railroad of the deficiencies in its program, the railroad must address these deficiencies and resubmit its program to FRA. The resubmitted program must conform with the procedures and requirements contained in § 245.107.
  - (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 fails to resubmit its program to FRA within the timeframe prescribed in paragraph (i)(2) of this section and the railroad continues its dispatching operations, FRA may consider such actions to be a failure to implement a program.
  - (5) If FRA issues a letter disapproving the railroad's resubmitted program, the railroad shall continue to 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's resubmitted program; or
    - (ii) FRA disapproves the railroad's second attempt at resubmitting its program.
  - (7) If FRA disapproves a railroad's second attempt at resubmitting its program under this paragraph (i) and the railroad continues its dispatching 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'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'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's originally submitted program, a resubmission of its program, or a material modification of its program.

**§ 245.105 Implementation schedule for certification programs.**

- (a) Each railroad that submits its dispatcher certification program to FRA in accordance with § 245.103(a), may continue dispatching 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 dispatching operations, FRA may consider such actions to be a failure to implement a program.
- (b) Each railroad that submits its dispatcher certification program to FRA in accordance with § 245.103(b), must have its program approved by FRA prior to commencing dispatching operations. If such railroad commences dispatching operations before its program is approved by FRA, FRA may consider such actions to be a failure to implement a program.
- (c) By March 17, 2025, each railroad shall:
  - (1) In writing, designate as certified dispatchers all persons authorized by the railroad to perform the duties of a dispatcher as of March 17, 2025; and
  - (2) Issue a certificate that complies with § 245.207 to each person that it designates.
- (d) Between March 17, 2025 and the date FRA approves the railroad's certification program, each railroad shall:
  - (1) In writing, designate as a certified dispatcher any person who has been authorized by the railroad to perform the duties of a dispatcher between March 17, 2025 and the date FRA approves the railroad's certification program; and
  - (2) Issue a certificate that complies with § 245.207 to each person that it designates.
- (e) After March 17, 2025, no railroad shall permit or require a person to perform service as a dispatcher unless that person is a certified dispatcher.
- (f) No railroad shall permit or require a person, designated as a certified dispatcher under the provisions of paragraph (c) or (d) of this section, to perform service as a certified dispatcher 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 dispatcher 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 by FRA, 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 dispatcher if that person has been tested and evaluated in accordance with procedures that comply with subpart B of this part.

## § 245.107 Requirements for certification programs.

### (a) *Railroad's certification program submission.*

- (1) A railroad's certification program submission must include a copy of the certification program and a request for approval. If a railroad is submitting a material modification to its program, the copy of the certification program must incorporate all of the material modifications the railroad would like to make.
- (2) For a railroad's initial certification program submission, the request for approval can be in letter or narrative format and shall include a statement that the railroad is seeking approval of its program by FRA.
- (3) If a railroad is making a material modification to a program that has been previously approved by FRA, the request for approval can be in letter or narrative format and shall include an explanation of all of the material modifications that the railroad is making to its program.
- (4) A railroad 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 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 by giving 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 1 of the program: general information and elections.*

- (i) The first section of the certification program must contain the name of the railroad, the person to be contacted concerning the request for 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 dispatchers or to not accept this responsibility.
- (ii) If a railroad elects not to provide initial dispatcher training, the railroad will be limited to recertifying persons initially certified by another railroad. A railroad can change its election by obtaining FRA approval of a material modification to its program in accordance with § 245.103(g).
- (iii) If a railroad elects to accept responsibility for training persons not previously certified as dispatchers, the railroad must submit information on how such persons will be trained but is not required to actually perform such training. A railroad that elects to accept responsibility for the training of such persons may authorize another railroad or a non-railroad entity to perform the actual training effort. The electing railroad remains responsible for ensuring that such other training providers adhere to the training program the railroad submits.

- (2) *Section 2 of the program: training persons previously certified.* The second section of the certification program must contain information about the railroad's program for training previously certified dispatchers, including all of the following information:

- (i) As provided for in § 245.119(i), each railroad must have a program for the ongoing education of its dispatchers to ensure that they maintain the necessary knowledge concerning relevant Federal safety regulations, operating rules and practices, familiarity with physical characteristics of the territory, and the dispatching systems and technology. The railroad must describe in this section how it will ensure that its dispatchers remain knowledgeable concerning the safe discharge of their responsibilities so as to comply with the standard set forth in § 245.119(i).
  - (ii) In accordance with the requirements in § 245.119(i), this section must contain sufficient detail to permit effective evaluation of the railroad's training program in terms of the subject matters covered, the frequency and duration of the training sessions (including the interval between attendance at such trainings), 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 program are voluntary or mandatory.
  - (iii) How the training will address a certified dispatcher's loss of knowledge over time.
  - (iv) How the training will address changed circumstances over time such as the introduction of new or modified technology including software modifications to dispatch systems and related signal and train control systems, new operating rule books, or significant changes in operations including alteration in the territory dispatchers are authorized to work over.
  - (v) A plan for familiarization training that addresses how long a person can be absent from dispatching on a territory before needing to be requalified on that territory (a time period that cannot exceed 12 months), and once that threshold is reached, how the person will acquire the needed familiarization training.
  - (vi) How the railroad will administer the training of previously certified dispatchers who have had their certification expire. If a railroad's certification program fails to specify how it will train these dispatchers, then the railroad shall require these dispatchers to successfully complete the railroad's entire training program.
- (3) **Section 3 of the program: testing and evaluating persons previously certified.** The third section of the certification program must contain information about the railroad's program for testing and evaluating previously certified dispatchers including all of the following information:
- (i) The railroad must describe in this section how it will ensure that its dispatchers demonstrate their knowledge concerning the safe discharge of their responsibilities so as to comply with the standards set forth in § 245.121.
  - (ii) The railroad must describe in this section how it will have ongoing testing and evaluation to ensure that its dispatchers have the necessary visual and hearing acuity as provided for in §§ 245.117 and 245.118. This section must also address how the railroad will ensure that its medical examiners have sufficient information concerning the railroad's operations, as well as the dispatcher's safety-related tasks, to effectively form appropriate conclusions about the ability of a particular individual to safely perform as a dispatcher.
- (4) **Section 4 of the program: training, testing, and evaluating persons not previously certified.** Unless a railroad has made an election not to accept responsibility for conducting the initial training of dispatchers, the fourth section of the certification program must contain information about the railroad's program for educating, testing, and evaluating persons not previously certified as dispatchers including all of the following information:

- (i) As provided for in § 245.119(c), a railroad that is issuing an initial dispatcher certification to a person must have a program for the training, testing, and evaluation of its dispatchers to ensure that they acquire the necessary knowledge and skills. A railroad must describe in this section how it will ensure that its dispatchers will acquire sufficient knowledge and skills and demonstrate their knowledge and skills concerning the safe discharge of their responsibilities.
  - (ii) This section must contain the same level of detail about the initial training program and the testing and evaluation of previously uncertified persons as is required for previously certified dispatchers in paragraphs (b)(2) and (3) of this section (Sections 2 and 3 of the program).
  - (iii) Railroads that elect to rely on other entities to conduct training away from the railroad's own territory and dispatching systems and technology must indicate how the student will be provided with the required training on the physical characteristics of the railroad's territory and the railroad's dispatching systems and technology.
  - (iv) How the railroad will administer the training of previously uncertified persons with extensive dispatching experience. If a railroad's certification program fails to specify how it will train these dispatchers, then the railroad shall require these dispatchers to successfully complete the railroad's entire training program.
- (5) **Section 5 of the program: monitoring operational performance by certified dispatchers.** The fifth section of the certification program must contain information about the railroad's program for monitoring the operational performance of its certified dispatchers including all of the following information:
- (i) Section 245.123 requires that a railroad perform ongoing monitoring of its dispatchers and that each dispatcher has an annual unannounced compliance test. A railroad must describe in this section how it will ensure that the railroad is monitoring that its dispatchers demonstrate their skills concerning the safe discharge of their responsibilities.
  - (ii) A railroad 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 § 245.123.
- (6) **Section 6 of the program: procedures for routine administration of the dispatcher certification program.** The final section of the certification program must contain a summary of how the railroad's program and procedures will implement the various aspects of the regulatory provisions in this part that relate to routine administration of its certification program for dispatchers. Specifically, this section must address the procedural aspects of the following provisions and must describe the manner in which the railroad will implement its program so as to comply with all of the following provisions:
- (i) Section 245.301 which provides that each railroad must have procedures for review and comment on adverse information.
  - (ii) Sections 245.111, 245.113, 245.115, and 245.303 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 245.109, 245.201, and 245.301 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 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 be not certified; and how the railroad will communicate adverse decisions.

- (iv) Sections 245.109, 245.117, 245.118, 245.119, and 245.121 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 must describe how it will document the factual basis the railroad relied on in making determinations under these sections.
- (v) Section 245.125 which permits reliance on certification determinations made by other railroads.
- (vi) Sections 245.207 and 245.307 which contain the requirements for replacing lost certificates and the conduct of certification revocation proceedings.

### **§ 245.109 Determinations required for certification and recertification.**

- (a) After FRA has approved a railroad's dispatcher certification program, the railroad, prior to initially certifying or recertifying any person as a dispatcher, shall, in accordance with its FRA-approved program, determine in writing that:
  - (1) The individual meets the prior safety conduct eligibility requirements of §§ 245.111 and 245.113;
  - (2) The individual meets the eligibility requirements of §§ 245.115 and 245.303;
  - (3) The individual meets the visual and hearing acuity standards of §§ 245.117 and 245.118;
  - (4) The individual has the necessary knowledge, as demonstrated by successfully completing a test that meets the requirements of § 245.121; and
  - (5) If applicable, the individual has completed a training program that meets the requirements of § 245.119.
- (b) Nothing in this section, § 245.111, or § 245.113 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 § 245.111 or § 245.113.

### **§ 245.111 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 dispatcher certification program, the railroad, prior to initially certifying or recertifying any person as a dispatcher, shall determine that the person meets the eligibility requirements of this section involving prior conduct as a motor vehicle operator.
- (b) A railroad shall initially certify a person as a dispatcher 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 § 245.109(a)(1) through (5).
- (c) A railroad shall recertify a person as a dispatcher 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 § 245.109(a)(1) through (5).
- (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 dispatcher 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 § 245.109(a)(1) through (5).
- (f) Except for persons designated as dispatchers under § 245.105(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 dispatcher or person seeking initial certification 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 dispatcher 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.

- (l) 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 July 22, 2024;
  - (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 § 245.111, § 245.113, § 245.115, or § 245.303.
- (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 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 § 245.115(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 dispatcher 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, 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.

**§ 245.113 Prior safety conduct with other railroads.**

- (a) After FRA has approved a railroad's dispatcher certification program, the railroad shall determine, prior to issuing any person a dispatcher 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 dispatcher:
  - (1) Information about that person's compliance with § 245.111 within the three years preceding the date of the request;
  - (2) Information about that person's compliance with § 245.115 within the five years preceding the date of the request; and
  - (3) Information about that person's compliance with § 245.303 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 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 explanation 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 July 22, 2024; or
  - (2) At a time other than that specifically provided for in § 245.111, § 245.113, § 245.115, or § 245.303.

- (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, each railroad, railroad officer, supervisor, and employee) 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.

### § 245.115 Substance abuse disorders and alcohol drug rules compliance.

- (a) **Eligibility determination.** After FRA has approved a railroad's dispatcher certification program, the railroad shall determine, prior to issuing any person a dispatcher 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 dispatcher.
  - (2) Except as provided for in paragraph (f) of this section, a certified dispatcher 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 § 245.111), 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 dispatcher, 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 dispatcher 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 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 dispatcher 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 dispatcher. 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 dispatcher 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 dispatcher 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, 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.

### § 245.117 Visual acuity.

- (a) After FRA has approved a railroad's dispatcher certification program, the railroad shall determine, prior to issuing any person a dispatcher 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 dispatcher 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 dispatcher. 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 dispatcher.
  - (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 dispatcher, the railroad may conclude that the person satisfies the visual acuity requirements of this section to be a certified dispatcher. 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 needed 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 dispatcher.
- (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 dispatcher unless the railroad's medical examiner subsequently determines in writing that the person can safely perform as a dispatcher without corrective lenses.
- (g) When a certified dispatcher 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 dispatcher. The individual cannot return to service as a dispatcher 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, 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.

#### **§ 245.118 Hearing acuity.**

- (a) After FRA has approved a railroad's dispatcher certification program, the railroad shall determine, prior to issuing any person a dispatcher 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 dispatcher 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 dispatcher. 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 dispatcher.
  - (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 dispatcher, the railroad may conclude that the person satisfies the hearing acuity requirements of this section to be a certified dispatcher. 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 needed 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 dispatcher.
- (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 dispatcher unless the railroad's medical examiner subsequently determines in writing that the person can safely perform as a dispatcher without a hearing aid.
- (g) When a certified dispatcher 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 dispatcher. The individual cannot return to service as a dispatcher 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, 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.

### § 245.119 Training requirements.

- (a) After FRA has approved a railroad's certification program, the railroad shall determine, prior to issuing any person a dispatcher certificate, that the person has successfully completed the training, in accordance with the requirements of this section.
- (b) A railroad that elects to accept responsibility to provide initial dispatcher training to persons who have not been previously certified as dispatchers shall state in its certification program whether it will conduct the training program or employ a training program conducted by some other entity on its behalf but adopted and ratified by the railroad.
- (c) A railroad that elects to train persons not previously certified as dispatchers shall develop an initial training program which, at a minimum, includes the following:
  - (1) An explanation of how training must be structured, developed, and delivered, including an appropriate combination of classroom, simulator, computer-based, correspondence, 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 applicable Federal railroad safety laws, regulations, and orders. This 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;
    - (ii) A statement of the conditions (e.g., prerequisites, dispatch and related dispatch support systems, 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, technologies, procedures, software, or equipment are introduced into the workplace, including how it is determined if additional or refresher training is needed.
- (d) Prior to beginning the initial dispatching related tasks associated with on-the-job exercises discussed in paragraph (c)(2) of this section, each railroad shall make any relevant information or materials, such as operating rules, safety rules, or other rules, available for referencing by certification candidates.
- (e) Prior to a person, not previously certified as a dispatcher, being certified as a dispatcher, a railroad shall require the person to:
  - (1) Successfully complete the formal initial 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 dispatcher;



- (2) Perform on-the-job training and 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 only perform such tasks under the direct onsite supervision of a qualified instructor; and
  - (3) Demonstrate knowledge of the physical characteristics of any assigned territory. If the railroad uses a written test to fulfill this requirement, the railroad must provide the certification candidate with an opportunity to consult with a supervisory employee who possesses territorial qualifications for the territory to explain a question.
- (f) In making the determination required under paragraph (a) of this section, a railroad shall have written documentation showing that:
  - (1) The person completed a training program that complies with paragraph (c) of this section (if the person has not been previously certified as a dispatcher);
  - (2) The person demonstrated their knowledge 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 physical characteristics exam associated with the territories, or its pertinent segments, over which the person will be performing dispatching service.
- (g) The certification program, required under this part and submitted in accordance with the procedures and requirements described in § 245.107, shall include:
  - (1) The methods that a person may acquire familiarity with the physical characteristics of a territory;
  - (2) The procedures used to qualify and requalify a dispatcher on a territory; and
  - (3) The maximum time period in which a dispatcher can be absent from a territory before requalification is required. In accordance with § 245.120(c), this time period cannot exceed 12 months.
- (h) If ownership of a railroad is being transferred from one company to another, the dispatchers of the acquiring company may receive familiarization training from the selling company prior to the acquiring company commencing operation.
- (i) A railroad shall provide for the continuing education of its certified dispatchers to ensure that each dispatcher maintains the necessary knowledge concerning:
  - (1) Railroad safety and operating rules;
  - (2) Physical territory;
  - (3) Dispatching systems and technology; and
  - (4) Compliance with all applicable Federal regulations including, but not limited to, hazardous materials, passenger train emergency preparedness, emergency response procedures, and physical characteristics of a territory.
- (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.

## § 245.120 Requirements for territorial qualification.

- (a) After FRA has approved a railroad's certification program, a railroad shall not permit or require a person to serve as a dispatcher on a particular territory unless that railroad determines that:
  - (1) The person is a certified dispatcher; and
  - (2) The person either:
    - (i) Possesses the necessary territorial qualifications for the applicable territory pursuant to § 245.119; or
    - (ii) Is assisted by a Dispatcher Pilot who is qualified on the territory.
- (b) If a person is called to serve on a territory that they are not qualified on, the person must immediately notify the railroad that they are not qualified on the assigned territory.
- (c) A person shall no longer be considered qualified on a territory if they have not worked on that territory as a dispatcher 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, 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.

## § 245.121 Knowledge testing.

- (a) After FRA has approved a railroad's dispatcher certification program, the railroad shall determine, prior to issuing any person a dispatcher certificate and in accordance with the requirements of this section, that the person has demonstrated sufficient knowledge of the railroad's rules and practices for the safe movement of trains.
- (b) In order 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 dispatcher that are:
  - (1) Designed to examine a person's knowledge of the railroad's operating rules and practices for the safe movement of trains;
  - (2) Objective in nature;
  - (3) In written or electronic form;
  - (4) Covering the following subjects:
    - (i) Safety and operating rules;
    - (ii) Timetable instructions;
    - (iii) Compliance with all applicable Federal regulations;
    - (iv) Physical characteristics of the territory or territories on which a person is currently working or training to qualify as a dispatcher; and
    - (v) Dispatching systems and technology.
  - (5) Sufficient to accurately measure the person's knowledge of the covered subjects; and

- (6) Conducted without open reference books or other materials except to the degree the person is being tested on their ability to use such reference books or materials.
- (c) The railroad shall provide the certification candidate with an opportunity to consult with a supervisory employee who possesses territorial qualifications for the territory to explain a test question.
- (d) If a person fails the test, no railroad shall permit or require that person to work as a dispatcher 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, 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.

### **§ 245.123 Monitoring operational performance.**

- (a) Each railroad's certification program shall describe how it will monitor the operational performance of its certified dispatchers by including procedures for:
  - (1) Giving each certified dispatcher at least one unannounced railroad and Federal rules, territorial and dispatch systems compliance test each calendar year, except as provided for in paragraph (c) of this section;
  - (2) Giving unannounced compliance tests to certified dispatchers who return to dispatcher service after performing service that does not require certification pursuant to this part, as described in paragraph (c) of this section; and
  - (3) What actions the railroad will take if it finds deficiencies in a dispatcher's performance during an unannounced compliance test.
- (b) An unannounced compliance test shall:
  - (1) Test certified dispatchers for compliance with one or more operational tests in accordance with the provisions of § 217.9 of this chapter;
  - (2) Be performed by a railroad officer who meets the requirements of § 217.9(b)(1) of this chapter; and
  - (3) Be given to each certified dispatcher at least once each calendar year, except as provided for in paragraph (c) of this section.
- (c) A certified dispatcher who is not performing service that requires certification pursuant to this part does not need to be given an unannounced compliance test. However, when the certified dispatcher returns to service that requires certification pursuant to this part after not being given an unannounced compliance test in a calendar year, the railroad shall:
  - (1) Give the certified dispatcher an unannounced compliance test within 30 days of their return to dispatcher service; and
  - (2) Retain a written record that includes the following information:
    - (i) The date the dispatcher stopped performing service that required certification pursuant to this part;
    - (ii) The date the dispatcher returned to service that required certification pursuant to this part; and

(iii) The date and the result of the unannounced compliance test that was performed following the dispatcher's return to service requiring certification.

(d) 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.

### **§ 245.125 Certification determinations made by other railroads.**

(a) A railroad that is considering certification of a person as a dispatcher may rely on certain determinations made by another railroad concerning that person's certification.

(b) A railroad relying on certification determinations made by another railroad shall still be responsible for determining that:

(1) The prior certification is still valid in accordance with the provisions of §§ 245.201 and 245.307;

(2) The person has received training on the physical characteristics of the new territory in accordance with § 245.119; and

(3) The person has demonstrated the necessary knowledge concerning the railroad's operating rules, territory, dispatch systems and technology in accordance with § 245.121.

## **Subpart C—Administration of the Certification Program**

### **§ 245.201 Time limitations for certification.**

(a) After FRA approves a railroad's dispatcher certification program, that railroad shall not certify or recertify a person as a dispatcher if the railroad is making:

(1) A determination concerning eligibility under §§ 245.111, 245.113, 245.115, and 245.303 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 visual 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 a knowledge testing program pursuant to § 245.121 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 § 245.125.

(c) Except if a person is designated as a certified dispatcher under § 245.105(c) or (d), no railroad shall certify a person as a dispatcher for an interval of more than three years.

(d) Each railroad shall issue each certified dispatcher a certificate that complies with § 245.207 no later than 30 days from the date of its decision to certify or recertify that person.

## § 245.203 Retaining information supporting determinations.

- (a) After FRA approves a railroad's dispatcher certification program, any time the railroad issues, denies, or revokes a certificate after making the determinations required under § 245.109, it shall maintain a record for each certified dispatcher 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 § 245.109.
- (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 § 245.121;
  - (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 dispatcher's performance in accordance with § 245.123.
- (c) If a railroad is relying on successful completion of an approved 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 and 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.

**§ 245.205 List of certified dispatchers and recordkeeping.**

- (a) After a railroad's certification program has received its initial approval from FRA, pursuant to § 245.103(f)(1), the railroad must maintain a list of each person who is currently certified as a dispatcher by the railroad. The list must include the date of the railroad's certification decision and the date the person's certification expires.
- (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; and
- (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 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.
- (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.

## § 245.207 Certificate requirements.

- (a) Each person who becomes a certified dispatcher in accordance with this part shall be issued a paper or electronic certificate that must:
  - (1) Identify the railroad or parent company that is issuing the certificate;
  - (2) Indicate that it is a dispatcher certificate;
  - (3) Provide the following information about the certified person:
    - (i) Name;
    - (ii) Employee identification number; and
    - (iii) Either a physical description or photograph of the person;
  - (4) Identify any conditions or limitations, including conditions to ameliorate visual or hearing acuity deficiencies, that restrict, limit, or alter the person's abilities to work as a dispatcher;
  - (5) Show the effective date of the certification;
  - (6) Show the expiration date of the certification unless the certificate was issued pursuant to § 245.105(c) or (d);
  - (7) Be signed by an individual designated in accordance with paragraph (b) of this section; and
  - (8) Be electronic or be of sufficiently small size to permit being carried in an ordinary pocket wallet.

- (b) Each railroad 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 from including additional information on the certificate or supplementing the certificate through other documents.
- (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 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 dispatcher shall:
  - (1) Have their certificate in their possession while on duty as a dispatcher; and
  - (2) Display their certificate upon a 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 dispatcher's employer if the dispatcher is not employed by the issuing railroad.
- (f) If a dispatcher's certificate is lost, stolen, or mutilated, the railroad shall promptly replace the certificate at no cost to the dispatcher.
- (g) A certified dispatcher 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 dispatcher has not yet received their certificate; or
  - (2) The dispatcher's certificate was lost, stolen, or mutilated, and the railroad has not yet issued a replacement certificate to the dispatcher.
- (h) Any dispatcher who is notified or called to serve as a dispatcher and such service would cause the dispatcher 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 anticipated service and it shall be unlawful for the railroad to require such service.
- (i) Nothing in this section shall be deemed to alter a certified dispatcher's duty to comply with other provisions of this chapter concerning railroad safety.

#### **§ 245.213 Multiple certifications.**

- (a) A person who holds a dispatcher certificate may also 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 dispatcher for multiple railroads or are seeking to become certified dispatchers for multiple railroads.



- (1) A person who holds a current dispatcher certificate from more than one railroad shall immediately notify the other certifying railroad(s) if they are denied dispatcher certification or recertification under § 245.301 by another railroad or has their dispatcher certification suspended or revoked under § 245.307 by another railroad.
- (2) If a person has their dispatcher certification suspended or revoked by a railroad under § 245.307, they may not work as a dispatcher for any other railroad during the period that their certification is suspended or revoked.
- (3) If a person has their dispatcher certification suspended or revoked by a railroad under § 245.307, they must notify any railroad that they are seeking dispatcher certification from that their dispatcher certification is currently suspended or revoked by another railroad.
- (d) Paragraphs (d)(1) through (4) of this section apply to persons who are currently certified as a dispatcher and also currently certified in another craft, such as a locomotive engineer or conductor.
  - (1) If a person's dispatcher certification is revoked under § 245.307 for a violation of § 245.303(e)(7), they may not work in another certified craft, such as a locomotive engineer or conductor, for any railroad during the period of revocation.
  - (2) If a person's dispatcher certification is revoked under § 245.307 for a violation of § 245.303(e)(1) through (6), they may work in another certified craft, such as a locomotive engineer or conductor, during the period of revocation.
  - (3) If any of a person's non-dispatcher certifications are revoked for failure to comply with § 219.101 of this chapter, they may not work as a dispatcher for any railroad during the period of revocation.
  - (4) If any of a person's non-dispatcher certifications are revoked for any reason other than a failure to comply with § 219.101 of this chapter, they may work as a dispatcher during the period of revocation.
- (e) A person who has had their dispatcher certification revoked for failure to comply with § 219.101 of this chapter may 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-dispatcher certifications revoked for failure to comply with § 219.101 of this chapter, may not obtain a dispatcher certification pursuant to this part from any railroad during the period of revocation.
- (g) A railroad that denies a person dispatcher certification or recertification under § 245.301 shall not, solely on the basis of that denial, deny or revoke that person's non-dispatcher certifications or recertifications.
- (h) A railroad that denies a person any non-dispatcher certification or recertification pursuant to this chapter shall not, solely on the basis of that denial, deny or revoke that person's dispatcher 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.

## § 245.215 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 dispatchers 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 train accidents attributed to poor safety performance by dispatchers; and
  - (3) The number and type of operational monitoring test failures recorded by railroad officers who meet the requirements of § 217.9(b)(1) of this chapter.
- (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 incidents of that nature.
- (d) If requested in writing by FRA, by the president of a labor organization that represents the railroad's dispatchers, or by a railroad's certified dispatcher that 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 failure to properly issue or apply mandatory directives when warranted.
  - (2) Incidents involving improperly authorizing a train or on-track equipment to enter into an out-of-service or blue flag protected track.
  - (3) Incidents involving granting permission for a train or on-track equipment to enter into established RWIC limits without authority or permission from the RWIC.
  - (4) Incidents involving removal of blocking devices or established protection of RWIC working limits prior to the RWIC releasing the limits.
  - (5) Incidents involving failure to properly apply blocking devices or failure to establish proper protection for specified working limits or movements of trains or on-track equipment.
  - (6) Incidents involving granting permission for a train to enter Positive Train Control (PTC) or Cab Signal limits with inoperative or malfunctioning PTC or Cab Signal equipment.
  - (7) 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.
- (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 dispatcher and is certified in another craft, such as a 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**

### **§ 245.301 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 person a reasonable opportunity to explain or rebut that adverse information in writing prior to denying certification. A railroad shall provide the dispatcher candidate with any documents or records, including written statements, related to failure to meet a requirement of this part which 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 certification candidate provided 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 candidate 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 operating rule or practice which constitutes a violation under § 245.303(e)(1) through (6) if sufficient evidence exists to establish that an intervening cause prevented or materially impaired the dispatcher's ability to comply with that railroad operating rule or practice.

### **§ 245.303 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 dispatcher who fails to comply with a railroad rule or practice described in paragraph (e) of this section shall have their certification revoked.
- (c) A certified dispatcher who is assigned to monitor, pilot, or instruct a dispatcher and fails to take appropriate action to prevent a violation of a railroad rule or practice described in paragraph (e) of this section shall have their certification revoked. Appropriate action does not mean that a supervisor, pilot, or instructor must prevent a violation from occurring at all costs; the duty may be met by warning the dispatcher of a potential or foreseeable violation.
- (d) A certified dispatcher who is called by a railroad to perform a duty other than that of a dispatcher shall not have their dispatcher certification revoked based on actions taken or not taken while performing that duty except for violations described in paragraph (e)(7) of this section.
- (e) When determining whether to revoke a dispatcher's certification, a railroad shall only consider violations of its operating rules or practices that involve:
  - (1) Failure to properly issue or apply a mandatory directive when warranted.
  - (2) Improperly authorizing a train or on-track equipment to enter into an out-of-service or blue flag protected track.
  - (3) Granting permission for a train or on-track equipment to enter into established RWIC limits without authority or permission from the RWIC.
  - (4) Removal of blocking devices or established protection of RWIC working limits prior to the RWIC releasing the limits.
  - (5) Failure to properly apply blocking devices or establish proper protection for specified working limits or movements of trains or on-track equipment.
  - (6) Granting permission for a train to enter PTC or Cab Signal limits with inoperative or malfunctioning PTC or Cab Signal equipment.

- (7) Failure to comply with § 219.101 of this chapter. However, such incidents shall be considered as a violation only for the purposes of § 245.305(a)(2) and (b).
- (f) In making the determination as to whether to revoke a dispatcher's certification, a railroad shall only consider conduct described in paragraphs (e)(1) through (6) 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 operating rule or practice, that event shall be treated as a single violation for the purposes of this section.
- (h) A violation of one or more operating rules or practices described in paragraphs (e)(1) through (6) of this section that occurs during a properly conducted operational compliance test subject to the provisions of this chapter shall be counted in determining the periods of ineligibility described in § 245.305.
- (i) An operational 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 operational 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.

#### **§ 245.305 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 operating rules or practices described in § 245.303(e)(1) through (6), 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 operating rules or practices described in § 245.303(e)(1) through (6), 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 operating rules or practices, described in § 245.303(e)(1) through (7), 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 operating rules or practices, described in § 245.303(e)(1) through (7), 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 § 245.303(e)(7), different periods of ineligibility may result under the provisions of this section and § 245.115, 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.

#### **§ 245.307 Process for revoking certification.**

- (a) If a railroad determines that a dispatcher, who is currently certified by the railroad, has violated a railroad operating rule or practice described in § 245.303(e), the railroad shall revoke the dispatcher's certification in accordance with the procedures and requirements of this section.
- (b) Except as provided for in § 245.115(f), if a railroad acquires reliable information that a dispatcher, who is currently certified by the railroad, has violated a railroad operating rule or practice described in § 245.303(e) or § 245.115(d), the railroad shall undertake the following process to determine whether revocation of the dispatcher's certification is warranted:
  - (1) The dispatcher's certification shall be suspended immediately.
  - (2) Prior to or upon suspending the dispatcher's certification, the railroad shall provide the dispatcher 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.
  - (3) 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 dispatcher requests or consents to a delay to the start of the hearing.
  - (4) Except as provided for in paragraph (c) of this section, the railroad shall provide the dispatcher 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.

- (5) 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 dispatcher's certification is warranted under § 245.303.
- (6) If the railroad determines that revocation of the dispatcher's certification is warranted, the railroad shall impose the proper period of revocation provided for in § 245.305 or § 245.115.
- (7) 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 dispatcher's 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 dispatcher's 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 operating rules and practices;
    - (ii) State whether the railroad official found that the dispatcher's certification should be revoked;
    - (iii) State the period of revocation under § 245.305 (if the railroad official concludes that the dispatcher's certification should be revoked); and
    - (iv) Be served on the dispatcher and the dispatcher's 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 dispatcher's 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 § 245.305.
- (g) A railroad shall revoke a dispatcher's certification if, during the period that certification is valid, the railroad acquires information which convinces it that another railroad has revoked the person's dispatcher 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 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 dispatcher's certification if sufficient evidence exists to establish that an intervening cause prevented or materially impaired the dispatcher's ability to comply with the railroad operating rule or practice which constitutes a violation under § 245.303.
- (i) A railroad may decide not to revoke a dispatcher's certification if sufficient evidence exists to establish that the violation of the railroad operating rule or practice described in § 245.303(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 245.215 for Class I railroads (including the National Railroad Passenger Corporation), railroads providing commuter service, and Class II railroads; or
  - (2) Section 245.203 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 dispatcher's certification.

## Subpart E—Dispute Resolution Procedures

### § 245.401 Review board established.

- (a) Any person who has been denied certification, denied 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.

### § 245.403 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;
  - (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 that 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 § 245.411.

#### **§ 245.405 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), and the railroad. 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) File such information 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) and the railroad.

### § 245.407 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 § 245.409.
- (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 requesting 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.

### § 245.409 Hearings.

- (a) An administrative hearing for a dispatcher 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 § 245.407(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.

### **§ 245.411 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 § 245.403(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 245—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 § 245.111 of this chapter. This provision requires that railroads consider the motor vehicle driving record of each person prior to issuing them certification or recertification as a dispatcher.
- (2) To fulfill that obligation, a railroad is required to review a certification candidate's recent motor vehicle driving record for information described in § 245.111(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 dispatchers 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 dispatcher. 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 § 245.301 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 245—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 §§ 245.117 and 245.118.
- (2) For any examination performed to determine whether a person meets the visual acuity requirements in § 245.117, 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 § 245.117 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 § 245.118, 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 § 245.118 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 245**

Accepted tests	Failure criteria
PSEUDOISCHROMATIC 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.

Accepted tests	Failure criteria
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 § 245.117(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 dispatcher. The intent of §§ 245.117(d) and 245.118(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 dispatcher. 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) Dispatchers 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.