

BEFORE THE
FEDERAL RAILROAD ADMINISTRATION

Docket No.:
FRA-2022-0020, RIN 2130AC92:
Certification of Signal Employees

COMMENTS FROM
HERITAGERAIL ALLIANCE, INC.

Submitted on August 30, 2023 by:
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I. Identification of the HeritageRail Alliance, Inc. and its Members

These comments are submitted by the HeritageRail Alliance, Inc. (“HRA”). HRA was originally founded in 2013 as a merger of the Association of Railway Museums and the Tourist Railway Association to exchange ideas and information to be of assistance to one another when necessary. Its 210 members, of which 178 are in the United States include many tourist railroads and railroad museums, dedicated to the preservation, restoration, display and operation of historic railway and street railway equipment. (A listing of HRA’s member organizations is included and attached as “Exhibit A” to this comment).

HRA’s membership is diverse. Member organizations range from small, all-volunteer museums to tourist railways which full-time paid staff and professional management. Many HRA members operate restored and vintage railroad equipment for the public and spend on the income from their demonstration rail operations as their primary source of funding. These operations are diverse, ranging from streetcars to standard railroad equipment, operating on a variety of narrow, standard, and broad-gauge trackage.¹

In preparation for this comment, HRA surveyed its membership, which included responses from both general and non-general system tourist and museum railroads. The relevant responses from non-general system tourist/museum railroads indicated that these properties have a relatively small number of crossings equipped with warning devices (usually less than ten), and they are maintained by a small number of employees or volunteers (1-4 on average). Most of these operations had passenger train miles operated in 2022 to be less than 10,000 miles. As you will see below, the proposed regulations, which are designed as a “one-size fits all” approach

¹ HRA’s membership includes insular properties, and non-insular railroads that are either in the general system or non-general system. For the purposes of this comment HRA opposes to the application of these proposed regulations on non-general system tourist/museum railroads.

from any non-insular railroad from a large Class I to a small tourist/museum railroad imposes significant burden on an operation with just a few volunteers or employees, especially when prior FRA policy did not impose near identical certification requirements on other employees or volunteers.

II. Summary of HRA's Position

HRA's position as to the rule being proposed by the FRA in this proceeding is as follows:

1. The proposed regulation of non-general system, non-insular tourist railroads introduces unprecedented regulation and application of FRA certification standards on those railroads. Other similar FRA regulations (engineer and conductor certification) are not imposed, per FRA regulation and policy.
2. The proposed regulation requires an unprecedented introduction of FRA drug and alcohol testing into non-insular operations after not being subject to these regulations before.
3. The proposed regulations' application to non-general system tourist/museum railroads is not supported by relevant safety data.
4. The proposed regulations have an undue impact on tourist/museum railroads, and was imposed outside the normal FRA rulemaking process, without participation by the Railroad Safety Advisory Committee (RSAC).

Each of these specific objections positions will be fully discussed, below.

III. Non-General System Tourist/Museum Railroads Should Not Be Covered by the Rule.

A. FRA's Current Policy Exempts Non-General System Tourist Railroads from Many Regulations.

Before addressing the onerous requirements, the FRA is proposing in this proceeding, it would be insightful to discuss the current regulatory policy of the FRA toward tourist/museum

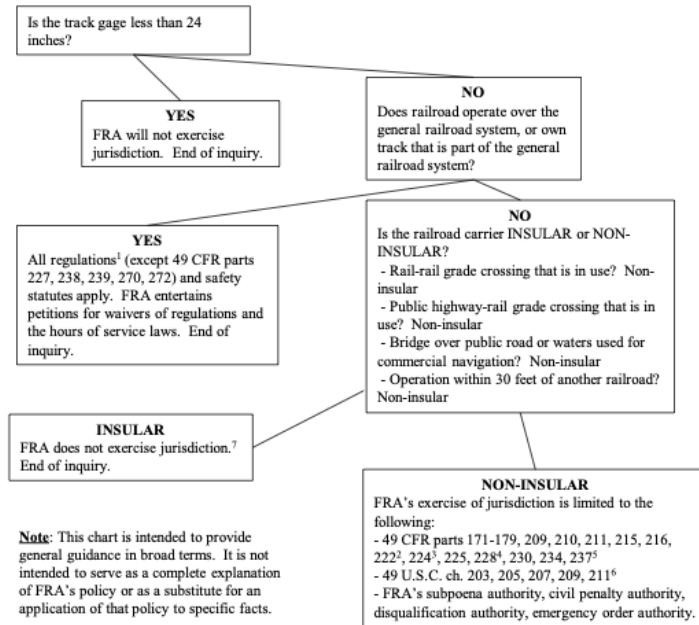
railroads which are non-insular. The best description of how the FRA currently treats these properties comes from the FRA itself, which states:

The authority of FRA, as a delegate of the Secretary of Transportation, to regulate railroads arises from title 49 of the United States Code, section 20103, which gives the agency plenary authority over “every area of railroad safety.” 49 U.S.C. § 20103; 49 C.F.R. § 1.49. The term “railroad” is defined by the Act as “any form of nonhighway ground transportation that runs on rails or electromagnetic guideways” 49 U.S.C. § 20102(2)(A). The definition excludes only rapid transit systems that operate in urban areas and are not connected to the general railroad system of transportation (general system). 49 U.S.C. § 20102(2)(B). The term “general railroad system of transportation” is defined at Appendix A to 49 C.F.R. Part 209 as: “the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas.” Portions of the network that lack a physical connection may still be part of the general system by virtue of the nature of the operations that occur. See *id.* The term “railroad carrier” is defined by the statute as “a person providing railroad transportation.” 49 U.S.C. § 20102(3).

For resource and policy reasons, FRA does not extend the reach of most of its regulations as far as the statute permits. See Appendix A to 49 C.F.R. Part 209. In an effort to clarify the proper extent of the exercise of FRA’s jurisdiction over tourist railroads, we have recently settled on several principles that we will use as our current guidelines. Read the full text that supports the decision tree.²

² FRA Website, “Safety Jurisdiction for Tourist Railroads” <https://railroads.dot.gov/legislation-regulations/regulations-rulemaking/safety-jurisdiction-tourist-railroads>

**Tourist Railroads
FRA's Exercise-of-Jurisdiction
Decision Tree**



¹ Please see the Applicability sections of Part 219 (drugs and alcohol), Part 221 (rear end markers), Part 223 (glazing), Part 225 (accident reporting), and Part 232, Subpart E (end-of-train devices), for certain nuances relating to the application of those Parts to general system tourist railroads.

² Part 222 (train horn) does not apply to passenger railroads that operate entirely off the general system and at speeds of 15 miles per hour or less over public highway-rail grade crossings.

³ Part 224 (reflectorization) only applies to those railroad freight cars and locomotives that cross a public or private highway-rail grade crossing, are used for revenue or work train service, and are not being used exclusively in passenger service.

⁴ Part 228 (passenger train hours of service requirements), Subpart F, and 49 C.F.R. §§ 228.11(c)(1)-(2) and 228.19(c)(5)-(8) apply to train employees of non-insular tourist railroads.

⁵ Part 237 (bridge safety standards) applies to both insular and non-insular tourist railroads.

⁶ Hours of service restrictions on duty hours apply to dispatcher and signal employees of non-insular tourist railroads.

⁷ See footnote 5 above.

As you can see, the FRA already has chosen, as a matter of policy, to limit its exercise of jurisdiction with regard to non-insular tourist/museum railroads. Other FRA certification regulations, such as for engineers and conductors are not applied to these railroads, for example. The proposed regulations which are the subject of this proceeding mark a significant departure from decades of prior FRA regulatory policy.

B. The proposed regulation of non-general system, non-insular tourist railroads introduce unprecedented regulation and application of FRA certification standards on those railroads

The certification of any employee, as required in this proceeding, on a non-insular tourist/museum railroad is unprecedented. Other FRA certification requirements are not applicable to non-insular operations. As outlined in the FRA’s own decision-tree, above, the FRA does not certify engineers or conductors at non-general system tourist/museum railroads. The proposed regulation in this proceeding would be a significant departure from this approach. Currently, the FRA has a currently pending Notice of Proposed Rulemaking (“NPRM”) (Docket Number 20023-10772) for certification of dispatchers. That Notice of Proposed Rulemaking makes it clear that it does not apply to non-general system railroads, whether they are insular or not. In stating the policy in that NPRM, the FRA states:

Paragraph (a)(3) of this section excludes “tourist, scenic, historic, and excursion operations that are not part of the general railroad system of transportation” (as defined in § 245.7) from compliance with this rule. Excluding these types of operations from this rule is consistent with FRA’s jurisdictional policy that excludes these operations from all but a limited number of Federal safety laws, regulations, and orders.³

In the current NPRM at issue, the FRA is proposing to introduce unprecedented regulation and application of FRA certification standards to non-general system tourist/museum railroads, which it also simultaneously admits in another NPRM would be inconsistent with current FRA jurisdictional policy.

³ See FR-2023-10772 at 35580-81.

C. The proposed regulation requires an unprecedented introduction of FRA drug and alcohol testing into non-insular operations after not being subject to these regulations before.

Under the current regulatory regime, the FRA does not authorize non-general system tourist/museum railroads to perform drug testing under 49 CFR Part 219 regulations.⁴ Normally, such testing is required under the engineer and conductor certifications required for general system railroads. However, under the proposed regulations at issue, signal employees would fall under the 49 CFR Part 219 testing apparatus. Once again, this points to the regulatory inconsistency that would develop if the regulation is implemented as written. It would also place a regulatory and financial burden for tourist railroads and museums covered by the new proposed regulations to set up a program which would only impact a very small portion of employees/volunteers, when other employees/volunteers, such as a train service employees, are not covered under the current FRA regulatory policy.

D. The proposed regulations' application to non-general system tourist/museum railroads is not supported by relevant safety data.

The FRA's own safety data it presented to support the implementation of the proposed regulation do not support an imposition of these regulations on non-general system tourist railroads. As part of this process, the FRA submitted a supplemental document to the docket, FRA-2022-0020, which provided accident data to assess the potential safety benefits of this proposed regulation. At best, the data is speculative, in that the FRA is relying on unknown factors to determine which incidents may have been prevented had there been a signal employee certification program in place. Even with this highly speculative approach, the FRA identified, over a ten-year period (February 2012 to January 2022) a total of THREE, non-Class I railroad,

⁴ It should be noted that non-general system tourist/museum railroads may have their own drug and alcohol testing program authorized under state law, but which are not subject to 49 CFR Part 219 regulations. Nothing prevents non-general system railroads from having their own programs.

grade crossing incidents caused by a failure of signal activation that the FRA states *may* have been prevented had there been a certification program in place. Of those three incidents, none were at a tourist/museum railroad. Therefore, the own safety data the FRA produced to justify the proposed regulations does not support imposition of this regulatory burden on non-general system tourist/museum railroads.

E. The proposed regulations have an undue impact on tourist/museum railroads, and was imposed outside the normal FRA rulemaking process, without participation by the Railroad Safety Advisory Committee (RSAC).

HRA and its members are especially concerned about the failure of the FRA to utilize the existing RSAC process to get input from the industry, including HRA itself on the impacts of this proposed regulation before proceeding with the NPRM. Unlike the currently pending rule on dispatcher certification (FRA 2023-10772), which went through RSAC, a formerly frequently used tool by the FRA, this proposed regulation did not, and as a result, does not comport, for the many reasons stated above, with current FRA jurisdictional policy. HRA as a stakeholder is concerned that this is the “new normal” of the FRA, to impose regulations without valuable input from the voices within the railroad industry, including the tourist/museum railroad sector. As a result of this approach, the FRA’s regulations will become an incomprehensible patchwork of inconsistencies which impose a significant burden on HRA’s membership.

III. HRA’s Proposed Option

HRA feels that the FRA in finalizing this regulation could re-write the regulation to conform with current FRA jurisdictional policy and exempt non-general system tourist railroads, much in the same way that it is for the currently pending NPRM on dispatcher certification. Such an exemption does not exempt those railroads from FRA regulations on the operation and

maintenance of signal systems, but better aligns the new proposed regulations with current FRA policy.

IV. Conclusion

HRA is deeply concerned that the FRA bypassed the RSAC rulemaking process with this postposed regulation. In doing such, HRA feels that the FRA is proposing a regulation that is grossly out of step with its current policy of not imposing overly burdensome regulations on non-general system tourist/museum railroads. The proposed regulation, as currently written marks a major departure of decades of FRA policy toward non-general system tourist/museum railroads, and such a change is not warranted by relevant safety data. HRA recommends FRA consider these comments and revise the proposed regulations to conform with existing FRA jurisdictional policy by exempting non-general system tourist/museum railroads from the requirements of this NPRM.

Respectfully submitted this 30th day of August 2023,

David M. Wilkins

David M. Wilkins
General Counsel
HeritageRail Alliance, Inc.

Exhibit A

List of Members of the HeritageRail Alliance, Inc as of August 30, 2023

ALBERTA PRAIRIE STEAM TOURS LTD

ALBERTA RAILWAY MUSEUM

BC FOREST DISCOVERY CENTRE

BYTOWN RAILWAY SOCIETY

CANADIAN RAILROAD HISTORICAL ASSOCIATION

CRANBROOK ARCHIVES, MUSEUM & LANDMARK SOCIETY

DAUPHIN RAIL MUSEUM

FRASER VALLEY HERITAGE RAILWAY SOCIETY

GUELPH HISTORICAL RAILWAY ASSOCIATION

INGENIUM: CANADA'S MUSEUMS OF SCIENCE & INNOVATION

KAMLOOPS HERITAGE RAILWAY SOCIETY

KOMOKA RAILWAY MUSEUM

MIDDLETON RAILWAY MUSEUM SOCIETY

MIDWESTERN RAIL ASSOCIATION

NEW BRUNSWICK RAILWAY MUSEUM

NIAGARA DIVISION CANADIAN RAILROAD HISTORICAL ASSOCIATION

NIAGARA RAILWAY MUSEUM INC.

NORTHERN ONTARIO RAILROAD MUSEUM & HERITAGE CENTRE

OGEMA HERITAGE RAILWAY ASSOCIATION

ONTARIO ELECTRIC RAILWAY HISTORICAL ASSOCIATION

REVELSTOKE HERITAGE RAILWAY SOCIETY

ROCKY MOUNTAIN RAIL SOCIETY

SASKATCHEWAN RAILROAD HISTORICAL ASSOCIATION INC

SOUTH SIMCOE RAILWAY HERITAGE CORPORATION

STEVESTON TRAM

SYDNEY AND LOUISBOURG RAILWAY HISTORICAL SOCIETY

THE VINTAGE LOCOMOTIVE SOCIETY, INC.

TORONTO RAILWAY HISTORICAL ASSOCIATION

VIA RAIL HISTORICAL ASSOCIATION

WATERLOO CENTRAL RAILWAY - SOUTHERN ONTARIO LOCOMOTIVE RESTORATION
SOCIETY

WEST COAST RAILWAY ASSOCIATION

WHEATLAND EXPRESS

ABILENE & SMOKY VALLEY RAILROAD

ACWR

AMERICAN HERITAGE RAILWAYS, INC.

AMERICAN ROCKY MOUNTAINEER

ARIZONA STATE RAILROAD MUSEUM

ARIZONA STREET RAILWAY MUSEUM, DBA PHOENIX TROLLEY MUSEUM

ATLANTIC RAILWAYS

AUSTIN STEAM TRAIN ASSOCIATION

BAY AREA ELECTRIC RAILROAD ASSOCIATION DBA WESTERN RAILWAY
MUSEUM

BELMONT TROLLEY INC.

BERKSHIRE SCENIC RAILWAY MUSEUM

BLACK HILLS CENTRAL RAILROAD

BLUE RIDGE SCENIC RAILWAY

BLUEGRASS RAILROAD MUSEUM

BOSTON STREET RAILWAY ASSOCIATION

BOWIE RAILROAD MUSEUM/CITY OF BOWIE MUSEUMS

BRANFORD ELECTRIC RAILWAY ASSOCIATION, INC.

CALIFORNIA STATE RAILROAD MUSEUM

CALIFORNIA STATE RAILROAD MUSEUM & FOUNDATION

CALIFORNIA TROLLEY & RAILROAD CORPORATION

CAPE COD CENTRAL RAILROAD

CASCADE RAIL FOUNDATION

CATERPARROTT RAILNET
CENTER FOR RAILROAD PHOTOGRAPHY & ART
CENTRAL FLORIDA RAILWAY HISTORICAL SOCIETY
CHEHALIS-CENTRALIA RAILROAD & MUSEUM
CHESAPEAKE BEACH RAILWAY MUSEUM
COASTAL HERITAGE SOCIETY
COLEBROOKDALE RAILROAD PRESERVATION TRUST
COLORADO RAILROAD HISTORICAL FOUNDATION, INC.
CONNECTICUT ELECTRIC RY ASSOCIATION, INC.
CONWAY SCENIC RAILROAD
CORDELE RAILWAY MUSEUM
CORY R.A.I.L.S.
CROSSROADS RAILCAR SERVICES
CUMBRES & TOLTEC SCENIC RAILROAD
CUYAHOGA VALLEY SCENIC RAILROAD
DANBURY RAILWAY MUSEUM
DENVER RAIL HERITAGE SOCIETY
DINING CAR SOCIETY
DOWNEAST SCENIC RAILROAD
DURANGO & SILVERTON NG RAILROAD
EAST TROY RAILROAD MUSEUM
EL DORADO COUNTY HISTORICAL MUSEUM
ELECTRIC CITY TROLLEY MUSEUM ASSOCIATION, INC.

ENGINE 557 RESTORATION COMPANY

FEATHER RIVER RAIL SOCIETY

FLORIDA RAILROAD MUSEUM, INC.

FORT COLLINS MUNICIPAL RAILWAY SOCIETY

FORT SMITH STREETCAR RESTORATION ASSOCIATION, INC.

FORT WAYNE RAILROAD HISTORICAL SOCIETY

FOX RIVER TROLLEY ASSOCIATION, INC

FREDERIC AREA HISTORICAL SOCIETY

FRENCH LICK WEST BADEN MUSEUM

FRIENDS OF COOPERSVILLE AND MARNE RAILWAY

FRIENDS OF SP4449, INC.

FRIENDS OF THE ARKANSAS MISSOURI RAILROAD

FRIENDS OF THE CUMBRES & TOLTEC SCENIC RAILROAD, INC

FRIENDS OF THE EAST BROAD TOP, INC.

FRIENDS OF THE JOSEPH BRANCH

FRIENDS OF THE RAILROAD

GALLOPING GOOSE HISTORICAL SOCIETY

GALVESTON RAILROAD MUSEUM

GOLDEN GATE RAILROAD MUSEUM, INC.

GOPHER STATE RAILWAY MUSEUM

GRAPEVINE VINTAGE RAILROAD

GREAT PLAINS TRANSPORTATION MUSEUM, INC.

GREAT SMOKY MOUNTAINS RAILROAD

HALEY TOWER HISTORICAL & TECHNICAL SOCIETY

HARRIS TOWER RAILROAD MUSEUM

HEBER VALLEY RAILROAD

HISTORIC RED CLAY VALLEY, INC.

HOBO/WINNIPESAUKEE SCENIC RAILROADS

HOOSIER HEARTLAND TROLLEY CO.

HOOSIER VALLEY RAILROAD MUSEUM, INC.

ILLINOIS RAILWAY MUSEUM

INLAND EMPIRE RAILWAY HISTORICAL SOCIETY

IOWA RAILROAD HISTORICAL SOCIETY

KENTUCKY RAILWAY MUSEUM INC.

KIRBY FAMILY FARM INC

LAKE SHORE RAILWAY HISTORICAL SOCIETY

LAKE SUPERIOR & MISSISSIPPI RAILROAD

LAKE SUPERIOR RAILROAD MUSEUM

LANCASTER LOCOMOTIVE WORKS

LIBERTY HISTORIC RAILWAY

LITTLE RIVER RAILROAD

LLANO RIVER RAILROAD, INC

LOCOMOTIVE 21 PRESERVATION, LLC

MAINE NARROW GAUGE RAILROAD CO. & MUSEUM

MANITOU & PIKES PEAK RAILWAY CO.

MARKET STREET RAILWAY

MARYLAND & PENNSYLVANIA RAILROAD PRESERVATION SOCIETY

MCKINNEY AVENUE TRANSIT AUTHORITY

MICHIGAN TRANSIT MUSEUM, INC.

MID-CONTINENT RAILWAY HISTORICAL SOCIETY

MIDDLETOWN & HUMMELSTOWN RAILROAD CO.

MINERAL SPRING

MINNESOTA STREETCAR MUSEUM, INC.

MINNESOTA TRANSPORTATION MUSEUM, INC.

MOFFAT RAILROAD MUSEUM

MONTICELLO RAILWAY MUSEUM, INC.

MOUNT WASHINGTON COG RAILWAY

MUSEUM OF THE AMERICAN RAILROAD

NARCOA

NATIONAL CAPITAL HISTORICAL MUSEUM OF TRANSPORTATION, INC.

NEVADA STATE RAILROAD MUSEUM

NEVADA STATE RAILROAD MUSEUM BOULDER CITY

NEVADA-CALIFORNIA-OREGON RAILWAY

NEW ENGLAND ELECTRIC RAILWAY HISTORICAL SOCIETY, INC,

NEW YORK MUSEUM OF TRANSPORTATION

NEWTON DEPOT AUTHORITY

NORGROVE RAILWAY

NORTH ALABAMA RAILROAD MUSEUM, INC.

NORTH CAROLINA RAILWAY MUSEUM

NORTH CAROLINA TRANSPORTATION MUSEUM FOUNDATION

NORTHERN CENTRAL RAILWAY OF YORK

NORTHERN OHIO RAILWAY MUSEUM

NORTHWEST RAILWAY MUSEUM

OIL CREEK RAILWAY HISTORICAL SOCIETY INC

OKLAHOMA RAILWAY MUSEUM

OLD DOMINION CHAPTER, NRHS

OLD PUEBLO TROLLEY, INC.

OREGON COAST SCENIC RAILROAD

OREGON ELECTRIC Rwy. HISTORICAL SOCIETY, INC.

OREGON RAIL HERITAGE FOUNDATION

OYSTER BAY RR MUSEUM

PACIFIC LOCOMOTIVE ASSOCIATION

PACIFIC SOUTHWEST RAILWAY MUSEUM ASSOCIATION

PENNSYLVANIA TROLLEY MUSEUM, INC.

PHILMONT SCOUT RANCH

PIKES PEAK HISTORICAL STREET RY FOUNDATION

PLANO CONSERVANCY FOR HISTORIC PRESERVATION

PULLMAN STATE HISTORIC SITE

RAILROAD MUSEUM OF NEW ENGLAND, INC.

RAILROAD MUSEUM OF PENNSYLVANIA

RAILROADERS MEMORIAL MUSEUM

RAILROADING HERITAGE OF MIDWEST AMERICA INC.

RAILSTAR CORPORATION

RAILWAYS TO YESTERDAY, INC.

READING COMPANY TECHNICAL & HISTORICAL SOCIETY

RIDGWAY RAILROAD MUSEUM

ROARING CAMP & BIG TREES NARROW-GAUGE RAILROAD

ROCHESTER & GENESEE VALLEY RR MUSEUM

SAN LUIS OBISPO RAILROAD MUSEUM

SHELBURNE FALLS TROLLEY MUSEUM, INC.

SIOUX CITY RAILROAD MUSEUM | SIOUXLAND HISTORICAL RAILROAD
ASSOCIATION

SMOKY HILL RAILWAY & HISTORICAL SOCIETY

SOUTH CAROLINA RAILROAD MUSEUM, INC

SOUTH DAKOTA STATE RAILROAD MUSEUM, INC.

SOUTH PARK RAIL SOCIETY

SOUTHEASTERN RAILWAY MUSEUM

SOUTHERN APPALACHIA RAILWAY MUSEUM

SOUTHERN CALIFORNIA RAILWAY MUSEUM, INC.

SOUTHERN FOREST HERITAGE MUSEUM

STEAMTOWN NATIONAL HISTORIC SITE

STEWARTSTOWN RAILROAD COMPANY

STRASBURG RAIL ROAD COMPANY

TENNESSEE VALLEY RAILROAD MUSEUM, INC.

THE 470 RAILROAD CLUB

THE AMERICAN PASSENGER TRAIN HISTORY MUSEUM

THE EBT FOUNDATION, INC.

THE EVERETT RAILROAD COMPANY

THE FRIENDS OF PHILADELPHIA TROLLEYS, INC.

THE HEART OF DIXIE RAILROAD MUSEUM

THE NATIONAL RAILWAY HISTORICAL SOCIETY, WASHINGTON, DC
CHAPTER, INC.

THE VALLEY RAILROAD COMPANY

TIMBER HERITAGE ASSOCIATION

TOURIST TRAIN SERVICES LLC

TRI-STATE RAILWAY HISTORICAL SOCIETY

WALDEN TOO RAILROAD

WESTERN MARYLAND SCENIC RAILROAD

WESTERN NEW YORK RAILWAY HISTORICAL SOC.

WHIPPANY RAILWAY MUSEUM, INC.

WHITEWATER VALLEY RAILROAD ASSOCIATION, INC.

WW&F RAILWAY MUSEUM

YAKIMA VALLEY TROLLEYS

YOSEMITE MOUNTAIN SUGAR PINE RAILROAD

YOUNGSTOWN STEEL HERITAGE MUSEUM