

**DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION**

**DOCKET NO. FRA-2026-2014,
NOTICE NO. 1
QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE ENGINEERS AND
CONDUCTORS; ENGLISH LANGUAGE PROFICIENCY AND OTHER REQUIREMENTS
NOTICE OF PROPOSED RULEMAKING**

**COMMENT SUBMITTED BY
THE ASSOCIATION OF AMERICAN RAILROADS AND
AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION,**

The Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) (jointly the Associations), on behalf of themselves and their member railroads, submit the following comments in response to the Federal Railroad Administration's (FRA's) July 31, 2026, Notice of Proposed Rulemaking (NPRM) proposing to amend its regulations by establishing an English language proficiency requirement for locomotive engineers and conductors, restricting Mexican crewmembers from operating outside a 10-route-mile geographic limitation, amending existing skills testing requirements for locomotive engineers, and amending the regulations to clarify that a locomotive engineer or conductor's territorial qualification is limited to the specific direction of travel traversed during the qualification process.¹

Statement of Interest

AAR is a trade association whose membership includes freight railroads that operate 83% of the line-haul mileage, employ 95% of the workers, and account for 97% of

¹ 91 FR 48345.

the freight revenues of all railroads in the United States; and passenger railroads that operate intercity passenger trains and provide commuter rail service. ASLRRA is a national trade association representing over 500 Class II and Class III freight railroads (“short lines”) in legislative and regulatory matters. Short lines operate about 30,000 miles of track in the United States, or approximately 30% of the national freight network. The members of the Associations will be directly affected by the proposed changes in the NPRM because they would be required to implement the proposed changes to 49 CFR parts 240 and 242.

Introduction

The Associations support the FRA's objective of promoting safe railroad operations and ensuring that operating employees possess the communication skills and operational knowledge necessary to perform safety-sensitive duties. Our member railroads are fully aligned on the importance of requiring crews operating within the United States to be proficient in English, as such proficiency is fundamental to safe railroad operations. For decades, railroads have worked collaboratively with FRA and other federal agencies to facilitate the safe, secure, and efficient movement of cross-border rail traffic, which remains an essential component of the North American freight network. While the Associations support the NPRM's overall safety objectives, several proposed requirements would impose new operational constraints or modify existing qualification practices without a demonstrated safety justification. Accordingly, the Associations request that FRA make changes consistent with these comments to ensure that the final rule advances safety and preserves operational flexibility.

Pilot Requirements Should Not Be Limited to U.S. Railroad Employees.

The Associations support FRA's objective of ensuring that operating crews can communicate effectively during cross-border train movements and that appropriate assistance is made available when language barriers exist. As such, we concur with the proposed requirement in 49 CFR §§ 240.227(c)(5) and 242.127(c)(5) that railroads provide a bilingual pilot who is proficient in English and Spanish, a certified locomotive engineer or conductor (or dual-certified pursuant to §§ 240.227(d) and 242.127(d)), and qualified on the physical characteristics of the territory if the locomotive engineer or conductor (or both crew members) of a Mexican railroad are not proficient in English.

However, FRA should remove the proposed requirement that the pilot accompanying a Mexican crew member must be an employee of the U.S. railroad. The purpose of this NPRM should be to enhance safety, but the proposed employment restriction does not advance that objective, and FRA has not articulated any safety rationale for the distinction. Under well-established principles of administrative law, an agency must demonstrate a rational connection between the facts found and the regulatory choice made. Here, FRA has identified no safety incidents, enforcement data, or operational evidence suggesting that employer affiliation affects a pilot's ability to perform the required safety functions. The pilot qualifications that are relevant to safety are bilingual proficiency, certification under the host railroad's FRA-approved program, and qualification on the territory over which the train will operate. Whether the pilot is employed by the U.S. railroad or the Mexican railroad has no bearing on the pilot's ability to

perform the required safety functions, and FRA's proposal would impose an employment-based criterion that is divorced from any demonstrated safety concern.

A Mexican railroad employee who satisfies all applicable certification and territorial qualification requirements is capable of performing the pilot function at least as safely and effectively as a U.S. railroad employee for the limited purpose of guiding the train to the crew exchange point. In some circumstances, permitting a qualified employee of the Mexican railroad to serve as the pilot may provide additional safety benefits. A pilot who regularly works with the operating crew is likely to be more familiar with that crew's communication styles, standard operating practices, and decision-making processes, enabling the pilot to anticipate potential misunderstandings and facilitate more effective communication regarding operating conditions and instructions. Such familiarity can promote timely compliance with operating requirements and enhance safety. Conversely, requiring an unfamiliar U.S. railroad employee to serve as a pilot could introduce communication friction and coordination challenges that undermine the very safety objectives FRA seeks to advance.

Moreover, the proposed restriction would unnecessarily narrow the pool of qualified pilots without providing a corresponding safety benefit, and FRA has not explained why such a restriction is necessary given the comprehensive certification, qualification, and language-proficiency requirements already proposed in the NPRM. Excluding otherwise qualified personnel based solely on employer affiliation would reduce operational flexibility and could delay cross-border train movements when a qualified U.S. railroad employee is delayed or unavailable, contributing to congestion at border gateways

and creating avoidable bottlenecks in rail operations. Because modern supply chains depend on the efficient and predictable movement of goods across international borders, delays at rail interchange points can reduce supply chain reliability for shippers and their customers. Such delays could also create safety concerns by extending the time that trains occupy highway-rail grade crossings in border communities and by increasing dwell time in areas that may be subject to security risks. As such, FRA should instead adopt a qualifications-based standard that permits any individual meeting the applicable language, certification, and territorial qualification requirements to serve as a pilot, regardless of employer affiliation. This approach would be consistent with the safety-focused framework that governs other aspects of FRA's locomotive engineer and conductor certification requirements, which appropriately emphasize individual qualifications rather than employment status.

The Proposed Ten-Mile Route Limitation Is Not Tied to Safety and Has the Potential to Unnecessarily Restrict Train Operations.

FRA does not provide a safety rationale for a strict ten-route-mile limitation, as proposed in 49 CFR §§ 240.227(c)(3)(i) and 242.127(c)(3)(i), and the agency bears the burden of demonstrating that such a restriction is reasonable and necessary to address an identified safety concern. FRA's primary concern in these sections is to ensure the safety of rail operations when Mexican railroad crews are conducting cross-border movements along the Mexican border. However, this objective is already accomplished through FRA's proposal to require that Mexican crew members be trained, tested, and certified by the U.S. railroad and either demonstrate English language proficiency or operate with a qualified bilingual pilot. Given those comprehensive protections—which directly address

the language and qualification concerns that FRA identifies as the basis for the rulemaking—the need for an additional ten-mile route limitation evaporates. FRA has not identified any safety incidents, near-misses, or operational data demonstrating that the distance between the border and the crew exchange point has ever been a contributing factor to a safety event. Absent such evidence, the proposed mileage cap appears arbitrary and unsupported by the record.

The Associations recognize that the proposed limitation was informed by existing drug and alcohol regulations in 49 CFR part 219 and the historic locations of crew exchange points. However, those considerations do not establish that a strict ten-route-mile cap is necessary to ensure safety. The part 219 regulations address a distinct set of concerns related to post-accident testing and hours-of-service compliance, and their geographic parameters were not designed to define safe operating limits for certified crew members. Nor does the fact that current crew exchange points happen to be located within ten miles of the border demonstrate that exceeding that distance would be unsafe—it merely reflects current operational practices, which are subject to change as infrastructure, traffic patterns, and community needs evolve. FRA’s reliance on these factors as a justification for a fixed mileage restriction conflates historical practice with regulatory necessity. Moreover, the arbitrary selection of ten miles—rather than eight, twelve, or fifteen miles—underscores the absence of any principled safety basis for the proposed limitation.

FRA also identifies concerns regarding Mexican qualification programs generally, but it does not explain why those concerns warrant a fixed geographic restriction after

requiring U.S.-railroad training, testing, certification, territorial qualification, and either English proficiency or a qualified pilot. Indeed, by requiring Mexican crew members to be certified under FRA-approved programs administered by the U.S. railroad, the NPRM already addresses any concerns about the adequacy of foreign qualification standards. FRA's proposal effectively codifies current crew change practices without demonstrating why future operational arrangements that exceed ten route miles would present a safety concern—a showing that is essential under the Administrative Procedure Act. Rather than imposing a fixed mileage restriction, FRA should permit railroads to move trains a reasonable distance between the international border and appropriate secure operating locations on the U.S. side of the border, subject to the certification, qualification, and language-proficiency requirements proposed in the NPRM. Allowing trains to proceed directly to secure rail yards, regardless of whether those facilities are located slightly more than ten route miles from the border, can reduce unnecessary stops and crew changes, improve operational efficiency, reduce the time trains occupy highway crossings in border communities, and help mitigate risks associated with theft, vandalism, and trespassing. A fixed mileage limitation also does not take into account the varying terrain, track configurations, population densities, and infrastructure along the border, which differ significantly from one crossing to another. A performance-based approach that focuses on the adequacy of training, certification, and language proficiency—rather than an arbitrary geographic limit—would better serve FRA's safety objectives while preserving the flexibility railroads need to develop operationally sound solutions. FRA can accomplish this in a way that does not lock in current practices and gives railroads operating along the

border the flexibility to develop workable solutions even if they do not fit within the proposed ten-route-mile limitation.²

FRA Should Clarify That the Rulemaking Is Not Intended to Modify Existing Certification Programs That Railroads Use to Certify Mexican Crews.

FRA should clarify that the proposed amendments to 49 CFR §§ 240.227(c) and 242.127(c) are not intended to require U.S. railroads to undertake additional training, testing, certification, or program-approval activities beyond those already required under their existing FRA-approved locomotive engineer and conductor certification programs. As FRA acknowledges, U.S. railroads currently certify Mexican-based crew members for cross-border operations pursuant to those approved programs. Indeed, FRA specifically notes that “Union Pacific and CPKC already certify crews from Mexico upon entry into the U.S.,” therefore, “[n]o additional costs would be expected from this provision.”³ Absent explicit clarification in the final rule, however, regulated parties could face uncertainty regarding whether the new regulatory text imposes additional requirements, and FRA regional offices could interpret the rule inconsistently. The final rule should therefore make clear—either in the regulatory text or in the preamble—that the proposed amendments are not intended to require railroads to modify previously approved certification programs or undertake additional certification activities beyond those already required under existing FRA-approved programs. Further, subsequent certification programs should not be subject to different requirements than previously approved

² In the event that FRA retains a prescriptive distance limitation in the final rule, the Associations urge FRA to, at minimum, ensure that any such limitation be tailored to the observed circumstances on the network as they exist today and will allow interchanges to take place within yards without imposing unnatural operating restrictions on how railroads move trains into and out of yards.

³ 91 FR at 48353.

certification programs that have been demonstrated to work safely. Such clarification would promote consistent implementation and avoid unnecessary compliance burdens that FRA has already indicated are not intended.

The Proposed Changes to Annual Skills Monitoring Will Negatively Impact Safety.

FRA proposes amendments to 49 CFR §§ 240.127(c) and 240.129(c) that would prohibit the use of an energy management system (EMS) that operates the throttle during triennial skills evaluations and annual operational monitoring observations unless the EMS is integrated with a critical-safety system. The Associations concur with the proposed amendment to § 240.127(c) governing triennial skills performance examinations, which are designed to verify that engineers possess the fundamental manual train-handling skills necessary for certification. However, FRA should not adopt the corresponding amendment to § 240.129(c) because the proposed restriction conflates two distinct assessment mechanisms that serve different purposes and would not improve safety. Annual operational monitoring under § 240.129 is not a skills examination—it is an ongoing assessment of an engineer’s compliance with railroad operating rules and overall operational performance during normal operations. Applying the same EMS restriction to both provisions disregards this fundamental distinction and would undermine the effectiveness of annual monitoring programs.

Existing railroad programs utilize a variety of complementary tools to evaluate locomotive engineer performance, including supervisory observations, certification examinations, locomotive event recorder reviews, download data, and operational testing. For annual monitoring in particular, railroads frequently rely on objective operating data to

conduct unannounced evaluations of everyday operating behavior. Because employees often do not know when those evaluations are occurring, these programs provide significant safety benefits by measuring actual performance under normal operating conditions rather than performance during a scheduled observation. This approach is grounded in well-established principles of workplace safety assessment, which recognize that unannounced monitoring provides a more accurate picture of day-to-day compliance than announced evaluations, during which employees may modify their behavior in response to observation.

FRA's proposal would substantially undermine these established monitoring practices. As noted above, annual operational monitoring under § 240.129 is intended to assess an engineer's overall operational performance and compliance with railroad operating rules over time, not simply to evaluate manual train-handling skills. Yet the proposed requirement would effectively place a "TEST IN PROGRESS" sign over the observation process, fundamentally altering the nature of the assessment and diminishing the value of annual monitoring as a tool for evaluating actual day-to-day operating behavior. Once an employee knows that an observation is being conducted for the specific purpose of evaluating train-handling skills with EMS disengaged, the railroad is no longer observing ordinary operating behavior under normal operating conditions. Instead, the railroad is observing behavior that may be influenced by the employee's awareness that he or she is being evaluated. Moreover, because EMS use is increasingly common during normal operations, requiring annual observations to be conducted without EMS means that the observation no longer reflects the conditions under which the engineer

actually operates on a daily basis. The result is a monitoring regime that assesses performance during an artificial scenario rather than during the normal operations that the monitoring is intended to evaluate.

FRA has not demonstrated that the railroads' longstanding monitoring practices are inadequate, nor has it identified any trend in train-handling accidents, operational rule violations, or other safety outcomes that would suggest existing annual monitoring programs have become ineffective due to widespread EMS use. The agency has cited no incident reports, enforcement data, or safety studies indicating that the current approach to annual monitoring has resulted in engineers lacking adequate train-handling skills or failing to maintain operational competence. Indeed, FRA has provided no evidence that requiring annual observations to be conducted with EMS disengaged would produce a measurable safety benefit. Under established principles of administrative rulemaking, an agency must articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made. Here, FRA has not established the factual predicate for the proposed amendment to § 240.129(c). In the absence of a demonstrated safety problem, FRA should not replace the flexibility afforded by the current rule with a more prescriptive approach that is less reflective of normal operations and likely provides a less accurate assessment of an engineer's day-to-day performance. Accordingly, FRA should withdraw the proposed amendment to § 240.129(c) and preserve the flexibility railroads currently have to conduct annual operational monitoring using methods that provide a more accurate assessment of employee performance during normal operations.

FRA Should Withdraw New Proposed Regulatory Requirements Related to Territorial Qualifications.

FRA frames the proposed revisions to 49 CFR §§ 240.231 and 242.301 that would limit an engineer's or conductor's territorial qualification to the specific direction of travel traversed during the qualification process as a clarification. In fact, the proposed changes would impose substantial regulatory costs by replacing the current discretion-based system with highly prescriptive new requirements. Under the existing approach, railroads may consider a variety of factors, including the types of train movements conducted on the territory, terrain, and supplemental testing and training, when determining how best to qualify engineers and conductors. The proposal would eliminate much of that flexibility and require some railroads to overhaul their territorial qualification programs. This approach is inconsistent with the Administration's stated priorities of reducing regulatory costs and eliminating regulations that impose substantial costs on private parties and burdens on small businesses, as expressed in Executive Orders 14192 and 14219.⁴

As FRA states in the preamble, the existing regulations "provide[s] each railroad carrier with the discretion to decide what training and testing is required to meet that qualification requirement."⁵ FRA also notes that, "[u]se of videos and simulator training is permitted and useful to supplement qualification familiarization rides that occur on a train."⁶ However, FRA suggests that a return ride is now a necessary component of territorial qualification because the person being qualified needs to experience the

⁴ 90 FR 9065 (Feb. 6, 2025) and 90 FR 10583 (Feb. 19, 2025)

⁵ 91 FR at 48348.

⁶ Ibid.

physical characteristics of the territory during live operations to reduce the risk of accidents caused by a lack of situational awareness.

As discussed above regarding the EMS restrictions, FRA has cited no incident reports, enforcement data, or safety studies indicating that the current approach to territorial qualification has resulted in an industry-level problem with engineers and conductors lacking an adequate understanding of their territories. Indeed, FRA has provided no evidence that requiring territorial qualification rides to be conducted in both directions would produce a measurable safety benefit. Under established principles of administrative rulemaking, an agency must articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made. Here, FRA has not established the factual predicate for the proposed amendments to §§ 240.231 and 242.301, as FRA has not pointed to any incidents or safety data in support of this change. In the absence of a demonstrated safety problem, FRA should not replace the flexibility afforded by the current rule with a more prescriptive approach.

The Associations request that FRA withdraw the proposed amendments and clarify that territorial qualification may be established or supplemented, consistent with the railroad's FRA-approved certification program, through a combination of practical operation, head-end observation, and written examinations covering the characteristics of the territory in each direction, rather than requiring physical operation in both directions in all circumstances. Such clarification is important to avoid unnecessary operational burdens on railroads that already conduct extensive territorial qualification activities and operate over territories where direction of travel does not materially affect train handling.

Railroads should retain flexibility to address territorial qualification through methods tailored to their operations and territory characteristics, provided those methods ensure engineers possess adequate knowledge of the territory and can operate safely.

For these reasons, the Associations request that FRA revise the NPRM in a manner that is consistent with these comments before issuing a final rule amending 49 CFR parts 240 and 242.

Respectfully submitted,



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