



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

#### **49 CFR Parts 240 and 242**

**[Docket No. FRA-2026-2014; Notice No. 1]**

**RIN 2130-AD65**

### **Qualification and Certification of Locomotive Engineers and Conductors; English Language Proficiency and Other Requirements**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** FRA proposes to amend its regulations governing the qualification and certification of locomotive engineers and conductors to establish English language proficiency as a requirement for a railroad carrier to certify and recertify locomotive engineers and conductors. FRA also proposes that each railroad carrier conducting a triennial examination of skill performance, and an annual operational monitoring observation for locomotive engineers, which are current requirements, conduct those examinations and observations without engaging energy management systems that limit the need for a locomotive engineer to operate the throttle or braking systems. Further, FRA proposes to codify limitations on operations at the southern border, including a 10 route-mile geographic limitation, to ensure domestic training, testing, and certification requirements for Mexican crew members are adequate. In addition, FRA proposes changes to clarify that a locomotive engineer or conductor's territorial qualification is limited to the specific direction of travel traversed during the qualification process.

**DATES:** Written comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. FRA will consider comments received after that date to the extent practicable.

**ADDRESSES:** *Comments:* You may submit comments identified by the Docket Number FRA-2026-2014 via the *Federal eRulemaking Portal*: <https://www.regulations.gov>.

Follow the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

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## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

#### ***Proposing New Requirements for English Language Proficiency (ELP)***

FRA is responsible for ensuring the safety of rail operations throughout the nation. Under current regulations in 49 CFR parts 240 and 242, railroad carriers are required to certify that locomotive engineers and conductors possess the knowledge, skills, and abilities necessary to perform their duties safely. ELP is essential to safe rail operations in the U.S. as each railroad's rules and practices, and all written and verbal communications, take place in English. Further, on March 1, 2025, President Trump issued Executive Order (E.O.) 14224, designating English as the official language of the U.S., and this proposed rule is consistent with E.O. 14224 in affirming each railroad carrier's duty to ensure every certified locomotive engineer and conductor possesses

sufficient ELP in reading, speaking, and writing skills to do their jobs. This rule also responds to FRA's recent safety oversight of cross border operations where FRA found Mexican-domiciled crews who could not sufficiently communicate in the English language, posing a potential safety risk.

The proposed rule would confirm that English is mandatory and will be used at all stages of the training and testing certification process. By doing so, FRA is proposing to eliminate any potential loophole a railroad carrier may have created for a non-English proficient locomotive engineer or conductor to impact safe rail operations negatively. FRA proposes to enforce the ELP requirement against each railroad carrier or person responsible for allowing an unqualified person to be issued a locomotive engineer or conductor certification, as each railroad carrier issuing such a certification is a gatekeeper that could prevent allowing the unsafe person to work in safety-sensitive service.

FRA is unaware of any U.S. railroad carrier that does not already conduct the training and testing of locomotive engineers and conductors exclusively in English. Because this is the established industry standard, FRA is not proposing that railroad carriers must proactively amend their existing programs to incorporate rigorous training or testing of the English language for all new or existing certified locomotive engineers and conductors. For instance, any railroad carrier that currently requires all written and verbal communications be exclusively in English will not be required to alter its training or testing protocols, provided it has integrated sufficient internal checks to ensure that all personnel possess the necessary reading, writing, and verbal comprehension necessary for compliance with all rail safety requirements.

As the proposed rule would mandate all training and testing for certification in English, U.S. railroads should be able to assess quickly whether ELP might be an obstacle to certifying any person. Like DOT requirements for commercial motor vehicle

(CMV) drivers issued by the Federal Motor Carrier Safety Administration (FMCSA),<sup>1</sup> FRA plans to evaluate whether locomotive engineers and conductors read and speak the English language sufficiently to perform their duties safely and will expect each railroad carrier to do so, as proposed in this rule. For this reason, FRA proposes guidance in a new appendix for both parts 240 and 242, that provides a sample conversational interview that can be used to evaluate whether a person meets the proposed requisite conversational ELP suitable for law enforcement, emergency responders, or the public. Each railroad carrier should be able to evaluate during current training and testing whether the person can converse appropriately in English with dispatchers and other rail employees. Likewise, currently required tests of a railroad's rules and practices are expected to both ensure knowledge of those safety requirements and confirm reading comprehension skills that are ELP.

### ***Revising Requirements for International Train Crew Operations***

#### ***Mexican-based Crews***

Mexico has not established qualification requirements for locomotive engineers or conductors. In addition, Mexico has not provided similar governmental oversight of rail safety as the U.S. This disparity in qualification requirements and level of government oversight represents a safety risk. Thus, FRA's current certification rules for those Mexican-based crew members do not permit the controlling U.S. host railroad carrier to accept their locomotive engineer or conductor qualifications.

On December 19, 2025, DOT announced that during FRA's routine regulatory oversight of cross-border operations on Canadian Pacific Kansas City Limited (CPKC) and Union Pacific Railroad (UP), FRA observed "instances in which inbound [Mexican-based] crew members appeared to have difficulty interpreting General Track Bulletins

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<sup>1</sup> See 49 CFR 391.11(b)(2) and FMCSA-DQ-391.11-FAQ001(2025-05-22) (providing guidance on how a motor carrier can assess a CMV driver's ELP during the driver qualification process).

and communicating safety requirements in English with [FRA] inspectors.”<sup>2</sup> Because essential train documents, radio communications, and mandatory directives are maintained exclusively in English for U.S. operations, ELP is an inherent and essential component of qualification under FRA’s locomotive engineer and conductor qualification and certification requirements. The ability of operating crews to communicate accurately with dispatchers and emergency responders during a crisis is a safety-critical function that must be ensured. U.S. railroad carriers engaged in operations with Mexican railroad carriers would likely need to assess whether their existing training and testing adequately address the ELP issue, so that Mexican train crews abide by the proposed U.S. standards, as FRA proposes to hold those U.S. railroad carriers responsible for compliance.

Based on FRA’s observations raising critical rail safety concerns, FRA proposes to amend its certification regulations to ensure that Mexican-based crews possess the necessary linguistic and operational skills to function safely or are otherwise assisted by qualified domestic personnel supplied by the U.S. host railroad carrier that controls the joint operation. Supported by the recent FRA investigations at the southern border finding non-ELP crews operating in the United States, as an additional check to ensure safe operations, this proposed rule includes a 10 route-mile geographic limit for Mexican-based crews,<sup>3</sup> a requirement for U.S. railroad carriers to train and certify these crews independently, and a mandate for ELP or a pilot who is proficient in English and Spanish.

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<sup>2</sup> Press Release, “Trump’s Transportation Secretary Sean P. Duffy to Enforce English Language Proficiency Among Rail Crews Along the Southern Border,” available at <https://www.transportation.gov/briefing-room/trumps-transportation-secretary-sean-p-duffy-enforce-english-language-proficiency>.

<sup>3</sup> Allowing Mexican-domiciled crews to travel no farther than 10 route miles into the U.S. provides a railroad with operational flexibility and is consistent with other FRA regulations. *See, e.g.*, 49 CFR 219.3(d)(2)(i) (stating that certain alcohol and drug testing requirements do not apply to employees of foreign railroads whose primary reporting point is outside the U.S. and who do not perform train or dispatching service beyond 10 route miles from the point of entry into the U.S.). Further, this restriction should not disrupt a railroad’s existing operations as it is FRA’s understanding that these crews do not currently travel beyond 10 route miles from the point of entry into the U.S. The limitation is also consistent with the current crew exchange points as established by U.S. Customs and Border Protection, which are currently less than 10 miles from the points of entry at the southern border.

Imposing both the ELP requirement and the 10 route-mile limitation at the southern border is appropriate and consistent with railroad safety, because railroad crews must be able to communicate fully and accurately when crossing into the United States, most notably with dispatchers and emergency responders during a crisis, as a safety-critical function. FRA has determined that the ELP requirement alone is not sufficient at the southern border to ensure safe operations in the United States and is therefore also proposing to impose the explicit 10 route-mile limit.

#### *Canadian-based Crews*

In contrast to the southern border, where Mexico has not established qualification requirements for crew members and the Mexican government has not provided similar oversight of rail safety as the U.S., the U.S. and Canada have a long history of cooperation in rail operations. In the locomotive engineer and conductor certification context, this cooperation is based on both countries establishing qualification requirements for these safety-sensitive jobs. For instance, during the first rulemaking proposing locomotive engineer certification requirements in 1989, FRA explained that the proposed rule “contains a provision ... which is designed to accommodate qualification determinations that are made pursuant to requirements issued by the Canadian Transport Commission in 1987.”<sup>4</sup> In the final rule, FRA explained that it was retaining the proposed provision “to accept qualification decisions made under the regulations issued by Transport Canada.”<sup>5</sup> Both FRA and Canada also established minimum qualification standards for conductors.<sup>6</sup> The oversight provided by Canada is comparable to FRA’s rail safety oversight, which provides significant assurances that

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<sup>4</sup> 54 FR 50890, 50916 (Dec. 11, 1989) (referring to SOR/87-150 of the Canada Transportation Act, Railway Employee Qualification Standards Regulations).

<sup>5</sup> 56 FR 28228, 28239 (June 19, 1991).

<sup>6</sup> 76 FR 69802 (Nov. 9, 2011) (establishing 49 CFR part 242) and SOR/87-150 of the Canada Transportation Act, Railway Employee Qualification Standards Regulations.

railroad carriers will ensure that their locomotive engineers and conductors are qualified on the necessary safety requirements before allowing those regulated employees the opportunity to operate or be in charge of a train movement on their own. FRA also notes that while Canada has two official languages, the majority of Canadians use English as their primary language, thus reducing the overall risk of cross border operations by crews who cannot fully and accurately communicate in English.<sup>7</sup>

Though FRA has not identified similar safety issues with Canadian-based crew members as described above with Mexican-based crews, this proposed rule would ensure consistency by amending the locomotive engineer and conductor certification regulations to ensure that inbound crews from Canada possess ELP.

Given that FRA has not identified similar ELP issues at the northern border, as those found in investigations of recent operations of Mexican-domiciled crews at the southern border, and after decades of experience of the U.S. and Canada working together monitoring rail safety compliance, FRA does not find it necessary to propose imposing a similar 10 route-mile limitation for northern border operations.

Otherwise, the proposed amendments to the certification regulations that impact Canadian-based crew members are non-substantive and merely are proposed to provide clarity. The regulatory amendments proposed in this rulemaking are intended to carry forward the U.S. and Canada's long and positive history of regulatory reciprocity on crew qualifications and certification.

### ***Proposing a New Requirement for Testing and Observing Skills***

Energy management systems have been commercially available since about 2009. These technologies have evolved over time from the early passive systems that advised a

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<sup>7</sup> See also 49 CFR 241.7(c)(3)(iii), reflecting that ELP requirements are not novel to FRA's regulations (stating "[t]he fringe border dispatcher shall communicate instructions to the train crew and maintenance of way employees working on the line in the English language and, when referencing units of measurement, shall use English units of measurement.").

locomotive engineer to notch the throttle up or down based on an analysis of terrain data. Currently, the commonly used energy management systems are active systems designed to be initiated by the locomotive engineer, and then to operate the train with minimal intervention by the engineer. Railroad rules require engineers to use the technology as much as possible because it is effective at saving fuel.<sup>8</sup>

Despite being sometimes confused for automation, these systems are meant to be overridden by the engineer any time a railroad operating rule or practice might be violated—which means a failure of the system does not cause an unsafe condition directly. For this reason, FRA does not regulate a railroad’s use of energy management systems. The main objective of these systems is to save fuel, not to substitute for the engineer. However, like a car’s cruise control, they can be engaged for long periods and reliably stay under the maximum authorized speed without the need for operator intervention. When engaged, the engineer may have few opportunities to engage the brake systems or to have hands-on-the-throttle operation of the train. For this reason, FRA is proposing that examination of an engineer’s performance skills that occurs triennially and the operational monitoring observations that are required annually, must not be conducted when an energy management system that operates the throttle is engaged.

FRA is aware that some railroads are experimenting with using energy management systems in an integrated system with positive train control (PTC) or other critical-safety systems. To the extent there is integration with a critical-safety system,

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<sup>8</sup> Each Class I freight railroad has rules mandating use of energy management systems like Trip Optimizer, which is manufactured by Wabtec, and LEADER, which is manufactured by New York Air Brake. As examples, with certain exceptions, BNSF’s ABTH Rule 103.2.1 requires engineers to initiate and engage Trip Optimizer on all equipped trains. Norfolk Southern’s NS-1 Rules for Equipment Operation and Handling, Section 60, similarly requires, with certain exceptions, that energy management systems, such as Trip Optimizer and LEADER, be used in auto control mode when operating conditions permit.



FRA does not propose the disengagement of that system to conduct skills testing or monitoring.

### ***Proposing a New Requirement for Territorial Qualifications***

During certification program reviews, audits, and inspections, FRA has noted that some railroad carriers have misinterpreted the territorial qualification requirements in ways that have a substantial negative safety impact. FRA currently requires each locomotive engineer and conductor to be qualified on the physical characteristics of any territory that they operate over with a locomotive or train, and has provided each railroad carrier with the discretion to decide what training and testing is required to meet that qualification requirement. Use of videos and simulator training is permitted and useful to supplement qualification familiarization rides that occur on a train. Typically, railroads have opted to state in their certification programs that only the regulatory minimum of at least one qualification ride is required, though it is not uncommon for experienced engineers and conductors to take 10 qualification rides over particularly challenging territories. The proposed changes to territorial qualifications requirements are intended to clarify the current requirements and to ensure that each railroad carrier meets FRA's intended minimum standards.

For these reasons, FRA proposes changes to clarify that a person's territorial qualification is limited to the specific direction of travel traversed during the qualification process. This proposed requirement would likewise clarify that a person is not qualified to serve as a locomotive engineer or conductor in a direction of travel for which they have not successfully completed a qualification move and demonstrated knowledge of the physical characteristics as viewed from that direction. This focus on the direction of travel during a qualification ride is practical, because the visual perspective, signal placements, and gradient changes are unique to the orientation of the movement. For instance, landmarks and signal aspects that are critical for safety and compliance in one

direction may not be visible, or may have different operational implications, when traveling in the opposite direction. By qualifying in the specific direction of travel, the railroad carrier ensures the engineer or conductor has demonstrated proficiency regarding the physical characteristics—such as permanent close clearances, switch locations, and track profiles—as they will actually be encountered during live operations, thereby reducing the risk of accidents caused by lack of situational awareness.

### ***Legal Authority***

FRA is proposing amendments to the regulations concerning the qualifications and certification of locomotive engineers and conductors based on the statutory general authority of the Secretary of Transportation (Secretary). The general authority states, in relevant part, that the Secretary “as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970.”<sup>9</sup> The Secretary delegated this authority to the Federal Railroad Administrator.<sup>10</sup>

By statute, the Secretary is required to “prescribe regulations and issue orders to establish a program requiring the licensing or certification . . . of any operator of a locomotive.”<sup>11</sup> FRA fulfilled that statutory requirement in 1991 by issuing a regulation requiring each railroad carrier to file a locomotive engineer certification program with FRA.<sup>12</sup> Each railroad carrier’s program must specify how the railroad carrier plans to make the determinations necessary to certify each of its locomotive engineers, as well as ensure that the certified locomotive engineers of other railroad carriers are qualified to

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<sup>9</sup> 49 U.S.C. 20103.

<sup>10</sup> 49 CFR 1.89(a); 49 U.S.C. 103(g).

<sup>11</sup> 49 U.S.C. 20135.

<sup>12</sup> 56 FR 28254 (June 19, 1991), 49 CFR part 240.

operate safely on the controlling railroad carrier's track.<sup>13</sup> A locomotive engineer's main task is to operate the train safely. Other important tasks central to safe operation include ensuring that the locomotive mechanical requirements are met; coordinating with the conductor about operational details; and, under the conductor's supervision, interpreting train orders, signals, and operating rules.

FRA also administers and enforces statutorily mandated<sup>14</sup> conductor certification requirements.<sup>15</sup> FRA defines a conductor as the crewmember in charge of a train or yard crew,<sup>16</sup> and the conductor's job requires supervising train operations to ensure they are safe. The conductor's responsibilities include managing the train consist; coordinating with the locomotive engineer for safe and efficient en route operation; interacting with dispatchers, roadway workers, and others outside the locomotive cab; and dealing with unexpected situations (*e.g.*, mechanical problems).<sup>17</sup> The purpose of the conductor certification regulation is to ensure that only those persons meeting minimum Federal safety standards serve as conductors.

Further, this proposed rule is consistent with President Trump's E.O. 14224, "Designating English as the Official Language of the United States," by affirming each railroad carrier's duty to ensure every certified locomotive engineer and conductor possesses sufficient ELP in reading, speaking, and writing skills to do their jobs in our national language.<sup>18</sup>

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<sup>13</sup> See 49 CFR part 240, subpart B—Component Elements of the Certification Process, and § 240.229 (requiring certain action on the part of a railroad controlling the conduct of joint operations with another railroad). Additional guidance was provided in an interpretation published Aug. 29, 2008. 73 FR 50883.

<sup>14</sup> 49 U.S.C. 20163, Certification of train conductors.

<sup>15</sup> 49 CFR part 242.

<sup>16</sup> 49 CFR 242.7 (defining "conductor").

<sup>17</sup> Rosenhand, Hadar, Emilie Roth, and Jordan Multer, Cognitive and Collaborative Demands of Freight Conductor Activities: Results and Implications of a Cognitive Task Analysis, FRA (July 2012).

<sup>18</sup> E.O. 14224, 90 FR 11363, Sec. 1. Purpose and Policy (stating "it is in America's best interest for the Federal Government to designate one—and only one—official language.")

## **II. Section-by-Section Analysis**

### **Part 240, Subpart B– Component Elements of the Certification Process**

#### *§ 240.7 Definitions*

The current regulation does not include two terms that are used in this proposed rule, “energy management system” and “English language proficient,” and thus FRA proposes to add them for clarity. The railroad industry should be familiar with the term energy management system (EMS) due to the widespread use of the technology. For purposes of this rule, FRA proposes that an EMS will mean any onboard system, software, or device that automatically intervenes in, modifies, or provides guidance on throttle or braking application for purposes of optimizing train handling, fuel consumption, or energy use, regardless of the commercial name, designation, or classification assigned to the system by the railroad or manufacturer. This definition should include all EMS.

The term “English language proficient,” means possessing sufficient ability in the English language to complete successfully the railroad’s written and oral certification program requirements as provided in part 240. To verify such proficiency, FRA proposes three components in the definition. The first component will ensure that an engineer, through knowledge training and testing, will be able to read, to comprehend, and to apply all railroad rules and instructions in English. The second component will ensure the person can speak English with sufficient proficiency to communicate effectively with U.S. based dispatchers, other rail employees, emergency responders, and anyone else the person might need to speak with. The third component will ensure that the person can make required entries on reports, records, and forms in English, regardless of whether the entries are made on a computer or require handwriting. In the proposed definition, FRA clarifies that proficiency is not required to be measured against any general English fluency standard, as it is specific to the safety-critical communicative functions identified

in the proposed definition, that are specific to the requirements of a locomotive engineer and railroad employee.

*§ 240.123 Training*

FRA proposes adding a new paragraph (g) to 49 CFR 240.123 to require that all training in accordance with this section must be conducted in English. This requirement ensures that training is communicated in a standardized language to maintain consistency and safety across the general system. The proposed change is consistent with other changes requiring the English language be used in every manner of implementation of the certification program, to reinforce the importance of ELP.

*§ 240.125 Knowledge Testing*

The proposed change to paragraph (b) would add the phrase “in the English language” and explicitly includes “signage” as a component of the railroad’s rules and practices. This revision establishes a baseline requirement for ELP as it relates to safety-critical information. By requiring the test to determine knowledge in the English language, the proposed change would ensure that engineers can comprehend the standard language used for dispatching, emergency communications, and operating manuals in the United States. The addition of “including signage” emphasizes that the engineer must not only understand verbal or written rules but must also be able to interpret physical trackside signs and signals correctly, as they are presented in the field.

The proposed change to paragraph (c)(1) would append “in English” to the description of the test design. This paragraph currently governs the “testing methods” selected by a railroad, and thus the proposed change would mandate that the testing instruments themselves, *i.e.*, written or electronic exams, be designed and administered in English. This proposed change would prevent the use of translated versions of exams for certification purposes, ensuring that the candidate’s mastery of the rules is inseparable from their ability to process those rules in the language of the operating environment.

Proposed changes to paragraph (e) would specify that the opportunity to consult with a supervisory employee must occur “in English.” Existing regulations allow a candidate to ask for clarification on a question from a supervisor who possesses territorial qualifications. The proposal mandates that this exchange happen in English. This ensures the candidate can communicate complex technical questions and understand nuanced clarifications in English, and it maintains the integrity of the testing environment by ensuring that the assistance provided by the supervisor remains within the linguistic constraints required for the certification.

*§ 240.127 Criteria for Examining Skill Performance*

The proposed change to paragraph (c) is consistent with other proposed requirements in this rulemaking that would ensure certification training and testing are conducted in English and promote ELP. This paragraph currently requires a railroad to have procedures for examining skill performance. The proposal would ensure that testing procedures must be conducted in English and must specifically serve to test the English language proficiency of the candidate.

Proposed paragraph (c)(1) would add a sentence stating that operational monitoring observations shall not be conducted while “an energy management system that operates the throttle is engaged, unless the energy management system is integrated with a critical-safety system.” As explained in the *Background* section, allowing such systems to be used during an examination of skill performance would skew the exam, as the person would only be demonstrating skills when the system operating the throttle failed or was close to violating a railroad operating rule requirement. FRA is aware that these energy management systems also often use dynamic braking and eventually air brakes, and thus, are even more greatly integrated into train operations. In addition, if the energy management system is integrated with a critical-safety system, such as PTC, FRA proposed an exception so that safety is not compromised. Thus, the proposed

change is consistent with the current regulations requiring that testing be held in the “most demanding class or type of service” because allowing a system that automates throttle controls, and potentially brakes too, could defeat the test’s purpose.

*§ 240.129 Criteria for Monitoring Operational Performance of Certified Engineers*

Proposed paragraph (c)(1) addresses the same safety issue of using a “non-safety-critical system that operates the throttle” when a railroad carrier is supposed to be determining whether a locomotive engineer can operate safely. The difference between the two sections is that § 240.127 applies to the skills performance examination that occurs every three years at certification and recertification, while paragraph (c)(1) of this section refers to the annual requirement to monitor a locomotive engineer for operational performance. In addition, if the energy management system is integrated with a critical-safety system such as PTC, FRA proposed an exception so that safety is not compromised. Thus, the proposed changes address whether a supervisor can evaluate an engineer’s manual train-handling skills if an EMS is controlling the locomotive’s power and speed during the observation.

**Part 240, Subpart C – Implementation of the Certification Process**

*§ 240.203 Determinations Required as a Prerequisite to Certification*

The proposed change to paragraph (a)(3) addresses whether the current knowledge testing requirements sufficiently ensure an engineer’s ability to interpret railroad-specific signage and whether the medium of testing is standardized for safety. Under current paragraph (a)(3), railroads must determine that an individual has the “necessary knowledge” demonstrated by a test meeting the requirements of § 240.125. The proposed change adds two critical qualifiers. First, it explicitly includes “signage” as a core component of the required knowledge of railroad rules and practices. Second, it would mandate that the test be conducted as a “written test in English.” This ensures that the engineer’s theoretical understanding of safety protocols is not only comprehensive

regarding physical track indicators, but also validated through a standardized language used for safety communications in the U.S. By adopting this change, FRA would clarify that proficiency in interpreting signs and the ability to pass a written English exam are prerequisites for certification.

Proposed paragraph (a)(4) seeks to refine the terminology used to describe the validation of an engineer's performance skills, to ensure it aligns with broader testing standards. The current rule refers to an "operational performance test" that meets the requirements of § 240.127, but that cross-reference refers to the criteria for examining skill performance, and not the criteria for monitoring operational performance of certified engineers as found in § 240.129. The proposed amendment replaces "operational performance test" with the broader term "examination" to more closely match the cross-referenced requirement.

Proposed paragraph (a)(5) remains the same except to add an "and" at the end as a placeholder to add new paragraph (a)(6).

Proposed paragraph (a)(6) contains new specific requirements for ELP. The primary issue is whether an engineer can operate safely in a complex environment where communication with various stakeholders is essential to prevent accidents or respond to emergencies, and how to ensure those subjects are covered in training and testing. Currently, part 240 does not have a dedicated, multi-point English proficiency determination specifically for safety-critical communication and recordkeeping. Proposed paragraph (a)(6) would establish three specific proficiency benchmarks. Under paragraph (i), an engineer must be able to communicate train hazards and cargo information to emergency responders and the public, which is critical during derailments or HAZMAT incidents. Under paragraph (ii), the engineer must be able to handle "mandatory directives" with dispatchers; as these directives govern track authority, any miscommunication could lead to head-on collisions. Finally, under paragraph (iii), the



engineer must be able to document safety data accurately in reports. Thus, this paragraph would formalize ELP as a safety-critical skill, ensuring that engineers can effectively navigate the human and administrative elements of rail safety.

*§ 240.227 Qualification Requirements for International Cross-border Operations*

FRA proposes amending this section to clarify and to improve the requirements for railroad carriers that conduct joint operations with Canadian or Mexican railroad carriers and seek to certify locomotive engineers for cross-border service. The proposed changes would provide continuity by recognizing the decades-long governmental qualification requirements of Canadian locomotive engineers, and providing a limited and clear path forward for a Mexican railroad carrier's locomotive engineers to operate in the U.S., despite not having the same longstanding history of operations as the U.S. and Canada. Accordingly, FRA proposes amending the title of this section so that it no longer reads "reliance on qualification requirements of other countries" to reflect the proposed content of this section better.

Paragraph (a) would clarify the impact of corporate structures on the employer-employee relationship for the purposes of this section. The proposed paragraph specifies that employees of a Canadian or Mexican railroad carrier are not to be considered employees of a U.S. railroad carrier, regardless of whether the foreign railroad carrier is a subsidiary of, or has a legal relationship with, a U.S. parent company. FRA also proposes a catch-all phrase that employees of a Canadian or Mexican railroad are not to be considered employees of a U.S. railroad if the foreign railroad "otherwise has a legal arrangement or other relationship with the controlling U.S. railroad" to capture all other formal legal arrangements, or even informal relationships. Thus, the plain meaning of this proposed requirement is to prohibit a U.S. railroad from considering the employees of a Canadian or Mexican railroad as employees of the U.S. railroad, despite a corporate structure that attempts to obscure the Canadian or Mexican railroad's employment

relationship. This paragraph is intended to distinguish between the regulatory responsibilities of the domestic railroad and the employment status of foreign personnel.

Paragraph (b) addresses proposed requirements for Canadian operations. It would allow a railroad carrier to certify a locomotive engineer employed by a Canadian railroad carrier, provided certain conditions are met. Specifically, as proposed, the U.S. railroad carrier must determine that the individual is employed by the Canadian railroad carrier, and meets or exceeds the qualification standards issued by Transport Canada. Proposed paragraphs (b), (b)(1), and (b)(2), are intended to capture the current regulatory text of 49 CFR 240.227. As discussed in the *Background* section, FRA does not have the same concerns regarding safe operations at the northern border as it has with the southern border.

Paragraph (c) proposes requirements for Mexican-based operations. Under this paragraph, a railroad carrier would be permitted to certify an engineer employed by a Mexican railroad carrier only if the person is trained, tested, and certified directly by the U.S. railroad carrier, in accordance with its own FRA-approved program. As discussed in the *Background* section, in contrast to Transport Canada, Mexico does not have comparable regulatory oversight. The U.S. railroad carrier is prohibited explicitly from relying on qualification determinations made by Mexican railroad carriers or Mexican governmental agencies. Further, to ensure safe operations at the southern border, this paragraph would limit the Mexican engineer's operations to a continuous movement between the international border and a U.S. railroad yard that has a southernmost point of entry within 10 route miles of the international border point of entry. The proposed rule would also require the Mexican-based engineer to be English language proficient or be accompanied by a U.S.-certified and territory-qualified locomotive engineer pilot who is proficient in English and Spanish.

Paragraph (d) proposes an option for a single, dual-certified pilot to assist a Mexican-based railroad crew. If neither the engineer nor the conductor is proficient in English, this proposed paragraph would allow a single U.S. railroad employee to serve as a pilot for both crew members. To ensure safety, this pilot would be required to be certified as both a locomotive engineer under part 240 and a conductor under part 242, be qualified on the specific territory, and be proficient in English and Spanish. This provision is intended to provide operational flexibility while maintaining rigorous safety and communication standards in cross-border joint operations territory.

FRA is not proposing a similar single, dual-certified pilot option for Canadian crews as FRA has no evidence of non-English language proficient Canadian crews. If, through comments or other reliable information, FRA becomes aware of such a safety issue, FRA may consider adding a similar 10 route-mile operation limitation for joint operations with Canadian railroad crews as it has for Mexican crews, or some other reasonable limitations on Canadian railroad crew operations.

*§ 240.231 Requirements for Locomotive Engineers Unfamiliar with Physical Characteristics in Other Than Joint Operations*

Proposed paragraph (a) addresses the issue raised in the *Background* section that some railroads have misinterpreted the territorial qualification requirements in ways that have a substantial negative safety impact. FRA proposes changes to clarify that a person's territorial qualification is limited to the specific direction of travel traversed during the qualification process. This proposed requirement would likewise clarify that a person is not qualified to serve as a locomotive engineer in a direction of travel for which they have not successfully completed a qualification move and demonstrated knowledge of the physical characteristics as viewed from that direction.

*Appendix B to Part 240—Procedures for Submission and Approval of Locomotive Engineer Qualification Programs*

The current appendix establishes the procedures for submission and approval of a railroad's certification program as required in part 240. The proposed changes to the description for the submission by a railroad carrier address that each railroad carrier will need to comply with the ELP requirements proposed in this rule, but that FRA is not proposing that each railroad carrier will be required to submit or resubmit a certification program solely because its program does not address the proposed ELP requirements. FRA explains in the appendix that no submission or resubmission of programs would be required, but railroad carriers would simply be expected to comply with the ELP requirements once a final rule in this docket is effective. FRA anticipates that, except for approximately 93 Mexican-based crewmembers<sup>19</sup> operating near the Mexican border, engineers certified by U.S. railroad carriers would not have difficulty meeting ELP requirements. This rule would ensure that any non-English language proficient engineers are restricted from operating until they receive the proper training and can pass all the required tests as necessary to do the job safely. The proposed appendix explains that FRA retains enforcement discretion if, after the effective date of a final rule, non-English language proficient engineers are found operating without English language proficient qualified pilots.

As this proposed rule would remove the emphasis in § 240.227 that a railroad may rely on a determination made in other countries, FRA proposes to amend the procedures in Section 7 to explain that § 240.227 contains the qualification requirements for international cross-border operations, which requires a railroad carrier to document the factual basis the railroad carrier relied on in making its determinations, including the

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<sup>19</sup> In 2025, there were 11,309 total inbound trains from Mexico. FRA divided this by 365 to get the daily average of 31. See Bureau of Transportation Statistics (BTS) Data Inventory, available at <https://data.bts.gov/stories/s/Tables-Query-Tool/6rt4-smhh>. To estimate the total number of crew members who would need to be trained, FRA multiplied the total daily train count (31) from BTS by the estimated number of crew on board (2) to estimate a baseline number of 62 crew members. Since it is likely that the 62 crew members are not working 365 days a year, FRA assumed there would be additional crew members who need to be trained. FRA applied a 50 percent multiplier to the daily baseline to estimate additional crew members, resulting in 93 total crew members (62 crew members \* 1.5 = 93).

procedures it will employ to ensure compliance with these provisions. Thus, FRA expects a railroad carrier with international cross-border operations to describe its training, testing, and qualification procedures required to comply with § 240.227 and then to retain records demonstrating compliance.

*Appendix H to Part 240—*

*Recommended Procedures for Conducting English Language Proficiency Evaluations*

This proposed new appendix is intended to provide useful information regarding how a railroad carrier can include procedures ensuring that each certified locomotive engineer is English language proficient to the extent that the person can safely perform assigned duties. It covers the need for a systematic approach that ensures the railroad carrier makes a correct determination that the person can perform the job in English. As part of that determination, railroad carriers that do not already include conversational interviews in their certification programs are recommended to add them. Railroad carriers are recommended to use training and testing involving required reporting and recordkeeping to ensure ELP requirements are met. The appendix contains recommendations for how to evaluate ELP and detect problems objectively. Each railroad carrier is recommended to retain a written evaluation record to reduce the risk that the evaluators will introduce subjectivity into an ELP determination. Rather than mandating specific Federal standards or tests, FRA is proposing that railroad carriers develop their own tests and standards to evaluate each person—which retains the general approach of FRA’s certification requirements that provide the flexibility each railroad carrier may need to design training and testing that conforms with a particular operation. Certainly, it could be expected that some railroad associations or groups of railroad carriers may find common ground and develop shared standardized training and testing. Further, while a railroad carrier may want to score any ELP tests, the appendix concludes that the standard against which any scoring system should be measured is whether the person

possesses functional proficiency in the safety-critical communicative functions required for their duties, not general English fluency.

## **Part 242, Subpart B – Program and Eligibility Requirements**

### *§ 242.7 Definitions*

The proposed changes to this section mirror the changes proposed for 49 CFR 240.7, with the exception that this section applies to conductors instead of locomotive engineers. For that reason, the section-by-section analysis for the proposed changes to the locomotive engineer regulation can be read to apply to this conductor regulation.

### *§ 242.109 Determinations Required for Certification and Recertification*

The proposed changes to this section are similar to the changes proposed for 49 CFR 240.203, with the exception that this section applies to conductors instead of engineers. For that reason, the section-by-section analysis for the proposed changes to the engineer regulation can be read to apply to this conductor regulation.

### *§ 242.119 Training*

The proposed changes to this section are similar to the changes proposed for 49 CFR 240.123 and other changes for ELP, with the exception that this section applies to conductors instead of engineers. For that reason, the section-by-section analysis for the proposed changes to the engineer regulation can be read to apply to this conductor regulation.

### *§ 242.121 Knowledge Testing*

The proposed changes to this section are similar to the changes proposed for 49 CFR 240.125 and other changes for ELP, with the exception that this section applies to conductors instead of engineers. For that reason, the section-by-section analysis for the proposed changes to the engineer regulation can be read to apply to this conductor regulation.

### *§ 242.127 Qualification Requirements for International Cross-border Operations*

The proposed changes to the title of this section and the section itself mirror the changes proposed for 49 CFR 240.227, with the exception that this section applies to conductors instead of engineers. Thus, the section-by-section analysis for the proposed changes to part 240 can be read to apply to part 242.

#### **Part 242, Subpart D – Territorial Qualification and Joint Operations**

##### *§ 242.301 Requirements for Territorial Qualification*

The proposed changes to this section are similar to the changes proposed for 49 CFR 240.231 regarding territorial qualifications, with the exception that this section applies to conductors instead of engineers, and a paragraph was added, not amended. For that reason, the section-by-section analysis for the proposed changes to the engineer regulation can be read to apply to this conductor regulation.

##### *Appendix B to Part 242—Procedures for Submission and Approval of Conductor Certification Programs*

The proposed changes to this appendix mirror the changes proposed for part 240, appendix B, albeit that the number and title of the section proposed for amendment are different. For that reason, the section-by-section analysis for the proposed changes to part 240, appendix B, can be read to also apply to part 242, appendix B.

##### *Appendix F to Part 242—Recommended Procedures for Conducting English Language Proficiency Evaluations*

The proposed addition of this appendix mirrors the proposed addition for part 240 for new appendix H. For that reason, the section-by-section analysis for the proposed addition of part 240, appendix H, can be read to also apply to part 242, appendix F.

### **III. Regulatory Impact and Notices**

#### **A. E.O. 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

E.O. 12866 (“Regulatory Planning and Review”)<sup>20</sup> requires agencies to regulate in the “most cost-effective manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.” 49 CFR 5.5(g) specifies that regulations generally should “not be issued unless their benefits are expected to exceed their costs.” E.O. 12866 states that agencies should consider “both quantifiable measures . . . and qualitative measures of costs and benefits that are difficult to quantify.” Under E.O. 12866, “agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating” and should select regulatory approaches that “maximize net benefits . . . unless a statute requires another regulatory approach.”

E.O. 12866 and 49 CFR part 5 also require that FRA submit “significant regulatory actions” to the Office of Information and Regulatory Affairs (OIRA) within the Executive Office of the President’s Office of Management and Budget (OMB) for review. This proposed rule is a significant regulatory action pursuant to section 3(f) of E.O. 12866.

This rule proposes to amend parts 240 and 242 by requiring ELP for all U.S. railroad carriers, to certify and recertify locomotive engineers and conductors, requiring that the examination of an engineer’s performance skills and operational monitoring observations must not be conducted when an EMS that operates the throttle is engaged, and clarifying that a person’s territorial qualification is limited to the specific direction of travel traversed during the qualification process. In addition, this proposed rule would revise requirements for international train crew operations, by requiring a 10 route-mile geographic limit for Mexican-based crews, a requirement for U.S. railroad carriers to train and certify these crews independently, and a mandate for ELP or piloting by a

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<sup>20</sup> 58 FR 51735 (Oct. 4, 1993).



person who is proficient in English and Spanish. FRA is proposing these changes to reduce the risk of potential costly accidents caused by crews not being English language proficient. The changes are also consistent with E.O. 14224.

### *Need for Regulation*

With this proposed rule, FRA aims to reduce the risk of accidents caused by miscommunication, or the inability to interpret written safety materials, by including procedures that ensure each certified locomotive engineer and conductor would be English language proficient to perform duties safely. Though FRA is unaware of any accidents due to a language barrier, there is a safety risk due to a potential loophole a railroad carrier may have created for a non-English language proficient engineer or conductor to be trained and certified. For example, if the railroad employee has received a mandatory directive through the radio, but they do not understand it due to a lack of ELP, there is a potential safety risk.<sup>21</sup> This includes international crews who would have crossed the border enroute to the interchange location, as FRA has observed instances where Mexican-based crews could not communicate with inspectors. If a mandatory directive is transmitted to the crew through the radio and a language barrier exists, a safety risk to life and property would be present. In addition, the 10-route mile limit is needed to ensure safe operations of Mexican-based crews in the United States.

The proposed new requirement for testing and observing skills, and the new requirement for territorial qualifications, are needed to provide clarity during the certification process. When EMS is engaged during the monitoring of performance skills, the engineer may have few opportunities to engage the brake systems and to have hands-on-the-throttle operation of the train. To ensure that the engineer is in full operation of the

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<sup>21</sup> See Press Release, “Trump’s Transportation Secretary Sean P. Duffy to Enforce English Language Proficiency Among Rail Crews Along the Southern Border,” available at <https://www.transportation.gov/briefing-room/trumps-transportation-secretary-sean-p-duffy-enforce-english-language-proficiency>.

throttle or braking system, the regulation would need to be updated to confirm EMS cannot be engaged. For the territorial qualification provision, FRA has noted during audits that some railroad carriers have misinterpreted the territorial qualification requirements in ways that have a substantial negative safety impact. Clarification is needed to ensure that a locomotive engineer or conductor's territorial qualification is limited to the specific direction of travel traversed during the qualification process.

### *Regulatory Options*

#### 1. No Action Baseline

One alternative approach to this proposed rule would be the no action baseline. Under the baseline, while FRA is unaware of any accidents due to a language barrier, there is currently a safety risk due to any potential railroad carriers training and certifying a non-English language proficient engineer or conductor. For example, if a crew member has received a mandatory directive through the radio but they do not understand it due to a lack of ELP, a safety risk is possible. The proposed rule would mitigate these potential risks and would prevent a scenario where an accident could occur due to a lack of ELP.

FRA currently requires each locomotive engineer and conductor to be qualified on the physical characteristics of any territory that they operate over with a locomotive or train, and has provided each railroad carrier with the discretion to decide what training and testing is required to meet that qualification requirement. FRA has noted during audits that some railroad carriers have misinterpreted the territorial qualification requirements. With respect to EMS, currently for testing and observing, when EMS is engaged, the engineer may have few opportunities to engage the brake systems and throttle during the operation of the train. To ensure that the engineer is in full operation of the throttle or braking system, the proposal would update the rule so that EMS is not engaged during testing.

#### 2. Requiring Resubmission of Training Programs for ELP Compliance

Another alternative approach to this proposed rule would be to require all railroad carriers to resubmit their certification programs to comply with ELP requirements. This would ensure that all railroad carriers comply with the revisions to the rule. However, this would result in undue costs for all U.S. railroad carriers to prepare and submit the program, as FRA is unaware of any U.S. railroad carriers who do not already train and test locomotive engineers and conductors in English. This proposed alternative offers less flexibilities to U.S. railroad carriers that may not outweigh the imposed costs. Instead, in this proposed rule, each railroad carrier would not be required to submit or resubmit a certification program for compliance with ELP. This would result in benefits, such as time saved by railroad companies, as they would not have to update and submit or resubmit their program because of the ELP requirements.

#### *Benefits*

FRA analyzed the potential benefits and costs of this proposed rule. There would be several qualitative benefits that would result from this proposed rule. Specifically, this proposed rule would reduce the risk of accidents caused by the inability to interpret written safety materials or miscommunication due to a lack of ELP, by requiring ELP for all locomotive engineers and conductors operating in the U.S. Similarly, the requirement for Mexican-based crews to be English language proficient or be accompanied by a bilingual crew member would reduce the risk of accidents caused by international crews failing to interpret accurately or understand mandatory directives. The addition of the 10 route-mile limit for Mexican-based crews provides consistency with other FRA regulations.<sup>22</sup>

In addition, this proposed rule would clarify that territorial qualifications must be direction specific. This would reduce the risk of accidents caused by a lack of situational

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<sup>22</sup> See 49 CFR 219.3(d)(2)(i).

awareness, as visual perspective, signal placements, and gradient changes are unique to the orientation of the movement. The requirement for testing and observing skills ensures supervisors would accurately be able to evaluate an engineer's manual train handling skills without EMS engaged.

### *Costs*

The proposed rule would require that the examination of an engineer's performance skills and operational monitoring observations be conducted when an EMS is not engaged. As this provision is clarifying, FRA anticipates no additional costs associated with this change. Additionally, this proposed rule would clarify that a person's territorial qualification is limited to the specific direction of travel traversed during the qualification process. FRA acknowledges there may be *de minimis* costs associated with the territorial qualification requirement. FRA seeks comment on the potential costs of both proposed requirements.

The proposed rule would require U.S. railroad carriers to ensure that all locomotive engineers and conductors would be English language proficient through the training and certification process. FRA is unaware of any U.S. railroad carrier that does not already conduct the training and testing of locomotive engineers and conductors exclusively in English. Because FRA is not proposing that each railroad carrier be required to submit or resubmit a certification program solely because its program does not address the proposed ELP requirements, for most railroad carriers, it is unlikely substantive changes would be required. FRA anticipates there would be *de minimis* costs associated with railroad carriers' reviews of their current training programs in compliance with the proposed ELP requirements.

This proposed rule would also require a 10 route-mile geographic limit for Mexican-based crews, and a requirement for U.S. railroad carriers to train and certify these crews independently. Currently, all crew interchanges at the southern border

happen at the border or at interchange yards less than 10 miles into the U.S.<sup>23</sup> Therefore, this provision would not be expected to have additional costs. For the international crew certification requirement, UP and CPKC already certify crews from Mexico upon entry into the U.S.<sup>24</sup> No additional costs would be expected from this provision.

In addition, this proposed rule would require ELP, or an option for a pilot for Mexican-based operations, who is proficient in English and Spanish. U.S. railroad carriers engaged in operations with Mexican railroad carriers likely would need to assess whether their existing training and testing adequately addresses the revised ELP provisions, so that Mexican-based crews abide by the proposed standard. FRA anticipates this likely would include testing for ELP by U.S. railroad carriers, of Mexican-based crews, resulting in *de minimis* costs.

According to FRA subject matter experts, it would be unlikely that U.S. railroad carriers would choose the option for an English and Spanish proficient pilot, and would instead mandate ELP for Mexican-based crews. Based on data from the U.S. DOT Bureau of Transportation Statistics, FRA estimates there are about 31 daily train entries from Mexico into the U.S through various entry points along the southern border.<sup>25</sup> Assuming each train has two crew members, plus backups, FRA estimates 93 Mexican-based crew members that need to be trained for ELP.<sup>26</sup> FRA recognizes that it is likely not all Mexican-based crew members would need to be trained for ELP, as some may

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<sup>23</sup> Association of American Railroads, “Freight Rail International Interchange,” available at: <https://www.aar.org/issue/international-interchange/> (accessed June 5, 2026).

<sup>24</sup> *Id.*; see also UP, “Union Pacific Enhances Safety and Security at Eagle Pass Border Crossing,” available at: <https://www.up.com/news/service/enhancing-safety-at-eagle-crossing-251121> (accessed June 5, 2026).

<sup>25</sup> In 2025, there were 11,309 total inbound trains from Mexico. FRA divided this by 365 to get the daily average of 31. See Bureau of Transportation Statistics (BTS) Data Inventory, available at <https://data.bts.gov/stories/s/Tables-Query-Tool/6rt4-smhh>.

<sup>26</sup> To estimate the total number of crew members who would need to be trained, FRA multiplied the total daily train count (31) by the estimated number of crew on board (2) to estimate a baseline number of 62 crew members. Since it is likely that the 62 crew members are not working 365 days a year, FRA assumed there would be additional crew members who need to be trained. FRA applied a 50 percent multiplier to the daily baseline to estimate additional crew members, resulting in 93 total crew members (62 crew members \* 1.5 = 93).

already be English proficient. To avoid underestimating, FRA assumed that all 93 Mexican-based crew members would need training. FRA recognizes this might overestimate the total costs but provides these estimates as an upper bound.

FRA welcomes public comment on the length of time rail carriers would require, to ensure that crew members are compliant with the proposed requirements related to ELP, energy management systems, and territorial qualification.

FRA is not requiring general English fluency, but rather functional proficiency in safety critical communicative functions required for the job duties of locomotive engineers and conductors. FRA is not mandating how railroad carriers train their crews in English, but for purposes of this analysis, FRA is assuming crew members would take English courses during their normally scheduled work hours.<sup>27</sup>

Table 1 shows the costs to U.S. railroad carriers over a 10-year period for railroads to train Mexican-based crews for ELP. FRA estimates that the first-year cost to train 93 employees would cost \$43,431 to U.S. railroad carriers and an additional \$934 to U.S. railroad carriers in each subsequent year.

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<sup>27</sup> English language course types vary from private self-paced online courses to corporate group courses. For purposes of this analysis, FRA assumed U.S. railroad carriers would choose an online English language group program to train Mexican-based crews. Based on examples of five different online language platforms, the average cost was \$467 (2025 dollars). *See* Berlitz Languages, available at <https://shopberlitz.us/english/>; Washington English Center, available at <https://www.washingtonenglish.org/students/>; Berlitz Business, available at <https://www.berlitz.com/corporations>; International Language Institute, available at <https://ilidc.com/esl/tutorials/>; Temple University, available at <https://noncredit.temple.edu/search/publicCourseSearchDetails.do?method=load&courseId=197068321>.

**Table 1: U.S. Railroad Carrier ELP Training Costs for Mexican-based Crews (2025, \$)**

| Year         | Number of Employees <sup>28</sup> | English Language Course Cost | Total Cost - ELP |
|--------------|-----------------------------------|------------------------------|------------------|
|              | a                                 | b                            | c = a x b        |
| 1            | 93                                | \$ 467                       | \$ 43,431        |
| 2            | 2                                 | \$ 467                       | \$ 934           |
| 3            | 2                                 | \$ 467                       | \$ 934           |
| 4            | 2                                 | \$ 467                       | \$ 934           |
| 5            | 2                                 | \$ 467                       | \$ 934           |
| 6            | 2                                 | \$ 467                       | \$ 934           |
| 7            | 2                                 | \$ 467                       | \$ 934           |
| 8            | 2                                 | \$ 467                       | \$ 934           |
| 9            | 2                                 | \$ 467                       | \$ 934           |
| 10           | 2                                 | \$ 467                       | \$ 934           |
| <b>Total</b> | 111                               |                              | \$ 51,837        |

FRA estimates this proposed rule would result in costs to U.S. railroad carriers of \$49,516 over a 10-year period (discounted at seven percent) in 2025 dollars and \$50,703 over a 10-year period (discounted at three percent, 2025 dollars). The annualized costs of this proposed rule would be \$7,050 discounted at seven percent and \$5,944 discounted at three percent in 2025 dollars. Table 2 below shows the total costs for this proposed rule.

**Table 2: 10-Year Total Costs to U.S. Railroad Carriers**

| Year              | ELP Training Costs | Discounted 7% | Discounted 3% |
|-------------------|--------------------|---------------|---------------|
| 1                 | \$ 43,431          | \$ 43,431     | \$ 43,431     |
| 2                 | \$ 934             | \$ 873        | \$ 907        |
| 3                 | \$ 934             | \$ 816        | \$ 880        |
| 4                 | \$ 934             | \$ 762        | \$ 855        |
| 5                 | \$ 934             | \$ 713        | \$ 830        |
| 6                 | \$ 934             | \$ 666        | \$ 806        |
| 7                 | \$ 934             | \$ 622        | \$ 782        |
| 8                 | \$ 934             | \$ 582        | \$ 759        |
| 9                 | \$ 934             | \$ 544        | \$ 737        |
| 10                | \$ 934             | \$ 508        | \$ 716        |
| <b>Total</b>      | \$ 51,837          | \$ 49,516     | \$ 50,703     |
| <b>Annualized</b> |                    | \$ 7,050      | \$ 5,944      |

FRA requests comments on the benefits and costs associated with this proposed rule.

<sup>28</sup> Due to attrition, FRA assumes two employees would need to be trained in ELP every year. Based on Surface Transportation Board (STB) employment data, employment has increased on average by 2 percent per year (2021 – 2024) for L600 – Transportation Train and Engine employees. STB Employment Data, available at <https://www.stb.gov/reports-data/economic-data/employment-data/>.

**B. E.O. 14192 (Unleashing Prosperity Through Deregulation)**

E.O. 14192, Unleashing Prosperity Through Deregulation, requires that for “each new [E.O. 14192 regulatory action] issued, at least ten prior regulations be identified for elimination.”<sup>29</sup> Implementation guidance for E.O. 14192 issued by OMB (Memorandum M-25-20, Mar. 26, 2025) defines two different types of E.O. 14192 actions: an E.O. 14192 deregulatory action, and an E.O. 14192 regulatory action.<sup>30</sup>

This rule responds to E.O. 14224, Designating English as the Official Language of the United States. A determination of whether a final rule here would be considered “regulatory” or partially or fully exempt from the requirements of E.O. 14192 will be made when any final rule in this rulemaking is issued.

**C. Regulatory Flexibility Act and E.O. 13272**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,<sup>31</sup> and E.O. 13272 (67 FR 53461, Aug. 16, 2002) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these entities. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. FRA does not anticipate this proposed rule would have a significant economic impact on a substantial number of small entities but has

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<sup>29</sup> Executive Office of the President, Executive Order 14192 of January 31, 2025, *Unleashing Prosperity Through Deregulation*, 90 FR 9065-9067 (Feb. 6, 2025).

<sup>30</sup> Executive Office of the President, OMB, *Guidance Implementing Section 3 of Executive Order 14192, Titled “Unleashing Prosperity Through Deregulation,”* Memorandum M-25-20 (Mar. 26, 2025).

<sup>31</sup> Pub. L. No. 104–121, 110 Stat. 857 (Mar. 29, 1996).



prepared this IRFA to aid the public in providing comments on any potential economic impacts.

### *1. Reasons for Considering Agency Action*

FRA is initiating this rulemaking to amend its regulations governing the qualification and certification of engineers and conductors, to establish ELP requirements and to require international crews to be English language proficient. As discussed above, FRA observed “instances in which inbound [Mexican-based] crew members appeared to have difficulty interpreting General Track Bulletins and communicating safety requirements in English with [FRA] inspectors.”<sup>32</sup> FRA is proposing to amend this regulation, as the ability of operating crews to communicate accurately with dispatchers and emergency responders during a crisis is a safety-critical function. FRA aims to reduce the risk of potential costly accidents caused by crews not being English language proficient.

FRA also proposes that each railroad carrier conducting a triennial examination of skill performance and an annual operational monitoring observation for engineers conduct those without engaging EMS that limit the need for an engineer to operate the throttle or braking systems. When engaged, the engineer may have few opportunities to engage the brake systems or have hands-on-the-throttle operation of the train. For this reason, FRA is proposing that examination and operational monitoring observations must not be conducted when an EMS that operates the throttle is engaged.

In addition, FRA proposes to clarify that a person’s territorial qualification is limited to the specific direction of movement traversed during the qualification process.

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<sup>32</sup> Press Release, “Trump’s Transportation Secretary Sean P. Duffy to Enforce English Language Proficiency Among Rail Crews Along the Southern Border,” available at <https://www.transportation.gov/briefing-room/trumps-transportation-secretary-sean-p-duffy-enforce-english-language-proficiency>.

FRA proposes this revision to clarify the current requirements, and to ensure that each railroad carrier meets FRA's intended minimum standards.

## *2. Objective and Legal Basis for the Proposed Rule*

FRA is proposing amendments to the regulations concerning the qualifications and certification of locomotive engineers and conductors based on the statutory general authority of the Secretary of Transportation (Secretary). By statute, the Secretary is required to "prescribe regulations and issue orders to establish a program requiring the licensing or certification . . . of any operator of a locomotive."<sup>33</sup> FRA fulfilled that statutory requirement in 1991 by issuing a regulation requiring each railroad carrier to file a locomotive engineer certification program with FRA.<sup>34</sup> Each railroad carrier's program must specify how the railroad carrier plans to make the determinations necessary to certify each of its locomotive engineers, as well as ensure that the certified locomotive engineers of other railroad carriers are qualified to operate safely on the controlling railroad carrier's track.<sup>35</sup> FRA also administers and enforces statutorily mandated conductor certification requirements.<sup>36</sup>

By amending its regulations governing the qualification and certification of locomotive engineers and conductors to establish ELP as a requirement, the proposed rule would more closely align with E.O. 14224, designating English as the official language of the U.S. This proposed rule is consistent with E.O. 14224 in affirming each railroad carrier's duty to ensure that every certified locomotive engineer and conductor possesses sufficient ELP to do their jobs.

## *3. Description of and Estimated Number of Small Entities Affected*

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<sup>33</sup> 49 U.S.C. 20135.

<sup>34</sup> 56 FR 28254 (June 19, 1991), 49 CFR part 240.

<sup>35</sup> See 49 CFR part 240, subpart B—Component Elements of the Certification Process, and § 240.229 (requiring certain action on the part of a railroad controlling the conduct of joint operations with another railroad). Additional guidance was provided in an interpretation published Aug. 29, 2008. 73 FR 50883.

<sup>36</sup> 49 CFR part 242, Qualification and Certification of Conductors.

The Regulatory Flexibility Act of 1980 requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. “Small entity” is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses and stipulates in its size standards that a “small entity” in the railroad industry is a for profit “line-haul railroad” that has fewer than 1,500 employees, a “short line railroad” with fewer than 1,500 employees, or a “commuter rail system” with annual receipts of less than \$47.0 million.<sup>37</sup>

Federal Agencies may adopt their own size standards for small entities, in consultation with SBA, and in conjunction with public comment. Under that authority, FRA published a statement of agency policy that formally establishes “small entities” or “small business” as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad, as set forth in 49 CFR 1201.1, which is \$20 million or less in inflation-adjusted annual revenues.<sup>38</sup> For commuter railroads or small Governmental jurisdictions, small entities are those that serve populations of 50,000 or less.<sup>39</sup> FRA is using this definition for the proposed rule.

FRA considered the impact that the proposed rule would have on small entities. FRA estimates that the provisions for international train crew operations would impact two Class I railroads. Neither of these railroads are classified as small entities. FRA estimates that the provisions for new requirements for ELP would not have a significant

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<sup>37</sup> U.S. SBA, “Table of Small Business Size Standards Matched to North American Industry Classification System Codes” (Mar. 17, 2023), available at: <https://www.sba.gov/document/support-table-size-standards> (accessed June 5, 2026).

<sup>38</sup> The Class III railroad revenue threshold is \$48.2 million or less for 2024. (The Class II railroad threshold is between \$48.2 million and \$1.07 billion.) See STB data, available at <https://www.stb.gov/reports-data/economic-data/>.

<sup>39</sup> 68 FR 24891 (May 9, 2023) (codified at 49 CFR part 209, app. C).

economic impact on any railroad carriers, including small entities, as FRA is unaware of any U.S. railroad carrier that does not already conduct their training and testing of locomotive engineers and conductors exclusively in English. FRA anticipates there would be *de minimis* costs associated with railroad carriers' reviews of their current training programs in compliance with the proposed ELP requirements. Moreover, FRA is not proposing to require railroad carriers to submit or resubmit their training programs. The revisions proposing new requirements for testing and monitoring a certified locomotive engineer or conductor's skill set, and the new requirement for territorial qualification, are clarifying provisions. Therefore, FRA does not estimate these revisions will impact any small entities. FRA welcomes comments from the public about whether small entities are impacted by this proposed rule, and whether that impact would be significant.

#### *4. Description of the Proposed Reporting, Recordkeeping, and Other Compliance Requirements of the Rule*

As part of the proposed rule, railroad carriers will not be required to submit or resubmit their training plans to comply with the revisions. No additional reporting, recordkeeping, or other compliance requirements for small entities are necessary with this proposed rule.

#### *5. Identification of the Relevant Federal Rules that may Duplicate, Overlap, or Conflict with the Proposed Rule*

FRA is not aware of any Federal rule that duplicates, overlaps with, or conflicts with the proposed rule.

#### *6. Significant Regulatory Alternatives*

##### *No Action Alternative*

One alternative approach to this proposed rule would be the no action baseline. Under the baseline, while FRA is unaware of any accidents due to a language barrier,

there is currently a safety risk due to any potential railroad carriers training and certifying a non-English language proficient engineer or conductor. For example, if the railroad employee has received a mandatory directive through the radio, but they do not understand it due to a lack of ELP, a safety risk is possible. The proposed rule would mitigate these potential risks, and would prevent a scenario where an accident could occur due to a lack of ELP.

#### *Requiring Resubmission of Training Programs for ELP Compliance*

Another alternative approach to this proposed rule would be to require all railroad carriers to resubmit their certification programs to comply with ELP requirements. This would ensure that all railroad carriers comply with the revisions to the rule. However, this would result in costs for all railroad carriers, including Class III railroads, to prepare and submit the program. In this proposed rule, each railroad carrier would not be required to submit or resubmit a certification program for compliance with ELP. This would result in benefits, such as time saved by railroad companies, as they would not have to update and submit or resubmit their program because of the ELP requirements.

#### **D. Paperwork Reduction Act**

This proposed rule contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Therefore, an information collection submission to OMB is not required.

#### **E. Federalism Implications**

This proposed rule would not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with E.O. 13132, Federalism (64 FR 43255, Aug. 10, 1999), preparation of a Federalism Assessment is not warranted.

#### **F. International Trade Impact Assessment**

The Trade Agreements Act of 1979<sup>40</sup> prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles.<sup>41</sup> The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This proposed rule aims to improve rail safety in the U.S., a legitimate domestic objective, and therefore does not create unnecessary obstacles to foreign commerce.

#### **G. Environmental Impact**

FRA has analyzed this proposed rule for the purposes of the National Environmental Policy Act of 1969 (NEPA). In accordance with 42 U.S.C. 4336 and DOT NEPA Order 5610.1D, FRA has determined that this rule is categorically excluded pursuant to 23 CFR 771.116(c)(15).

This rulemaking is not anticipated to result in any environmental impacts, and there are no unusual or extraordinary circumstances present in connection with this rulemaking.

Pursuant to section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties.<sup>42</sup> FRA has also determined that this rulemaking would not approve a project resulting in a use of a resource protected by section 4(f).<sup>43</sup>

#### **H. Unfunded Mandates Reform Act of 1995**

This proposed rule would not result in the expenditure, in the aggregate, of \$100,000,000 or more, adjusted for inflation, in any one year by State, local, or Indian

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<sup>40</sup> 19 U.S.C. ch. 13.

<sup>41</sup> 19 U.S.C. 2531(a).

<sup>42</sup> 54 U.S.C. 306108.

<sup>43</sup> Department of Transportation Act of 1966, as amended (Pub. L. No. 89-670, 80 Stat. 931); 49 U.S.C. 303.

Tribal governments, or the private sector. Thus, consistent with section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4, 2 U.S.C. 1532), FRA is not required to prepare a written statement detailing the effect of such an expenditure.

**I. E.O. 13175 (Tribal Consultation)**

FRA has evaluated this proposed rule in accordance with the principles and criteria contained in E.O. 13175, Consultation and Coordination with Indian Tribal Governments (Nov. 6, 2000). The proposed rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian Tribal governments, and would not preempt tribal laws. Therefore, the funding and consultation requirements of E.O. 13175 do not apply, and a tribal summary impact statement is not required.

**J. Energy Impact**

E.O. 13211 requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.”<sup>44</sup> FRA evaluated this proposed rule under E.O. 13211 and determined that this regulatory action is not a “significant energy action” within the meaning of E.O. 13211.

**K. Privacy Act Statement**

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to <https://www.regulations.gov>, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through <https://www.transportation.gov/privacy>. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully

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<sup>44</sup> 66 FR 28355 (May 22, 2001).

considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

## **L. Rulemaking Summary**

As required by 5 U.S.C. 553(b)(4), a summary of this proposed rule can be found at regulations.gov, Docket No. FRA-2026-2014, in the SUMMARY section of this proposed rule.

## **List of Subjects**

### **49 CFR Part 240**

Administrative practice and procedure, Locomotive engineer, Penalties, Railroad employees, Railroad operating procedures, Railroad safety, Reporting and recordkeeping requirements.

### **49 CFR Part 242**

Administrative practice and procedure, Conductor, Penalties, Railroad employees, Railroad operating procedures, Railroad safety, Reporting and recordkeeping requirements.

## **The Proposed Rule**

For the reasons discussed in the preamble, FRA proposes to amend 49 CFR parts 240 and 242 of chapter II, subtitle B of title 49 of the Code of Federal Regulations as follows:

### **PART 240—QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE ENGINEERS**

1. The authority citation for part 240 continues to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461 note; and 49 CFR 1.89.

2. Section 240.7 is amended by adding definitions in alphabetical order for “Energy management system” and “English language proficient” to read as follows:



## **§ 240.7 Definitions.**

\* \* \* \* \*

*Energy management system (EMS)* means any onboard system, software, or device that automatically intervenes in, modifies, or provides guidance on throttle or braking application for purposes of optimizing train handling, fuel consumption, or energy use, regardless of the commercial name, designation, or classification assigned to the system by the railroad or manufacturer.

*English language proficient* means possessing sufficient ability in the English language to complete successfully the railroad's written and oral certification program requirements as provided in this part. Proficiency is not required to be measured against any general English fluency standard, as it is specific to the safety-critical communicative functions identified in this definition. As used in this part, a person is English language proficient when the person can:

- (1) Read, comprehend, and correctly apply railroad operating rules, timetables, special instructions, mandatory directives, and safety notices as written in English;
- (2) Communicate by voice in English, including the transmission and receipt of mandatory directives, instructions from train dispatchers and other operating personnel, and communications with emergency responders and law enforcement regarding safety hazards, train consist, and cargo information; and
- (3) Make required entries on reports, records, and forms in English.

\* \* \* \* \*

3. Section 240.123 is amended by adding paragraph (g) to read as follows:

## **§ 240.123 Training.**

\* \* \* \* \*

(g) All training conducted in accordance with this section must be in English.

4. Section 240.125 is amended by revising paragraphs (b), (c)(1), and (e) to read as follows:

**§ 240.125 Knowledge testing.**

\* \* \* \* \*

(b) A railroad shall have procedures for testing a person being evaluated for qualification as a locomotive engineer in either train or locomotive service to determine that the person has sufficient knowledge in the English language of the railroad's rules and practices, including signage, for the safe operation of trains.

(c) \* \* \*

(1) Designed to examine a person's knowledge of the railroad's rules and practices, in English, for the safe operation of trains;

\* \* \* \* \*

(e) For purposes of paragraph (c) of this section, the railroad must provide the person(s) being tested with an opportunity to consult in English with a supervisory employee, who possesses territorial qualifications for the territory, to explain a question.

\* \* \* \* \*

5. Section 240.127 is amended by revising paragraph (c) introductory text and (c)(1) to read as follows:

**§ 240.127 Criteria for examining skill performance.**

\* \* \* \* \*

(c) The testing procedures selected by the railroad shall be in English, and used to test the English language proficiency of a person, and:

(1) Designed to examine a person's skills in safely operating locomotives or trains, including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains, when performing the most demanding class or type of service that the person will be permitted to perform. To ensure that the operational

monitoring observation is effective, it shall not be conducted when an energy management system that operates the throttle is engaged, unless the energy management system is integrated with a critical-safety system;

\* \* \* \* \*

6. Section 240.129 is amended by revising paragraph (c)(1) to read as follows:

**§ 240.129 Criteria for monitoring operational performance of certified engineers.**

\* \* \* \* \*

(c) \* \* \*

(1) Be designed to determine that the person possesses and routinely employs the skills to operate locomotives or trains safely, including the proper application of the railroad's rules and practices for the safe operation of locomotives and trains. To ensure that the operational monitoring observation is effective, it shall not be conducted when an energy management system that operates the throttle is engaged, unless the energy management system is integrated with a critical-safety system;

\* \* \* \* \*

7. Section 240.203 is amended by revising paragraphs (a)(3) through (5), and adding paragraph (a)(6), to read as follows:

**§ 240.203 Determinations required as a prerequisite to certification.**

(a) \* \* \*

(3) The individual has the necessary knowledge of the railroad's rules and practices, including signage, for the safe operation of trains, as demonstrated by successfully completing a written test in English that meets the requirements of § 240.125;

(4) The individual has the necessary applied knowledge and operating performance skills, as demonstrated by successfully completing an examination that meets the requirements of § 240.127;

(5) Where a person has not previously been certified, that the person has completed a training program that meets the requirements of § 240.123; and

(6) The individual has the necessary English language proficiency to:

(i) Communicate effectively with emergency responders, law enforcement, and the general public regarding issues of rail safety, including information regarding the train consist, cargo, and known hazards;

(ii) Communicate effectively with railroad employees, such as dispatchers, regarding rail operations, including the procedures necessary to transmit and receive mandatory directives; and

(iii) Make entries on reports and records.

\* \* \* \* \*

8. Section 240.227 is revised to read as follows:

**§ 240.227 Qualification requirements for international cross-border operations.**

(a) *Employment Status of Foreign Railroad Personnel.* For purposes of this section, a Canadian or Mexican railroad's employees must not be considered employees of a U.S. railroad, even if the Canadian or Mexican railroad is a subsidiary of a U.S. railroad or U.S. parent company, or otherwise has a legal arrangement or other relationship with the controlling U.S. railroad.

(b) *Canadian Operations.* A railroad that conducts operations with a Canadian railroad, or a Canadian railroad required to comply with this part, may certify a person as a locomotive engineer provided the railroad determines that:

(1) The person is employed by the Canadian railroad; and

(2) The person meets or exceeds the qualification standards issued by Transport Canada for such service.

(c) *Mexican Operations.* A controlling U.S. railroad that conducts operations with a Mexican railroad may certify a person as a locomotive engineer provided the railroad determines that:

(1) The person is employed by the Mexican railroad;

(2) The person is trained, tested, and certified by the U.S. railroad in accordance with its approved program, and the railroad does not rely on any qualification determinations made by a Mexican railroad or any Mexican governmental agency;

(3) The person's operation on the U.S. railroad is limited to a continuous movement between the international border and a U.S. railroad yard, provided that:

(i) The southernmost point of entry to the U.S. railroad yard is located within 10 route miles of the international border point of entry;

(ii) For northbound movements, the train proceeds directly into the yard and travels no further north than necessary to clear the yard's entry switches and place the train on its designated receiving track; and

(iii) For southbound movements, the train departs directly from the designated yard track where it was staged for departure, proceeding directly to the international border;

(4) If there is any conflict or inconsistency between the provisions of this section and 49 CFR part 219, the provisions of this section shall control as the exclusive requirements for persons certified pursuant to this section to operate a train between a U.S.-Mexico rail port of entry to a yard for the purpose of interchange; and

(5) Either the person is:

(i) English language proficient as required in this part and in the U.S. railroad's certification program; or

(ii) Accompanied by a pilot who is an employee of the U.S. railroad, is certified as a locomotive engineer under this part, is qualified on the physical characteristics of the territory to be operated over, and is proficient in English and Spanish.

(d) *Option for a Single, Dual-Certified Pilot for Mexican Operations.* If both the locomotive engineer and the conductor of a Mexican railroad crew are not proficient in English, as described in paragraph (c)(5) of this section, a single U.S. railroad employee may act as a pilot for both crew members, if the pilot is:

- (1) Certified under both this part and part 242 of this chapter;
- (2) Qualified on the territory to be operated over; and
- (3) Proficient in English and Spanish.

9. Section 240.231 is amended by revising paragraph (a) to read as follows:

**§ 240.231 Requirements for locomotive engineers unfamiliar with physical characteristics in other than joint operations.**

(a) Except as provided in paragraph (b) of this section, no locomotive engineer shall operate a locomotive over a territory unless he or she is qualified on the physical characteristics of the territory pursuant to the railroad's certification program. A person's territorial qualification is limited to the specific direction of travel traversed during the qualification process. A person is not qualified to serve as a locomotive engineer in a direction of travel for which they have not successfully completed a qualification move and demonstrated knowledge of the physical characteristics as viewed from that direction.

\* \* \* \* \*

10. In appendix B to part 240, revise the section under the heading "Submission by a Railroad" and section 7 to read as follows:

\* \* \* \* \*

*Submission by a Railroad*

As provided for in § 240.101, each railroad must have a program for determining the certification of each person it permits or requires to operate a locomotive. In designing its program, a railroad must consider the trackage and terrain over which it operates, the system(s) for train control that are employed, and the operational design characteristics of the track and equipment being operated, including train length, train makeup, and train speeds. In designing the program, the railroad must also include procedures that ensure each certified locomotive engineer is English language proficient to perform assigned duties safely, which will normally be accomplished by conducting all training and testing in English; *e.g.*, knowledge testing of a railroad's operating rules will cover written comprehension, classroom role playing or OJT involving various scenarios, will test for verbal comprehension and adequate English language proficiency (ELP) spoken responses, and training on required recordkeeping will cover written ELP. Because all training and testing under a railroad's program must be in English, it is unnecessary for a railroad to submit or resubmit a program that fails to address the ELP requirements. FRA will audit training programs and conduct regular inspections to determine effectiveness, and FRA will consider enforcement action when certified persons do not meet the ELP standards.

Each railroad must submit its individual program to FRA for approval, as provided for in § 240.103. Each program must be accompanied by a request for approval, organized in accordance with this appendix. Requests for approval must contain appropriate references to the relevant portion of the program being discussed. Requests can be in letter or narrative format. The primary method for a railroad's submission is by email to *FRAOPCERTPROG@dot.gov*. For a railroad that is unable to send the program by email, the program shall be sent to the Associate Administrator for Railroad Safety and Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590. Simultaneous with its filing with FRA, each railroad

must provide a copy of its submission to the president of each labor organization that represents the railroad's employees subject to this part.

A railroad that electronically submits an initial program, or new portions or revisions to an approved program required by this part, shall be considered to have provided its consent to receive approval or disapproval notices from FRA by email. FRA may electronically store any materials required by this part, regardless of whether the railroad that submits the materials does so by delivering the written materials to the Associate Administrator and opts not to submit the materials electronically. A railroad that opts not to submit the materials required by this part electronically, but provides one or more email addresses in its submission, shall be considered to have provided its consent to receive approval or disapproval notices from FRA by email or mail.

\* \* \* \* \*

*Section 7 of the Submission: Procedures for Routine Administration of the Engineer Certification Program*

The final section of the request must contain a summary of how the railroad's program and procedures will implement the various specific aspects of the regulatory provisions that relate to routine administration of its certification program for locomotive engineers. At a minimum, this section needs to address the procedural aspects of the rule's provisions identified in the following paragraph.

Section 240.109 provides that each railroad must have procedures for review and comment on adverse prior safety conduct but allows the railroad to devise its own system within generalized parameters. Sections 240.115, 240.117, and 240.119 require a railroad to have procedures for evaluating data concerning prior safety conduct as a motor vehicle operator and as railroad workers yet leave selection of many details to the railroad. Sections 240.203, 240.217, and 240.219 place a duty on the railroad to make a series of determinations, but allow the railroad to select what procedures it will employ to assure



that all of the necessary determinations have been made in a timely fashion; who will be authorized to conclude that a person is or is not qualified; and how it will communicate adverse decisions. Documentation of the factual basis the railroad relied on in making determinations under sections 240.205, 240.207, 240.209, 240.211, and 240.213 is required, but these sections permit the railroad to select the procedures it will employ to accomplish compliance with these provisions. Section 240.225 permits reliance on qualification determinations made by other entities, and permits a railroad latitude in selecting the procedures it will employ to ensure compliance with these provisions. Section 240.227 contains the qualification requirements for international cross-border operations, which require a railroad to document the factual basis the railroad relied on in making its determinations, including the procedures it will employ to ensure compliance with these provisions. If a railroad is choosing to use the pilot option, the railroad will be responsible for documenting how the person serving as the pilot is both English and Spanish language proficient for purposes of railroad safety. Similarly, § 240.229 permits use of railroad selected procedures to meet the requirements for certification of engineers performing service in joint operations territory. Sections 240.301 and 240.307 allow a railroad a certain degree of discretion in complying with the requirements for replacing lost certificates, or the conduct of certification revocation proceedings.

This section of the request should outline in summary fashion the way the railroad will implement its program to comply with the specific aspects of each of the rule's provisions described in the preceding paragraph.

\* \* \* \* \*

11. Add new appendix H to part 240 to read as follows:

**Appendix H to Part 240— Recommended Procedures for Conducting English Language Proficiency Evaluations**

FRA requires that each railroad's certification program include procedures

ensuring that each certified locomotive engineer is English language proficient as necessary to perform assigned duties safely. FRA has afforded railroads discretion in selecting how to make this determination, to allow each railroad to tailor its evaluation to its operational realities. Such evaluations are only necessary if it is unclear, after talking with a person, that he or she is proficient in English. For example, a railroad would not need to test a native English speaker for English language proficiency, presumably. This appendix contains FRA's recommendations for conducting English language proficiency evaluations. Evaluations should be conducted entirely in English. The person being evaluated may not use translation applications, bilingual reference cards, or third-party interpreters.

### **The Need for a Systematic Approach**

A locomotive engineer must be able to perform several distinct communicative functions in English: transmitting and receiving mandatory directives; providing safety-critical information to emergency responders and law enforcement; communicating with the public in safety situations; and making required entries on reports and records. A railroad's evaluation should be designed to assess each of these functions. A railroad that has not established clear criteria for adequate proficiency in each area will have difficulty conducting evaluations consistently or supporting adverse certification determinations. FRA recommends that railroads develop a written evaluation guide identifying the communicative situations relevant to their operations, and the observable indicators of adequate and inadequate performance in each.

### **Conversational Interview**

FRA recommends that each evaluation begin with a conversational interview covering the safety-critical topics a supervisor, inspector, or emergency responder would need to discuss with a crew member. The evaluator should ask follow-up questions on brief or unclear responses to distinguish genuine comprehension from a memorized

answer. At a minimum, the interview should cover the following:

- Certification and assignment, including the person's name, employer, certification type, issuing railroad, qualified territories, and restrictions;
- Current crew composition and positions;
- Trip and train information, including origin, destination, intermediate stops, number of cars in the consist, and any hazardous materials being transported;
- Movement restrictions, including any Form B protection, special instructions, or mandatory directives in effect;
- Hours of service, including time on duty and time remaining; and
- Locomotive and train condition, including mechanical problems, status of the inspection record, brake test conducted, and off-duty procedures.

The interview may be conducted in a classroom setting or in the field. Where sample documents, such as a consist or inspection record, are available, the evaluator should ask the person to use them during the interview.

### **Proficiency Scenarios**

Following the conversational interview, FRA recommends scenario-based prompts to assess communicative functions under mild contextual pressure. Scenarios need not be elaborate, and may be presented as a brief oral description followed by a prompt question. At a minimum, FRA recommends addressing the following four situations:

- Public interaction. The person explains a train delay or operational matter to a member of the public in plain English, without railroad-specific jargon.
- Dispatcher radio communication. The person gives or receives a mandatory directive over a simulated radio exchange, using standard protocol, and read-back confirmation.
- Emergency responder communication. The person provides a responding officer or fire official with consist information, including the location and nature of any hazardous

material cars, using correct terminology.

—Public safety command. The person uses short imperative English commands to direct an individual away from a hazardous location near the right-of-way.

### **Report and Record Entry**

Each certified locomotive engineer must be able to make required entries on reports and records in English. FRA recommends that railroads assess this through at least one of the following methods:

- Provide a blank inspection record or switch list and read aloud a brief scenario describing a condition requiring an entry. Ask the person to complete the relevant fields and assess whether entries are legible, accurate, and reflect the information given.
- Provide a standard operational document, such as a waybill or safety bulletin, and ask the person to read and summarize the key safety information aloud in their own words.
- Ask the person to write two or three sentences describing a hypothetical incident, such as a minor derailment, and assess whether the description is clear, uses correct terminology, and would be understandable without additional explanation.

### **Objectivity and the Evaluation Record**

Proficiency evaluations will involve some degree of subjectivity. FRA recommends using a written evaluation record to reduce that risk. The record should document the date, location, evaluator identity, subjects and scenarios covered, observations on each communicative function, and the pass or fail determination with supporting rationale. It should be retained in the employee's qualification file. FRA recommends that the form include space for narrative observations, so that specific examples supporting the determination can be recorded.

Indicators that tend to support a finding of adequate proficiency include: self-correction of technical terms without prompting; appropriate adjustment of vocabulary between dispatcher and public communications; and accurate read-back of mandatory

directives.

Indicators that tend to support a finding of inadequate proficiency include: repeating the evaluator's question without answering it; confusion of safety-critical directional or operational terms; extended silence when asked to describe an emergency or provide hazardous materials information; and inability to complete a record entry from a verbal description without a translation aid.

### **Scoring**

FRA does not prescribe a specific scoring system. Each railroad should develop a reasonable scoring methodology suited to its operations, and specify that methodology, including a defined passing threshold for certification and recertification, in its approved program. The standard against which any scoring system should be measured is whether the person possesses functional proficiency in the safety-critical communicative functions required for their duties, not general English fluency.

## **PART 242—QUALIFICATION AND CERTIFICATION OF CONDUCTORS**

12. The authority citation for part 242 continues to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 20135, 20138, 20162, 20163, 21301, 21304, 21311; 28 U.S.C. 2461 note; and 49 CFR 1.89.

13. Section 242.7 is amended by adding a definition in alphabetical order for “English language proficient” to read as follows:

### **§ 242.7 Definitions.**

\* \* \* \* \*

*English language proficient* means possessing sufficient ability in the English language to complete successfully the railroad's written and oral certification program requirements as provided in this part. Proficiency is not required to be measured against any general English fluency standard, as it is specific to the safety-critical communicative

functions identified in this definition. As used in this part, a person is English language proficient when the person can:

- (1) Read, comprehend, and correctly apply railroad operating rules, timetables, special instructions, mandatory directives, and safety notices as written in English;
- (2) Communicate by voice in English, including the transmission and receipt of mandatory directives, instructions from train dispatchers and other operating personnel, and communications with emergency responders and law enforcement regarding safety hazards, train consist, and cargo information; and
- (3) Make required entries on reports, records, and forms in English.

\* \* \* \* \*

14. Section 242.109 is amended by revising paragraphs (a)(3) and (4) and adding paragraph (a)(5) to read as follows:

**§ 242.109 Determinations required for certification and recertification.**

(a) \* \* \*

(3) The individual has the necessary knowledge, as demonstrated by successfully completing a written test in English that meets the requirements of § 242.121 (“Knowledge Testing”);

(4) Where a person has not previously been certified, that the person has completed a training program that meets the requirements of § 242.119 (“Training”); and

(5) The individual has the necessary English language proficiency to:

(i) Communicate effectively with emergency responders, law enforcement, and the general public regarding issues of rail safety, including information regarding the train consist, cargo, and known hazards;

(ii) Communicate effectively with railroad employees, such as dispatchers, regarding rail operations, including the procedures necessary to transmit and receive mandatory directives; and

(iii) Make entries on reports and records.

\* \* \* \* \*

15. Section 242.119 is amended by adding paragraph (m) to read as follows:

**Section 242.119 Training.**

\* \* \* \* \*

(m) All training conducted in accordance with this section must be in English.

16. Section 242.121 is amended by revising paragraphs (b), (c)(1), and (e) to read as follows:

**§ 242.121 Knowledge testing.**

\* \* \* \* \*

(b) After the pertinent date specified in § 242.105(d) or (e), each railroad, prior to initially certifying or recertifying any person as a conductor for any type of service, shall determine that the person has, in accordance with the requirements of this section, demonstrated sufficient knowledge in the English language of the railroad's rules and practices, including signage, for the safe movement of trains.

(c) \* \* \*

(1) Designed to examine a person's knowledge of the railroad's operating rules and practices, in English, for the safe operation of trains;

\* \* \* \* \*

(e) For purposes of paragraph (c) of this section, the railroad must provide the person(s) being tested with an opportunity to consult in English with a supervisory employee, who possesses territorial qualifications for the territory, to explain a question.

\* \* \* \* \*

17. Section 242.127 is revised to read as follows:

**§ 242.127 Qualification requirements for international cross-border operations.**

(a) *Employment Status of Foreign Railroad Personnel.* For purposes of this section, a Canadian or Mexican railroad's employees must not be considered employees of a U.S. railroad, even if the Canadian or Mexican railroad is a subsidiary of a U.S. railroad or U.S. parent company, or otherwise has a legal arrangement or other relationship with the controlling U.S. railroad.

(b) *Canadian Operations.* A railroad that conducts operations with a Canadian railroad, or a Canadian railroad required to comply with this part, may certify a person as a conductor provided the railroad determines that:

(1) The person is employed by the Canadian railroad; and

(2) The person meets or exceeds the qualification standards issued by Transport Canada for such service.

(c) *Mexican Operations.* A railroad that hosts or conducts operations with a Mexican railroad may certify a person as a conductor provided the railroad determines that:

(1) The person is employed by the Mexican railroad;

(2) The person is trained, tested, and certified by the U.S. railroad in accordance with its approved program, including all English language proficiency requirements, and the U.S. railroad does not rely on any qualification determinations made by a Mexican railroad or any Mexican governmental agency;

(3) The person's operation on the U.S. railroad is limited to a continuous movement between the international border and a U.S. railroad yard, provided that:

(i) The southernmost point of entry to the U.S. railroad yard is located within 10 route miles of the international border point of entry;

(ii) For northbound movements, the train proceeds directly into the yard and travels no further north than necessary to clear the yard's entry switches and place the train on its designated receiving track; and



(iii) For southbound movements, the train departs directly from the designated yard track where it was staged for departure, proceeding directly to the international border;

(4) If there is any conflict or inconsistency between the provisions of this section and 49 CFR part 219, the provisions of this section shall control as the exclusive requirements for persons certified pursuant to this section to operate a train between a U.S.-Mexico rail port of entry to a yard for the purpose of interchange; and

(5) Either the person is:

(i) English language proficient as required in this part and in the U.S. railroad's certification program; or

(ii) Accompanied by a pilot who is an employee of the U.S. railroad, is certified as a conductor under this part, is qualified on the physical characteristics of the territory to be operated over, and is proficient in English and Spanish.

(d) *Option for a Single, Dual-Certified Pilot for Mexican Operations.* If both the locomotive engineer and the conductor of a Mexican railroad crew are not proficient in English, as described in paragraph (c)(5) of this section, a single U.S. railroad employee may act as a pilot for both crew members, if the pilot is:

(1) Certified under both this part and part 240 of this chapter;

(2) Qualified on the territory to be operated over; and

(3) Proficient in English and Spanish.

18. Section 242.301 is amended by adding paragraph (f) to read as follows:

**§ 242.301 Requirements for territorial qualification.**

\* \* \* \* \*

(f) A person's territorial qualification is limited to the specific direction of travel traversed during the qualification process. A person is not qualified to serve as a conductor in a direction of travel for which they have not successfully completed a

qualification move and demonstrated knowledge of the physical characteristics as viewed from that direction.

20. In appendix B to part 242, revise the section under the heading “Submission by a Railroad” and section 6 to read as follows:

\* \* \* \* \*

*Submission by a Railroad*

As provided for in § 242.101, each railroad must have a program for determining the certification of each person it permits or requires to perform as a conductor or as a passenger conductor. In designing the program, the railroad must also include procedures that ensure each certified conductor is English language proficient to perform assigned duties safely, which will normally be accomplished by conducting all training and testing in English; *e.g.*, knowledge testing of a railroad’s operating rules will cover written comprehension, classroom role playing or OJT involving various scenarios, will test for verbal comprehension and adequate English language proficient spoken responses, and training on required recordkeeping will cover written English language proficiency (ELP). Because all training and testing under a railroad’s program must be in English, it is unnecessary for a railroad to submit or resubmit a program that fails to address the ELP requirements. FRA will audit training programs and conduct regular inspections to determine effectiveness, and FRA will consider enforcement action when certified persons do not meet the ELP standards.

Each railroad must submit its individual program to FRA for approval, as provided for in § 242.103. Each program must be accompanied by a request for approval, organized in accordance with this appendix. Requests for approval must contain appropriate references to the relevant portion of the program being discussed. Requests should be submitted in writing on standard sized paper (8 1/2 × 11) and can be in letter or narrative format. The railroad’s submission shall be sent to the Associate Administrator

for Railroad Safety and Chief Safety Officer, FRA. The mailing address for FRA is 1200 New Jersey Avenue, S.E., Washington, D.C. 20590. Simultaneous with its filing with FRA, each railroad must serve a copy of its submission on the president of each labor organization that represents the railroad's employees subject to this part.

Each railroad is authorized to file by electronic means any program submissions required under this part. Prior to any person submitting a railroad's first program submission electronically, the person shall provide the Associate Administrator with the following information in writing:

- (1) The name of the railroad;
- (2) The names of two individuals, including job titles, who will be the railroad's points of contact and will be the only individuals allowed access to FRA's secure document submission site;
- (3) The mailing addresses for the railroad's points of contact;
- (4) The railroad's system or main headquarters address located in the United States;
- (5) The email addresses for the railroad's points of contact; and
- (6) The daytime telephone numbers for the railroad's points of contact.

A request for electronic submission or FRA review of written materials shall be addressed to the Associate Administrator for Railroad Safety and Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590. Upon receipt of a request for electronic submission that contains the information listed above, FRA will then contact the requestor with instructions for electronically submitting its program.

A railroad that electronically submits an initial program, or new portions or revisions to an approved program required by this part, shall be considered to have provided its consent to receive approval or disapproval notices from FRA by email. FRA may electronically store any materials required by this part, regardless of whether

the railroad that submits the materials does so by delivering the written materials to the Associate Administrator and opts not to submit the materials electronically. A railroad that opts not to submit the materials required by this part electronically, but provides one or more email addresses in its submission, shall be considered to have provided its consent to receive approval or disapproval notices from FRA by email or mail.

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*Section 6 of the Submission: Procedures for Routine Administration of the Conductor Certification Program*

The final section of the request must contain a summary of how the railroad's program and procedures will implement the various specific aspects of the regulatory provisions that relate to routine administration of its certification program for conductors. At a minimum this section needs to address the procedural aspects of the rule's provisions identified in the following paragraph.

Section 242.109 provides that each railroad must have procedures for review and comment on adverse prior safety conduct but allows the railroad to devise its own system within generalized parameters. Sections 242.111, 242.115, and 242.403 require a railroad to have procedures for evaluating data concerning prior safety conduct as a motor vehicle operator and as railroad workers yet leave selection of many details to the railroad. Sections 242.109, 242.201, and 242.401 place a duty on the railroad to make a series of determinations, but allow the railroad to select what procedures it will employ to assure 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 it will communicate adverse decisions. Documentation of the factual basis the railroad relied on in making determinations under sections 242.109, 242.117, 242.119, and 242.121 is required, but these sections permit the railroad to select the procedures it will employ to accomplish compliance with these provisions. Section 242.125 permits reliance on

certification/qualification determinations made by other entities, and permits a railroad latitude in selecting the procedures it will employ to assure compliance with these provisions. Section 242.127 contains the qualification requirements for international cross-border operations, which require a railroad to document the factual basis the railroad relied on in making its determinations, including the procedures it will employ to ensure compliance with these provisions. If a railroad is choosing to use the pilot option, the railroad will be responsible for documenting how the person serving as the pilot is both English and Spanish language proficient for purposes of railroad safety. Similarly, § 242.301 permits the use of railroad selected procedures to meet the requirements for certification of conductors performing service in joint operations territory. Sections 242.211 and 242.407 allow a railroad a certain degree of discretion in complying with the requirements for replacing lost certificates, or the conduct of certification revocation proceedings.

This section of the request should outline in summary fashion the way the railroad will implement its program, to comply with the specific aspects of each of the rule's provisions described in the preceding paragraph.

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19. Add new appendix F to part 242 to read as follows:

**Appendix F to Part 242— Recommended Procedures for Conducting English Language Proficiency Evaluations**

FRA requires that each railroad's certification program include procedures ensuring that each certified conductor is English language proficient as necessary to perform assigned duties safely. FRA has afforded railroads discretion in selecting how to make this determination, to allow each railroad to tailor its evaluation to its operational realities. Such evaluations are only necessary if it is unclear, after talking with a person, that he or she is proficient in English. For example, a railroad would not need to test a

native English speaker for English language proficiency, presumably. This appendix contains FRA's recommendations for conducting English language proficiency evaluations. Evaluations should be conducted entirely in English. The person being evaluated may not use translation applications, bilingual reference cards, or third-party interpreters.

### **The Need for a Systematic Approach**

A conductor must be able to perform several distinct communicative functions in English: transmitting and receiving mandatory directives; providing safety-critical information to emergency responders and law enforcement; communicating with the public in safety situations; and making required entries on reports and records. A railroad's evaluation should be designed to assess each of these functions. A railroad that has not established clear criteria for adequate proficiency in each area will have difficulty conducting evaluations consistently or supporting adverse certification determinations. FRA recommends that railroads develop a written evaluation guide identifying the communicative situations relevant to their operations, and the observable indicators of adequate and inadequate performance in each.

### **Conversational Interview**

FRA recommends that each evaluation begin with a conversational interview covering the safety-critical topics a supervisor, inspector, or emergency responder would need to discuss with a crew member. The evaluator should ask follow-up questions on brief or unclear responses to distinguish genuine comprehension from a memorized answer. At a minimum, the interview should cover the following:

- Certification and assignment, including the person's name, employer, certification type, issuing railroad, qualified territories, and restrictions;
- Current crew composition and positions;
- Trip and train information, including origin, destination, intermediate stops, number of

- cars in the consist, and any hazardous materials being transported;
- Movement restrictions, including any Form B protection, special instructions, or mandatory directives in effect;
- Hours of service, including time on duty and time remaining; and
- Locomotive and train condition, including mechanical problems, status of the inspection record, brake test conducted, and off-duty procedures.

The interview may be conducted in a classroom setting or in the field. Where sample documents, such as a consist or inspection record, are available, the evaluator should ask the person to use them during the interview.

### **Proficiency Scenarios**

Following the conversational interview, FRA recommends scenario-based prompts to assess communicative functions under mild contextual pressure. Scenarios need not be elaborate, and may be presented as a brief oral description followed by a prompt question. At a minimum, FRA recommends addressing the following four situations:

- Public interaction. The person explains a train delay or operational matter to a member of the public in plain English, without railroad-specific jargon.
- Dispatcher radio communication. The person gives or receives a mandatory directive over a simulated radio exchange, using standard protocol, and read-back confirmation.
- Emergency responder communication. The person provides a responding officer or fire official with consist information, including the location and nature of any hazardous material cars, using correct terminology.
- Public safety command. The person uses short imperative English commands to direct an individual away from a hazardous location near the right-of-way.

### **Report and Record Entry**

Each certified conductor must be able to make required entries on reports and

records in English. FRA recommends that railroads assess this through at least one of the following methods:

—Provide a blank inspection record or switch list and read aloud a brief scenario describing a condition requiring an entry. Ask the person to complete the relevant fields and assess whether entries are legible, accurate, and reflect the information given.

—Provide a standard operational document, such as a waybill or safety bulletin, and ask the person to read and summarize the key safety information aloud in their own words.

—Ask the person to write two or three sentences describing a hypothetical incident, such as a minor derailment, and assess whether the description is clear, uses correct terminology, and would be understandable without additional explanation.

### **Objectivity and the Evaluation Record**

Proficiency evaluations will involve some degree of subjectivity. FRA recommends using a written evaluation record to reduce that risk. The record should document the date, location, evaluator identity, subjects and scenarios covered, observations on each communicative function, and the pass or fail determination with supporting rationale. It should be retained in the employee's qualification file. FRA recommends that the form include space for narrative observations, so that specific examples supporting the determination can be recorded.

Indicators that tend to support a finding of adequate proficiency include: self-correction of technical terms without prompting; appropriate adjustment of vocabulary between dispatcher and public communications; and accurate read-back of mandatory directives.

Indicators that tend to support a finding of inadequate proficiency include: repeating the evaluator's question without answering it; confusion of safety-critical directional or operational terms; extended silence when asked to describe an emergency or provide hazardous materials information; and inability to complete a record entry from



a verbal description without a translation aid.

### **Scoring**

FRA does not prescribe a specific scoring system. Each railroad should develop a reasonable scoring methodology suited to its operations, and specify that methodology, including a defined passing threshold for certification and recertification, in its approved program. The standard against which any scoring system should be measured is whether the person possesses functional proficiency in the safety-critical communicative functions required for their duties, not general English fluency.

Issued in Washington, D.C., under authority delegated in 49 CFR 1.89.

**David A. Fink,**  
*Administrator.*

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