



1200 New Jersey Avenue, SE
Washington, DC 20590

U.S. Department
Of Transportation

Federal Railroad
Administration

Mr. David O'Hara
General Director Operating Practices
Union Pacific Railroad Company
1400 Douglas Street, Stop 1800
Omaha, NE 68179

July 2, 2024

Dear Mr. O'Hara:

This letter serves as a notice of the Federal Railroad Administration's (FRA) approval of the material modifications to Union Pacific Railroad Company's (UPRR) locomotive engineer and conductor certification programs (certification programs or programs) required under 49 C.F.R. parts 240 and 242 (parts 240 and 242) that were submitted to FRA on March 8 and 13, 2024, respectively. FRA has reviewed the material modifications, as well as the comments it received from the Brotherhood of Locomotive Engineers and Trainmen (BLET) and the International Association of Sheet Metal, Air, Rail, and Transportation Workers – Transportation Division (SMART-TD), the labor organizations representing UPRR's locomotive engineer and conductor employees (collectively, the labor unions). In accordance with Appendix B to 49 C.F.R. parts 240 and 242, FRA approves the material modifications to UPRR's certification programs by the attached letters – one for UPRR's locomotive engineer certification program and one for UPRR's conductor certification program (Attachments A and B, respectively). This letter also provides further context concerning FRA's review and approval of UPRR's certification programs.

Over an approximately 18-month period, FRA worked with UPRR on its submittals. FRA suggested revisions to UPRR's draft material modifications, and UPRR responded to FRA's suggestions and the shortcomings FRA identified in its previously approved locomotive engineer and conductor certification programs. While FRA is approving UPRR's certification programs, FRA notes that UPRR still must comply with other federal laws and regulations that go beyond 49 C.F.R. parts 240 and 242, including equipment inspection requirements, when conducting crew changes and interchanges with other railroads.

FRA has reviewed each of the points raised in the comments submitted by SMART-TD (Attachment C) and BLET (Attachment D) relating to UPRR's material modifications. FRA addresses those comments in detail in the attached approval letters. As described in those attachments, while FRA is approving the certification programs because they comply with FRA's regulations in 49 C.F.R. parts 240 and 242, FRA strongly believes UPRR should further discuss its training methodologies, training duration, the standardization of testing, and other

training or evaluation processes with representatives from the labor unions, as explained in more detail in the attached letters.

As FRA monitors UPRR's implementation of its modified certification programs through audits, investigations, and other enforcement activities, it will continue to consider the labor unions' comments, any additional comments or complaints FRA receives during UPRR's implementation of the certification programs, and whether additional program modifications or other actions are necessary to effectuate program improvements and regulatory compliance. *See* 49 C.F.R. §§ 240.103(f)(2), 242.103(g)(2).

If you have any questions regarding this letter, please contact Christian Holt, FRA's Director of Operating Practices at (202) 366-0978 or Christian.Holt@dot.gov, with FRAOPCERTPROG@dot.gov in copy of all email correspondence.

Sincerely,

Karl Alexy
Associate Administrator for Railroad Safety
Chief Safety Officer

Attachments: UPRR's Locomotive Engineer Certification Program Review Letter
UPRR's Conductor Certification Program Review Letter
SMART-TD's Comments
BLET's Comments

cc: Jeremy Ferguson, President, Transportation Division, SMART-TD, jferguson@smart-union.org
Edward Hall, National President, BLET, hall@ble-t.org

Attachment A



1200 New Jersey Avenue, SE
Washington, DC 20590

US Department
Of Transportation

Federal Railroad
Administration

Mr. David O'Hara
General Director Operating Practices
Union Pacific Railroad Company
1400 Douglas Street, Stop 1800
Omaha, NE 68179

July 2, 2024

Dear Mr. O'Hara:

This letter responds to the Union Pacific Railroad Company's (UPRR) submission on March 8, 2024, to the Federal Railroad Administration (FRA) seeking approval of its material modifications to the UPRR Locomotive Engineer Certification Program (locomotive engineer certification program or program). UPRR has complied with FRA's procedures for the submission and approval of locomotive engineer certification programs, as described in Appendix B to 49 C.F.R. part 240. FRA reviewed UPRR's program modifications, as well as the comments it received from the Brotherhood of Locomotive Engineers and Trainmen (BLET) on May 7, 2024 and the International Association of Sheet Metal, Air, Rail, and Transportation Workers – Transportation Division (SMART-TD) on May 10, 2024 (collectively, the labor organizations),¹ and FRA approves this program pursuant to 49 C.F.R part 240.

The labor organizations' comments express concern with certain aspects of UPRR's modified locomotive engineer certification program. Although FRA expects that UPRR will continue discussions with the labor organizations about safety issues of concern to all parties, FRA concludes that the labor organizations' comments do not identify any non-compliance with FRA's regulations in 49 C.F.R. part 240 that requires the disapproval of UPRR's modified program at this time. *See, e.g.*, 49 C.F.R. § 240.101(c) (required program elements), App. B (procedures and standards for submission and approval of certification programs).² In evaluating UPRR's programs in light of the comments from SMART-TD and BLET, FRA considered the agency's published guidance, including Appendix B to part 240:

Rather than establish rigid requirements for each element of the program, FRA has given railroads discretion to select the design of their individual programs within a specified context for each element. The rule, however, provides a good guide to the considerations

¹ UPRR's submission to FRA on March 8, 2024 stated that the railroad provided a copy of its program modifications to the labor organizations representing UPRR's employees.

² FRA will continue to monitor the implementation of UPRR's locomotive engineer certification program under FRA's broad enforcement authority, including through inspections, investigations, and audits. FRA reserves the right to revisit the program's content, as appropriate, based on that monitoring. *See* 49 C.F.R. § 240.103(f)(2).

that should be addressed in designing a program that will meet the performance standards of this rule. In reviewing program submissions, FRA will focus on the degree to which a particular program deviates from the norms set out in its rule.

49 C.F.R. part 240, Appendix B (“FRA Review” section).

BLET’S COMMENTS ON UPRR’S PART 240 CERTIFICATION PROGRAM

Section 2: Selection of Supervisors of Locomotive Engineers and Remote-Control

Operators

BLET questions UPRR’s program for allowing designated supervisors of locomotive engineers (DSLEs) to make a minimum of one round trip to qualify over a segment of its territory. BLET asserts that this number of trips is insufficient, as most territories have multiple runs over multiple subdivisions with unique characteristics. BLET suggests setting a minimum number of round trips for each run to ensure comprehensive expertise.

FRA’s Response

The term “territorial qualifications” is defined in 49 C.F.R. § 240.7, and it requires that a person possess both the necessary knowledge of a railroad’s operating rules/instructions and familiarity with the applicable tracks and territorial physical characteristics that will allow a person to safely conduct locomotive or train operations in that territory. Training for all locomotive engineers must include physical characteristics training. *See, e.g.*, 49 C.F.R. § 240.123(c)(4) (requiring training of a previously untrained person to include “[f]amiliarization with physical characteristics including train handling”). To be a DSLE, the person must also be “a certified engineer who is qualified on the physical characteristics of the portion of the railroad on which that person will perform the duties of a [DSLE].” 49 C.F.R. § 240.105(b)(4). Thus, if UPRR allows locomotive engineers working on a territory to be qualified on the physical characteristics of that territory in one round trip, that standard is also applicable to a DSLE; similarly, in more complex territories in which UPRR mandates more than one round trip for territorial qualifications, UPRR must provide its DSLEs and other locomotive engineers the same minimum number of qualifying trips.

By focusing on UPRR’s minimum of one round trip to qualify on the physical characteristics of a territory, BLET’s comment raises a question of whether that one trip is sufficient for a DSLE to have knowledge of, and be able to safely operate a locomotive or train or supervise other locomotive engineers operating a locomotive or train in, a particular territory. The territorial qualifications requirement for DSLEs is separate from UPRR’s duty to select DSLEs that (1) know and understand the requirements in part 240, (2) can appropriately test and evaluate the knowledge and skills of locomotive engineers, and (3) have the necessary supervisory experience to prescribe appropriate remedial actions for any noted deficiencies in the training, knowledge, or skills of a person seeking to obtain or retain certification. *See* 49 C.F.R. § 240.105(b)(1)-(3). FRA understands there are various methods of enhancing a person’s knowledge of a territory’s physical characteristics, in addition to providing additional rides above any minimum number of round trips. FRA expects that UPRR will set a different number of minimum trip requirements in different territories, depending on the complexity of the operations of each territory. As such, FRA understands the stated one round trip for a territorial familiarization ride is provided in the program to meet the regulatory requirement, and FRA expects it may be augmented depending on the specific circumstances. Therefore, this comment is not a reason to disapprove UPRR’s program.

Section 3: Training Persons Previously Certified

BLET requests input into the incorporation of new training methodologies as technological advancements are made. BLET asserts that not all training methods, such as various types of simulators, provide an adequate level of knowledge and experience. BLET urges FRA to review new methodologies and consider feedback from its members. Additionally, BLET contends that the allotted five hours for “Safety, Operating, Air Brake/Train Handling, and Applicable Federal Regulation” in the triannual recertification training under UPRR’s modified locomotive engineer program is insufficient. BLET points out that many updates to regulations and procedures can occur within three years, particularly with the implementation of Positive Train Control and energy management systems, which may significantly alter train handling rules.

FRA’s Response

FRA agrees with BLET that UPRR should be working with BLET to find a consensus understanding of the best training methodologies, to consider constructive feedback from the employees in the locomotive engineer certification training program, and to consider questions about the amount of time devoted to any particular subject matter, and UPRR should discuss this issue further with BLET. However, FRA does not view BLET’s requests for more input in these subjects as a reason to not approve UPRR’s modified program.

For context, FRA permits railroads to use simulators in the locomotive engineer training and certification regulatory context. *See, e.g.,* 49 C.F.R. §§ 240.7 and 240.129 (defining three different types of simulators and allowing for monitoring operational performance to take place at the controls of some simulators). Simulators provide a controlled, safe environment where locomotive engineers can be exposed to various scenarios that may be challenging or difficult to replicate during regular train operations. For example, simulators can create emergency situations and complex operational scenarios that are valuable for training and testing. FRA finds that UPRR’s training program effectively leverages simulators to present various operating scenarios and provides hands-on training that enhances an engineer’s ability to respond to different situations. Of course, some training methodologies will contain a technological element and are not intended to replace a simulator or operation of a locomotive or train. If BLET notifies FRA of training that it believes does not meet FRA’s standards, FRA will investigate and take appropriate action.

Section 4: Testing and Evaluating Persons Previously Certified

BLET questions UP’s policy for employees who fail certification exams, noting that it does not align with existing collective bargaining agreements (CBAs). BLET cites UPRR’s program that allows employees to retake missed questions on the same day, with a second and third attempt allowed within a week. BLET suggests adding a clause to the program to adhere to CBAs, which often allow engineers six months to pass failed exams. Similarly, BLET expresses concern that UPRR’s Virtual Ride-Along (VRA) tools, which can be used to evaluate a locomotive engineer’s performance skills, do not conform with the CBA.

FRA’s Response

FRA notes that section 4 of UPRR’s modified program makes an exception for re-examination scheduling “as required by the collective bargaining agreement.” Thus, it appears that UPRR aligns its locomotive engineer certification program with any applicable CBA, as BLET requests. FRA believes it would be beneficial if UPRR continues coordinating with BLET on this topic. This is especially true because FRA does not enforce or regulate CBAs. Even if BLET were

correct on the exam retake issue or the VRA issue, these CBA issues cannot provide a reason for FRA to disapprove UPRR's program.

SMART-TD's COMMENTS ON UPRR's PART 240 CERTIFICATION PROGRAM

Section 2: Selection of Supervisors of Locomotive Engineers and Remote-Control Operators

A. DSLE Selection and Training

SMART-TD asserts that the language in UPRR's locomotive engineer certification program regarding the selection and training of supervisors is vague and lacking measurable criteria with regard to the demonstration of the necessary skills ranging from event recorder data analysis to performing operational field tests.

FRA's Response

FRA notes that the requirements cited by SMART-TD in this section require an instructor or manager to determine that the supervisor candidate has adequately demonstrated the necessary skills and, therefore, FRA does not find UPRR's program to be deficient in this regard.³ Further, FRA finds that UPRR's program covers supervisor training requirements for operational testing, data analysis, and a comprehensive list of course studies. By covering these requirements, UPRR's program satisfies the regulatory requirement that a railroad's program include criteria and procedures for selecting DSLEs. See 49 C.F.R. § 240.105.

B. DSLE Territorial Training, Testing, and Qualification Trips

SMART-TD questions whether the computer-based training course that includes a minimum of 20 knowledge questions regarding UPRR's locomotive engineer certification program is sufficient for DSLEs. Similarly, SMART-TD questions whether the minimum 10 question physical characteristics test is sufficient. SMART-TD also questions whether a minimum single round trip is adequate for ensuring a DSLE's familiarity with a territory. Further, SMART-TD questions whether UPRR's refresher training description is sufficient.

FRA's Response

SMART-TD's comment does not identify how these concerns would require a finding that UPRR's locomotive engineer certification program violates part 240 because the regulation does not specify the quantitative requirements for a DSLE's territorial training and qualification trips. Nonetheless, FRA emphasizes that each railroad should strive to have well-qualified DSLEs administer the locomotive engineer certification program and, for that reason, FRA encourages UPRR to work with SMART-TD to find mutual agreement on a way to improve the qualifications process for these supervisors.

With regard to whether a single round trip is adequate for ensuring a DSLE's familiarity with a territory, as FRA explained above in response to a similar comment from BLET, the requirement is for a DSLE to receive the same territorial qualification training as "a certified engineer who is qualified on the physical characteristics of the portion of the railroad on which that person will

³ In the portion of section 2 that relates to DSLE selection and training, UPRR requires supervisors to demonstrate the ability to test and evaluate by: (1) demonstrating data analysis skills on event recorders in the form of teaching back to the course instructor and (2) assisting and demonstrating operational testing skills in the field to a qualified operational testing manager.

perform the duties of a [DSLE].” 49 C.F.R. § 240.105(b)(4). Thus, if UPRR allows locomotive engineers working on a territory to be qualified on the physical characteristics of that territory in one round trip, that standard is also applicable to a DSLE; similarly, in more complex territories in which UPRR mandates more than one round trip for territorial qualifications, UPRR must provide its DSLEs and other locomotive engineers the same minimum number of qualifying trips. By focusing on UPRR’s minimum of one round trip to qualify on the physical characteristics of a territory, SMART-TD’s comment raises a question of whether that one trip is sufficient for a DSLE to have knowledge of, and be able to safely operate a locomotive or train or supervise other locomotive engineers operating a locomotive or train in, a particular territory.

The territorial qualifications requirement for DSLEs is separate from UPRR’s duty to select DSLEs that (1) know and understand the requirements in part 240, (2) can appropriately test and evaluate the knowledge and skills of locomotive engineers, and (3) have the necessary supervisory experience to prescribe appropriate remedial action for any noted deficiencies in the training, knowledge or skills of a person seeking to obtain or retain certification. *See* 49 C.F.R. § 240.105(b)(1)-(3). FRA understands there are various methods of enhancing a person’s knowledge of a territory’s physical characteristics, in addition to providing additional rides above any minimum number of round trips. FRA expects that UPRR will set a different number of minimum trip requirements in different territories, depending on the complexity of the operations of each territory. As such, FRA understands the stated one round trip for a territorial familiarization ride is provided in the program to meet the regulatory requirement, and it may be augmented depending on the specific circumstances. Therefore, this comment is not a reason to disapprove UPRR’s program.

Section 3: Training Persons Previously Certified

UPRR anticipates the refresher training program’s length will be a 10-hour classroom training, which includes the examination, and SMART-TD questions whether the refresher training program’s length is unrealistic. SMART-TD requests that it be included in the process of deciding what course content will be addressed in refresher training, especially when there are operational changes or the introduction of new technologies for locomotive engineers. SMART-TD also raises the issue of the minimum number of territorial qualifications trips in this context.

FRA’s Response

SMART-TD again raises questions that warrant further conversations with UPRR, and FRA encourages UPRR to discuss these issues with SMART-TD to resolve any concerns. However, FRA does not find that the issues raised by SMART-TD would form the basis for disapproving UPRR’s locomotive engineer certification program. While the labor organization implies the refresher training curriculum and number of territorial qualification trips are inadequate, those issues do not identify a UPRR failure to meet a regulatory requirement. FRA notes that refresher training is for experienced locomotive engineers who do not need the same in-depth training as newly hired employees, but instead need to keep conversant with all applicable safety directives and operating rules and practices.⁴ Certainly, UPRR would benefit from SMART-TD’s and BLET’s early input when deciding what content to include in refresher training, and such

⁴ *See* 56 Fed. Reg. 28228, 28246 (June 19, 1991) (citing 49 C.F.R. § 240.123 in the final rule’s section-by-section analysis and adding that continuing education requirements must be designed by a railroad to ensure that its engineers are kept advised of changes on any subject covered under the previous training). Also, on this page of the 1991 final rule, FRA stated that it afforded each railroad discretion to design its own program, and FRA will monitor a railroad’s use of that discretion. *See id.*

coordination on all certification program issues may reduce the confusion expressed in some of comments made by SMART-TD and BLET.

Section 4: Testing and Evaluating Persons Previously Certified

A. The Criteria of the Periodic Rules Exams

SMART-TD questions whether UPRR has written the periodic rules examination criteria in such a way that it can unilaterally change aspects of the testing without guidance or oversight.

FRA's Response

Section 4 of UPRR's modified program defines the exam as not less than 100 questions that requires a minimum score of 85% to pass. FRA does not require knowledge testing on a railroad's rules and practices for the safe operation of trains to include a specific number of questions, but 100 questions is a large enough number that FRA would expect the test to cover all the required subjects. *See* 49 C.F.R. § 240.125(c)(4). Moreover, FRA does not require that a railroad provide every person the same test, and it is expected that a railroad will retain discretion to modify the test if certain groups of people need more or fewer questions in particular subject areas, based on the type of work they will be asked to perform. For this reason, FRA finds that SMART-TD's comment does not focus on a feature of UPRR's locomotive engineer certification program that forms a basis for disapproving it.

B. The Use of Simulators for the Skills Performance Exams

SMART-TD objects to the use of simulators for the periodic skills performance examination and asks that simulators be replaced with actual locomotive operational experience and by direct observation, implying an objection to UPRR's VRA tools.

FRA's Response

FRA responded to similar comments from BLET above and references those answers here. In summary, FRA permits railroads to use simulators in the locomotive engineer training and certification regulatory context. *See, e.g.,* 49 C.F.R. §§ 240.7 and 240.129 (defining three different types of simulators and allowing for monitoring operational performance to take place at the controls of some simulators). Simulators provide a controlled, safe environment where locomotive engineers can be exposed to various scenarios that may be challenging or difficult to replicate during regular train operations. For example, simulators can create emergency situations and complex operational scenarios that are valuable for training and testing. FRA finds that UPRR's training program effectively leverages simulators to present various operating scenarios and provides hands-on training that enhances an engineer's ability to respond to different situations. SMART-TD did not explain why it believes VRA tools do not provide the equivalent of a direct observation, and FRA does not identify a safety issue with UPRR's VRA tools that would distinguish it from direct observations. If SMART-TD notifies FRA of training that is believed not to meet FRA standards, FRA will investigate and take appropriate action.

C. The Duration of Skills Performance Exams

SMART-TD objects to the duration of skills performance exams, commenting that by establishing a minimum for the exam, but no maximum, individual UPRR tests could be made more lengthy or difficult, creating unfair practices.

FRA's Response

UPRR's requirement of having an engineer operate a train for four hours or 50 miles for mainline operations and two hours or 35 miles for yard/local service provides a framework to assess an engineer's ability to operate a train safely and competently. If a train is stopped for an extended period, the DSLE is expected to use professional judgment to determine whether additional time or distance is needed to ensure a comprehensive evaluation. This flexibility allows the DSLE to account for real-world conditions and ensure that the evaluation accurately reflects the engineer's capabilities. For these reasons, FRA finds that UPRR's program meets the requirements of part 240. *See* 49 C.F.R. § 240.127(c)(4) (describing the criteria for examining skills performance and only requiring that the test "[b]e of sufficient length to effectively evaluate the person's ability to operate trains"). That said, if SMART-TD becomes aware of any alleged unfairness in the exams administered by UPRR, FRA encourages SMART-TD to report that information to FRA for investigation.

D. The Scoring of Skills Performance Exams

SMART-TD objects to the scoring of skills performance exams, commenting that UPRR has not addressed how it will ensure a student's comprehension of questions that are missed.

FRA's Response

FRA believes that it is a best practice for an instructor to go over the exam with a student or the entire class of students. However, that practice is not required by part 240 and, therefore, is not a justification for disapproving UPRR's program. FRA recommends that UPRR revisit this issue with SMART-TD to ensure each student learns from exam questions missed.

Section 5: Training, Testing and Evaluating Persons Not Previously Certified

A. Instruction for Student Train Service Engineers (STSE)

SMART-TD questions whether the curriculum described in UPRR's locomotive engineer certification program is equivalent to the stated minimum of seven weeks of formalized classroom training for STSEs.

FRA's Response

FRA finds the curriculum described in UPRR's program sufficient because it meets the criteria outlined in Section 5 of 49 C.F.R part 240, Appendix B. The program consists of 35 days of classroom training, including simulator training, followed by nine weeks of on-the-job training. Depending on the number of territories the STSE needs to qualify over, the training can extend up to six months. The program covers the subjects that STSEs receive instruction on and practical experience in adequately preparing them for their roles. As UPRR's approach addresses the necessary knowledge and skills required for certification, FRA does not find that this comment can form the basis to disapprove UPRR's program. FRA suggests that UPRR consult with SMART-TD regarding the inclusion of additional training topics to the locomotive engineer training curriculum.

B. Instruction for Student Remote Control Operators (RCOs)

SMART-TD questions whether UPRR's training for student RCOs would only meet the "bare minimum" that is required by part 240 and comments that 10 days is not a sufficient training period—especially for newly hired employees who recently completed conductor certification and are immediately following conductor training with RCO training. Further, SMART-TD's comment expresses a concern that UPRR's locomotive

engineer certification program lacks clarity on the specific topics covered by the training, and the timelines set forth in the program do not align with the ten days scheduled for training.

FRA's Response

SMART-TD's comments apply to individuals UPRR trains to operate remotely controlled locomotives (RCLs), who are referred to as RCOs, and who are not otherwise train service engineers, locomotive servicing engineers, or student engineers, as FRA defines those types of service in 49 C.F.R. § 240.107.⁵ That is, UPRR's program referenced in SMART-TD's comment applies to people who only move locomotives or trains with RCLs.

Overall, FRA finds that UPRR's training of RCOs meets the requirements of FRA's regulations. FRA believes that SMART-TD may have identified additional factors that, although not required by part 240, would be helpful for UPRR to consider when training student RCOs, including general experience as a safety-related railroad employee involved in switching operations and the complexity of the operations for which the individual will be tasked. For that reason, FRA recommends that UPRR discuss with SMART-TD ways to improve safety and resolve areas of concern.

Section 6: Monitoring Operational Performance of Certified Engineers, Locomotive Servicing Engineers, and RCOs

SMART-TD's comments raise two issues, abbreviating their comment by referring back to previous comments. First, SMART-TD objects to the observation of employees while they are performing on a simulator. Second, SMART-TD objects to testing based on a minimum time period and states that testing should be based on the job's responsibilities and functions, not exposure to observation.

FRA's Response

First, FRA reiterates that the agency permits railroads to use simulators in the locomotive engineer training and certification regulatory context. *See, e.g.*, 49 C.F.R. §§ 240.7 and 240.129 (defining three different types of simulators and allowing for monitoring operational performance to take place at the controls of some simulators). Simulators provide a controlled, safe environment where locomotive engineers can be exposed to various scenarios that may be challenging or difficult to replicate during regular train operations. For example, simulators can create emergency situations and complex operational scenarios that are valuable for training and testing. FRA finds that UPRR's training program effectively leverages simulators to present various operating scenarios and provides hands-on training that enhances an engineer's ability to respond to different situations. Of course, some training methodologies will contain a technological element and are not intended to replace a simulator or operation of a locomotive or train. If SMART-TD becomes aware of any training administered by UPRR that does not meet the requirements of part 240, SMART-TD should report that information to FRA for investigation.

⁵ FRA does not define RCO in part 240, but the technology and operations that RCOs utilize have been well developed over more than two decades. *See* 66 Fed. Reg. 10340 (Feb. 14, 2001) (providing a notice of Safety Advisory 2001-1, addressing the establishment of recommended minimum guidelines for the operation of RCLs); 49 C.F.R. §§ 229.5 and 229.15 (establishing definitions for key RCL terminology and railroad locomotive safety standards for operations controlled by RCLs); 84 Fed. Reg. 20472, 20476 (May 9, 2019) (proposing to add definitions and other requirements related to RCOs); 85 Fed. Reg. 81290, 81291 (Dec. 15, 2020) (issuing a final rule that removed the RCO-related definitions and other proposed requirements as unnecessary).

Second, with regard to operational monitoring testing for RCOs, FRA notes that UPRR's locomotive engineer certification program specifically states that "[t]ime spent while delayed, stopped, or otherwise not actively engaged in representative duties will not be counted toward the . . . minimum observation requirement." Locomotive Engineer Certification Program at 19. FRA finds this provision addresses the requirements in 49 C.F.R. § 240.129, especially paragraph (c), which require a railroad to focus its procedures so that they are designed to monitor and determine that the person possesses and routinely employs the skills to safely operate locomotives and/or trains; thus, UPRR's program does not appear to be focused on merely observing a person for a set period of time. For this reason, FRA finds the program addresses the regulatory requirements. If SMART-TD believes UPRR is not meeting the requirements in 49 C.F.R. § 240.129, SMART-TD should report that information to FRA for investigation.

Conclusion

In conclusion, FRA finds that the modified locomotive engineer certification program contains the necessary program elements and a sufficient level of detail to permit effective evaluation, as required by part 240, and therefore approves the program. *See* 49 C.F.R. § 240.101(c), App. B. As stated above, FRA notes that it will continue to monitor the program's implementation under FRA's broad enforcement authority, including through inspections, investigations, and audits. FRA reserves the right to revisit the program's content, as appropriate, based on that monitoring. *See* 49 C.F.R. § 240.103(f)(2).

Please continue in your efforts to improve railroad safety on your system and contact FRA with any questions regarding this submission at (202) 366-0978 or FRAOPCERTPROG@dot.gov or Kevin.Lewis@dot.gov or Kurt.Erickson@dot.gov

Sincerely,

Karl Alexy
Associate Administrator for Railroad Safety
Chief Safety Officer

Attachment B



1200 New Jersey Avenue, SE
Washington, DC 20590

U.S. Department
Of Transportation

Federal Railroad
Administration

Mr. David O'Hara
General Director Operating Practices
Union Pacific Railroad Company
1400 Douglas Street, Stop 1800
Omaha, NE 68179

July 2, 2024

Dear Mr. O'Hara:

This letter responds to the Union Pacific Railroad Company's (UPRR) submission on March 13, 2024, to the Federal Railroad Administration (FRA) seeking approval of its material modifications to the UPRR Conductor Certification Program (conductor certification program or program). UPRR has complied with FRA's procedures for the submission and approval of conductor certification programs, as described in Appendix B to 49 C.F.R. part 242. FRA reviewed UPRR's program modifications, as well as the comments it received from the International Association of Sheet Metal, Air, Rail, and Transportation Workers – Transportation Division (SMART-TD) on May 10, 2024,¹ and FRA approves this program pursuant to 49 C.F.R. part 242.

SMART-TD's comments express concern with certain aspects of UPRR's modified conductor certification program. Although FRA expects that UPRR will continue discussions with SMART-TD about safety issues of concern to all parties, FRA concludes that SMART-TD's comments do not identify any non-compliance with FRA's regulations in 49 C.F.R. part 242 that requires the disapproval of UPRR's modified program at this time.² *See, e.g.*, 49 C.F.R. § 242.101(a) (required program elements), App. B (procedures and standards for submission and approval of certification programs). In evaluating UPRR's programs in light of the comments from SMART-TD, FRA considered the agency's published guidance, including Appendix B to part 242:

Rather than establish rigid requirements for each element of the program, FRA has given railroads discretion to select the design of their individual programs within a specified context for each element. The rule, however, provides a good guide to the considerations

¹ UPRR's submission to FRA on March 13, 2024, stated that the railroad provided a copy of its program modifications to the labor organizations representing UPRR's employees.

² FRA will continue to monitor the implementation of UPRR's conductor certification program under FRA's broad enforcement authority, including through inspections, investigations, and audits. FRA reserves the right to revisit the program's content, as appropriate, based on that monitoring. *See* 49 C.F.R. § 242.103(g)(2).

that should be addressed in designing a program that will meet the performance standards of this rule.

In reviewing program submissions, FRA will focus on the degree to which a particular program deviates from the norms identified in its rule.

49 C.F.R. part 242, Appendix B (“FRA Review” section).

SMART-TD’S COMMENTS ON UPRR’S PART 242 CERTIFICATION PROGRAM

Section 2: Training Persons Previously Certified

A. Classroom Training and B. Classroom and/or Field Training

SMART-TD questions whether UPRR’s description of the training methodologies for conductors, within the classroom training context, are too broad and ambiguous. SMART-TD also comments on the risk that the flexibility for UPRR to change training methods, without clear criteria, could result in UPRR opting for faster and more convenient methods, rather than the safest ones. Moreover, SMART-TD asserts this latitude could lead to significant inconsistencies and potentially unsafe training practices. SMART-TD further asserts that it believes UPRR must provide a matrix to exhibit its decision-making tree of how or when a particular instructional method will be selected to ensure that an appropriate level of safety is maintained. SMART-TD finally comments that UPRR’s training methods do not guarantee the necessary rigor and consistency required for conductor training.

In addition, SMART-TD questions whether UPRR’s conductor certification program, which outlines a classroom training duration of 10 hours, including the examination, is sufficient. In its comments, SMART-TD states that the detailed breakdown of training topics alone totals 10 hours, leaving no time for the examination. Further, SMART-TD comments that its concern could mean that UPRR will have the discretion to sacrifice essential curriculum elements to fit within the allotted time.

FRA’s Response

FRA finds that UPRR’s description of its classroom training for conductors meets the criteria set forth in part 242 and acknowledges that the program provides UPRR with some flexibility to adopt new or improved training methods within the classroom training context. Classroom training is one of several acceptable types of formal training for conductors. *See, e.g.*, 49 C.F.R. § 242.119(d)(1) (identifying other acceptable formal training methods for conductors, including simulator, computer-based, correspondence, on-the-job, or other formal training). FRA will continue to audit UPRR’s classroom and other types of formal training to provide feedback regarding whether the training is effective in accomplishing the goal of ensuring that each person trained “has ... the knowledge to safely perform as a conductor in each type of service that the person will be permitted to perform.” 49 C.F.R. § 242.119(b). FRA understands that UPRR, like other Class I railroads, seeks to improve its training methodologies each year for the following year’s training. As FRA permits computer-based training and the use of technologies to enhance employee training as needed, FRA will not disapprove UPRR’s conductor program because the railroad provides formal training using a method other than with an instructor in the classroom.

Although UPRR could adopt a matrix to aid its decisions on the appropriateness of a particular instructional method or resource selected, UPRR is not required by part 242 to do so. However, FRA recommends that UPRR explore this issue with SMART-TD as there may be good reasons to use different instructional methods for different learners under various circumstances, and a matrix would provide an established roadmap for instructors to make those kinds of decisions. For example, some learners prefer classroom training with a live instructor and others prefer computer-based learning. Similarly, FRA expects railroads to train a person who has never been certified as a conductor more thoroughly than a certified conductor who is going through refresher training,³ but part 242 does not require a railroad to accelerate refresher training for new employees sooner than the regulatory minimum of 36 months when recertification is due. *See, e.g.*, 49 C.F.R. § 242.201(c).

Regarding UPRR's classroom training duration of 10 hours, FRA finds that time period is acceptable as the regulation does not specify a minimum requirement. UPRR describes the 10 hours as a minimum. FRA's regulations require a duration of training to be sufficient to cover all mandatory topics. UPRR has addressed the number of hours it anticipates will be needed to cover the four topics in Section 2.A. of UPRR's conductor certification program.⁴ While conductor experiences may reveal more time is necessary, and FRA will monitor the effectiveness of the training and provide feedback accordingly, FRA finds UPRR's submitted program complies with the regulatory requirements. If SMART-TD becomes aware of any alleged unfairness in the exams administered by UPRR, SMART-TD should report that information to FRA for investigation.

C. Territory Qualifications for Main Track

SMART-TD alleges that this section of UPRR's certification program lacks sufficient criteria, particularly with regard to evaluating a conductor's knowledge of complex territories, and that the absence of detailed criteria makes it difficult to ensure that conductors are adequately prepared for the specific challenges of different territories.

FRA's Response

A railroad's conductor certification program is required to "include the procedures used to qualify or requalify a person on the physical characteristics." 49 C.F.R. § 242.119(k). The term "territorial qualifications" is defined in 49 C.F.R. § 242.7, and it requires that a person possess both the necessary knowledge of a railroad's operating rules/instructions and familiarity with the applicable tracks and territorial physical characteristics that will allow a conductor to safely conduct locomotive or train operations in that territory. Each railroad establishes in its conductor certification program how a person serving as a conductor becomes territorially qualified, including how previously certified persons who are absent from a territory, can become

³ *See, e.g.*, 49 C.F.R. § 242.119(d), (e), and (l) (describing the requirements for a railroad that elects to train a previously untrained person to be a conductor compared to the requirements for a railroad to provide for the continuing education of certified conductors). FRA notes that paragraph (l), which describes the requirements for the continuing education of certified conductors, is intended "to ensure that each conductor maintains the necessary knowledge concerning railroad safety and operating rules and compliance with all applicable Federal regulations, including, but not limited to, hazardous materials, passenger train emergency preparedness, brake system safety standards, pre-departure inspection procedures, and passenger equipment safety standards, and physical characteristics of a territory." 49 C.F.R. § 242.119(l).

⁴ UPRR describes the four subjects as "(a) Safety, Operating, Air Brake/Train Handling, and Applicable Federal Regulation, anticipated 5 hours; (b) Physical Characteristics (territory specific), anticipated 1 hour; (c) Hazardous Materials, anticipated 2 hours; and (d) Use of any job aid that a railroad may provide to a conductor, anticipated 2 hours."

requaified on that territory. *See* 49 C.F.R. App. B, Submission by a Railroad, Organization of the Submission, Section 2 of the Submission: Training Persons Previously Certified (stating if a person is absent from a territory for a period specified in the program, the program must include “the number of times a person must pass over a territory per year to be considered to have ‘regularly traversed’” it, and noting that “[s]ince territories differ in their complexity, railroads will be given discretion to determine how many times a conductor must pass over a territory”). FRA recognizes that one round trip for a conductor’s territorial qualification ride meets the regulatory requirement and therefore is not a reason to disapprove UPRR’s program. However, FRA has raised this concern with UPRR, and other Class I railroads, as the agency is aware that the certification of conductors on each territory of a railroad’s system should consider the complexity of the territory being qualified on and, if necessary, the railroad should set additional criteria that are above the minimum regulatory requirements. FRA suggests that UPRR consult with SMART-TD about each territory’s qualification ride requirements to eliminate any confusion or safety concerns.

D. Territory Qualifications for other than Main Track

SMART-TD questions whether this section fails to define what constitutes an appropriate job aid.

FRA’s Response

As the term “job aid” is defined in FRA’s regulation, FRA does not agree that UPRR’s program should be disapproved for not also defining this term. *See* 49 C.F.R. § 242.7.

Section 3: Testing and Evaluating Persons Previously Certified

SMART-TD states its disappointment that UPRR has set the frequency of training at the “bare minimum” of every three years. SMART-TD also questions the passing score of one of the tests, but without providing details. In addition, SMART-TD questions whether UPRR’s program allows for too much variability in the number of exam questions because it could raise questions of fairness and adequacy in the testing process.

FRA’s Response

Because UPRR has set the frequency of training at the minimum requirement of three years, coinciding with recertification under 49 C.F.R. § 242.201(c), FRA cannot disapprove the program on that basis. FRA understands that a railroad may have a legitimate need for some variability in the number of exam questions; however, FRA is always concerned with illegitimate variability and would investigate any question of UPRR not following its own procedures or introducing bias or other unfairness into its testing protocols. To remove uncertainty in the testing procedures, FRA encourages UPRR to work with SMART-TD to explain or further develop its standard testing protocols. Further, if SMART-TD becomes aware of any alleged unfairness in the exams administered by UPRR, FRA encourages SMART-TD to report that information to FRA for investigation.

Section 4: Training, Testing, and Evaluating Persons Not Previously Certified

SMART-TD asserts that this section of UPRR’s conductor certification program, which covers both classroom training and structured field training, lacks clarity and measurable details, and, for that reason, SMART-TD cannot assess the adequacy of the program. Further, SMART-TD questions whether the duration of each training topic is a suitable measurement of the adequacy of the training alone and suggests that the number of repetitions of each safety-related task or activity should be described in the program.

FRA's Response

FRA finds UPRR's descriptive overview of classroom training and structured field training, along with the anticipated hours for training on various topics, such as operating rules, hazardous materials, railroad safety rules, and on-the-job training, adequate to meet the requirements of part 242 for a conductor certification program. *See* 49 C.F.R. § 242.119 and App. B. FRA expects formal training to have a structure and defined curriculum and expects all railroads to implement effective training and achieve measured results. To the extent SMART-TD continues to believe that UPRR has not made its intent clear, FRA urges UPRR to discuss its program with SMART-TD and explain how measured results will be achieved. Additionally, if SMART-TD notifies FRA of training that it believes does not meet FRA's standards, SMART-TD should report that information to FRA for investigation.

Conclusion

In conclusion, FRA finds that the modified conductor certification program contains the necessary program elements and a sufficient level of detail to permit effective evaluation, as required by part 242, and therefore approves the program. *See* 49 C.F.R. § 242.101(a), and App. B. As stated above, FRA notes that it will continue to monitor the program's implementation under FRA's broad enforcement authority, including through inspections, investigations, and audits. FRA reserves the right to revisit the program's content, as appropriate, based on that monitoring. *See* 49 C.F.R. § 242.103(g)(2).

Please continue in your efforts to improve railroad safety on your system and contact FRA with questions regarding this submission at (202) 366-0978 or at FRAOPCERTPROG@dot.gov, Kevin.Lewis@dot.gov, or Kurt.Erickson@dot.gov.

Sincerely,

Karl Alexy
Associate Administrator for Railroad Safety
Chief Safety Officer

Attachment C



Transportation Division

1750 New York Ave., NW, 6th Floor, Washington, DC 20006
PHONE: 202-543-7714 · www.smart-union.org/td/

JEREMY R. FERGUSON
President

GREG K. HYNES
National Legislative Director

May 10, 2024

Mr. Kevin Lewis
FRA Program Manager
Certification Specialist
Kevin.Lewis@dot.gov

RE: SMART TD Comments on Union Pacific's Conductor, Engineer, and RCO Certification Program as submitted in February and March of 2024

Mr. Lewis,

On behalf of the Transportation Division of the International Association of Sheet Metal, Air, Rail and Transportation Workers (SMART TD) employed by CSX Transportation (CSX) in a craft governed by 49 CFR Part 242.7, and pursuant to 49 CFR Part 242.103(d), this letter shall serve as our comments on the Conductor Certification program that CSX submitted to the Federal Railroad Association (FRA) in January 2024 (herein referred to as the program). We thank FRA for the opportunity to comment on our joint pursuit of enhancing safety across the industry.

There is no higher priority to establishing a safe foundation for railroad workers than training. From introduction to certification, each step must be weighed and measured to ensure comprehension and effectiveness of the program. Unfortunately, this program falls short. It is not enough to base training around generic time expectations. Genuine care and consideration are needed to develop an effective program. This submission is void of any measurables that would highlight and reflect a candidate's progression and comprehension. Instead, it relies on topics so broad that the details of the educational process are insignificant. In fact, the vagueness of this program makes it difficult for a reader to discern how the carrier even intends to administer the training.

SMART TD is greatly disappointed by Union Pacific's acceptance of the bare minimum. Despite having the freedom and latitude to offer training at intervals greater than the floor set by regulation, the railroad has embraced the *least* as its standard for educational opportunities. Whether it's the frequency of refresher training or the job aid utilized to communicate critical technological changes, the carrier has ensured minimal effort is appropriate and permissible via this program. More is needed to determine when a particular instruction method will be utilized or what constitutes a higher degree of instruction.

More is needed to ensure a quality training program capable of preparing individuals for the railroad environment in which they will be required to work. Structure and regiment are needed to fill the gaps in this program, and an emphasis on exposure and experience that meaningfully contributes to comprehension and preparedness needs to be present.

As reflected in the comments contained herein, SMART TD objects to much of the program as submitted.

Sincerely,

A handwritten signature in black ink, appearing to read "Jared Cassity", is positioned above the typed name. The signature is fluid and cursive.

Jared Cassity

Alternate National Legislative Director & Chief of Safety

SMART TD Comments on UP 242 Submission

In **Section 2: Training Persons Previously Certified**, Union Pacific (UP) provides the *Components of Ongoing Training*:

“A. Classroom Training

Conductors will be required to demonstrate their knowledge by the successful completion of a triennial written examination prior to certification or recertification. Attendance for the classroom training is mandatory and consists of an anticipated 10 hours, including an examination. The Program Administrator (PA) will keep appropriate records for each Conductor Certification training class. Union Pacific Railroad reserves the right to incorporate different training and qualification methodologies as technological improvements become available, e.g., interactive video, simulators, etc. The PA will be the person who makes the final determination on methods of training. These formal training sessions will be either on site and in a traditional classroom room setting or virtual classroom setting determined by class size and approved by the PA or designee. Knowledge testing shall be designed to examine the conductor’s knowledge of the railroad’s rules and practices for the safe operation of trains. Comprehensive operating rules and practices training class containing, at a minimum, the following subjects:

- a) Safety, Operating, Air Brake/Train Handling, and Applicable Federal Regulation anticipated 5 hours.*
- b) Physical Characteristics (territory specific) anticipated 1 hour.*
- c) Hazardous Materials anticipated 2 hours.*
- d) Use of any job aid that a railroad may provide to a conductor anticipated 2 hours.*

Computer based multiple choice examinations are administered in a closed book format, with the exception that employees are allowed to use the Instructions for Handling Hazardous Materials for train placement and switching requirements and Timetable if testing includes the ability to read and apply subdivision information. A passing score is as listed required in Section 3A item 3, is required for each examination to be eligible to perform the duties of a conductor.”

SMART TD is greatly concerned by the broad and ambiguous language contained therein. As written, significant inconsistencies can be borne by and from this program. Lateral discretion, as permitted in Appendix B of Part 242, should not result in *less than* educational situations for railroad workers, yet this is exactly what can result from this section. By omitting language defining how determinations are made regarding training and qualification methodologies, UP is permitting itself the ability to seek the fastest course and/or the more convenient course rather than the safest one. This means that subsequent changes to operations or management from within UP can result in less-than-ideal situations for employee training because the carrier fails to provide the criteria for its determination on how or when to utilize a certain method of instruction. Additionally, it is not

enough to assume that a change in technology will suffice to replace an instructor, nor is it acceptable to permit class size as justification for altering instructional methodology. Interestingly, this section states that “classroom training is mandatory and consists of an anticipated 10 hours, *including the examination*¹.” Yet, simple math will reveal that UP’s time allotted for each subject per this section equals ten hours without regard for the examination. As written, it would be impossible for UP to comply with its own program, as 10 hours of curriculum and time for examination would exceed the time allotted. This clearly would result in the disposal of curriculum in order to make up the lost time, which is detrimental to safety and a dereliction of duty.

Rationale is needed to ensure the appropriateness of the instructional method or resource selected, not just for a commenter to weigh in accordingly but also for a worker to understand how they are to be trained when presented with new technologies, new procedures, and/or new policies. UP must provide a matrix to exhibit its decision-making tree of how or when a particular method will be selected. This is not to take away from the latitude granted in the regulation but rather to ensure that an appropriate level of safety is maintained and not squandered at some point in the future, whether intentionally or not.

Additionally, not all employees should be treated the same. Newer employees may need refresher training sooner than 36 months. Under this program, there is no established procedure to offer them that opportunity. Similarly, more seasoned workers may also desire to have refresher training sooner than triennially. UP needs to address how it intends to educate employees seeking further instructional opportunities. Not all employees are the same, so a one-size-fits-all approach to safety doesn’t make much sense, which is all this Section offers.

Section 2. B. states,

“B. Classroom and/or Field Training

1. *Field training as required by regulation (i.e., Field Training Exercises; Hands- on Air Brake).*
2. *Information covering new technology, procedure changes, new equipment, etc. is provided through face-to-face meetings, networked interactive multimedia program, simulators, videos, programmed instruction booklets, operating manuals, safety meetings, quick reference cards, job aids, and/or other means.*
3. *Employee documents, including but not limited to job aids, timetables, operating rules, air brake and train handling rules, safety rules, hazardous materials regulations and restricted equipment rules are continuously provided (as required and/or when changes mandate) via the following formats:*
 - a. *Posted instructions*
 - b. *Formal documents*
 - c. *System Bulletins and Notices*

¹ Emphasis added

- d. *General Bulletins and Notices*
- e. *Broadcast Messaging System”*

This Section, in essence, provides no information whatsoever as to how the carrier intends to provide sufficient training. At best, it is a regurgitation of the regulation, which guides the railroad on how to develop a thorough and comprehensive program. Here, it is being used as a scapegoat to relieve itself of any real description of how it intends to perform training. To this point, it is impossible to comment on specifics as there are no specifics. At best, it is implied that UP intends to train its employees and not much else. This is woefully insufficient, and SMART TD wholly objects to this Section, as the critique permitted by the regulation is not possible in the absence of adequate information.

Sec. 2. C. states,

“C. Territory Qualifications for Main Track

Territory qualifications must be satisfied by certified conductors before operating over such territory except as outlined in 49 CFR 242.301 (e). The conductor will be tested on the operating instructions and physical characteristics pertaining to track speeds, methods of operation, timetable special instructions and/or any other characteristics of that territory. The number of familiarization trip(s) necessary will be based upon the complexity of the territory with a minimum of one round trip.

Factors considered in determining whether a Conductor has “regularly traversed” a territory include the complexity of the territory, how frequently the Conductor has traversed a comparable territory (CTC, ABS, TWC, grade, etc.), type of assignment, type of train movement authority, signal systems, grade, and any other factors that are considered significant to the operations of that territory. A minimum of 1 round trip per year is required.

Requirements for a certified conductor to operate over a territory which he/she has never operated:

1. *The conductor will be considered qualified over the territory once he/she has completed the required number of training trips on a train, which include the use of a simulator or other tools, as determined by the transportation manager; and*
2. *A conductor will be administered and required to pass a physical characteristics test in written or electronic form for each territory to demonstrate that the conductor is familiar with that territory.*

Requirements for a certified conductor that has not operated over a territory in the last twenty-four (24) months:

1. *The conductor will be considered qualified over the territory once he/she has completed one round trip on a train, or by using a*

simulator, video, job aids, or other tools as determined by the transportation manager.

2. *The conductor will be considered qualified if he/she has completed the requirements contained in Section 3 (a)”*

More context is needed to ascertain that an appropriate degree of safety is being met. This program lacks the criteria necessary to determine how a student will be evaluated aside from a subpar, sub-standard testing threshold that should not be acceptable to determining territorial knowledge. Additionally, there is no meaningful context as to how territorial complexity will be decided or how it will be applied to the territorial qualification process. UP needs to provide more information about its decision-making and how it intends to ascertain that an employee comprehends the complexities of the territory over which they are assigned to operate.

As written, the only thing discernable is that UP intends to have varying applications as to how it views territorial complexity and that a test will be administered. Missing from this section, however, are the details, as required by the regulation, on how it intends to do so. This section is severely deficient and underwhelming. As such, objections to particulars are near impossible, as they are absent from the program, and therefore, SMART TD wholly objects to this section.

In Section 2. D. the carrier provides that,

“D. Territory Qualifications for other than Main Track

The conductor will be required to be accompanied by a qualified employee who meets the territorial requirements where practicable or provided an appropriate up-to-date job aid.”

Again, description is needed. What is an appropriate job aid, and what circumstances are considered when determining which job aid will be utilized? Despite being labeled as “other than main track,” some of the railroad’s most difficult territory will fall under this particular category. It is not enough to just say that a job aid will be provided; context on the decision-making process and the quality of the job is needed to determine regulatory compliance and an acceptable degree of safety.

“Borrow-Out/Temporary Employees

For employees utilized on a temporary or borrow-out basis when relying on another railroad’s certification, Union Pacific shall determine that:

1. *The prior certification is still valid and in accordance with the provisions of §§242.201 and 242.407;*
2. *The prior certification is for the same type of service as the certification being issued under this section;*

3. *The person has received training on the physical characteristics of the new territory and have taken and passed a territory specific test covering the operating conditions of the territory in accordance with §242.119; and*
4. *The person has demonstrated the necessary knowledge by taking a rules exam consisting of not less than 100 questions and achieving a minimum passing score of 85% concerning the railroad's operating rules in accordance with §242.121."*

The objections aired in the previous sections are applicable here as well. The training, qualifying, and testing parameters within this program are in desperate need of context, improvement, and adequate standards.

Section 3: Testing and Evaluating Persons Previously Certified, provides that

- "A.** *Conductors will be required to demonstrate their knowledge by the successful completion of a triennial written examination prior to recertification. All exams are multiple-choice; the GCOR, Air Brake, and Safety questions are combined into one exam and the Air Brake and Train Handling questions of the combined exam are scored separately. The combined exam is administered in a closed book format, with the exception that employees are allowed to use the Timetable or System Special Instructions with Item 10 rule changes removed if testing includes the ability to use and apply that document appropriately. The Hazardous Materials and Physical Characteristics exams are open-book exams where Timetables and Union Pacific's Instruction for Handling Hazardous Materials (Form 8620) can be used. These formal training sessions will be onsite in a traditional classroom setting or virtual classroom setting determined by class size and approved by the PA or designee. The test shall:*
1. *Be objective in nature.*
 2. *Be administered in written or electronic form.*
 3. *Cover the following subjects:"*

SMART TD is deeply disappointed and troubled by UP's desire to do the least amount possible regarding the training and education of its certified conductors. It is not enough to set the frequency of training at the bare minimum, as it is a failure to properly ensure that employees are armed with the knowledge necessary to perform their job functions safely. By only offering training every three years, UP is abandoning its newer employees and/or employees who might be struggling to adjust to changes to operational rules and practices. Guidelines or protocols are needed to ensure that all employees are offered adequate training.

Additionally, the examination breakdown contained within Sec. 3. A. 3. is unacceptable. SMART TD has significant concerns regarding the passing score of at least one of the tests and the number of questions on all of them. Regarding training, consistency is key, including administering the applicable test(s). As written, the program fails that mark. While some lateral discretion is needed for a successful training program, the large variation in the number of exam questions is wholly objectionable.

Exams need to be consistent so that adequacy can be determined and so that fairness is assured. UP should not have the ability within its own program to change an exam based on operational whims or whatever pressures may be present. It is not in the interest of safety for one class or student to receive a 100 question test and another 150. UP needs to commit to its structure of examination.

Section 4: Training, Testing, and Evaluating Persons Not Previously Certified, A. Training provides that,

1. Classroom Training will include multimedia presentations and other technology concerning operating rules and practices, track authorities, familiarity with physical characteristics of the territory(ies), relevant federal safety rules, and company rules, policies, and procedures. Application of classroom training will occur in the field.
2. Structured Field Training includes hands-on, task-based training integrated throughout the comprehensive training program. Each student must demonstrate proficiency in the required skills.

The section lacks clarity and detail. It also lacks specifics on UP's contemplation of when or what methodology of instruction will be used. Again, consistency is needed in a quality training program. Yet, this section seemingly allows for an excess of freedom when it comes to the delivery of the curriculum. As written, it is much too vague, making the discernment of adequacy almost impossible for the commenter, the reader, or, more importantly, the student. More is needed here.

Sec. 4. A. also states that

Two weeks of classroom training covering the following topics, anticipated 80 hour(s). Topics stated below will be covered individually, but also can be part of other activities not covered in these section.

- o Safety – includes principles of safe work practices and procedures. Anticipated 26 hour(s).
- o Railroad Basics – includes freight car basics and other fundamental skills. Anticipated 8 hour(s).
- o Switching – includes exposure to handling freight equipment in context of switching. Anticipated 8 hour(s).
- o Rules – includes introduction to GCOR. Anticipated 26 hour(s).
- o Hazmat – includes inspecting, handling, and placement of hazmat shipments. Anticipated 6 hour(s).
- o Switch Assessment Final – includes switch alignment review and test. Anticipated 6 hour(s).

Does any of this training involve being hands-on with the equipment? If so, more information is needed to determine whether an adequate level of instruction is being met. It is not enough to simply

state that a set amount of time will be dedicated to an activity, as downtime when hands-on with equipment can be significant. This results in a student's time waiting in line to perform a task as counting toward the educational clock as provided therein. Training experiences need to be measured in repetition, as well as time. It is not fair to the student to have their time waiting in line or performing no function as receiving training.

This portion of the section is woefully insufficient. There are literally no measurables beyond the anticipated duration. As written, it is impossible to determine adequacy or even how UP intends to train students while in this phase of training.

Additionally, this section states,

“Two weeks of OJT with Qualified Instructor at their assigned terminal focused on Switchperson/Brakeperson OJT to include switching and yard familiarization. CIT will be required to complete the daily Conductor Checklist. Anticipated 80 hour(s).”

Again, this portion of the section is woefully insufficient. There are literally no measurables beyond the anticipated duration. As written, it is impossible to determine adequacy or even how UP intends to train students while in this phase of training.

Two weeks of classroom training covering the following topics, anticipated 80 hour(s)

- o Train Operations – includes main track operations, territory types, and paperwork application. Anticipated 34 hour(s)*
- o Hazmat – includes inspecting, handling, and placement of hazmat shipments. Anticipated 6 hour(s).*
- o Signals – includes signal function and anatomy. Anticipated 8 hour(s).*
- o Airbrakes – includes airbrake components, functions, testing, and inspections. Anticipated 24 hour(s).*
- o New Hire Final – includes GCOR, Airbrake, and Hazmat rules review and exam. Anticipated 8 hour(s).*

Two weeks of OJT with Qualified Instructor focused on main track operations and territory familiarization, minimum of 2 round trips.”

Sec. 4. A. in its entirety is woefully insufficient. There are literally no measurables beyond the anticipated duration. As written, it is impossible to determine adequacy or even how UP intends to train students while in these phases of training.

Our objections to Sec. 3. A. are also applicable for Sec. 4. B.

Sec. 4. C. provides,

“C. Evaluating Persons Not Previously Certified

1. *The CIT Checklist, Appendix 1, will be successfully completed. See also, Appendix 2, Proficiency Checklist Task Explanation for Conductor Certification. The checklist is completed by the CIT and a qualified instructor during the course of the training program.*

2. *Upon successful completion of all required training, testing, vision and hearing examination, checklist, and the proficiency evaluation, and the review of the individual's prior safety conduct as required by 49 CFR §242.109, a conductor certificate will be issued by Union Pacific Employee Certification & Licensing Department.”*

SMART TD is deeply troubled by the lack of consideration in UP’s development of its CIT Checklist, specifically the number of repetitions required to determine compliance. In large part, more than two repetitions are needed for a student to fully understand the steps required to perform a task safely or even to have full exposure to all of the types of an apparatus (e.g., switch, freight car, etc.) present on the territory. UP needs to put forth the effort necessary to ensure that comprehension has been achieved and just how many repetitions that will require. Two, as written for every task, is woefully insufficient.

SMART TD Comments on UP 240 Submission

Section 2: Selection of Supervisors of Locomotive Engineers and Remote-Control Operators states,

“Non agreement designated supervisors must demonstrate the ability to test and evaluate the knowledge and skill of TSE and /or RCO. This process is demonstrated in the following steps.

- *Demonstrate data analysis skills on event recorders in the form of teaching back to the course instructor.*
- *Assist and demonstrate operational testing skills in the field to a qualified operational testing manager.”*

This language lacks specificity. Measurables need to be included so that a commenter or student understands how an adequate level of knowledge is determined. As written, the carrier has full discretion in determining what is or is not qualified. The lack of a formal methodology is a detriment to this program and is a failure to ensure that the appropriate training is being administered to the individuals that will ultimately be responsible for student training.

Section 2 also states,

“A DSLE is required to take a computer-based training course consisting of not less than 20 knowledge check questions regarding UP engineer certification program, CFR Part 240. The DSLE must also take and pass a physical characteristics test of not less than 10 questions covering the territories in which qualifying engineers and RCO’s. The Program Administrator will keep appropriate records of training and tests.”

The testing seems woefully inadequate to determine the knowledge of a person who is going to serve as an instructor. At the very least, the DSLE should be required to pass the same examination as the students. Additionally, UP has failed to provide the criteria for a passing score. It is not enough to say that they will take a test. UP needs to determine what a passing score is to establish that a DSLE is qualified and so that a commenter can discern its appropriateness.

Also,

“The DSLE will make a minimum of one round trip(s) to qualify over the territory under their responsibility to ensure their ability to instruct and evaluate engineers to be qualified. If the DSLE/ADSLE does not operate a minimum of once each year in their territory he/she must take one familiarization trip over that territory to re-familiarize. If the DSLE works on grade

territory and has not operated a train over that territory within the last 5 months, they will be required to make a minimum of one familiarization trip over this grade territory.”

UP needs to include how qualification is determined. It is not enough to just say “minimum of one round trip(s).” For the vast majority of territories, one qualifying trip does not suffice. The carrier needs to provide criteria for how or when it considers a DSLE or student qualified.

Sec. 2 also provides,

“As needs for alternative or additional training arise, the curriculum may be adjusted. DSLE’s will be required to participate in an anticipated 30 minutes to one-hour computer based refresher training conducted on a triennial basis. Training will be specific to requirements pertaining to the role and responsibilities of a DSLE. The Program Administrator will keep appropriate records of the refresher training.”

The entirety of this paragraph is woefully insufficient. The training needs to be more thorough and more frequent. A maximum of 60 minutes every three years is deplorable.

Section 3: Training Persons Previously Qualified provides,

“Union Pacific Railroad provides skills proficiency and knowledge training for previously certified TSE’s, RCO’s, and LSE’s. Rules and training required to maintain certification is conducted triennially. Any significant operational changes since the last training are to be addressed during this training. Instructors are available to answer questions and provide additional instruction. Attendance for the classroom training is mandatory and consists of an anticipated 10 hours, including an examination. The Program Administrator (PA) will keep appropriate records for each Engineer Certification training class. Union Pacific Railroad reserves the right to incorporate different training and qualification methodologies as technological improvements become available, e.g., interactive video, simulators, and PTC. The PA will be the person who makes the final determination on methods of training. All topics required by 240.123(b) will be covered and will highlight new and/or revised rules, operating practices, and the introduction of new technology. Recertification Knowledge and Skills Testing, including physical characteristics, will be covered in the training sessions. These formal training sessions will be on site and in a traditional classroom room setting or virtual classroom setting determined by class size and approved by the PA or designee. The following subjects will be covered in this triannual training session. Each subject has listed an anticipated amount of time that will be spent on each subject.

- *Safety, Operating, Air Brake/Train Handling, and Applicable Federal Regulation anticipated 5 hours.*

- *Physical Characteristics (territory specific) anticipated 1 hour.*
- *Hazardous Materials anticipated 2 hours (TSE/RCO).*
- *New Technology (If applicable) anticipated 2 hours.”*

SMART TD is greatly concerned by the broad and ambiguous language contained therein. As written, significant inconsistencies can be borne by and from this program. Discretion, as permitted in Appendix B of Part 240, should not result in *less than* educational situations for railroad workers, yet this is exactly what can result from this section. By omitting language defining how determinations are made regarding training and qualification methodologies, UP is permitting itself the ability to seek the fastest course and/or the more convenient course rather than the safest one. This means that subsequent changes to operations or management from within UP can result in less-than-ideal situations for employee training because the carrier fails to provide the criteria for its determination on how or when to utilize a certain method of instruction. Additionally, it is not enough to assume that a change in technology will suffice to replace an instructor, nor is it acceptable to permit class size as justification for altering instructional methodology.

Interestingly, this section states that “classroom training is mandatory and consists of an anticipated 10 hours, *including the examination*¹.” Yet, simple math will reveal that UP’s time allotted for each subject per this section equals ten hours without regard for the examination. As written, it would be impossible for UP to comply with its own program, as 10 hours of curriculum and time for examination would exceed the time allotted. This clearly would result in the disposal of curriculum in order to make up the lost time, which is detrimental to safety and a dereliction of duty.

This section also states,

“Course content will be revised and updated periodically by Union Pacific’s Rules Team to ensure TSE’s, LSE’s and RCO’s receive a progressive education covering new technology, terminology (including changes in terminology), along with changes in rules and railroad operating practices, as determined from a review of Timetable Special Instructions, General Orders, and job aids. The determination of what items or issues are incorporated into the training regarding the above will be decided by the PA or his/her designee.”

Labor respectfully requests that the applicable employee representatives be included in this process. Employees working the ballast are best suited to have their finger on the pulse of what training is needed and how best to deliver it when there are operational changes and the introduction of new technologies.

This section goes on to provide,

¹ Emphasis added

TSE's who have not operated over a specific territory for a period of twelve consecutive months must make a minimum of (1) round trip.

TSE, LSE or RCO not qualified on a territory will be provided a minimum of one (1) round trip with an engineer pilot or by operating on a simulator specific to the respective territory. The TSE, LSE or RCO must pass a territorial qualification exam of a minimum of 10 questions.

This portion of the section is insufficient. With rare exception, one round trip does not suffice for declaring someone qualified on a territory. This is especially true for the locomotive engineer craft. UP needs to create a criteria that contemplates qualification periods for each of its subdivisions. Additionally, more description is needed for the testing process. Rather than just arbitrarily list a number of questions, UP should provide the specifics of what it intends to test (i.e., plant locations, switch locations, permanent speed restrictions, thru-truss bridges, etc.). This section should also provide that a pilot is needed for the qualification process.

The section goes on to state:

“Except as provided in 240.231 (c) (1-4), TSE's, LSE's or RCO's that do not have experience in terminal operations at a particular location will be required to qualify by operating in the terminal area for (1) hour or (10) miles with a qualified engineer (Pilot) or the respective DSLE/DSRCO who will determine the Engineer or Remote-Control Operator is qualified to operate in that terminal.”

Territorial qualification should be taken seriously, especially considering the vast majority of accidents and incidents occur within yard limits. The provisions contained herein are pathetic. With the rarest of exception, one hour's worth of familiarization is woefully insufficient.

SECTION 4: TESTING AND EVALUATING PERSONS PREVIOUSLY CERTIFIED offers,

*“**Periodic Rules Examination:** Union Pacific Railroad will administer examinations at least triennially to test the knowledge level of TSE's, LSE's or RCO's. Previously Certified TSE, LSE, and RCO who have not operated in 365 or more days as an engineer, or whose certification has been suspended, or revoked must take a return to service examination of not less than 100 questions and must achieve a minimum score of 85% prior to returning to service.”*

This language is too ambiguous. As stated herein and throughout our comments on UP's 242 program, consistency is needed. As written, UP would possess the ability to unilaterally change its testing schedule or frequency without guidance or oversight. This is not in the interest of safety. The testing cadence should be fixed and free from external pressures and operational whims.

Additionally, the structure or size of the test also needs to be consistent. It should not be permissible for the carrier to have the ability to administer tests of varying scope and content. Consistency is needed to evaluate the effectiveness of the testing and training process.

Additionally, the examination breakdown contained within Sec. 4. is unacceptable. SMART TD has significant concerns regarding the passing score of at least one of the tests and the number of questions on all of them. Regarding training, consistency is key, including administering the applicable test(s). As written, the program fails that mark. While some lateral discretion is needed for a successful training program, the large variation in the number of exam questions is wholly objectionable.

Exams need to be consistent so that adequacy can be determined and so that fairness is assured. UP should not have the ability within its own program to change an exam based on operational whims or whatever pressures may be present. It is not in the interest of safety for one class or student to receive a 100-question test and another 150. UP needs to commit to its examination structure.

“Periodic Skill Performance Examination: *Union Pacific Railroad will examine and evaluate the skill performance of TSE, LSE, or RCO. The skill performance for TSE/RCO will be evaluated while at the controls of a train or simulator by the DSLE/DSRCO. LSE skill performance evaluations are conducted by the DSLE’s direct observation. Each Supervisor will use a standardized evaluation scoring matrix to ensure the evaluation is administered consistently using all performance skills data. See Appendix A, “Criteria for Pass/Fail of an Evaluation or Exam,” for detailed performance evaluation information.*

Union Pacific Railroad uses TS-2 model simulators for training and skills maintenance purposes. These simulators can be used to evaluate skill performance of engineers or to help maintain skills proficiency for certified engineers who are cutback to train service or who infrequently work as locomotive engineers. Remote control simulators can also be used to perform observation rides and recertification rides of previously certified Remote-Control Operators. When utilized for the purposes of recertification a field observation to determine the RCO can safely operate the RCL under actual field operating conditions must be performed before a certificate is issued.

Union Pacific Railroad uses Virtual Ride Along tools to evaluate skill performance live on an actual train by a DSLE. VRA applications include DVR tool to display inward and outward camera views, LDARS tool to display event recorder data, and a Display Server tool to display PTC screen. APPENDIX F Virtual Ride Along.”

SMART TD objects to and is concerned with the practice of using simulators for evaluation, qualification, observation, and/or recertification. In principle, simulators, especially RCO simulators, are too limited in function to fully simulate the actual experience of operating a locomotive, whether traditional or RCO. These functions should only be performed through the use of direct observation. If simulators are to be used, it should be in an extremely limited capacity. UP needs to define how much of its training it intends to perform on a simulator so that a reader can

discern a level of adequacy. In other words, simulators should not be relied upon to perform training but rather to expose students to extenuating circumstances that may not be safe or appropriate in the actual working environment.

The section also states,

“Duration of Skills Performance Exams: *The minimum duration of an applied knowledge and skills performance test for a TSE shall be a minimum of 4 hours or 50 miles or may be met by traversing the entire route when less than the minimum requirement to effectively evaluate the person’s ability to operate the train in freight service during which the engineer being evaluated is at the controls and actively involved in the operation of a train.*

Previously certified TSE’s working yard/local service, the minimum duration of an applied knowledge and skills performance test for a TSE shall be a minimum of 2 hours or 35 miles or met by observing 2 hours of active switching/movement from the ground (if accessible) in conjunction with reviewing the event recorder data for validation to effectively evaluate the TSE’s ability to operate the train while being evaluated at the controls and actively involved in the operation of a train.

The minimum duration of an applied knowledge and skills performance test for RCO shall be a minimum of 2 hours to effectively evaluate the RCO’s ability to perform the tasks relative to remote control operation during which the RCO being evaluated is at the controls and actively involved in the remote-control operation.

The minimum duration of an applied knowledge and skills performance test for LSE shall be a minimum of 2 hours to effectively evaluate the person’s ability to operate the locomotive(s) in locomotive servicing service during which the engineer being evaluated is at the controls and actively involved in locomotive(s) operation.”

Once again, consistency is needed. UP should not possess the discretion or the ability to set different testing durations for each individual student. By setting the floor of testing durations via minimum timelines, the maximum remains permissible and unlimited, meaning that some employees could be treated differently and exposed to much more lengthy or difficult testing practices. UP must establish and provide the principles and criteria it intends to test upon. The test should not be figured in time, but rather content, context, and practices.

Additionally, the section provides,

“Scoring of Skills Performance Exams: *The skills performance exams will be in the form of tasks rated on a numeric scoring system consisting of categories the employee will be evaluated on. Each category reflects the maximum points it is worth, with a total accumulative value of 100. Compliance with the category allows for full points, while a rules*

failure deducts full point value for the category. Any deficiencies observed during a ride observation are reviewed with the TSE, SLE, or RCO at the conclusion of the event. Successful completion requires achieving an overall passing score of 80 percent in accordance with §240.211. See Appendix A, “Criteria for Pass/Fail of an Evaluation or Exam,” for detailed performance evaluation information.”

UP needs to include how it intends to address the questions missed by the student. It is not enough to just accept a passing grade. The carrier should be obligated to meet its due diligence in ensuring a student’s comprehension.

SECTION 5: TRAINING, TESTING AND EVALUATING PERSONS NOT PREVIOUSLY CERTIFIED states,

*“**Student Train Service Engineer (STSE) Instruction:** STSE candidates will attend a minimum of seven weeks of formalized classroom instruction. Each subject has listed an anticipated amount of time that will be spent on each subject.*

- *Locomotive mechanical systems anticipated 8 hours.*
- *Locomotive and train air brake systems anticipated 8 hours.*
- *Train makeup and helper placement anticipated 4 hours.*
- *Air Brake and Train Handling rules and application anticipated 48 hours.*
- *Operating rules anticipated 10 hours.*
- *Safety rules and application anticipated 2 hours.*
- *Hazardous materials training anticipated 2 hours.*
- *Company policies and procedures anticipated 1 hour.*
- *Timetable instruction anticipated 6 hours.*

STSE’s complete self-guided computer-based training on the general aspects of Positive Train Control, take written exams, and receive hands-on instruction as required under 49 CFR Part 236.927 and 236.1047, including a minimum of four hours on the simulator. Classroom and onthe-job training modules vary based on prior training and experience and the type of work performed at each location. The program consists of 35 days of classroom training, including simulator training and a minimum of nine weeks OJT not to exceed a combined six months of training predicated on the number of territories the STSE may need to qualify. A detailed breakdown of the classroom curriculum can be found in the weekly agendas. An STSE Proficiency checklist is attached as Appendix B.”

This portion of the section doesn’t make sense. Perhaps if Appendix B was included with the program, it might, but there is not enough curriculum here to equal the seven weeks of formalized classroom instruction. Clarification is needed to determine whether the training being provided is adequate or not.

Also, regarding the exam matrix, the previous objections apply.

The section states further,

“Student Remote Control Operators (SRCO) Instruction: *Student SRCO candidates will attend a minimum of ten days of formalized classroom instruction. The classroom training has listed an anticipated amount of time that will be spent on each subject.*

- *Basic mechanical systems anticipated 3 hours.*
- *Operating Rules anticipated 2 hours.*
- *Safety Rules anticipated 2 hours.*
- *Air Brake and Train Handling rules anticipated 3 hours.*
- *Timetable instruction anticipated 2 hours.*
- *Operating practices anticipated 1 hour.*
- *Hazardous materials training anticipated 2 hours.*
- *Federal regulations anticipated 1 hour.*
- *Company policies and procedures anticipated 1 hour.*

SRCO’s complete a self-guided computer-based training on the general aspects of Positive Train Control, take exams, and receive hands-on instruction as required under 49 CFR Part 236.927 and 236.1047. On-the-job training checklists may vary based on the type of work performed at each location. Generally, the program consists of ten days of classroom training, including simulator training, followed by a minimum of five days of OJT predicated on the number of territories the SRCO may need to qualify. An SRCO Proficiency checklist is attached as Appendix B.”

SMART TD is troubled and discouraged by UP’s willingness not to perform training above the bare minimum as required by the regulation. Two weeks is not a sufficient training period, but this is especially true for newly hired employees having just completed conductor certification being subsequently forced to train as an SRCO. Additionally, like the item before, there is too much ambiguity within this section to determine how or what UP intends to teach. The timelines do not equal the ten days scheduled for training. Clarification is needed.

SMART TD is also troubled by what appears to be a simple copy and paste approach to the development of this program. Ideally, each topic should be contemplated on its own merits for adequacy. However, in this section, UP advises how it intends to provide instruction on positive train control for RCO operations. Clearly, this is not sensible and its inclusion is concerning.

Also,

“Skill Proficiency and Performance: Skills proficiency checklists of the tasks that are required to become fully qualified and certified for a position will be managed and completed by the DSLE or instructor engineer and student. The skills performance evaluation /ride will be administered by a DSLE for TSE and LSE positions or DSRCO for RCO positions. The duration of the ride will be a minimum of 4 hours or 50 miles for TSE positions, 2 hours for LSE and RCO positions to demonstrate proficiency to the satisfaction of the DSLE or DSRCO and achieving a passing score for the given territory/assignment. The model TS-2 simulators may also be used for this purpose. Proficiency checklists are attached as Appendices B & C.”

The testing objections waged previously are also applicable here. Testing should be based on criteria, not time.

SECTION 6: MONITORING OPERATIONAL PERFORMANCE OF CERTIFIED ENGINEERS LOCOMOTIVE SERVICING ENGINEERS, AND REMOTE-CONTROL OPERATORS

“Each calendar year:

- *a DSLE will monitor each TSE’s or LSE’s performance by riding on an actual train/locomotive, observing performance utilizing VRA tools on an actual train/locomotive, observing the TSE/LSE while operating a model TS-2 simulator, or reviewing results of an electronic event recorder.*
- *a DSRCO will directly observe Remote Control Operators’ performance while operating remote equipment, review results of an electronic event recorder, or observe the Remote-Control Operator while operating a RCO simulator.”*

SMART TD objects to the observation of employees while performing on a simulator for the reasons already mentioned within these comments.

This section also provides that,

“The minimum duration of operational performance rides for TSE shall be minimum of four (4) hours or 50 miles to effectively evaluate the person’s ability to operate the train in service during which the engineer being evaluated is at the controls and actively involved in train or locomotive operation. The same standards would apply to TSE conducting their performance evaluation rides on a simulator. A TSE assigned to yard/local service must be observed for a minimum of two (2) hours or 35 miles while actively engaged in representative duties. Time spent while delayed, stopped, or otherwise not actively engaged in representative duties will not be counted toward the two (2) hour minimum observation requirement.

The minimum duration of operational performance rides for RCO or SRCO shall be (minimum of (1) hour) to effectively evaluate the person's ability to operate the train in this type of service during which the RCO/SRCO being evaluated is at the controls and actively involved in train or locomotive operation. Time spent while delayed, stopped, or otherwise not actively engaged in representative duties will not be counted toward the two (1) hour minimum observation requirement.

LSE must be observed for a minimum of (2) hours while actively engaged in operating a locomotive. Time spent while delayed, stopped, or otherwise not actively engaged in operating duties will not be counted toward the one (2) hour minimum observation requirement.”

As stated previously, testing based on time is insufficient. Testing should be based on the job's responsibilities and functions, not exposure to observation. This is true for the entirety of this section, not just the portion above.

Attachment D

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

NATIONAL DIVISION

7061 East Pleasant Valley Road
Independence, Ohio 44131



Phone: 216.241.2630

Fax: 216.241.6516

www.ble-t.org

EDWARD A. HALL

National President

VIA ELECTRONIC AND FIRST-CLASS MAIL

May 7, 2024

Mr. Kevin Lewis
FRA Program Manager, Engineer and Conductor Certification
Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: Union Pacific Part 240 Certification Program Submission

Dear Mr. Lewis:

These comments are submitted by the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference of the International Brotherhood of Teamsters (“BLET”), which is the duly designated and recognized collective bargaining representative for over 31,000 active locomotive engineers and trainmen. Consequently, we have a vested interest in the safety and effectiveness of training and certification for rail workers.

On February 16, 2024, the Union Pacific Railroad (UP) submitted its Part 240 Engineer Certification Program documentation to the FRA. The submission describes UP’s responsibilities and activities to provide all locomotive engineers with adequate training as required by 49 CFR 240. Too often, railroads have provided the bare minimum training that does not adequately prepare operators for the dangers of the job, and we are pleased that the FRA has encouraged labor organizations to comment on these programs and suggest areas for improvement. Training programs are possibly the most safety critical operation a railroad will conduct – because all subsequent operations are based on and build upon initial training.

Section 2:

In Section 2, the UP states, “The DSLE will make a minimum of one round trip(s) to qualify over a segment of his/her territory to ensure their ability to instruct and evaluate engineers.”

The BLET argues that it would be better to have the minimum number of round trips set for each run as most territories have multiple runs over multiple subdivisions and are usually directional runs. Each trip may have drastically different characteristics that require unique expertise.

Section 3:

In Section 3, the UP states that “Union Pacific Railroad reserves the right to incorporate different training and qualification methodologies as technological improvements become available, e.g., interactive video, simulators, and PTC.”

The BLET should be allowed input concerning training methodologies as they are incorporated with technological advancements. Not all training methods provide a sufficient level of knowledge and experience to participants. Even the term “simulator” can refer to multiple types of technology that vary widely from complete physical recreations of control panels to crude point-and-click, computer-generated graphics. The FRA should review new training methodologies and consider the feedback provided by our members.

Further, in Section 3, the UP allots an anticipated 5 hours for “Safety, Operating, Air Brake/Train Handling, and Applicable Federal Regulation.” Five hours is not enough time to review this amount of material in triannual recertification training. In three years, there may be many updates to regulations and train handling procedures. Particularly as Positive Train Control (PTC) becomes implemented across the rail network and as energy management systems are also being increasingly deployed, train handling and related rules may have changed so significantly since the locomotive engineer was last certified as to be almost entirely new.

Section 4:

In Section 4, the UP states,

Employees who fail to achieve a passing score on the first attempt will be offered an opportunity on the same day to retake the questions missed. Employees who fail to achieve a passing score on the questions missed will have their certificate suspended and may not work in any craft or class of service until the successful completion of the examination. Employees who decline to take the questions missed on the same day or fail to achieve a passing score on the questions missed will be given an opportunity to re-examine the next day but not more than 1 week from a failed attempt or as required by the collective bargaining agreement. In the event of a second failure, employees will be allowed a third and final attempt. Failure to pass the third attempt results in denial of certification.

The Eastern District’s Instruction-Examination Classes-Operating Rules Agreement, dated September 26, 1994, allows an Engineer 6 months to pass failed exams. Similarly, the Missouri Pacific Upper Lines Agreement governing the UP Southern region allows locomotive engineers to retake questions missed until a passing score is achieved. To correct this, the following should be added at the end of the above-quoted paragraph: “or as required by the collective bargaining agreement.”

Further in Section 4, the UP states that “Union Pacific Railroad can use Virtual Ride Along tools to evaluate skill performance live on an actual train by a DSLE. VRA applications include DVR tool to display inward and outward camera views, LDARS tool to display event recorder data, and a Display Server tool to display PTC screen.”

The BLET requests that provisions be added to the plan to require that locomotive engineers be notified at their on-duty time if they will undergo virtual skills tests during that shift along with details of the specific 50-mile segment of the virtual ride. Additionally, the same 50-mile segment should be used for all virtual skills tests on that subdivision. These provisions will ensure fairness and equivalence of skills among locomotive engineers operating on the same subdivision and allow engineers to adequately prepare for the virtual skills tests.

Section 5:

In Section 5, the UP provides for a minimum of nine weeks of on-the-job training. However, this is far too little. A number of weeks is an imprecise measure of experience and instead, the plan should detail a minimum number of trips that is based on the number of years an individual has been employed in the Train Engine and Yard craft.

Section 6:

In Section 6, the UP states the following:

At least one unannounced operational performance test will be conducted each calendar year for each TSE, LSE and RCO. The test will be designed to evaluate compliance with provisions of the railroads operating rules, timetable, or other directives that requires an affirmative response by the TSE, LSE, and RCO to less favorable conditions than that which existed prior to the initiation of the test. A copy of these test results will be entered into the system within 30 days.

The BLET finds 30 days to be too long. It would be beneficial to all parties if these were entered quicker into the system. This would allow any discrepancies to be identified quicker and allow for an investigation into the matter much sooner. We request the 30-day timeline to be changed to a maximum of 10 days.

Section 7:

In Section 7, the UP states:

The candidate will be required to complete 8 hours of mandatory classroom training in a discussion format, including taking an exam and achieving a minimum score of 85% percent on the exam. There will be one training session for an anticipated 8 hours once every 36-month recertification cycle. The classroom training will consist of approximately 2 hours on GCOR operating rules and air brake and train handling (ABTH), 1 hours on safety rules, 2 hour on mechanical/methods of safe train handling, including familiarity with physical characteristics and pertinent federal regulations, and 3 hour for examination of material. The exam will address the topics of the training, with exam questions, with emphasis given to safety and operating rules and ABTH. Following successful completion of training and examination, the individual will be issued a student certificate. The individual will then be required to complete a period of territorial familiarization with an instructor engineer. The length of this territorial familiarization will be 2 round trips based on the evaluation of a DSLE as prescribed in 49 CFR 240.213. At the successful completion of this territorial familiarization, the individual will be given a skill performance evaluation

Mr. Kevin Lewis

(4)

May 7, 2024

(240.127) that will be a minimum of one hour or 8 to 12 miles predicated on the location and a territorial exam of a minimum of 10 written questions with a required score of 80% and, if successful, will be issued a UP engineer certificate for the designated territory the person has been qualified on and only in the appropriate class of service.

We note again that this does not conform with the Eastern District's Instruction-Examination Classes-Operating Rules Agreement. Within that agreement it allows an Engineer 6 months to pass failed exams.

Conclusion

We appreciate the opportunity to submit comments on UP's proposed Part 240 Certification Program and are happy to discuss these comments further with both the FRA and UP at any time. We are committed to ensuring that all locomotive engineers are sufficiently trained to operate safely.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized initial 'G' followed by a long, sweeping horizontal line that tapers to the right.

National President

cc: M. L. Wallace, First Vice President
D. P. Estes, National Secretary-Treasurer