The Association of American Railroads (“AAR”) and the American Short Line and Regional Railroad Association (“ASLRRA”), on behalf of themselves and their member railroads, submit the following comments in response to FRA’s proposal to revise its regulation governing the qualification and certification of locomotive engineers.\(^1\) FRA proposes to consolidate the handling of engineer and conductor petitions for review into a new Operating Crew Review Board (“OCRB”), and other changes that FRA claims will result in cost savings and benefits for railroads and locomotive engineers by adopting the conductor certification regulation’s streamlined processes developed twenty years after the engineer certification regulation. The railroads take no issue with the creation of the unified OCRB but have concerns with some of the additional burdens created by this notice of proposed rulemaking (“NPRM”).

I. FRA’s Changes to “Instructor Engineer” Definition are Burdensome and Unnecessary

FRA proposes to revise the definition of “instructor engineer” to make it similar to the definition of “qualified instructor” in Part 242. Specifically, FRA is proposing to amend the

\(^{1}\) AAR is a trade association whose membership includes freight railroads that operate 83% of the line-haul mileage, employ 95% of the workers, and account for 97% of the freight revenues of all railroads in the United States; and passenger railroads that operate intercity passenger trains and provide commuter rail service. ASLRRA is a non-profit trade association representing the interests of approximately 450 short line and regional railroad members and railroad supply company members in legislative and regulatory matters. Short lines operate 50,000 miles of track in 49 states, or approximately 38% of the national railroad network, touching in origination or termination one out of every four cars moving on the national railroad system, serving customers who otherwise would be cut off from the national railroad network. 84 Fed. Reg. 20,472 (May 9, 2019).
definition to establish a role for employee representative participation and to add requirements for qualification. These changes are unnecessary and create an additional, unjustified burden to the railroads.

An “instructor engineer” is currently defined as a person who: (1) is a qualified locomotive engineer under Part 240; (2) has been selected by the railroad to teach others proper train handling and procedures; and (3) has demonstrated an adequate knowledge of the subjects under instruction. FRA proposes to change the definition of “instructor engineer” to mean a person who has demonstrated, pursuant to the railroad’s written program, an adequate knowledge of the subjects under instruction and, where applicable, has the necessary operating experience to effectively instruct in the field, and has the following qualifications: (1) is a certified locomotive engineer under Part 240; (2) has been selected as such by a designated railroad officer, in concurrence with the designated employee representative, where present, to teach others proper train handling procedures; or (3) in the absence of the concurrence provided in (2), has a minimum of 12 months service working in the class of service for which the person is designated to instruct.

FRA should not modify the definition of instructor engineer simply for the sake of conforming Part 240 with Part 242. There are notable differences between the role of an instructor engineer under Part 240 and a qualified instructor under Part 242. For example, under Part 242, a qualified instructor can provide input regarding the proficiency of multiple conductor trainees, while under Part 240, an instructor engineer is assigned to one trainee, who rides with that particular instructor engineer consistently to monitor, pilot, or instruct the trainee on his or her operation of a locomotive. Numerous instructor engineers are necessary for a railroad program to train multiple locomotive engineers concurrently. Additionally, a Part 240 instructor engineer is not responsible for evaluating an individual trainee’s performance in the same manner as a designated supervisor of locomotive engineers pursuant to § 240.105 or in the manner a qualified instructor is expected to make under Part 242.

The additional requirements proposed for a railroad’s selection of an instructor engineer to be made in concurrence with a designated employee representative and for an instructor engineer to have a 12-month service minimum are not merited. The railroad is ultimately responsible for the safety of engineers trained through its program, including the requirement to revoke instructor engineer licenses in cases of noncompliance with § 240.117(e); an employee representative does not have the safety accountability of the railroad, and in many cases defends the instructor engineer in cases of license revocation. Additionally, FRA provides no justification to support the proposed 12-month minimum service requirement. Many railroads have operations where there is not an employee at a particular location with 12 months of service; however, the locomotive engineers on-site are in the best position to serve as instructor engineers to trainees at their locations. In addition to creating confusion where none currently exists, conforming the definition of “instructor engineer” in Part 240 to that of a “qualified instructor” in Part 242 adds administrative burdens to the railroads in the management of their many instructor engineers.
II. FRA Should Not Amend the Definition of “Main Track”

FRA proposes to adopt Part 242’s definition of “main track,” which would mean a track upon which the operation of trains is governed by one or more of the following methods of operation: timetable; mandatory directive; signal indication; positive train control as defined in Part 236; or any form of absolute or manual block system. The proposed inclusion of PTC in this list is both problematic and incorrect, as PTC is not a “method of operation.” As the FRA has stated in material located on its website, “method of operation” is a term which is best defined as the means by which a train has authority for movement.” PTC is not a means by which a train has authority for movement, but is instead a system that must, by statute, prevent train-to-train collisions, over-speed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position. Alternatively, AAR and ASLRRRA propose that FRA define “main track” in both Parts 240 and 242 to mean “a track upon which the operation of trains is governed by one or more of the following methods of operation: timetable; mandatory directive; and signal indication. Main track includes track on which positive train control, as defined in Part 236 of this chapter, is used and track on which absolute or manual block systems are used.”

Further, the proposed references to “yard” and “other than main track” are unnecessary for Part 240 certification. These terms are appropriate in Part 242 given the unique duties of a conductor in these areas. A locomotive engineer’s duties, however, are not differentiated in that way. Accordingly, adding the terms “yard” and “other than main track” are not necessary for conformity and would impose additional regulatory burdens on railroads’ Part 240 programs.

III. FRA Should Not Create a New RCL Certification Class

With this rule change, FRA proposes a new certification program for individuals who operate remote control locomotives (“RCL”). In addition to adding the administrative burden of an additional certification class without any stated benefit, FRA also creates a great deal of confusion with this proposed change. Not all train service engineers are RCL operators – in many cases, due to collective bargaining restrictions, conductors are the class of employees that operate RCLs. Further, the railroads have worked closely with FRA since the agency issued its RCL safety advisory in 2001 on RCL training programs and operating practices and are not aware of any need for this drastic change.

Instead of adding remote control operators and student remote control operators as additional classes of locomotive service, FRA should recognize RCL certification and training as separate from train service, locomotive service and student engineer certification and training. There is no justification to create a new locomotive certification class for RCL operators.

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IV. FRA Should Amend its Approach Regarding Joint Operations

FRA should amend its approach regarding certification and training obligations for locomotive engineers in joint operations. In the preamble to the Part 242 final rule, FRA explains that, while Part 240 puts the burden on the controlling railroad, Part 242 puts the burden on the employing railroad. The perceived unfairness rests on the fact that it is not always feasible for the controlling railroad to make all the determinations required by § 242.119. The employing railroad may provide the controlling railroad with a long list of hundreds or thousands of locomotive engineers that it deems eligible for joint operations; following up on a long, and ever-changing list is made much more difficult since a controlling railroad would not control the personnel files of the conductors on this list. FRA should take a conforming approach with this rulemaking and place the burden of training and qualification of locomotive engineers on the employing railroad, a deregulatory measure that would reduce administrative and operational burdens.

V. FRA Should Not Add Additional Training Requirements

FRA proposes to add a requirement at §240.123 that a person not previously trained must be train in compliance to the training rule pursuant to 49 C.F.R. § 243.101. Further, FRA states that railroads’ on-the-job training should be modified to be compliant with Part 243.103(b), which would necessitate a resubmittal of a railroad’s Part 243 program to FRA. However, FRA fails to identify any specific deficiencies with existing railroad training plans for locomotive engineers. A requirement to train previously untrained individuals would require a substantial revision of existing training programs, which impose substantial burdens particularly on smaller railroads. Railroads have successfully implemented their training standards for locomotive engineers for almost 30 years. FRA should not impose additional training requirements for locomotive engineers, especially as the training regulations in Part 243 go into effect in 2020.

FRA further burdens the railroads, in particular smaller railroads, by adding restrictive language to Appendix B to Part 240 that permits railroads to have their locomotive engineers trained by another entity as long as the other entity “complies with the requirements for training organizations and learning institutions in § 243.111 of this chapter.” Many small railroads work together when training their employees. For example, one railroad may conduct an operating rules class that may be attended by employees from multiple railroads. This would cover the operating rules training requirement in Part 240 for all the attending railroads. However, under FRA’s proposed inclusion of Part 243, the training railroad would have to be approved as a training organization. This will complicate the training of engineers, create inefficiencies and adversely affect safety. Additionally, FRA has not provided a cost analysis regarding these proposed program modifications or training organization or learning institution requirements in the NPRM. Requiring railroads to modify the Part 240 programs and training due to a Part 243 reference is unnecessary, redundant and creates an unnecessary economic burden, especially on smaller railroads.
VI. FRA Should Not Shift an Administrative Burden onto the Railroads

FRA proposes to amend § 240.405(d) to require a railroad to serve a copy of its response in an OCRB proceeding to both the petitioner and the petitioner’s representative, if any. This presents an unnecessary new burden on the railroad. A representative at a certification hearing may not be the same as the representative who assisted the individual in filing the petition. Accordingly, this requirement that the railroad track down and provide service to the representative in the hearing creates an administrative burden without providing a meaningful benefit.

Respectfully Submitted,

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