

Enclosure: Norfolk Southern Railway Company Conductor Certification Program Review

Section 1: General Information and Elections

FRA takes no exception to the contents of Section 1.

Section 2: Training Persons Previously Certified

Under § 242.119(l), NS has the latitude in selecting the specific subject matter to be covered, the duration of the training, the method of presenting the information, and the frequency with which the training will be provided. However, as provided in Appendix B to Part 242, NS must describe how it will use that latitude to assure that its conductors remain knowledgeable concerning the safe discharge of their responsibilities so as to comply with the performance standard set forth in § 242.119(l). Accordingly, in Section 2 of NS' submission, NS must describe how it will use that latitude to assure that its conductors remain knowledgeable concerning the safe discharge of their responsibilities to comply with the performance standard set forth in § 242.119(l).¹

Overall, FRA finds this section of NS' submission lacking detail to permit effective review of the NS training program. Specifically, NS has not provided any detail regarding the training program in terms of the frequency and duration of the training sessions, the training environment employed (for example, use of classroom, use of computer-based training, use of multimedia presentations, and use of on-job-training), and which aspects of the program are voluntary or mandatory.

Under A.: This section does not describe the training program in any detail. The language is vague and does not contain specifics required in Appendix B to Part 242. The introduction begins with the educational program "may" consist of the following. What training topics will be covered in the classroom environment and each training session's duration? What is the length of the entire training program, and at what frequency is the training provided? Also, NS has not articulated how posted instructions and/or formal documents such as system bulletins are used as training tools.

Under A.6.: Regarding remedial training, what is considered "senior transportation officer," and how does that individual decide on the remedial training program? What criteria are used in developing the remedial training program? How is remedial training different than standard training? Is there any oversight that is provided?

Under B.: There is no detail provided regarding the training environment used for each topic listed, nor is there any detail provided regarding the training duration and frequency on each of the topics.

¹ Pursuant to Appendix B of Part 242, NS' program must, among other things, "contain sufficient detail to permit effective evaluation of the railroad's training program in terms of the subject matter covered, the frequency and duration of the training sessions, the training environment employed (for example, use of classroom, use of computer based training, use of film or slide presentations, and use of on-job-training) and which aspects of the program are voluntary or mandatory."

Under C.1.: NS' program states that the number of requisite training trips for territorial familiarization "will be determined by the transportation manager" without explaining the procedure employed by such a manager to make that decision. Statements such as these lack sufficient detail to provide an adequate evaluation of the program. Are there criteria that the transportation manager follows? If so, what are they? Is there any oversight provided by the System General Road Forman with respect to the determination made by the transportation manager? If so, what does it consist of?

Under C.2.: Any place that states there will be an exam must include at least the minimum number of questions on the exam and the passing score. There are several examples of this throughout NS' program where NS states an exam must be passed but does not indicate a passing score.

Under D.1.: On June 20, 2020, FRA sent NS a letter stating that 36 months away from a territory before requalifying is excessive and not acceptable. However, NS has not revised the time away. The time away must be revised to a maximum of 24 months. Also, NS must state the minimum number of times a person must traverse over the territory.

Under D.2.: What makes one territory more complex than another? TWC, ABS, CTC? Different managers will have different definitions of complex. Remove the variables and set a baseline minimum.

Under F.: Again, this is an area where NS states that conductors must pass an exam but lacks details of the minimum number of questions and a passing score. Remove terms such as "at the discretion," which lead to vagueness and inconsistency. State a minimum benchmark of what is required for qualifying trips.

Section 3: Training and Evaluating Persons Previously Certified

Under § 242.121(c), NS is required to have "procedures for testing a person being evaluated for certification as a conductor" Section 3 of Appendix B to Part 242 states that NS "must describe in this section how it will use [the latitude afforded under the regulation] to assure that its conductors will demonstrate their knowledge concerning the safe discharge of their responsibilities" However, Section 3 of NS' program contains very little detail beyond the repetition of the regulatory requirements. For example, NS' Section 3 does not describe whether the examinations are proctored, which topics are testing an individual's ability to use reference material, whether there is one version of a test given, whether any particular topic is weighted, and under what circumstances a particular knowledge test will contain more than 50 questions. Overall, NS' Section 3 does not contain sufficient detail to permit effective review of NS' knowledge testing procedures to determine whether individuals have the necessary knowledge and skills to safely discharge their duties as conductors.

Under A.: Repeating regulatory language does not provide sufficient detail to permit FRA to determine whether the knowledge testing conforms with the requirements of § 242.121. For example, there is no discussion regarding whether different versions of knowledge tests have

been developed or whether different versions of tests are used during the same examination. Additionally, with respect to electronically administered tests, there is no discussion on whether the same test questions are relied on or whether there is a pool of questions that are randomly selected.

Under A.1.: Although § 242.121(c)(2) requires knowledge tests to be objective, NS' submission contains no discussion of how NS assures that its knowledge tests are developed in an objective manner. How are test questions developed? Who develops the test questions, and what is the vetting and approval process for test questions?

Under A.2.: How is the decision made on whether to administer a particular test in written versus electronic form? Are the considerations or criteria used to make that determination, or can individuals simply elect the method of administration? If the latter, how does NS ensure that there is no disparate treatment of who can elect different administration methods?

Under A.3.: How does NS decide to allocate test questions per subject matter? Who makes that determination? Is it different depending on the particular division or territory an individual will work on? How does NS ensure equitable treatment of its employees? Do other versions of tests have different allocations of test questions per subject matter?

Under A.4.: This section of NS' submission states that a test will have a minimum of 50 questions, implying that there could be a test with more than 50 questions. Are there tests that have more than 50 questions? If so, who determines to administer a test with more than 50 questions? What criteria are used in making that determination? For example, can individuals in the same training class be administered different length tests, with one individual receiving a 50-question test with another individual receiving a test with more than 50 questions? With respect to the passing score, is 80% the overall passing score? Are different subject matters weighted? If so, how, and what is the scoring methodology?

Under A.5.: What subject matters are tested by "closed book," and what subject matters are testing an individual's ability to use reference material?

Under A.6.: Pursuant to § 242.121(e), NS "must provide the person(s) being tested with an opportunity to consult with a **supervisory employee**, who possesses territorial qualifications for the territory, to explain a question." (Emphasis added.) However, NS' program states, "A certified conductor, **who may be a transportation manager**, that possesses territorial qualifications for the territory, will be available either in person or telephonically to explain questions to those persons being tested." (Emphasis added.) This is not in conformance with Part 242, as NS is required to make supervisory employees available to those being tested.

Under A.7.: How is an individual notified of a failure? Does the electronic method provide immediate feedback? There is no discussion of how long an individual must wait before being eligible for a re-test; can the individual immediately re-test the same day, or is there a period of remedial training conducted? Does an individual who fails a test have the opportunity to go over the test with an instructor or supervisor, so the individual understands their mistakes? Is there a process under which an individual can challenge a test failure if a question is not objective or

poorly worded? How many times can an individual fail before they are removed from the training program? Who makes that determination?

Under A.8.: What is a “test bank”? Does NS keep the physical copy of the test or just an annotation of the score?

Under B: As stated in Section 3 of Appendix B to Part 242, NS “must describe in this section how it will assure that its medical examiner has sufficient information concerning the railroad’s operations to effectively form appropriate conclusions about the ability of a particular individual to safely perform as a conductor.” However, there is no discussion in NS’ program that addresses this requirement. What is the process if an employee fails the color vision portion of a test? NS’ program does not mention whether a field vision test will be given. Does NS have a field vision test? If so, NS does not sufficiently describe their field-testing procedures to allow FRA to determine whether those procedures are likely to produce valid, reliable, and comparable field tests. *See* 80 Fed. Reg. 73122, 73126 (Nov. 24, 2015).

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

Overall, this section of NS’ submission lacks sufficient detail to permit an effective evaluation of NS’ initial training program by FRA. As stated in Appendix B to Part 242, Section 4 of NS’ submission must “contain the same level of detail concerning initial training programs as that described for each of the components of the overall program” outlined in the prior sections. Accordingly, the concerns raised in Sections 2 and 3 of NS’ submission should also be addressed here.

In the introduction to this section of NS’ submission, NS states that individuals not previously certified will be required to attend the certification and qualification phases of the training program. However, NS does not provide any specific detail about the two phases. Therefore, NS needs to clarify and define these various phases by including details such as the number of weeks, days, or hours each phase of the training program lasts for new hire Conductor Trainees. Additionally, later in the submission under Appendix II, NS refers to “Phase II,” which is inconsistent with the phase references made under Section 4 and needs to be clarified.

Under A.: NS states that the curriculum and subject matter may consist of various methods of training and subject matters. As stated throughout Appendix B to Part 242, NS is required to explain how it is using its latitude given under the regulation to satisfy the performance requirements contained therein. Stating that the curriculum and subject matter of the training *may* consist of different methods without providing more detail does not permit effective evaluation of the training program. How does NS determine which training method it will employ of a given day to a particular class? Who makes that determination? What is the amount of time spent on each area? Is there a minimum amount of time? NS training manual has time increments down to hours. Why is this stated differently in NS’ program? Can different candidates for initial certification be trained on the same subject matter using different delivery methods (for example, a classroom presentation versus a computer-based training exercise regarding hazardous materials requirements)? If so, what criteria are followed to ensure equitable treatment of employees? What is the duration of each training class on the various subject matters? Can

employees receive different length training periods on the same subject (meaning one individual needs to complete 8 hours on a topic whereas another may need to complete 16+ hours)? If so, how is that determination made, and by whom? Are there criteria that are followed? If so, what are they?

Under A.3. and 4.: NS references examinations to be given as part of the Certification Phase, but there are no details regarding the testing procedures to be used to ensure adequate knowledge transfer. Please refer to FRA's comments above, under Section 3, regarding testing procedures.

Under A.5.: NS states that all trainees must successfully complete an evaluation of the required tasks contained on Form 12201. NS also states that Form 12201 is included as part of NS' submission as an appendix. However, that form is not included. Instead, NS only includes Form 12200. Form 12201 must be provided to permit effective evaluation of whether the tasks along with associated conditions and standards are adequately detailed.

Under B.: NS' discussion of the Qualification Phase of its initial training program needs more detail. For example, what is the difference between a training phase and a qualification phase? Are phases I and II interchangeable with training and qualification phases? NS does not provide any detail regarding the curriculum or training program regarding the OJT program.

Under B.1.: NS states that a trainee will be scheduled for on-the-job training (OJT) in all classes or types of service that the trainee will be required to perform on the individual's assigned territory, which implies that an individual could perform service as a conductor or passenger conductor. However, under Section 1, NS has elected to only certify conductors in the conductor classification or type of service. NS must clarify this.

Under B.2.: NS states that the OJT training program will be directed by the designated Division training supervisor and local supervisors. What criteria, curriculum, training program, or guidance document do these individuals follow when performing the training under this phase of the training program? Does the training program developed at the local level undergo any review and approval at a higher level within NS (i.e., what is the oversight of these local training programs)? NS also states that Designated supervisors, other employees, and transportation supervisors will conduct conferences and periodic performance observations. What "other employee" will be conducting performance conferences and periodic performance observations? Is there a standardized form or any guidance for how to conduct these conferences and observations? What are the consequences of negative conferences or observations?

Under B.3.a.: How does NS memorialize the consultation and concurrence (or non-concurrence) of the designated employee representative when selecting qualified instructors?

Under B.: Please refer to FRA's comments regarding testing procedures under Section 3.

Under B.5.: How does NS memorialize the input from the qualified instructor pursuant to § 242.119(e)(2)?

Under C.: This information should be articulated under Section 6 of NS' program and provide more detail explaining this process. For example, how long is the training course for each of the four types of individuals listed (i.e., certified NS conductors absent from the previous position for at least 365 days; previously uncertified individuals with extensive operating experience; previously certified individuals whose certification has expired; and certified conductors hired from other railroads)? Who makes the decision? Are there criteria to follow to assist with the decision? How does NS determine that a previously uncertified individual has extensive operating experience? Who makes the decision? Are there criteria? How are many familiarization trips versus qualification trips necessary? Who makes the determination? Are there criteria?

Under D.: What is the process that NS internally follows for making changes to the training curriculum? What types of technology introductions warrant a review of the training curriculum? What process does NS follow to ensure that individuals who have completed the training program receive supplemental training on any changes to the training program?

Section 5: Monitoring the Operational Performance of Certified Conductors

Section 5 of Appendix B to Part 242 states that NS must provide information in this section "concerning the railroad's program for monitoring the operation of its certified conductors" pursuant to § 242.123. Repeating the regulatory language does not provide sufficient detail to permit FRA to determine whether the operational performance monitoring program conforms with the requirements of § 242.123.

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

Section 6 of Appendix B to Part 242 requires NS to provide "in summary fashion" how NS' program and associated procedures will implement the requirements of various specific aspects of the regulatory provisions related to the routine administration of NS' program for conductor certification. At a minimum, Section 6 of NS' program must address the procedural aspects of §§ 242.109, 242.111, 242.115, 242.117, 242.119, 242.121, 242.125, 242.127, 242.201, 242.211, 242.301, 242.401, 242.403, and 242.407. Notably, FRA found that NS' program did not address the procedural aspects of § 242.125, § 242.127, or § 242.407 at all except for a footnote referencing § 242.127. Overall, as identified in the comments below, FRA finds this section deficient as it does not provide sufficient detail to permit effective evaluation of NS' program addressing the routine administration of the conductor certification program.

Under A.1.: NS states that it will determine whether an individual meets the eligibility requirements involving prior conduct as a motor vehicle operator and references § 242.111(b), which is the regulatory requirement to make the stated determination. Although FRA does not generally find that citation to a regulatory requirement satisfies the requirements of Appendix B to Part 242, FRA takes no exception in this instance as § 242.111 does not provide a railroad much discretion in the manner it determines an individual's eligibility to hold a conductor certification based on prior conduct as a motor vehicle operator. Accordingly, FRA understands that NS will direct any individual who has a pertinent incident in their motor vehicle operator

history, as specified in § 242.111(n), to be evaluated by a DAC for a determination on whether that individual has an active substance abuse disorder and will thus follow, as written, § 242.111(o).

Under B.: NS does not discuss any procedures associated with a review of an individual's prior alcohol and drug rules compliance. Specifically, NS does not address in its program whether an individual who might otherwise be eligible to hold a certificate but who has had multiple drug and/or alcohol rule violations would be eligible for certification or recertification. Should NS make this type of determination, FRA would expect NS to discuss any associated criteria it would follow in making such a determination. Although the regulation specifies that individuals who have active substance abuse disorders are ineligible to hold a certification, NS could still make the determination that multiple alcohol and/or drug rules violations, without an active substance abuse disorder, could also render an individual ineligible from being certified or recertified.

Under C.1.: NS states that a supervisor will review an individual's record of compliance with operating rules and make a determination regarding eligibility for certification or recertification. However, pertinent details explaining this process are not included in the program. For example, what level of supervisor makes this determination—an individual's direct supervisor? If so, what, if any, training does that supervisor receive to make this determination? Is there any higher-level oversight of these determinations? What criteria are followed in making eligibility determinations with respect to prior safety conduct as a railroad worker? Is it possible for two employees with similar compliance records, but with different supervisors, to receive different determinations?

Under C.2.: NS references that periods of ineligibility are listed in § 242.403 for operating rule violations under § 242.403(e). This is incorrect. The periods of ineligibility are listed in § 242.405. Additionally, it not clear from the text of the program how this paragraph relates to the review and evaluation of an individual's prior safety conduct as a railroad worker.

Under D.: What criteria does the System General Road Foreman use when evaluating an individual's prior safety conduct as an employee of another railroad? The program implies that any criteria would be the same as used under C. However, the program does not specify whether this implication is correct.

Under E.: NS simply repeats the regulatory requirement that it will determine that an individual meets hearing and visual acuity standards prior to making an initial certification or recertification decision but does not provide any explanation of the procedures followed or processes used to reach those decisions. See FRA's comments under Section 3, B., above.

Under G.1.f.: NS states that the review of an individual's "safety history" will not commence until after "all required steps have been completed . . ." However, NS does not specify which steps need to be completed as a condition precedent to "safety history" review. Further, NS does not define what "safety history" is. Is this the individual's prior safety conduct as an employee of NS, an employee of another railroad, or both?

Under G.2.: NS states that individuals who are candidates for initial certification will be provided a “package of materials” but other than instructions for obtaining motor vehicle operator records, NS does not specify what materials will be included. Further, NS states that the “information obtained” by the individual will be “referred to the individuals named in section A, above for review.” FRA is unclear on the information being referred. Additionally, FRA is unclear as to who the “the individuals named in section A” are as Section 6.A. does not list any individuals, and there is not a Section A to the program.

Under I.1.: NS states that it will provide an individual certain information related to a failure to meet “a requirement of this part” that supports NS’ pending denial decision. FRA is unclear as to what “part” is referring to?

Under I.3.: NS states that its denial notification will include the reasons for the pending denial along with “additional courses of action, if applicable.” What other courses of action is NS referring?

Under M.1.: NS states that it requires the employing railroad to call only those conductors qualified on NS territory to serve as conductors in joint territory. However, NS does not describe how it will assure that those conductors called by the employing railroad to perform joint operations are qualified to serve on NS’ territory (e.g., physical characteristics qualified, rules qualified, etc.). Similarly, NS states it will only provide qualified conductors to serve in joint territory. Again, there is no description of how this is assured.

Under M.2.: NS states that it will rely on certification determinations by Canadian railroads for conductors operating on NS territory. The structure of the sentence implies that NS permits individuals to serve as conductors on its territory that have only been certified by a Canadian railroad separate from joint operation situations. Apart from joint operations, NS is responsible for determining the qualification and certification of all conductors permitted to operate on its territory. This section of NS’ program seems contrary to that general requirement.

Under N.: This discussion of territorial qualifications and whether a conductor has regularly traversed a territory should be included under Sections 2 and 4. Please see FRA’s comments in Section 2, above.

NS Certification Program Appendices

Under Appendix I: The title (and NS’ program) reference NS Form 12201. However, the form that is provided under this appendix is NS Form 12200. Also see FRA’s comments under Section 4.A.5., above.

Under Appendix II: The title to this appendix states that it includes task specific conditions and standards. However, FRA cannot determine what those are and does not see any tasks with specific conditions or standards listed. Additionally, the appendix states the “Qualification phase training will consist of sufficient on-the job training” but does not articulate how the sufficiency is determined or by whom. Further, the appendix uses different terms (“Qualification phase” and “Phase II”), which introduces ambiguity.