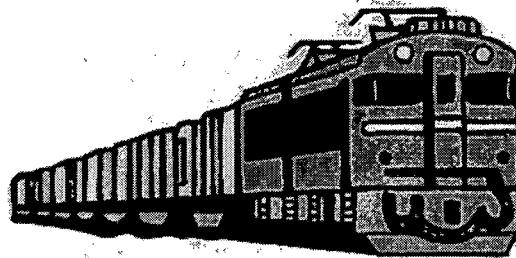


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# ENGINEER CERTIFICATION



## REFERENCE GUIDE

Federal Railroad Administration  
Revised August 2000

**ENGINEER CERTIFICATION  
REFERENCE GUIDE**

**TABLE OF CONTENTS**

**APPLICATION**

Background	2
Schedule for Implementing Certification	4
Purpose and Scope	6
Preemptive Effect and Construction	7
Responsibility for Compliance	9
Application	10
Plant Railroads and Urban Rapid Transit Operations	11
Plant Railroads	12
Locomotive and Other Service Vehicles	13
<i>Locomotive Defined</i>	14
Certified Engineer Not Required	15
<i>Roadway Maintenance Equipment Defined</i>	16
<i>Specialized Roadway Maintenance Equipment Defined</i>	17
<i>Dual Purpose Vehicle Defined</i>	18
Brandt Roadrailer	19
Wreck Trains	20, 33
Work Train	21
Roadway Maintenance Machines - Trained & Qualified	22
214.341	22
214.343	23
214.355	24
Classes of Service	25
Engineer Classifications	26
Student Engineer	27
Instructor Engineer	28
Decertification Implications	29
See also Certification Evaluations Tab Page 10	
See also Revocation Tab Pages 3, 4	
Train Service Engineer - Yard	30
Moving fuel tender or DPU units	31
Operation of steam trains	32
Wreck Trains	33, 20
Additional Training - Certificates	34
Exceptions to Certification	35
<i>Locomotive Engineer Defined</i>	35
Locomotive Servicing Track Area	36
Leaving the Controls	37
Operators of Remote Control Locomotives	39
Incidental Train Operators	40

<i>Designated Supervisor of Locomotive Engineers Defined</i>	41
Designated in Writing	42
Criteria for Selection of DSLEs	43
See also Certification Evaluations Tab Page 88	
Railroad's Program Submission for DSLEs	44
If Railroad Does Not Have Any DSLEs	45
Letters of Interpretation	

## **CERTIFICATION EVALUATIONS**

Determinations Required as a Prerequisite to Certification	2
Time Limitations for Making Determinations	3
Exceptions	4
<b>PRIOR SAFETY CONDUCT</b>	5
As a Railroad Employee and Operator of a Motor Vehicle	6
Duty to Furnish Data From Former Railroad	7
AAR Petition	8
Review and Comment	9
Operating Rules Compliance - 3 Years	10
Denial/Revocation of Certification	10
DSLE, Engineer Pilot, Instructor Engineer - Decertification Implications	10
See also Application Tab Page 29	
See also Revocation Tab Pages 3, 4	
Conductor who is also a Certified Engineer	11, 18
See also Revocation Tab Page 5	
Operating Rules Compliance - 3 years	12
Alcohol/Drug Compliance - 5 Years	13
Review of Certification	14
Active Substance Abuse Disorder	15
Voluntary Referral	15, 17, 29
<i>Current Employee Defined</i>	15
<i>Active Substance Abuse Disorder Defined</i>	16
A/D Violation as a Trainman	18
Certificate Reinstatement	19
Return to Service	20
No Entitlement	21
AAR Petitions	22
<b>Motor Vehicle Operator - 3 Years</b>	23
Completed State Actions	23
Disciplinary Action Not Prohibited	23
EAP Counselor Evaluation	24
Furnishing Data - Employee Written Request	25
Driving Record	25
NDR Check	25
Additional Information	26
Never Had Driver's License	27

## CERTIFICATION EVALUATIONS, Continued

### PRIOR SAFETY CONDUCT

#### Motor Vehicle Operator

Reporting to Railroad Within 48 Hours of Conviction	28
Procedures for Obtaining State and NDR Data	30
NDR Problem Driver Pointer System	31
Failure to Supply Records	32
AAR Petition	33

### VISION & HEARING ACUITY

Vision Acuity Thresholds	35
Colors of Railroad Signals	36
Contact Lenses	40
Vision Exam	41
Medical Examiner Defined	41, 43
Hearing Acuity Thresholds	42
Hearing Exam	43
Exceptions to Vision & Hearing Acuity	44
Restrictions on Certificate	47

See also Certification Evaluations Tab Page 3

Integrating CBAs	50
Records	48
Engineer's Notification of Vision or Hearing Deterioration	49

KNOWLEDGE TEST	51
Written Documentation	52
Testing Methods and Criteria	54
Territorial Qualifications	55
ASLRA Petition	56

PERFORMANCE SKILLS	57
Demonstrate Train Handling Skills in Most Demanding Service	58, 60
Written Documentation	59, 66
Failure of Performance Skills Test	59
Testing Criteria	60
Conducted by DSLE	60
Testing Procedures	61
Operation of Train or Type I/II Simulator	62
Type I Simulator Defined	63
Type II Simulator Defined	64
Type III Simulator Defined	65



## **CERTIFICATION EVALUATIONS, Continued:**

<b>INITIAL AND CONTINUING EDUCATION</b>	67
Program Submission	67
Initial Education	69
Criteria	69
Non-Railroad Contractors	71
Student Engineers	75
	See also Application Tab Page 27
Written Documentation	76
Recommended Guidelines	77
Continuing Education	79
Familiarity with Physical Characteristics	80
New Territory	80
Territorial Qualifications	82
Requalification	84
Disagreements	86
<b>DENIAL OF (RE)CERTIFICATION</b>	87
Letters of Interpretation	
<b>REVOCATION</b>	
<b>REVOCATION OFFENSES</b>	2
Engineer, DSLE, Engineer Pilot, Instructor Engineer	3
	See also Applications Tab Page 29
	See also Certification Evaluations Tab Page 10
Conductor who is a Certified Engineer	5
	See also Certification Evaluations Tab Pages 11, 18
Operating Rules Compliance	6
Signals	7
Train Speed	9
Safe Use of Train or Engine Brakes	11
Occupying Main Track	12
Tampering	13
Multiple Events During Same Duty Tour	16
Alcohol/Drug Compliance	17
<b>PERIODS OF INELIGIBILITY</b>	18
Revocation Periods Begin	19
Operating Rules	20
Incidents Prior to Effective Date	22
Grant or Reinstatement Earlier	23
Validity of Railroad Decisions Prior to May 10, 1999	24
Not Prior Incidents	25
Alcohol/Drugs	26

## **REVOCATION, Continued:**

<b>PROHIBITED CONDUCT</b>	28
Operating Rules	29
Certificate	32
See also Certificate & Pilots Tab Page 7	
Unqualified	33
Revocation of Certification	34
Voluntary Referral Policy	34
Intervening Cause or Minimal Nature	36
Examples of Intervening Causes	37
Examples of Minimal Nature	38
Recording Evidence	41
Receipt of Reliable Information	42
Provide Notice	42
240.307 Hearing	43
Alcohol/Drug	49
Letters of Interpretation	

## **CERTIFICATE & PILOTS**

### **THE CERTIFICATE**

Criteria	2
Replacement	5
Falsification	6
Prohibited Conduct	7
Reliance on Qualification of Other Countries	8
Reliance on Qualification Made by Another Railroad	9
<b>JOINT OPERATIONS</b>	11
<i>Joint Operations</i> Defined	11
Requirements for Joint Operations Territory	12
Host Railroad's Reliance On Another Railroad's Certification	13
Evaluate Training Program	15
Engineer Pilot	16
Minimal Joint Operations	17

<b>PILOTS (NON-JOINT OPERATIONS)</b>	18
Pilot Exemptions	20
Revocation Considerations	22
Letters of Interpretations	

## **ANNUAL OPERATIONAL MONITORING**

Program Submission . . . . .	1
Criteria . . . . .	2
Failure to Conduct . . . . .	3
Check Ride . . . . .	4
Event Recorder Reading . . . . .	5
Operation of Train or Type I/II Simulator . . . . .	6
Date Recorded on Engineer's Certificate . . . . .	7
See also Certificate & Pilots Tab Page 4	
Performance Skills Test . . . . .	8
Efficiency Test . . . . .	9
During Simulator Operation . . . . .	11
Failures . . . . .	12
Improper Tests . . . . .	13
Unattended Burning Fusee . . . . .	14

## **DISPUTE RESOLUTION PROCEDURES**

Locomotive Engineer Review Board Petition . . . . .	2
LERB . . . . .	3
Petition Status . . . . .	5
Decision Percentages . . . . .	6
Yearly Petition Submissions . . . . .	7
Petitions by Decertification Causes . . . . .	8
Major Railroad Petition Percentages . . . . .	9
Average Petition Completion Times . . . . .	10
Four Levels of Appeal . . . . .	11
Petition Requirements . . . . .	12
Processing Qualification Review Petitions . . . . .	14
Request for Administrative Hearing . . . . .	15
240.409 Administrative Hearing . . . . .	16
Appeals . . . . .	23
<i>Administrator and Filing Defined</i> . . . . .	24

## **RECORDKEEPING**

Identification of Qualified Persons . . . . .	2
Joint Operations . . . . .	3
Record of Relevant Data for Each Engineer/Applicant . . . . .	7
Prior Safety Conduct . . . . .	7
Former Railroad Data . . . . .	7
Motor Vehicle Data . . . . .	7
Applicant Data . . . . .	8
Vision/Hearing Acuity Data . . . . .	8
Knowledge Data . . . . .	9
Performance Skills Data . . . . .	10
Annual Efficiency Test Data . . . . .	11

## **RECORDKEEPING, Continued:**

Annual Check Ride Data . . . . .	11
Training Program Data . . . . .	12
If Relying on Decision by Another Railroad . . . . .	13
Data for Joint Operation Certifications . . . . .	14
Maintenance of Records . . . . .	13
Centralization of Records . . . . .	13
Electronic Format . . . . .	17
Falsification . . . . .	16
Railroad Oversight Responsibilities . . . . .	18
Incidents . . . . .	20
Letters of Interpretation	

## **PROGRAM SUBMISSION**

Written Certification Program . . . . .	2
Procedures Addressed . . . . .	3
Approval by FRA . . . . .	4
Sections of the Submission . . . . .	8
General Information and Elections . . . . .	9
Selection of DSLEs . . . . .	10
Qualifying DSLEs . . . . .	11
Training Persons Previously Certified . . . . .	12
Familiarization with New Territory . . . . .	13
Uncertified Experienced Engineers/Expired Certifications . . . . .	14
Qualifying Non-Certified Engineers as Pilots . . . . .	15
Testing & Evaluating Persons Previously Certified . . . . .	16
Training, Testing & Evaluating Persons Not Previously Certified . . . . .	17
Class III Railroads Modification to Program . . . . .	18
Monitoring Operational Performance . . . . .	20
Procedures for Routine Administration . . . . .	21
Program Modification Guidance - Handout	



# APPLICATION

Background

Application

Locomotive & Other Service Vehicles

Classes of Service

Designated Supervisors of Locomotive Engineers

1

- Final rule amendments have been made in **bold** in this reference guide, revised August 2000.
- This tab of the reference guide covers:
  - Background of the regulation
  - Application and responsibility for compliance
  - Locomotives & other service vehicles
  - Classes of service
  - Designated Supervisors of Locomotive Engineers (DSLE)

Questions: John Conklin 202-493-6318 (FRA Program Manager)  
Alan Nagler 202-493-6049 (Chief Counsel)

## Background

- Public concerns following the 1987 Chase, MD accident
- Rail Safety Improvement Act of 1988
- December 1989 - Proposed Rule
- September 1991 - Final Rule
- May 1993 - Interim Final Rule
- November 1995 - Interim Final Rule

2

- The Engineer Certification rulemaking was in direct response to the 1987 Amtrak-Conrail accident at Chase, MD.
- Section 4 of the Rail Safety Improvement Act of 1988, adopted by Congress in the wake of the Chase accident, required FRA to issue regulations to establish a program for certifying or licensing locomotive operators.
- In December 1989, FRA published a Notice of Proposed Rulemaking.
- The Final Rule was issued in June 1991, but didn't go into effect until September 1991.
- FRA then received five "petitions for reconsideration" from the Association of American Railroads, American Short Line Railroad Association, Brotherhood of Locomotive Engineers, Sperry Rail Service, and a concerned citizen. Several "requests for clarification" were also received.
- As a result, FRA made amendments and clarifications in the form of an Interim Final Rule, which went into effect in May 1993. As different sections of Part 240 are discussed, the petitions for reconsideration will be referenced.
- A second Interim Final Rule became effective in Nov. 1995. It amended Part 240 to clarify administrative hearing procedures for engineer decertification cases.

## Background

- RSAC working group formed Oct. 1996
- September 1998 - Proposed Rule
- **Final Rule - Effective January 7, 2000**
  - Clarifies decertification process
  - Clarifies when certified engineers are required to operate service vehicles
  - Addresses concern of DSLE qualification to supervise, train & test

3

- RSAC working group was formed in October 1996.
- On September 22, 1998, a proposed rule was published in the Federal Register (Vol. 63, No. 183, page 50626) to make miscellaneous amendments to Part 240.
- On November 8, 1999, a final rule was published in the Federal Register (Vol. 64, No. 215, page 60966).
- Amendments are largely based on recommendations made by the RSAC committee.
- The effective date of the final rule is January 7, 2000.
- The final rule:
  - Clarifies the decertification process;
  - Clarifies when certified locomotive engineers are required to operate service vehicles; and
  - Addresses the concern that some designated supervisors of locomotive engineers (DSLE) are insufficiently qualified to properly supervise, train, or test locomotive engineers.



## Schedule for Implementing Certification

- Engineers & DSLE's were initially grandfathered and issued certificates
- Grandfathered engineers & DSLE's had to meet certification requirements within 3 year period and have certificates re-issued

4

- Initially, each railroad was required to designate in writing all persons that it deemed qualified as certified engineers and DSLE's for the purpose of initial compliance (referred to as grandfathered).
- Each engineer must have demonstrated to the railroad through training, testing or prior experience that he or she had the necessary knowledge and skills. These engineers had to have been issued certificates by December 31, 1991.
- Each DSLE must have demonstrated to the railroad through training, testing or prior experience that he or she had the knowledge, skills, and ability to be a DSLE, and had to have been issued a certificate by December 31, 1991.
- The grandfathered engineers and DSLE's should all have since been re-certified within the required 3-year interval and been re-issued certificates.

240.201

# APPLICATION AND RESPONSIBILITY FOR COMPLIANCE

## Purpose and Scope

- Ensure that only qualified persons operate a locomotive or train
- Railroad may **adopt & enforce** additional or more stringent requirements not inconsistent with Part 240
- Any person regardless of job classification title

6

### **Purpose and scope.**

- The purpose of Part 240 is to ensure that only qualified persons operate a locomotive or train.
- Part 240 prescribes minimum Federal safety **standards** for the eligibility, training, testing, certification, and monitoring of all locomotive engineers **to whom it applies**.
- Part 240 does not restrict a railroad from **adopting and enforcing** additional or more stringent requirements not inconsistent with Part 240.
- The qualifications for locomotive engineers prescribed in Part 240 are pertinent to any person who operates a locomotive, unless that person is specifically excluded by a provision of Part 240, regardless of the fact that a person may have a job classification title other than that of locomotive engineer.

240.1

## Preemptive Effect & Construction

- **Preempts State laws except those addressing local safety hazard**
- **Does not preempt:**
  - State criminal laws
  - CBA job classification titles for locomotive engineer

7

### **Preemptive effect and construction.**

- **Under 49 U.S.C. 20206, issuance of the regulations in Part 240 preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not compatible with a law, regulation, or order of the U.S. Government; and does not impose an unreasonable burden on interstate commerce.**
- FRA does not intend by issuance of these regulations to preempt provisions of State criminal law that impose sanctions for reckless conduct that leads to actual loss of life, injury, or damage to property, whether such provisions apply specifically to the railroad employees or generally to the public at large.
- FRA does not intend by use of the term *locomotive engineer* in Part 240, to preempt or otherwise alter the terms, conditions, or interpretation of existing collective bargaining agreements that employ other job classification titles when identifying persons authorized by a railroad to operate a locomotive.

240.5 (a)(b)(c)

## Preemptive Effect & Construction

- Does not preempt railroad disciplinary sanctions
- Does not create or prohibit a decertified engineer from employment in other service
- Does not abridge any additional CBA, RLA, or common law procedural rights

8

### **Preemptive effect and construction, continued.**

- FRA does not intend by issuance of these regulations to preempt or otherwise alter the authority of a railroad to initiate disciplinary sanctions against its employees, including managers and supervisors, in the normal and customary manner, including those contained in its collective bargaining agreements.
- Nothing in Part 240 shall be construed to create or prohibit an eligibility or entitlement to employment in other service for the railroad as a result of denial, suspension, or revocation of certification under Part 240.
- Nothing in Part 240 shall be deemed to abridge any additional procedural rights or remedies not inconsistent with Part 240 that are available to the employee under a collective bargaining agreement, the Railway Labor Act, or (with respect to employment at will) at common law with respect to removal from service or other adverse action taken as a consequence of Part 240.

240.5 (d)(e)(f)

## Responsibility for Compliance

### ANY PERSON:

- Railroad (managers, supervisors, officials, agents, etc.)
- Owner, manufacturer, lessor, or lessee of railroad equipment, track or facilities (or employee of)
- Independent contractor providing goods or services to a railroad (or employee of)

9

### Responsibility for compliance.

- Although the duties imposed by Part 240 are generally stated in terms of the duty of a railroad, each person, including a contractor for a railroad, who performs any function covered by Part 240 must perform that function in accordance with Part 240.

**DEFINITION: PERSON** means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

240.3 (c)

240.7

# Application

Part 240 applies to all railroads:

- Operating on standard gage track
- Part of the general railroad system of transportation
- Includes commuter or other short-haul passenger service in metro or suburb
- Includes high speed systems that connect metro areas

10

## Application.

- **Except as provided in 240.3 (b) [plant railroads or rapid transit operations in an urban area not connected to the general railroad system], Part 240 applies to all railroads.**

NOTE: Part 240 is not applicable to tourist, scenic or excursion operations that occur on tracks that are not part of the general railroad system of transportation (preamble to 1999 Final Rule).

DEFINITION: RAILROAD means **any form** of nonhighway ground transportation that runs on rails or electromagnetic guideways and **any entity providing such transportation**, including

- (1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area **and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and**
- (2) High speed ground transportation systems that connect metropolitan areas, without regard to whether **those systems** use new technologies not associated with traditional railroads; **but does not** include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

240.3 (a)

240.7

## Does Not Apply

- Plant railroads (that operate only on track inside their plant)
  - May be connected only for purposes of receiving/offering own cars
  - May not operate over general system even when general system railroad is not using the track
- Rapid transit operations in an urban area that are not connected to the general railroad system

11

### **Application, continued.**

Part 240 does not apply to -

- A railroad that operates only on track inside an installation that is not part of the general railroad system of transportation; or
- Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

NOTE: The word "installation" is intended to convey a meaning of physical (and not just operational) separateness from the general system. A railroad that operates only within a distinct enclave that is connected to the general system only for purposes of receiving or offering its own shipments is within an installation. However, a rail operation conducted over the general system in a block of time during which the general system railroad is not operating is not within an installation, and, accordingly, not outside of the general system merely because of the operational separation. (from preamble to 1999 Final Rule)

240.3 (b)



## Plant Railroad

- **Leased Track Exception - Plant railroads are not subject to 240 if only cars shipped to/from the plant are moved on the leased track**
- **If a plant railroad operates on the general system railroad, it is subject to Part 240 while on the general system (equipment, crew, practices)**

12

### **Plant railroad exception.**

- Plant railroads are not subject to Part 240 as long as they stay within the confines of the plant facility.
- There is also a provision for plant railroads to operate on leased track. Appendix A to Part 209 states, "In some cases, the plant railroad leases track immediately adjacent to its plant from the general system railroad. Assuming such a lease provides for, and actual practice entails, the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant, the lease would remove the plant railroad's operation on that trackage from the general system for purposes of FRA's regulations..."
- Part 209 also states, "Where the plant railroad itself operates beyond the plant boundaries on the general system, it becomes a railroad with respect to those particular operations, during which its equipment, crew, and practices would be subject to FRA's regulations.
- In such case, the plant railroads have alternatives. They can accept their status as a railroad and proceed to comply with the regulation by having the host railroad certify any persons who will operate on the railroad's tracks, seek a waiver, or elect to cease operations on the General System, avoiding the rule.

References: Appendix A to Part 209; Interim Final Rule

# LOCOMOTIVES AND OTHER SERVICE VEHICLES

13

## Operation of Locomotive by Certified Engineer

Locomotive means a piece of on-track equipment **[other than specialized roadway maintenance equipment or a dual purpose vehicle operating in accordance with 240.104(a)(2)]**:

- With one or more propelling motors designed for moving other equipment or to carry freight or passenger traffic or both; or
- Without propelling motors but with one or more control stands.

14

**DEFINITION: LOCOMOTIVE** means a piece of on-track equipment **[other than specialized roadway maintenance equipment or a dual purpose vehicle operating in accordance with 240.104 (a)(2)]**:

- (1) With one or more propelling motors designed for moving other equipment;
- (2) With one or more propelling motors designed to carry freight or passenger traffic or both; or
- (3) Without propelling motors but with one or more control stands.

**NOTE:** This definition previously mirrored the definition in Part 229, Locomotive Safety Standards. The revised text is in bold letters.

## Certified Engineer Not Required To:

- Operate specialized roadway maintenance equipment; or
- Operate a dual purpose vehicle when:
  - Related to roadway maintenance;
  - Movement authority protects it from trains; and
  - Operated by a trained & qualified individual (roadway worker)

15

Criteria for determining whether movement of roadway maintenance equipment or a dual purpose vehicle requires a certified locomotive engineer.

1) A railroad is not required to use a certified locomotive engineer to perform the following functions:

- Operate specialized roadway maintenance equipment; or
- Operate a dual purpose vehicle that is:
  - Being operated in conjunction with roadway maintenance and related maintenance of way functions, including traveling to and from the work site;
  - Moving under authority of railroad operating rules designated for the movement of roadway maintenance equipment that ensure the protection of such equipment from train movements; and
  - Being operated by an individual trained and qualified in accordance with 214.341, 214.343, and 214.355 of this chapter.  
(see pages 22-24)

2) A railroad is required to use a certified locomotive engineer when operating a dual purpose vehicle other than in accordance with the above.

240.104

## Roadway Maintenance Equipment

**On-track equipment  
powered by any  
means of energy other  
than hand power  
which is used in  
conjunction with  
maintenance, repair,  
construction or  
inspection of**

- **Track (i.e., rail grinder)**
- **Bridges**
- **Roadway (i.e., weed  
sprayer)**
- **Signal**
- **Communications or**
- **Electric traction  
systems**

16

**DEFINITION: ROADWAY MAINTENANCE EQUIPMENT is on-track equipment powered by any means of energy other than hand power which is used in conjunction with maintenance, repair, construction or inspection of track, bridges, roadway, signal, communications, or electric traction systems.**

- This definition has been incorporated into the definitions of dual purpose vehicle and specialized roadway maintenance equipment to clarify that within the set of vehicles meeting the definition of roadway maintenance equipment there are two subsets:

(1) Vehicles capable of moving railroad rolling stock, i.e., dual purpose vehicles, and

(2) Vehicles that do not have such capability, i.e., specialized roadway maintenance equipment.

- Examples of roadway maintenance equipment: self-propelled weed sprayer or rail grinding equipment, and self-propelled detection equipment (Sperry; track geometry)
- It does not include moving disabled equipment for clearing and repair of track (wreck train).

## Specialized Roadway Maintenance Equipment

- Engineer certification not required
- Roadway maintenance equipment that does not have the capability to move railroad rolling stock
- Tampers, excavators, in-track welders, undercutters, ballast regulators, T-10, geometry cars, sperry cars, unimogs, plaser units

17

**DEFINITION: SPECIALIZED ROADWAY MAINTENANCE EQUIPMENT** is roadway maintenance equipment that does not have the capability to move railroad rolling stock. Any alteration of such equipment that enables it to move railroad rolling stock will require that the equipment be treated as a dual purpose vehicle.

- Specialized roadway maintenance equipment is not considered to be a "locomotive" for purposes of Part 240.
- Specialized roadway maintenance equipment need not be operated by a certified locomotive engineer because since it does not have the capability to move railroad rolling stock, it cannot be used as a substitute for a traditional locomotive.
- Examples include equipment designed to maintain the track structure and not normally capable of being operated like a train, such as self-propelled tampers, excavators, in-track welders, undercutters, ballast regulators, ballast shoulder cleaners, ditchers, cross-tie installation machines, mobile cranes, and plaser units (used by surfacing gangs - are normally transported to the work site, coupled up, and operated on the track).
- Other examples include FRA's T-10, geometry cars, sperry cars, and unimogs (used on Amtrak to perform catenary work; capable of operating 50 mph).

240.7

## Dual Purpose Vehicle

- A piece of on-track equipment that is capable of moving railroad rolling stock (freight or passenger car) and may also function as roadway maintenance equipment
- Engineer certification is sometimes required and sometimes not

18

**DEFINITION: DUAL PURPOSE VEHICLE** means a piece of on-track equipment that is capable of moving railroad rolling stock and may also function as roadway maintenance equipment.

**DEFINITION: RAILROAD ROLLING STOCK** is on-track equipment that is either a freight car (as defined in 215.5 of this chapter) or a passenger car (as defined in 238.5 of this chapter).

- Since dual purpose vehicles can be used as a substitute for a traditional locomotive as a result of their capability to move railroad rolling stock, the rule requires a certified locomotive engineer at the controls of a dual purpose vehicle when it is being used as a locomotive in service unrelated to roadway maintenance work and also when, even in the context of maintenance work, there is no employee available who is trained to operate the vehicle.

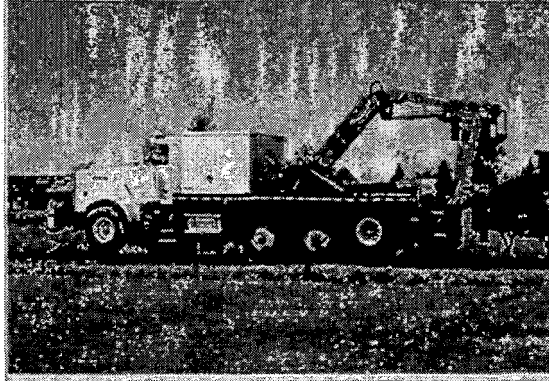
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240.7

240.104 (b)

## Dual Purpose Vehicle

- Track-mobiles
- Burro cranes
- Brandt Roadrailer (shown here)



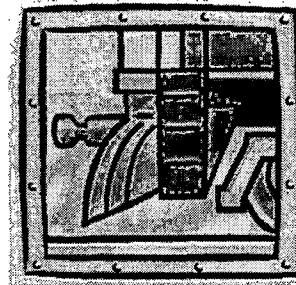
19

- Examples of dual purpose vehicles include rubber-tired vehicles outfitted with standard couplers and frequently with retractable rail wheels (including trackmobiles) and self-propelled locomotive and burro cranes capable of hauling multiple cars.
- Another example is the Brandt Roadrailer which is made by Kenworth in Canada and can operate about 25 mph. It is frequently used to power a work train or could also be used in switching operations in the future.



## Dual Purpose Vehicles (Maintenance Operations)

***Are wreck train  
operations  
considered to be  
maintenance  
movements?***

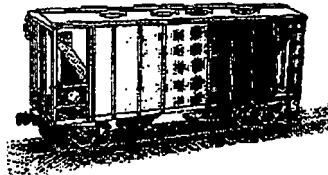


20

- To determine whether a certified engineer is required, you have to find out for what purpose the dual purpose vehicle is being operated. Is it deadheading, switching, or being operated for maintenance purposes?
- Per the preamble to the 1999 final rule, wrecking operations to move damaged equipment are not maintenance movements, which are the only movements of dual purpose vehicles FRA intended to permit without the use of a certified engineer.
- Therefore, a wreck train does require a certified locomotive engineer.

## Work Train

***Does a work train  
need a certified  
engineer if it is  
being operated with  
a locomotive?***



21

**QUESTION:** Does a work train need a certified locomotive engineer if it is being operated with a locomotive?

**ANSWER:** Yes.

**Being operated by an individual trained and qualified in accordance with 214.341, 214.343, and 214.355.**

**214.341 Roadway maintenance machines.**

(a) Each employer shall include in its on-track safety program specific provisions for the safety of roadway workers who operate or work near roadway maintenance machines. Those provisions shall address:

(1) Training and qualification of operators of roadway maintenance machines.

(2) Establishment and issuance of safety procedures both for general application and for specific types of machines.

(3) Communication between machine operators and roadway workers assigned to work near or on roadway maintenance machines.

(4) Spacing between machines to prevent collisions.

(5) Space between machines and roadway workers to prevent personal injury.

(6) Maximum working and travel speeds for machines dependent upon weather, visibility, and stopping capabilities.

(b) Instructions for the safe operation of each roadway machine shall be provided and maintained with each machine large enough to carry the instruction document.

(1) No roadway worker shall operate a roadway maintenance machine without having been trained in accordance with 214.355.

(2) No roadway worker shall operate a roadway maintenance machine without having complete knowledge of the safety instructions applicable to that machine.

(3) No employer shall assign roadway workers to work near roadway machines unless the roadway worker has been informed of the safety procedures applicable to persons working near the roadway machines and has acknowledged full understanding.

(c) Components of roadway maintenance machines shall be kept clear of trains passing on adjacent tracks. Where operating conditions permit roadway maintenance machines to be less than four feet from the rail of an adjacent track, the on-track safety program of the railroad shall include the procedural instructions necessary to provide adequate clearance between the machine and passing trains.

**Being operated by an individual trained and qualified in accordance with 214.341, 214.343, and 214.355.**

**214.343 Training and qualification, general.**

(a) No employer shall assign an employee to perform the duties of a roadway worker, and no employee shall accept such assignment, unless that employee has received training in the on-track safety procedures associated with the assignment to be performed, and that employee has demonstrated the ability to fulfill the responsibilities for on-track safety that are required of an individual roadway worker performing that assignment.

(b) Each employer shall provide to all roadway workers in its employ initial or recurrent training once every calendar year on the on-track safety rules and procedures that they are required to follow.

(c) Railroad employees other than roadway workers, who are associated with on-track safety procedures, and whose primary duties are concerned with the movement and protection of trains, shall be trained to perform their functions related to on-track safety through the training and qualification procedures prescribed by the operating railroad for the primary position of the employee, including maintenance of records and frequency of training.

(d) Each employer of roadway workers shall maintain written or electronic records of each roadway worker qualification in effect. Each record shall include the name of the employee, the type of qualification made, and the most recent date of qualification. These records shall be kept available for inspection and photocopying by the Federal Railroad Administrator during regular business hours.

**Being operated by an individual trained and qualified in accordance with 214.341, 214.343, and 214.355.**

**214.355 Training and qualification in on-track safety for operators of roadway maintenance machines.**

(a) The training and qualification of roadway workers who operate roadway maintenance machines shall include, as a minimum:

- (1) Procedures to prevent a person from being struck by the machine when the machine is in motion or operation.
- (2) Procedures to prevent any part of the machine from being struck by a train or other equipment on another track.
- (3) Procedures to provide for stopping the machine short of other machines or obstructions on the track.
- (4) Methods to determine safe operating procedures for each machine that the operator is expected to operate.

(b) Initial and periodic qualification of a roadway worker to operate roadway maintenance machines shall be evidenced by demonstrated proficiency.

## CLASSES OF SERVICE



## Engineer Classifications

- **TRAIN SERVICE ENGINEER** - May operate locomotives and cars
- **LOCOMOTIVE SERVICING ENGINEER** - May operate only locomotives – no cars
- **STUDENT ENGINEER** - May operate under direct & immediate supervision of instructor engineer

26

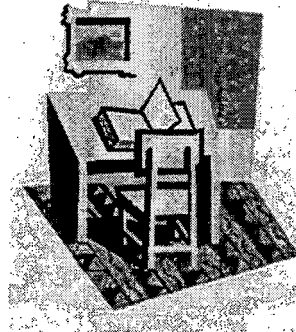
### Criteria for designation of classes of service.

- Each railroad's program shall state which of the three classes of service that it will cover.
- A railroad may issue certificates for any or all of the following classes of service with the following operational constraints applied to each class of service:
  - 1) **TRAIN SERVICE ENGINEERS** (may operate locomotives singly or in multiples and may move them with or without cars coupled to them);
  - 2) **LOCOMOTIVE SERVICING ENGINEERS** (may operate locomotives singly or in multiples but may not move them with cars coupled to them); and
  - 3) **STUDENT ENGINEERS** (may operate only under the direct and immediate supervision of an instructor engineer).
- Each railroad is authorized to impose additional conditions or operational restrictions on the service an engineer may perform beyond those identified in 240.107 provided those conditions or restrictions are not inconsistent with Part 240.

240.107

## Student Engineer

***Does a student engineer have to go through all of the training requirements before being certified as a student engineer?***



27

- A railroad may certify a person as a student engineer after determining that the person meets the vision and hearing acuity standards of 240.121.
- A railroad may subsequently certify that student engineer as either a locomotive servicing engineer or a train service engineer without further review of vision/hearing acuity, provided it determines that:
  - 1) The person successfully completed a training program that complies with 240.123;
  - 2) The person meets the eligibility requirements of 240.109 and 240.119; and
  - 3) A period of not more than 24 months has elapsed since the student engineer certification was issued.

See page 75 of the Certification Evaluations tab of this reference guide.

240.203 (b)



## Instructor Engineer

A person who:

- Is a qualified locomotive engineer
- Has been selected by the railroad to teach others proper train handling procedures, and
- Has demonstrated an adequate knowledge of the subjects under instruction

28

- A student engineer may operate only under direct and immediate supervision of an instructor engineer.

**DEFINITION: INSTRUCTOR ENGINEER** means a person who

- 1) Is a qualified locomotive engineer under this part,
- 2) Has been selected by the railroad to teach others proper train handling procedures, and
- 3) Has demonstrated an adequate knowledge of the subjects under instruction.

**NOTE:** There is no requirement for a railroad to have a listing of instructor engineers.

**QUESTION:** If a student engineer is operating a locomotive, is it okay for the engineer to assist the conductor with duties on the ground as long as he remains within close proximity to the lead locomotive?

**ANSWER:** No, the instructor engineer should be in the locomotive cab with the student engineer.

240.7

240.107

## Decertification Implications of an Instructor Engineer

- Railroad must evaluate the action or inaction by the student and the instructor engineer, **engineer pilot, or DSLE**
- Only the person(s) actually culpable for noncompliance will be accountable
- A student engineer's certificate may be revoked

29

**QUESTION:** What are the certification implications for an instructor engineer of an operational mistake made by a student engineer?

**ANSWER:** This is a railroad call, based on the circumstances. The railroad's discipline policy may prevail, and in extreme cases the student's culpability may be the deciding factor in his completing the training program.

• On page 18994 of the preamble to the Interim Final Rule states, "...It is important to remember that only operational mistakes involving noncompliance with one of five critical rules can trigger potential revocation of certification. In addition, operational mistakes can involve a wide variety of factual settings. Thus, FRA gave railroads the discretion to evaluate each situation and determine what the appropriate response should be to that particular incident...The railroad must evaluate the action or inaction by the student and the instructor engineer supervising the student. When it evaluates the conduct of both persons under the FRA rule, FRA intends that only an individual who is actually culpable for the noncompliance will be held accountable for the purposes of 240.117. In some settings culpability could belong to the student alone, the instructor alone, or be assigned to both engineers." **NOTE:** The above also applies to a situation in which an engineer pilot or DSLE is accompanying an engineer.

**NOTE:** See page 10 of Certification Evaluations tab.

## Engineer Classifications

### ***Could a railroad have an engineer classification of TRAIN SERVICE ENGINEER - YARD ONLY?***

30

**QUESTION:** Could a railroad have an engineer classification of Train Service Engineer - Yard Only?

**ANSWER:** Yes, a railroad is authorized to impose additional restrictions on the service, as long as it's not inconsistent.

- The preamble to the Interim Final Rule (page 18995) states, "A second set of interpretive questions has been generated by the desire of some railroads to certify a person as a train service engineer but then impose significant limits or constraints on the operational authority of that person. Part 240.107 permits railroads to take such action and can be employed by them to address issues such as utilizing persons who have sufficient skills to perform in terminal or yard service but lack the knowledge or skill to operate trains beyond terminal areas. Railroads that elect to follow this approach will of course need to structure their implementation program submissions to reflect any differences in the training or testing of these engineers that would flow from their more limited operating responsibilities."

240.107

## Engineer Classifications

***May a locomotive servicing engineer move a locomotive consist with a:***

- ***FUEL TENDER CAR attached?***
- ***Slave (DPU) unit coupled to a BOXCAR that contains electronic equipment?***

31

**QUESTION:** What if a locomotive servicing engineer moves a locomotive consist with a fuel tender attached?

**ANSWER:** It's okay as long as the fuel tender is an integral part of, and intended only for the use with, the specific locomotive (s) to which it is attached. As long as the fuel tender is MU'd (properly connected to the other locomotives in the consist), then the fuel tender is considered part of the locomotive consist. Therefore, employees working within a locomotive shop can move this equipment without certification.

Regarding employees with a locomotive servicing certification, the same would hold true. Exception: When it becomes necessary to switch the tender out of the consist (uncouple all MU hoses), the fuel tender now is separate from the consist and is considered a car. Moving the separated fuel tender would then be considered switching operations, which must be performed by a certified train service engineer. To move the tenders with just the air coupled would be considered switching operations because once the "fuel" connections are broken, the tenders are no longer considered part of the consist.

**QUESTION:** Can a locomotive servicing engineer move a locomotive "slave" unit coupled to a boxcar that contains electronic equipment?

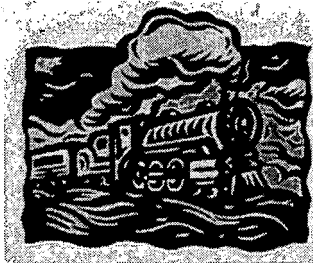
**ANSWER:** Yes, same condition as fuel tender.

1994 Sarah Hall letter

John Conklin email

## Engineer Classifications

***May a non-certified member of the NRHS operate a STEAM TRAIN on a Class I railroad if a qualified engineer and DSLE are onboard?***



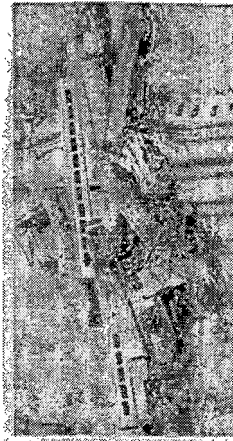
32

**QUESTION:** The National Railway Historical Society (NRHS) plans to operate a steam train on a Class I railroad. The Class I railroad puts a qualified engineer and DSLE on the locomotive, but a non-certified member of the NRHS operates the steam locomotive from Arkansas to Louisiana. Is this prohibited?

**ANSWER:** Yes, it is prohibited. The rule has two mechanisms for dealing with this situation. The first is to issue a waiver, and the second is to treat the identified steam operator as a student engineer and issue him a certificate as such. The Class I railroad could rely on the presence of its DSLE and/or an appropriate locomotive engineer as an "instructor engineer" and be in compliance. Of course, the student engineer would have to have passed a hearing and vision test. This is addressed in the preamble to the Interim Final Rule, page 18995.

## Engineer Classifications

***Does the operation of  
a locomotive (s)  
during WRECKING  
OPERATIONS  
require a certified  
locomotive  
engineer?***



33

**QUESTION:** Does the operation of a locomotive (s) during wrecking operations require a certified locomotive engineer?

**ANSWER:** Yes, this is beyond the scope of the engineer certification exclusions and requires the railroad to conduct wrecking operations in the same manner as any other locomotive operation, with a certified locomotive engineer (OP-97-36).

- Per the preamble to the 1999 final rule, wrecking operations to move damaged equipment are not maintenance movements, which are the only movements of dual purpose vehicles FRA intended to permit without the use of a certified engineer.

OP-97-36

## Engineer Classifications

***If a railroad wants to train a locomotive servicing engineer to be a train service engineer does the engineer need both a locomotive servicing and student engineer certificate?***

34

**QUESTION:** If a railroad wants to train a locomotive servicing engineer to be a train service engineer does the engineer need both a locomotive servicing and student engineer certificate?

**ANSWER:** No, an endorsement to the locomotive servicing certificate or its supplementary documents is sufficient to reflect status as a student train service engineer.

- This question was raised in the preamble to the Interim Final Rule (page 18995). To accomplish the transition, the person needs to function as a student on some occasions and as a servicing engineer on others. The railroads are reluctant to issue the person two certificates to reflect the duality of the person's status and are fearful that even if such action is taken the fact that the servicing engineer is hauling cars could be viewed as a violation of this section.
- It is not FRA's intent that a railroad be required to issue two certificates in this setting. An endorsement to the locomotive servicing certificate or its supplementary documents will be sufficient to reflect the person's status as a student train service engineer.
- The intent of the provision is met when the locomotive servicing engineer, with the documentation described, functions as student and operates under the immediate supervision of an instructor engineer.

240.107

## Exceptions to Certification

- Move a locomotive(s) within the confines of a locomotive repair or servicing area as per 218.5 (f) [locomotive servicing track area] and 218.29(a)(1) [alternate blue signal protection]
- Move a locomotive(s) less than 100 feet for inspection or maintenance purposes

35

**DEFINITION: LOCOMOTIVE ENGINEER** means any person who moves a locomotive or group of locomotives regardless of whether they are coupled to other rolling equipment except:

(1) A person who moves a locomotive or group of locomotives within the confines of a locomotive repair or servicing area as provided for in 218.5 (f) and 218.29 (a)(1) [limits defined by blue signal protection]; or

(2) A person who moves a locomotive or group of locomotives for distances of less than 100 feet and this incidental movement of a locomotive or locomotives is for inspection or maintenance purposes (no coupling allowed).

- For the exception to apply, you have to have a blue-flagged (not necessarily displayed) locomotive servicing track area, meaning one or more tracks, within an area in which the testing, servicing, repair, inspection, or rebuilding of locomotives is under the exclusive control of mechanical department personnel. The area must be defined and it cannot be moved sporadically.

- In 1993, the BN applied for a waiver from 240.7, asking to be allowed to move locomotives, coupled to a maximum of 5 company cars, without being certified. FRA "denied" the waiver.

- AAR has submitted a petition for reconsideration to FRA to allow non-certified car movers to move cars within a car repair shop area.

240.7

1993 Werner letter



## Exceptions to Certification

***A non-certified mechanical employee is working within the confines of a blue-flagged locomotive servicing track area. He is required to switch a 5-locomotive consist onto another track which requires him to go outside the blue-flagged area to get "head room." Is this prohibited?***

36

QUESTION: A non-certified mechanical employee is working within the confines of a blue-flagged locomotive servicing track area. He is required to switch a five-locomotive consist onto another track which requires him to go outside the blue-flagged area to get "head room." Is this prohibited?

ANSWER: Yes, movement "into or out" of that facility must be conducted with a certified engineer at the controls.

## Leaving the Controls

- "Operation" of a locomotive means that an individual is at the controls of a moving locomotive, in a position to control the locomotive should the need arise
- It does not mean there has to be actual manipulation of a control

37

- FRA inspectors have encountered several situations wherein non-certified individuals have been observed at the controls of moving locomotives.
- For example, an engineer vacated the seat to use the toilet in the cab nose. In one case, the engineer left the controls unattended. In a second case, the engineer asked another crewmember to watch the controls, and in a third case, the conductor sounded the whistle at crossings while the engineer was in the toilet.
- "Operation" of a locomotive means that an individual is at the controls of a moving locomotive, in a position to control the locomotive should the need arise. It does not mean that there has to be actual manipulation of a control.
- It is a violation of the rule for a non-certified engineer to "sit in the seat" and "watch" or "sound the horn" while the engineer is temporarily away, even if no controls are touched.
- The same rationale applies if nobody is at the controls, that is an engineer leaves the seat vacant, and leaves the control compartment for any reason, while the locomotive is in motion. FRA considers this a violation of the rule.

(continued)

OP-97-15

## Leaving the Controls

***If a train service engineer vacated the controls and went into the nose of the locomotive to use the restroom, could he or she be decertified?***

38

- This does not prohibit an engineer from exiting the engineer's chair in order to move around the control compartment, but does require that he remain personally in charge of the operation of the locomotive at all times.
- The best practice is for the inspector to ask the train crew in advance what the railroad's policy is for vacating the engineer's seat to use the restroom. If they provide the incorrect answer, advise them that it would be a violation of Part 240 for the engineer to leave the controls under those circumstances. In addition, talk to the railroad to determine what their policy is on this matter.

**QUESTION:** Would these circumstances constitute a "revocable" event for the engineer under Part 240?

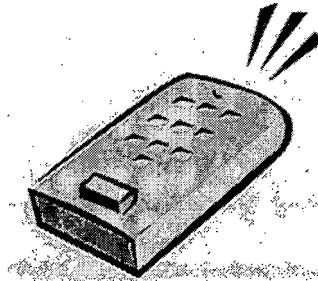
**ANSWER:** No, it is not a decertifiable event.

**QUESTION:** What should you do if you encounter such a situation?

**ANSWER:** Contact your regional specialist for guidance. Depending on the circumstances, both the certified and non-certified employee may be subject to individual liability action. The railroad may also be liable depending on its policy.

## Operators of Remote Control Locomotives

***If a person is controlling a locomotive from a remote location, through the use of radio signals, is he or she required to be a certified locomotive engineer?***



39

### **Operators of remote control locomotives.**

Also per the preamble to the Interim Final Rule (pg. 18995), "Questions have been raised about whether a person who is controlling a locomotive from a remote location, through the use of radio signals, must be deemed an engineer for the purposes of this rule...FRA considers such persons to be locomotive engineers covered by Part 240."

- Per John Conklin, FRA Engineer Certification Program Manager, this also includes hump operators who stop and start locomotives by remote control within a hump yard. In this scenario, the hump operators have to be certified engineers.

## Incidental Train Operators

- FRA was asked by AAR to permit contracted business entities (such as excursion & dinner trains; & companies which operate service vehicles) to perform their own certification activities & operate on railroads with only a pilot.
- FRA "denied" petition

40

### **Certification by incidental train operators.**

• In the preamble to the Interim Final Rule, page 18984, FRA addresses the AAR's request, involving the ability of business entities that are not traditional railroads to qualify their own employees under this rule. It appears FRA is asked to permit business entities that have contractual relationships with traditional railroads to perform their own certification activities. For example, instances in which railroads routinely contract with companies to operate company "service vehicles" (while providing inspection or maintenance activities) and instances in which railroads contract for the operation of special ventures like excursion or dinner train service. If sanctioned, contractor self-certifications would enable contractor engineers to operate on multiple railroads with only a pilot to provide localized information...

FRA "denied" the portion of reconsideration request seeking modification of the rule to permit certification of engineers by contractors or other entities that incidentally conduct rail operations on the general system. These entities are already included in the rule, thus they can simply accept their status as a railroad and proceed to comply, or can apply for a waiver. Otherwise, like plant railroads, they can elect to cease operations on the general system or have the host railroad certify any of its engineers who will perform service on the railroad's tracks.

## DESIGNATED SUPERVISOR OF LOCOMOTIVE ENGINEERS

41

**DEFINITION: DESIGNATED SUPERVISOR OF LOCOMOTIVE ENGINEERS (DSLE)** is a person designated as such by a railroad in accordance with the provisions of 240.105.

- The role of the DSLE is twofold. One, the DSLE makes the final determination that a locomotive engineer is qualified to safely operate a train. Two, after a person is certified, a DSLE is responsible for qualifying engineers on the physical characteristics of any additional territories over which the engineer will need to operate.

240.7

## Designated Supervisors of Locomotive Engineers (DSLE)

Railroad shall  
designate in  
writing any person  
it deems qualified  
as a DSLE



42

- After October 30, 1999, each railroad in operation shall designate in writing any person(s) it deems qualified as a DSLE. Each person so designated shall have demonstrated to the railroad through training, testing or prior experience that he or she has the knowledge, skills, and ability to be a DSLE.
- After November 1, 1991, a railroad shall maintain a written record identifying each person designated by it as a DSLE. The listing shall be updated at least annually. This record shall be kept at the divisional or regional headquarters of the railroad and shall be available for inspection or copying by FRA during regular business hours. See the Recordkeeping tab of this reference guide for additional information.

240.201(a)

240.221

## Designated Supervisors of Locomotive Engineers (DSLE)

- Railroad's program should address
- Railroad shall examine to determine:
  - (1) Knowledge & understanding of 240
  - (2) Able to test & evaluate knowledge & skills of engineers
  - (3) Supervisory experience to prescribe remedial action
  - (4) Certified engineer  
**(qualified on assigned territory)**

43

240.105 identifies the criteria for the selection of Designated Supervisors of Locomotive Engineers (DSLE).

- Each railroad's program shall include criteria and procedures for implementing this section.
- The railroad shall examine any person it is considering for qualification as a SLE to determine that he or she:
  - (1) Knows and understand the requirements of Part 240
  - (2) Can appropriately test and evaluate the knowledge and skills of locomotive engineers
  - (3) Has 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 (i.e., capable of demonstrating in the seat); and
  - (4) Is 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.**

(continued)

240.105



## **Railroad Program Submission (Selection of DSLE's)**

- Describe the criteria & evaluation methodology it will rely on for selecting DSLE's
- For example, a minimum level of prior experience as an engineer, successful completion of a course of study, or successful passage of a standardized testing program

44

- The second section of the railroad's program submission must contain information concerning the railroad's procedures for selecting the person(s) it will rely on to evaluate the knowledge, skill, and ability of persons seeking (re)certification.
- As provided for in 240.105, each railroad must have a procedure. It gives a railroad latitude to select the criteria and evaluation methodology.
- The railroad must describe how it will use that latitude and evaluate those it designates as DSLE's.
- The railroad must identify in sufficient detail to permit effective review by FRA, the criteria for evaluation it has selected.
- For example, if a railroad intends to rely on one or more of the following; a minimum level of prior experience as an engineer, successful completion of a course of study, or successful passage of a standardized testing program, the submission must state which criteria it will employ.

## Designated Supervisors of Locomotive Engineers (DSLE)

- If a railroad does not have any DSLEs, the chief operating officer shall make a determination in writing that the DSLE “designate” possesses the necessary skills per 240.127
- Consider any special operating characteristics unique to the railroad

45

- If a railroad does not have any DSLEs, and wishes to hire one, the chief operating officer of the railroad shall make a determination in writing that the DSLEs designate possesses the necessary performance skills in accordance with 240.127. (see page 58 of Certification Evaluations tab)
- This determination shall take into account any special operating characteristics which are unique to that railroad.
- A DSLE who changes territories will receive training on the physical characteristics of the new territory and requisite skills commensurate with the difficulty of the terrain (preamble to 1999 final rule).
- A railroad's program must address how it intends to implement the physical characteristics qualification of its DSLEs.
- The addition of 240.105 (c) is an effort to clarify how small railroads, particularly those just commencing operations who find themselves without a qualified and certified DSLE, can designate and train such individuals without reliance on outside sources. 56 FR 28228, 28241-42 (June 19, 1991) (stating that a DSLE could be a contractor rather  
(continued)

240.105 (c)

## Designated Supervisors of Locomotive Engineers (DSLE)

- **If a railroad does not have any DSLEs, the chief operating officer shall make a determination in writing that the DSLE “designate” possesses the necessary skills per 240.127**
- **Consider any special operating characteristics unique to the railroad**

46

than an employee of the railroad). The need to create a DSLE can occur under a variety of scenarios including when:

- 1) New railroads have never certified a locomotive engineer or a DSLE;
  - 2) Railroads may have had one or a few DSLEs at one time but no longer employ any qualified individuals; and
  - 3) A railroad wishes to utilize contractor engineers.
- For those railroads that do not have DSLEs, the addition of 240.105 (c) will enable them to consider an additional option for creation of their first DSLE.
  - This section is designed to address the problems that arise from a railroad being unable to certify any person as a locomotive engineer, let alone a DSLE, since the railroad lacks even one DSLE who could conduct the required training and testing of 240.203 (a)(4) (for initial certification or recertification) or 240.225 (a)(5) (for certifying based on the reliance of the qualification determinations made by other railroads).
  - Meanwhile, even if 240.105 (c) is utilized, a railroad must comply with the other provisions of either 240.203 or 240.225.

Preamble to 1999 Final Rule

## **Designated Supervisors of Locomotive Engineers (DSLE)**

**Qualified on physical characteristics only:**

- **On assigned territory**
- **When qualifying engineers on the physical characteristics of the territory**
- **When conducting the performance skills test on a student or new engineer**

47

**A DSLE needs to be qualified on the physical characteristics of a territory in the following circumstances:**

- **His or her assigned territory**
- **When qualifying engineers on the physical characteristics of the territory**
- **When conducting a performance skills test for student engineers or for a new engineer**

Mr. Edward W. Lechut  
Vice Chairman  
Wyoming State Legislative Board  
Brotherhood of Locomotive Engineers  
653 Vista Lane  
Cheyenne, Wyoming 82009

Dear Mr. Lechut:

Thank you for your August 29 letter concerning certification requirements for individuals operating locomotives on privately owned industrial tracks. Specifically, you requested information concerning the circumstances under which an individual operating a locomotive would not need to meet the requirements of Title 49, Code of Federal Regulations, Part 240.

Part 240.3(a) - Applicability of Part 240, states:

"This part applies to all railroads that operate locomotives on standard gage track that is part of the general railroad system of transportation."

Part 240.3(b) states:

"This part does not apply to:

1. Rapid transit operations in an urban area that are not connected with the general system of transportation; and
2. A railroad that operates only on track inside an installation which is not part of the general railroad system of transportation." (Emphasis mine)

The Federal Railroad Administration's (FRA) regulations exclude from their reach railroads whose entire operations are confined to an industrial installation, e.g., "plant railroads" such as those in steel mills that do not go beyond plant boundaries. In some cases a plant railroad leases track immediately adjacent to its plant, from a general system railroad, for the purposes of moving only cars shipped to or from the plant. The lease would remove the plant railroad's operations on that trackage from the general system for purposes of FRA regulations.

CONCURRENCE
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In addition, Part 240 also excludes all railroads that are not part of, or operated over the "general railroad system of transportation, i.e., the network of standard gage railroads over which the interchange of goods and passengers throughout the nation is possible.

However, if the plant railroad or a railroad not considered part of the general system, itself operates on the general system, it's equipment, crew, and practices would be subject to FRA's regulations.

Even where a railroad operates outside the general system, other railroads that are definitely part of the general system may have occasion to enter the first railroad's property (e.g., a major railroad goes into a chemical, auto, or coal plant to pick up or set-out cars). In such cases, the railroad that is part of the general system remains part of that system while inside the installation; thus, all of it's activities are covered by FRA's regulations during that period.

Any interpretive issues concerning the applicability of these policies, to certain railroad operations, are investigated by FRA on a case by case basis.

I hope this information is helpful and I thank you for your interest in railroad safety.

Sincerely,

Original Signed By  
James T. Schultz

Edward R. English  
Director, Office of Safety Assurance  
and Compliance

FRA:RRS11:JConklin:60902:tes:12/7/95

cc: RRS1, 10, 11 rdg & subj

N:\tsmith\lechut.ind

## Wrecking Operations

Several incidents have been brought to FRA's attention involving the operation of locomotives by uncertified persons during wrecking operations. Some have taken the position that these operations are de minimis in nature and are neither directly associated with railroad operations nor applicable to the intent of Part 240. Others have indicated that these operations are conducted while personnel are located in close proximity to equipment and are therefore, sensitive in nature, requiring the expertise and training intrinsic to engineer certification.

By definition, FRA excludes from engineer certification any person who:

"(1) moves a locomotive or group of locomotives within the confines of a locomotive repair or servicing area in which the testing, servicing, repair, inspection or rebuilding of locomotives is under the exclusive control of mechanical department personnel, and the area is protected by a blue signal displayed at or near a switch providing entrance to or departure from the area; or

(2) moves a locomotive or group of locomotives for distances of less than 100 feet and this incidental movement of a locomotive or group of locomotives is for inspection or maintenance purposes."

The language is clear and unambiguous. Except for these two exclusions, nowhere is it stated, nor intended, that anyone other than a certified locomotive engineer is permitted to operate a locomotive or locomotives with cars attached. Conversely, the language is clear that there is no exclusion as to "where" a locomotive may be moved for the purposes of inspection or maintenance as long as this distance is less than 100 feet. Clearly, the movements of locomotives and/or cars during wrecking operations are not provided for within the regulation. The prime function of a wrecking operation is to "clear the railroad of damaged equipment" in order to restore service. In so doing, it is not uncommon for the railed locomotive(s) and/or equipment to be moved to locations beyond the wreck site, thereby extending these operations.

FRA Policy: It is FRA's belief that the operation of a locomotive(s) during wrecking operations is beyond the scope of the aforementioned exclusions and, therefore, requires the railroad to conduct these operations in the same manner as any other locomotive operation, with a certified locomotive engineer.

#

To: Tom Murphy

04/21/92

Subject: Certified Engineers for Steam Excursion Operations

Southern Pacific (Ken Miller) called asking for clarification of what is required for compliance with Part 240 when non-railroad personnel are seeking to operate steam locomotives on SP track.

SP's immediate concern was prompted by the desire of the National Railway Historical Society to sponsor a steam train from Little Rock, Arkansas to somewhere in Louisiana. That operation is contemplated for the weekend of May 2-3. Moreover, SP is concerned about the recurring operation of another steam locomotive. SP routinely allows a steam locomotive owned by the City of Portland (#4449) to operate over its tracks at various times during the summer months.

Miller said that SP normally puts a qualified engineer and a roadforeman of engines on the NRHS steamer but SP exercises no control over who the NRHS permits to run the unit. A similar system is in place with the #4449 except that the City of Portland has retained an ex-SP engineer who is in-charge of the unit and decides who runs it. Miller wanted to know whether SP would be in violation of the rule, if they continue this practice and, if in violation, how they could extricate themselves.

I told Miller that currently the rule has only two mechanisms for dealing with this situation. The first is to issue a waiver and the second is to treat the identified steam operator(s) as students and issue them certificates as such. Then SP could rely on the presence of its Supervisor of Locomotive Engineers and/or an appropriate locomotive engineer as an "instructor" and be in compliance. Miller said that sounded reasonable to him since the only thing the "student" needs to do is show that his or her physical fitness [visual/hearing] and it tends to hold down the number of "buffs" who can climb into the seat.

Larry Wagner





U.S. Department  
of Transportation

Federal Railroad  
Administration

COPY

400 Seventh St., S.W.  
Washington, D.C. 20590

NOV 18 1994

Via Facsimile and U.S. Mail

Ms. Sarah E. Hall  
Counsel  
CSX Transportation  
500 Water Street  
Jacksonville, Florida 32202

Dear Ms. Hall:

Thank you for your November 2 letter regarding CSX Transportation's proposal to modify one tank car for use as a fuel tender for diesel locomotives. Your specific inquiry regarded whether an employee other than a certified train service engineer could move a consist containing the fuel tender within the confines of a locomotive repair or servicing area.

Based upon our understanding of your letter, we have determined that your intended use of a fuel tender, attached as a fuel source for the locomotive, would not necessitate the use of a train service engineer for movements on servicing track areas. However, such movements can be made only when the fuel tender is an integral part of, and is intended only for the use with, the specific locomotive(s) to which it is attached. Any other movements of these cars would require the use of a train service engineer.

It was a pleasure to respond to your question and I look forward to working with you on future rail safety issues.

Sincerely,

E. R. English

Edward R. English  
Director, Office of Safety  
Enforcement

cc: Mr. Richard A. Fliess

RRS11:LMcquarie rev:JSchultz 11-17-94  
cc: RRS10, 11, Reg 3



U.S. Department  
of Transportation  
Federal Railroad  
Administration

400 Seventh St., S.W.  
Washington, D.C. 20590

February 24, 1992

Mr. Ronald E. Wiggins  
General Chairman  
Brotherhood of Locomotive Engineers  
General Committee of Adjustment  
523 Route 38  
Cherry Hill, New Jersey 08002-2948

Dear Mr. Wiggins:

Thank you for your January 10 letter concerning implementation of the Federal Railroad Administration's (FRA) new regulations establishing qualification standards for locomotive engineers. Your letter questions the actions taken by the National Railroad Passenger Corporation (Amtrak) to certify as locomotive engineers individuals who work primarily in various mechanical facilities.

Let me begin by noting that although the regulation uses the term "locomotive engineer" to describe the individuals to whom it applies, the regulation pertains to any person who operates a locomotive regardless of their job classification. FRA originally proposed to use the phrase "locomotive operator" to highlight the broad applicability of the rule. However, in response to commenter concerns that use of the term operator could be viewed as denigrating the proud heritage of the individuals who have historically been referred to as locomotive engineers, FRA's final rule uses the term locomotive engineer, but explains in section 240.3(c) that the rule applies to the larger universe of persons who operate locomotives.

The rule requires that, with two exceptions, everyone who operates a locomotive be certified. The first exception permits non-certified operators to make short movements, of 100 feet or less, incident to inspection or maintenance activities. The second exception applies to operations that occur within a designated locomotive servicing facility. In general, movements of locomotives that occur within the perimeters of that facility may be performed without a certified locomotive engineer at the controls. However, movement into or out of that facility must be conducted with a certified engineer at the controls.

When other circumstances prevail, such as operations in a car repair facility or the conduct of operational testing beyond the boundaries of the locomotive servicing area, the rules do require that the operator of the locomotive be a certified locomotive engineer whose qualifications have been established in accordance with the provisions of these rules. To ease conversion to the new certification requirements, all railroads were permitted to initially decide who would be certified under the grandfathering provision. After FRA's rules became effective on September 17, 1991, railroads were required to establish qualification criteria for evaluating individuals eligible to be grandfathered and to determine whether a person met those qualifications. Beginning in 1992, Amtrak is required to conduct a formal evaluation of each grandfathered person's qualifications. The formal evaluation must be conducted in accordance with the railroad's FRA-approved implementation program and must be completed within three years.

In accordance with this approach, Amtrak concluded that it wanted to authorize some people to operate locomotives beyond the boundaries of their locomotive servicing facilities, but in relatively close proximity to those facilities. In this way, Amtrak could continue existing practices whereby personnel known as "locomotive equipment operators" routinely move equipment in terminal areas. Amtrak, therefore, established criteria for determining the knowledge, skill, and ability that persons performing such limited operations would require and evaluated eligible personnel to determine whether they met those criteria. As permitted by the rule, those meeting the criteria were authorized to move locomotives, with or without cars, in geographically limited areas and were issued certificates showing their status as restricted train service engineers. A similar effort was conducted for evaluating those individuals Amtrak authorized to operate in unrestricted service. Although different criteria were used (to reflect such things as the need for higher levels of train handling skills), these individuals were also issued certificates to perform as train service engineers but without narrow operational constraints.

For the reasons provided, Amtrak did not need a "written exception" prior to certifying individuals as limited train service engineers. Please let me know if I can be of further assistance.

Sincerely yours,

[original signed by]

Gilbert E. Carmichael  
Administrator

SEP 12 1995

Mr. Thomas A. Buettner  
President, Local Lodge  
International Association of Machinists  
and Aerospace Workers  
P.O. Box 639  
Aberdeen, Maryland 21001

Dear Mr. Buettner:

Thank you for your letter of September 7, 1995, requesting information concerning the qualification and certification of locomotive engineers.

Title 49, Code of Federal Regulations (49 CFR), Part 240, Qualification and Certification of Locomotive Engineers, stipulates that:

"After December 31, 1991, no railroad shall permit or require any person to operate a locomotive in any class of locomotive or train service unless that person has been certified as a qualified locomotive engineer and issued a certificate."

The guidelines for the certification process are described in the railroad's certification program. This program is required to be submitted to the Federal Railroad Administration (FRA) for approval.

Prior to the implementation of this regulation (before November 1, 1991), the railroads were required to make these determinations based on the prior railroad experience of those individuals who were previously locomotive engineers. This process was known as "grandfathering."

After the effective date of this regulation (December 31, 1992), railroads were prohibited from certifying any person as a locomotive engineer unless that person has been tested, evaluated and determined to be qualified to safely operate a locomotive or train.

There are two exceptions permitted by the regulation. Locomotive engineer certification is not required for:

"(1) a person who moves a locomotive or group of locomotives within the confines of a locomotive repair or service area as provided for in 49 CFR 218.5(f) and 218.29(a)(1); or

(2) a person who moves a locomotive or group of locomotives for distances of less than 100 feet and this incidental movement of a locomotive or locomotives is for inspection or maintenance purposes."

The regulation provides for three classifications of locomotive engineers:

(1) Train service engineer: may operate locomotives singly or in multiples and may move them with or without cars coupled to them;

(2) Locomotive servicing engineer: may operate locomotives singly or in multiples but may not move them with cars coupled to them; and

(3) Student engineer: may operate only under direct and immediate supervision of an instructor engineer.

The regulation gives the railroad latitude to impose additional conditions or operational restrictions on the service an engineer may perform beyond those identified above, provided those conditions or restrictions are in compliance with the regulation.

For example, a railroad may issue a "restricted" train service certificate to an employee with a mechanical department background. The purpose of this restricted service would be to provide for the movement of locomotives with a limited number of cars attached, between a service area and a yard. However, the regulation requires that these employees have the necessary training, skills and knowledge to perform these movements safely.

In response to your second inquiry concerning other railroad positions that require certification and training, Federal certification requirements do not apply to other railroad occupations at the present time.

I appreciate your interest in railroad safety and I hope this information is helpful.

Sincerely,

Original Signed By  
James T. Schultz

Edward R. English  
Director, Office of Safety Assurance  
and Compliance

FRA:RRS1:JConklin:tes:12/1/95  
cc: RRS1, 10, 11 Rdg & Subject  
N:Tsmith:Buettner.240 & Backupfile-John



U.S. Department  
of Transportation  
Federal Railroad  
Administration

400 Seventh St., S.W.  
Washington, D.C. 20590

JAN 24 1992

Mr. R. J. McCarthy  
Railroad Coordinator  
International Association of  
Machinists and Aerospace Workers  
1300 Connecticut Avenue  
Washington, D.C. 20036

Dear Mr. McCarthy:

This responds to your letter seeking clarification of the application of the Federal Railroad Administration (FRA) rules establishing qualifications standards for locomotive engineers. In that request you sought confirmation of your view that the rules would not require certification of persons who move locomotives in connection with inspection, maintenance, and repair activities.

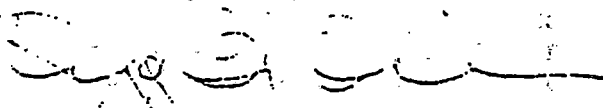
The rules start from the premise that, with two exceptions, everyone who operates a locomotive should be qualified under these rules. The first exception applies to short movements, of 100 feet or less, made incident to inspection or maintenance activities. FRA's rules permit persons who have not been qualified in accordance with these rules to operate the locomotive under these circumstances. FRA's rules do not limit the locations where such incidental movements may occur. Thus, theoretically such movements could occur on a main line track.

The second exception applies to operations that occur within a designated locomotive servicing facility. Movements of locomotives that occur within the perimeters of that facility can be performed without a certified locomotive engineer at the controls. However, movement into or out of that facility must be conducted with a certified engineer at the controls. This exception is limited in several ways: (i) the number of locations at which this exception can be invoked are limited; (ii) the geographic area in which this exception can apply are easily identified through the use of blue signals positioned on all of the tracks providing entry to the area; and (iii) operations within the area to which this exception applies are conducted at slow speed and are under the control of mechanical department employees.

However, if other circumstances prevail, such as operations in a car repair facility or the conduct of operational testing beyond the boundaries of the locomotive servicing area, then the rules do require that the operator of the locomotive be a certified locomotive engineer whose qualifications have been established in accordance with the provisions of these rules. I believe that, with the reservations just described, your letter does reflect an accurate understanding of these rules.

As a matter of information, FRA has recently granted in part a petition for reconsideration filed by the Association of American Railroads (AAR). In that petition, AAR requested that FRA rethink its position about whether "trackmobiles" should be considered locomotives for the purposes of these rules. FRA intends to issue a supplemental notice of proposed rulemaking to gather additional information on this subject prior to making a decision on the merits. In light of its decision to defer action on the merits as to these types of vehicles, FRA has decided not to apply these rules to such vehicles until completion of the supplemental rulemaking.

Very truly yours,

  
Gregory B. McBride  
Assistant Chief Counsel  
for Safety

Ward D. Werner, Esquire  
Associate General Counsel  
Burlington Northern Railroad  
9401 Indian Creek Parkway  
Overland Park, Kansas 66201-9136

7:00 PM  
CC: KJS  
3/18/44

Dear Mr. Werner:

On November 8, the Federal Railroad Administration (FRA) denied waiver petition docket number RSEQ-92-6 "Qualification and Certification of Locomotive Engineers," submitted by the Burlington Northern Railroad (BN). The petition requested a permanent waiver from a specific requirement of Title 49, Code of Federal Regulations (CFR), Part 240. The request for waiver specifically asked for relief from complying with the definition of locomotive engineer as defined in 49 CFR 240.7. BN asked to be allowed to move locomotives, coupled to a maximum of five company cars, within the limits of a locomotive servicing area, without being required to use certified locomotive engineers.

FRA's investigation of this matter disclosed that the BN is part of the general system of transportation and a waiver from compliance with the regulation is not justified. BN has the authority under the regulations to submit a train service engineer program designed for the specific purpose that the waiver petition requests. The regulations permit the certification of a train service engineer with restricted activities, such as authority to operate locomotives coupled to a limited number of cars within the confines of a designated locomotive servicing area, by designing and submitting a qualification program tailored to the purpose of the restriction. It appears from BN's petition that the basic portions of a training program are already in effect for the group of employees for which this exclusion is sought.

As a result of these findings and in the interest of safety, FRA has denied waiver petition RSEQ-92-6.

Sincerely,

Original Signed  
Philip Olekszyk

Phil Olekszyk  
Deputy Associate Administrator  
for Safety

FRA:RRS11:Murphy:66594:tes;12/10/93 -  
RE: RSEQ-92-6  
cc: RRS1, 2, OSE, Rdg11 & Subject file,  
REGION 1,2,3,4,5,6,7,and 8, and  
Safety Board: Stotts-R5  
Burgess-RRS10  
Tessler-RCC30  
Clairmont-R8





U.S. Department  
of Transportation  
Federal Railroad  
Administration

Date: SEP 1 1993

Reply to Attn. of:

Subject: **Action: Requirement for Certified Engineers at the Controls of Moving Locomotives or Trains**

From:   
Edward R. English  
Director, Office of Safety Enforcement

To: Regional Directors

FRA inspectors have encountered several situations wherein non-certified individuals have been observed at the controls of moving locomotives. In each situation, the certified locomotive engineer has vacated the seat (e.g., to use the toilet in the cab nose; to attend to an alarm bell on a trailing locomotive; to "rest," etc.). In each case, the engineer has been replaced by a non-certified train crew member.

The regulation (49 CFR Part 240.201(d)) clearly provides parameters within which we expect railroads and individuals to abide: "After December 31, 1991, no railroad shall permit or require any person to operate a locomotive in any class of locomotive or train service unless that person has been certified as a qualified locomotive engineer and issued a certificate that complies with Part 240.223."

In order to ensure consistent application of the rule in such situations, the following instructions are provided:

- The regulation requires that only a certified individual may operate a moving locomotive. A certified engineer, or a certified student engineer, under the immediate supervision of an instructor engineer,<sup>1</sup> must be at the controls of a moving locomotive at all times. The only exceptions to this are defined in 49 CFR Part 240.7 in the definition of locomotive engineer and include:

- (1) A person who moves a locomotive or group of locomotives within the confines of a locomotive repair or servicing area as defined in 49 CFR 218.5(f) and 218.29(a)(1); or

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<sup>1</sup>The student must be carrying a certification card which designates him as a "Student." The certified engineer who is instructing the student must be certified either "Train Service" or "Locomotive Servicing," whichever is appropriate, and be designated by the railroad as an instructor.

- (2) A person who moves a locomotive or group of locomotives for distances of less than 100 feet and this incidental movement of a locomotive or locomotives is for inspection or maintenance purposes.

- "Operation" of a locomotive means that an individual is at the controls of a moving locomotive, in a position to control the locomotive should the need arise. It does not mean that there has to be actual manipulation of a control.<sup>2</sup>
- The same rationale applies if nobody is at the controls, i.e., an engineer leaves the seat vacant, and leaves the control compartment for any reason, while the locomotive is in motion.<sup>3</sup> We consider this action as a violation of the rule.
- If an inspector encounters a situation which violates the rule as described above, he/she should contact his/her supervisory specialist for guidance. Depending upon the circumstances, both the certified and non-certified employees may be subject to individual liability action under Part 209. The railroad may also be liable depending upon their policy addressing such situations.<sup>4</sup>

We recognize that long standing industry practice has included temporary augmentation of a locomotive engineer by another crewmember for short periods. However, Part 240 now renders such practice unacceptable while a locomotive is in motion except as provided in 240.7.

Please disseminate this information to your operating practices specialists and inspectors.

#

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<sup>2</sup> Some misunderstanding is apparent here. Some individuals believe it acceptable for a non-certified individual to "sit in the seat" and "watch" or sound the horn while the certified engineer is temporarily away. We consider such action as "operating" even if no controls are touched.

<sup>3</sup> This does not prohibit the locomotive engineer from exiting the engineers chair in order to move around the control compartment of the locomotive. However, it does require that he remain personally in charge of the operation of the locomotive at all times.

<sup>4</sup> Keep in mind that this is not a revokable event for the locomotive engineer under Part 240.

**From:** John Conklin  
**To:** ELROD, Jim; Spry, Sidney  
**Date:** 7/19/00 7:11AM  
**Subject:** Re: BNSF Hostlers, Alliance

**Policy on Fuel Tenders Included in Locomotive Consists**

As long as the fuel tender is MU'd (properly connected to the other locomotives in the consist), then we consider the fuel tender to be part of the locomotive consist. Therefore, employees working within a locomotive servicing area can move this equipment without certification. Regarding employees with a locomotive servicing certification, the same would hold true. They would not be exceeding their certification if they moved such equipment, since all of the equipment is considered to be a locomotive consist.

**Exception**

When it becomes necessary to switch the tender out of the locomotive consist (uncouple all MU hoses), the fuel tender now becomes separate from the consist and is considered a car. Now-moving the fuel tender would be considered switching operations, which must be performed by a certified train service engineer.

Answer to Mr. Spry's question: Fuel tenders are, in essence, fuel tanks. Once this "fuel" connection is broken, the tenders are no longer considered part of the consist. To move the tenders with just the air coupled would be considered switching operations. We gave the railroads a break on this issue and will not let them try to sharp shoot us. Therefore, switching a fuel tender into or out of a locomotive consist would be considered switching and would require a certified train service engineer to perform this task.

>>> Sidney Spry 07/11/00 07:25PM >>>

JB: How did the interpretation go on hostlers operating locomotives coupled to fuel tenders? Did the fuel tenders have to be MU'd or could just the air be cut in for the hostlers to move them? Thanks, Bifford

**CC:** Keane, Thomas; OP Specialists; schnakenberg, Kathy; Taylor, DOUG; Yachechak, Dennis

CERTIFICATE EVALUATIONS

# **CERTIFICATION EVALUATIONS**

## **Time Limitations Certification Evaluations**

1

This section of the reference guide covers:

- Time limitations for making determinations
- Certificate evaluations
- Prior safety conduct
- Hearing and visual acuity
- Written knowledge exam
- Performance skills test
- Completion of required training

## Certification Evaluations

- |                                 |  |
|---------------------------------|--|
| ▪ Prior safety conduct          | ▪ Written knowledge exam   |
| - Operating rules compliance    | ▪ Performance skills test  |
| - Alcohol/drug rules compliance | ▪ Completion of required training program (where not previously certified) |
| - Motor vehicle operator        |  |
| ▪ Vision test                   |  |
| ▪ Hearing test                  |  |

2

### **Determinations required as a prerequisite to certification.**

- Without getting into detail at this point, let's look at the types of evaluations a railroad must make prior to certification or recertification of a locomotive engineer.
- Each railroad, prior to initially certifying or recertifying any person as an engineer for any class of service (except student engineer – see page 75), shall in accordance with its FRA-approved program, determine in writing that the individual meets the eligibility requirements of:
  - (1) Prior safety conduct evaluations for operating rules compliance [240.117], for alcohol/drug offenses from the motor vehicle driving record [240.115], and for substance abuse disorders and alcohol/drug rules compliance [240.119];
  - (2) Vision and hearing acuity standards [240.121];
  - (3) Necessary knowledge, as determined by successfully passing a written test [240.125];
  - (4) Necessary applied knowledge and operating performance skills, as demonstrated by successfully completing an operational performance test [240.127]; and
  - (5) Completion of required training, where a person has not previously been certified [240.123].

240.203

## Time Limitations

- Certification is for not more than 3 years
- May not rely on another railroad's certification that is more than **36** months old
- Must not be furnished more than **366** days before the date of the railroad's decision for:
  - Eligibility and eligibility data
  - Visual and hearing acuity data
  - Knowledge exam
  - Performance skill testing

3

### **Time limitations for making determinations.**

- No railroad shall certify a person as a qualified locomotive engineer for an interval of more than 36 months.
- No railroad shall rely on a certification issued by another railroad that is more than **36** months old (except for time limitation exceptions on next page).
- A railroad shall not certify or recertify a person as a qualified locomotive engineer in any class of train or engine service, if the railroad is making the following determinations and the information being relied on was furnished more than **366** days before the date of the railroad's certification decision.
  - Eligibility and the eligibility data;
  - Visual and hearing acuity and the medical examination;
  - Demonstrated knowledge and the knowledge examination; or
  - Demonstrated performance skills and the performance skill testing.

240.217

## **Time Limitations (Exceptions)**

**366 days does not apply if railroad is  
relying on certification determinations  
by:**

- **Another railroad;**
- **Other countries; or**
- **Joint operations territory**

4

- **These time limitations do not apply to a railroad that is making a  
certification decision in accordance with:**

**(1) 240.217 (c) (2) [Reliance on determinations made by another  
railroad]; (see pages 115-116)**

**(2) 240.227 [Reliance on qualification requirements of other countries];  
(see page 114); or**

**(3) 240.229 [Reliance on requirements for joint operations territory].  
(see pages 119-121)**

240.217



## PRIOR SAFETY CONDUCT



5

### **Procedures for determining eligibility based on prior safety conduct.**

- Each railroad, prior to initially certifying or recertifying any person as an engineer for any class of service, shall determine that the person meets the eligibility requirements of 240.115 involving prior conduct as a motor vehicle operator, 240.117 involving prior conduct as a railroad worker, and 240.119 involving substance abuse disorders and alcohol/drug rules compliance.

240.205

## Prior Safety Conduct

- Evaluate prior safety conduct as a railroad employee & operator of a motor vehicle (data from railroad's records, former railroad's records, & motor vehicle driving records)
- Person is ineligible for certification if they have an adverse record

6

### **General criteria for eligibility based on prior safety conduct.**

- Per 240.109, each railroad's program must include criteria and procedures for evaluating an employee's prior safety conduct.
- A railroad shall evaluate the prior safety conduct of any person it is considering for qualification as a locomotive engineer and the program shall require that a person is ineligible if the person has an adverse record of prior safety conduct as provided for in 240.115 [motor vehicle record], 240.117 [operating rules compliance], or 240.119 [alcohol/drug compliance].
- The program shall require evaluation of data which reflect the person's prior safety conduct as a railroad employee and the person's prior safety conduct as an operator of a motor vehicle, provided that there is relevant prior conduct. The information to be evaluated shall include:
  - The relevant data furnished from the evaluating railroad's own records, if the person was previously an employee of that railroad;
  - The relevant data furnished by any other railroad formerly employing the person; and
  - The relevant data furnished by any governmental agency with pertinent motor vehicle driving records.

240.109

240.115

240.117

240.119

## **Prior Safety Conduct (Former Railroad)**

- **Within one year prior to (re)certification, person shall request that former railroad provide copy of service record**
  - **In writing; and**
  - **Provide any necessary consent forms**

7

### **Individual's duty to furnish data on prior safety conduct as an employee of a different railroad.**

Except for initial certification [240.201 (b) (h) or (i)] or for persons covered by 240.109 (h) [never been a railroad employee or motor vehicle operator], each person seeking certification under Part 240 shall, within **366** days preceding the date of the railroad's decision on certification or recertification:

- Request, in writing, that the chief operating officer or other appropriate person of the former employing railroad provide a copy of that railroad's available information concerning his or her service record to the railroad that is considering such certification or recertification; and
- Take any additional actions, including providing any necessary consent required by State or Federal law to make information concerning his or her service record available to that railroad.

240.113

## AAR Petition for Reconsideration

- AAR petitioned FRA to absolve a railroad's responsibility for sending employee information to another railroad
- FRA "denied" this petition, stating, "FRA wants TRUE information provided. Truth is a complete defense in defamation actions."

8

- The AAR petitioned FRA to absolve a railroad's responsibility for sending employee information - and if not - be relieved of responsibility for any resulting libelous material supplied to another railroad.
- FRA denied the petition for reconsideration, stating, "FRA wants TRUE information provided. Truth is a complete defense in defamation actions."

## Prior Safety Conduct (Review & Comment)

- Prior to railroad making its eligibility decision
- Employee must have an opportunity to review & comment in writing on any record
- If railroad believes the record contains info sufficient to render person ineligible for certification

9

### **General criteria for eligibility based on prior safety conduct.**

- A railroad's program shall provide a candidate for certification or recertification a reasonable opportunity to review and comment in writing on any record which contains information concerning the person's prior safety conduct, including information pertinent to determinations required under 240.119, if the railroad believes the record contains information that could be sufficient to render the person ineligible for certification under 240.109.
- The opportunity for comment shall be afforded to the person prior to the railroad's rendering its eligibility decision based on that information. Any responsive comment furnished shall be retained by the railroad in accordance with 240.215.
- The program shall include a method for a person to advise the railroad that he or she has never been a railroad employee or obtained a license to drive a motor vehicle. Nothing in 240.109 shall be construed as imposing a duty or requirement that a person have prior railroad employment experience or obtain a motor vehicle driver's license in order to become a certified locomotive engineer.
- Nothing in 240.109, 240.111, or 240.113 shall be construed to prevent persons subject to Part 240 from entering into an agreement that results in a railroad's obtaining the information needed for compliance with 240.109 in a different manner than that prescribed in 240.111 or 240.113.

240.109 (f – i)

## Prior Safety Conduct (Operating Rules Compliance)

Certification may be revoked if following persons fail to comply:

- Certified engineer
- DSLE (except during efficiency tests)
- Certified locomotive engineer pilot
- Instructor engineer

10

### **Criteria for consideration of operating rules compliance data.**

- A person who has demonstrated a failure to comply, as described in 240.117 (e) [see Revocation tab page 6], with railroad rules and practices for the safe operation of trains shall not be currently certified as a locomotive engineer.
- A certified engineer who has demonstrated a failure to comply, as described in 240.117 (e) [see Revocation tab page 6], with railroad rules and practices for the safe operation of trains shall have **his or her** certification revoked.
- **A DSLE, a certified locomotive engineer pilot or an instructor engineer who is monitoring, piloting or instructing a locomotive engineer and fails to take appropriate action to prevent a violation of 240.117 (e) [as described in Revocation tab page 6], shall have his or her certification revoked. Appropriate action does not mean that a supervisor, pilot or instructor must prevent a violation from occurring at all costs; the duty may be met by warning an engineer of a potential or foreseeable violation. A DSLE will not be held culpable under 240.117 when this monitoring event is conducted as part of the railroad's operational compliance tests as defined in 217.9 and 240.303.**

NOTE: See page 29 of Application tab.      240.117 (a) (b) (c)

## Prior Safety Conduct (Operating Rules Compliance)

- A conductor (who is also a certified engineer) may not have his engineer certificate revoked for the actions of the engineer
- Except A/D offenses



11

- A person who is a certified locomotive engineer but is called by a railroad to perform the duty of a train crew member other than that of locomotive engineer, and is performing such other duty, shall not have his or her certification revoked based on actions taken or not taken while performing that duty.
- Per the preamble to the 1999 Final Rule, this exemption only applies when a person is performing non-locomotive engineer duty. Thus, the exemption will not apply if such person (conductor) is performing the duties of a locomotive engineer and causes the violation to occur.
- The preamble further states that the exemption does not apply for violations of 240.117 (e)(6) [alcohol/drug] so that engineers working in other capacities who violate certain alcohol and drug rules will have certification revoked for the appropriate period pursuant to 240.117 and 240.119.

240.117 (c)

## **Prior Safety Conduct (Operating Rules Compliance)**

- Railroad shall consider as operating rules compliance data only conduct described in **240.117 (e)(1) – (e)(5)**
- That occurred within a period of **3 years** prior to the determination

12

### **Limitations on consideration of prior operating rule compliance data.**

- Except as provided for in 240.117 (i) [validity of railroad decisions prior to May 10, 1993 revisions, see Revocation tab page 24], in determining whether a person may be or remain certified as a locomotive engineer, a railroad shall consider as operating rule compliance data only conduct described in **240.117 (e)(1) through (e)(5)** that occurred within a period of **36 months** prior to the determination.

- A review of an existing certification shall be initiated promptly upon the occurrence and documentation of any conduct described in 240.117.

**NOTE:** See Revocation tab page 6 for the violations of operating rules and practices that may be considered for prior operating rule compliance data.

- In order to make the determination involving prior conduct as a railroad worker, a railroad shall have on file documents pertinent to the determinations of 240.117...

240.117

240.205 (b)



## Prior Safety Conduct (Alcohol/Drug Compliance)

- Railroad shall consider any violation of 219.101 or 219.102 (including refusals)
- That occurred within a period of 5 years



13

### **Prior alcohol/drug conduct; Federal rule compliance.**

- In determining whether a person may be or remain certified as a locomotive engineer, a railroad shall consider conduct described in 240.119 (c) (2) that occurred within a period of 60 consecutive months prior to the review.
- 240.119 (c) (2) states that a railroad shall consider any violation of 219.101 or 219.102 and any refusal or failure to provide a breath or body fluid sample for testing under the requirements of part 219 when instructed to do so by a railroad representative.

NOTE: See page 17 of the Revocation tab.

- In order to make the determinations on prior safety conduct, a railroad shall have on file documents pertinent to the determinations involving substance abuse disorders and alcohol/drug rules compliance per 240.119, including a written document from its EAP Counselor either a document reflecting his or her professional opinion that the person has been evaluated as not currently affected by a substance abuse disorder or that the person has been evaluated as affected by an active substance abuse disorder and is ineligible for certification.

240.119 (c) (2)

240.205 (b)

## Prior Safety Conduct (Alcohol/Drug Compliance)

A review of certification shall be initiated promptly upon the occurrence and documentation of any violation of 219.101 or 219.102 (including refusals)



14

**Review of certification.** A review of certification shall be initiated promptly upon the occurrence and documentation of any incident of conduct described in 240.119 (c) (2) [violations of 219.101 or 219.102].

- 219.102 (prohibition of drugs on/off duty, except for approved medical use) is marginally less serious than a 219.101 because in most cases on-the-job use, possession, or impairment is not established, i.e., a random urinalysis drug test.
- A refusal to take an FRA post-accident or breath test would be scored as if a 219.101 violation because they, for instance, in the worst case could establish use on the job, violation of the .04% alcohol prohibition, or - with other evidence - impairment.
- A refusal of a drug urinalysis, which in most cases could only be used to establish a 219.102 violation, would be treated as if it were a violation of 219.102.

**NOTE:** See the periods of ineligibility for alcohol/drug violations on page 26 of the Revocation tab.

240.119 (c)

## Prior Safety Conduct (Alcohol/Drug Compliance)

A person with an active substance abuse disorder:

- Shall not be currently certified
- Shall be suspended from certification
  - Except for voluntary referral policy
  - May be reinstated
- May voluntarily self-refer

15

### **Consideration of data on substance abuse disorders and alcohol drug rules compliance.**

- Each railroad's program shall include criteria and procedures for implementing this section.

#### *Fitness requirement.*

- A person who has an active substance abuse disorder shall not be currently certified as a locomotive engineer. (defined on next page)
- Except as provided in 240.119 (e) [voluntary referral], a certified engineer who is determined to have an active substance abuse disorder shall be suspended from certification. Consistent with other provisions of Part 240, certification may be reinstated as provided in 240.119 (d).
- In the case of a current employee of the railroad evaluated as having an active substance abuse disorder (including a person identified under the procedures of 240.115), the employee may, if otherwise eligible, voluntarily self-refer for substance abuse counseling or treatment under the policy required by 219.403; and the railroad shall then treat the substance abuse evaluation as confidential except with respect to current ineligibility for certification.

**DEFINITION: CURRENT EMPLOYEE** is any employee with at least one year of experience in transportation service on a railroad.

240.119 (a)(b)

240.7

## Alcohol/Drug Compliance (Substance Abuse Disorder)

- Psychological or physical dependence on A/D
- Or another identifiable and treatable mental or physical disorder involving the abuse of A/D as a primary manifestation
- It is "active" if the person:
  - Is currently using A/D (except per 219.103) or
  - Has failed to successfully complete primary treatment or aftercare as directed by EAP Counselor

16

**DEFINITION: SUBSTANCE ABUSE DISORDER** refers to a psychological or physical dependence on alcohol or a drug or another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation. A substance abuse disorder is "active" within the meaning of this part if the person

(1) is currently using alcohol and other drugs, except under medical supervision consistent with the restrictions described in 219.103 of this chapter or

(2) has failed to successfully complete primary treatment or successfully participate in aftercare as directed by an EAP Counselor.

**NOTE:** If an engineer takes a periodic physical examination that provides a basis to think he has an active substance abuse disorder, the railroad should respond according to its company policy.

240.7

## **Prior Safety Conduct (Alcohol/Drug Compliance)**

### **Voluntary Referral:**

- Certification status shall not be adversely affected
- Must be treated as confidential
- Except if person refuses to cooperate in recommended course of counseling or treatment

17

### **Voluntary Referral.**

- Nothing in Part 240 shall affect the responsibility of the railroad under 219.403 [Voluntary Referral Policy] to treat voluntary referrals for substance abuse counseling and treatment as confidential; and the certification status of an engineer who is successfully assisted under the procedures of that section shall not be adversely affected.
- However, the railroad shall include in its voluntary referral policy required to be issued pursuant to 219.403 a provision that, at least with respect to a certified locomotive engineer or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the EAP Counselor official notice of the substance abuse disorder and shall suspend or revoke the certification, as appropriate) if the person at any time refuses to cooperate in a recommended course of counseling or treatment.

**NOTE:** Part 240 recognizes voluntary referral (and co-worker report policies in 240.119) but NOT so called "by-pass" programs that several railroads have. The "by-pass" programs kick in after an individual is accused by a railroad officer.

240.119 (e)

## Prior Safety Conduct (Alcohol/Drug Compliance)

***If an engineer had a 219.101 violation within the 5-year time frame (while performing duties as a trainman), should the railroad consider the violation in determining certification?***



18

**QUESTION:** If an engineer had a 219.101 violation within the 5-year time frame, while performing duties as a trainman, should the railroad consider the violation in determining certification?

**ANSWER:** Yes, the preamble to the Final Rule, Page 28245, states, "Note that conduct violative of the FRA proscriptions against alcohol and drugs need not occur while the person is serving in the capacity of a locomotive engineer in order to be considered. For instance, an employee who violated 219.101 while working as a conductor and then sought engineer certification 6 months later would not be currently eligible for certification." The preamble to the Interim Final Rule, Page 18997 further states, "...If a certified engineer is found to be in noncompliance with 219.101 while performing in any service, that person renders himself ineligible for the mandatory 9-month interval provided in 240.119.

**QUESTION:** Did FRA intend to remove the EAP Counselor's discretion when setting the 9-month certificate revocation requirement for a violation of 219.101?

**ANSWER:** Yes, FRA did so intend (per preamble to Interim Final Rule, page 18997).

240.119

## Alcohol/Drug Compliance (Certificate Reinstatement)

If denied, suspended or revoked because of A/D violation - prior to reinstatement of certificate:

- Been evaluated by EAP Counselor
- Successfully completed any program
- Presented both a negative urine sample for drugs & breath test for alcohol

19

### **Future eligibility to hold certificate following alcohol/drug violation.**

The following requirements apply to a person who has been denied certification or who has had certification suspended or revoked as a result of conduct described in 240.119 (c) [219.101 or 219.102 violation]:

- The person shall not be eligible for grant or reinstatement of the certificate unless and until the person has:
  - (1) Been evaluated by an EAP Counselor to determine if the person currently has an active substance abuse disorder;
  - (2) Successfully completed any program of counseling or treatment determined to be necessary by the EAP Counselor prior to return to service; and
  - (3) Presented a urine sample for testing under Part 219 Subpart H that tested negative for controlled substances assayed and has tested negative for alcohol under 240.119 (d)(4).

240.119 (d)

219.104

## **Alcohol/Drug Compliance (Return to Service)**

- Engineer returned to service shall continue in any program of counseling or treatment required by EAP
- Engineer shall be subject to program of follow-up alcohol and drug testing
  - (1) Without prior notice
  - (2) For not more than 5 years
  - (3) During 1st year - at least 6 alcohol and 6 drug tests

20

### **Future eligibility to hold certificate following alcohol/drug violation (219.101 or 219.102).**

- An engineer placed in service or returned to service under these conditions shall continue in any program of counseling or treatment deemed necessary by the EAP Counselor and shall be subject to a reasonable program of follow-up alcohol and drug testing without prior notice for a period of not more than 60 months following return to service.
- Follow-up tests shall include not fewer than 6 alcohol tests and 6 drug tests during the first 12 months following return to service.
- Return-to-service and follow-up alcohol and drug tests shall be performed consistent with the requirements of Subpart H of Part 219.

240.119 (d)(2)(3)

219.104



## Alcohol/Drug Compliance (No Entitlement)

- No entitlement for:
  - EAP Counselor services
  - Leave for counseling or treatment
  - Employment as an engineer
- Railroad may take disciplinary action



21

### **Future eligibility to hold certificate following alcohol/drug violation (219.101 or 219.102).**

- This does not create an entitlement to utilize the services of a railroad EAP Counselor, to be afforded leave from employment for counseling or treatment, or to employment as a locomotive engineer.
- Nor does it restrict any discretion available to the railroad to take disciplinary action based on conduct described herein.

**DEFINITION: EAP COUNSELOR** means a person qualified by experience, education, or training to counsel people affected by substance abuse problems and to evaluate their progress in recovering from or controlling such problems. An EAP Counselor can be a qualified full-time salaried employee of a railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified physician designated by the railroad to perform functions in connection with alcohol or substance abuse evaluation or counseling. As used in this rule, the EAP Counselor owes a duty to the railroad to make an honest and fully informed evaluation of the condition and progress of an employee.

240.7

240.119 (d)(4)

## Petitions for Reconsideration

- Decrease stringency of return-to-service testing (BLE)
- Duty to perform, and nature of EAP evaluations (BLE and ASLRA)
- Objection to use of phrase, "Active Substance Abuse Disorder" (BLE)

22

- The BLE petitioned FRA to decrease the stringency of the return-to-service testing for those with an active substance abuse disorder.

FRA "denied" this petition for reconsideration, stating "The provisions of this rule reflect FRA's maturing views about the appropriate criteria for return-to-service testing and FRA has proposed revision of the analogous criteria in Part 219 to bring that rule into conformity with the approach taken in this rule.

- The BLE and ASLRA petitioned for clarification of railroads to have EAP counselor evaluations.

The main concern here is that it was perceived that FRA was requiring the performance of an EAP evaluation each time an engineer is certified or recertified. FRA responded by saying, "FRA is not requiring an EAP evaluation each time unless there is reason to think one is needed.

- The BLE petition objected to the use of the phrase, "Active Substance Abuse Disorder."

The BLE objected on the grounds that the phrase was not in the proposed rule and is subject to interpretation.

FRA's response was that "FRA will continue to use the phrase. They state: The use of such a descriptor "reflects the effort to differentiate between whether a disease such as alcoholism is currently having an adverse effect, is dormant, or is under control."

## **Prior Safety Conduct (Motor Vehicle Operator)**

May only consider convictions for, or completed state actions to cancel, revoke, suspend, or deny a driver's license for:

- Operating a motor vehicle while under the influence of, or impaired by alcohol or a controlled substance, or
- Refusing to undergo such alcohol or drug testing as required by state law.

**NOTE:** Consider records within 3 years

23

### **Criteria for consideration of prior safety conduct as a motor vehicle operator.**

- Each railroad's program must include criteria and procedures for considering motor vehicle data.
- When evaluating a person's motor vehicle driving record, a railroad shall not consider information concerning motor vehicle driving incidents that occurred more than 36 months before the month in which the railroad is making its certification decision and shall only consider information concerning the following types of motor vehicle incidents:
  - A conviction for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle drivers license for:

(1) Operating a motor vehicle while under the influence of, or impaired by alcohol or a controlled substance; or

(2) Refusing to undergo such alcohol or drug testing as is required by State law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance.

**NOTE:** FRA does not prohibit railroads from taking any disciplinary actions during the period while awaiting state action. See 240.5 (d).

240.115

## **Prior Safety Conduct (Motor Vehicle Operator)**

**If such an incident is identified:**

- **Goes to EAP Counselor to determine if has a substance abuse disorder**
- **Must cooperate and provided records of prior counseling or treatment**
- **If not active, can condition certification upon aftercare and/or follow-up testing**
- **May not be certified if has an active substance abuse disorder**

24

**If such an incident is identified,**

- **The railroad shall provide the data to the railroad's EAP Counselor, together with any information concerning the person's railroad service record, and shall refer the person for evaluation to determine if the person has an active substance abuse disorder;**
- **The person shall cooperate in the evaluation and shall provide any requested records of prior counseling or treatment for review exclusively by the EAP Counselor in the context of such evaluation; and**
- **If the person is evaluated as not currently affected by an active substance abuse disorder, the subject data shall not be considered further with respect to certification. However, the railroad shall, on recommendation of the EAP Counselor, condition certification upon participation in any needed aftercare and/or follow-up testing for alcohol or drugs deemed necessary by the EAP Counselor consistent with the technical standards specified in 240.119 (d)(3). See page 19.**
- **If the person is evaluated as currently affected by an active substance abuse disorder, the person shall not be currently certified and the provisions of 240.119 (b) will apply. See page 15.**

**240.115**

## **Prior Safety Conduct (Motor Vehicle Operator)**

**Employee must request in writing:**

- 1) Driving record from last driver licensing agency & other states within the last 5 years**
- 2) National Driver Register (NDR) check**

25

### **Individual's duty to furnish data on prior safety conduct as motor vehicle operator.**

Each person seeking certification or recertification shall, within **366** days preceding the date of the railroad's decision on certification or recertification: request the following to make information concerning his or her driving record available to the railroad that is considering such (re)certification;

- Request, in writing, that the chief of each driver licensing agency which last issued that person a driver's license; and the chief of the driver licensing agency of any other state or states that issued or reissued him or her a driver's license within the preceding 5 years, and
- Request that a check of the National Driver Register (NDR) be performed to identify additional information concerning his or her driving record and that any resulting information be provided to that railroad (from the Chief, National Driver Register, Nat'l Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590 in accordance with the procedures contained in Appendix C unless the person's motor vehicle driving license was issued by one of the driver licensing agencies identified in Appendix D); and

(continued)

240.111

## **Prior Safety Conduct (Motor Vehicle Operator)**

**If NDR or NHTSA advises railroad that additional info may exist in another state, the employee shall:**

- **Request in writing that the agency provide a copy to the railroad and**
- **Take any action required by law to obtain that additional info**

**NOTE: For prior 3 years records only**

26

• If the person's motor vehicle driving license was issued by one of the driver licensing agencies identified in Appendix D, the person shall request the chief of that driver licensing agency to perform a check of the NDR for the possible existence of additional information concerning his or her driving record and to provide the resulting information to the railroad.

**NOTE: All states are now part of the NDR.**

• If advised by the railroad that a driver licensing agency or the Nat'l Highway Traffic Safety Administration has informed the railroad that additional information concerning that person's driving history may exist in the files of a state agency not previously contacted in accordance with 240.115, such person shall:

- Request in writing that the chief of the state agency which compiled the information provide a copy of the available information to the prospective certifying railroad; and
- Take any additional actions, including providing any necessary consent required by State or Federal law to make information concerning his or her driving record available to that railroad.

**NOTE: See page 19 for additional info.**

**NOTE: Only the records for the prior 3 years may be used in the (re)certification decision.**

**240.111**

## Prior Safety Conduct (Motor Vehicle Operator)

If an employee has never had a driver's license, they only have to notify the railroad of that fact



27

- Any person who has never obtained a motor vehicle driving license is not required to comply with the provisions of 240.111 (b) but shall notify the railroad of that fact in accordance with procedures of the railroad that comply with 240.109 (d).
- In order to make the determination on prior safety conduct, a railroad shall have on file documents pertinent to the determinations involving prior conduct as a motor vehicle operator...

240.111 (g)

240.205 (b)

## Prior Safety Conduct (Motor Vehicle Operator)

**Engineer (or person seeking certification) must report to the railroad within 48 hours of being convicted for, or completed state action to cancel, revoke, suspend, or deny a drivers license for operating while under the influence of or impaired by alcohol or a controlled substance**

28

- **Each certified locomotive engineer or person seeking initial certification shall report motor vehicle incidents described in 240.115 (b)(1) and (2) [conviction for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle drivers license for, operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance or for refusal to undergo such testing as is required by State law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance] to the employing railroad within 48 hours of being convicted for, or completed state action to cancel, revoke, suspend, or deny a motor vehicle drivers license for, such violations.**
- **For the purposes of engineer certification, no railroad shall require reporting earlier than 48 hours after the conviction, or completed state action to cancel, revoke, or deny a motor vehicle drivers license.**
- **Per the preamble to the 1999 Final Rule, this will create an obligation for certified engineers to report to their employing railroad any type of temporary or permanent denial to hold a motor vehicle driver's license when found to have either refused an alcohol or drug test, or to be under the influence or impaired when operating a motor vehicle.**

240.115 (h)



## Prior Safety Conduct (Motor Vehicle Operator)

The 48 hour reporting does not prevent a person from choosing to enter the voluntary referral program



29

- The preamble to the 1998 proposed rule states, "By not requiring reporting until 48 hours after the completed state action, the rule has the practical effect of insuring that a required referral to an EAP Counselor under 240.115 (c) does not occur prematurely; however, it does not prevent an eligible person from choosing to voluntarily self-refer pursuant to 240.119 (b)(3) [voluntary self-referral program]. Nor does it prevent the railroad from referring the person to an EAP counselor pursuant to 240.119 if there exists other information that identifies the person as possibly having a substance abuse disorder. Further, the restriction applies only to actions taken against a person's certificate and has no effect on a person's right to be employed by that railroad.

## **Prior Safety Conduct (Motor Vehicle Data)**

- **Appendix C - Procedures for obtaining state and NDR data**
- **NDR - National repository of info on problem drivers (Maintained by NHTSA)**
- **Appendix D - State agencies that perform NDR checks**

30

- In addition, to state driver licensing agencies, the individual must request that a search and retrieval be performed of any relevant information concerning his driving record contained in the National Driver Registry (NDR).
- Appendix C to Part 240 explains the procedures for obtaining and evaluating motor vehicle driving record data.
- The NDR is a system of information created by Congress in 1960. In essence it is a nationwide repository of information on problem drivers.
- The NDR is currently maintained by the National Highway Traffic Safety Administration (NHTSA) under the provisions of the National Driver Register Act.
- Only individuals and state agencies can obtain access to NDR data.
- FRA requires that the individual request the NDR info directly from NHTSA unless the individual has a license issued by a state that is "participating" under the NDR Act of 1982.

## Prior Safety Conduct (Motor Vehicle Data)

All states now  
participate in the NDR  
Problem Driver  
Pointer System

(Yes, even Texas,  
Montana, and North  
Carolina)



31

- Participating states can directly access the NDR data on behalf of the individual.
- Those state agencies that are currently authorized to access NDR data are identified in Appendix D.
- Since the states can provide a higher quality of info, FRA requires that individuals make use of this method in preference to directly contacting NHTSA.
- There is no charge for an NDR check, but there may be costs associated with having the request notarized.
- Although Appendix D lists only four states (North Dakota, Ohio, Virginia, and Washington), to date all states participate in the NDR Problem Driver Pointer System.
- Based upon the person's name, issuing state, date of birth, sex, height, weight, color of eyes, and driver's license number, a response is provided indicating no potential record match or notification that a potential record match was made.

## Prior Safety Conduct (Motor Vehicle Data)

- If the second state agency fails or refuses to supply the records, the railroad may act on the pending certification without the data
- However, an NDR response is required and the railroad may not act without the NDR data and without a response from the first (issuing) state

32

- If the potential match is a state, other than the issuing state, it is necessary to contact the other state licensing agency to obtain the relevant record.
- FRA places responsibility on the railroad to notify the individual to contact the state with the relevant information. A small fee may be required and the person may have to furnish written evidence that he consents to the release of the data to the railroad.
- If the (second) state agency fails or refuses to supply the records, the railroad may act on the pending certification without the data.
- An NDR response (and information from the first state); however, is required and a railroad may not act without these responses.
- Upon receipt, the railroad should verify the record pertains to the individual (physical description, photographs, and handwriting comparisons).
- Prior to evaluating the record, the railroad must give the individual the opportunity to review the record(s) and respond in writing.

240.111

## **Prior Safety Conduct (Petitions for Reconsideration)**

- **AAR wanted a time limit set so individuals would be required to request motor vehicle info to ensure timeliness - FRA Denied**
- **BLE wanted relief from the responsibility of the state motor vehicle agencies not responding - FRA Denied**

33

- The AAR petitioned FRA to set a time constraint for individuals to request motor vehicle (and other railroads) data to ensure timeliness.
- The railroads were concerned they may have to make the decision without the data, or have to wait for delivery and have to start over if other elements become untimely.
- FRA denied the AAR's petition.
- The BLE petitioned FRA to relieve them from the responsibility of the motor vehicle agencies not responding. FRA denied the BLE's petition, stating, "The regulation does not obligate the candidate to obtain the data." However, it does require that the candidate take prudent action in an attempt to retrieve the data.

## VISION & HEARING ACUITY



34

- Each railroad, prior to initially certifying or recertifying any person as an engineer for any class of service, shall determine that the person meets the standards for visual acuity and hearing acuity prescribed in 240.121.
- Vision and hearing tests and the medical examination being relied on must not have been conducted more than **366 days** prior to the date of the railroad's recertification decision (except that a student engineer's initial vision and hearing test remains valid for up to 2 years).

240.207

240.217

## Vision Acuity Thresholds

- Meet or exceed standards of 240.121 and Appendix F
- Per manufacturer's instructions and ANSI standards



35

### Criteria for vision and hearing acuity data.

- Each railroad's program must include criteria and procedures implementing vision and hearing acuity data.
- *Fitness requirement.* In order to be currently certified as a locomotive engineer, except as permitted by 240.121 (e) [medical evaluation], a person's vision and hearing shall meet or exceed the standards prescribed in 240.121 and Appendix F to Part 240 [medical standards guidelines].
- It is recommended that each test conducted pursuant to 240.121 should be performed according to any directions supplied by the manufacturer of such test and any American National Standards Institute (ANSI) standards that are applicable.

NOTE: See exceptions to vision and hearing acuity thresholds on page 44.

240.121

## Vision Acuity Thresholds

- Distant vision of 20/40 each eye (with or without corrective lenses)
- Distant binocular acuity of 20/40 both eyes (with or without corrective lenses)
- Field of vision of 70 degrees (each eye)
- Ability to recognize and distinguish between the colors of **railroad signals**

36

• Except as provided in 240.121 (e) [medical evaluation], each person shall have visual acuity that meets or exceeds the following thresholds:

1) For distant viewing either:

- Distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or
- Distant visual acuity separately corrected to at least 20/40 (Snellen) with corrective lenses and distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses;

2) A field of vision of at least 70 degrees in the horizontal meridian in each eye; and

3) The ability to recognize and distinguish between the colors of **railroad signals as demonstrated by successfully completing one of the tests in Appendix F to Part 240.**

240.121



## Vision Testing Methods (Colors of Railroad Signals)

- **Determining whether a person has the ability to recognize and distinguish among the colors used as railroad signals**
- **Appendix F provides guidance on the testing protocols deemed acceptable testing methods**

37

- **The purpose of Appendix F to Part 240 is to provide greater guidance on the procedures that should be employed in administering the vision and hearing requirements of 240.121 and 240.207.**
- **In determining whether a person has the visual acuity that meets or exceeds the requirements of Part 240, the following testing protocols are deemed acceptable testing methods for determining whether a person has the ability to recognize and distinguish among the colors used as signals in the railroad industry.**
- **The acceptable testing methods are shown in the left hand column and the criteria that should be employed to determine whether a person has failed the particular testing protocol are shown in the right hand column.**

### Appendix F to Part 240

## Vision Testing Methods (Colors of Railroad Signals)

- American Optical Company 1965
- AOC-Hardy-Rand-Ritter Plates
- Dvorine
- Ishihara (14, 16, 24, or 38 Plate)
- Richmond Plates 1983
- Keystone Orthoscope
- OPTEC 2000
- Titmus Vision Tester
- Titmus II Vision Tester

38

### Accepted Tests and Failure Criteria.

#### 1) PSEUDOISOCROMATIC PLATE TESTS

- American Optical Company 1965 (5 or more errors on plates 1-15)
- AOC-Hardy-Rand-Ritter plates-second edition [Any error on plates 1-6 (plates 1-4 are for demonstration-test plate 1 is actually plate 5 in book)]
- Dvorine-Second Edition (3 or more errors on plates 1-15)
- Ishihara (14 plate) (2 or more errors on plates 1-11)
- Ishihara (16 plate) (2 or more errors on plates 1-8)
- Ishihara (24 plate) (3 or more errors on plates 1-15)
- Ishihara (38 plate) (4 or more errors on plates 1-21)
- Richmond Plates 1983 (5 or more errors on plates 1-15)

#### 2) MULTIFUNCTION VISION TESTER

- Keystone Orthoscope (Any error)
- OPTEC 2000 (Any error)
- Titmus Vision Tester (Any error)
- Titmus II Vision Tester (Any error)

Appendix F

## **Vision Testing Methods (Colors of Railroad Signals)**

- **Examiner must know that signals do not always occur in same sequence & YELLOW signals do not always appear to be the same**
- **May not use “yarn” test**
- **May not wear chromatic lenses during initial test**

39

- **In administering any of these protocols, the person conducting the examination should be aware that railroad signals do not always occur in the same sequence and that “yellow signals” do not always appear to be the same.**
- **It is not acceptable to use “yarn” or other materials to conduct a simple test to determine whether the certification candidate has the requisite vision.**
- **No person shall be allowed to wear chromatic lenses during an initial test of the person’s color vision; the initial test is one conducted in accordance with one of the accepted tests in the chart and 240.121 (c)(3).**

**NOTE:** There is no prohibition against the use of chromatic lenses during further field testing (in the regulation, but railroad’s could prohibit their use during further field testing).

### **Appendix F**

## Contact Lenses

**Engineers who wear contact lenses:**

- **Good tolerance to the lenses; and**
- **Instructed to have a pair of corrective glasses available when on duty**



40

- **Engineers who wear contact lenses should have good tolerance to the lenses and should be instructed to have a pair of corrective glasses available when on duty.**

## Vision Exam

- Performed by or under the supervision of a medical examiner (MD or DO) or licensed physician's assistant
- Licensed optometrist or technician responsible to that person
- Medical examiner may be employee or contractor of railroad or designated to perform functions in connection with medical evaluations of employees

41

• Any examination required for compliance with 240.207 (vision and hearing acuity) shall be performed by or under the supervision of a medical examiner or a licensed physician's assistant such that:

- A licensed optometrist or a technician responsible to that person may perform the portion of the examination that pertains to visual acuity...

**DEFINITION: MEDICAL EXAMINER** means a person licensed as a doctor of medicine or doctor of osteopathy. A medical examiner can be a qualified full-time salaried employee of a railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified practitioner designated by the railroad to perform functions in connection with medical evaluations of employees. As used in this rule, the medical examiner owes a duty to the railroad to make an honest and fully informed evaluation of the condition of an employee.

240.7

240.207

## Hearing Acuity Thresholds

- Average hearing loss (better ear) no greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz (with or without hearing aid)
- Audiometric device calibrated to ANSCA

42

- Each railroad's program shall include criteria and procedures implementing vision and hearing acuity data.
- Except as provided in 240.121 (e) [medical evaluation], each person shall have hearing acuity that meets or exceeds the following thresholds when tested by use of an audiometric device (calibrated to American National Standard, Specification for Audiometers, S3.6-1969):
  - The person does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without use of a hearing aid.

NOTE: See the exceptions for vision and hearing acuity thresholds on page 44.

240.121 (d)

## Hearing Exam

- Performed by or under the supervision of a medical examiner (MD or DO) or licensed physician's assistant
- Licensed or certified audiologist or his technician
- Medical examiner may be employee or contractor of railroad or designated to perform functions in connection with medical evaluations of employees

43

### **Procedures for making the determination on vision and hearing acuity.**

- Any examination required for compliance with 240.207 (vision and hearing acuity) shall be performed by or under the supervision of a medical examiner or a licensed physician's assistant such that:
  - A licensed or certified audiologist or a technician responsible to that person may perform the portion of the examination that pertains to hearing acuity.

**DEFINITION: MEDICAL EXAMINER** means a person licensed as a doctor of medicine or doctor of osteopathy. A medical examiner can be a qualified full-time salaried employee of a railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified practitioner designated by the railroad to perform functions in connection with medical evaluations of employees. As used in this rule, the medical examiner owes a duty to the railroad to make an honest and fully informed evaluation of the condition of an employee.

240.7

240.207 (c)

## Exception to Vision & Hearing Acuity

- Person not meeting thresholds shall, upon request, be subject to further evaluation by medical examiner
  - one retest
  - second retest (showing of cause)
- Appendix F addresses further testing and evaluation procedures

44

- 240.121 (e) states that a person not meeting the vision and hearing acuity thresholds of 240.121 **shall, upon request**, be subject to further medical evaluation by a railroad's medical examiner to determine that person's ability to safely operate a locomotive.
- In accordance with the guidance prescribed in Appendix F to Part 240, a person is entitled to one retest without making any showing and to another retest if the person provides evidence substantiating that circumstances have changed since the last test to the extent that the person could now arguably operate a locomotive or train safely.
- *Appendix F states that an examinee who fails to meet the criteria in the chart, may be further evaluated as determined by the railroad's medical examiner.*
- *Ophthalmologic referral, field testing, or other practical color testing may be utilized depending on the experience of the examinee.*

240.121 (e)

Appendix F



## Exception to Vision & Hearing Acuity

- Person not meeting thresholds shall, upon request, be subject to further evaluation by medical examiner
  - one retest
  - second retest (showing of cause)
- Appendix F addresses further testing and evaluation procedures

45

- *Appendix F further states that the railroad's medical examiner will review all pertinent information and, under some circumstances, may restrict an examinee who does not meet the criteria from operating the train at night, during adverse weather conditions or under other circumstances.*
- *The intent of 240.121 (e) is not to provide an examinee with the right to make an infinite number of requests for further evaluation, but to provide an examinee with at least one opportunity to provide that a hearing or vision test failure does not mean the examinee cannot safely operate a locomotive or train.*
- *Appropriate further medical evaluation could include providing another approved scientific screening test or a field test.*
- *All railroads should retain the discretion to limit the number of retests that an examinee can request but any cap placed on the number of retests should not limit retesting when changed circumstances would make such retesting appropriate.*
- *Changed circumstances would most likely occur if the examinee's medical condition has improved in some way or if technology has advanced to the extent that it arguably could compensate for a hearing or vision deficiency.*

Appendix F

## Exception to Vision & Hearing Acuity

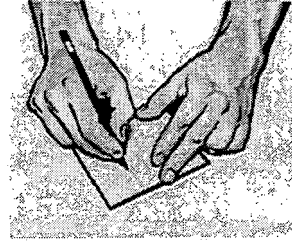
- **Railroad provides copy of Part 240 and appendices to medical examiner**
- **Engineer may be certified conditioned on any special restrictions the medical examiner determines (in writing) to be necessary**
- **After consultation with one of the railroad's DSLEs**

46

- **The railroad shall provide its medical examiner with a copy of Part 240, including all appendices.**
- **If, after consultation with one of the railroad's DSLEs, the medical examiner concludes that, despite not meeting the visual and hearing acuity threshold(s), the person has the ability to safely operate a locomotive, the person may be certified as a locomotive engineer and such certification conditioned on any special restrictions the medical examiner determines in writing to be necessary.**
- **A railroad's program submission must describe 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 operate a train.**

## Restrictions on Certificate

Restrictions must be noted on certificate & engineer must use such corrective lenses and/or hearing aid while operating



47

- If the examination required under 240.207 discloses that the person needs corrective lenses or a hearing aid, or both, either to meet the threshold acuity levels established in 240.121 or to meet a lower threshold determined by the railroad's medical examiner to be sufficient to safely operate a locomotive or train on that railroad, that fact shall be noted on the certificate issued in accordance with the provisions of Part 240.
- 240.223 (a)(4) also requires each certificate to identify any conditions or limitations, including conditions to ameliorate vision or hearing acuity deficiencies, that restrict the person's operational authority.
- Any person with such a certificate notation shall use the relevant corrective device(s) while operating a locomotive in locomotive or train service unless the railroad's medical examiner subsequently determines in writing that the person can safely operate without using the device.

240.207 (d)(e)

240.223

## Vision & Hearing Acuity Records

- Medical examiner's certificate or
- If does not meet standard(s), a written document from medical examiner stating basis for determination and
  - whether the person can nevertheless be certified under certain conditions or
  - cannot safely operate a locomotive

48

### **Procedures for making the determination on vision and hearing acuity.**

In order to make the vision and hearing acuity determinations, a railroad shall have on file either:

- A medical examiner's certificate that the individual has been medically examined and meets these acuity standards; or
- A written document from its medical examiner documenting his or her professional opinion that the person does not meet one or both acuity standards and stating the basis for his or her determination that
  - The person can nevertheless be certified under certain conditions or
  - The person's acuity is such that he or she cannot safely operate a locomotive even with conditions attached.

240.207 (b)

## **Engineer's Responsibility (Notification)**

- **Engineer shall notify railroad's medical department (or official) if vision or hearing deteriorates to the extent he or she no longer meets vision or hearing standard(s)**
- **Notification required prior to any subsequent operation requiring a certified engineer**

49

- **As a condition of maintaining certification, each certified locomotive engineer shall notify his or her employing railroad's medical department or, if no such department exists, an appropriate railroad official, if the person's best correctable vision or hearing has deteriorated to the extent that the person no longer meets one or more of the prescribed vision or hearing standards or requirements of 240.121.**
- **This notification is required prior to any subsequent operation of a locomotive or train which would require a certified locomotive engineer.**

240.121 (f)

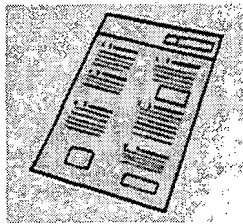
## Vision & Hearing (Integrating CBA)

- CBAs may be integrated with a person's failure to meet the acuity criteria
- Minimum procedures accorded the candidate before denying certification
- CBA could provide for the use of multiple medical opinions

50

- The Interim Final Rule (pg. 18999) discusses the integration of collective bargaining agreements (CBA) with denial of certification for failure to meet the acuity criteria. The concern is that FRA procedures have displaced CBAs for resolving disputes about medical qualifications.
- Sections 240.207 and 240.219 (denial of certification) establish the minimum procedures that must be accorded the candidate before a railroad renders a potentially adverse decision. 240.219 gives the candidate a reasonable opportunity to explain or rebut the adverse information. Those provisions can readily be integrated with CBAs. For example, conforming with a CBA that calls for the use of multiple medical opinions about the person's medical condition prior to reaching a final qualification determination would satisfy this provision.
- In other instances, where no formal written mechanism exists but a practice has developed that allows an engineer to obtain further medical review, if the candidate can convince a doctor of the engineer's medical fitness, reliance on that process would satisfy the rule. The rule does not limit the types of alternate methods response mechanisms that are acceptable to FRA. The rule applies to initial and periodic certification. If a railroad has reason to think an engineer's physical qualifications require re-examination, the rule contemplates the railroad would schedule a new certification evaluation.

# KNOWLEDGE TEST



51

- 240.125 provides a railroad latitude in selecting the design of its own testing policies [including the number of questions each test will contain, how each required subject matter will be covered, weighting (if any) to be given to particular subject matter responses, selection of passing scores, and the manner of presenting the test information].
- The railroad must describe in their program submission how it will use that latitude to assure that its engineers will demonstrate their knowledge concerning the safe discharge of their train operation responsibilities so as to comply with the performance standard set forth in 240.125.

## Knowledge Test

- Before (re)certifying, must demonstrate sufficient knowledge of rules & practices
- Written documentation showing achievement of a passing grade, or did not achieve a passing grade
- If fails to achieve passing score, no railroad shall permit or require that person to operate a locomotive prior to having a passing score during re-exam

52

### **Procedures for making the determination on knowledge.**

- Each railroad, prior to initially certifying or recertifying any person as an engineer for any class of train or locomotive service, shall determine that the person has, in accordance with the requirements of 240.125, demonstrated sufficient knowledge of the railroad's rules and practices for the safe operation of trains.
- In order to make this determination, a railroad shall have written documentation showing that the person either:
  - 1) Exhibited his or her knowledge by achieving a passing grade in testing that complies with Part 240, or
  - 2) Did not achieve a passing grade in such testing.
- If a person fails to achieve a passing score under the testing procedures required by Part 240, no railroad shall permit or require that person to operate a locomotive as a locomotive or train service engineer prior to that person's achieving a passing score during a re-examination of his or her knowledge.

240.209



## Knowledge Test

- Train service or locomotive servicing
- Knowledge of the railroad's rules and practices for the safe operation of trains
- Specific testing methods
- Conduct of test documented in writing
- Completed within **1 year** of certification

53

### **Criteria for testing knowledge.**

- Each railroad's program shall include criteria and procedures for implementing knowledge testing.
- A railroad shall have procedures for testing a person being evaluated for qualification as a locomotive engineer in either train or locomotive service to determine that the person has sufficient knowledge of the railroad's rules and practices for the safe operation of trains.
- The regulation provides for specific testing methods (see next page)
- The conduct of the test shall be documented in writing and the documentation shall contain sufficient information to identify the relevant facts relied on for evaluation purposes.
- The test must have been completed no more than **366 days** before the date of the railroad's certification decision.

**NOTE:** Inspectors are not expected to critique the railroad's knowledge test.

240.125

240.217

## Knowledge Testing Criteria

- Objective and in written form
- Cover: personal safety, operating practices, equipment inspection, train handling (physical characteristics); and compliance with Federal safety rules
- Accurately measure knowledge
- Closed book, except testing ability to use reference books/materials

54

- The testing methods selected by the railroad shall be:
  - (1) Designed to examine a person's knowledge of the railroad's rules and practices for the safe operation of trains;
  - (2) Objective in nature;
  - (3) Administered in written form;
  - (4) Cover the following subjects:
    - Personal safety practices
    - Operating practices
    - Equipment inspection practices
    - Train handling practices including familiarity with the physical characteristics of the territory
    - Compliance with Federal safety rules
  - (5) Sufficient to accurately measure the person's knowledge of the covered subjects; and
  - (6) Conducted without open reference books or other materials except to the degree the person is being tested on their ability to use such reference books or materials.

240.125 (c)

## Knowledge Test

- May be computer-based (if monitored)
- A railroad may administer portions of its testing activities at different points in time
- Physical characteristic knowledge questions need to be route-specific (not generic), and when authorized to operate over multiple routes, knowledge on each route needs to be examined

55

- The knowledge test may be computer-based if it is monitored.
- The engineer must pass a written knowledge test on the physical characteristics of the territory.
- Per the preamble to the Interim Final Rule (pg. 18998), FRA received inquiries about the proper conduct of knowledge testing. Several larger railroads were concerned about whether the rule permitted them to divide the conduct of knowledge testing into segments administered at different times. FRA recognizes that a railroad may have some need to administer portions of its testing activities at different points in time and the rule does not prohibit this.
- These railroads were also concerned about the need for specificity when questioning a person to determine knowledge about physical characteristics. Physical characteristic knowledge questions need to be route-specific, and limiting such a test to generic questioning will not be sufficient. Moreover, when testing a person who is authorized to operate over multiple routes, the person's knowledge concerning each route needs to be examined.

240.125

## Knowledge Test (Petition for Reconsideration)

The ASLRA petitioned FRA for:

- Latitude to orally conduct knowledge exams for those with literacy problems; and
- The need to rethink the perceived harsh consequences prescribed for failing a knowledge or skill test.
- Both petitions were “denied”

56

• The ASLRA petitioned FRA for:

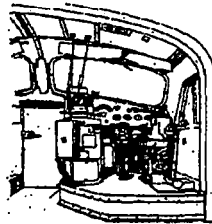
1) Latitude to orally conduct knowledge exams for those with literacy problems. This issue involved concern that some locomotive engineers do not have sufficient literacy to pass a standard written examination.

FRA “denied” this petition, responding, “As far as FRA has been able to ascertain, virtually all of those affected by this rule have the capacity to successfully take written examinations. Being an engineer literally demands that locomotive engineers have effective reading and writing skills.”

2) The need to rethink the perceived harsh consequences prescribed for failing a knowledge or skill test. This involved concern that locomotive engineers will routinely fail to achieve a passing grade on their initial examinations.

FRA “denied” this petition, concluding “There is no valid safety rationale for permitting a person who has just demonstrated either a lack of basic knowledge or skills to continue operating a locomotive. The rule now permits a person who has failed an examination to continue operating only when accompanied by a qualified locomotive engineer. Precluding a locomotive engineer who has just demonstrated a deficiency in his or her knowledge or skill, from placing others at risk is, in FRA’s judgment, the only appropriate response.”

## PERFORMANCE SKILLS



57

- The performance skill testing must not have been conducted more than **366 days** before the date of the railroad's certification decision.

**NOTE:** The performance skills test is often confused with the annual check ride. The main difference between the two is that the performance skills test is conducted as a prerequisite to certification or recertification and is therefore normally conducted every 3 years.

## Performance Skills

Prior to (re)certifying, demonstrate skills to safely operate locomotive or train

- Including proper application of railroad's rules & practices for the safe operation of trains
- In the most demanding class or type of service they will be permitted to perform

58

### **Procedures for making the determination on performance skills.**

- Each railroad, prior to initially certifying or recertifying any person as an engineer for any class of train or locomotive service, shall determine the person has demonstrated, in accordance with the requirements of 240.127, the skills to safely operate locomotives or locomotives and trains, including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains, in the most demanding class or type of service that the person will be permitted to perform.

**NOTE:** If a student's performance skill education is provided away from the certifying railroad's facility, he or she must be provided the appropriate familiarization with physical characteristics education concerning operation of its own lines prior to certification of that student as an engineer.

240.211

## Performance Skills

- Written documentation showing achievement of a passing grade, or not
- If fails, may not operate a locomotive prior to a passing grade during re-exam
- Can operate when accompanied by a certified locomotive engineer
- DSLE may not test or evaluate himself

59

- In order to make this determination, a railroad shall have written documentation showing the person either
  - 1) Exhibited his or her knowledge by achieving a passing grade in testing that complies with Part 240 or
  - 2) Did not achieve a passing grade in such testing.
- If a person fails to achieve a passing score under the testing and evaluation procedures required by Part 240, no railroad shall permit or require that person to operate a locomotive as a locomotive or train service engineer prior to that person's achieving a passing score during a re-examination of his or her performance skills.
- The rule now permits a person who has failed an examination to continue operating only when accompanied by a qualified locomotive engineer.
- No railroad shall permit a DSLE to test, examine or evaluate his own performance skills when complying with 240.211.

240.211

## Performance Skills Test

Railroad shall have testing procedures:

- Examine performance skills
  - Application of railroad's rules & practices
  - Most demanding class or service
- Conducted by DSLE (not required to be qualified on physical characteristics of that territory)

60

### Criteria for examining skill performance.

- Each railroad's program shall include criteria and procedures for implementing performance skills.
- A railroad shall have procedures for examining the performance skills of a person being evaluated for qualification as a locomotive engineer in either train or locomotive servicing to determine whether the person has the skills to safely operate locomotives and/or trains, including the proper application of the railroad's rules and practices for the safe operation of trains, in the most demanding class or type of service that the person will be permitted to perform.
- The testing procedures selected by the railroad shall be:
  - Designed to examine a person's skills in safely operating locomotives or trains including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains when performing the most demanding class or type of service that the person will be permitted to perform;
  - Conducted by a DSLE, who does not need to be qualified on the physical characteristics of the territory over which the test will be conducted; (continued)

240.127



## Performance Skills Test

- Cover: Operating practices, equipment inspection practices, train handling practices, & compliance with Federal safety rules
- Sufficient length to effectively evaluate the person's ability to operate trains

61

The testing procedures shall also:

- Cover the following subjects during the test period: (Operating practices, equipment inspection practices, train handling practices; and compliance with Federal safety rules);

NOTE: The engineer must be given a skills performance test to ensure that the engineer has the necessary train handling skills to operate over the new territory. This is especially true when an engineer is transferring to territory that demands greater train handling skills, e.g., transferring from relatively flat territory to mountainous territory or transferring to a territory that allows for the operation of extremely long trains the engineer has never experienced before. Under these circumstances, the engineer would need to acquire additional training.

- Be of sufficient length to effectively evaluate the person's ability to operate trains; and (continued)

NOTE: The BLE petitioned FRA to exercise a greater degree of control over the duration of performance skills tests by DSLE's.

FRA "denied" the specified minimum duration portion of the petition, feeling the rule is adequate.

240.127

## Performance Skills Test

Conducted when person either:

- Is at controls of the type of train normally operated, or
- Is at controls of a Type I or Type II simulator

62

- The testing shall be conducted when the person either:
  - Is at the controls of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification, or
  - Is at the controls of a Type I or Type II simulator programmed to replicate the responsive behavior of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification.

**NOTE:** A railroad's exclusive use of simulators for initial training is not in compliance. It is not the intent of the regulation to allow certification of engineers who have never operated an actual train.

## Type I Simulator

- Gauges respond to use of controls
- Picture, sound, graphics of route
- Graphics, sound, and physical effect on train speed, braking, & in-train force levels throughout the train
- Computer enhanced (specific train consists & physical characteristics)

63

**DEFINITION: TYPE I SIMULATOR** means a replica of the control compartment of a locomotive with all associated control equipment that:

- functions in response to a person's manipulation and causes the gauges associated with such controls to appropriately respond to the consequences of that manipulation;
- pictorially, audibly and graphically illustrates the route to be taken;
- graphically, audibly, and physically illustrates the consequences of control manipulations in terms of their effect on train speed, braking capacity, and in-train force levels throughout the train; and
- is computer enhanced so that it can be programmed for specific train consists and the known physical characteristics of the line illustrated.

**NOTE:** A Type I or Type II Simulator is acceptable for use during a performance skills test.

240.7

240.127

240.211

## Type II Simulator

- Gauges respond to use of controls
- Picture, sound, graphics of route
- Graphics, sound, (no physical) effect on train speed, braking, & in-train force levels throughout the train
- Computer enhanced (specific train consists & physical characteristics)

64

**DEFINITION: TYPE II SIMULATOR** means a replica of the control compartment of a locomotive with all associated control equipment that:

- functions in response to a person's manipulation and causes the gauges associated with such controls to appropriately respond to the consequences of that manipulation;
- pictorially, audibly and graphically illustrates the route to be taken;
- graphically and audibly (not physically) illustrates the consequences of control manipulations in terms of their effect on train speed, braking capacity, and in-train force levels throughout the train; and
- is computer enhanced so that it can be programmed for specific train consists and the known physical characteristics of the line illustrated.

240.7

240.127

240.211

## Type III Simulator

- Gauges respond to use of controls
- Graphics (no picture or sound) of route
- Graphics (no sound or physical) effect on train speed, braking, & in-train force levels throughout the train
- Computer enhanced (specific train consists & physical characteristics)

65

**DEFINITION: TYPE III SIMULATOR** means a replica of the control compartment of a locomotive with all associated control equipment that:

- functions in response to a person's manipulation and causes the gauges associated with such controls to appropriately respond to the consequences of that manipulation;
- graphically (not pictorially or audibly) illustrates the route to be taken;
- graphically (not audibly or physically) illustrates the consequences of control manipulations in terms of their effect on train speed, braking capacity, and in-train force levels throughout the train; and
- is computer enhanced so that it can be programmed for specific train consists and the known physical characteristics of the line illustrated.

**NOTE:** A Type III simulator is NOT acceptable for use during performance skills testing

240.7

240.127

240.211

## Performance Skills Test

Conduct of test shall be documented in writing and contain:

- Relevant facts of train operated
- Constraints applicable to its operation
- Factors observed & relied on for evaluation purposes by the DSLE

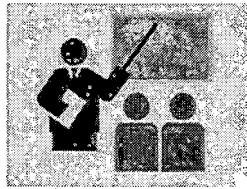
66

- The conduct of the test shall be documented in writing by the DSLE and the documentation shall contain:

- The relevant facts concerning the train being operated;
- The constraints applicable to its operation; and
- The factors observed and relied on for evaluation purposes by the DSLE.

240.127 (d)

# INITIAL AND CONTINUING EDUCATION



67

- The railroad's program submission must contain information concerning the railroad's program for training previously certified locomotive engineers (Appendix B Section 3) and training persons not previously certified (Appendix B Section 5).
- 240.123 (b) provides a railroad latitude to select the specific subject matter to be covered, duration of the training, method of presenting the information, and the frequency with which the training will be provided.
- The railroad's program submission must contain sufficient detail to permit effective evaluation of the railroad's training program, including the training environment employed (for example, and use of classroom, use of computer based training, use of simulators, use of film or slide presentations, use of on-job-training) and which aspects of the program are voluntary or mandatory.
- Each railroad must design its program to address both loss of retention of knowledge and changed circumstances. For example, engineers need to have their fundamental knowledge of train operations refreshed periodically, including interval between attendance at such training, and nature and method of training.

Appendix B to Part 240

## Railroad Program Submission

Railroad's program shall state whether it:

- Accepts responsibility for training student engineers (conduct itself or employ other entity) or
- Will recertify only engineers previously certified by other railroads

68

- The railroad's submission shall state the railroad's election either:
  - (1) To accept responsibility for the training of student engineers and thereby obtain authority for that railroad to initially certify a person as an engineer in an appropriate class of service, or
  - (2) To recertify only engineers previously certified by other railroads.
- A railroad that elects to accept responsibility for the training of student engineers shall state in its submission whether it will conduct the training program or employ a training program conducted by some other entity on its behalf but adopted and ratified by that railroad.
- Per Appendix B, a railroad that plans to accept responsibility for the initial training of engineers may authorize another railroad or a non-railroad entity to perform the actual training effort. The authorizing railroad may submit a training program developed by that authorized trainer but the authorizing railroad remains responsible for assuring that such other training providers adhere to the training program submitted.

240.103 (b)

Appendix B (Section 5)



## Initial Education

### INITIAL TRAINING:

- 1) Composed of classroom, skill performance, & familiarization with physical characteristics
- 2) Includes both knowledge & performance skill testing
- 3) Conducted under the supervision of a qualified class instructor

69

### **Criteria for initial and continuing education.**

- Each railroad's program shall include criteria and procedures for implementing initial and continuing education.
- A railroad that elects to train a previously untrained person to be a locomotive engineer shall provide initial training which, at a minimum:
  - (1) Is composed of classroom, skill performance, and familiarization with physical characteristics components;
  - (2) Includes both knowledge and performance skill testing;
  - (3) Is conducted under the supervision of a qualified class instructor;(continued)

240.123

## Initial Education

- 4) Periods of duration to effectively cover personal safety, operating rules, equipment, train handling, familiarization, Federal regulations
- 5) Performance skill is under supervision of instructor engineer, student engineer is at controls a significant time, & operates a variety of trains

70

4) Is subdivided into segments or periods of appropriate duration to effectively cover the following subject matter areas:

- Personal safety;
- Railroad operating rules;
- Mechanical condition of equipment;
- Train handling procedures (including use of locomotive and train brake systems);
- Familiarization with physical characteristics including train handling; and
- Compliance with Federal regulations.

5) Is conducted so that the performance skill component shall

- Be under the supervision of a qualified instructor engineer located in the same control compartment whenever possible;
- Place the student engineer at the controls of a locomotive for a significant portion of the time; and
- Permit the student to experience whatever variety of types of trains are normally operated by the railroad. 240.123

## Non-Railroad Contractors

- Section 5 of Appendix B makes provisions for training companies to exist & for railroads to use them
- Use of outside contractor - described in the railroad's plan submission
- Actual certification must be done by the railroad

71

- 240.103 permits a railroad to employ a training program conducted by some other entity on its behalf (for initial or student training).
- Appendix B to Part 240 (Section 5 of the Submission: Training, Testing, and Evaluating Persons Not Previously Certified) states, "A railroad that plans to accept responsibility for the initial training of engineers may authorize another railroad or a non-railroad entity to perform the actual training effort. The authorizing railroad may submit a training program developed by that authorized trainer but the authorizing railroad remains responsible for assuring that such other training providers adhere to the training program submitted. Railroads that elect to rely on other entities to conduct training away from the railroad's own trackage must indicate how the student will be provided with the required familiarization with the physical characteristics for its trackage.
- Several of the Class I railroads are offering the service of engineer training, particularly on simulators.

240.103      Appendix B

## Non-Railroad Contractors

- Contractors may offer railroads temporary engineers
- They can offer persons with experience, & test them for knowledge, vision/hearing, initial/continuing education, performance skills & monitoring
- Contractor may check motor vehicle data, operating & A/D compliance

72

- Technical bulletin OP-97-33 was issued on December 13, 1995. It states:

"Numerous inquiries have been made regarding the use of outside contractors for certification purposes and for the temporary use of third party engineers, such as during a work stoppage. The use of service continuation engineers during a recent major labor dispute has raised many questions.

Policy: Section 5 of Appendix B in the regulations makes provisions for training companies to exist, and for railroads to use those companies. Actual certification must be done by the railroad. Use of an outside contractor and how that contractor will be used must be described in the railroad's plan submission.

Contractors who offer railroads temporary engineers, much like a "temp agency" offers temporary employees in other fields of work, are certainly an acceptable business under Part 240. The problems raised by outside contractors involve the fact that only a railroad can qualify a locomotive engineer under Part 240. However, a contractor can be useful to a railroad by offering persons with experience, testing those persons for knowledge of certain required criteria, and completing some of the required background checks. For example, a contractor may check prior safety conduct as a motor vehicle operator, operating

(continued next page) OP-97-33

## Non-Railroad Contractors

- Railroads remain liable for compliance
- Temporary engineer could be certified by multiple railroads & have multiple railroad-issued certificates
- Engineer would have to remain current on each issuing railroad (annual monitoring tests)
- Railroads must maintain required records

73

rules compliance data, and data on substance abuse disorders and alcohol/drug rules compliance. In addition, contractors may ensure compliance with the criteria for vision and hearing acuity, initial and continuing education, testing knowledge, examining skill performance, and monitoring operational performance. Railroads must continue to meet the maintenance records requirements imposed by the regulation. While railroads are free to contract with these contractors, the railroads remain liable for compliance with the regulation.

One or more of these temporary engineers employed by the certification service could be certified by multiple railroads and carry multiple certificates. Each certificate would have to be issued by the railroad, not by the contractor, a non-railroad entity. For each certificate to remain valid, the certificate holder would have to remain current on the issuing railroad, i.e., by an annual check ride and operational test.

Under ordinary circumstances, a railroad would require a minimum of two certified locomotive engineers. Each locomotive engineer could be utilized to perform monitoring and check rides on the other. However, by using a contractor, a shortline could achieve compliance without employing two certified locomotive engineers. For example, a shortline railroad with one certified engineer could contract to a certification service. The certification service could conduct all of the tests

(continued) OP-97-33

## Non-Railroad Contractors

- A shortline railroad with one certified engineer could contract with such an entity and the non-railroad contractor could conduct the required annual check ride for the shortline railroad's engineer as long as the railroad's engineer did the same for the other certified engineer employed by the contractor.

74

and checks for the railroad's engineer as well as for the certification service's employee. The certification service's employee could conduct the required annual check ride for the certification service employee. Railroads must continue to meet the maintenance records requirements imposed by the regulation.

## Student Engineers

- Certify as student engineer after hearing and vision test
- A student engineer may be later certified as an engineer if:
  - Completes training program (knowledge & performance skills)
  - Motor vehicle, operating rules, A/D
  - Within 2 year period

75

- A railroad may certify a person as a student engineer after determining that the person meets the vision and hearing acuity standards of 240.121.
- A railroad may subsequently certify that student engineer as either a locomotive servicing engineer or a train service engineer without further review of vision/hearing acuity, provided it determines:
  - 1) the person successfully completed a training program that complies with 240.123 (knowledge and skills performance testing);
  - 2) the person meets the eligibility requirements of 240.109 (prior safety conduct-motor vehicle & operating rules compliance) and 240.119 (alcohol/drug compliance); and
  - 3) a period of not more than 24 months has elapsed since the student engineer certification was issued.

**NOTE:** See page 27 of the Application tab in this reference guide for further information on student engineers.

240.203 (b)

## Initial Education

Railroad must have written documentation that the person:

- Completed the training program
- Demonstrated his knowledge & skills by achieving a passing grade
- Is familiar with the physical characteristics of the railroad (as determined by a qualified DSLE)

76

### **Procedures for making the determination on completion of training program.**

- Each railroad, prior to the initial issuance of a certificate to any person as a train or locomotive servicing engineer, shall determine that the person has, in accordance with the requirements of 240.123, the knowledge and skills to safely operate a locomotive or train in the most demanding class or type of service that the person will be permitted to perform.
- In making this determination, a railroad shall have written documentation showing that:
  - 1) The person completed a training program that complies with 240.123;
  - 2) The person demonstrated his knowledge and skills by achieving a passing grade under the testing and evaluation procedures of the training program; and
  - 3) **A qualified DSLE has determined that the person is familiar with the physical characteristics of the railroad or its pertinent segments.**

240.213



## Initial Training (Recommended Guidelines)

▪ Safety (New)	TSE - 40'	LSE - 40'
▪ Operating Rules	TSE - 40'	LSE - 20'
▪ Mechanics	TSE - 24'	LSE - 12'
▪ Air Brakes/Tests	TSE - 24'	LSE - 12'
▪ Train Handling	TSE - 30'	LSE - 8'
▪ HM/ER	TSE - 16'	LSE - 8'
▪ Federal Regs	TSE - 16'	LSE - 16'

77

• Whenever railroads ask for guidelines on initial training programs, FRA refers them to the proposed rule (FR, 12/89, Vol. 54, No. 236, Pg. 50930).

• The proposed rule for Category A (train service) and Category C (locomotive servicing engineers) indicated minimum duration for training as follows:

1. Personal Safety (new hires only)	TSE - 40'	LSE - 40'
2. Operating Rules	TSE - 40'	LSE - 20'
3. Mechanics	TSE - 24'	LSE - 12'
4. Air Brakes/Tests	TSE - 24'	LSE - 12'
5. Train Handling	TSE - 30'	LSE - 8'
6. Federal Regulations	TSE - 16'	LSE - 16'

(Other Federal regulations, including locomotive inspection, hours of service, drug and alcohol, and radio procedures)

7. Administrative matters (8 hours each class of service)

TOTAL for NEW HIRES	TSE - 4.5 wks	LSE - 3 wks
for current employees	TSE - 3.5 wks	LSE - 2 wks

**THESE ARE GUIDELINES ONLY - NOT ENFORCEABLE**

## Initial Training (Recommended Guidelines)

- Performance Skills TSE - 480' LSE - 60'
- One hour of training on a Type 1 simulator count as up to 5 hours of total train operation experience
- One hours of training on a Type 2 simulator count as up to 2 hours of total train operation experience
- Three round trips over entire territory

78

- Whenever railroads ask for guidelines on initial training programs, FRA refers them to the proposed rule (FR, 12/89, Vol. 54, No. 236, Pg. 50931).
  - The proposed rule set guidelines for the minimum duration for total actual train operation (i.e., combined actual and simulator operation) as:
    - 480 hours for train service engineers and
    - 60 hours for locomotive servicing engineers
  - If training on a simulator was substituted for a portion of the actual train operation experience when teaching performance skills, each student was to be given a minimum period of actual train operation of 240 hours Type 1 simulator and 360 hours Type 2 simulator for train service engineers, and 30 hours Type 1 simulator and 60 hours Type 2 simulator for locomotive servicing engineers
- That is, 1 hour of training on a Type 1 simulator could be counted as up to 5 hours of total train operation experience; and 1 hour of training on a Type 2 simulator could be counted as up to 2 hours of total train operation experience.
- The proposed rule required the student engineer to make at least 3 round trips over the entire authorized territory.

**GUIDELINES ONLY-NOT ENFORCEABLE**

## Continuing Education

CONTINUING EDUCATION to maintain necessary knowledge, skill, & ability of:

- Personal safety
- Operating rules & practices
- Mechanical condition of equipment
- Train handling (including familiarity with physical characteristics **as determined by a DSLE**)
- Relevant Federal safety rules

79

- A railroad shall provide for the continuing education of certified locomotive engineers to ensure that each engineer maintains the necessary knowledge, skill and ability concerning: personal safety, operating rules and practices, mechanical condition of equipment, - methods of safe train handling (including familiarity with physical characteristics **as determined by a qualified DSLE**), and relevant Federal safety rules.
- DSLE's must participate in the continuing education program and at a minimum attend the same as regular engineers. DSLE's should take the same written rules exam instead of a special "officer's examination."
- There is no requirement that the railroad conduct its training at determined intervals or for specified durations.
- In designing its program, railroads must ensure their engineers are kept advised of changes (new or amended) guidance provided in general orders or special instructions, amendments to its "book of rules," changes that occur in the physical characteristics of the territory with which the engineer is required to be familiar, and the introduction of new technology.
- Railroad must also provide for programs to ensure each engineer stays familiar with existing rules and procedures learned years ago, as well as with physical characteristics unused for a significant period.

240.123

## Familiarity With Physical Characteristics

- For initial & continuing education
- Railroad shall describe methods for familiarizing its engineers with new territory in its program submission:
  - Starting up a new railroad,
  - Starting operations over newly acquired rail lines, or
  - Reopening of a long unused route

80

### **Familiarity with the physical characteristics of a territory.**

- Pursuant to initial and continuing education, a person may acquire familiarity with the physical characteristics of a territory through the following methods if the specific conditions included in the description of each method are met.
- The methods used by a railroad for familiarizing its engineers with new territory while starting up a new railroad, starting operations over newly acquired rail lines, or reopening of a long unused route, shall be described in the railroad's locomotive engineer qualification program required under Part 240 and submitted according to the procedures described in Appendix B to Part 240.
- 1) If ownership of a railroad is being transferred from one company to another, the engineer(s) of the acquiring company may receive familiarization training from the selling company prior to the acquiring railroad commencing operation; or

(continued)

240.123 (d)

## Familiarity With Physical Characteristics

- If ownership is transferred, engineers of acquiring railroad may receive familiarization training from the selling company prior to commencing operations; or
- Other methods (e.g., hyrail or lite locomotive trips per program submission)

81

- 2) Failing to obtain familiarization training from the previous owner, opening a new rail line, or reopening an unused route would require that the engineer(s) obtain familiarization through other methods.
- Acceptable methods of obtaining familiarization include using hyrail trips or initial lite locomotive trips in compliance with what is specified in the railroad's locomotive engineer qualification program required under Part 240 and submitted according to the procedures described in Appendix B to Part 240.
  - Per Appendix B, the railroad must have a plan for the familiarization training that addresses the question of how long a person can be absent before needing more education and, once that threshold is reached, how the person will acquire the needed education. The railroad's program must address how the railroad responds to changes such as significant changes in operations including alteration in the territory engineers are authorized to operate over.
  - Railroads that elect to rely on other entities to conduct training away from the railroad's own trackage, must indicate how the student will be provided with the required familiarization with the physical characteristics for its trackage.

240.123 (d)

Appendix B

## Territorial Qualifications

### QUESTION 1:

***What are the territorial qualifications requirements for a railroad that elects to qualify a previously untrained person to be a locomotive engineer?***

82

**QUESTION 1:** What are the territorial qualifications requirements for a railroad that elects to qualify a previously untrained person to be a locomotive engineer?

**ANSWER:** The training requirements for a previously untrained person are listed in 240.123 (c). Both a knowledge test and a skills performance test must be passed. Furthermore, a railroad supervisor must make certain determinations for a person to be considered qualified and, thus, safe to operate over a particular territory. In summary, the training, testing and qualification requirements include:

1. **Training:** See 240.123 (c) and FRA approved program prepared by the railroad pursuant to 240.103;
2. **Testing:** The engineer must pass a written knowledge test on the physical characteristics of the territory as prescribed by 240.125 (c)(4)(iv) [physical characteristics knowledge questions need to be route specific, and limiting such a test to generic questioning will not be sufficient. Moreover, when testing a person who is authorized to operate over multiple routes, the person's knowledge concerning each route needs to be examined]; and
3. **Qualifying:** A DSLE, who must be qualified on the territory, must determine in writing that the engineer is familiar with the physical characteristics of the railroad or its pertinent segments pursuant to 240.213 (b)(3). OP-2000-01

## Territorial Qualifications

### QUESTION 2:

***What are the requirements when a railroad wishes to qualify a certified engineer over territory in which the engineer has never operated?***

83

QUESTION 2: What are the requirements of the regulation when a railroad wishes to qualify a certified engineer over territory in which the engineer has never operated?

ANSWER: The term "qualified" is defined in the 1999 amendments as meaning "a person who has passed all appropriate training and testing programs required by the railroad and Part 240 and who, therefore, has actual knowledge or may reasonably be expected to have knowledge of the subject on which the person is qualified." Qualifying a certified engineer over new territory, as required by 240.231 (a), is accomplished according to the provisions for continuing education in the railroad's own program. In developing the continuing education provisions, a railroad will need to determine what kind of training, if any, is appropriate and address such possible training scenarios in the railroad's Part 240 program. FRA recommends that a railroad's Part 240 program address those possible training scenarios in which an engineer is transferring to territory that demands greater train handling skills, e.g., transferring from relatively flat territory to mountainous territory or transferring to territory that allows for the operation of extremely long trains the engineer has never experienced before. Failure to address such scenarios may lead to a determination that the program is deficient. 240.123 (a) OP-2000-01

## Territorial Qualifications

### QUESTION 3:

***What are the requirements when a railroad wishes to “requalify” a certified engineer on the physical characteristics of a territory (i.e., qualifications expired or nearing expiration date)?***

84

QUESTION 3: What are the requirements of the regulation when a railroad wishes to requalify a certified engineer on the physical characteristics of a territory; i.e., the engineer has previously been territorially qualified but has either allowed his or her qualifications to expire (according to the railroad's program) or is nearing that expiration date:

ANSWER: The regulation requires, at section 240.123 (b), that railroads address the concern that an engineer's knowledge of a particular territory can begin to erode over time. Failure to have adequate procedures for continuing education is a violation of that section. When a railroad has previously determined that an engineer is qualified to operate over a particular territory, FRA has permitted each railroad to address the subject of continuing education in its certification program filed pursuant to Part 240.

In Appendix B to Part 240, FRA makes clear that each railroad's program must address familiarization training for engineers who have been away from a territory for some time or whose territories have changed. Railroads have fulfilled this obligation by requiring engineers to requalify on a territory after a specified period of time has elapsed, but under no circumstances may a railroad wait longer than 36 months

(continued)

OP-2000-01



## Territorial Qualifications

### **QUESTION 3:**

***What are the requirements when a railroad wishes to "requalify" a certified engineer on the physical characteristics of a territory (i.e., qualifications expired or nearing expiration date)?***

85

to requalify an engineer on territorial qualifications since no interval for recertification can exceed 36 months. Although a railroad could treat a previously territorially qualified engineer as it does a previously untrained person (see answer to Question 1) or a certified engineer who has never operated over that territory (see answer to Question 2), FRA's policy is to permit a railroad to perform a less formal process as long as that process is clearly articulated in accordance with the railroad's Part 240 program.

OP-2000-01

## Territorial Qualifications

### **QUESTION 4:**

***What if there is a disagreement between an engineer and a DSLE concerning the engineer's territorial qualifications?***

86

**QUESTION 4:** What procedures must be followed if there is a disagreement between an engineer and a DSLE concerning the engineer's territorial qualifications? In other words, what are the parties' responsibilities if a DSLE believes an engineer is territorially qualified but the engineer believes otherwise?

**ANSWER:** 240.231 (a) expressly prohibits an engineer from operating over a territory if not qualified on its physical characteristics. Under that section, FRA could hold railroad officials and engineers individually liable, in addition to holding railroads liable. A railroad may not order a person who is territorially unqualified to operate a locomotive or train in that territory. Likewise, an engineer who operates over territory in which he or she is unqualified on the physical characteristics risks facing FRA enforcement proceedings, i.e., civil penalties, disqualification from safety sensitive service, etc.

Under some circumstances, a railroad official, such as a DSLE, and an engineer may disagree as to whether the engineer is territorially qualified. The dispute may be resolved by checking the territorial records kept for this engineer to see if the person was initially qualified properly over this territory [240.213 (b)], checking the engineer's certificate to see if it indicates the territory on which the engineer is

(continued)

OP-2000-01

## Territorial Qualifications

### **QUESTION 4:**

***What if there is a disagreement between an engineer and a DSLE concerning the engineer's territorial qualifications?***

87

qualified, or determining whether a DSLE has determined the engineer to be qualified on this territory since his or her initial certification [240.123 (b)]. If the railroad cannot determine through one of these means that the engineer is qualified on the territory, FRA strongly recommends that the railroad not order the engineer to operate a train under such conditions. Ordering an engineer to operate a train when the railroad has no basis for believing the engineer is territorially qualified is likely to result in FRA taking enforcement action under 240.231 (a) against the railroad or the officials who approved such an order should it turn out that the engineer was in fact not qualified. In addition, if the engineer's certificate actually contains a territorial restriction and the railroad requires the engineer to perform service beyond that specified certificate limitation, this action would also violate 240.305 (c). Of course, FRA's decision as to whether enforcement action is warranted will be based on the facts specific to each incident.

Please note that if an engineer is not territorially qualified, a railroad may permit the train movement with that engineer and a pilot pursuant to 240.231. Who may be considered a qualified pilot will depend on the experience of the engineer as specified in that section of the regulation.

OP-2000-01

## Territorial Qualifications

### **QUESTION 5:**

***What degree of knowledge & skills must a DSLE possess to test and qualify engineers over his or her assigned territory?***

88

**QUESTION 5:** What degree of knowledge and skills must a DSLE possess to test and qualify engineers over his or her assigned territory?

**ANSWER:** The regulation outlines DSLE requirements in 240.105 (b): The railroad shall examine any person it is considering for qualification as a DSLE to determine that he or she:

- (1) Knows and understands the requirements of Part 240;
- (2) Can appropriately test and evaluate the knowledge and skills of locomotive engineers;
- (3) Has 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; and
- (4) Is 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.

Compliance with these requirements will ensure that any DSLE, who is responsible for qualifying engineers over a specific territory, will be a proficient engineer who can perform the basic duties of a supervisor. If a DSLE lacks the knowledge or skills required of engineers who

(continued)

OP-2000-01

## Territorial Qualifications

### QUESTION 5:

***What degree of knowledge & skills must a DSLE possess to test and qualify engineers over his or her assigned territory?***

89

operate over the specific territory, that person should not be a DSLE. FRA intends to strictly enforce these requirements of the regulation to ensure that each DSLE is qualified to perform his or her supervisory duties.

FRA notes that it is possible for a lone DSLE to perform the required testing and qualifying for both physical characteristics and skills performance simultaneously; however, a railroad that wishes to enjoy the advantages of combining these requirements must use a DSLE who is qualified on the physical characteristics of the territory over which the test will be conducted. Compare 240.213 (b)(3) [requiring a qualified DSLE to determine upon completion of training program that the person is familiar with the physical characteristics of the railroad or its pertinent segments]; with 240.127 (c)(2) [explaining that a skills performance test does not require a DSLE qualified on the physical characteristics of the territory over which the test will be conducted]. The additional requirement of annual operational performance monitoring explicitly allows a railroad's program to contain procedures that permit a DSLE to conduct the monitoring even if that DSLE is not qualified on the physical characteristics of the territory over which the operational performance monitoring will be conducted. 240.129 (c)(2).

OP-2000-01

## Territorial Qualifications

### **QUESTION 6:**

***Under what conditions can an engineer operate over territory on which he or she is not qualified?***

90

**QUESTION 6:** Under what conditions can an engineer operate over territory on which he or she is not qualified?

**ANSWER:** As a threshold issue, it is important to distinguish between whether the engineer in question is operating in joint operations territory or not.

If an engineer is operating in joint operations territory over which he or she is not qualified, the engineer could operate a locomotive or train:

- (1) With a qualified person as a pilot pursuant to 240.229 (e). Qualified person is defined in that section to mean "either a DSLE or a certified train service engineer determined by the controlling railroad to have the necessary knowledge concerning the controlling railroad's operating rules and to have the necessary operating skills including familiarity with its physical characteristics concerning the joint operations territory;" or,
- (2) Without a qualified person as a pilot pursuant to 240.229 (f) as long as a minimal joint operation is involved. Minimal joint operation is defined in this section.

More commonly, a railroad may have a need for a territorially unqualified engineer to operate a locomotive or train in other than

(continued)

OP-2000-01

## Territorial Qualifications

### **QUESTION 6:**

***Under what conditions can an engineer operate over territory on which he or she is not qualified?***

91

joint operations territory. Like a railroad's options when an engineer is operating in joint operations territory, some circumstances do not require a pilot but other situations do. Who may serve as a pilot and when a pilot is unnecessary are specifically addressed in 240.231.

See information on use of pilots on page 16 of the Certificate & Pilots tab.

OP-2000-01

## Denial of (Re)Certification

- Railroad shall notify candidate of info that forms basis for denial
- Provide person reasonable opportunity to explain or rebut in writing prior to denial (except: if based solely on factors of motor vehicle record, operating rules or alcohol/drug compliance)
- Notify of denial, give date, & explain basis in writing-mail/deliver in 10 days

92

### **Denial of certification.**

- A railroad shall notify a candidate for certification or recertification of information known to the railroad that forms the basis for denying the person certification and provide the person a reasonable opportunity to explain or rebut that adverse information in writing prior to denying certification.
- 240.219 does not require further opportunity to comment if the railroad's denial is based solely on factors addressed by 240.115, 240.117, and 240.119 (motor vehicle record, operating rules compliance, and alcohol/drug compliance) and the opportunity to comment afforded by those sections has been provided.
- If it denies a person certification or recertification, a railroad shall notify the person of the adverse decision and explain, in writing, the basis for its denial decision. The document explaining the basis for the denial shall be mailed or delivered to the person within 10 days after the railroad's decision and shall give the date of the decision.

240.219



Mr. T. M. Kelly  
Assistant Vice President  
Wisconsin Central Limited  
1625 Depot Street  
Stevens Point, Wisconsin 54481

JUN 15 1992

Dear Sir:

This in response to your April 2 letter to Mr. John Wyker, Operating Specialist, Chicago, Illinois. You requested clarification of certain portions of Title 49, Code of Federal Regulations, Part 240.111 and 240.115 pertaining to evaluation the Locomotive Engineer's motor vehicle driving record.

The actions required for compliance with Section 240.111 may be made within the 180 days preceding the date of the railroad's decision to certify or recertify the affected Locomotive Engineer.

When evaluating a Locomotive Engineer's motor vehicle driving record, only a conviction for, or completed action to cancel, revoke, suspend or deny a license for operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance may be considered. If such an incident is identified, the railroad must provide the necessary data to the Employee Assistance Program (EAP) Counselor and require the affected individual to report to the EAP Counselor for evaluation.

The individual may elect on his own to report to the EAP Counselor prior to the railroad identifying the incident. When the railroad does identify the incident, it is not necessary to have the individual report a second time to the EAP Counselor for evaluation of the same incident.

Thank you for your interest and concern in these regulations. If you need further information on this subject, please contact Mr. Tom Murphy, Operating Specialist, Washington, D.C., at (202) 366-6594.

Sincerely,

E. R. English

Edward R. English  
Director, Office of Safety  
Enforcement

b/c John Wyker, OP Specialist, RRS-44  
FRA:RRS11:TMurphy:66594:tes:6/11/92  
cc: RRS1, OSE(2), RRS11(TS),  
Subject File A:Letter.WC

U.S. Department  
of Transportation  
**Federal Railroad  
Administration**

Office of the Administrator

400 Seventh St., S.W.  
Washington, D.C. 20590

JUN 17 1991

Mr. Ken Gentzke, Jr.  
26 Cambridge Street  
Honeoye, NY 14471

Dear Mr. Gentzke:

Thank you for your recent letter raising concerns with regard to the hearing acuity standards established for locomotive engineers.

As you know, FRA has the responsibility for ensuring that qualified persons operate locomotives. FRA began requiring the certification of locomotive engineers when the agency promulgated its final rule on June 19, 1991. FRA's regulation requiring the qualification and certification of locomotive engineers requires a railroad to implement a certification program which tests for hearing acuity. In section 240.121(d), FRA established a hearing acuity threshold that must be met or exceeded with or without the use of a hearing aid. Furthermore, a person who does not meet the threshold established in section 240.121(d) may still be found qualified if the railroad exercises its option of allowing a medical examiner to determine whether that person has the ability to operate a locomotive safely. See 49 CFR 240.121(e).

In the section-by-section analysis published with this regulation, FRA explained that section 240.121(d) "afford[s] railroads some discretion in applying these criteria." See 56 Federal Register at 28246 (1991). Besides allowing the medical officer exception to FRA's hearing acuity standard as established in section 240.121(d), "the medical officer can, if necessary, impose conditions on the service that person is permitted to perform." See 56 Federal Register at 28236 (1991). I have enclosed for your review a copy of the relevant sections of the regulation, including those sections of the preamble and section-by-section analysis cited above. However, I want to stress again that the medical examiner determination in section 240.121(e) of the regulation is only an option if the railroad chooses to exercise it.

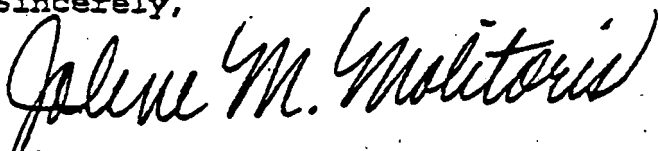
Considering both paragraphs (d) and (e) of section 240.121, it appears that it is possible for a railroad to certify a deaf person as a locomotive engineer. In addition, the approach in promulgating section 240.121(e) was developed so as to be

"consistent with the spirit of the recently enacted Americans with Disabilities Act." See 56 Federal Register at 28236 (1991). Hence, based on the current information at my disposal, I do not believe that the hearing acuity standard established in the locomotive engineer qualifications rule is prejudicial to deaf persons.

Since you inquired about changing the rule either permanently or temporarily, I have included for your review a copy of FRA's rules of practice located at 49 CFR Part 211. Section 211.9 explains what a rulemaking or waiver petition must contain. Subparts B and C, respectively, of Part 211 explain the procedures for rulemaking and waivers.

I appreciate your contacting me concerning compliance with agency safety laws and am glad to be of assistance.

Sincerely,



Jolene M. Molitoris  
Administrator

Enclosure

RCC-31/ANagler/dw/x6-0621/5-3-94/revised:5-13-94/revised:5-17-94-  
FRA Control No. 940420-04470  
cc: Chron, RCC31, RCC2, RCC1, ROA4, ROA6, ROA20, RRS, RRP, I10,  
RAD  
source: P:\LETTERS.RCC\240121.HRG  
O:\NAGLER\CONTROL.LET\240121.HRG

FILE

*Leane*

JUL 31 1995

Ms. Lola Michelle Winder  
4202 Pershing Avenue  
Fort Worth, Texas 76107

Dear Ms. Winder:

Thank you for your letter requesting an appeal of Atchison Topeka and Santa Fe Railroad's (ATSF) decision to deny your engineer certification for failure to pass a written certification examination. I apologize for the delay in responding to your inquiry.

In various discussions with members of my staff, you indicated that the ATSF hired you with full knowledge of your dyslexic condition. You claim that at that time, you were told you would be administered examinations orally, should you have difficulty in reading the exam text.

You were subsequently designated as a candidate for Locomotive Engineer Certification. You successfully completed the training program up to the point of the final examination. You failed the written final exam and were notified that you were denied certification as a locomotive engineer and that you would be restricted to yard service as a trainman.

Title 49 Code of Federal Regulations (Title 49 Code of Federal Regulation Part 240) prescribes minimum Federal safety requirements for the eligibility, training, and testing certification and monitoring of all locomotive engineers. It requires that all railroads conduct an assessment of each locomotive engineer candidate's knowledge and performance skills, as a part of the initial certification process.

Section 240.125 requires that a railroad have procedures for testing a person being evaluated for qualification as a locomotive engineer in train service to determine that the person has sufficient knowledge of the railroad's rules and practices for the safe operation of trains. Railroads have the discretion to design the test that will be employed. However, Section 240.125(c) (3) requires that testing be administered in written form.

Under the provisions of Section 240.219, certification or recertification can be denied by railroads based on a

CONCURRENCES		
RTG SYMBOL	RRS-17	
INITIALS/SIG	<i>(Signature)</i>	
DATE	7-15-95	
RTG SYMBOL	RRS-11	
INITIALS/SIG	G. Cox	
DATE	7-26-95	
RTG SYMBOL	RRS-10	
INITIALS/SIG	ERE	
DATE	7-28-95	
RTG SYMBOL		
INITIALS/SIG		
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RTG SYMBOL		
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INITIALS/SIG		
DATE		

GRID

determination that the certification candidate lacks the knowledge and skills to perform the duties of an engineer.

Subpart E, Dispute Resolution Procedures outlines a method for filing with FRA's Locomotive Engineer Review Board, a petition for review of the railroad's decision to deny certification. Additionally, Section 240.9 permits you to petition FRA for a waiver of compliance with any requirement of Part 240 (see attached). Each petition for waiver must be filed in the manner and contain the information required by Title 49 Code of Federal Regulation Section 211.9 (attached). If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, he or she may grant the waiver subject to any conditions he or she deems necessary. Should you not choose or qualify to utilize either procedure, the issue concerning your engineer certification status may be handled through the railroad labor-management process.

I hope this information is helpful.

Sincerely,

Original Signed By  
Edward R. English

Edward R. English  
Director, Office of Safety  
Enforcement

Enclosures

FRA:RRS-11:TKEANE:60954:07/18/95  
cc: RRS-1,10,11, Region 5  
Subject File 2400.1(125(c)(3)-  
O:\tkeane\240-125c.3

JUL 13 1994

Mr. Jerry R. Kolpek  
General Chairman  
Brotherhood of Locomotive Engineers  
413 North Federal  
Mason City, Iowa 50401

Dear Mr. Kolpek:

Thank you for your letter asking for an interpretation of locomotive engineer certification regulations. You specifically referred to Title 49, Code of Federal Regulations (49 CFR), Part 240.127 "as it is to be applied to the training program for recertification."

You make two specific statements in your letter that serve as the basis of your concerns: (1) Passing the simulator portion of the test is an unfair requirement for recertification; and, (2) if passing the simulator is a requirement for recertification it should be set up to cover a portion of each seniority district, otherwise, it should be used solely as a training tool.

Please note that the regulation prescribes only the minimum requirements a railroad must meet for examining skill performance. This part does not restrict a railroad from implementing additional or more stringent requirements for its locomotive engineers that are not inconsistent with the regulation [see 49 CFR 240.1(b)].

The Federal Railroad Administration (FRA) believes that CP Rail System's (CP) application of the regulation is in compliance with general regulatory requirements. CP is at liberty to design its training program to meet specific company needs, provided it meets the minimum requirements of the regulation.

During a telephone discussion with an FRA Specialist, you related that although you were generally dissatisfied with CP's program, no harm (decertification) came to any of your engineers as a result of CP's use of the simulator. You did advise that one of your employees lost time due to failing the simulator portion of recertification on the first try, however he passed on the second attempt.

CONCURRENCES	
RTG SYMBOL	RRS-11
INITIALS/SIG.	RM
DATE	7-7-94
RTG SYMBOL	RRS-11
INITIALS/SIG.	RM
DATE	7-7-94
RTG SYMBOL	RRS-10
INITIALS/SIG.	ERE
DATE	7-11-94
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I appreciate your interest in this matter and hope this information is helpful.

Sincerely,

**L. R. English**

Edward R. English  
Director, Office of Safety  
Enforcement

FRA:RRS11:Mcquarie:60954:tes:6/26/94  
cc: RRS1, 10, RDG11 & Subject  
C:\wpdata\wp51doc\k...\Kolpek.GB2  
N:Tsmith....



U.S. Department  
of Transportation  
Federal Railroad  
Administration

400 Seventh St., S.W.  
Washington, D.C. 20590

NOV 30 1995

Mr. D. G. McInnes  
Senior Vice President and  
Chief Operating Officer  
Burlington Northern Santa Fe, Incorporated  
P.O. Box 961034  
2600 Lou Menk Drive  
Fort Worth, Texas 76161-0034

Dear Mr. McInnes:

- The Federal Railroad Administration (FRA) recently completed an investigation into the locomotive engineer certification practices of the Atchison Topeka and Santa Fe Railway Company (ATSF). A major concern arose which I want to bring to your attention for correction. Specifically, ATSF's exclusive utilization of simulators for initial training of engineers is in noncompliance with the Federal Regulation.

FRA takes no exception to the use of Type I or Type II Simulators as a training tool and has made provisions for their use in the regulation. However, Title 49, Code of Federal Regulations (CFR), Part 240.123(c) (5) (ii) and (iii) require that:

"(c) A railroad that elects to train a previously untrained person to be a locomotive engineer shall provide initial training which, at a minimum:

. . . (5) Is conducted so that the performance skill component shall

. . . (ii) Place the student engineer at the controls of a locomotive for a significant portion of the time; and

(iii) Permit the student to experience whatever variety of types of trains are normally operated by the railroad." (emphasis added)

- FRA does not consider the use of simulators to be an acceptable substitute for practical experience in the initial training of persons previously untrained. It is not the intent of the regulation to allow the certification of locomotive engineers who have never operated an actual train.

FRA's investigation determined that ATSF recently issued train service locomotive engineer certificates to 103 previously untrained persons whose practical experience training (on-the-job-training) was confined exclusively to simulators. FRA took exception to the training procedures utilized in the certification of these individuals and recommended civil penalties in each case to our Office of Chief Counsel.



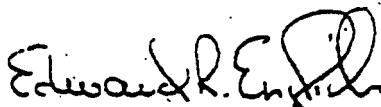
Additionally, FRA found that ATSF failed to determine that most of these individuals possessed the required knowledge and operating skills prior to certification as required by Title 49 CFR 240.203(a). This section requires that a candidate be observed by a Designated Supervisor of Locomotive Engineers (DSLE) to determine if the candidate possesses the necessary applied knowledge and performance skills. It is FRA's understanding that these individuals were not observed by a DSLE prior to certification.

Consequently, the ATSF has failed to comply with the requirements of 49 CFR Part 240.213(a) which states in part:

" . . . prior to the initial issuance of a certificate to any person as a train or locomotive service engineer, shall determine that the person has . . . the knowledge and skills to safely operate a locomotive or train in the most demanding class or type of service that the person will be permitted to perform . . . "

We appreciate Santa Fe's long lasting leadership in the industry, however the recent changes to ATSF's engineer certification program have not been consistent with Santa Fe's traditional commitment to railroad safety. To have anything less than the best trained people is not in Santa Fe's best interest. FRA requests that Santa Fe develop an action plan addressing what actions you intend to take to correct FRA's concerns. The action plan should be submitted to FRA within 30 days. Please feel free to call me if you have any questions.

Sincerely,



Edward R. English  
Director, Office of Safety Assurance  
and Compliance

FILE

Mr. Jerry L. Batton  
General Chairman  
General Committee of Adjustment  
15 Northtown Drive, Suite M, Box 7  
Jackson, Mississippi 39211

NOV 13 1995

Dear Mr. Batton:

Thank you for your September 25 letter concerning the credibility of information contained on locomotive event recorder printouts (tapes).

Your letter lists four examples of erroneous data taken from an event recorder tape that was used as evidence to decertify an engineer. You also state that the tape in question would not comply with Title 49, Code of Federal Regulations, Parts 229.5 and 229.25(e)(3), and consequently data obtained from the tape should not have been used as evidence to decertify the engineer.

Historically, the information obtained from locomotive event recorder tapes has become the most reliable source of information in determining an engineer's actions just prior to a particular incident. The Federal Railroad Administration (FRA) has recently taken further steps to ensure that this information will continue to be reliable and readily obtainable by enhancing Part 229, Railroad Locomotive Safety Standards, through the addition of Parts 229.5, 229.25 and 229.135.

Part 229.5 defines the term "event recorder" and describes what functions are required to be recorded on these devices. Part 229.25(e)(3) prescribes procedures for testing an event recorder during locomotive periodic 92-day inspections. Part 229.135 requires that, after May 5, 1995, locomotives operating at speeds above 30 miles per hour shall be equipped with an operable event recorder and also prescribes procedures that must be followed when the device becomes inoperative between 92-day inspections. In order to comply with this part, the railroad is required to inspect the event recorder during the 92-day inspection and maintain the documentation of this inspection at the same inspection point.

The regulations do not, however, address the inconsistencies in data that periodically appear on event recorder tapes. If it is determined that the information on the tape is consistent with actual train operations and follows a logical sequence of events leading up to a particular incident, the information is usually

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considered reliable. If, on the other hand, the data is distorted in such a fashion, that there can be no logical conclusion drawn from the content, the information is disregarded.

The Locomotive Engineer Review Board considers many petitions involving train speed violations. Incidents that involve inconsistencies in event recorder information, such as the one you described, are handled on a case by case basis. There are no standard procedures to follow when making these determinations.

I hope this information is helpful and I look forward to working with you on other safety issues that are important to you and your members.

Sincerely,

Original Signed By  
Edward R. English

Edward R. English  
Director, Office of Safety Assurance  
and Compliance

FRA:RRS11:JConklin:60902:tes:11/8/95  
cc: RRS1, 10, 11, Subject File  
N:\Tsmith\Recorder

## Signals

Inquiries have been received as to whether or not hand signals and radio signals are considered "signals" as that term is used in Section 240.117(e)(1).

Policy: As noted in the preamble to the Interim Final Rule at 58 Fed. Reg. 18992 (Apr. 9, 1993), "FRA intends this section to apply to both active stop signals (e.g. wayside automatic block or cab signal indications) and passive stop signals (e.g. stop boards, flags or gates)." It is FRA's view that unattended fusees and banners used in operational tests are the functional equivalent of a flag and that passing an unattended fusee under circumstances which require a stop should be considered a violation of Section 240.117(e)(1). This definition does not include hand signals and radio signals.

## Designated Supervisors of Locomotive Engineers

Numerous inquiries have been made regarding the use of outside contractors for certification purposes and for the temporary use of third party engineers, such as during a work stoppage. The use of service continuation engineers during a recent major labor dispute has raised many questions.

Policy: Section 5 of Appendix B in the regulations makes provisions for training companies to exist, and for railroads to use those companies. Actual certification must be done by the railroad. Use of an outside contractor and how that contractor will be used must be described in the railroad's plan submission.

Contractors who offer railroads temporary engineers, much like a "temp agency" offers temporary employees in other fields of work, are certainly an acceptable business under part 240. The problems raised by outside contractors involve the fact that only a railroad can qualify a locomotive engineer under part 240. However, a contractor can be useful to a railroad by offering persons with experience, testing those persons for knowledge of certain required criteria, and completing some of the required background checks. For example, a contractor may check prior safety conduct as a motor vehicle operator, operating rules compliance data, and data on substance abuse disorders and alcohol/drug rules compliance. In addition, contractors may ensure compliance with the criteria for vision and hearing acuity, initial and continuing education, testing knowledge, examining skill performance, and monitoring operational performance. Railroads must continue to meet the maintenance records requirements imposed by the regulation. While railroads are free to contract with these contractors, the railroads remain liable for compliance with the regulation.

One or more of these temporary engineers employed by the certification service could be certified by multiple railroads and carry multiple certificates. Each certificate would have to be issued by the railroad, not by the contractor, a non-railroad entity. For each certificate to remain valid, the certificate holder would have to remain current on the issuing railroad, i.e., by an annual check ride and operational test.

Under ordinary circumstances, a railroad would require a minimum of two certified locomotive engineers. Each locomotive engineer could be utilized to perform monitoring and check rides on the other. However, by using a contractor, a shortline could achieve compliance without employing two certified locomotive engineers. For example, a shortline railroad with one certified engineer could contract to a certification service. The certification service could conduct all of the tests and checks for the railroad's engineer as well as for the certification service's employee. The certification service's employee could conduct the required annual check ride for the railroad's engineer as long as the railroad's engineer did the same for the certification service employee. Railroads must continue to meet the maintenance records requirements imposed by the regulation.

#### New Railroads, New Territory

Questions have been raised concerning the certification of locomotive engineers on new railroads being created, or on portions of a railroad being reopened after years of nonuse.

Policy: The methods used by railroads for start up of a new railroad, or the reopening of a long unused route, must be described in the railroad's plan submission as described in Appendix B.

If ownership of a railroad is being transferred from one company to another, the engineer(s) of the acquiring company could receive familiarization training from the selling company prior to the acquiring railroad commencing operation.

Failing to obtain familiarization training from the previous owner, opening a new rail line, or reopening an unused route would require that the engineer(s) obtain familiarization through other methods. Suggested methods would be through the use of hi-rail trips or initial lite locomotive trips in compliance with what is specified in the Part 240 plan submission.

#### Class 1 Acceptance of Class 3 Certification

Recent economic times have demanded increased employment for locomotive engineers on class 1 railroads. Signing bonuses and other incentives, including higher

pay, have caused some engineers on class 3 railroads to seek employment on class 1 railroads utilizing their class 3 railroad certificates. The regulation is structured on the premise that the operating environment on most class 3 railroads is less complex than that of most Class 1 railroads. Class 3 railroad's training programs are frequently far less substantial than Class 1 programs.

Policy: The class 1 railroad's plan submission should address how the railroad will handle this occurrence. Failure to address the subject in the plan submission would require the new engineer to take the class 1 railroad's entire training program.

#

JUN 20 1994

Ms. Linda Gray  
Assistant to the President  
Rail Management & Consulting Corp.  
2605 Thomas Drive  
P. O. Box 28300  
Panama City Beach, Florida 32411

Dear Ms. Gray:

This is in response to your May 20 correspondence to Tom Murry Federal Railroad Administration (FRA), Washington, D.C. requesting an interpretation of Federal Railroad Administration (FRA) regulations concerning locomotive engineer qualifications. The question you presented was: "Must an individual be a railroad employee to be a (1) Certified Engineer and/or (2) Supervisor of Locomotive Engineers."

Title 49, Code of Federal Regulations (49 C.F.R.) Part 240 is the regulation that governs the qualifications for locomotive engineers. These regulations do not address employment conditions of the person certified by the railroad to function as an engineer. However, only a railroad can issue a person a certificate to operate a locomotive and that certification must be based on an FRA approved certification program. The person certified must meet all of the conditions of the railroad's approved program.

The regulations require a railroad to make a series of formal determinations before issuing a person certification to operate a locomotive. Regardless of the person's employment status, the railroad must make those determinations and decide if that person meets the standards required by 49 C.F.R. Part 240, and the railroad's own qualification submission before issuing that person a certificate. FRA expects all persons designated as locomotive engineer and supervisors of locomotive engineers to meet the requirements of 49 C.F.R. Part 240.

I appreciate your interest and trust that this response satisfactorily addresses the questions raised in your letter. Please let me know if I can be of further assistance.

Sincerely,

~~E. R. English~~  
Edward R. English  
Director, Office of Safety  
Enforcement

CONCURRENCES	
RTG SYMBOL	RRS-4
INITIALS/SIG	TAM
DATE	6/16
RTG SYMBOL	RRS-10
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**Problem:** Non railroad entities contracting with railroads to perform training and certification procedures required by Part 240. Several individuals have been reported has selling their services to Class III railroad to certify and train LEs. Two companies have a formal program and actively offer their services, primarily to Class III railroads. These two are:  
(1) Illinois Institute of Technology, Chicago, Illinois  
(2) Transportation Certification Services, Kansas City, MO and Naperville, IL.

Several of the major railroads are offering the service of training engineers, particularly on simulators. As near as I can determine the training provided is determined by the Class III selecting from a published training program. This is for training only and does not encompass the recertification process.

Two separate parts of the regulations are involved in this process, training and certification. Each part has distinct criteria and require different degrees of expertise. Some of the contractors appear to be confusing the two parts and their practices may not be in compliance with the regulations.

I have received several reports (reliable) concerning the sales technique of some of these individuals. Some may be deliberately misleading some small railroads into thinking their services are required under the regulations.

The following outline describes the issue and what is required by the contractor and railroad involved in this type arrangement. I strongly recommend that the records and practices of the two mentioned companies, Illinois Institute and Transportation Services be reviewed and evaluated for compliance with the regulations. Hopefully the following outline will assist who ever makes the inspection.



Questions - Outside Training Organizations Performing Training Events:

Two separate segments are involved in the training process: (a) initial or student engineer training; and (b) on-going or continual training for certified engineers.

Q 1. Is the practice of employing a contractor to train engineers in these two categories allowed by the regulations?

(a) Initial or student training?

A. Yes. §240.103 specifically allows a railroad to employ an outside training organization to provide the actual training.

(b) On going or continual training?

A. Yes. This practice is not addressed in the regulations. The premise is that if the practice is not prohibited a railroad may employ an outside contractor to perform this service.

Q 2. If a railroad employs an outside organization to provide either initial or on-going training which company is held responsible for the contents and day to day application of the program.

A. The regulations provide the railroads the opportunity to employ contractors to perform certain functions required by the regulations. However, the railroad is totally accountable for the contractors actions. §240.103(b)(2) allows the railroads to pursue this approach but any action the FRA may take, because of deficiencies in the training program, will be against the railroad and not the contractor.

Q 3. What procedures must the railroad follow if an outside entity is employed to initially train its new engineers?

A. (1) The railroad must declare in its submission to the FRA its intentions to employ an outside training organization (§240.103(b)(2)).

(2) The railroad may design its own training program or use one designed by the contractor. If using the contractor's training program it must be approved and verified by the railroad (§240.103(b)(2)).

(3) The railroad must describe the training program in detail in Section 5 of its submission to the FRA (App D, Pt. 240).

(4) If the training is conducted away from the railroad's own trackage, the submission must describe how the student will be taught physical characteristics of the railroad (App D, Pt. 240).

(5) The training program must comply with the criteria of § 240.123(c), 240.125, 240.127, 240.209, 240.211 and Section 5 of Appendix B.

(6) In addition to satisfactorily completing the railroad's engineer training program, two other separate events must occur before the student is issued a certificate. The student must satisfactorily pass a knowledge examination and satisfactorily pass a skill examination.

(a) § 240.125, 240.209 and Section 4 of Appendix B provide details for the contents and conduct of the knowledge examination. This event usually takes place at the completion of the training program and is administered by the railroad's rules examiner. However the railroad may designate any qualified person to conduct this examination, including an employee of a training organization. The contents and conduct of the examination must meet the requirements of the railroad's submission.

(b) § 240.127, 240.211, Section 4 of Appendix B, and Appendix E, provide details for the contents and conduct of the skills examination. The person conducting the skills examination must be a designated supervisor of locomotive engineers. There are no exceptions to this requirement. This event usually takes place when the student completes the training program and returns to his/her home district. At that point the local supervisor of locomotive engineers accompanies the student on a final check ride, in the most demanding class of service the student is expected to perform, and completes the grading requirement of the railroad's submission (App. E).

The railroad may employ an outside contractor to perform the skills examination. However, the individual conducting this examination, regardless of employment status, must meet the requirements of § 240.105. This is not an easy task for the railroad to accomplish if they choose to designate an employee

of a contractor a supervisor of locomotive engineers. The railroad is required to evaluate, train and test the individual in accordance with their submission the same as they do their regular engineers. The railroad must also determine the individual's supervisory capabilities and authorize him or her to exercise supervisory authority over their own employees.

Many of the instructors employed by training organizations have a wealth of railroad experience but are not certified in accordance with Part 240. Neither do they have authority to take corrective action on deficiencies noted during an evaluation or skills examination. Independent training organization are not authorized under Part 240 to issue certificates or designate their own employees a supervisor of locomotive engineers.

(7) Once the student completes the training program, passes both the knowledge and skills examination required by the railroad submission, the railroad may issue the appropriate certification. The certificate must be signed by the railroad's designated supervisor of locomotive engineers, unless the railroad program designates another person to perform this task (\$240.223(b)).

Q 4. What procedures must the railroad follow if an outside entity is employed to provide on-going or continual training to its engineers?

A. On-going or continual training is an integral part of these procedures, it would be unusual for a railroad to employ an outside entity to perform this function alone. Several of the smaller Class III railroads have contracted with individuals as well as organized training organizations to perform all of the procedures required by Part 240, which include continual training. Reports indicate there is some confusion concerning this segment and some organization may attempt to incorporate continual training procedures with certification and yearly monitoring requirements.

\$240.123 and Section 3 of Appendix B provide the details for the railroad to establish a continual training program. FRA expected the railroads to incorporate part of their existing programs such as, rules training, train handling classes, air brake classes, rule books, orders and notices as part of this program. Simply stated, this section requires the railroads to provide the engineer with up to date

information concerning factors that influence his day to day operating performance.

The railroads may accomplish this task through a variety of programs. The railroads are free to design a program to satisfy their particular needs. However, the railroad must describe their program in detail in their submission. It would be difficult for a part time training organization to satisfy this segment of the regulations.

Q 5. What authority does the FRA have to inspect and/or evaluate the services of a non-railroad training entity?

A. Although the ultimate responsibility for compliance with Part 240 rests with the railroad and not the non-railroad training entity, FRA has a duty to evaluate the railroad's procedures to determine the integrity of its program. In some cases a general evaluation of the railroad application of its program may be satisfactory. However, in some cases it may be necessary to determine the qualifications of the non-railroad entity employees performing the training and or certification services. This is the reason it is important that the railroad formally declare their intention of employing these organizations in their submission as well as listing the employees of training organizations who will perform the services. When a person is designated as a locomotive engineer or designated supervisor of locomotive engineers in compliance with Part 240 the FRA Inspector has a duty to determine the individual's qualifications the same as railroad employees.



U.S. Department  
of Transportation

Federal Railroad  
Administration

# Memorandum

Date: JUN 16 2000

Reply to Attn of: OP-2000-01

Subject: 49 C.F.R. Part 240 Safety Guidance: Territorial Qualifications, Class 3 Railroad Training Requirements, and Responsibilities in Joint Operations

From: Edward R. English, RRS-10  
Director, Office of Safety  
Assurance and Compliance

To: Regional Administrators

Attached is Operating Practices Technical Bulletin OP-2000-01. The bulletin addresses three categories of issues pertaining to the application of Title 49, Code of Federal Regulations, Part 240 (49 C.F.R. Part 240): (I) territorial qualifications; (II) Class 3 railroad training requirements; and (III) responsibilities in joint operations. All affected personnel are to utilize this bulletin as guidance when dealing with these issues. Legal conclusions stated here are supported by legal analysis provided by our Office of Chief Counsel.

This technical bulletin will also be distributed to the Association of American Railroads, the American Short Line and Regional Railroad Association, the United Transportation Union, and the Brotherhood of Locomotive Engineers.

Please distribute to Deputy Regional Administrators, Operating Practices Specialists, Principal Regional Inspectors, Operating Practices Inspectors/Trainees, and State Inspectors within your regions.

If there are any questions concerning this Technical Bulletin, please contact John Conklin, Engineer Certification Program Manager, at (202) 493-6318.

Attachment

**Federal Railroad Administration**  
**Operating Practices Technical Bulletin (OP-2000-01)**

**49 CFR Part 240**

**I. Territorial Qualifications**

The Federal Railroad Administration (FRA) has received questions from rail labor and management regarding the requirements that must be met for a certified locomotive engineer to be considered qualified to operate over a specific territory. Some customers have been confused by the regulation since these requirements are not covered in a single section of Title 49, Code of Federal Regulations, Part 240 (49 CFR Part 240). All references are to provisions of Part 240 as amended in 1999. See 64 Fed. Reg. 60966 (Nov. 8, 1999).

**General Requirements**

The regulation is explicit that railroads must initially train and test, and periodically thereafter reeducate, locomotive engineers to ensure that they (1) remain knowledgeable on the physical characteristics and (2) possess train handling skills commensurate for the territory over which they are expected to operate. See 49 C.F.R. §§ 240.123(b) and (c), 240.125, 240.127, 240.203, 240.213, 240.231(a), and Appendix B to Part 240. The general rule, added by amendment in 1999, is that "no locomotive engineer shall operate a locomotive over a territory unless he or she is qualified on the physical characteristics of the territory." § 240.231(a). The exceptions to this general rule either require a pilot, or allow "unqualified" (although certified) locomotive engineers to operate when specified physical characteristics and operational conditions pose minimal risk. See § 240.231(b) and (c). Since each railroad best knows its own territory, FRA has left the method of training to the discretion of each individual railroad subject to FRA approval.<sup>1</sup> See §§ 240.103 and 240.123(a).

**Qualification and Certification Requirements**

The following are FRA's answers to the most frequently asked questions concerning territorial qualifications:

**Question 1:** What are the territorial qualifications requirements for a railroad that elects to qualify a previously untrained person to be a locomotive engineer?

**Answer 1:** The training requirements for a previously untrained person are listed in § 240.123(c). Both a knowledge test and a skills performance test must be passed. Furthermore, a railroad supervisor must make certain determinations for a person to be considered qualified and, thus, safe to operate over a particular territory. In summary, the training, testing and qualification requirements include:

---

<sup>1</sup>FRA recommends that labor and management jointly develop training procedures for each territory to assure adequate training. The development of uniform maps of the territory would also assure consistency and thoroughness in this training.

1. Training: See § 240.123(c) and FRA approved program prepared by the railroad pursuant to § 240.103;
2. Testing: The engineer must pass a written knowledge test on the physical characteristics of the territory as prescribed by § 240.125(c)(4)(iv)<sup>2</sup>; and
3. Qualifying: A Designated Supervisor of Locomotive Engineers (DSLE), who must be qualified on the territory, must determine in writing that the engineer is familiar with the physical characteristics of the railroad or its pertinent segments pursuant to § 240.213(b)(3).

**Question 2:** What are the requirements of the regulation when a railroad wishes to qualify a certified engineer over territory in which the engineer has never operated?

**Answer 2:** The term "qualified" is defined in the 1999 amendments as meaning "a person who has passed all appropriate training and testing programs required by the railroad and this part and who, therefore, has actual knowledge or may reasonably be expected to have knowledge of the subject on which the person is qualified." § 240.7. Qualifying a certified engineer over new territory, as required by § 240.231(a), is accomplished according to the provisions for continuing education in the railroad's own program. See § 240.123(b) and Appendix B to Part 240.

In developing the continuing education provisions, a railroad will need to determine what kind of training, if any, is appropriate and address such possible training scenarios in the railroad's Part 240 program. § 240.123. FRA recommends that a railroad's Part 240 program address those possible training scenarios in which an engineer is transferring to territory that demands greater train handling skills, e.g., transferring from relatively flat territory to mountainous territory or transferring to territory that allows for the operation of extremely long trains the engineer has never experienced before. § 240.127. Failure to address such scenarios may lead to a determination that the program is deficient. See § 240.103(c) and (d).

**Question 3:** What are the requirements of the regulation when a railroad wishes to requalify a certified engineer on the physical characteristics of a territory; i.e., the engineer has previously been territorially qualified but has either allowed his or her qualifications to expire (according to the railroad's program) or is nearing that expiration date?

**Answer 3:** The regulation requires, at section 240.123(b), that railroads address the concern that an engineer's knowledge of a particular territory can begin to erode over time. Failure to have adequate procedures for continuing education is a violation of that section. When a railroad has previously determined that an engineer is qualified to operate over a particular territory, FRA has permitted each railroad to address the subject of continuing education in its certification program filed pursuant to Part 240.

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<sup>2</sup>"Physical characteristics knowledge questions need to be route specific, and limiting such a test to generic questioning will not be sufficient. Moreover, when testing a person who is authorized to operate over multiple routes, the person's knowledge concerning each route needs to be examined." 58 Fed. Reg. 18982, 18998 (Apr. 9, 1993).

In Appendix B to Part 240, FRA makes clear that each railroad's program must address familiarization training for engineers who have been away from a territory for some time or whose territories have changed. Railroads have fulfilled this obligation by requiring engineers to requalify on a territory after a specified period of time has elapsed, but under no circumstances may a railroad wait longer than 36 months to requalify an engineer on territorial qualifications since no interval for recertification can exceed 36 months. § 240.217(c)(1). Although a railroad could treat a previously territorially qualified engineer as it does a previously untrained person (see Answer 1) or a certified engineer who has never operated over that territory (see Answer 2), FRA's policy is to permit a railroad to perform a less formal process as long as that process is clearly articulated and performed in accordance with the railroad's Part 240 program.

**Question 4:** What procedures must be followed if there is disagreement between an engineer and a DSLE concerning the engineer's territorial qualifications? In other words, what are the parties' responsibilities if a DSLE believes an engineer is territorially qualified but the engineer believes otherwise?

**Answer 4:** Section 240.231(a) expressly prohibits an engineer from operating over a territory if not qualified on its physical characteristics. Under that section, FRA could hold railroad officials and engineers individually liable, in addition to holding railroads liable. A railroad may not order a person who is territorially unqualified to operate a locomotive or train in that territory. Likewise, an engineer who operates over territory in which he or she is unqualified on the physical characteristics risks facing FRA enforcement proceedings, i.e., civil penalties, disqualification from safety sensitive service, etc.

Under some circumstances, a railroad official, such as a DSLE, and an engineer may disagree as to whether the engineer is territorially qualified. The dispute may be resolved by checking the territorial qualification records kept for this engineer to see if the person was initially qualified properly over this territory (§ 240.213(b)), checking the engineer's certificate to see if it indicates the territory on which the engineer is qualified, or determining whether a DSLE has determined the engineer to be qualified on this territory since his or her initial certification (§ 240.123(b)). If the railroad cannot determine through one of these means that the engineer is qualified on the territory, FRA strongly recommends that the railroad not order the engineer to operate a train under such conditions. Ordering an engineer to operate a train when the railroad has no basis for believing the engineer is territorially qualified is likely to result in FRA taking enforcement action under § 240.231(a) against the railroad or the officials who approved such an order should it turn out that the engineer was in fact not qualified. In addition, if the engineer's certificate actually contains a territorial restriction and the railroad requires the engineer to perform service beyond that specified certificate limitation, this action would also violate § 240.305(c). Of course, FRA's decision as to whether enforcement action is warranted will be based on the facts specific to each incident.

Please note that if an engineer is not territorially qualified, a railroad may permit the train movement with that engineer and a pilot pursuant to § 240.231. Who may be considered a



qualified pilot will depend on the experience of the engineer as specified in that section of the regulation.

**Question 5:** What degree of knowledge and skills must a DSLE possess to test and qualify engineers over his or her assigned territory?

**Answer 5:** The regulation outlines DSLE requirements in § 240.105(b):

The railroad shall examine any person it is considering for qualification as a supervisor of locomotive engineers to determine that he or she:

- (1) Knows and understands the requirements of this part;
- (2) Can appropriately test and evaluate the knowledge and skills of locomotive engineers;
- (3) Has 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; and
- (4) Is 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.

Compliance with these requirements will ensure that any DSLE, who is responsible for qualifying engineers over a specific territory, will be a proficient engineer who can perform the basic duties of a supervisor. If a DSLE lacks the knowledge or skills required of engineers who operate over the specific territory, that person should not be a DSLE. FRA intends to strictly enforce these requirements of the regulation to ensure that each DSLE is qualified to perform his or her supervisory duties.

FRA notes that it is possible for a lone DSLE to perform the required testing and qualifying for both physical characteristics and skills performance simultaneously; however, a railroad that wishes to enjoy the advantages of combining these requirements must use a DSLE who is qualified on the physical characteristics of the territory over which the test will be conducted. Compare § 240.213(b)(3)(requiring a qualified DSLE to determine upon completion of training program that the person is familiar with the physical characteristics of the railroad or its pertinent segments); with § 240.127(c)(2)(explaining that a skills performance test does not require a DSLE qualified on the physical characteristics of the territory over which the test will be conducted). The additional requirement of annual operational performance monitoring explicitly allows a railroad's program to contain procedures that permit a DSLE to conduct the monitoring even if that DSLE is not qualified on the physical characteristics of the territory over which the operational performance monitoring will be conducted. § 240.129(c)(2).

**Question 6:** Under what conditions can an engineer operate over territory on which he or she is not qualified?

**Answer 6:** As a threshold issue, it is important to distinguish between whether the engineer in question is operating in joint operations territory or not.

If an engineer is operating in joint operations territory over which he or she is not qualified, the engineer could operate a locomotive or train:

- (1) with a qualified person as a pilot pursuant to § 240.229(e). Qualified person is defined in that section to mean "either a designated supervisor of locomotive engineers or a certified train service engineer determined by the controlling railroad to have the necessary knowledge concerning the controlling railroad's operating rules and to have the necessary operating skills including familiarity with its physical characteristics concerning the joint operations territory;" or,
- (2) without a qualified person as a pilot pursuant to § 240.229(f) as long as a minimal joint operation is involved. Minimal joint operation is defined in this section.

More commonly, a railroad may have a need for a territorially unqualified engineer to operate a locomotive or train in other than joint operations territory. Like a railroad's options when an engineer is operating in joint operations territory, some circumstances do not require a pilot but other situations do. Who may serve as a pilot and when a pilot is unnecessary are specifically addressed in § 240.231.

## 49 CFR Part 240

**II. Class 3 Railroad Training Requirements**

**Background Concerning Adequate Engineer Training:** It has become apparent that the American Short Line and Regional Railroad Association (ASLRRA) Class 3 Standard Program for the qualification and certification of locomotive engineers may not be appropriate for all railroads who fall under this classification. The program was initially developed to provide initial training guidance for light switching operations conducted at slow speeds. Under this program, the total training period required to become a certified train service engineer is just over three weeks, 48 hours of classroom training and 80 hours of on-the-job-training (OJT). See the Class 3 Standard Program, Section 5, Paragraphs A, B, and C. The Federal Railroad Administration (FRA) considers this program to be the baseline model which provides the minimum training necessary for basic railroad operations and will not accept programs of lesser content.

Many Class 3 railroad operations are becoming more sophisticated and demand a greater degree of training for engineers. Track speeds are faster due to successful track maintenance programs, and train size has increased as these railroads expand operations to aggressively seek their share of the shipping market. Similarly, due to joint operation ventures, many of these Class 3 railroads operate over the nation's major railroads, which again dictates that engineers receive additional training due to the complex methods of train operations, larger trains, and higher speeds encountered on those railroads. FRA data indicates that of the 654 Class 3 railroad programs currently on file, 209 railroads are operating at speeds between 20 and 79 miles per hour and 218 railroads engage in joint operations with major Class 1 and Class 2 railroads. Many of these joint operations are conducted on high-speed freight and passenger corridors.

FRA has been working individually with each Class 3 railroad, whose operations exceed those intended for the Class 3 Standard Program, to ensure that engineer training is commensurate with the actual operations the engineer will experience on that railroad. When these engineers are expected to operate in more complex operations, most of the contacted railroads require engineer trainees to acquire more OJT than that stated in the Class 3 program. However, because of the large number of railroads involved, the following FRA policy will provide a broader and more consistent means to ensure that engineers are receiving sufficient training for the type of operations they will encounter.

**FRA's Policy:** FRA requests that railroads, who have adopted or used in part the ASLRRA Class 3 Standard Engineer Certification Program and whose operations exceed those intended for the Class 3 program, consider modifying Section 5, Paragraph C, of that program to provide for any additional training necessary. Specifically, FRA is recommending that these railroads increase the student engineer's OJT period stated in the program, i.e., "of not less than the higher of 80 hours or 15 road trips," accordingly. For example, FRA recommends that, at a minimum, a Class 3 railroad whose operations are similar to those of a Class 2 railroad, should adopt the ASLRRA Class 2 Standard Program. This program requires a minimum of 240 hours of OJT and also slightly increases classroom training time. FRA has taken this approach based on an evaluation

of the training programs of the larger railroads with similar operations. FRA's intention is to address this safety concern without having to mandate specific minimum training periods. This approach is consistent with the intended design of the regulation, which was to set basic training guidelines and allow railroads the latitude to develop training programs specific to individual needs and operations. Given the past cooperation of the ASLRRA and its members, FRA expects that the vast majority of Class 3 railroads will amend their programs accordingly, if necessary.

However, if FRA perceives this issue to be a problem on a specific railroad and that railroad refuses to voluntarily address this issue in its program, FRA intends to serve notice of such deficiencies pursuant to the formal process for disapproval of a program. See § 240.103(c) and (d). This disapproval process requires that the Administrator notify the railroad in writing and inform the railroad of the specific deficiencies. § 240.103(c)(1). Under such circumstances, a railroad shall resubmit its program with the necessary revisions within 30 days after the date of such notice of deficiencies. § 240.103(d). Failure to timely resubmit with the necessary revisions will be considered a failure to implement a program under this part and FRA will use its enforcement discretion as to whether a civil penalty, or alternative enforcement action, is appropriate. See § 240.11 (explaining the consequences for noncompliance) and App. A (citing FRA's standard civil penalty for a violation of § 240.103(d)).

## 49 CFR Part 240

**III. Responsibilities in Joint Operations**

**Background:** Except under "minimal joint operations" pursuant to § 240.229(f), the regulation recognizes that several parties are responsible for the safe operation of locomotives or trains in joint operations territory and identifies their duties. § 240.229(c). For instance, the engineer must be qualified on territory over which he or she is ordered to operate and has a duty to immediately notify his or her railroad employer if he or she is not qualified to perform that service. § 240.229(c)(3). Similarly, an engineer's railroad employer, i.e., the foreign or guest railroad, shall determine that the engineer is both certified and qualified to operate in the joint operations territory in question. § 240.229(c)(2).

Although other parties carry responsibilities for safe joint operations, a railroad responsible for controlling joint operations (controlling railroad) carries the greatest burden for ensuring the safety of such locomotive or train movements. A controlling railroad is required to make a minimum of four determinations: (1) that the engineer has been certified as a qualified engineer by the engineer's railroad employer; (2) that the engineer has demonstrated the necessary knowledge concerning the controlling railroad's operating rules, if the rules are different; (3) that the engineer has the necessary operating skills to safely operate in the joint operations territory; and (4) that the engineer has the necessary familiarity with the physical characteristics for the joint operations territory. §§ 240.229(c)(1)(i) through (iv). A controlling railroad which provides a pilot, i.e., a "qualified person to accompany a locomotive engineer who lacks joint operations certification,"<sup>3</sup> is only required to determine that the engineer has been certified as a qualified engineer by the engineer's railroad employer. § 240.229(a) and (e).

Since a controlling railroad may rely on the certification issued by a foreign railroad, FRA is concerned that controlling railroads may abdicate their responsibilities to make the four determinations required by § 240.229(c)(1). That is, the regulation permits reliance on the other railroad's certification as a less burdensome alternative to applying its full certification program to these guest railroad engineers. § 240.229(b). Meanwhile, the regulation still requires that the host railroad independently make certain determinations. § 240.229(c). Blind acceptance of a foreign railroad's list of qualified engineers does not satisfy the intent of the regulation. In order to make these four determinations, a controlling railroad has an obligation to take some affirmative action to ensure that the engineers operating over its lines are properly trained for those operations. One reason for this affirmative action is to resolve the problem of disparities in

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<sup>3</sup>Qualified person "means either a designated supervisor of locomotive engineers or a certified train service engineer determined by the controlling railroad to have the necessary knowledge concerning the controlling railroad's operating rules and to have the necessary operating skills including familiarity with its physical characteristics concerning the joint operations territory." § 240.229(e).

training among the different classes of railroads. That is, engineers from Class 2 or 3 railroads may not necessarily receive the same level of training as engineers who receive the same classification from the Class 1 railroads. A controlling railroad needs some method of addressing this concern so that engineers who would be considered under-trained by the procedures set forth in the controlling railroad's Part 240 program are not allowed to operate in complex joint operations along side trains operated by engineers who have been required by the controlling railroad to have significantly more training for that operating environment. Failure to adequately address this issue poses a significant threat to railroad safety.

FRA's Recommendation: In addition to the requirements of § 240.229, when a controlling railroad accepts the certification of a foreign railroad in lieu of issuing its own certification, FRA recommends that a controlling railroad evaluate the training program of the foreign railroad. A controlling railroad's review of a foreign railroad's training program will ensure that foreign engineers have received sufficient training for operating over the controlling railroad's lines. A controlling railroad that follows this recommendation should have an easier time making the required determinations pursuant to § 240.229(c)(1) and will be in compliance with both the letter and intent of the regulation.

REVOCATION

# **REVOCATION**

**Revocation Offenses  
(Operating Rules & Alcohol/Drug Compliance)  
Revocation Periods  
FRA Violations - Prohibited Conduct  
Revocation of Certification**

1

**NOTE:** This is a continuation from the Certification Evaluations tab regarding Prior Safety Conduct (Operating Rules Compliance) and (Alcohol/Drug Compliance). This tab also addresses:

- Periods of ineligibility (revocation periods)
- Prohibited conduct (FRA violations)
- Certificate revocation process



# **REVOCATION OFFENSES**

**Operating Rules Compliance  
Alcohol/Drug Compliance**

2

- These are often referred to as the cardinal sins of a locomotive engineer. They are contained in 240.117 and are the offenses for which an engineer may be decertified.

## Prior Safety Conduct (Operating Rules Compliance)

Certification may be revoked if following persons fail to comply:

- Certified engineer
- DSLE (monitoring, piloting, instructing – except during efficiency tests)
- Certified locomotive engineer pilot
- Instructor engineer

3

### **Criteria for consideration of operating rules compliance data.**

- A person who has demonstrated a failure to comply, as described in 240.117 (e), with railroad rules and practices for the safe operation of trains shall not be currently certified as a locomotive engineer.
  - A certified engineer who has demonstrated a failure to comply, as described in 240.117 (e), with railroad rules and practices for the safe operation of trains shall have his or her certification revoked.
  - A DSLE, a certified locomotive engineer pilot or an instructor engineer who is monitoring, piloting or instructing a locomotive engineer and fails to take appropriate action to prevent a violation of 240.117 (e), shall have his or her certification revoked.
- Appropriate action does not mean that a supervisor, pilot or instructor must prevent a violation from occurring at all costs; the duty may be met by warning an engineer of a potential or foreseeable violation. A DSLE will not be held culpable under 240.117 when this monitoring event is conducted as part of the railroad's operational compliance tests as defined in 217.9 and 240.303.

**NOTE:** See page 29 of Application tab.

240.117 (a) (b) (c)

## **Prior Safety Conduct (Operating Rules Compliance)**

**DSLE's certificate may be revoked if he fails to take appropriate action to prevent a 240.117 (e) violation:**

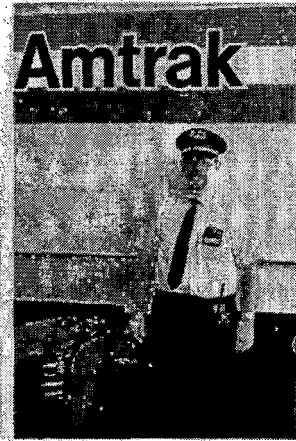
- **Example: Engineer doesn't prepare to stop after passing an approach signal**
- **Example: Engineer is speeding (warning)**

4

- The preamble to the 1998 proposed rule states that the thresholds to be met in revoking a DSLE's certificate include whether a DSLE is monitoring an engineer and, while doing so, whether that DSLE fails to take appropriate action to prevent a violation of 240.117 (e).
- For example, if a DSLE is monitoring an engineer and, while doing so, the train encounters a properly displayed Approach Signal, and the engineer is not taking effective action to stop at the next signal, the DSLE must take appropriate action.
- Another example would be a supervisor warning an engineer that the train is speeding and the engineer is in danger of causing a revocable event by operating the train at a speed exceeding 10 mph over the maximum authorized speed.
- Appropriate action does not mean that the DSLE must prevent the violation from occurring at all costs; the duty may be met by warning the engineer of a potential or foreseeable violation.
- Similar to the way in which the rule treats student and instructor engineers, the decision to revoke a DSLE's certification must be made on a case-by-case basis depending on the facts of the particular situation.
- If a Road Foreman of Engines, who is also a DSLE, is riding a train to evaluate the performance of new locomotives, his or her certification would not be in jeopardy for failure to take appropriate action.

## Prior Safety Conduct (Operating Rules Compliance)

- A conductor (who is also a certified engineer) may not have his engineer certificate revoked for the actions of the engineer
- Except A/D offenses



5

- A person who is a certified locomotive engineer but is called by a railroad to perform the duty of a train crew member other than that of locomotive engineer, and is performing such other duty, shall not have his or her certification revoked based on actions taken or not taken while performing that duty.

240.117 (c)

## **Prior Safety Conduct (Operating Rules Compliance)**

- Railroad shall consider as operating rules compliance data only conduct described in **240.117 (e)(1) – (e)(5)**
- That occurred within a period of **3 years** prior to the determination

6

### **Limitations on consideration of prior operating rule compliance data.**

- Except as provided for in 240.117 (i), in determining whether a person may be or remain certified as a locomotive engineer, a railroad shall consider as operating rule compliance data only conduct described in **240.117 (e)(1) through (e)(5)** that occurred within a period of **36** months prior to the determination.
- A review of an existing certification shall be initiated promptly upon the occurrence and documentation of any conduct described in 240.117.
- In order to make the determination involving prior conduct as a railroad worker, a railroad shall have on file documents pertinent to the determinations of 240.117...

240.117

240.205 (b)

# Signals



- Failure to control a locomotive or train in accordance with a signal indication, **excluding a hand or a radio signal indication or a switch**, that requires a complete stop before passing it.
- Applies to both active stop signals (e.g., wayside automatic block or cab signal indications) and passive stop signals (e.g., stop boards, flags, fusees, banners, or gates).

7

## Signals.

A railroad shall **only** consider violations of its operating rules and practices that involve:

- Failure to control a locomotive or train in accordance with a signal indication, **excluding a hand or a radio signal indication or a switch**, that requires a complete stop before passing it.
- This wording was revised in the Interim Final Rule. Previous wording was "Failure to control a locomotive or train in accordance with a signal indication." It was revised again in the 1999 Final Rule to exclude a hand or a radio signal indication or a switch, switch target, or derail.
- In the Interim Final Rule, Federal Register, Vol. 58, No. 67, Pg. 18992, the preamble states "This will eliminate confusion over whether failure to respond to signals requiring speed reduction have certification consequences under this section. FRA intends this section to apply to both active stop signals (e.g., wayside automatic block or cab signal indications) and passive stop signals (e.g., stop boards, flags or gates).
- Technical Bulletin OP-97-33 further states, "It is FRA's view that unattended fusees and banners used in operational tests are the functional equivalent of a flag and that passing an unattended fusee under circumstances which require a stop should be considered a violation of 240.117(e)(1). 240.117 (e)(1)"

## Signals

- Individual railroad operating rules control what devices or methods are deemed signal indications
- In FRA's view a mandatory directive communicated by radio; a dragging equipment detector message; clearly visible flagging devices, both lighted and unlighted, would all be encompassed within the words "signal indication"

8

- Also in the Interim Final Rule, Federal Register Vol. 58, No. 67, Pg. 18996, the preamble states,

"FRA intended that the individual railroad operating rules and practices would control what devices or methods would be deemed signal indications. FRA did not intend to limit the term to wayside signals which are subject to FRA's signal and train control regulations but to take an expansive view. In FRA's view a mandatory directive communicated by radio; a dragging equipment detector message; clearly visible flagging devices, both lighted and unlighted, would all be encompassed within the words "signal indication."

**NOTE:** Derails, switches, and switch targets are not normally considered to be signals.

**NOTE:** If an engineer moves a locomotive when a blue signal is displayed at the controls, it is not a decertifiable event because it does not require a stop before passing. However, if an engineer passes a displayed blue signal at a switch, it is a decertifiable event.

## Train Speed

- Exceeding the maximum authorized limit by at least 10 mph
- For restricted speed, consider only those violations of the conditional clause (stopping within  $\frac{1}{2}$  the range of vision) which cause reportable accident/incidents

9

### **Train Speed.**

A railroad shall **only** consider violations of its operating rules and practices that involve:

- Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at least 10 mph. **Where restricted speed is in effect, railroads shall consider only those violations of the conditional clause of restricted speed rules (i.e., the clause that requires stopping within one half of the locomotive engineer's range of vision), or the operational equivalent thereof, which cause reportable accidents or incidents under part 225 of this chapter, as instances of failure to adhere to this section.**

- This wording was revised in the Interim Final Rule. Previous wording was "Failure to adhere to limitations concerning train speed." It was revised again in the 1999 Final Rule to eliminate the words, "or by more than one half of the authorized speed, whichever is less" and to clarify when restricted speed is in effect.

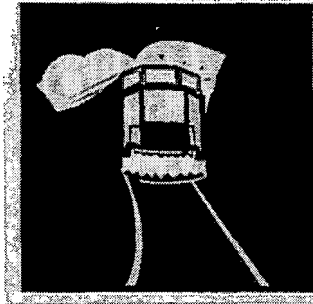
**NOTE:** Examples of some of the speed rules which are the operational equivalent of restricted speed include those called yard speed, reduced speed, caution speed, controlled speed, or other than main track speed.

240.117 (e)(2)



## Train Speed

***If an engineer does not comply with speed restrictions for ditch lights or EOT en route failures, can he or she be decertified?***



10

**QUESTION:** If an engineer does not comply with speed restrictions for ditch lights or EOT en route failures, can he or she be decertified?

**ANSWER:** Yes, if the engineer exceeded the speed restriction by at least 10 mph. Engineers are prohibited from operating faster than 20 mph over public crossings when both ditch lights have failed. Under these conditions, operating over a crossing at 30 mph or more would result in a certificate revocation.

**NOTE:** For an EOT front to rear (FR) en route failure (no-com), the engineer is prohibited from operating above 30 mph. Under these conditions, operating at 40 mph or more would result in a certificate revocation. On most railroads, the engineer cannot wait the 16 minutes 30 seconds before taking action. The seconds have already timed out before the engineer would get a "no-com" reading.

Check railroad special instructions to make sure that they convey this information regarding "no-com" EOT front to rear failures.

## Safe Use of Train or Engine Brakes

- Failure to adhere to procedures for the safe use of train or engine brakes when the procedures are required for compliance with the initial terminal, intermediate terminal, or transfer train and yard test provisions of Part 232
- Also for Class 1, 1A, II, or running brake test provisions of Part 238

11

### **Safe use of train or engine brakes.**

A railroad shall **only** consider violations of its operating rules and practices that involve:

- Failure to adhere to procedures for the safe use of train or engine brakes when the procedures are required for compliance with the **initial terminal, intermediate terminal, or transfer train and yard test provisions of Part 232** or when the procedures are required for compliance with the **class I, class IA, class II, or running brake test provisions of Part 238**.
- This refers to the Passenger Equipment Safety Standards of the new final rule Part 238 (Class I brake test is in 238.313, Class IA brake test is in 238.315, Class II brake test is in 238.317, and running brake test is in 238.319).
- This wording was revised in the Interim Final Rule. Previous wording was "Failure to adhere to procedures for the safe use of train or engine brakes." It was clarified again in the 1999 Final Rule and also addressed in Part 238.

240.117 (e)(3)

## Occupying Main Track

- Occupying main track or a segment of main track without proper authority or permission
- Main track means 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; or any form of absolute or manual block system

12

### Occupying main track.

A railroad shall **only** consider violations of its operating rules and practices that involve:

- Occupying main track or a segment of main track without proper authority or permission.
- This wording was revised in the Interim Final Rule. Previous wording was "Entering track segment without proper authority." It was revised again in the 1999 Final Rule to add "or a segment of main track" and "or permission."

**DEFINITION:** MAIN TRACK means 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; or any form of absolute or manual block system.

**NOTE:** If a crew has a stop and flag (protect) grade crossing order, and they operate through it, the engineer could be decertified for occupying main track without authority.

240.117 (e)(4)

240.7

## Tampering with Locomotive Safety Devices

- Failure to comply with prohibitions against tampering with locomotive mounted safety devices or **knowingly operating or permitting to be operated a train with an unauthorized disabled safety device in the controlling locomotive**

13

### **Tampering with locomotive safety devices.**

A railroad shall **only** consider violations of its operating rules and practices that involve:

- Failure to comply with prohibitions against tampering with locomotive mounted safety devices or **knowingly operating or permitting to be operated a train with an unauthorized disabled safety device in the controlling locomotive (See Part 218, Subpart D and Appendix C to Part 218).**
- Per 218.53, *disable* means to unlawfully render a device incapable of proper and effective action or to materially impair the functioning of that device.
- Per 218.53, *safety device* means any locomotive-mounted equipment that is used either to assure that the locomotive operator is alert, not physically incapacitated, aware of and complying with the indications of a signal system or other operational control system or to record data concerning the operation of that locomotive or the train it is powering. See Appendix B to Part 218 for a statement of agency policy on this subject.

## **Tampering (Locomotive Safety Devices)**

- Event recorders
- Alerters
- Deadman controls
- Automatic cab signals
- Cab signal whistles
- Automatic train stop/control equipment

14

Per Appendix C to Part 218, this regulation applies to a variety of devices including equipment known as:

- Event recorders
- Alerters
- Deadman controls
- Automatic cab signals
- Cab signal whistles
- Automatic train stop equipment
- Automatic train control equipment

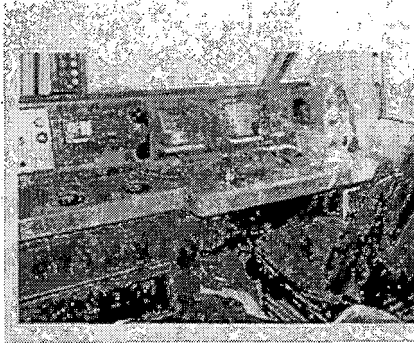
FRA does not consider the following equipment to be covered:

- Radios
- Monitors for end of train devices
- Bells or whistles that are not connected to alerters, deadman pedals, or signal system devices
- Fans for controlling interior temperature of locomotive cabs
- Locomotives performance monitoring devices, unless they record such data as train speed and air brake operations.

Appendix C to Part 218

## Tampering (Subsequent Operator)

FRA will limit its enforcement actions to situations where individuals clearly had knowledge of the disabled device and intentionally operated the train nevertheless



15

**Knowingly operating or permitting to be operated a train with an unauthorized disabled safety device in the controlling locomotive.**

- This new language refers to an instance in which one individual has tampered with a safety device and a subsequent operator knowingly operates a train or permits it to be operated nevertheless.
- The subsequent operator could be culpable if either
  - Due to their failure to exercise reasonable care, they failed to determine that the safety device was not functioning, or
  - Having ascertained that the device was not functioning, still elected to operate the train.
- FRA will limit its enforcement actions to situations where individuals clearly had actual knowledge of the disabled device and intentionally operated the train notwithstanding that knowledge.
- Actual, subjective knowledge need not be demonstrated. It will suffice to show objectively that the alleged violator must have known the facts based on reasonable inferences drawn from the circumstances. For example, it is reasonable to infer that a person knows about something plainly in sight on the locomotive he is operating.

Appendix C to Part 218

## Multiple Events During Same Duty Tour

- If more than one operating rule is violated in a single incident, it is treated as a single violation
- However, it is possible for an engineer to be involved in more than one single incident during a tour of duty if these incidents are separated by time, distance or circumstance

16

- If in any single incident the person's conduct contravened more than one operating rule or practice, that event shall be treated as a single violation for the purposes of 240.117.
- A single incident is a unique identifiable occurrence caused by an operational error of an engineer.
- However, it is possible for an engineer to be involved in more than one single incident during a tour of duty if these incidents are separated by time, distance or circumstance (OP-97-36).

Example 1: An engineer operating a train overlooks a 45 mph speed restriction for a car in his train and operates at 60 mph. He repeatedly accelerates to 60 mph. (This is a single incident.)

Example 2: Same facts as Example 1, then assume the engineer passes a signal requiring a stop at an intermediate point. Is passing the signal a single incident? (Yes.) Is the engineer therefore subject to two certification proceedings, one for the excess speed and one for passing the signal? (Yes.)

## Alcohol/Drug Compliance

[240.117 (e)(6)]

- Incidents of noncompliance with 219.101  
(alcohol and drug use prohibitions)
  - (1) use or possession A/D
  - (2) under the influence/impaired A/D
- For alcohol - 0.04 or more alcohol concentration or use alcohol within 4 hours of reporting or after receiving notice to report, whichever is less

17

### **Alcohol/Drug Compliance.**

A railroad shall **only** consider violations of its operating rules and practices that involve:

- Incidents of noncompliance with 219.101; however such incidents shall be considered as a violation only for the purposes of paragraphs (g)(2) and (3) of 240.117.

NOTE: 240.117 (g)(2) and (g)(3) refer to the period of ineligibility for persons currently certified. See next pages.

NOTE: Only Federal tests are considered for decertification purposes, not company policy alcohol/drug tests.

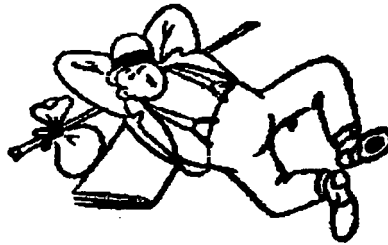
NOTE: See page 13 of the Certification Evaluations tab for further information on alcohol/drug rules compliance.

240.117 (e)(6)

219.101



## PERIODS OF INELIGIBILITY



18

- The 1999 Final Rule added an additional period of revocation so that it will take four, instead of three, separate incidents involving violations of one or more of the 240.117 (e) operating rules before the longest period of revocation is implemented.
- The periods of revocation have been shortened; hence, a second offense period is shortened from 1 year to 6 months and a third offense period is reduced from 5 years to 1 year. The occurrence of a fourth offense would trigger a 3-year revocation, instead of 5 years maximum.
- The time interval in which multiple offenses would trigger increasingly stiffer periods of revocation was reduced. If a period of 2 years, reduced from 3 years, passes between a first and second offense, the second offense revocation period is treated in the same way as a first offense. If a period of 3 years, reduced from 5 years, passes between a second and third offense, or a third and fourth offense, this later offense will also be treated in the same way as a first offense.
- The revocation period schedule is based on a floating window. When computing a revocation period, review whether there were any other revocation incidents during the prior 2 years and 3 years from the most recent incident.
- The 1999 Final Rule retroactively applies the new, shorter periods of ineligibility to most incidents that have occurred prior to January 7, 2000.

## Revocation Periods Begin...

- |   |  |
|---|--|
| <ul style="list-style-type: none"><li>■ 240.117 (g)(1) –<br/><b>Person <u>not</u><br/>currently certified</b> -<br/>Date of the<br/>railroad's written<br/>determination that<br/>the most recent<br/>incident occurred</li></ul> | <ul style="list-style-type: none"><li>■ 240.117 (g)(2) –<br/><b>Person currently<br/>certified</b> - Date of<br/>the railroad's<br/>notification of denial<br/>or revocation</li></ul> |
|---|--|

19

### **Revocation periods.**

For both violations of operating rules and alcohol/drug rules, a period of ineligibility shall begin:

- **FOR A PERSON NOT CURRENTLY CERTIFIED** - on the date of the railroad's determination that the most recent incident has occurred; or
- **FOR A PERSON CURRENTLY CERTIFIED** - on the date of the railroad's notification that recertification has been denied or certification has been revoked; and
- Be determined according to the following standards:  
(continued)

240.117 (g)(1)(2)

240.119 (c) (4)

## Revocation Periods (Operating Rules)

- |   |            |
|---|------------|
| ■ 1 <sup>st</sup> offense .....                                     | = 30 days  |
| ■ 2 <sup>nd</sup> offense within 2<br>years.....                    | = 6 months |
| ■ 3 <sup>rd</sup> offense within 3<br>years.....<br>(including A/D) | = 1 year   |
| ■ 4 <sup>th</sup> offense within 3<br>years.....<br>(including A/D) | = 3 years  |

20

For involvement of violations of one or more of the operating rules or practices described in 240.117(e):

- In the case of a single incident involving violation of one or more of the operating rules or practices described in 240.117(e)(1-5), the person shall have his or her certificate revoked for a period of one month. (at railroad's option, can be reduced to 15 days)
- In the case of two separate incidents involving a violation of one or more of the operating rules or practices described in 240.117(e)(1-5), that occurred within 24 months of each other, the person shall have his or her certificate revoked for a period of 6 months. (at railroad's option, can be reduced to 3 months)

NOTE: In the case of a second offense after a 24-month period – back to 30 days.

- In the case of three separate incidents involving violations of one or more of the operating rules or practices, described in 240.117 (e)(1-6), that occurred within 36 months of each other, the person shall have his or her certificate revoked for a period of 1 year. (at railroad's option, can be reduced to 6 months)

240.117 (g)(3)

## Revocation Periods (Operating Rules)

- |   |            |
|---|------------|
| ■ 1 <sup>st</sup> offense .....                                     | = 30 days  |
| ■ 2 <sup>nd</sup> offense within 2<br>years.....                    | = 6 months |
| ■ 3 <sup>rd</sup> offense within 3<br>years.....<br>(including A/D) | = 1 year   |
| ■ 4 <sup>th</sup> offense within 3<br>years.....<br>(including A/D) | = 3 years  |

21

- In the case of four separate incidents involving violations of one or more of the operating rules or practices, described in 240.117 (e)(1-6), that occurred within 36 months of each other, the person shall have his or her certificate revoked for a period of 3 years. (no option to reduce period)
- Where, based on the occurrence of violations described in 240.117 (e)(6), different periods of ineligibility may result under the provisions of 240.117 and 240.119, the longest period of **revocation** shall control.

240.117 (g)(3)

## Incidents Prior to Effective Date

Reduced to shorter periods of ineligibility  
if incident:

- Occurred prior to January 7, 2000; &
- Involved violations of 240.117 (e)(1-5);  
&
- Did not occur within 5 years of a prior  
violation of 240.117 (e)(6)  
*[219.101 A/D violation]*

22

### **Incidents prior to effective date.**

- A period of ineligibility described in this paragraph **shall be reduced to the shorter periods of ineligibility imposed by 240.117 (g)(1) through (3) as amended, and effective January 7, 2000 if the incident:**
  - Occurred prior to January 7, 2000; and
  - Involved violations described in 240.117 (e)(1-5); and
  - Did not occur within 60 months of a prior violation as described in 240.117 (e)(6) [219.101 alcohol/drug violation].
- The preamble to the 1999 Final Rule (pg. 60971) states that the rule will apply the new, shorter periods of ineligibility retroactively to most incidents that have occurred prior to January 7, 2000. The rule will NOT retroactively apply the new, shorter revocation periods if the event involves a violation of 240.117 (e)(6) or the most recent decertifiable event occurred within 5 years of a prior violation of 240.117 (e)(6).

**240.117 (g)(4)**

## Future Eligibility to Hold Certificate

### Eligible for grant or reinstatement earlier if:

- Revocation was for one year or less;
- For other than a violation of 219.101;
- Evaluated by DSLE & received remedial training;
- Completed any mandatory training or retraining program; and
- Completed at least one half of ineligibility period

23

### **Future eligibility to hold certificate.**

**A person whose certification has been denied or revoked shall be eligible for grant or reinstatement of the certificate prior to the expiration of the initial period of revocation only if:**

- **The denial or revocation of certification in accordance with the provisions of 240.117 (g)(3) is for a period of one year or less;**
- **Certification was denied or revoked for reasons other than noncompliance with 219.101;**
- **The person has been evaluated by a DSLE and determined to have received adequate remedial training;**
- **The person has successfully completed any mandatory program of training or retraining, if that was determined to be necessary by the railroad prior to return to service; and**
- **At least one half the pertinent period of ineligibility specified in 240.117 (g)(3) has elapsed.**

240.117 (h)

## Validity of Railroad Decisions Prior to May 10, 1993 Revisions

Interim Rule added 240.117(i) to preclude railroads from considering as prior incidents for revocation periods, those:

- That occurred prior to May 10, 1993 &
- Involved violations that would not be considered as violations under the Interim Final Rule

24

- In the Interim Final Rule, FRA added 240.117(i) to resolve questions concerning the validity of railroad decisions made in conformity with the provisions of 240.117(e) prior to its May 10, 1993, revision.
- As a matter of fairness to those who violated the rule under the previous wording, those incidents should not have further prospective effect on the certification status of engineers. Part 240.117(i) precludes railroads from considering those incidents as prior incidents for the purposes of periods of ineligibility.
- Not all prior railroad decisions are affected, only incidents that:
  - (1) would not be a violation under the revised rule, and
  - (2) that occurred prior to the effective date of the Interim Final Rule (May 10, 1993).
- In general, this precludes future use of signal violations that involved something other than a failure to halt at a signal requiring an absolute stop; over-speeds that involve exceeding the maximum speed by less than 10 mph; and failures to adhere to procedures for the safe use of train brakes other than failures to make Federally required tests.
- For example, if an engineer was decertified for operating a train at 23 mph in a 20 mph speed restricted area, the certificate revocation would not be counted as his first offense. However, if his speed had been 31 mph in a 20 mph zone, the revocation would remain his first offense.

240.117 (i)

## Not Prior Incidents

May not be considered prior incidents if:

- Occurred prior to January 7, 2000;
- Involved signals or train speed (under Interim Final Rule);
- Even though they were or could have been found to be violations under the Interim Final Rule; and
- Would not be a violation of 240.117 (e)

25

**Not prior incidents.**

**240.117 (j)** In no event shall incidents that meet the criteria of 240.117 (j)(1) through (2) of this section be considered as prior incidents for the purposes of 240.117 (g)(3) [periods of ineligibility] even though such incidents could have been or were validly determined to be violations at the time they occurred. Incidents that shall not be considered under 240.117 (g)(3) are those that:

- (1)** Occurred prior to January 7, 2000;
- (2)** Involved violations of one or more of the following operating rules or practices:
  - (i)** Failure to control a locomotive or train in accordance with a signal indication that requires a complete stop before passing it;
  - (ii)** Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at least 10 mph or by more than one half of the authorized speed, whichever is less;
- (3)** Were or could have been found to be violations under this section contained in the Parts 200 to 399, edition revised as of October 1, 1999; and
- (4)** Would not be a violation of paragraph (e) of this section.



## Periods of Ineligibility (Alcohol/Drugs - 219.101)

- 1<sup>st</sup> violation 219.101 = **9 months** (unless investigation is waived thru co-worker report)
- 2<sup>nd</sup> or more violation of 219.101 = **5 years**

26

### **Periods of ineligibility – alcohol/drug violations.**

The period of ineligibility described in 240.119 (c) (4) shall be determined in accordance with the following standards:

- In the case of ONE VIOLATION OF 219.101 (on-the-job use, possession, or impairment), the person shall be ineligible to hold a certificate for a period of 9 months (unless identification of the violation was through a qualifying “co-worker report” as described in 219.405 and the engineer waives investigation, in which case the certificate shall be deemed suspended during evaluation and any required primary treatment as described in 240.119 (d)).
- In the case of TWO OR MORE VIOLATIONS OF 219.101, the person shall be ineligible to hold a certificate for a period of five years.
- In the case of a refusal or failure to provide a breath or body fluid sample for testing under the requirements of Part 219 when instructed to do so by a railroad representative, the refusal or failure shall be treated for purposes of ineligibility under this paragraph in the same manner as a violation of 219.101, in the case of a refusal or failure to provide a breath sample (subpart D), or a blood specimen for mandatory post-accident toxicological testing (subpart C).

240.119

219.405

## Periods of Ineligibility (Alcohol/Drugs)

- 1<sup>st</sup> violation 219.102 = **EAP Evaluation**
- 2<sup>nd</sup> violation 219.102 = **2 Years**
- 3<sup>rd</sup> or more 219.102 = **5 Years**
- One 219.101 and one 219.102 = **3 Years**

27

### **Periods of ineligibility – alcohol/drug violations.**

The period of ineligibility described in this paragraph shall be determined in accordance with the following standards:

- In the case of a **SINGLE VIOLATION OF 219.102** (prohibition of drugs on or off duty, except for approved medical use), the person shall be ineligible to hold a certificate during evaluation and any required primary treatment as described in 240.119 (d).
- In the case of **TWO VIOLATIONS OF 219.102**, the person shall be ineligible to hold a certificate for a period of two years.
- In the case of **MORE THAN TWO VIOLATIONS OF 219.102**, the person shall be ineligible to hold a certificate for a period of five years.
- In the case of **ONE VIOLATION OF 219.102 AND ONE VIOLATION OF 219.101**, the person shall be ineligible to hold a certificate for a period of three years.
- In the case of a refusal or failure to provide a breath or body fluid sample for testing under the requirements of Part 219 when instructed to do so by a railroad representative, the refusal or failure shall be treated for purposes of ineligibility under this paragraph in the same manner as a violation of 219.102, in the case of a refusal or failure to provide a urine specimen for testing. 240.119 (c) (4)

## PROHIBITED CONDUCT

28

- Prohibited conduct mirrors the operating rules compliance section of 240.117, but represents conduct that is a violation of Part 240.
- When a railroad revokes an engineer's certificate, it does so under 240.117, but when FRA takes a violation of those same offenses, the violation is cited under 240.305.

## Prohibited Conduct (Operating Rules)

### FRA VIOLATIONS (240.305):

- Signal
- Train speed
- Train or engine brakes
- Main track occupancy
- Tampering
- Fail to take action as a DSLE, engineer pilot or instructor engineer

29

After December 31, 1991, it shall be unlawful to:

- Operate a locomotive or train past a signal indication, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it; or
- Operate a locomotive or train at a speed which exceeds the maximum authorized limit by at least 10 mph. Where restricted speed is in effect, only those violations of the conditional clause of restricted speed rules (i.e., the clause that requires stopping within one half of the locomotive engineer's range of vision), or the operational equivalent thereof, which cause reportable accidents or incidents under Part 225, shall be considered instances of failure to adhere to this section; or
- Operate a locomotive or train without adhering to procedures for the safe use of train or engine brakes when the procedures are required for compliance with the initial terminal, intermediate terminal, or transfer train and yard test provisions of Part 232 or when the procedures are required for compliance with the Class I, Class IA, Class II, or running brake test provisions of Part 238.

(continued)

240.305

## Prohibited Conduct (Operating Rules)

### FRA VIOLATIONS (240.305):

- Signal
- Train speed
- **Train or engine brakes**
- Main track occupancy
- **Tampering**
- **Fail to take action as a DSLE, engineer pilot or instructor engineer**

30

### Prohibited conduct, continued.

- Fail to comply with any mandatory directive concerning the movement of a locomotive or train by occupying **main track** or a segment of main track without proper authority **or permission**.

**NOTE:** **Segment** is defined in 240.7 as, "any portion of a railroad assigned to the supervision of one superintendent or equivalent transportation officer."

- **Fail to comply with prohibitions against tampering with locomotive mounted safety devices, or knowingly operate or permit to be operated a train with an unauthorized disabled safety device in the controlling locomotive. (See Part 219, Subpart D, and Appendix C to Part 218).**

**NOTE:** **FRA will be guided by railroad interpretations of rule applications** to particular factual settings in determining whether a train operated past a signal requiring a stop (signal not limited to automatic roadway signals) or occupied main track without authority.

**NOTE:** If FRA is going to write a violation against the railroad or engineer (or recommend individual liability against the railroad representative or engineer for willful violations) 240.305 is the section that would be cited, not 240.117.                      240.305                      240.7

## Prohibited Conduct (Operating Rules)

### **FRA VIOLATIONS (240.305):**

- Signal
- Train speed
- Train or engine brakes
- Main track occupancy
- Tampering
- Fail to take action as a DSLE, engineer pilot or instructor engineer

31

### **Prohibited conduct, continued.**

- **Be a DSLE, a certified locomotive engineer pilot or an instructor engineer who is monitoring, piloting or instructing a locomotive engineer and fails to take appropriate action to prevent a violation of 240.305 (a)(1) through (a)(5). Appropriate action does not mean that a supervisor, pilot or instructor must prevent a violation from occurring at all costs; the duty may be met by warning an engineer of a potential or foreseeable violation. A DSLE will not be held culpable under this section when this monitoring event is conducted as part of the railroad's operational compliance tests as defined in 217.9 and 240.303 [efficiency tests].**

240.305

## **Prohibited Conduct (Certificate)**

- Each engineer must have his certificate in his possession while on duty as an engineer; and
- Display the certificate upon request from:
  - FRA representative
  - Officer of issuing railroad
  - Officer of joint operations railroad

32

### **Prohibited conduct.**

Each locomotive engineer who has received a certificate required under Part 240 shall:

- 1) Have that certificate in his or her possession while on duty as an engineer; and
  - 2) Display that certificate upon the receipt of a request to do so from
    - A representative of the FRA,
    - An officer of the issuing railroad, or
    - An officer of another railroad when operating a locomotive or train in joint operations territory.
- The civil penalties for failure of the engineer to either carry his certificate or display it when requested, are each \$1,000.

240.305 (b)

## **Prohibited Conduct (Unqualified)**

- Engineer shall immediately notify the railroad if he is not qualified to perform service called for & it shall be unlawful for the railroad to require the service
- Engineer shall immediately notify other certifying railroad(s) if he is denied recertification by a railroad or has his certification revoked by a railroad

33

### **Prohibited conduct, continued.**

- Any locomotive engineer who is notified or called to operate a locomotive or train and such operation would cause the locomotive engineer to exceed certificate limitations, set forth in accordance with Part 240 Subpart B, shall immediately notify the railroad that he or she is not qualified to perform that anticipated service and it shall be unlawful for the railroad to require such service.
- During the duration of any certification interval, a locomotive engineer who has a current certificate from more than one railroad shall immediately notify the other certifying railroad(s) if he or she is denied recertification by a railroad or has his or her certification revoked by a railroad.
- Nothing in 240.305 shall be deemed to alter a certified locomotive engineer's duty to comply with other provisions of this chapter concerning railroad safety.
- The civil penalty for failure to notify the railroad(s) is \$4,000.

240.305 (c) (d)



# REVOCATION OF CERTIFICATION

34

## Revocation of Certification

- A railroad acquiring convincing info that an engineer no longer meets the qualification requirements shall revoke their certificate
- Exception: Voluntary referral policy



35

### **Revocation of certification.**

- Except as provided for in 240.119 (e) [voluntary referral policies], a railroad that certifies or recertifies a person as a qualified locomotive engineer and, during the period that certification is valid, acquires information which convinces the railroad that the person no longer meets the qualification requirements of Part 240, shall revoke the person's certificate as a qualified locomotive engineer.

240.307 (a)

## **Revocation of Certification**

**(Intervening Cause or Minimal Nature)**

- **Railroad shall not revoke if there is an intervening cause which prevented or materially impaired the engineer's ability; or**
- **Railroad may decide not to revoke if the violation was of a minimal nature with no effect on rail safety**

36

- **A railroad shall not determine that the person failed to meet the qualification requirements of Part 240 and shall not revoke the person's certification as provided for in 240.307 (a) if sufficient evidence exists to establish that an intervening cause prevented or materially impaired the locomotive engineer's ability to comply with the railroad operating rule or practice which constitutes a violation under 240.117 (e)(1) through (e)(5); or**
- **A railroad may determine that the person meets the qualification requirements of Part 240 and decide not to revoke the person's certification as provided for in 240.307 (a), if sufficient evidence exists to establish that the violation of 240.117 (e)(1) through (e)(5) was of a minimal nature and had no direct or potential effect on rail safety.**

**NOTE: FRA permits railroads to use their discretion to determine whether revocation is desirable under these limited circumstances.**

240.307 (i)

## **Revocation of Certification**

### **(Intervening Cause)**

**Examples of intervening causes:**

- **Train speed due to defective equipment**
- **Entering main track based on incorrect information from the conductor or dispatcher**

37

**Examples of intervening causes might be:**

- **Failure to operate the train within the prescribed speed limits because of defective equipment;**
- **Conductor or dispatcher may relay incorrect information to the engineer which is reasonably relied on in making a prohibited train movement.**

## **Revocation of Certification**

**(Minimal Nature With No Effect on Safety)**

### **Examples of minimal nature:**

- **Front units exceed train speed at bottom of steep grade on high speed track (remainder of train's speed is OK)**
- **Speed restrictions in difficult train-handling territory**
  - **Flat switching-kicking cars**
  - **Snow plow operations**
  - **Spotting cars on steep inclines**

38

### **Examples of violations of a minimal nature might be:**

- **On high speed track at the bottom of a steep grade, the front of the lead unit in a four unit consist hauling 100 cars enters a speed restriction at 10 mph over speed, but the third unit and the balance of the train enters the speed restriction at the proper speed, and maintains that speed for the remainder of the train;**
- **Slowing down for speed restrictions that are located within difficult train-handling territory, flat switching-kicking cars, snow plow operations, and certain industrial switching operations requiring short bursts of speed to spot cars on steep inclines.**

**Per the preamble to the 1999 Final Rule, for minimal nature to apply, it will also be required that sufficient evidence be presented to prove that the violation did not have either a direct or potential effect on rail safety. This defense will certainly not apply to a violation that actually caused a collision or injury or that, given the factual circumstances surrounding the violation, could have resulted in a collision or injury.**

## Revocation of Certification

(Minimal Nature With No Effect on Safety)

- If caused (or could have caused) a collision or injury, it is not minimal
- Passing a banner is not minimal, but barely touching a banner could be minimal, depending on railroad's use of its discretion

39

- The preamble also states that in contrast, if a train fails to stop short of a banner, which is acting as a signal requiring a complete stop before passing it, during an efficiency test, that striking of a banner may have no direct effect on rail safety but it has a potential effect since a banner would be simulating a railroad car or another train. Meanwhile, there is a difference between passing a banner versus making an incidental touching of a banner. If a locomotive or train barely touches a banner so that the locomotive or train does not run over the banner, break the banner, or cause the banner to fall down, this incidental touching could be considered a minimal nature violation that does not have any direct or potential effect on rail safety. This is because such an incidental touching is not likely to cause damage to equipment or injuries to crew members even if the banner was another train. Although it is arguable that if the banner were a person the touching could be fatal, FRA is willing to allow railroads the discretion to consider this type of scenario in the context of excusing a violation pursuant to the minimal nature application.

## **Revocation of Certification**

**(Minimal Nature With No Effect on Safety)**

- **Entering main track with written authority and oral authority**
  - **Oral authority refers to correct train number (but incorrect locomotive number)**
  - **Could be of a minimal nature**

40

- **Per the preamble to the 1999 Final Rule, if a train has received oral and written authority to occupy a segment of main track, the oral authority refers to the correct train number, and the oral authority refers to the wrong locomotive because someone transposed the numbers, the engineer's violation in not catching this error before entering the track without proper authority could be considered of a minimal nature with no direct or potential effect on rail safety. Since the railroad would be aware of the whereabouts of this train, the additional risk to safety of this paperwork mistake may practically be zero. Under the same scenario, where there are no other trains or equipment operating within the designated limits, there may be no potential effect on rail safety as well as no direct effect.**

## **Revocation of Certification**

**(Intervening Cause or Minimal Nature)**

- **Railroad must record this evidence prior to suspension or hearing**
  - **In oversight report (Class I and II)**
  - **In 240.215 records for Class III**
- **Railroad must make a good faith determination after a reasonable inquiry**

41

- **The railroad shall place the relevant information in the records maintained in compliance with 240.309 [oversight report] for Class I (including the National Railroad Passenger Corporation) and Class II railroads, and 240.215 for Class III railroads if sufficient evidence meeting the criteria provided in 240.307 (i) [intervening cause or minimal nature], becomes available either:**
  - (1) Prior to a railroad's action to suspend the certificate as provided for in 240.307 (b)(1); or**
  - (2) Prior to the convening of the hearing provided for in 240.307.**
- **Provided that the railroad makes a good faith determination after a reasonable inquiry that the course of conduct provided for in 240.307 (i) is appropriate, the railroad which does not suspend a locomotive engineer's certification, as provided for in 240.307 (a), is not in violation of 240.307 (a).**

**240.307 (j)(k)**



## Revocation of Certification

- Upon receipt of reliable information, immediately suspend certificate
- Prior to or upon suspension, provide notice of reason, pending revocation, and opportunity for hearing
  - Oral (confirmed in writing) or
  - Written notice
  - CBA or within 96 hours

42

### Revocation of certification, continued.

Pending a revocation determination, the railroad shall:

- 1) Upon receipt of reliable information indicating the person's lack of qualification under Part 240, immediately suspend the person's certificate;

**NOTE:** Because the railroad cannot always make that determination immediately, the regulation does not require that a railroad prohibit an engineer from operating a train immediately after the occurrence of a possible de-certifiable event. See Von Essen letter.

- 2) Prior to or upon suspending the **person's certificate**, provides notice of the reason for **the** suspension, the pending revocation, and an opportunity for a hearing before a presiding officer other than the **investigating officer**. **The notice may initially be given either orally or in writing. If given orally, it must be confirmed in writing and the written confirmation must be made promptly. Written confirmation which conforms to the notification provisions of an applicable collective bargaining agreement shall be deemed to satisfy the written confirmation requirements of 240.307. In the absence of an applicable collective bargaining agreement provision, the written confirmation must be made within 96 hours. 240.307 (a)(b)**

## **Revocation of Certification (240.307 Hearing)**

- Convene hearing w/in 10 days or CBA
- Determine if no longer qualified & basis of conclusion
- Impose appropriate period of revocation
- Retain record of hearing 3 years

43

- 3) Convene the hearing within the deadline prescribed by either 240.307 (c)(1) [10 days of the date the certificate is suspended unless the locomotive engineer requests or consents to delay in the start of the hearing] or the applicable collective bargaining agreement as permitted under 240.307 (d);
- 4) Determine, on the record of the hearing, whether the person no longer meets the qualification requirements of Part 240 stating explicitly the basis for the conclusion reached;
- 5) When appropriate, impose the pertinent period of revocation in 240.117 or 240.119; and
- 6) Retain the record of the hearing for 3 years after the date the decision is rendered.

240.307 (b)

## Revocation of Certification (240.307 Hearing)

Unless hearing waived or per CBA:

- Conducted & convened by presiding officer other than **investigating officer**
- Conduct hearing to achieve a prompt & fair determination
- Testimony recorded verbatim
- Relevant & probative evidence received

44

- Except as provided for in 240.307 (d) [CBA], (f) [waive rights], (i) [railroad's discretion] and (j) [240.309 oversight report], a hearing required by this section shall be conducted in accordance with the following procedures:
  - (1) The hearing shall be convened within 10 days of the date the certificate is suspended unless the locomotive engineer requests or consents to delay in the start of the hearing.
  - (2) The hearing shall be conducted by a presiding officer, who can be any qualified person authorized by the railroad other than the **investigating officer**.
  - (3) The presiding officer will exercise the powers necessary to regulate the conduct of the hearing for the purpose of achieving a prompt and fair determination of all material issues in controversy.
  - (4) The presiding officer shall convene and preside over the hearing.
  - (5) Testimony by witnesses at the hearing shall be recorded verbatim.
  - (6) All relevant and probative evidence shall be received unless the presiding officer determines the evidence to be unduly repetitive or so extensive and lacking in relevancy that its admission would impair the prompt, orderly, and fair resolution of the proceeding.

(continued)

240.307 (c)

## **Revocation of Certification (240.307 Hearing)**

**Presiding officer may:**

- **Adopt any needed procedures for submission of evidence in writing;**
- **Examine witnesses at the hearing;**
- **Convene, recess, adjourn or otherwise regulate the course of the hearing; and**
- **Take other authorized actions to expedite or aid in disposition**

45

7) The presiding officer may:

- Adopt any needed procedures for the submission of evidence in written form;
- Examine witnesses at the hearing;
- Convene, recess, adjourn or otherwise regulate the course of the hearing; and
- Take any other action authorized by or consistent with the provision of this part and permitted by law that may expedite the hearing or aid in the disposition of the proceeding.

(continued)

240.307 (c)

## Revocation of Certification (240.307 Hearing)

- Parties may appear on own behalf or through designated representatives; offer testimony & examine witnesses
- Record will be closed unless additional time is allowed for submissions by presiding officer
- Written decision (basis) served **within 10 days**
- Railroad has burden of proof

46

8) Parties may appear and be heard on their own behalf or through designated representatives. Parties may offer relevant evidence including testimony and may conduct such examination of witnesses as may be required for a full disclosure of the relevant facts.

9) The record in the proceeding shall be closed at conclusion of the hearing unless the presiding officer allows additional time for the submission of information. In such instances the record shall be left open for such time as the presiding officer grants for that purpose.

10) **No later than 10 days after the close of the record, a railroad official, other than the investigating officer, shall prepare and sign a written decision in the proceeding.**

11) The decision shall:

- Contain the findings of fact as well as the basis therefore, concerning all material issues of fact presented on the record; and
- Be served on the employee.

12) The railroad shall have the burden of proving that the locomotive engineer's conduct was not in compliance with the applicable railroad operating rule or practice or Part 219.

240.307 (c)

## Revocation of Certification (240.307 Hearing)

- A CBA hearing satisfies requirements
- May be consolidated with disciplinary hearing  
- separate findings
- May waive right to hearing (in writing,  
understands rights, signed)
- Other railroads shall revoke; only one railroad  
hearing
- Period of suspension is credited towards  
revocation period

47

- A hearing which is conducted in a manner that conforms procedurally to the applicable collective bargaining agreement shall be deemed to satisfy the procedural requirements.
- A hearing may be consolidated with any disciplinary or other hearing arising from the same facts, but in all instances **a railroad official, other than the investigating officer**, shall make separate findings as to the revocation required under 240.307.
- A person may waive the right to the hearing provided under 240.307. That waiver shall:
  - Be made in writing;
  - Reflect the fact that the person has knowledge and understanding of these rights and voluntarily surrenders them; and
  - Be signed by the person making the waiver.
- A railroad that has relied on the certification by another railroad (240.227 or 240.229) shall revoke its certification if, during the period that certification is valid, the railroad acquires information which convinces it that another railroad has revoked its certification after determining that the person no longer meets the qualification requirements. The preamble to the Final Rule, pg. 28251 explains other railroads will be bound by that determination. Railroads will receive notification of such revocation because the engineer is obligated to advise all affected railroads of such adverse action in 240.305.

240.307 (d)(e)(f)(g)

## Revocation of Certification (240.307 Hearing)

- A CBA hearing satisfies requirements
- May be consolidated with disciplinary hearing  
- separate findings
- May waive right to hearing (in writing, understands rights, signed)
- Other railroads shall revoke; only one railroad hearing
- Period of suspension is credited towards revocation period

48

- The requirement to provide a hearing is satisfied when any single railroad holds a hearing and no additional hearing is required prior to a revocation by more than one railroad arising from the same facts.
- The period of certificate suspension prior to the commencement of a hearing shall be credited towards satisfying any applicable revocation period imposed in accordance with the provisions of 240.117.
- The preamble to the Interim Final Rule, page 18999, clarifies certificate suspension as employed in instances where there is reason to think the certificate should be revoked or made conditional but time is needed to resolve the situation. Certificate suspension is applicable to instances where a person is awaiting an investigatory hearing to determine whether that person violated FRA's alcohol/drug rules or engaged in operational misconduct and situations in which the person is being evaluated or treated for an active substance abuse disorder.
- Regarding company disciplinary action, the preamble states that the rule left railroads the option of treating the event as having safety significance and warranting initiation of an investigatory hearing with the possible imposition of (a) revocation of FRA certification, or (b) two types of sanctions: company disciplinary sanctions and revocation.

240.307 (g)

## Revocation of Certification (Alcohol/Drug)

- An engineer with an active substance abuse disorder - conditionally certified
- Failure of follow-up testing is the same as a violation either of 219.102 or 219.101 - hold person out of service
- If railroad intends to withdraw conditional certification - must hold 240.307 hearing if engineer requests

49

- The AAR petition for reconsideration questioned how to comply with this rule in two situations involving detection of alcohol and drug use (preamble to Interim Final Rule, page 19000).
- The first situation involves instances in which an engineer with a known substance abuse disorder fails to adhere to the conditions imposed for his return to service, that is, fails to take or fails to successfully pass follow-up testing after being return to service. Questions have been raised about whether the railroad must treat this as a revocation decision and provide a 240.307 hearing before altering the person's certification status and, if such a hearing is required, concern has been expressed about the possible impingement on EAP confidentiality in having a revocation hearing.
- An engineer with an active substance abuse disorder can be conditionally certified under terms that subject the person to periodic follow-up testing after being returned to service. Failure of such follow-up testing would be tantamount to a violation either of 219.102 or 219.101. Consequently, a railroad would be required under FRA's alcohol and drug rule to hold the person out of covered service. A railroad that intends to withdraw its conditional certification must afford the engineer the formalized trial type investigatory hearing procedures provided in 240.307 if the engineer so requests.



## **Revocation of Certification (Alcohol/Drug)**

- **An engineer with an active substance abuse disorder - conditionally certified**
- **Failure of follow-up testing is the same as a violation either of 219.102 or 219.101 - hold person out of service**
- **If railroad intends to withdraw conditional certification - must hold 240.307 hearing if engineer requests**

50

- Confidentiality is waived under these circumstances and release of treatment records would not be required.
- The second situation involves instances in which an engineer's motor vehicle driving history shows evidence of substance abuse. The question here is whether, upon receipt of such data, the rule requires that the engineer's certificate be suspended and an investigatory hearing held. The rule does not require a railroad to suspend a person's certification under these circumstances. The intent of 240.115 is that motor vehicle driving records indicating substance abuse on the highway which could be relevant to the person's certification status, be conducted by EAP counselors, not investigatory hearing officers.

240.307

### Multiple Decertification Events During Same Duty Tour

FRA has recently received petitions from engineers who have been decertified for multiple events during the same tour of duty, resulting in one (1) to (5) year decertification periods.

In response to these petitions, FRA has found that the regulation is silent concerning that which constitutes a single incident for decertification purposes. The closest regulatory guidance is found in 240.117(f) which deals with multiple violations during the course of a single incident. It reads as follows: "If in any single incident the person's conduct contravened more than one operating rule or practice, that event shall be treated as a single violation for the purposes of this section."

This provision prevents engineers from receiving excessive penalties involving multiple rules violations that occurred during a single incident, such as passing a stop signal without first stopping. The engineer violated a stop signal rule and in so doing, entered a main track without authority, thus violating another rule. Under these circumstances, the engineer is only charged with one rule violation.

This provision does not, however, address those events that are set apart from the original event by time, circumstance or distance. It can be argued that unless there is a nexus or common denominator between the instances of operational misconduct, logic and equity demand that each instance be treated as a separate single incident.

Conversely, if multiple incidents can occur during a single tour of duty, there is or at least appears to be, a lack of the progressive discipline on which the regulation is based. It is not beyond the realm of possibility that an engineer could report for duty with a clean record, and yet by the time he goes off duty, he could be subject to a 5 year decertification for the commission of 3 decertifiable offenses.

**FRA Policy:** A single incident is a unique identifiable occurrence caused by an operational error of an engineer. It is possible for an engineer to be involved in more than one single incident during a tour of duty if these incidents are separated by time, distance or circumstance. Recognizing that some cases may be difficult calls FRA has provided the following scenarios.

Scenario 1: An engineer operating a train from Chicago to St. Louis overlooks a 45 mph speed restriction for a car in his train and operates at maximum speed of 60 miles per hour. He repeatedly accelerates to this speed after making intermediate stops.

Question: Is this a single incident, or does a new single incident occur each time the engineer operates above 45 mph?

Answer: This is a single incident.

Scenario 2: Assume the same facts as Scenario 1, then assume that the engineer passes a signal requiring a stop in Alton.

Question: Is passing the signal in Alton a single incident?

Answer: Yes.

Question: Is the engineer therefore subject to two certification proceedings, one for the excess speed and one for passing the signal?

Answer: Yes.

As a consequence of multiple decertification events occurring within a single tour of duty, there appears to be a conflict with the intent of the progressive ineligibility periods for certification. As applied, engineers would not be afforded any probationary periods between events for any remedial corrective actions. In order to address this paradox FRA is considering proposing that the decertification periods under Part 240.117 be revisited. FRA will place this issue on the agenda of the Railroad Safety Advisory Committee for consideration.

#



U.S. Department  
of Transportation  
  
Federal Railroad  
Administration

Office of the Administrator

400 Seventh St., S.W.  
Washington, D.C. 20590

MAR 25 1992

Mr. G. Thomas DuBose  
International President  
United Transportation Union  
14600 Detroit Avenue  
Cleveland Ohio 44107-4250

Dear Mr. DuBose:

I am responding to issues raised by your National Legislative Director, Mr. James Brunkenhoefer, about the Federal Railroad Administration's (FRA) regulations concerning the qualification and certification of locomotive engineers. I appreciate learning of your concerns during the early implementation phases of this rule.

Since we are dealing with a new regulation, it may be helpful to provide some background information. In looking at accident statistics for a recent ten-year period, FRA noted that railroads had reported nearly 7,000 human factor-caused accidents and that more than 5,000 of those involved some failure by a locomotive engineer to adhere to one of five cardinal safety rules or practices regarding train operation. The five safety rules are those: (1) requiring adherence to signal indications; (2) limiting train speed; (3) prescribing the operation of the train and engine brake systems; (4) prohibiting a train from occupying track without authority; and (5) prohibiting the unlawful nullification of locomotive-mounted safety devices. Railroads have long had to consider carefully how they should respond to incidents of noncompliance with these critical safety rules.

—The railroads are now required by the FRA rule to also consider whether the incident has implications for the certification status of the locomotive engineer involved. Section 240.117 of the rule requires that a railroad revoke the certification of an engineer who violates one of these rules.

The assertion that some railroads are initiating decertification action on the basis of minor problems is cause for concern. As I assured Mr. Brunkenhoefer, FRA is investigating the circumstances of several such incidents. Let me assure you, however, that no railroad can hide behind the FRA rule in taking improper action against its employees.

In a series of meetings with railroads since issuance of the rule, FRA has urged the responsible use of discretion by railroads in the administration of their certification programs. This issue continues to be cause for serious concern, and as I indicated in my December 19, 1991, letters responding to petitions for reconsideration, FRA intends in a supplemental proceeding to issue proposed amendments to the rule that would, among other things, clarify and improve treatment of cardinal rule violations. We will be anxious to receive your substantive comments and advice in that proceeding.

Section 240.307 of FRA's rule provides that when a railroad has reliable information indicating a person's lack of qualification, the railroad must suspend the locomotive engineer's certification and promptly provide the engineer with an investigatory hearing. That hearing is intended to permit a formal examination of the facts involved in the incident and a determination on the record whether the engineer failed to comply with one of the critical safety rules.

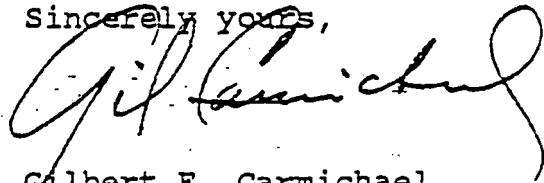
If after such an alleged violation a railroad initiates both revocation procedures under the FRA rule and disciplinary action that will entail a hearing in accordance with a collectively bargained agreement, section 240.307 of the FRA rule permits that hearing to serve both purposes, so long as separate findings are made as to revocation. In drafting the rule, FRA believed it unlikely that a railroad would not initiate disciplinary action against an engineer for conduct warranting decertification. Indeed, one reason for allowing the railroad party status in the appeals process was the recognition that the railroad could be liable for back wages and other benefits under the parallel Railway Labor Act process should FRA fail to uphold the decertification action.

As noted, the rule contemplates suspension of engineers pending hearing. FRA appreciates that this may be a result not previously experienced on a particular railroad for a given set of circumstances. I share your concern about fairness in this context. I emphasize, however, that a railroad may not suspend an engineer pending a hearing unless it is in possession of reliable information indicating the person's lack of qualification.

FRA did not intend that its rule preempt or otherwise affect the dispute resolution provisions of Railway Labor Act. In fact, FRA's preamble to the final rule affirms FRA's intent that railroad workers' access to the mechanisms of section 3 of the Railway Labor Act for resolving grievances and disputes about entitlement to employment or lost wages that might arise in connection with railroad decisions to suspend or revoke certification not be altered in the rule.

We see nothing in the rule that would preclude a worker whose certification has been denied, revoked, or suspended from pursuing whatever Railway Labor Act remedy he may otherwise have against the railroad if the railroad's decertification action is ultimately found to have been improper by FRA or a court. To read into the law some preclusion of such rights would permit a railroad to remove engineers in a way not supportable under the rule, yet leave the engineer with no remedy. We did not intend such a result and do not believe our rule could have such an effect.

Sincerely yours,



Gilbert E. Carmichael  
Administrator

cc: Mr. James M. Brunkenhoefer  
National Legislative Director  
United Transportation Union

## FAX TRANSMITTAL

# of pages = 3

To <i>K. Schenker</i>	From <i>RL</i>
Dept./Agency	Phone #
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GENERAL SERVICES ADMINISTRATION	

cc: OP/Chief  
JRP  
4/3/95

February 23, 1995

Mr. G. Thomas DuBose  
President  
United Transportation Union  
14600 Detroit Avenue  
Cleveland, OH 44107

Mr. Edwin L. Harper  
President  
Association of American Railroads  
50 F Street, NW  
Washington, DC 20001

Mr. William E. Loftus  
President  
American Short Line Railroad Association  
1120 G Street  
Washington, DC 20005

Mr. Ronald P. McLaughlin  
President  
Brotherhood of Locomotive Engineers  
1370 Ontario Street  
Cleveland, OH 44113

Gentlemen:

I am responding to multiple requests for guidance concerning the proper approach when confronting the locomotive engineer certification program implications created by incidents of train overspeed. The focus of this letter is to clarify when a violation of restricted speed should be considered a violation of 240.117(e)(2).

On April 9, 1993, we published a modification of the locomotive engineer certification rule (see Federal Register at 58 FR 18982). Our interim final rule changed 240.117(e)(2) to limit the certification implications of excess train speed to situations in which the train speed was relatively significant. As we explained in our preamble, we concluded that we needed to help guide railroads in deciding which violations of a railroad's operating rules and practices that involve failure to adhere to limitations concerning train speed would result in a suspension or revocation of a locomotive engineer's certificate.

As we noted in the preamble to the interim final rule, "it has become clear that, with respect to certain types of rule violations, the current rule does not distinguish serious offenses from negligible offenses. Railroads, believing themselves to be under a regulatory mandate to take action even for offenses that might not have been the subject of disciplinary action, have in some cases decertified employees where FRA had not anticipated such actions." See 58 FR 18987. While our regulatory language cleared up one set of ambiguities, FRA did not effectively address a particular subset of overspeed violations.

Thus, a major source of concern has become the proper application of 240.117(e)(2) to decertification of locomotive engineers for violations of restricted speed or the operational equivalent of restricted speed. Generally, restricted speed rules provide a maximum speed and a conditional clause stating that a locomotive engineer must be able to stop the train being operated within one half the range of vision. FRA's rule allows a violation of the restricted speed's conditional clause to be considered a violation under 240.117(e)(2) because of the language "[a] railroad shall consider violations of its operating rules and practices that involve: (2) failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit ... by more than one half of the authorized speed." Extrapolating from that provision, some railroads have argued that the very fact that a collision occurred or that a misaligned switch was run through at restricted speed, required the railroad to undertake the revocation process.

FRA disagrees with this extrapolation. As we noted when we adopted the initial provisions of this section, FRA's intent was to respond to the type of operational misconduct that was causing accidents. Implicit in FRA's approach was a focus on decertification for significant events instead of for every collision or movement through a misaligned switch.

Railroads shall consider only those violations of the conditional clause of restricted speed rules, or the operational equivalents thereof, which cause reportable accidents or incidents under 49 CFR Part 225 as instances of failure to adhere to the speed limitations as defined in 240.117(e)(2). Depending on the specific language used in a railroad's code of operating rules, the operational equivalent of restricted speed refers to other limitations on train speed which include the conditional clause similar to that previously described. Examples of some of the speed rules which are the operational equivalent of restricted speed include those that are called yard speed, reduced speed, caution speed, controlled speed or other than main track speed.



3

It is important to note that this interpretation does not alter the agency belief that the current rule is unambiguous concerning the maximum speed portion of the restricted speed rule. That is, an incident is already specifically considered a violation of the rule if the locomotive or train is operated at a speed which exceeds the maximum authorized speed by at least 10 miles per hour or by more than one half the maximum authorized speed, whichever is less. Likewise, if a person violates any one of the other provisions of 240.117(e) while operating at restricted speed, that person is subject to certification implications for violating that other provision. For example, a person operating a locomotive at restricted speed could be found to have violated 240.117(e) (1) if he or she operated a locomotive past a signal indication that requires a complete stop before passing it; any reference to damage thresholds would not be applicable since this other provision of 240.117(e) was simultaneously violated.

Because this interpretation flows from FRA's basic tenet concerning which types of incidents should result in decertification, we are applying this interpretation as a basis for deciding cases currently pending before the Locomotive Engineer Review Board. This interpretation will benefit the railroad industry by providing a clear line of demarcation. The result should prevent the problems of railroads bringing certification action against engineers for their belief that federal law requires them to do so. Meanwhile, it will benefit both engineers and railroads by eliminating many truly minor accidents or incidents from impacting certification status.

This issuance of this interpretation highlights the need for FRA to permit public discussion of this and other topics involving the decertification provisions of the regulation. FRA is planning to meet that need by holding an open meeting in the next few months and thereby provide a forum for revisiting this topic.

Additionally, FRA will provide an issues paper for this meeting which will discuss the problems that the agency has identified with the rule. Moreover, FRA is eager to allow commenters an opportunity to discuss any substantive issues that they may want to raise with Part 240. FRA plans to use comments provided at the open meeting for developing amendments to the rule through the normal notice and comment rulemaking process. I appreciate your interest in this matter and look forward to working with you on transportation issues that are important to you and your members.

Sincerely,

Bruce M. Fine  
Associate Administrator for Safety

*Original was  
Signed.*

FEB 1 1995

Mr. C. Wayne Calder  
Vice President and  
Chief Transportation Officer  
Southern Pacific Lines  
1860 Lincoln Street  
14th Floor  
Denver, Colorado 80295

Dear Mr. Calder: -

The Federal Railroad Administration (FRA) received your letter of December 27, 1994 concerning a previous letter you sent FRA on April 7, 1994. Your letters requested an official ruling on Title 49, Code of Federal Regulations, Part 240.117(e)(2), "Qualification and Certification of Locomotive Engineers", as it pertains to restricted speed violations. I apologize for the delay in answering your letters and for any confusion this issue has caused you and your locomotive engineers.

Restricted speed accidents are a major problem in the industry. FRA data points to restricted speed violations as the cause of a number of train accidents every year. For example, a review of data for 1991 revealed that about 52 percent of all impact accidents that year resulted from restricted speed violations. A total of 2 fatalities, 38 personal injuries, and about 12 million dollars property damage resulted from those accidents. There has been little improvement since 1991. This is a serious concern for FRA due to the simple fact that there should be no restricted speed collisions given the requirement of the rule.

FRA believes restricted speed accidents continue to occur for two basic reasons:

1. **Rule Misunderstanding.** FRA has found that many railroad operating employees and many operating officers do not understand restricted speed. Many feel that as long as the train is under the specified speed (e.g., 20 mph), then they are in compliance with restricted speed. This is reinforced by railroad operational testing for restricted speed that grants a "pass" if the train is under 20 mph, ignoring the need to stop "...within one-half range of vision...short of obstruction...."

During a recent survey of operating crews in one FRA region, we recorded about 80 percent of the employees and officers

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improperly responding to the question "Define restricted speed." Their primary answer: "...20 mph....". FRA further confirmed unfamiliarity with the rule through review of human factor supplements submitted after certain collisions. Several employee commentators said in their defense: "...it was dark...there were curves...I was only going 20 mph...by the time I saw the other train it was too late to stop...."

2. **Poor Operational Testing.** As mentioned, some railroads test for restricted speed with a radar gun alone. Such tests are incomplete and fail to fully test rule compliance. The speed requirement is but one standard--trains must be able to stop short.

FRA has successfully collected civil penalties from railroads that do not require a stop when conducting restricted speed tests. Such testing does not represent actual operating conditions on the railroad. A standard required under Part 217.

As a result of the safety risk posed by noncompliance with restricted speed, FRA believes there should be certain decertification sanctions for noncompliance. Unfortunately, the issue was not addressed in the regulation with sufficient clarity. We intend to address restricted speed noncompliance with specific verbiage in the final rule currently under draft. However, in the interim, FRA offers the following specific interpretation relative to restricted speed and implications for decertification:

Violation of the railroad "restricted speed" rule which results in any of the following, is per se violation of 49 CFR 240.117 (e)(2):

- collision with railroad rolling equipment that results in property damage exceeding the FRA reporting threshold (currently \$6300) or a reportable injury.
- movement through improperly lined switch or over a derail resulting in derailment of equipment which exceeds the reporting threshold (currently \$6300).

The rationale for this interpretation is based upon the fact that the speed of the train should have been zero prior to impact/improperly lined switch. Therefore, any speed in excess of zero is more than one half the authorized speed. We have focused the Federal decertification for instances of more serious consequences leaving the less serious incidents to handling under railroad discipline policy.

FRA believes that the railroads have the obligation to ensure operating employees and officers understand restricted speed and we expect the Southern Pacific to emphasize the rule in training and rules classes. We expect to see railroad operational tests that require stopping in addition to any speed standard.

I appreciate your interest in this issue and look forward to working with you on other issues of rail safety.

Sincerely,

Original Signed By  
Edward R. English

Edward. R English  
Director, Office of Safety  
Enforcement

cc: RRS-1  
RRS-10  
RRS-11  
REGION 6  
SUBJECT N:\TSMITH\CALDER.INT\TM\1-27-95



U.S. Department  
of Transportation

Federal Railroad  
Administration

400 Seventh St., S.W.  
Washington, D.C. 20590

BLE

DEC 20 1991

Mr. Leroy D. Jones  
National Legislative Representative  
Brotherhood of Locomotive Engineers  
400 North Capitol Street, NW  
Washington, D.C. 20001

Dear Mr. Jones:

Thank you for your November 7 letter concerning the Federal Railroad Administration's (FRA) new rules regarding the Certification of locomotive engineers. Your letter seeks FRA action to ensure that existing Rule G bypass and substance abuse prevention agreements will be effectively integrated with the new FRA qualification process.

The FRA fully supports voluntary peer prevention programs such as Operation Red Block. We recognize that Operation Red Block can provide an excellent means of promoting an alcohol and drug free workplace.

The FRA's rules concerning the certification of locomotive engineers do not disrupt the functioning of Operation Red Block procedures. For example, the rules specifically except from the 9 month ineligibility period a violation of 219.101 that is brought to the railroad's attention through a formal co-worker report (see section 240.119). However, as pointed out in the preamble to the final rule, FRA believes it is important to have a standard period of revocation for 219.101 violations where individuals have not availed themselves of the options and counter measures currently in place.

We agree that neither the rules text nor the preamble specifically address all of the consequences of some Operations Red Block procedures. In responding to the pending petitions for reconsideration, FRA will provide additional guidance on this subject including the use of approaches such as informal mark-off arrangements.

I hope this information is helping.

Sincerely,

Grady C. Cothen, Jr.  
Associate Administrator  
for Safety

AUG 20 1994

Mr. L. D. Rice  
Local Chairman, Division 549  
Brotherhood of Locomotive Engineers  
7590 15th Street, N.W.  
Willmar, Minnesota 56201

Dear Mr. Rice:

This is in response to your July 20 letter requesting that the Federal Railroad Administration (FRA) grant leniency in the case of Engineer Craig O. Herman. The letters you provided show that Mr. Craig signed a document on April 4 admitting to a violation of Burlington Northern's (BN) rules governing the use of alcohol while on duty.

The letters also indicate that BN revoked Mr. Craig's engineer certification for a nine-month period in accordance with 49 CFR Part 240.119(c)(4)(iii). Further, from the information provided, it appears that BN correctly applied FRA's regulations in this matter.

FRA's regulations provide the criteria for evaluating an engineer's conduct in the use of alcohol and controlled substances. When an incident of noncompliance is detected, a railroad is required to evaluate the facts of that incident. If the railroad's evaluation supports violations of Federal regulations, the railroad is required to impose a specific period of revocation. That period of revocation is mandatory. There are no provisions in the regulations for FRA, or the railroad, to grant leniency for extenuating circumstances.

Mr. Craig should be commended for his attitude in this situation. It is to his credit that he availed himself to the provisions of BN's employee assistance program. With his present outlook, I feel confident that Mr. Craig will overcome this temporary setback and return to duty with a high level of competency and be an asset to BN. —

Sincerely,

*E. R. English*

E. R. English  
Director, Office of Safety  
Enforcement

FRA:RRS11:murphy:66594:tes:8/17/94

cc: RRS1, 10, RDG11 & Subject.

N:\murphy\RICE

A:\.....

FILE NO: \_\_\_\_\_

**From:** JIM SCHULTZ (JSCHULTZ)  
**To:** FRA31.FRMAILS.R6KSCHNA, FRA31.FRMAILS.R6JWYKER  
**Date:** Monday, June 26, 1995 4:55 pm  
**Subject:** BN 219.101 Violation

Kathy/John,

**RE: 240 Certified BN Conductor .05 Breath Positive v. 240.119**

The answer to Tony Crabb's question can be found in FR Vol 56, No. 118 (original 240 rule) dated June 19, 1991, page 28245, first paragraph left column. Specifically: "Note that conduct violative of the FRA proscriptions against alcohol and drugs need not occur while the person is serving in the capacity of a locomotive engineer in order to be considered. For instance, an employee who violated 219.101 while working as a conductor and then sought engineer certification six months later...would not be currently eligible for certification."

Let me know if you need anything else.

**CC:** GCothen,ADow

To: Tom Murphy

05/04/92

Subject: Locomotive Engineer Qualifications -  
Violations of §240.117 Occurring in Canada

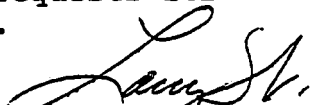
I was asked for an opinion concerning the extra territorial effect of Part 240.117. The specific question that was posed focused on whether a locomotive engineer, found drunk on-duty in Canada, can return to service after a 30-60 day period of detoxification and rehabilitation or is precluded from operating a locomotive for 9-months under the provisions of 240.117.

The key to answering that question is deciding whether a person who reports for or is actually on-duty performing service is performing an activity covered by the Hours of Service Act when that event occurs on Canadian soil. In other words, can a person be in violation of § 219.101 when they are drunk on-duty in Canada since FRA has previously taken the position that the Hours of service Act itself is not offended by excessive on-duty intervals.

After reading the strong language in the preamble to an old Hours of Service interpretation issued on May 31, 1977, I have concluded that we could not convince a judge that the Hours of service Act applies beyond the U.S. borders. That old interpretation expressed the opinion that the Act does not apply when the individuals are beyond the U.S. border.

Logically, if the Act does not apply beyond the border, then the engineer is not subject to it while beyond the border. Since being subject to the Act is the key to jurisdiction under Part 219, I don't think we reasonably could expect to convince a judge that being drunk was a violation of 219.101. If no violation of 219.101 occurred, then there is no basis for saying that the 9-month period of ineligibility under 240.117 applies.

All of this raises the still unanswered question of how we should deal with operating rule violations occurring in Canada. We have not yet dealt with the CP & CN requests for clarification which address this matter.

  
Larry Wagner

cc: RM, PS, JS, WR



WLC 8/17/92

E92-SOO-0310

Mr. E. F. Von Essen  
General Chairman  
United Transportation Union  
333 N. Wood Dale Road  
Suite D  
Wood Dale, Illinois 60191

Dear Mr. Von Essen:

This will respond to your letter of June 18, 1992, alleging an improper efficiency test by the Soo Line Railroad Company (SOO) on May 7, 1992, at Rutledge, Iowa, and requesting an interpretation of the Engineer Certification Regulation.

The Federal Railroad Administration has completed its investigation into the matter. While the efficiency test performed on the crewmembers on Train 431/TC7 should have been performed in a more proficient manner, the locomotive engineer operated the train past a red stop sign within yard limits. Title 49, Code of Federal Regulations, Part 240.307 states that a railroad that acquires convincing information that a person no longer meets the qualification requirements of Part 240, shall revoke the person's certificate as a qualified locomotive engineer.

The railroad has the responsibility for determining whether a rules violation warrants suspension of an engineer's certificate. Because the railroad cannot always make that determination immediately, the regulation does not require that a railroad prohibit an engineer from operating a train immediately after the occurrence of a possible de-certifiable event.

I hope this information is helpful in responding to your membership.

Sincerely,

Edward R. English  
Director, Office of Safety  
Enforcement

R6:KJSCHNAKENBERG:cm8/13/92  
cc: RRS-1, RRS-10 (2)  
Subject File, Kansas City, R6

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Mr. Leroy D. Jones  
Vice President and  
National Legislative Representative  
Brotherhood of Locomotive Engineers (BLE)  
400 North Capitol Street N.W., Suite 850  
Washington, D.C. 20001

Dear Mr. Jones:

This refers to your September 3 letter requesting an interpretation of Federal Railroad Administration's (FRA) regulations concerning locomotive engineer qualifications. The question you presented was: "May a locomotive engineer whose certification has been revoked work in another craft. For example, as a brakeman."

Title 49 Code of Federal Regulations, Section 240.5 (e) responds to your question. This section does not create an eligibility or entitlement to employment in other service for the railroad as a result of denial, suspension, or revocation of certification. This means that the railroad may recognize a persons eligibility to work other positions under their contractual agreement. If a locomotive engineer's certification is revoked for an operating rules violation as described in Section 240.117, it is the contractual provisions that allow the individual to return to other service that determines their eligibility to do so. The regulations do not prevent a decertified locomotive engineer from working other positions such as you suggested - a trainman.

Sincerely,

E. R. English

Edward R. English  
Director, Office of Safety  
Enforcement

FRA:RCC11:Murphy:60594:9/15, 10/4  
cc: RRS1, RRS10, Rdg & Subj File  
C:JONES.04



# **CERTIFICATE & PILOTS**

**The Certificate  
Joint Operations  
Pilots**

1

**This section of the reference guide covers:**

- **Requirements of the certificate, including reliance on other countries and other railroads**
- **Joint operations**
- **Use of pilots (joint operations territory and non-joint operations territory)**

# Certificate

- Issuing railroad or parent company
- Statement of qualification
- Identification of person
  - Name
  - Date of birth
  - Employee ID no.
  - Physical description or photograph
- Issued within 30 days



2

## Criteria for the certificate.

As a minimum, each certificate issued in compliance with Part 240 shall:

- Identify the railroad or parent company that is issuing it;

NOTE: The individuals must still qualify under the program of each short line railroad for which they are certified to operate and each of those railroads must maintain appropriate records as required by Part 240 (from preamble to 1999 Final Rule).

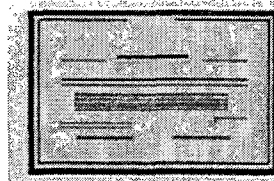
- Indicate that the railroad, acting in conformity with Part 240, has determined that the person to whom it is being issued has been determined to be qualified to operate a locomotive.

NOTE: This DOES NOT have to be a statement, but should refer to Part 240.

- Identify the person to whom it is being issued [including the person's name, date of birth and employee identification number (or social security number), and either a physical description (height, weight, eye color, hair color) or photograph of the person].
- A railroad shall issue each person designated as a certified locomotive engineer a certificate that complies with 240.223 no later than 30 days from the date of its decision to certify or recertify that person. 240.223 240.217 (d)

## Certificate

- Conditions or restrictions
  - Classes of service
  - Vision/hearing
- Date of issuance
- Signature of DSLE or designee



3

### Criteria for the certificate.

- Identify any conditions or limitations, including the class of service or conditions to ameliorate vision or hearing acuity deficiencies, that restrict the person's operational authority. See page 47 of the Certification Evaluations tab.

**Note:** Some shortline railroads use abbreviations for classes of service such as TS for train service, and LS for locomotive servicing without spelling out the class. Agreement has been reached with the ASLRA that when engineers are recertified, the complete spelling of the class will be inserted on the cards.

**NOTE:** If an engineer is an instructor engineer, it is recommended this be identified on the certificate, but it is not required.

- Show the date of its issuance;
- Be signed by a supervisor of locomotive engineers or other individual designated in accordance with 240.223 (b) [in writing that it authorizes to sign the certificates (identified by name or job title)].

**NOTE:** Chief Counsel agreed to allow the use of a "check signature" machine to endorse the cards (Burlington Northern).

# Certificate

- Date of last operational monitoring event  
(check ride, simulator, or event recorder)
- Wallet size



4

## Criteria for the certificate.

- Show the date of the person's last operational monitoring event as required by 240.129 (c) and 240.303 (b) [check ride, simulator, or event recorder reading], unless that information is reflected on supplementary documents which the locomotive engineer has in his or her possession when operating a locomotive; and
- Be of sufficiently small size to permit being carried in an ordinary pocket wallet.
- Nothing in 240.223 (a) shall prohibit any railroad from including additional information on the certificate or supplementing the certificate through other documents.
- The Union Pacific's (UP) practice of using a UP photo identification card with its certificate as a "team" certificate is not prohibited. Both documents must be on the engineer's person and available upon request by FRA. If one of the two prescribed documents is not available, we consider the engineer without a proper certificate. We won't accept the certificate with other pictured ID's (e.g., driver's license, college ID, credit card, etc.). See attached January 25, 1996, E-mail memo from Jim Schultz, Staff Director for further explanation.
- A question has arisen as far as, "Who owns an engineer certificate?" The answer is the "railroad" that issued the certificate owns the certificate.

240.223

## Certificate (Replacement)

- A railroad shall have a system for the prompt replacement of lost, stolen, or mutilated certificates and that system shall be reasonably accessible to certified locomotive engineers in need of a replacement certificate.
- ***What if an engineer forgets his certificate at home?***

5

### **Replacement of certificates.**

- A railroad shall have a system for the prompt replacement of lost, stolen, or mutilated certificates and that system shall be reasonably accessible to certified locomotive engineers in need of a replacement certificate.

**QUESTION:** Prior to conducting an onboard train observation, you ask to see the engineer's certificate. He does not have it and says he left it at home. What should you, as an inspector do?

**ANSWER:** Have the engineer talk to a railroad officer and get a replacement (temporary) certificate as soon as possible. If you are convinced the engineer is a certified engineer and acting within the limitations of his certificate, do not delay the train awaiting the arrival of a replacement certificate.



## Certificate (Falsification)

Unlawful for any railroad to knowingly or any individual to willfully:

- Make, cause to be made, or participate in the making of a false entry on that certificate; or
- Otherwise falsify that certificate through material misstatement omission, or mutilation.

6

• It shall be unlawful for any railroad to knowingly or any individual to willfully:

- 1) Make, cause to be made, or participate in the making of a false entry on that certificate; or
- 2) Otherwise falsify that certificate through material misstatement, omission, or mutilation.

**DEFINITION:** KNOWINGLY is defined in 240.7, meaning having actual knowledge of the facts giving rise to the violation or that a reasonable person acting in the circumstances, exercising due care, would have had such knowledge.

## Certificate (Prohibited Conduct)

- Each engineer must have his certificate in his possession while on duty as an engineer; and
- Display the certificate upon request from:
  - FRA representative
  - Officer of issuing railroad
  - Officer of joint operations railroad

7

### **Prohibited conduct.**

- Each locomotive engineer who has received a certificate required under Part 240 shall:
  - 1) Have that certificate in his or her possession while on duty as an engineer; and
  - 2) Display that certificate upon the receipt of a request to do so from
    - A representative of the FRA,
    - An officer of the issuing railroad, or
    - An officer of another railroad when operating a locomotive or train in joint operations territory.
- The civil penalties for failure of the engineer to either carry his certificate or display it when requested, are each \$1,000.

240.305 (b)

## **Reliance on Qualification of Other Countries**

**If a railroad conducts joint operations with a Canadian railroad, or a Canadian railroad is required to comply, they may certify persons qualified if determine:**

- **Employed by the Canadian railroad; &**
- **Meets or exceeds the qualifications standards issued by Transport Canada**

8

- This section contains the requirements for a railroad that wants to rely on the system of locomotive engineer qualification established by Transport Canada.
- A railroad that conducts joint operations with a Canadian railroad may certify, for the purposes of compliance with Part 240, that a person is qualified to be a locomotive or train service engineer provided it determines that:
  - 1) The person is employed by the Canadian railroad; and
  - 2) The person meets or exceeds the qualifications standards issued by Transport Canada for such service.
- Any Canadian railroad that is required to comply with this regulation may certify that a person is qualified to be a locomotive or train service engineer provided it determines that:
  - 1) The person is employed by the Canadian railroad; and
  - 2) The person meets or exceeds the qualification standards issued by Transport Canada for such service.
- The AAR petitioned FRA for qualification requirements for Mexican operations, asking FRA to devise a scheme analogous to that afforded for the operations close to the border with Canada. FRA denied this aspect of the petition because there are no significant operations conducted in the U.S. by Mexican engineers. 240.227

## Reliance on Qualification Made by Another Railroad

- **Railroad must address this in its program submission or engineer will have to go through its entire training program**
- **May rely on qualification determinations made by another railroad, but must:**
  - **Determine the prior certification is valid**
  - **Certification for same class of service**

9

- A railroad that is considering certification of a person as a qualified engineer may rely on determinations made by another railroad concerning that person's qualifications.
- **The railroad's certification program shall address how the railroad will administer the training of previously uncertified engineers with extensive operating experience or previously certified engineers who have had their certification expire.**
- **If a railroad's certification program fails to specify how to train a previously certified engineer hired from another railroad, then the railroad shall require the newly hired engineer to take the hiring railroad's entire training program.**
- A railroad relying on another's certification shall determine that:
  - 1) The prior certification is still valid in accordance with the provisions of 240.201 (schedule for implementation), 240.217 (time limitations), and 240.307 (revocation);
  - 2) The prior certification was for the same classification of locomotive or train service **as the certification** being issued under this section;
  - 3) The person has received training on and visually observed the physical characteristics of the new territory in accordance with 240.123 (initial and continuing education);

240.225

## Reliance on Qualification Made by Another Railroad

- Received training on & visually observed the physical characteristics of the new territory
- Demonstrated knowledge of operating rules & performance skills

10

- 4) The person has demonstrated the necessary knowledge concerning **the railroad's** operating rules in accordance with 240.125 (knowledge test); and
- 5) The person has demonstrated the necessary performance skills concerning **the railroad's** operating rules in accordance with 240.127 (performance skills).

240.225

## Definition of Joint Operations

Joint Operations means rail operations conducted by more than one railroad on the same track regardless of whether such operations are the result of -

- Contractual arrangement between the railroads,
- Order of a governmental agency or a court of law, or
- Any other legally binding directive.

11

**DEFINITION: JOINT OPERATIONS** means rail operations conducted by more than one railroad on the same track regardless of whether such operations are the result of -

- 1) Contractual arrangement between the railroads,
- 2) Order of a governmental agency or a court of law, or
- 3) Any other legally binding directive.

## Joint Operations

- Except for minimal joint operations, no host railroad shall permit or require a person to operate unless certified and issued certificate
- Host railroad may comply by noting its supplemental certification decision on the original certificate
- Host railroad shall certify person OR rely on other railroad's certification

12

### **Requirements for joint operations territory.**

- Except for minimal joint operations, no railroad that is responsible for controlling the conduct of joint operations with another railroad shall permit or require any person to operate a locomotive in any class of train or engine service unless that person has been certified as a qualified locomotive engineer for the purposes of joint operations and issued a certificate that complies with 240.223.
- A railroad that controls joint operations and certifies locomotive engineers from a different railroad may comply with the above requirement by noting its supplemental certification decision on the original certificate as provided for in 240.223(c) [including additional information on the certificate].

**NOTE:** The controlling railroad must document those it certifies for joint operations (see 240.221).

- Each railroad that is responsible for controlling the conduct of joint operations with another railroad shall certify a person as a qualified locomotive engineer for the purposes of joint operations either by making the determinations required under Part 240 Subpart C (implementation of certification) or by relying on the certification issued by another railroad under Part 240.

240.229 (a)(b)(d)

240.221

## Host Railroad Relying On Another Railroad's Certification

The host railroad shall determine:

- The person has been certified by the employing railroad;
- Knowledge of operating rules, if different;
- Operating skills;
- Familiarity with physical characteristics

13

### **Requirements for joint operations territory, continued.**

- Per the preamble to the Interim Final Rule, pg. 18998, FRA will hold the controlling railroad responsible for enforcement purposes.
- **A railroad that controls joint operations may rely on the certification issued by another railroad under the following conditions:**

#### **1) The controlling railroad shall determine:**

- That the person has been certified as a qualified engineer under the provisions of Part 240 by the railroad which employs that individual;
- That the person certified as a locomotive engineer by the other railroad has demonstrated the necessary knowledge concerning the controlling railroad's operating rules, if the rules are different;
- That the person certified as a locomotive engineer by the other railroad has the necessary operating skills concerning the joint operations territory; and
- That the person certified as a locomotive engineer by the other railroad has the necessary familiarity with the physical characteristics for the joint operations territory; and

(continued)

240.229 (c) (1)



## **Host Railroad Relying On Another Railroad's Certification**

- **Employing railroad shall determine engineer called to operate on host railroad is qualified to operate on that track segment**
- **Engineer must be qualified on that track (per host railroad's requirements)**
- **Engineer must immediately notify employing railroad if not qualified**

14

### **Requirements for joint operations territory, continued.**

- (1) The railroad which employs the individual shall determine that the person called to operate on the controlling railroad is a certified engineer who is qualified to operate on that track segment; and**
- (2) Each locomotive engineer who is called to operate on another railroad shall:**
  - Be qualified on the segment of track upon which he or she will operate in accordance with the requirements set forth by the controlling railroad; and,**
  - Immediately notify the railroad upon which he or she is employed if he or she is not qualified to perform that service.**

**240.229 (c) (2) (3)**

## Host Railroad Relying On Another Railroad's Certification

FRA recommends that  
the host railroad  
evaluate the training  
program of the  
foreign railroad



15

**FRA's Recommendation:** In addition to the requirements of 240.229, when a controlling railroad accepts the certification of a foreign railroad in lieu of issuing its own certification, FRA recommends that a controlling railroad evaluate the training program of the foreign railroad. A controlling railroad's review of a foreign railroad's training program will ensure that foreign engineers have received sufficient training for operating over the controlling railroad's lines. A controlling railroad that follows this recommendation should have an easier time making the required determinations pursuant to 240.229 (c)(1) and will be in compliance with both the letter and intent of the regulation.

See pages 8 and 9 of OP-2000-01 for an explanation of the background for this recommendation.

OP-2000-01

## Engineer Pilot (Joint Operations)

- A host railroad may provide a qualified person to accompany an engineer who lacks joint operations certification.
- Qualified person means a DSLE or a certified train service engineer determined to have the necessary knowledge of operating rules, & operating skills, including familiarity with the physical characteristics
- May be a train crewmember

16

### **Requirements for joint operations territory, continued.**

• A railroad responsible for controlling the conduct of joint operations with another railroad shall be deemed to be in compliance with 240.229(a) when it provides a qualified person to accompany a locomotive engineer who lacks joint operations certification during that engineer's operations in joint operations territory. As used in this section qualified person means either a DSLE or a certified train service engineer determined by the controlling railroad to have the necessary knowledge concerning the controlling railroad's operating rules and to have the necessary operating skills including familiarity with its physical characteristics concerning the joint operations territory.

**NOTE:** In joint operations territory, the pilot may be a train crewmember unlike non-joint operations (home road) as long as the crewmember is a certified engineer.

240.229 (e)

## **Minimal Joint Operations (Joint Certification Not Required)**

- Maximum authorized speed does not exceed 20 mph;
- Track is "other than a main track;"
- Operations are conducted under the equivalent of a "restricted speed" rule; &
- Maximum distance for joint operations on the track does not exceed one mile

17

• A railroad that is responsible for controlling the conduct of joint operations with another railroad may permit a certified locomotive engineer to operate a locomotive in any class of train or engine service without determining that the person has been certified as a qualified locomotive engineer for the purposes of joint operations when a minimal joint operation is involved. For the purposes of this section a minimal joint operation exists when a locomotive or train belonging to one railroad is being operated on the same track on which operations are conducted by the railroad controlling operations, under the following conditions:

- 1) The maximum authorized speed for operations on the track does not exceed 20 mph;
- 2) The track is other than a main track;
- 3) Operations are conducted under operating rules that require every locomotive and train to proceed at a speed that permits stopping within one half the range of vision of the locomotive engineer; and
- 4) The maximum distance for joint operations on the track does not exceed one mile.

**NOTE:** This amendment was a result of petitions for reconsideration from the AAR and ASLRA. It DOES NOT apply to a plant railroad's operation on a general system railroad.

240.229 (f)

## **Pilots (Non-Joint Operations)**

- **No engineer shall operate a locomotive over a territory unless he or she is qualified on the physical characteristics of the territory**
  - **Unless assisted by a qualified Pilot or**
  - **Pilot exemptions**

18

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

- **Except as provided in 240.231 (b) [qualified pilot] or 240.231 (c) [pilot exemptions], no locomotive engineer shall operate a locomotive over a territory unless he or she is qualified on the physical characteristics of the territory pursuant to the railroad's certification program.**

**DEFINITION: QUALIFIED means a person who has passed all appropriate training and testing programs required by the railroad and Part 240 and who, therefore, has actual knowledge or may reasonably be expected to have knowledge of the subject on which the person is qualified.**

240.7

240.231 (a)

## **Pilots (Non-Joint Operations)**

**Qualified pilot (who is not an assigned crewmember):**

- **For a never-been-qualified engineer, the pilot must be a certified & qualified engineer**
- **For a previously qualified (but expired) engineer, the pilot may be any qualified person**

19

**Requirements for locomotive engineers unfamiliar with physical characteristics in other than joint operations, continued.**

- **Except as provided in 240.231 (c) [pilot exemptions], if a locomotive engineer lacks qualification on the physical characteristics required by 240.231 (a), he or she shall be assisted by a pilot qualified over the territory pursuant to the railroad's certification program.**
- **For a locomotive engineer who has never been qualified on the physical characteristics of the territory over which he or she is to operate a locomotive or train, the pilot shall be a person qualified and certified as a locomotive engineer who is not an assigned crew member.**
- **For a locomotive engineer who was previously qualified on the physical characteristics of the territory over which he or she is to operate a locomotive or train, but whose qualification has expired, the pilot may be any person, who is not an assigned crew member, qualified on the physical characteristics of the territory.**

240.231 (b)

## **Pilot Exemptions (Non-Joint Operations)**

- **Average grade of less than 1% over 3 continuous miles, and**
  - **Other than a main track; or**
  - **Maximum distance of 1 mile; or**
  - **Maximum speed of 20 mph; or**
  - **Stop within ½ range of vision operations**

20

### **Requirements for locomotive engineers unfamiliar with physical characteristics in other than joint operations, continued.**

- **Pilots are not required if the movement is on a section of track with an average grade of less than 1% over 3 continuous miles, and**
  - (1) The track is other than a main track [regardless of distance]; or**
  - (2) The maximum distance the locomotive or train will be operated does not exceed one mile [on main track, regardless of maximum authorized speed; e.g., this exception would allow an unqualified engineer to operate movements from a yard on the south side of a main track, using the main track for less than a mile, to a yard on the north side of the main track]; or**
  - (3) The maximum speed for any operation on the track does not exceed 20 miles per hour [on any track, regardless of distance]; or**
  - (4) Operations are conducted under operating rules that require every locomotive and train to proceed at a speed that permits stopping within one half the range of vision of the locomotive engineer [on any track, regardless of distance].**

**NOTE: The above criteria must be permanent restrictions.**

**240.231 (c)**

**Preamble to 1998 Proposed Rule**

## Pilot Exemptions (Non-Joint Operations)

- If a pilot exemption applied, railroad shall consider whether there was a direct relationship between the violation and the engineer's unfamiliarity with the territory
- If so, engineer's certificate should not be revoked

21

The preamble to the 1998 Proposed Rule states that, in considering whether to suspend or revoke a person's certificate when the person is operating pursuant to one of the exceptions in 240.231 (c), the railroad should consider the following issues:

- 1) Whether the engineer notified a railroad official that he or she was unqualified to operate over the territory;
  - 2) Whether the engineer was ordered by a railroad official to operate over the territory despite the official's knowing that the engineer was unqualified; and
  - 3) If one of the exceptions in 240.231 (c) applied, whether there was a direct relationship between the alleged operational misconduct event pursuant to 240.117 (e)(1) through (5) and the engineer's unfamiliarity with the territory.
- If an alleged violation is caused by the engineer's territorial unfamiliarity, 240.307 (i) [intervening cause/minimal nature] could be referenced as a defense to the alleged misconduct. For example, if an engineer is operating for a distance of less than one mile without a pilot and the train passes a signal requiring a complete stop that was around a curve, it is arguable that the engineer passed the signal due to his or her unfamiliarity and lack of a pilot; thus, revoking an engineer's certificate under such circumstances would be improper.

(continued)



## **Pilot Exemptions (Non-Joint Operations)**

- If there is not a direct relationship between the violation and the engineer's unfamiliarity with the territory
- The engineer would be held liable for his or her conduct

22

• On the other hand, if an alleged violation occurs that is unrelated to the engineer's unfamiliarity with the territory, the engineer would be held liable for his or her conduct. For example, if an engineer is operating without a pilot in unfamiliar territory and the type of operation requires that any operation on the track does not exceed 20 mph pursuant to 240.231 (c)(3) [pilot exemptions], then an engineer should probably have his or her certificate revoked for operating at 10 mph or more above the maximum authorized speed. It is unlikely under such conditions that the physical characteristics somehow would have helped cause the alleged violation since a pilot would be required if the unfamiliar territory was over heavy grade.

**From:** JIM SCHULTZ  
**To:** OPPROS  
**Date:** 1/25/96 4:29pm  
**Subject:** UP CERTIFICATES

Ladies and Gentlemen-- questions have again arisen regarding whether UP certificates comply with the rule (i.e., UP's use of two cards as a "team" certificate-one a photo ID/one a UP certificate). Thanks to Region 4 and Jeff for bringing the matter up for clarification.

**HISTORICAL BACKGROUND:** We reviewed the very limited material on hand, and talked to Rich McCord, Larry Wagner, David Green, Cory Weaver, and others involved in the early days with UP's implementation of 240. The bottom line is that at the start of the program, FRA gave UP the OK to utilize a two card system. Rationale for doing so was based upon provisions outlined in 240.33(8)(c): "...nothing...shall prohibit any railroad from including additional information on the certificate or supplementing the certificate through other documents" (emphasis mine).

**THE UP SITUATION:** John Conklin and I conferred at length with UP's Bob Pugmire regarding the matter. He related that UP elected, prior to 240 adoption, to issue photo ID's to every UP employee. They purchased at significant expense the equipment, trained people on each service unit, and set about to provide employee photo ID's which are still produced and issued to employees today. The reason for doing so was based, according to Mr. Pugmire, to facilitate employee ID for alcohol and drug testing, and to satisfy a Texas statute that railroad employees have on their person while on duty, a photo ID. When 240 later arrived on the scene, rather than incur additional expense to provide a second photo ID only to locomotive engineers, UP sought, and was granted, FRA concurrence that their two document certificate "team" met the requirements of the regulation.

In my discussion with Mr. Pugmire, I related that our intent in the rule was that all critical certification elements would be on one document. Nonetheless, the UP's approach appears to meet the requirements of the regulation as long as the UP program clearly delineates that both documents must be on ones person and available upon request to an FRA inspector. If one of the two prescribed documents is not available, then we consider the engineer without proper certification on his/her person. And that doesn't mean we will accept the certificate with other pictured ID's (e.g., drivers license, college ID, credit card, etc.). It must be the two documents prescribed in the UP program: the UP photo ID card AND the engineer certificate. I asked Mr. Pugmire to review his 240 program to ensure verbiage is direct in this area. John Conklin is also reviewing the program in order to provide guidance to the UP if necessary.

**SUMMARY:** This is not a rail safety issue. Rather it is a compliance issue which we pursued for the sake of consistency and correctness with the administrative provisions of the rule.

In that light, as confirmed again by Counsel, please be aware that the regulation provides for supplemental documentation for certificates. However, railroad programs must clearly describe the process. This should not be an issue on many other railroads. For most it is much less

expensive and complicated to utilize one card rather than two. I don't think we will see railroads running out to spend money on production of separate ID cards in addition to required certificates.

We should honor our original commitment to UP on this issue as a matter of integrity, especially since the regulation lends no alternative. However, we will continue to work with the UP and other railroads to ensure they meet not only the letter of the regs, but also the intent. If you have any questions feel free to call John Conklin, Joe Gallant, or me.

CC: R1MMCKEO, R4RMCCOR

FILE

JUL 24 1995

Mr. J. L. Hogan  
Chairman  
Brotherhood of Locomotive Engineers  
4223 West Pipeline  
Euless, Texas 76040

Dear Mr. Hogan:

Thank you for your recent letter requesting explanation of the provisions of locomotive engineer certin as outlined in Title 49 Code of Federal Regulations (49 CFR), Part 240, Sections 240.307 and 240.117. Your letter was developed in response to correspondence from Brotherhood of Locomotive Engineers Chairman Bruce Bland to Atchison, Topeka & Santa Fe Railway Company (ATSF) Superintendent, L. E. Rees in Haslet, Texas.

The ATSF is required to comply with section 240.307(b)(3), which allows the railroad two options: 1) Convene the certification hearing within 10 days; or 2) convene the hearing in accordance with the provisions of the applicable collective bargaining agreement. In either case, the hearing required under this section is to determine whether or not a decertification event occurred and to consider as outlined in section 240.117(e), whether the railroad will revoke the person's locomotive engineer certification. Section 240.307(e) permits a railroad to combine a certification hearing held under Section 240.307(b)(3) with any disciplinary or other hearing arising from the same facts. Any dispute regarding the propriety of a railroad's handling of a decertification proceeding must be addressed through the established appeals process (see sections 240.401 through 240.411).

→ The answer to your second question, who "owns" the locomotive engineer certificate, is found in section 240.307(a): "...a railroad that issues a person certification or recertification as a qualified locomotive engineer..." indicates that it is the railroad which is responsible for issuing or revoking the certification. It is part of the Federal Railroad Administration's mission to ensure that the issuing railroad complies with 49 CFR Part 240 at the certification/recertification process. Therefore, the railroad "owns" the locomotive engineer certification cards.

CONCURRENCES
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GRID

I hope this information sufficiently addresses your concern. We appreciate your efforts on behalf of railroad safety and feel free to contact me if I may be of additional service.

Sincerely,

Original Signed By  
Edward R. English

Edward R. English  
Director, Office of Safety  
Enforcement

RRS11:JGALLANT:tes:7/18/95  
cc:RRS-1,10,11-Subj File:(Gallant) 2400.3.4  
N:\tsmith\Hogan.240



# ANNUAL OPERATIONAL MONITORING

## Check Ride Efficiency Test

1

- The railroad's program submission must contain information concerning the railroad's program for annual monitoring observations (check ride and efficiency test) of its certified locomotive engineers.
- As provided for in 240.129, each railroad must have a program for the ongoing monitoring of its locomotive engineers to assure that they operate their locomotives in conformity with the railroad's operating rules and practices including methods of safe train handling and relevant Federal safety rules.
- 240.129 directs that the observation (check ride) be conducted by a DSLE but provides a railroad latitude in selecting the design of its own observation procedures (including the duration of the observation process, reliance on tapes that record the specifics of train operation, and the specific aspects of the engineer's performance to be covered).
- The section also gives the railroad the latitude to employ either a Type I or a Type II simulator (properly programmed) to conduct monitoring observations.
- A railroad must describe in section 6 of its program submission how it will use that latitude to assure that the railroad is monitoring that its engineers demonstrate their skills concerning the safe discharge of their train operation responsibilities.

Appendix B to Part 240

## Annual Operational Monitoring

Each calendar year, each certified locomotive engineer must receive:

- At least one operational performance monitoring observation (check ride) by a DSLE
- At least one operating rules compliance (efficiency) test

2

### **Criteria for monitoring operational performance of certified engineers.**

- Each railroad's program must include criteria and procedures for implementing 240.129 [ annual monitoring observations].
- A railroad shall have procedures for monitoring the operational performance of those it has determined as qualified as a locomotive engineer in either train or locomotive service.

**NOTE:** This is in addition to the performance skills test required to be performed prior to certification and recertification (every 3 years).

- Each railroad to which Part 240 applies shall, prior to FRA approval of its program in accordance with 240.201, have a program to monitor the conduct of its certified locomotive engineers by performing both operational monitoring observations (check ride) and by conducting unannounced operating rules compliance (efficiency) tests.
- The program shall be conducted so that each locomotive engineer shall be given at least one operational monitoring observation (check ride) by a qualified DSLE in each calendar year.
- The program shall be conducted so that each locomotive engineer shall be given at least one unannounced compliance test (efficiency test) each calendar year.

240.129

240.303 (a)



## Annual Operational Monitoring

- A railroad's failure to conduct the annual check ride and/or efficiency test, does not invalidate an engineer's certification status
- Such failure may constitute a violation of 240.303(b)

3

• In the preamble to the Interim Final Rule (page 18998), FRA was asked to clarify details about the conduct of annual monitoring efforts. Under relatively routine circumstances, such as illness, it is foreseeable that a person might not be given his annual check ride or operational compliance (efficiency) test. Although the rules do not appear to provide that a failure to administer an annual check ride or operational compliance test will serve to invalidate a person's certification status, there is concern that FRA might interpret the rules to dictate that response.

The certification rule does not provide that a failure to administer an annual check ride or operational compliance test will serve to invalidate a person's certification status. If FRA discovers that a railroad has not conducted these annual events, FRA will inquire into the reasons behind that failure. When there are valid reasons for not conducting these events, such as illness, absence, or some similar legitimate explanation, FRA will take no further action. If a railroad lacks valid reasons for such failure then FRA will consider the need for remedial action to preclude recurrence of such failures by the railroad.

• If this operational monitoring observation is not conducted within the calendar year, a violation of 240.303(b) may have occurred.

240.129

240.303

## Operational Monitoring Observation (Check Ride)

- Annual check ride by DSLE (**does not have to be qualified on territory**) for a reasonable length of time or
- Event recorder reading (railroad must indicate how it determines what person was at controls & what signal indications or other constraints were applicable)

4

The operational monitoring observation procedures shall:

- Be designed to determine that the person possesses and routinely employs the skills to safely operate locomotives and/or trains, including the proper application of the railroad's rules and practices for the safe operation of locomotives and trains;
- Be designed so that each engineer shall be annually monitored by a DSLE, **who does not need to be qualified on the physical characteristics of the territory over which the operational performance monitoring will be conducted.**
- Be designed so that the locomotive engineer is either accompanied by the designated supervisor for a reasonable length of time or has his or her train handling activities electronically recorded by a train operations event recorder.

NOTE: Per Appendix B, a railroad that intends to employ train operation event recorder tapes shall indicate how it anticipates determining what person was at the controls and what signal indications or other operational constraints, if any, were applicable to the train's movement.

(continued)

240.129 (c)

Appendix B

## Operational Monitoring Observation (Check Ride)

- Annual check ride by DSLE (**does not have to be qualified on territory**) for a reasonable length of time or
- Event recorder reading (railroad must indicate how it determines what person was at controls & what signal indications or other constraints were applicable)

5

- Historically, the information obtained from event recorder tapes has become the most reliable source of information in determining an engineer's actions just prior to a particular incident. Part 229.25(e)(3) prescribes procedures for testing an event recorder during locomotive 92-day inspections. The documentation of this inspection must be maintained at the same inspection point.
- The regulations do not address inconsistencies in data that periodically appear on event recorder tapes. If it is determined that the information on the tape is consistent with actual train operations and follows a logical sequence of events leading up to a particular incident, the information is usually considered reliable. If, on the other hand, the data is distorted in such a fashion that there can be no logical conclusion drawn from the content, the information is disregarded. The LERB considers many petitions involving train speed violations. Incidents that involve inconsistencies in event recorder information are handled on a case by case basis.

240.129

240.303

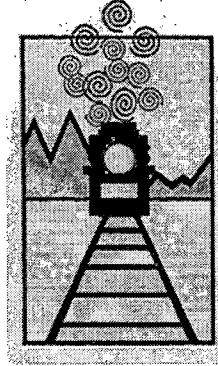
229.5

229.25

229.135

## Operational Monitoring Observation (Check Ride)

- Annual check ride by one of following:
  - Actual onboard train observation
  - Type I or II train ride simulation
  - Locomotive event recorder reading



6

The operational monitoring observation procedures may be designed so that the locomotive engineer being monitored either:

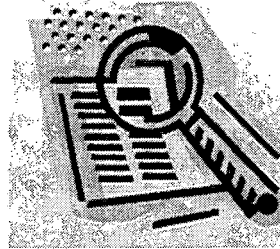
- Is at the controls of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification or
- Is at the controls of a Type I or Type II simulator programmed to replicate the responsive behavior of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification.

**NOTE:** This "check ride" is not part of a test, but to provide for observation performance in routine operations, rather than merely in test environments.

240.129      240.303

## Operational Monitoring Observation (Check Ride)

- Within 30 days of this event, the date must be recorded on the engineer's certificate or supplemental document
- DSLE does not have to sign
- If cut-off or set-back, railroad should address in its program (recommend 60 days)



7

- Each certificate issued in compliance with Part 240 shall show the date of the person's last operational monitoring event as required by 240.129 (c) and 240.303 (b), unless that information is reflected on supplementary documents (such as rulebook, timetable, etc.) which the locomotive engineer has in his or her possession when operating a locomotive. (see page 4 of the Certificate & Pilots tab for additional certificate requirements)

**NOTE:** When the date of the check ride is entered, there is no requirement for the DSLE to "sign" the certificate or supplemental document.

- If an engineer is cut-off or set-back and does not receive their annual monitoring check ride for that reason, the railroad should address in its program how that situation will be handled. It is recommended that the railroad conduct the check-ride within 60 days in that case.

240.223 (a)(7)

## Operational Monitoring Observation (Check Ride)

***If an engineer receives a "performance skills test" (required every 3 years), will that suffice as his or her annual monitoring observation (check ride) for that one year?***

8

**QUESTION:** If an engineer receives a "performance skills test" (required every 3 years) will that suffice as his or her annual monitoring observation for that one year?

**ANSWER:** Yes, but the railroad's program should address this, and the date should be noted on the engineer's certificate.

## Operating Rules Compliance (Efficiency) Test

Unannounced test (by any official) each calendar year that requires:

- Response to "less than clear" signals
- Response to less favorable conditions
- Accident reporting (cause cited)
- Distributed throughout 24-hour day
- Without prior notice to engineer

9

The testing and examination procedures selected by the railroad for the conduct of a monitoring program shall be:

- Designed so that each locomotive engineer shall be given at least one unannounced test each calendar year.
- Designed to test engineer compliance with provisions of the railroad's operating rules that require response to signals that display less than a "clear" aspect, if the railroad operates with a signal system that must comply with Part 236.
- Designed to test engineer compliance with provisions of the railroad's operating rules, timetable or other mandatory directives that require affirmative response by the locomotive engineer to less favorable conditions than that which existed prior to initiation of the test (such as slow orders, stop signs, work limits, flagman, etc.);
- Designed to test engineer compliance with provisions of the railroad's operating rules, timetable or other mandatory directives violation of which by engineers were cited by the railroad as the cause of train accident or train incidents in accident reports filed in compliance with Part 225 in the preceding calendar year.

(continued)

240.129 (e)

240.303 (d)

## Operating Rules Compliance (Efficiency) Test

- Efficiency test can be performed by any railroad official
- Date of efficiency test does NOT have to be entered on the certificate, but must be kept in railroad's records (within 30 days)
- Failure to receive an efficiency test does not mean the certificate is invalid

10

- Designed so the administration of these tests is effectively distributed throughout whatever portion of a 24-hour day that the railroad conducts its operation; and
- Designed so individual tests are administered without prior notice to the engineer being tested.

NOTE: 240.303 (d)(6) the unannounced test program shall be conducted so that the results of the test are recorded on the certificate and entered on the record established under 240.215 [retaining information supporting determinations] within 30 days of the day the test is administered.

NOTE: OP-97-32 clarifies that this efficiency test can be performed by any railroad official. The date of this test is NOT required to be written on the certificate or other documentation in the engineer's possession, but must be kept in railroad records required by 240.215(e)(3) and 217.9(c).

- If an efficiency test was not conducted within the calendar year, a violation of 240.303(c) may have occurred.
- If the efficiency test was not performed according to the outlined procedures, a violation of 240.303(d) may have occurred.

240.129 (e)

240.303 (d)



## Operating Rules Compliance (Efficiency) Test

- For engineers who do not routinely operate a locomotive, FRA considers an annual efficiency test conducted on a locomotive simulator to be valid so long as such testing retains its basic integrity
- Tolerable provided railroads do not lose the element of surprise through constant repetition.

11

• FRA was asked to clarify the conduct of annual monitoring efforts, regarding the administration of an unannounced compliance test as part of an annual check ride particularly if a railroad uses a simulator to conduct such operations. The preamble to the Interim Final Rule (page 18999) addresses this issue, as follows:

Some railroads plan to use their simulators to assure that some engineers, who do not routinely operate a locomotive in the course of their normal duties, maintain their skill performance levels by annually operating on a simulator. If that simulator can reasonably be expected to be the only scheduled operating experience the person will have in a year, several parties have questioned whether a railroad can fulfill its duty to conduct an annual operational compliance test (efficiency test) by including the test as part of that simulator program. The concern is, that by including the test in the simulator program, the railroad's test will no longer be completely unannounced.

FRA will consider these simulator tests to be valid compliance tests so long as such testing retains its basic integrity. While FRA recognizes that to some degree permitting such a simulator test means that the test loses some of its unanticipated quality, FRA sees that as tolerable provided railroads not attempt to subvert this authority by employing testing procedures that lose their element of surprise through constant repetition.

## Operating Rules Compliance (Efficiency) Test

FRA considers the failure of an engineer to pass a properly conducted efficiency test as subject to the provisions of 240.117



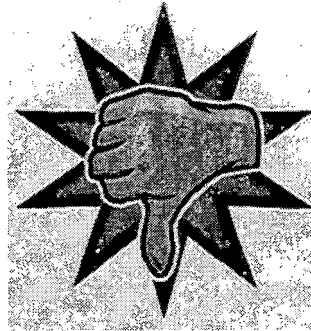
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- When an engineer fails an efficiency test, there is no specific Federal requirement that keeps engineers from operating a locomotive until he successfully passes an efficiency test (such as there is in knowledge or performance skills tests).
- However, due to confusion in this area, FRA issued Technical Bulletin OP-97-33 on February 13, 1996. It states, "FRA's external customers have raised the issue of whether revocation should ever occur due to a locomotive engineer's failure of an operational test or inspection conducted pursuant to Part 217. The question has also been raised in the context as to whether an improperly conducted test could have decertification implications. Anecdotes have been presented alleging abuse of Part 217 and Part 240 by entrapment. Examples have alleged "bucket tests," where the fusee was concealed under a bucket until the last moment when a supervisor kicks the bucket over, revealing the fusee. When the engineer could not get stopped prior to the recently exposed fusee, he/she was decertified.

**Policy:** FRA considers the failure of an engineer to pass a properly conducted operational test [related to one of the events listed under 240.117 (e)] as subject to provisions of 240.117. FRA does not consider improper operational tests, such as the alleged "bucket test," to be legitimate tests of operational skills or knowledge for any purpose, and certainly not for purposes of decertification."

## Operating Rules Compliance (Efficiency) Test

**FRA does not  
consider improper  
efficiency tests to  
be legitimate tests  
of operational  
skills or knowledge  
for any purpose,  
including  
decertification**



13

- **An operational test that is not conducted in compliance with Part 240, a railroad's operating rules, or a railroad's program under 217.9, will not be considered a legitimate test of operational skill or knowledge, and will not be considered for certification, recertification or revocation purposes.**

**NOTE: FRA will permit but not require a railroad responsible for conducting joint operations, which involve certified engineers from other railroads operating over its territory, to annually observe and perform compliance tests of all such engineers.**

240.117 (f)(3)

## Operating Rules Compliance (Efficiency) Test

***If an engineer gets by an  
unattended burning fusee in a  
yard track, can he or she be  
decertified?***

***Is this considered a stop signal or  
violation of restricted speed?***

14

**QUESTION:** If an engineer gets by an unattended burning fusee in a yard track, can he or she be decertified?

**ANSWER:** Yes, passing a burning fusee is a decertifiable offense if the fusee is properly displayed, i.e., in plain view and unobstructed, not withstanding track curvature. In this particular instance, the fusee represents a stop signal, even though the test was to determine compliance with restricted speed. Most railroad operating rules consider a burning fusee to be a stop signal (except Conrail). The determining factor lies with just how the railroad applies its own rules. Banner or barricade tests are usually interpreted as stop signal tests even though they represent obstructions. A railroad could state that the banners represent obstructions only and are not considered stop signals. Therefore, if a train got by one, the engineer would be found guilty of noncompliance with restricted speed, which would not be a decertifiable event unless something occurred that made the incident reportable under Part 225.

For restricted speed tests, forget about stopping "within half the range of vision." If an engineer stops short of the obstruction, he or she passes the test regardless of distance. The language was intended to address a situation where two opposing movements would stop before colliding. The rule was not intended to require movements to stop within half the range of vision under all circumstances. If this was true, trains would be required to stop one half mile from a signal that could be seen from a distance of one mile away.



U.S. Department  
of Transportation

Federal Railroad  
Administration

OPERATING PRACTICES DIVISION

OP-97-32

Date:

Subject: **Action: Technical Bulletin**

From:  **Edward R. English, Director, OSAC**

To: **All Regions**

The following procedures are designed to guide and assist inspectors in determining railroad compliance with Parts 240.129 and 240.303 (annual operational monitoring and operating rules compliance testing of engineers). Due to the confusion concerning the language used to describe the time limitations of these tests, the enforcement of this part of the regulation should allow for these misunderstandings. Initially, the railroad should be advised of FRA's policy concerning the time limitations described in Parts 240.129 and 240.303 (b) and (c). Following this visit, the railroad will be required to comply.

#### **Inspection Procedures**

##### **Part 240.303(b) Operational Monitoring Observations:**

This procedure is performed by a DSLE and must be performed at least once each calendar year (January 1 to December 31). The operational monitoring observation date should appear on the engineer's certificate or in his supplemental documents (timetable, rule book, etc.) If this observation has not been conducted within the calendar year, a violation of Part 240.303(b) may have occurred; and

##### **Part 240.303(c) Operating Rules Compliance Test:**

1. This test can be performed by any railroad official and must be performed each calendar year. The date of this test is not required to be written on any of the engineer's documents, but must be kept in railroad records required by Part 240.215(e)(3) and Part 217.9(c). If this test was not conducted within the calendar year (January 1st to December 31st), a violation of Part 240.303(c) may have occurred.

2. Determine if this test included the following:
- a. was unannounced;
  - b. signal (Part 236) compliance less favorable than a "clear" aspect; or
  - c. engineer response to slow orders; stop signs; work limits; flagman; etc.; or
  - d. were rules tested that were attributed to accidents the previous year, that involved engineer rules compliance;
  - e. were the tests conducted throughout whatever portion of a 24-hour day that the railroad conducts operations; and
  - f. no prior notice should have been given to the engineer being tested.

If the test was not performed according to the procedures outlined above, a violation of Part 240.303(d) may have occurred.

#

certification action against engineers for their belief that federal law requires them to do so. Meanwhile, it will benefit both engineers and railroads by eliminating many truly minor accidents or incidents from impacting certification status.

### Operational Tests

FRA's external customers have raised the issue of whether revocation should ever occur due to a locomotive engineer's failure of an operational test or inspection conducted pursuant to 49 CFR Part 217. The question has also been raised in the context as to whether an improperly conducted test could have decertification implications. Anecdotes have been presented alleging abuse of Part 217 and Part 240 by entrapment. Examples have alleged "bucket tests," where the fusee was concealed under a bucket until the last moment when a supervisor kicks the bucket over revealing the fusee. When the engineer could not get stopped prior to the recently exposed fusee, he/she was decertified.

**Policy:** FRA considers the failure of an engineer to pass a properly conducted operational test as subject to provisions of 240.117. FRA does not consider improper operational tests, such as the alleged "bucket test", to be legitimate tests of operational skills or knowledge for any purpose, and certainly not for purposes of decertification.

### Definition of Main Track

The Interim Final Rule adds the following definition of Main Track at 240.7

Main track means 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; or any form of absolute or manual block system.

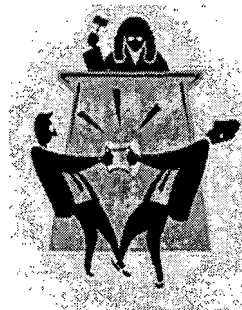
Questions have been raised regarding the term "mandatory directive" and its decertification implications under 240.117 (e)(4).

**Policy:** This term is used in Part 240 as it has historically been used in Part 220: "authority for the conduct of a railroad operation." It includes all situations where a segment of main track is occupied without permission or authority in accordance with the railroad's operating rules. It does not include occupying a segment of track contrary to advisory information, such as that from a yardmaster relative to which track to use in a yard.





# DISPUTE RESOLUTION PROCEDURES



## Dispute Resolution Procedures

- If denied (re)certification, or certification revoked, person may petition FRA to review the railroad's decision
- FRA delegated initial responsibility to the Locomotive Engineer Review Board
- LERB composed of at least 3 FRA employees selected by the Administrator

2

- Any person who has been denied certification, denied recertification, or has had his certificate revoked and believes that a railroad incorrectly determined that he failed to meet the requirements of this regulation when making the decision to deny or revoke certification, may petition the FRA Administrator to review the railroad's decision.
- The FRA Administrator has delegated initial responsibility for adjudicating such disputes to the Locomotive Engineer Review Board (LERB).
- The LERB shall be composed of at least three employees of the FRA selected by the Administrator. The Administrator further delegated this selection responsibility to the Director, Office of Safety Enforcement. The Administrator also delegated to the Chief Counsel the authority to appoint, from his staff, the Senior Counsel to the LERB. Trial Attorney Alan Nagler presently serves in this capacity.
- The LERB was created by FRA Order 1100.18, dated April 17, 1992, and currently consists of Chairman, John McGary (Regional Administrator in Hurst), Jim Elrod (OP Inspector in Kansas City), and Ken Boynton (OP Inspector in Riverside).

240.401

## Locomotive Engineer Review Board

- Purpose of LERB is to review petitions after the railroad has opportunity to respond to petitioner's assertions
- Render decision based solely on the record presented to the LERB
- LERB must consider whether incident is a certification issue, railroad's rule or policy, evidence to confirm railroad's decision, and procedural requirements

3

- The purpose of the LERB is to initially review submitted petitions after providing the railroad the opportunity to respond to the petitioner's assertions. It is a review of the record, not a hearing.
- In the preamble to the Interim Final Rule, page 19001, FRA responded to a request for clarification on FRA's review process. Based on the written record, FRA staff will analyze the railroad decision and make a recommendation to the LERB. The Board will determine whether the denial or revocation was proper under the regulation.
- In reviewing each petition, the Board is responsible for considering factual & procedural (240.307) disputes. Factual disputes could involve questions of whether the information relied on by the railroad was correct (i.e., person did pass knowledge test or operated train within prescribed speed limit).
- Factual disputes could also involve whether certain equitable considerations warrant reversal of the railroad's decision on the grounds that, due to certain peculiar underlying facts, the railroad's decision would produce an unjust result not intended by FRA's rules (i.e., the Board will consider assertions that a person failed to operate the train within prescribed speed limits because of defective equipment).
- In considering factual assertions, the LERB uses a "substantial evidence" standard and in considering procedural assertions, the LERB uses a "substantial harm" standard.

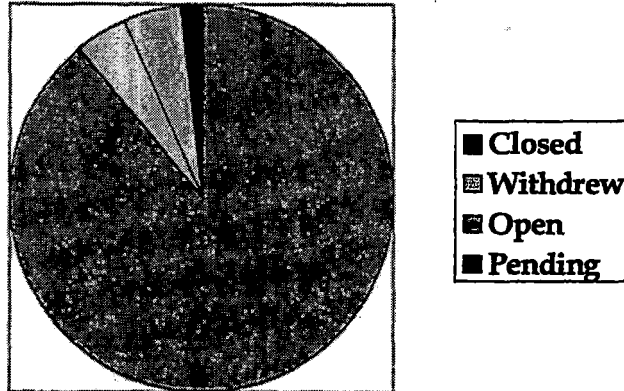
## Locomotive Engineer Review Board

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- Render decision based solely on the record presented to the LERB
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4

- Finally, the Board will consider procedural disputes, which involve questions of whether the process followed by the railroad, such as correct adherence to time limits prescribed in FRA's rule or a governing agreement, was appropriate and fair.
- When considering factual issues, the Board will determine whether there is substantial evidence to support the railroad's decision, and a negative finding is grounds for reversal. When considering procedural issues, the Board's standard for review will be to determine whether substantial harm was caused the petitioner by virtue of the failure to adhere to the dictated procedures for making the railroad's decision. A finding of substantial harm is grounds for reversing the railroad's decision.
- As to legal issues involving interpretation of regulations or statutes administered by FRA, the Board will provide "de nova" review, which means that the Board will not be bound by legal interpretations reached by the railroad in making its decision.
- The decision-making power of the Board is limited to approving the railroad decision, overturning the railroad decision, or returning the case to the railroad for additional fact finding. The Board is not empowered to make determinations concerning qualifications under this regulation. The contractual consequences, if any, of those determinations must be

## Petition Status



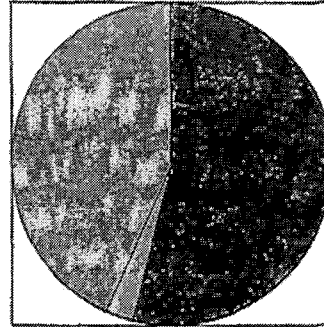
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resolved under dispute resolution mechanisms that do not directly involve FRA. For example, FRA cannot order a railroad to alter its seniority rosters or make an award of back pay to accommodate a finding that a railroad wrongfully denied certification.

- In reviewing petitions, FRA's role is to assure the qualification determinations are performed in compliance with the rule and to take appropriate remedial action if it detects noncompliance...All Board decisions are provided in writing to both the petitioner and the relevant railroad and contain an explanation of the Board's findings. The Board's decision is subject to appeal by either adversely affected party.
- The LERB reports quarterly to the Associate Administrator for Safety on actions taken and the status of proceedings pending before the Board
- To date (11/09/00) the LERB has received 757 petitions. Of those 673 have been closed, 36 are open, 33 were withdrawn and 15 are pending.

## LERB Decision Percentages

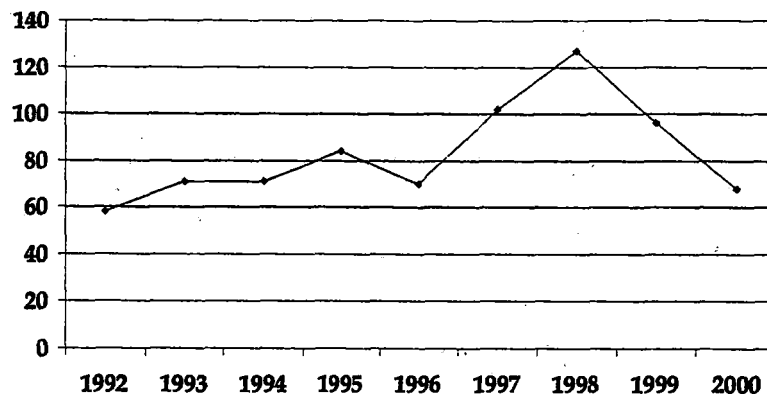
- Denied - 53.79%
- Granted - 43.44%
- Dismissed - 2.77%



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- FRA has dismissed 2.77%, has granted 43.44% (overturned railroad's decision) and has denied 53.79% of the petitions (as of 11/9/2000).

## Yearly Petition Submissions

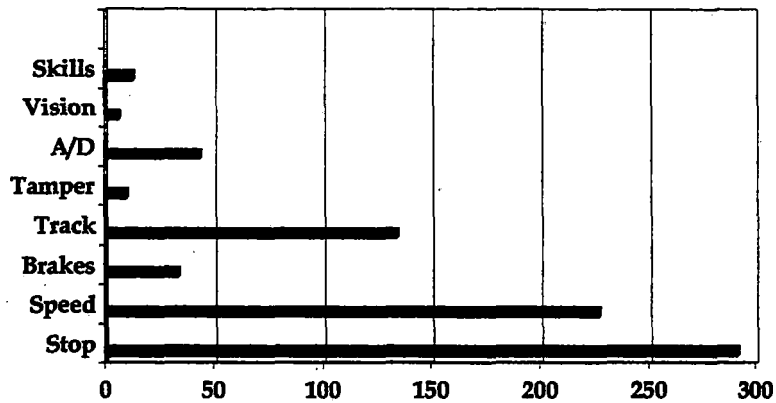


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- **Yearly petition submissions are as follows:**

1992 - 58	1995 - 84	1998 - 127
1993 - 71	1996 - 70	1999 - 106
1994 - 71	1997 - 102	2000 - 68 (as of 11/09/2000)
TOTAL = 757		

## Petitions by Decertification Causes



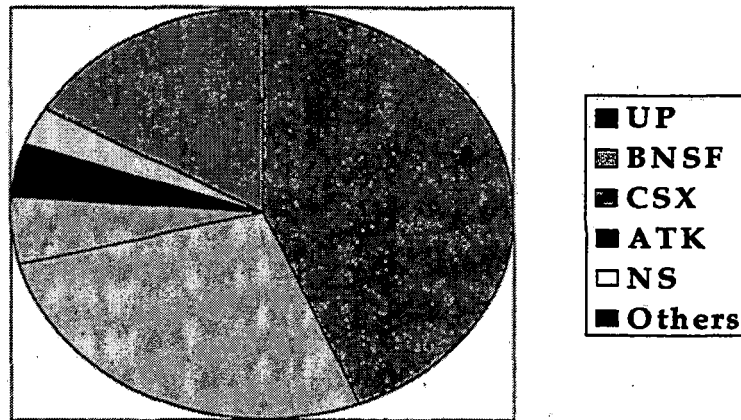
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### • Petitions by decertification events (From 1992 to 1999):

Stop Signals - 291	Brake Tests - 33	Hearing - 0
Speed - 227	Skill Test - 13	
Authorities - 134	Vision - 6	
A/D - 43	Tampering - 10	



## Major Railroad Petition Percentages (1999)

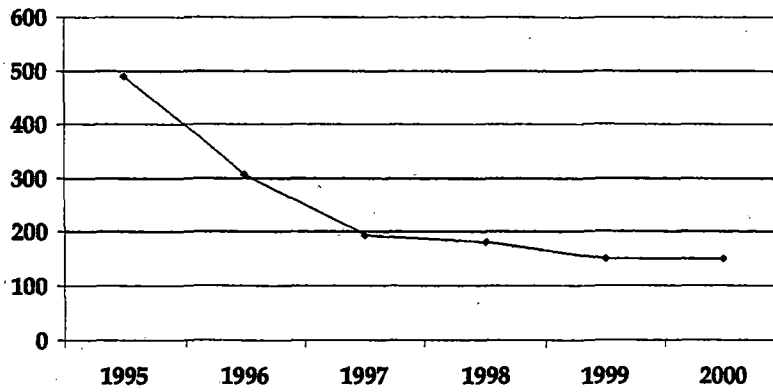


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• **Number of petitions received by railroad in 1998 and 1999:**

	<u>1998</u>	<u>1999</u>	<u>Total Engineers Major RRs</u>
UP	43.31%	44.09%	10,536 (33.4%)
BNSF	18.90%	25.80%	7,250 (22.98%)
CSX	2.36%	5.37%	5,300 (16.80%)
ATK	3.94%	4.30%	1,600 (5.07%)
NS	8.66%	3.23%	3,614 (11.46%)
Others	22.83%	17.20%	CR 3,240

## Average Petition Completion Times



10

- **Average petition completion times.**

1995 – 489 days

1996 – 306 days

1997 – 193 days

1998 – 182 days

1999 – 151 days

2000 – 150 days (as of 11/09/00)

## Four Levels of Appeal

- LERB
- Administrative hearing conducted by presiding officer
- Appeal to the FRA administrator
- Judicial review

11

The LERB is only the first level of appeal. There are actually four levels of appeal:

- Locomotive Engineer Review Board
- Administrative Hearing (see page 15)
- Appeal to the Administrator (see page 23)
- Judicial Review (suit in a Federal appellate court over an FRA final agency action to deny certification, recertification, or revocation – based on section 706 of the Administrative Procedure Act – the court would need to decide whether the FRA Administrator's decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law)

## Petition Requirements

- Be in writing
- Three (3) copies to FRA Docket Clerk
- Supporting information (petitioner's full name, current mailing address, daytime phone, name & address railroad); and facts (locations, dates, identities of all persons present or involved in railroad's actions)

12

- To obtain review of a railroad's decision to deny certification, deny recertification, or revoke certification, a person shall file a petition for review that complies with 240.403.
  - Each petition shall:
    - 1) Be in writing;
    - 2) Be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW, WA, DC 20590;
    - 3) Contain all available information that the person thinks supports the person's belief that the railroad acted improperly, including:
      - (i) The petitioner's full name;
      - (ii) The petitioner's current mailing address;
      - (iii) The petitioner's daytime telephone number;
      - (iv) The name and address of the railroad; and
      - (v) The facts that the petitioner believes constitute the improper action by the railroad, specifying the locations, dates, and identities of all person who were present or involved in the railroad's actions (to the degree known by the petitioner);
- (continued)

240.403

## Petition Requirements

- Explain the nature of the remedial action sought
- Include copy of all written documents
- Filed in timely manner (within 6 months after date of railroad's denial or 4 months after revocation decision)
- Filing period for revocation may be extended by LERB for cause shown

13

4) Explain the nature of the remedial action sought;

5) Be supplemented by a copy of all written documents in the petitioner's possession that document that railroad's decision; and

6) Be filed in a timely manner. A petition seeking review of a railroad's decision to revoke or deny (re)certification filed with FRA more than 6 months after the date of the railroad's denial or revocation decision will be denied as untimely.

- A petition seeking review of a railroad's decision to deny certification or recertification filed with FRA more than 180 days after the date of the railroad's denial decision will be denied as untimely.

- A petition seeking review of a railroad's decision to revoke certification in accordance with the procedures required by 240.307 filed with FRA more than 120 days after the date of the railroad's revocation decision will be denied as **untimely except that the LERB for cause shown may extend the petition filing period at any time in its discretion: (1) Provided the request for extension is filed before the expiration of the period provided in this paragraph; or (2) Provided that the failure to timely file was the result of excusable neglect.**

- A party aggrieved by a Board decision to deny a petition as untimely may file an appeal with the Administrator in accordance with 240.411.

240.403

## Processing Qualification Review Petitions

- Acknowledge in writing
- Provide copy of petition to railroad
- Railroad - 60 days to submit info to FRA
- Office of safety prepares case summary
- Referred to LERB for a decision (grant or deny)
- Decision in writing to petitioner & RR

14

- Each petition shall be acknowledged in writing by FRA and contain the assigned docket number and statement of FRA's intent to render a decision within 6 months.
- Upon receipt, FRA will notify the railroad that it has received the petition and provide the railroad with a copy of the petition.
- The railroad will be given a period of not to exceed 60 days to submit to FRA any information the railroad considers pertinent to the petition. **Late filings will only be considered to the extent practicable.**
- A railroad that submits such information shall: (1) Identify the petitioner by name and the docket number; (2) Provide a copy of the information being submitted to FRA to the petitioner; (3) **Submit the info in triplicate to the Docket Clerk, FRA.**
- Each petition will then be referred to the LERB for a decision.
- The Board will determine whether the denial or revocation of (re)certification was improper under this regulation (i.e., based on an incorrect determination that the person failed to meet the qualification requirements of this regulation) and grant or deny the petition accordingly. The Board will not otherwise consider the propriety of a railroad's decision, i.e., it will not consider whether the railroad properly applied its own more stringent requirements.
- Notice of that decision will be provided in writing to both the petitioner and the railroad. The decision will include findings of fact on which it is based.

240.405

## Request for Administrative Hearing (240.407)

- If adversely affected by LERB decision, petitioner or railroad has right to a 240.409 hearing
- File written request within 20 days of LERB's decision (name, address, telephone no., representative, factual issues, signature)
- FRA will arrange for presiding officer

15

- If adversely affected by the LERB decision, either the petitioner before the Board or the railroad involved shall have a right to an administrative proceeding as prescribed by 240.409.
- To exercise that right, the adversely affected party shall, within 20 days of service of the Board's decision on that party, file a written request with the Docket Clerk, DOT Central Docket Management System, Nassif Bldg., Seventh Street, SW, WA, DC 20590
- The result of a failure to request a hearing within the period provided is that the LERB's decision will constitute final agency action.
- If a party elects to request a hearing, that person shall submit a written request to the Docket Clerk containing the following:
  - 1) The name, address, and telephone number of the respondent and the requesting party's designated representative, if any;
  - 2) The specific factual issues, industry rules, regulations, or laws that the requesting party alleges need to be examined in connection with the certification decision in question; and
  - 3) The signature of the requesting party or the requesting party's representative, if any.
- Upon receipt of a hearing request complying with the above, FRA shall arrange for the appointment of a presiding officer (Joe King) who shall schedule the hearing for the earliest practicable date.

240.407

## Administrative Hearing (240.409)

- Conducted by presiding officer
- *De novo* hearing to find facts & determine correct application
- May authorize discovery & impose non-monetary sanctions for willful failure or refusal to comply with discovery requests

16

- An administrative hearing for an engineer qualification petition shall be conducted by a presiding officer, who can be any person authorized by the Administrator, including an administrative law judge.
- The presiding officer may exercise the powers of the Administrator to regulate the conduct of the hearing for the purpose of achieving a prompt and fair determination of all material issues in controversy.
- The presiding officer shall convene and preside over the hearing. The hearing shall be a *de novo* hearing to find the relevant facts and determine the correct application of Part 240 to those facts. The presiding officer may determine that there is no genuine issue covering some or all material facts and limit evidentiary proceedings to any issues of material fact as to which there is a genuine dispute.
- The presiding officer may authorize discovery of the types and quantities which in the presiding officer's discretion will contribute to a fair hearing without unduly burdening the parties. The presiding officer may impose appropriate non-monetary sanctions, including limitations as to the presentation of evidence and issues for any party's willful failure or refusal to comply with approved discovery requests.

240.409



## Administrative Hearing (240.409)

- All petitions, motions, & responses must be signed
- All documents filed or served must be served upon all parties

17

- Every petition, motion, response, or other authorized or required document shall be signed by the party filing the same, or by a duly authorized officer or representative of record, or by any other person. If signed by such other person, the reason therefore must be stated and the power of attorney or other authority authorizing such other person to subscribe the document must be filed with the document. The signature of the person subscribing any document constitutes a certification that he has read the document; that to the best of his knowledge, information and belief every statement contained in the document is true and no such statements are misleading; and that it is not interposed for delay or to be vexatious.
- After the request for a hearing is filed, all documents filed or served upon one party must be served upon all parties. Each party may designate a person upon whom service is to be made when not specified by law, regulation, or directive of the presiding officer. If a party does not designate a person upon whom service is to be made, then service may be made upon any person having subscribed to a submission of the party being served, unless otherwise specified by law, regulation, or directive of the presiding officer. Proof of service shall accompany all documents when they are tendered for filing.

240.409

## Administrative Hearing (240.409)

- May strike or dismiss documents
- May be heard in person or by a representative
- May have an attorney and be examined
- May request to consolidate or separate the hearing of 2 or more petitions
- Requests to extend action periods

18

- If any document initiating, filed, or served in a proceeding is not in substantial compliance with the applicable law, regulation, or directive of the presiding officer, the presiding officer may strike or dismiss all or part of such document, or require its amendment.
- Any party to a proceeding may appear and be heard in person or by an authorized representative.
- Any person testifying at a hearing or deposition may be accompanied, represented, and advised by an attorney or other representative, and may be examined by that person.
- Any party may request to consolidate or separate the hearing of two or more petitions by motion to the presiding officer, when they arise from the same or similar facts or when the matters are for any reason deemed more efficiently heard together.
- Except as provided in 240.407(c) [failure to timely request hearing] and 240.409(u)(4) [written decision constituting final agency action unless an aggrieved party files an appeal within 35 days after issuance], whenever a party has the right or is required to take action within a period prescribed by this part, or by law, regulation, or directive of the presiding officer, the presiding officer **may extend such period with or without notice, for good cause**, provided another party is not substantially prejudiced by such extension. A request to extend a period which has already expired may be denied as untimely.

## Administrative Hearing (240.409)

- Filing of motions
- Witness testimony given under oath and recorded verbatim



19

- Any application to the presiding officer for an order or ruling not otherwise specifically provided for in this part shall be by motion. The motion shall be filed with the presiding officer and, if written, served upon all parties. All motions, unless made during the hearing, shall be written. Motions made during hearings may be made orally on the record, except that the presiding officer may direct that any oral motion be reduced to writing. Any motion shall state with particularity the grounds therefore and the relief or order sought, and shall be accompanied by any affidavits or other evidence desired to be relied upon which is not already part of the record. Any matter submitted in response to a written motion must be filed and served within 14 days of the motion, or within such other period as directed by the presiding officer.
- Testimony by witnesses at the hearing shall be given under oath and the hearing shall be recorded verbatim. The presiding officer shall give the parties to the proceeding adequate opportunity during the course of the hearing for the presentation of arguments in support of or in opposition to motions, and objections and exceptions to rulings of the presiding officer. The presiding officer may permit oral argument on any issues for which the presiding officer deems it appropriate and beneficial. Any evidence or argument received or proffered orally shall be transcribed and made a part of the record. Any physical evidence

## Administrative Hearing (240.409)

- Federal Rules of Evidence for U.S. Courts and Magistrates
- Presiding officer may administer oaths, issue subpoenas, adopt written evidence procedures, examine witnesses, & regulate the course of the hearing)

20

or written argument received or proffered shall be made a part of the record, except that the presiding officer may authorize the substitution of copies, photographs, or descriptions, when deemed to be appropriate.

- The presiding officer shall employ the Federal Rules of Evidence for United States Courts and Magistrates as general guidelines for the introduction of evidence. Notwithstanding (the previous paragraph m), all relevant and probative evidence shall be received unless the presiding officer determines the evidence to be unduly repetitive or so extensive and lacking in relevancy that its admission would impair the prompt, orderly, and fair resolution of the proceeding.
- The presiding officer may:
  - 1) Administer oaths and affirmations;
  - 2) Issue subpoenas as provided for in 209.7;
  - 3) Adopt any needed procedures for the submission of evidence in written form;
  - 4) Examine witnesses at the hearing;
  - 5) Convene, recess, adjourn or otherwise regulate the course of the hearing; and
  - 6) Take any other action authorized by or consistent with the provisions of this part and permitted by law that may expedite the hearing or aid in the disposition of the proceeding.

## Administrative Hearing (240.409)

- The petitioner, the railroad, and FRA shall be parties at the hearing (may testify and conduct cross-examination)
- The “hearing petitioner” has the burden of proving its case by a preponderance of the evidence
- FRA is a mandatory party & at the start of the hearing is a respondent

21

- The petitioner before the LERB, the railroad involved in taking the certification action, and FRA shall be parties at the hearing. All parties may participate in the hearing and may appear and be heard on their own behalf or through designated representatives. All parties may offer relevant evidence, including testimony, and may conduct such cross-examination of witnesses as may be required to make a record of the relevant facts.
- The party requesting the administrative hearing shall be the “hearing petitioner.” The hearing petitioner shall have the burden of proving its case by a preponderance of the evidence. Hence, if the hearing petitioner is the railroad involved in taking the certification action, that railroad will have the burden of proving that its decision to deny certification, deny recertification, or revoke certification was correct. Conversely, if the petitioner before the LERB is the hearing petitioner, that person will have the burden of proving that the railroad’s decision to deny certification, deny recertification, or revoke certification was incorrect. Between the petitioner before the LERB and the railroad involved in taking the certification action, the party who is not the hearing petitioner will be a respondent.
- FRA will be a mandatory party to the administrative hearing. At the start of such proceeding, FRA will be a respondent.

## Administrative Hearing (240.409)

### Written decision at close of record:

- Findings of fact & conclusions of law
- Served on all parties
- Not final for 35 days after issuance
- Constitutes final agency action unless an aggrieved party files an appeal within 35 days after issuance
- Does not set precedence

22

- The record in the proceeding shall be closed at the conclusion of the evidentiary hearing unless the presiding officer allows additional time for the submission of additional evidence. In such instances the record shall be left open for such time as the presiding officer grants for that purpose.
- At the close of the record, the presiding officer shall prepare a written decision in the proceeding.
- The decision:
  - 1) Shall contain the findings of fact and conclusions of law, as well as the basis for each concerning all material issues of fact or law presented on the record;
  - 2) Shall be served on the hearing petitioner and all other parties to the proceeding;
  - 3) Shall not become final for 35 days after issuance;
  - 4) Constitutes final agency action unless an aggrieved party files an appeal within 35 days after issuance; and
  - 5) Is not precedential.

240.409

## Appeals (240.411)

- Aggrieved party may file an appeal within 35 days
- May file a reply to the appeal in 25 days
- Administrator may extend the periods
- Administrator has sole discretion to permit oral argument on the appeal
- Administrator may **remand, vacate, affirm, reverse, alter or modify** decision

23

- Any party aggrieved by the presiding officer's decision may file an appeal. The appeal may be filed within 35 days of issuance of the decision with the FRA (WA, D.C.). A copy of the appeal shall be served on each party. The appeal shall set forth objections to the presiding officer's decision, supported by reference to applicable laws and regulations and with specific reference to the record.
- A party may file a reply to the appeal within 25 days of service of the appeal. The reply shall be supported by reference to applicable laws and regulations and with specific reference to the record, if the party relies on evidence contained in the record.
- The Administrator may extend the period for filing an appeal or a response for good cause shown, provided that the written request for extension is served before expiration of the applicable period provided in this section.
- The Administrator has sole discretion to permit oral argument on the appeal. On the Administrator's own initiative or written motion by any party, the Administrator may grant the parties an opportunity for oral argument.
- The Administrator may **remand, vacate, affirm, reverse, alter or modify** the decision of the presiding officer and the Administrator's (continued)

240.411

## Definitions of "Administrator" and "Filing"

- Administrator means the Administrator of FRA, the Deputy Administrator of FRA, or the delegate of either.
- Filing means that a document to be filed under this part, shall be deemed filed only upon receipt by the Docket Clerk.

24

decision constitutes final agency action **except where the terms of the Administrator's decision (for example, remanding a case to the presiding officer) show that the parties' administrative remedies have not been exhausted.**

- **Where a party files an appeal from a LERB decision pursuant to 240.403 (e), the Administrator may affirm or vacate the Board's decision, and may remand the petition to the Board for further proceedings. An Administrator's decision to affirm the Board's decision constitutes final agency action.**

NOTE: A remand is a tool which allows the appellate decision-maker to send a case back to the tribunal or body from which it was appealed for further deliberation.

NOTE: The authority to vacate may be necessary if the Administrator wishes to annul or set aside an entry of record or a judgment.

- The second Interim Final Rule, effective November 13, 1995, added two new definitions of "Administrator" and "Filing" to 240.7.
- **ADMINISTRATOR** means the Administrator of FRA, the Deputy Administrator of FRA, or the delegate of either.
- **FILING** means that a document to be filed under this part shall be deemed filed only upon receipt by the Docket Clerk. 240.7





# **RECORDKEEPING**

**Identification of Qualified Persons**

**Records of Relevant Data**

**Data for Joint Operations Certifications**

**Railroad Oversight Report**

1

For recordkeeping, we are going to be looking at:

- Identification of qualified persons
- Records of relevant data
- Data for joint operations certifications
- Railroad oversight report

## Identification of Qualified Persons

- Maintain written record identifying DSLEs
- Maintain a written record identifying each certified engineer to indicate:
  - Class of service
  - Date of certification



2

### **Identification of qualified persons.**

- A railroad shall maintain a written record identifying each person designated by it as a DSLE.
- A railroad shall maintain a written record identifying each person designated as a certified locomotive engineer. That listing of certified engineers shall indicate the class of service the railroad determines each person is qualified to perform and date of the railroad's certification decision.

240.221

## Identification of Qualified Persons (Joint Operations)

- For joint operations, controlling railroad's listing shall include information on joint territory engineers
  - Controlling railroad must determine how these engineers meet the qualification requirements (certified, knowledge, operating skills, physical characteristics)

3

- If a railroad is responsible for controlling joint operations territory, the listing shall include person(s) certified in accordance with 240.229 [Requirements for Joint Operations Territory], which states in part: If the controlling railroad relies on the certification issued by another railroad, the controlling railroad shall determine:
  - (1) That the person has been certified as a qualified engineer under Part 240 by the railroad which employs that individual;
  - (2) That the person certified as a locomotive engineer by the other railroad has demonstrated the necessary knowledge concerning the controlling railroad's operating rules, if the rules are different;
  - (3) That the person certified as a locomotive engineer by the other railroad has the necessary operating skills concerning the joint operations territory; and
  - (4) That the person certified as a locomotive engineer by the other railroad has the necessary familiarity with the physical characteristics for the joint operations territory.

240.221      240.229 (c)

## Identification of Qualified Persons (Joint Operations)

The simple  
exchange of  
engineer rosters  
does not comply



4

- OP-97-36, issued May 16, 1996, states that railroads have, since the inception of the regulation, considered the act of exchanging lists of their certified locomotive engineers to comply with these requirements. Under most circumstances this task is accomplished by merely providing a "seniority roster" of certified engineers to the controlling railroad. The controlling railroad must determine how these locomotive engineers meet the qualification requirements of the regulation. The simple exchange of engineer rosters does not comply with the requirements of 240.229.
- For example, if Amtrak provides a listing of its certified engineers to BNSF, BNSF is obligated to determine which Amtrak engineers are qualified to operate over BNSF trackage. The BNSF's operating rules are under the GCOR so it is understood that not all the certified engineers on the Amtrak listing are qualified on GCOR since Amtrak also operates under NORAC operating rules.
- OP-97-36 outlines FRA's policy: Although the regulation is silent on the procedures used to make these determinations and on the associated recordkeeping requirements, the railroads are required to demonstrate to FRA how these determinations are reached. FRA considers the exchange of rosters permissible in making the determinations required in 240.229 (c) (1), that is, the person is a (continued)

240.221 OP-97-36

## Identification of Qualified Persons (Joint Operations)

The simple  
exchange of  
engineer rosters  
does not comply



5

qualified engineer under the regulation. However, from this point, the exchange of rosters does not satisfy the railroad's obligation to determine that the engineer has the necessary knowledge, the operating skills and the familiarity with the physical characteristics of the joint operations territory.

Consequently, FRA is advising the regulated community that compliance inspections will expect railroads to have some type of system in place for providing to FRA that these determinations have been made. Any list of qualified persons required under 240.221 (c) should only include those persons who operate on joint territory and their qualification determinations required under 240.229 (c).

## Identification of Qualified Persons

- May be combined in one listing (if DSLEs & joint operation engineers are annotated)
- Updated annually
- Kept at divisional or regional HQ & available for inspection & copying
- May get approval to maintain electronically and/or at general offices

6

- The listings [DSLEs, certified engineers (including joint operations)] required by 240.221 shall be updated at least annually.

**NOTE:** A railroad may have only one list of certified engineers, as long as the DSLE's and Joint Operations Engineers are identified in some manner.

- The record required under 240.221 shall be kept at the divisional or regional headquarters of the railroad and shall be available for inspection or copying by FRA during regular business hours.
- A railroad may obtain approval from FRA to maintain this record electronically or maintain this record at the railroad's general offices, or both. Requests for such approval shall be filed in writing with the Associate Administrator for Safety and contain sufficient information to explain how FRA will be given access to the data that is fully equivalent to that created by compliance with 240.221 (e) [keeping it at the specified location and available for inspection and copying by FRA during regular business hours].

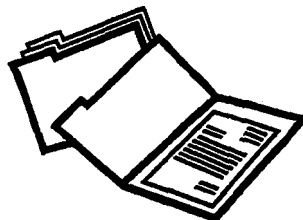
**NOTE:** While this information on Identification of Qualified Persons is included in the recordkeeping tab of this reference manual, it should be noted that there is no reference to this listing(s) in 240.215. Therefore, there is no requirement that this listing(s) be maintained for 6 years.

240.221

## Record of Relevant Data for Each Engineer/ Applicant

### Eligibility:

- Prior safety conduct
  - Alcohol/drug (5 yrs)
  - Operating rules (3 yrs)
- Former railroad data
  - Records, letter, notes
- Motor vehicle data
  - Actual records
  - EAP documents
- Applicant data (actual records)



7

### Retaining information supporting determinations.

- A railroad that issues, denies, or revokes a certificate after making the determinations required under 240.203 shall maintain a record for each certified engineer or applicant that contains the information the railroad relied on in making the determinations.
- The information concerning eligibility the railroad shall retain includes:
  - 1) Any relevant data from the railroad's records concerning the person's prior safety conduct [documents pertinent to the determinations on alcohol/drug (5 years) and operating rules compliance (3 years) as a railroad employee (current and former railroads); & as an operator of a motor vehicle(3 years); including any pertinent written documents from its EAP Counselor]. If pertinent, 240.205 requires a written document from the EAP Counselor, either reflecting his professional opinion that the person has been evaluated as not currently affected or that the person has an active substance abuse disorder & is ineligible for certification.
  - 2) Any relevant data furnished by another railroad (actual records or letter furnished; and/or railroad notes of pertinent conversations with other railroads);
  - 3) Any relevant data furnished by a governmental agency concerning the person's motor vehicle driving record (actual documents from state & NDR records); and

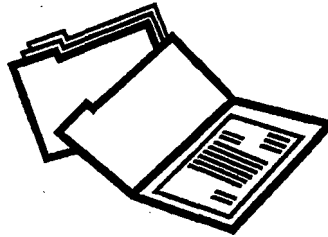
240.215



## Record of Relevant Data for Each Engineer/ Applicant

### Vision/hearing acuity:

- Relevant test results
  - Medical examiner's certificate or document
- Opinion of examiner (if applicable)



8

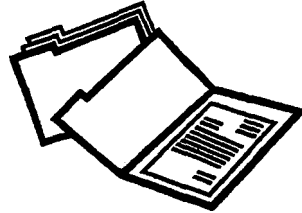
- 4) Any relevant data furnished by the person seeking certification (actual records furnished) concerning his eligibility.
  - The information concerning vision and hearing acuity that the railroad shall retain includes:
    - (1) The relevant test results data concerning vision and hearing acuity [a minimum of a medical examiner's certificate that the individual has been medically examined and meets the standards; or a written document from its medical examiner documenting his professional opinion the person does not meet the acuity standards and stating the basis for his determination whether the person can/cannot be certified under certain conditions]; and
    - (2) If applicable, the relevant data concerning the professional opinion of the railroad's medical examiner on the adequacy of the person's acuity.

240.215 (c)

## Record of Relevant Data for Each Engineer/ Applicant

### Knowledge data:

- Success or failure
- Copy sample test



9

- The information concerning demonstrated knowledge that the railroad shall retain includes:
  - (1) Any relevant data from the railroad's records concerning the person's success or failure of the passage of knowledge test(s); and
  - (2) A sample copy of the written knowledge test or tests administered.

**NOTE:** The conduct of the test shall be documented in writing and the documentation shall contain sufficient information to identify the relevant factors relied on for evaluation purposes. A sample copy of the written knowledge test(s) will suffice to identify the relevant factors relied on for evaluation purposes.

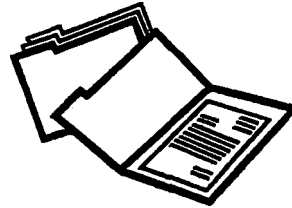
- Per the preamble to the Interim Final Rule (pg. 18998), the minimum recordkeeping requirements (pertaining to joint operations) would be the ability to show the person was given a standard written test type A on a given date and achieved a passing score of "X" percent. Most railroads maintain the test answer sheet which includes this information.

240.215 (d)

## Record of Relevant Data for Each Engineer/ Applicant

### Performance skills:

- Success or failure
- Operating facts
- Observations DSLE



10

- The information concerning demonstrated performance skills that the railroad shall retain includes:
  - (1) The relevant data from the railroad's records concerning the person's success or failure on the performance skills test(s) that documents the relevant operating facts on which the evaluation is based including the observations and evaluation of the DSLE.
  - (2) If a railroad relies on the use of a locomotive operations simulator to conduct the performance skills testing required under Part 240, the relevant data from the railroad's records concerning the person's success or failure on the performance skills test(s) that documents the relevant operating facts on which the determination was based including the observations and evaluation of the DSLE; and

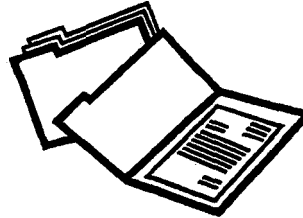
**NOTE:** Per 240.127, the conduct of the test shall be documented in writing by the DSLE and the documentation shall contain the relevant facts concerning the train being operated, the constraints applicable to its operation; and the factors observed and relied on for evaluation purposes by the DSLE.

(continued)

240.215 (e)

## Record of Relevant Data for Each Engineer/ Applicant

- Annual efficiency test
  - Date, time, type of test
  - Pass or fail
- Annual check ride
  - Checklist for rides or simulator observations
  - Documentation for event recorder data



11

- (3) The relevant data from the railroad's records concerning the person's success or failure on tests the railroad performed to monitor the engineer's operating performance in accordance with 240.129 [annual check ride and efficiency test].

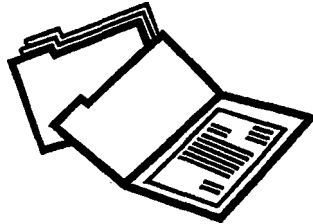
**NOTE:** For the annual check ride we would expect the railroad to maintain some kind of checklist or other format for onboard and simulator observations; and some documentation for evaluation of event recorder data. A notation for just pass or fail is not adequate relevant data.

**NOTE:** Relevant data for maintenance of efficiency testing records would be, at a minimum, documentation showing the date and time of the test, type of test (to identify signal tests and tests requiring less than favorable conditions), and pass or fail.

240.215 (e)

## Record of Relevant Data for Each Engineer/ Applicant

- Training program
  - Data furnished by training entity (knowledge & performance skills)
  - Data showing completion (knowledge, skills, physical characteristics) & passing grade



12

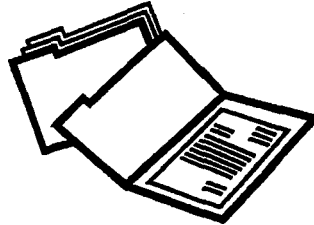
- If a railroad is relying on successful completion of an approved training program conducted by another entity, the relying railroad shall maintain a record for each certified engineer that contains the relevant data furnished by the training entity concerning the person's demonstration of knowledge and performance skills and relied on by the railroad in making its determinations.

**NOTE:** Although 240.215 does not specifically address training records, 240.213 requires that in determining whether to initially issue a certificate, a railroad shall have written documentation showing that the person completed a training program that complies with 240.123, the person demonstrated his knowledge and skills by achieving a passing grade under the testing and evaluation procedures of the training program; and the person is familiar with the physical characteristics of the railroad or its pertinent segments.

240.215 (f)

## Record of Relevant Data for Each Certified Engineer

- If relying on decision by another railroad, relying record shall maintain record for each engineer
- Records maintained for 6 years & available to FRA during normal business hours



13

- If a railroad is relying on a certification decision initially made by another railroad, the relying railroad shall maintain a record for each certified engineer that contains the relevant data furnished by the other railroad which it relied on in making its determinations.
- All records required under 240.215 shall be retained for a period of 6 years from the date of the certification, recertification, denial or revocation decision and shall be made available to FRA representatives upon request during normal business hours.

**NOTE:** Records for identification of qualified persons and the railroad oversight report are not mentioned in 240.215 and are therefore not required to be maintained for 6 years.

**Centralization of Records** - A railroad may elect to retain FRA-required records at a central location or at its system headquarters. This policy statement covers manually and electronically generated records required by 240. All records so maintained shall be available for inspection & copying during the railroad's normal business hours at its centralized recordkeeping location (OP-97-35).

240.215 (g )(h)

OP-97-35

## Data for Joint Operation Certifications

- If controlling railroad elects to do its own testing, then it will be responsible for the particulars of that testing
- If controlling railroad elects to rely on the visiting railroad, then the host railroad is responsible only for documenting its reliance on an agreement for visiting railroad to perform tests & maintain records

14

- In the preamble to the Interim Final Rule (pg. 18998), FRA clarified the level of detail required for the information that must reside in a railroad's files when the railroad authorizes a person from another railroad to operate on joint operations trackage for which it is operationally responsible. The level of data will vary depending on the method(s) selected by the railroad for making the decision that a visiting engineer is qualified to operate on the joint operations trackage.

The rule provides two options: The controlling railroad can conduct the necessary testing or it can rely on the visiting railroad to conduct the testing on its behalf. If the controlling railroad elects to do its own testing, then it will be responsible for being able to identify the particulars of that testing. For example, if the controlling railroad were a large railroad that uses standardized tests, it would be sufficient to be able to show that the person was given standard written test type A on a given date and achieved a passing score of "x" percent.

If the controlling railroad elects to rely on the visiting railroad, then the host railroad will be responsible only for documenting that it has relied on an agreement with the visiting railroad whereby the visiting railroad was authorized by the controlling railroad to perform the testing on behalf of the controlling railroad and to maintain the appropriate records concerning that testing.

## Data for Joint Operation Certifications

- The controlling railroad sometimes allows the visitor to sit in judgment of its employees only when selected members of the visitor railroad's staff are administering the tests
- Under FRA rule, the arrangements for such decision making must be known, adhered to, and documented
- FRA will normally hold the controlling railroad responsible

15

Railroads typically will employ both approaches. In some instances a middle ground will be selected in which the controlling railroad allows the visitor to sit in judgment of its employees only when selected members of the visitor railroad's staff are administering the tests. These approaches to testing prior to sanctioning operation on the joint territory by the engineers working for the visiting railroad predate the existence of FRA's rule.

The significant difference under FRA's rule is that the arrangements for such decision making must be known, adhered to, and documented because the controlling railroad will bear the ultimate responsibility under this rule for all engineers it authorizes to operate on its lines. A controlling railroad can anticipate that under appropriate circumstances FRA will be prepared to hold the controlling railroad responsible for enforcement purposes despite being confronted with the argument that the visiting railroad was the culprit and that the controlling railroad should be exonerated because it was totally dependent on the visiting railroad to prevent an unqualified engineer from operating on the controlling railroad's lines.



## Falsification

Unlawful for railroad (knowingly) or individual (willfully) to:

- Make, cause to be made, or participate in the making of a false entry on the required record(s) or
- Otherwise falsify such records through material misstatement, omission, or mutilation

16

• It shall be unlawful for any railroad to knowingly or any individual to willfully:

- 1) Make, cause to be made, or participate in the making of a false entry on the record(s) required by this section; or
- 2) Otherwise falsify such records through material misstatement, omission, or mutilation.

240.215 (i)

## Maintaining Records in an Electronic Format

- Limits and controls access to records
- Data storage system permits reasonable access & retrieval in usable format upon request by FRA
- Retrieved information can be easily produced in a printed format readily provided to FRA; & authenticated by a designated representative as true & accurate upon request by FRA

17

- Nothing in 240.215 precludes a railroad from maintaining the information required to be retained under 240.215 in an electronic format provided that:

- 1) The railroad adequately limits and controls those who have access to such information;

**NOTE:** FRA intends this will entail prescribing who can create, modify, or delete data from the data base. Although it does not require the existence of a capacity to identify which authorized source made changes to a data base, for accountability purposes such a capacity is desirable. FRA's intent is that the person who performs the authentication and the railroad itself be able to assure FRA that the data have not been tampered with.

- 2) The railroad employs a system for data storage that permits reasonable access and retrieval of the information in usable format when requested to furnish data by FRA representatives; and
- 3) Information retrieved from the system can be easily produced in a printed format which can be readily provided to FRA representatives and authenticated by a designated representative of the railroad as a true and accurate copy of the railroad's records if requested to do so by FRA representatives.

**NOTE:** This change was a result of the AAR's petition for reconsideration which was granted and modified in the rule.

240.215 (j)

## **Railroad Oversight Responsibilities (Class I and II)**

**By March 31, shall conduct formal annual review & analysis to respond to poor safety conduct trends, to include:**

- **No. & nature (including remedial action)**
- **No. & nature FRA reported accidents**
- **No. & type annual monitoring failures**
- **No. joint operation engineer failures**

18

- **No later than March 31 of each year (beginning in calendar year 1993), each Class I railroad (including Amtrak and a railroad providing commuter service) and Class II railroad shall conduct a formal annual review and analysis concerning the administration of its program for responding to detected instances of poor safety conduct by certified locomotive engineers during the prior calendar year.**
- **Each review and analysis shall involve:**
  - 1) **The number and nature of the instances of detected poor safety conduct including the nature of the remedial action taken in response thereto;**
  - 2) **The number and nature of FRA reported train accidents attributed to poor safety performance by locomotive engineers;**
  - 3) **The number and type of operational monitoring test failures and observations of inadequate skill performance recorded by DSLEs; and**
  - 4) **If it conducts joint operations with another railroad, the number of locomotive engineers employed by such other railroad(s) to which such events were ascribed which the controlling railroad certified for joint operations purposes.**

240.309 (a)(b)

## **Railroad Oversight Responsibilities (Class I and II)**

- Determine what action(s) it will take to improve safety to reduce future incidents of that nature
- Shall provide a report of the findings & conclusions to FRA upon written request

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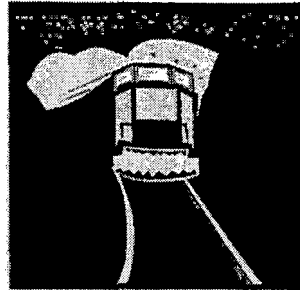
- Based on that review and analysis each railroad shall determine what action(s) it will take to improve the safety of train operations to reduce or eliminate future incidents of that nature.
- If requested in writing by FRA, the railroad shall provide a report of the findings and conclusions reached during such annual review and analysis effort.

**NOTE:** This report is normally available for review by FRA at the railroad's location where certification records are maintained.

240.309 (c)(d)

## Railroad Oversight Incidents

- Part 218
- Part 219
- Part 232/238
- Train speed
- Signal indications
- Restricted speed



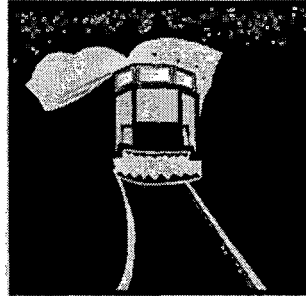
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• For reporting purposes, information about the nature of detected poor safety conduct shall be capable of segregation for study and evaluation purposes into the following categories:

- 1) Incidents involving noncompliance with Part 218;
- 2) Incidents involving noncompliance with Part 219;
- 3) Incidents involving noncompliance with the procedures for the safe use of train or engine brakes when the procedures are required for compliance with the initial terminal, intermediate terminal, or transfer train and yard test provisions of Part 232 or when the procedures are required for compliance with the Class I, Class IA, Class II, or running brake test provisions of Part 238.
- 4) Incidents involving noncompliance with the railroad's operating rules involving operation of a locomotive or train to operate at a speed that exceeds the maximum authorized limit;
- 5) Incidents involving noncompliance with the railroad's operating rules resulting in operation of a locomotive or train past any signal, **excluding a hand or a radio signal indication or a switch**, that requires a complete stop before passing it;
- 6) Incidents involving noncompliance with the provisions of restricted speed, and the operational equivalent thereof, that must be reported under the provisions of Part 225; 240.309 (e)

## Railroad Oversight Incidents

- Occupying main track
- Tampering
- Operating rules  
(including train handling  
procedures) resulting in  
excessive in-train force  
levels



21

- 7) Incidents involving occupying main track or a segment of main track without proper authority or permission;
- 8) Incidents involving the failure to comply with prohibitions against tampering with locomotive mounted safety devices, or knowingly operating or permitting to be operated a train with an unauthorized or disabled safety device in the controlling locomotive;
- 9) Incidents involving noncompliance with the railroad's operating practices (including train handling procedures) resulting in excessive in-train force levels; and

240.309 (e)

## Railroad Oversight Incidents

- Remedial action (formal discipline; informal discipline; formal training; informal training)
- If formal discipline (number withheld from service, number dismissed from employment, or number issued demerits)

22

• For reporting purposes each category of detected poor safety conduct identified in 240.309 (e) shall be capable of being annotated to reflect the following:

1) The nature of the remedial action taken and the number of events subdivided so as to reflect which of the following actions was selected:

- i) Imposition of informal discipline;
- ii) Imposition of formal discipline;
- iii) Provision of informal training; or
- iv) Provision of formal training; and

2) If the nature of the remedial action taken was formal discipline, the number of events further subdivided so as to reflect which of the following punishments was imposed by the hearing officer:

- i) The person was withheld from service;
- ii) The person was dismissed from employment; or
- iii) The person was issued demerits.

If more than one form of punishment was imposed only that punishment deemed the most severe shall be shown.

240.309 (f)

## Railroad Oversight Incidents

### Category resulting in discipline:

- No. instances in which railroad's internal appeals process reduced the initially imposed punishment; and
- No. instances in which the railroad punishment was reduced by the NRAB, a Public Law Board, a Special Board of Adjustment or others under RLA

23

• For reporting purposes each category of detected poor safety conduct identified in 240.309 (e) which resulted in the imposition of formal or informal discipline shall be annotated to reflect the following:

1) The number of instances in which the railroad's internal appeals process reduced the punishment initially imposed at the conclusion of its hearing; and

2) The number of instances in which the punishment imposed by the railroad was reduced by any of the following entities:

- National Railroad Adjustment Board (NRAB);
- Public Law Board;
- Special Board of Adjustment; or
- Other body for the resolution of disputes duly constituted under the provisions of the Railway Labor Act (RLA).

240.309 (g)



## Railroad Oversight Incidents

Category annotated to reflect:

- Total number of incidents in that category;
- Of total, number requiring FRA accident/incident reports; and
- Of total, number detected during a scheduled operational monitoring effort.

24

• For reporting purposes each category of detected poor safety conduct identified in 240.309 (e), shall be capable of being annotated to reflect the following:

- 1) The total number of incidents in that category;
- 2) The number of incidents within that total which reflects incidents requiring an FRA accident/incident report; and
- 3) The number of incidents within that total which were detected as a result of a scheduled operational monitoring effort.

240.309 (h)

OP-97-35

Federal Railroad Administration  
Operating Practices Technical Bulletin (OP-96-05)  
Operating Practices Safety Advisory (OPSA-96-04)

**49 Code of Federal Regulations (CFR)  
Parts 217, 219, 225, 228, 240**

Centralization of Records

At issue is the need to clarify FRA's position regarding the recordkeeping provisions of the Operating Practices regulations, relative to the points where required railroad carrier records are to be maintained.

FRA Policy: A railroad may elect to retain FRA-required records at a central location or at its system headquarters. This policy statement covers manually generated records required by Title 49 Code of Federal Regulations, Parts 217, 219, 225, 228 and 240. Electronic records generated under these CFR Parts, with the exception of 49 CFR Part 228.11, may also be retained at a central location. All records so maintained shall be available for inspection and copying by the Administrator of the FRA, or the Administrator's agent, during the railroad carrier's normal business hours at its centralized recordkeeping location.

Department of Transportation policy regarding 49 CFR Parts 40 and 219 records is as follows:

Maintenance of records required by 49 CFR Parts 40 and 219 can be delegated to an agent of the employer such as a consortium/third party service administrator (C/TPA), or a Medical Review Officer (MRO). The actual location at which the employer allows the records to reside will vary; the records could reside at the employer's or the C/TPA or the MRO's principal place of business, or at another authorized location. An employer will need to have an arrangement with any authorized maintainer of records to ensure that the records (copies, facsimile or electronic) could be made available at the employer's site on short notice (3 days) if requested by appropriate DOT officials.

Maintenance and availability of records required by 49 CFR Part 225.25(a) Log of Occupational Injuries and Illnesses, will be governed by the provisions of the revised Railroad Accident Reporting rule when published.

Electronic records required by 49 CFR Part 228.11 are maintained under the provisions of an approved waiver with availability established as part of the waiver review process. Records maintained under this part shall be accessible for inspection, review, and printing at the established locations during the railroad carrier's normal business hours.

Centralized record retention systems shall be so designed, as to be capable of reproducing, electronically or mechanically, copies of records required by 49 CFR Parts 217.9, 217.11, 225.25(b) Supplementary Record, and 228 (except for Dispatcher's Records of Train Movements) for inspection upon request at each railroad carrier establishment, including but not limited to an operating division, general office, or major installation.

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CP-97-36

Federal Railroad Administration  
Operating Practices Technical Bulletin (OP-96-06)  
Operating Practices Safety Advisory (OPSA-96-05)

**49 Code of Federal Regulation (CFR) Part 240  
Qualification and Certification of Locomotive Engineers**

**Identification of Qualified Persons**

For various reasons railroads are increasingly extending their operations onto neighboring railroads. Thus, the logistics of identifying the qualified engineers who operate on these joint territories have become complex. The regulation, specifically Part 240.221, Identification of Qualified Persons, requires railroads to maintain a written record identifying each person designated as a certified locomotive engineer. That listing of certified engineers must indicate the class of service the railroad determines each person is qualified to perform and date of the railroad's certification decision. The railroads are also required to update the list at least annually.

Part 240.221(c) states that "if a railroad is responsible for controlling joint operations territory, the listing shall include person(s) certified in accordance with Part 240.229, Requirements for Joint Operations Territory, which states in part:

"(c) If the controlling railroad relies on the certification issued by another railroad, the controlling railroad shall determine:

(1) That the person has been certified as a qualified engineer under the provisions of this part by the railroad which employs that individual;

(2) That the person certified as a locomotive engineer by the other railroad has demonstrated the necessary knowledge concerning the controlling railroads operating rules, if the rules are different;

(3) That the person certified as a locomotive engineer by the other railroad has the necessary operating skills concerning the joint operations territory; and

(4) That the person certified as a locomotive engineer by the other railroad has the necessary familiarity with the physical characteristics for the joint operations territory." (emphasis ours)

Railroads have, since the inception of the regulation, considered the act of exchanging lists of their certified locomotive engineers to comply with these requirements. Under most circumstances this task is accomplished by merely providing a "seniority roster" of certified engineers to the controlling railroad.

**Example:** The Burlington Northern Santa Fe Railroad (BNSF) (foreign railroad) forwards a list of its certified locomotive engineers to Conrail (CR) (controlling railroad) containing the entire BNSF engineer seniority roster. CR accepts this list as complying with the provisions of Part 240.229.

The controlling railroad must determine how these locomotive engineers meet the qualification requirements of the regulation. The simple exchange of engineer rosters does not comply with the requirements of Part 240.229.

**Example:** Amtrak (ATK), the foreign railroad, provides a listing of its certified engineers to BNSF, the controlling railroad. BNSF is obligated to determine which ATK engineers are qualified to operate over BNSF trackage. The BN's operating rules are under the General Code of Operating Rules (GCOR). Therefore, it is understood in this example, that not all the certified engineers on the listing from ATK are qualified on the GCOR since ATK operates under Northeastern Operating Rules Advisory Committee (NORAC) operating rules.

**Questions:** How does BNSF determine, who on ATK's list, is qualified on the GCOR? How does BNSF determine who has the requisite skills to operate on the BNSF's territory? How does BNSF determine who has familiarity with the physical characteristics? What specific territories are the engineers qualified on? Are the certificates or supplemental documents of the ATK engineers correctly annotated to reflect their qualifications on the BNSF?

**FRA Policy:** Although the regulation is silent on the procedures used to make these determinations and on the associated recordkeeping requirements, the railroads are required to demonstrate to FRA how these determinations are reached. FRA considers the exchange of rosters permissible in making the determination required in Part 240.229(c)(1), that is, the person is a qualified engineer under the regulation. However, from this point, the exchange of rosters does not satisfy the railroads' obligation to determine that the engineer has the necessary knowledge, the operating skills and the familiarity with the physical characteristics of the joint operations territory.

Consequently, FRA is advising the regulated community that compliance inspections will expect railroads to have some type of system in place for proving to FRA that these determinations have been made. Any list of qualified persons required under Part 240.221(c) should only include those persons who operate on joint territory and their qualification determinations required under Part 240.229(c).

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# Railroad Program Submission



## Railroad Program Submission

- Each railroad must have a written program for certifying engineers
- Before commencing operations



2

### **Certification program required.**

- Each railroad subject to Part 240 shall have in effect a written program for certifying the qualifications of locomotive engineers.
- A railroad commencing operations shall have such a program in effect prior to commencing operations.

240.201

## Railroad Program Submission

### ADDRESS PROCEDURES FOR:

- |                                      |                                      |
|--------------------------------------|--------------------------------------|
| ▪ Designating DSLEs                  | ▪ Training                           |
| ▪ Classes of service                 | ▪ Knowledge testing                  |
| ▪ Evaluating prior safety conduct    | ▪ Skill performance testing          |
| ▪ Evaluating visual & hearing acuity | ▪ Monitoring operational performance |

3

Each railroad shall have a certification program approved in accordance with 240.103 that includes:

- A procedure for designating any person it determines to be qualified as a DSLE that complies with the criteria established in 240.105;
- A designation of the classes of service that it determines will be used in compliance with the criteria established in 240.107;
- A procedure for evaluating prior safety conduct that complies with the criteria established in 240.109;
- A procedure for evaluating visual and hearing acuity that complies with the criteria established in 240.121;
- A procedure for training that complies with the criteria established in 240.123;
- A procedure for knowledge testing that complies with the criteria established in 240.125;
- A procedure for skill performance testing that complies with the criteria established in 240.127; and
- A procedure for monitoring operational performance that complies with the criteria established in 240.129.

240.101

## Railroad Program Submission

- New railroads shall submit program for approval at least 60 days prior to commencing operations
- Program considered approved & may be implemented 30 days after filing date unless notified in writing by FRA

4

### **Approval of design of individual railroad programs by FRA.**

- Each railroad shall submit its written **certification** program and a description of how its program conforms to the specific requirements of Part 240 in accordance with the procedures contained in Appendix B to Part 240 and shall submit this written certification program for approval at least 60 days before commencing operations.

- A railroad's program is considered approved and may be implemented 30 days after the required filing date (or the actual filing date) unless the Administrator notifies the railroad in writing that the program does not conform to the criteria set forth in Part 240.

**NOTE:** In reviewing program submissions, FRA will focus on the degree that a particular program submission materially deviates from the norms identified in its proposed rule, and the validity of the reasoning relied on by a railroad for selecting alternative approaches.

- If the Administrator determines that the program does not conform, the Administrator will inform the railroad of the specific deficiencies.
- If the Administrator informs the railroad of deficiencies more than 30 days after the initial filing date, the original program may remain in effect until 30 days after approval of the revised program is received.

## Railroad Program Submission

- If program does not conform, FRA will inform the railroad of the deficiencies in writing
- Railroad shall resubmit program within 30 days
- If railroad wants to materially modify program, it shall submit a description 30 days prior to implementing the change

5

- A railroad shall resubmit its program within 30 days after the date of such notice of deficiencies. A failure to resubmit the program with the necessary revisions will be considered a failure to implement a program under Part 240.
- The Administrator will inform the railroad in writing whether its revised program conforms with Part 240.
- If the program does not conform, the railroad shall resubmit its program.
- A railroad that intends to materially modify its program after receiving initial FRA approval shall submit a description of how it intends to modify the program in conformity with the specific requirements of Part 240 at least 30 days prior to implementing such a change.
- A modification is material if it would affect the program's conformance with Part 240.
- The modification submission shall contain a description that conforms with the pertinent portion of the procedures contained in Appendix B.
- The modification submission will be handled in accordance with the procedures of 240.103 (c) and (d) as though it were a new program.

240.103

## Railroad Program Submission

Railroad's program shall state whether it:

- Accepts responsibility for training student engineers (conduct itself or employ other entity) or
- Will recertify only engineers previously certified by other railroads

6

- The railroad's submission shall state the railroad's election either:
  - (1) To accept responsibility for the training of student engineers and thereby obtain authority for that railroad to initially certify a person as an engineer in an appropriate class of service, or
  - (2) To recertify only engineers previously certified by other railroads.
- A railroad that elects to accept responsibility for the training of student engineers shall state in its submission whether it will conduct the training program or employ a training program conducted by some other entity on its behalf but adopted and ratified by that railroad.

240.103 (b)

## Railroad Program Submission

- Each program must be accompanied by a request for approval organized in accordance with Appendix B
- Each section should identify the contact person (name, title, telephone, address)

7

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

- In designing its program a railroad must take into account the trackage and terrain over which it operates, the system(s) for train control that are employed, the operational design characteristics of the track and equipment being operated including train length, train make-up, and train speeds.
- Each program must be accompanied by a request for approval organized in accordance with this appendix. Requests for approval must contain appropriate references to the relevant portion of the program being discussed (in writing on 8.5 x 11 paper in letter or narrative format).
- Should be sent to FRA's Associate Administrator for Safety.
- Organized to present the required information in the following standardized manner.
- Each section must begin by giving the name, title, telephone number, and mailing address of the person to be contacted concerning the matters addressed by that section. If a person is identified in a prior section, it is sufficient to merely repeat the person's name in a subsequent section.

Appendix B to Part 240

## Sections of the Submission

- |  |   |
|--|---|
| 1. General information & elections                   | 5. Training, testing, & evaluating persons not previous certified |
| 2. Selection of DSLEs                                | 6. Monitoring operational performance                             |
| 3. Training persons previously certified             | 7. Procedures for routine administration                          |
| 4. Testing & evaluating persons previously certified |   |

8

- Section 1: General Information and Elections
- Section 2: Selection of Supervisors of Locomotive Engineers
- Section 3: Training Persons Previously Certified
- Section 4: Testing and Evaluating Persons Previously Certified
- Section 5: Training, Testing, and Evaluating Persons Not Previously Certified
- Section 6: Monitoring Operational Performance by Certified Engineers
- Section 7: Procedures for Routine Administration of the Engineer Certification Program

## 1. General Information and Elections

- Name of railroad & contact person
- Statement electing either to educate previously untrained persons or recertify only engineers previously certified
- If educating, info on how such persons will be trained (including other railroads or non-railroad entities)
- State the class/classes of service

9

- The first section of the request must contain the name of the railroad, the person to be contacted concerning the request (including the person's name, title, telephone number, and mailing address) and a statement electing either to accept responsibility for educating previously untrained persons to be qualified engineers or recertify only engineers previously certified by other railroads [240.103(b)].
- If a railroad elects not to conduct the training of persons not previously trained to be an engineer, the railroad is not obligated to submit information on how the previously untrained will be trained. A railroad that makes this election will be limited to recertifying persons initially certified by another railroad.
- A railroad that initially elects not to accept responsibility for training its own engineers can rescind its initial election by obtaining FRA approval of a modification of its program [240.103 (e)].
- If a railroad elects to accept responsibility for conducting the education of persons not previously trained to be engineers, the railroad is obligated to submit information on how such persons will be trained but has no duty to actually conduct such training (may authorize another railroad or a non-railroad entity to perform the actual training effort). The electing railroad remains responsible for assuring other training providers adhere to the training program the railroad submits.
- This section must state which class or classes of service the railroad will employ (240.107).

240.103

Appendix B



## 2. Selection of DSLE's

- Describe the criteria & evaluation methodology it will rely on for selecting DSLE's
- For example, a minimum level of prior experience as an engineer, successful completion of a course of study, or successful passage of a standardized testing program.

10

- The second section must contain information concerning the railroad's procedures for selecting the person(s) it will rely on to evaluate the knowledge, skill, and ability of persons seeking (re)certification.
- As provided for in 240.105, each railroad must have a procedure. It gives a railroad latitude to select the criteria and evaluation methodology.
- The railroad must describe how it will use that latitude and evaluate those it designates as DSLE's.
- The railroad must identify in sufficient detail to permit effective review by FRA, the criteria for evaluation it has selected.
- For example, if a railroad intends to rely on one or more of the following; a minimum level of prior experience as an engineer, successful completion of a course of study, or successful passage of a standardized testing program, the submission must state which criteria it will employ.

## Qualifying DSLEs on Assigned Territory

### Recommended:

- Sufficient number of qualifying trips
- Pass written knowledge test
- Re-qualify if more than 1-year lapse (minimum of one round trip)
- Written knowledge test retained in DSLE's file

11

**240.105 (a) - Procedures for qualifying DSLEs over the territory in which they will be assigned.**

### PROGRAM MODIFICATION GUIDANCE:

Recommended language: The DSLE will be required to make a sufficient number of qualifying trips over the territory to effectively instruct and evaluate the engineers he or she will qualify or Pilot on that territory. The DSLE must also pass a written test on the operating instructions and physical characteristics of the territory, i.e, track speeds; methods of operation; timetable special instructions; unique peculiarities of that territory; etc. If the DSLE has not performed duty on the particular territory within a one (1) year period, the DSLE must re-qualify on the territory. The re-qualification process will require a minimum of one round trip over the territory. The test required under this section will be placed in the DSLE's file and retained according to 240.215 (d).

### 3. Training Persons Previously Certified

- Program for ongoing education
- Specific subject matter, duration of training, method of presenting the information, frequency, voluntary or mandatory
- Territory familiarization intervals
- New technology, rulebooks, changes in operations including territory

12

- The third section must contain information for the ongoing education of its engineers to assure they maintain the necessary knowledge concerning personal safety, operating rules & practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics), and relevant Federal safety rules.
- A railroad has latitude to select the specific subject matter to be covered, duration of the training, method of presenting the information (classroom, computer based training, simulators, film or slide presentations, OJT), the frequency, and voluntary or mandatory.
- Each railroad must design its program to address both loss of retention of knowledge and changed circumstances.
- For example, engineers need to have their fundamental knowledge of train operations refreshed periodically; including interval between attendance at such training, and nature and method of training.
- Railroad must have plan for the familiarization training that addresses the question of how long a person can be absent before needing more education and how the person will acquire the needed education.
- How the railroad responds to changes such as new technology, new operating rulebooks, or significant changes in operations including alteration to authorized territories.

240.123

## Familiarization With New Territory

- Use hi-rail or a lite locomotive
- Written knowledge test
- Qualified by a DSLE (who is qualified on the territory)
- Performance skills test

13

### **PROGRAM MODIFICATION GUIDANCE.**

**240.123 (d) – The methods used by a railroad for familiarizing its engineers with new territory while starting up a new railroad, starting operations over newly acquired rail lines, or reopening of a long unused route, shall be described in the railroad's plan submission as described in Appendix B.**

Recommended Language: In situations where there is no available means to afford engineers the opportunity to obtain the operating skills and physical characteristics knowledge of a section of track, i.e., train operations are nonexistent, the railroad elects to use hi-rail equipment or a lite locomotive as the engineer's vehicle to initially observe and experience the physical characteristics of the new territory. Following this initial training, the engineer will be tested on the operating instructions and physical characteristics of the territory, i.e., track speeds; methods of operation; timetable special instructions; unique peculiarities of that territory; etc. Prior to the engineer's first solo operation of a train over the territory, the engineer will be qualified by a DSLE, who is qualified on the territory, and tested according to the procedures outlined in 240.127 [skill performance test].

## Uncertified Experienced Engineers or Expired Certifications

- Satisfy all prior safety conduct & vision/hearing acuity components
- Issued a student certificate
- Complete OJT and territorial familiarization (length based on DSLE evaluation)
- Complete training program for previously certified engineers

14

### **PROGRAM MODIFICATION GUIDANCE.**

**240.225 (a) – Address how the railroad will administer the training of previously uncertified engineers with extensive operating experience or previously certified engineers who have had their certification expire.**

Recommended Language: Previously uncertified engineers with extensive operating experience or previously certified engineers who have had their certification lapse, will be required to satisfy all the components required for certification. Following the applicable prior safety conduct evaluations and hearing and visual acuity examination prescribed by 240.115, 240.117, 240.119, and 240.121, the individual will be issued a student certificate. The individual will then be required to complete a period of on-the-job training and territorial familiarization. The length of this training will be based on the evaluation of a DSLE, who will take into account the individual's past operating experience and the unique characteristics of the territory in which the individual will operate. At the completion of this training, the individual will be trained and tested according to the procedures specified in Sections 3 & 4 of the certification program and will be issued a certificate for the appropriate class of service that individual will be expected to perform.

## Qualifying Non-Certified Engineers as Pilots

- Provided appropriate number of qualifying trips over territory
- Interviewed, evaluated and given a written test by a DSLE (qualified)
- Written test retained in the employee's file

15

### **PROGRAM MODIFICATION GUIDANCE.**

**240.231 (b) – The program shall address how the railroad intends to qualify persons it intends to use as pilots who are not certified engineers.**

Recommended Language: The prospective Pilot candidate will be given an appropriate number of qualifying trips over the territory to assure sufficient familiarization with the territory. Additionally, the Pilot will be interviewed, evaluated, and given a written test by a DSLE, who is qualified on the territory, to ensure that the Pilot is knowledgeable on the operating instructions and physical characteristics of the territory. The test will be retained in the employee's file.

## 4. Testing & Evaluating Persons Previously Certified

- Ongoing testing and evaluating, including knowledge, performance skills (including use of simulators), vision and hearing acuity
- Describe how a railroad's medical examiner has sufficient information concerning the railroad's operations to form conclusions about persons with substandard acuity

16

- Each railroad must have a program for the ongoing testing and evaluation of its engineers for knowledge and skills, including vision and hearing acuity.
- Written knowledge test (objective questions and answers that covers the required subject matter; number of questions, selection of passing scores)
- Test and evaluation procedure for performance skills (most demanding type of service, how each required subject matter will be covered, use of simulators)
- Describe 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 operate a train.

## **5. Training Testing & Evaluating Persons Not Previously Certified**

- Describe initial training of persons as engineers, including training by another railroad or a non-railroad entity.
- Describe how students will be provided with the required familiarization with the physical characteristics for its trackage.

17

- Unless a railroad has made an election not to accept responsibility for conducting the initial training of persons to be engineers, the fifth section must contain information concerning how it will assure its engineers will acquire (and demonstrate) sufficient knowledge and skill to operate trains.
- A railroad may authorize another railroad or non-railroad entity to perform the actual training effort. The authorizing railroad may submit a training program developed by that authorized trainer but the authorizing railroad remains responsible for assuring that such other training providers adhere to the training program submitted.
- Must indicate how the student will be provided with the required familiarization with the physical characteristics for its trackage.



## Class 3 Railroad Training Requirements

Class 3 railroads (other than light switching operations conducted at slow speeds) need to modify their program:

- Student engineer's OJT 240 hours
- Increase class time

18

**FRA's Policy:** FRA requests that railroads, who have adopted or used in part the ASLRA Class 3 Standard Engineer Certification Program and whose operations exceed those intended for the Class 3 program (i.e., light switching operations conducted at slow speeds), consider modifying Section 5, Paragraph C, of that program to provide for any additional training necessary. Specifically, FRA is recommending that these railroads increase the student engineer's OJT period stated in the program, i.e., "of not less than the higher of 80 hours or 15 road trips," accordingly.

For example, FRA recommends that, at a minimum, a Class 3 railroad whose operations are similar to those of a Class 2 railroad, should adopt the ASLRA Class 2 Standard Program. This program requires a minimum of 240 hours of OJT and also slightly increases classroom training time.

FRA has taken this approach based on an evaluation of the training programs of the larger railroads with similar operations. FRA's intention is to address this safety concern without having to mandate specific minimum training periods. This approach is consistent with the intended design of the regulation, which was to set basic training guidelines and allow railroads the latitude to develop training programs specific to the individual needs and operations. Given the past

(continued)

OP-2000-01

## Class 3 Railroad Training Requirements

- If a railroad refuses to voluntarily address this issue in its program, FRA will serve notice of deficiencies (disapproval of a program)
- Railroad shall resubmit revised program within 30 days after notice or will be considered a failure to implement a program

19

cooperation of the ASLRA and its members, FRA expects that the vast majority of Class 3 railroads will amend their programs accordingly, if necessary.

However, if FRA perceives this issue to be a problem on a specific railroad and that railroad refuses to voluntarily address this issue in its program, FRA intends to serve notice of such deficiencies pursuant to the formal process for disapproval of a program. See 240.103 (c) and (d). This disapproval process requires that the Administrator notify the railroad in writing and inform the railroad of the specific deficiencies [240.103 (c)(1)].

Under such circumstances, a railroad shall resubmit its program with the necessary revisions within 30 days after the date of such notice of deficiencies [240.103 (d)]. Failure to timely resubmit with the necessary revisions will be considered a failure to implement a program under Part 240 and FRA will use its enforcement discretion as to whether a civil penalty, or alternative enforcement action, is appropriate. See 240.11 (explaining consequences for noncompliance) and Appendix A [citing FRA's standard civil penalty for a violation of 240.103 (d)].

See page 6 of OP-2000-01 for the background concerning adequate engineer training.

OP-2000-01

## 6. Monitoring Operational Performance

- Describe the duration of the observation process, reliance on event recorder tapes, simulators, & the specific aspects of the engineer's performance to be covered
- For event recorder tapes, Indicate how it will determine what person was at the controls & what operational constraints were applicable

20

- Contain information concerning the railroad's program for annual monitoring observations.
- Observation procedures, including the duration of the observation process, reliance on event recorder tapes, use of simulators, and the specific aspects of the engineer's performance to be covered.
- A railroad that intends to employ train operation event recorder tapes shall indicate how it anticipates determining what person was at the controls and what signal indications or other operational constraints, if any, were applicable to the train's movement.

## 7. Procedures for Routine Administration

- Summary of routine administration procedures
- Procedures for review and comment on adverse prior safety conduct
- Reliance on qualification determinations by another railroad
- Joint operations territory
- Replacement of lost certificates

21

- Routine administration of its certification program
- Procedures for review and comment on adverse prior safety conduct as a motor vehicle operator and as a railroad worker.
- What procedures it will employ to assure all the necessary determinations have been made in a timely fashion
- Who will be authorized to conclude that a person is or is not qualified
- How it will communicate adverse decisions
- Documentation of the factual basis the railroad relied on in making determinations
- Reliance on qualification determinations made by another railroad
- Joint operations territory
- Replacing lost certificates or the conduct of certification revocation proceedings

**ASLRRA Standard Engineer Certification Program Modifications**  
**(240.105(a); 240.123(d); 240.225(a); 240.231(b))**

The final rule to PART 240 becomes effective on January 7, 2000. The following is a list of the sections of the regulation which require modification and the recommended language that, if adopted, will fulfill the requirements of the final rule. This language was developed through the collaborative efforts of the American Short Line Regional Railroad Association and the Federal Railroad Administration (FRA) to simplify the administrative process associated with these modifications. To adopt these modifications, simply submit this document to FRA with a cover letter explaining your intention to incorporate the modifications into your certification program.

## **Program Modification Guidance**

### **SECTION II**

**1. § 240.105(a) - Procedures for qualifying Designated Supervisors of Locomotive Engineers (DSLE) over the territory in which they will be assigned.**

**Recommended language:** The DSLE will be required to make a sufficient number of qualifying trips over the territory to effectively instruct and evaluate the engineers he or she will qualify or Pilot on that territory. The DSLE must also pass a written test on the operating instructions and physical characteristics of the territory, i.e., track speeds; methods of operation; timetable special instructions; unique peculiarities of that territory; etc. If the DSLE has not performed duty on the particular territory within a one (1) year period, the DSLE must re-qualify on the territory. The re-qualification process will require a minimum of one round trip over the territory. The test required under this section will be placed in the DSLE's file and retained according to §240.215(d).

### **SECTION III**

**2. § 240.123(d) - The methods used by a railroad for familiarizing its engineers with new territory while starting up a new railroad, starting operations over newly acquired rail lines, or reopening of a long unused route, shall be described in the railroad's plan submission as described in Appendix B.**

**Recommended Language:** In situations where there is no available means to afford engineers the opportunity to obtain the operating skills and physical characteristics knowledge of a section of track, i.e., train operations are nonexistent, the railroad elects to use hi-rail equipment or a lite locomotive as the engineer's vehicle to initially observe and experience the physical characteristics of the new territory. Following this initial training, the engineer will be tested on the operating instructions and physical characteristics of the territory, i.e., track speeds; methods of operation;

timetable special instructions; unique peculiarities of that territory; etc. Prior to the engineer's first solo operation of a train over the territory, the engineer will be qualified by a DSLE, who is qualified on the territory, and tested according to the procedures outlined in - § 240.127.

**3. § 240.225(a) - Address how the railroad will administer the training of previously uncertified engineers with extensive operating experience or previously certified engineers who have had their certification expire.**

Recommended Language: Previously uncertified engineers with extensive operating experience or previously certified engineers who have had their certification lapse, will be required to satisfy all the components required for certification. Following the applicable prior safety conduct evaluations and hearing and visual acuity examination prescribed by §§ 240.115, 240.117, 240.119, and 240.121, the individual will be issued a student certificate. The individual will then be required to complete a period of on-the-job-training and territorial familiarization. The length of this training will be based on the evaluation of a DSLE, who will take into account the individual's past operating experience and the unique characteristics of the territory in which the individual will operate. At the completion of this training the individual will be trained and tested according to the procedures specified in Sections 3 & 4 of the certification program and will be issued a certificate for the appropriate class of service that individual will be expected to perform.

**4. § 240.231(b) The program shall address how the railroad intends to qualify persons it intends to use as pilots who are not certified engineers.**

Recommended Language: The perspective Pilot candidate will be given an appropriate number of qualifying trips over the territory to assure sufficient familiarization with the territory. Additionally, the Pilot will be interviewed, evaluated, and given a written test by a DSLE, who is qualified on the territory, to ensure that the Pilot is knowledgeable on the operating instructions and physical characteristics of the territory. The test will be retained in the employee's file.

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