U.S. Department
of Transportation

Federal Railroad Administration

Memorandum

Date: February 3, 2004 Reply to Attn of: OP-04-21

Subject: 49 CFR Part 240:
I. Territorial Qualifications;
II. Class 3 Railroad Training Requirements;
III. Responsibilities in Joint Operations

Original Signed By:
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To: Regional Administrators

Attached is Operating Practices Technical Bulletin OP-04-21. The bulletin addresses three categories of issues pertaining to the application of Title 49, Code of Federal Regulations, 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 when dealing with these issues. Legal conclusions stated here are supported by legal analysis provided by FRA's Office of Chief Counsel.

This Technical Bulletin is being 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.

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

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Federal Railroad Administration

Operating Practices Technical Bulletin (OP-04-21)

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 individuals 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. All references are to a specific provision of Part 240, as amended in 1999. See 64 FR 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 Section 240.123(b) and (c), 240.125, 240.127, 240.203, 240.213, 240.23(a), and Appendix B. 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." See Section 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 Section 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.[1] See Sections 240.103 and 240.123 (a).

Qualification and Certificating 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 Section 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:

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[1]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 Section 240.123(c) and FRA approved program prepared by the railroad pursuant to Section 240.103;
2. Testing: The engineer must pass a written knowledge test on the physical characteristics of the territory as prescribed by Section 240.125 (c)(4)(iv)[2]; 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 Section 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." See Section 240.7. Qualifying a certified engineer over new territory as required by Section 240.231(a), is accomplished according to the provisions for continuing education in the railroad's own program. See Section 240.123(b) and Appendix B.

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. See Section 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. See Section 240.127. Failure to address such scenarios may lead to a determination that the program is deficient. See Section 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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[2]"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 FR 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. See Section 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 a disagreement between an engineer and a DSLE concerning the engineer's territorial qualification? In other words, what are the parties' responsibilities if a DSLE believes and 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 [See Section 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 [See Section 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 Section 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 Section 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 the engineer and a pilot pursuant to Section 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 Section 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:
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> (1) Knows and understands the requirements of this part;
>
> (2) Can appropriately test and evaluate the knowledge and skills of locomotive engineers;
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> (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 skill 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 performances simultaneously; however, a railroad that wishes to enjoy the advantages of combing these requirements must use a DSLE who is qualified on the physical characteristics of the territory over which the test will be conducted. Compare Section 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 Section 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. See Section 240.129 (c)(2).

Question 6: Under what conditions may 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 Section 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 Section 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 Section 240.231.

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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 operation, 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 operated 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 training programs of the larger railroad 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 Section 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. See Section 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. See Section 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 Section 240.11 (explaining the consequences for noncompliance) and Appendix A [citing FRA's standard civil penalty for a violation of Section 240.103(d)].

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III. Responsibilities in Joint Operations

Background: Except under "minimal joint operations" pursuant to Section 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. See Section 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. See Section 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 operating territory in question. See Section 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 movement. 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. See Section 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[3]," Is only required to determine that the engineer has been certified as a qualified engineer by the engineer's railroad employer. See Section 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 Section 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. See Section 240.229(b). Meanwhile, the regulation still requires that the host railroad independently make certain determinations. See Section 240.229(c). Blind acceptance of a foreign railroads'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 ensue 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 training among the different classes of railroads

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[3]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." See Section 240.229(e).

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 I 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 railroads' 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 Section 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 Section 240.229 (c)(1) and will be in compliance with both the letter and intent of the regulation.

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