

AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION'S QUESTIONS  
AND  
THE FEDERAL RAILROAD ADMINISTRATION'S ANSWERS  
REGARDING  
FRA'S TRAINING, QUALIFICATION, AND OVERSIGHT FOR SAFETY-RELATED  
RAILROAD EMPLOYEES FINAL RULE (49 CFR PART 243)

1. Q: Section 243.201(a) requires railroads to “declare the designation of each of its existing safety-related railroad employees by occupational category or subcategory.” Employees of small railroads typically perform multiple tasks across traditional class or craft designations. For example, an employee of a small railroad might be responsible for operating a locomotive, inspecting track and inspecting signals. In light of this, may Class II and Class III railroads (and their contractors) declare the occupational categories/subcategories to which their employees belong by reference to CFR parts (e.g. in the scenario above by referencing Parts 213, 214, 218, 220, etc.) rather than by class or craft?

A: Yes, this approach is acceptable to FRA. Rather than class or craft, a railroad could retain a record for each employee identifying the list of CFR parts, subparts, or sections that cover the work the person is designated as qualified to perform. However, such designations must be made by the applicable regulatory deadline in § 243.201(a).

2. Q: Similarly, may Class II and Class III railroads (and their contractors) organize their training programs by reference to CFR parts (e.g. in the scenario in Q: 1, by referencing Parts 213, 214, 218, 220, etc.) rather than by class or craft?

A: Yes, this approach is acceptable to FRA.

3. Q: Can Class II and Class III railroads (and their contractors) train each safety-related railroad employee on just the relevant provisions of the CFR parts that apply to the tasks that the employee actually performs? For example, if an employee of a small railroad performs transfer train brake tests but never performs Class 1 or Class 1A brake tests because, e.g., the railroad's operations do not exceed 20 miles, the small railroad would be required to train the employee on transfer train brake tests but not on either Class 1 or Class 1A brake tests.

A: Yes, your understanding is correct.

4. Q: Will OJT templates be sufficient if they contain the following headings supported by sufficient detail to set forth all activities the employee must perform to meet the requirements of all relevant CFR provisions applicable to the operations of the individual railroad:
- Task description;
  - Conditions (describe what conditions means). How the student is exposed to the CFR: either observes, reads or is taught in class;
  - Performance standard. How the trainee confirms his ability or understanding;

- d. Sign-off boxes for student and for instructor; and
- e. Check box to indicate applicability?

A: Yes. Although, the three key components of OJT (task, conditions, standard) are defined in § 243.101(d)(1)(i-iii), and differ from the terms referenced in a, b, and c above, on October 20, 2016, FRA approved an OJT template submitted for the Model Program Course ID: MOW Basic 2016, Course Name: Track Laborer that used those terms because they meet the requirements of the regulation.

5. Q: Will a Class II and/or a Class III railroad (or their contractors) that [1] trains its safety-related employee(s) using ASLRRRA developed (and FRA-approved) OJT templates that are applicable to the tasks that such employee(s) perform and [2] maintains a record of such training, be deemed in full compliance with the OJT Training requirements of Part 243?

A: Yes, your understanding is correct. FRA expects an employer that adopts and implements an FRA-approved model program, OJT template, or other training program would be in compliance with the approved model program. Of course, this assumes the OJT templates adopted and implemented by the employer are consistent with the operations of that employer. By adopting and implementing the OJT template and maintaining appropriate records, FRA would deem the employer in full compliance with the OJT requirements of Part 243.

As a reminder, FRA approves programs based on the information included in each submission. Notwithstanding FRA's initial approval, if a subsequent FRA audit or review suggests noncompliance with the course curriculum or some aspect of the program, including the way it is delivered, FRA may request changes. The rule, in § 243.109, specifies a process whereby FRA often will permit deficient portions to remain in effect for 90 days to provide a submitter with an opportunity to make revisions.

6. Q: For each CFR subpart that requires periodic qualification of a railroad employee be "evidenced by demonstrated proficiency," may railroads (and their contractors) use railroad efficiency testing under Part 217 to satisfy those requirements? For example, § 214.347 addresses training and qualification for lone workers. Section 214.347(a) sets out the factors that at a minimum will be given consideration in the training and qualification and § 214.347(b) states that "Initial and periodic qualification of a lone worker shall be evidenced by demonstrated proficiency." Assume a railroad observes a previously qualified lone worker performing his duties in the field and records the lone worker's performance of those duties as demonstrating proficiency in the factors covered by § 214.347. In this scenario, would the railroad be in compliance with the periodic qualification requirements of § 214.347(b)?

A: Yes, your understanding is correct.

7. Q: Will FRA Regional Personnel have authority to make determinations and decisions concerning the adequacy of a training program that has been approved (or deemed

approved) by FRA? For example, if a railroad trains an employee on how to conduct an air brake test using an FRA-approved training program and the railroad maintains records of such training, would an FRA inspector be prohibited from finding that the air brake training that the employee received was deficient?

A: FRA personnel who do not have instructional design experience and Master Trainer accreditation will not have authority to make determinations and decisions concerning the adequacy of a training program that has been approved (or deemed approved) by FRA under Part 243. However, such FRA personnel would have the authority to request copies of training records to verify when and what kinds of training an employee received.

If FRA detects a pattern or practice that indicates a potential deficiency in training, FRA personnel with instructional design experience and Master Trainer accreditation may consider that information when reviewing the training with the railroad to determine whether there are ways to improve the training and ensure the training is effective. Additionally, FRA personnel with instructional design experience and Master Trainer accreditation may find course curriculum satisfactory and instead recommend coaching, feedback, or practice for deficient employees administered by a supervisor, qualified person, or designated instructor.

8. Q: If a railroad (or its contractor) uses an FRA-approved training program and FRA subsequently determines the program is not compliant, or should otherwise be modified or updated, would FRA address such issues directly with the training program vendor without negative consequences for the railroad such as imposition of a penalty?

A: This question assumes a railroad or its contractor is using an FRA-approved training program developed by an entity other than the railroad or contractor. FRA agrees that if there is a problem with a training program, FRA will first attempt to address any non-compliance with the program developer. For example, if a model program was FRA-approved, but it was later determined to be missing a component, FRA would address the concern with the model program developer who could resubmit the program with any material modification for FRA-approval. Each railroad would then adopt and comply with the revised model program. Under this scenario, as long as the railroad or contractor appropriately adopted the revised model program, FRA would not consider enforcement action against the railroad or contractor.

However, if the model program developer was unresponsive, FRA would need to address that issue with each railroad that adopted the model program. In that scenario, FRA would consider enforcement action only after FRA issued written notification to the railroad or contractor, and that railroad or contractor did not take the necessary steps to modify its training program per FRA's notice. This scenario is covered under § 243.109, and a railroad or contractor would have 90 days after FRA's notice of deficiencies to resubmit a revised program with the necessary revisions, although the regulation specifies that FRA may extend this 90-day period upon written request. FRA believes this

scenario is unlikely and anticipates it would be looking for universal changes to a model program, not having individual companies making their own amendments, as that would defeat much of the benefit of adopting and approving model programs.

9. Q: In the circumstances described in Q: 8. above, would the railroad (or its contractor) be required to retrain its employees using the modified or updated training program?

A: Employees will be trained, and then receive refresher training on a 3-calendar-year cycle per § 243.201(e), unless another FRA regulation requires a more frequent refresher training period. See § 243.1(c) and (d). Any time the training program is modified or otherwise updated, FRA understands that only new employees who have not yet been trained, or employees due for refresher training, would receive training in a given year. Of course, if there was a significant matter of safety concern, a railroad or contractor may need to take some kind of immediate action to brief employees or provide some kind of remedial training, but FRA anticipates this would be an extremely rare situation.

10. Q: Will CLASS II and CLASS III railroads satisfy the requirements of the Training Standard rule (Part 243) if the training plan includes one template for each relevant CFR part and any related Federal railroad safety statutes and orders? Each template would include all of the subparts of the applicable CFR part. The templates would then be used by the CLASS II and CLASS III railroads to train employees on only those subparts that are relevant to the activities that each employee actually performs.

A: Yes, if any related Federal railroad safety statutes and orders are also captured by this approach. For example, knowledge training on the Federal Hours of Service Laws (i.e., the statutory requirements) can be combined with training on the regulatory requirements for hours of service recordkeeping and reporting found in 49 CFR Part 228.

11. Q: For regulations that contain training requirements independent of Part 243 for which training materials already exist, can a service provider exclude such training requirements from its template for each such C.F.R. Part? For example, 49 C.F.R. §§ 213.118, 213.119, 213.237 and 213.238, as well as 49 C.F.R. § 220.313, each contain training requirements independent of Part 243 for which training materials already exist. Can a service provider exclude §§ 213.118, 213.119, 213.237 and 213.238 from its training template for Part 213, and exclude § 220.313 from its training template from Part 220?

A: Yes. 49 C.F.R. § 243.103(b) specifically relieves an employer from duplicating a training program submission if it is already submitted under another regulatory requirement. 49 C.F.R. Part 213 includes regulations related to the inspection of rail, including Continuous Welded Rail (CWR), and the qualifications of operators of rail flaw detection equipment. The specific regulations that pertain to training are found in §§ 213.119 and 213.238 only. Assuming the railroad or “service provider” has addressed the training requirements for CWR procedures in its CWR Program Plan (§ 213.119), or addressed the training requirements for operation of rail flaw detection equipment in its qualified operator training program (§ 213.238), or both as required, there is no need to include them in the training template for Part 213. The second part of the question refers

to a written Program of Instruction for operating employees and supervisors of operating employees in connection with the use of Electronic Devices. Again, assuming the railroad or “service provider” has addressed inappropriate use of Electronic Devices while on duty in its Program of Instruction, there is no need to include it in the training template for Part 220.