

CONDENSED SUMMARY OF CERTIFICATION OF CONDUCTORS

Subpart A - General

§ 242.1 Purpose and scope.

[cf. 240.1]

This part prescribes minimum Federal safety standards for the eligibility, training, testing, certification and monitoring of all conductors to whom it applies. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements consistent with this part.

§ 242.3 Application and responsibility for compliance.

[cf. 240.3]

This part applies to all railroads, including their contractors, except:

A railroad that operates only on track inside an installation that is not part of the general railroad system of transportation; or (2) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

§ 242.5 Preemptive effect and construction.

[cf. 240.5]

This section sets out the preemption restrictions under the law.

Nothing in this part shall be (a) 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 this part or (b) deemed to abridge any additional procedural rights or remedies not inconsistent with this part 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 this part.

§ 242.7 Definitions.

[cf. 240.7]

Some of the definitions include:

Job aid means information regarding other than main track physical characteristics that supplements the operating instructions of the territory over which the locomotive or train movement will occur. See definitions of “main track” and “physical characteristics” in this section. A job aid may consist of training on the territory pursuant to 49 CFR 242.119, maps, charts or visual aids of the territory, or a person or persons to contact who are qualified on the territory and who can describe the physical characteristics of the territory. At a minimum, a job aid must cover characteristics of a territory including:

permanent close clearances, location of permanent derails and switches, assigned radio frequencies in use and special instructions required for movement, if any, and railroad-identified unique operating conditions.

On-the-job training means job training that occurs in the work place (*i.e.*, the employee learns the job while doing the job). In the context of this part, the on-the-job training portion of the program must be based on a model generally accepted by the educational community, and must consist of the following three key components:

- (1) A brief statement describing the tasks and related steps the employee must be able to perform;
- (2) A statement of the conditions (*i.e.*, tools, equipment, documentation, briefings, demonstrations, and practice) necessary for learning transfer; and
- (3) A statement of the standards by which proficiency can be measured through a combination of task/step accuracy, completeness, and repetition.

Passenger conductor means a conductor who has also received emergency preparedness training under part 239 of this chapter

Physical characteristics means the actual track profile of and physical location for points within a specific yard or route that affect the movement of a locomotive or train. Physical characteristics includes both main track physical characteristics and other than main track physical characteristics.

Qualified instructor means a person who has demonstrated, pursuant to the railroad's

Territorial qualifications means possessing the necessary knowledge concerning a railroad's operating rules and timetable special instructions including familiarity with applicable main track and other than main track physical characteristics of the territory over which the locomotive or train movement will occur.

§ 242.9 Waivers.
[cf. 240.9]

A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement in accordance with 49 C.F.R. §211.

§ 242.11 Penalties and consequences for noncompliance.
[cf. 240.11]

This sets out the penalties for violations of the regulation. They are similar to the penalties in the locomotive engineer regulations.

§ 242.13 Information collection requirements.
[cf. 240.13]

The information collection requirements of this Part were reviewed by the Office of Management and Budget.

Subpart B Program and Eligibility Requirements

§ 242.101 Certification program required.

[cf. 240.101]

Each railroad shall have in effect a written program for certifying conductors.

Each railroad shall have a certification program approved in accordance with § 242.103 that includes:(1) A designation of the types of service that it determines will be used in compliance with the criteria established in § 242.107;(2) A procedure for evaluating prior safety conduct that complies with the criteria established in § 242.109;(3) A procedure for evaluating visual and hearing acuity that complies with the criteria established in § 242.117;(4) A procedure for training that complies with the criteria established in § 242.119;(5) A procedure for knowledge testing that complies with the criteria established in § 242.121; and (6) A procedure for monitoring operational performance that complies with the criteria established in § 242.123.

§ 242.103 Approval of design of individual railroad programs by FRA.

[cf. 240.103 & 238.505]

Each railroad shall submit its written certification program and request for approval in accordance with the procedures contained in appendix B at least 60 days prior to the date specified in § 242.105(a).

Each railroad shall:

Simultaneous with its filing with the FRA, serve a copy of any submission, resubmission, or a material modification filed on the president of each labor organization that represents the railroad's employees subject to this part; and

Not later than 45 days from the date of such filing a submission, any designated representative of railroad employees subject to this part may comment on the submission, resubmission, or material modification:

§ 242.105 Schedule for implementation.

[cf. 240.201]

No railroad shall permit or require a person, designated as a certified conductor to perform service as a certified conductor for more than a 36-month period. A certified conductor who is eligible to receive a retirement pension in accordance with the terms of an applicable agreement or in accordance with the terms of the Railroad Retirement Act within 36 months from the pertinent date for compliance with the procedures for testing and evaluation may request, in writing, that a railroad not recertify that person, until 36 months from the pertinent date for compliance with the mandatory procedures for testing and evaluation.

A person who is subject to recertification under the engineer certification regulation may not make a request pursuant to this section.

§ 242.107 Types of service.
[cf. 240.107]

A railroad may issue certificates for either of the following types of service:

- (1) Conductor; and (2) Passenger conductor.

A railroad shall not reclassify the certification of any type of certified conductor to a different type of conductor certification during the period in which the certification is otherwise valid except when a conductor completes 49 CFR part 239 emergency training and is certified as a passenger conductor.

Each railroad is authorized to impose additional conditions or operational restrictions on the service a conductor may perform beyond those identified in this section, provided those conditions or restrictions are not inconsistent with this part.

§ 242.109 Determinations required for certification and recertification.
[cf. 240.109, 240.203 and 240.205]

This section sets out the eligibility requirements for becoming a certified conductor.

§ 242.111 Prior safety conduct as motor vehicle operator.
[cf.240.111 and 240.115]

Individual's duty. Except for persons designated as conductors under paragraph (a) or (b) of § 242.105 or for persons covered by § 242.109(f), each person seeking certification or recertification under this part shall, within 366 days preceding the date of the railroad's decision on certification or recertification:

Make information concerning his or her driving record available to the railroad, and also any information relating to any substance abuse.

§ 242.113 Prior safety conduct as an employee of a different railroad.
[cf. 240.113 and 240.205]

The information regarding the driving record and substance abuse from the employee's work on a different railroad shall be provided.

§ 242.115 Substance abuse disorders and alcohol drug rules compliance.
[cf. 240.119 and 240.205]

The regulation adopts similar alcohol and drug requirements that apply to the hours of service employees and under the engineer certification regulations.

§ 242.117 Vision and hearing acuity.
[cf. 240.121 and 240.207]

The standards for visual acuity and hearing acuity are similar to the requirements under the engineer certification regulations.

§ 242.119 Training.
[cf. 240.123 and 240.213]

This section requires that each railroad shall determine that the person has the knowledge to safely perform as a conductor in each type of service that the person will be permitted to perform.

§ 242.123 Monitoring operational performance.
[cf. 240.129 and 240.303]

Each railroad shall monitor the conduct of its certified conductors by performing unannounced operating rules compliance tests.

§ 242.125 Certification determinations made by other railroads.
[cf. 240.225]

A railroad may rely on determinations made by another railroad concerning that person's certification.

§ 242.127 Reliance on qualification requirements of other countries.
[cf. 240.227]

A Canadian railroad that is required to comply with this regulation or a railroad that conducts joint operations with a Canadian railroad may certify that a person is eligible to be a conductor.

Subpart C -Administration of the Certification Program

§ 242.201 Time limitations for certification.
[cf. 240.217]

Regarding prior driving record and substance abuse, a railroad cannot rely on information furnished more than 366 days, and more than 450 days for visual and hearing acuity.

§ 242.203 Retaining information supporting determinations.

[cf. 240.215]

A railroad that issues, denies, or revokes a certificate shall maintain detailed records for each certified conductor or applicant for certification.

§ 242.205 Identification Of certified persons and record keeping.

[cf. 240.221]

After the effective date, a railroad shall maintain a list identifying each person designated as a certified conductor, including conductors working in joint operations territory.

§ 242.207 Certificate components.

[cf. 240.223]

This section sets forth the information required to be contained on a certificate.

§ 242.209 Maintenance of the certificate.

[cf. 240.305]

Each conductor shall have the certificate in his or her possession while on duty as a conductor and display it upon request. .

§ 242.211 Replacement of certificates.

[cf. 240.301]

(a) A railroad shall have a system for the prompt replacement of lost, stolen or mutilated certificates at no cost to conductors.

§ 242.213 Multiple certifications.

A person may hold certification for multiple types of conductor service, including holding both conductor and locomotive engineer certification.

Except as provided in paragraph (e) of this section, a locomotive engineer, including a remote control operator, who is operating a locomotive without an assigned certified conductor must either be (i) certified as both a locomotive engineer and as a conductor or (ii) accompanied by a person certified as a conductor under this part but who will be attached to the crew in a manner similar to that of an independent assignment.

A person who is certified to perform multiple types of conductor service and who has had any of those certifications revoked may not perform any type of conductor service during the period of revocation.

A person who holds a conductor and locomotive engineer certificate and who has had his or her conductor certification revoked may not work as a locomotive engineer during the

period of revocation. However, a person who holds a current conductor and locomotive engineer certificate and who has had his or her conductor certification revoked may work as a locomotive engineer during the period of revocation.

A person who holds a current conductor and locomotive engineer certificate and who has had his or her locomotive engineer certification revoked under may not work as a conductor during the period of revocation.

§ 242.215 Railroad oversight responsibilities.
[cf. 240.3 09]

No later than March 31. of each year (beginning in calendar year _____), each Class I railroad (including the National Railroad Passenger Corporation 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 conductors during the prior calendar year.

Subpart D - Territorial Qualification and Joint Operations

§ 242.301 Requirements for territorial qualification.
{cf. 240.2291

This sets out the territorial qualifications required for a conductor. .

If a conductor lacks territorial qualification on main track physical characteristics, he or she shall be assisted by a person who is a certified conductor or certified locomotive engineer and meets the territorial qualification requirements for the main track physical characteristics. If on other than main track, such assistance shall be provided, where practicable. If not practicable, a job aide shall be provided.

If a conductor lacks territorial qualification on other than main track physical characteristics, where practicable, he or she shall be assisted by a person who is a certified conductor and meets the territorial qualification requirements for other than main track physical characteristics. Where not practicable, the conductor should be provided an appropriate up-to-date job aid.

Subpart E - Denial and Revocation of Certification

§ 242.401 Denial of certification.
[cf. 240.219]

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.

A document explaining the basis for a denial of a certificate shall be served on the person within 10 days after the railroad's decision and shall give the date of the decision.

A person shall not be denied certification if an intervening cause prevented or materially impaired the conductor's ability to comply with the railroad operating rule or practice which constitutes a violation.

§ 242.403 Criteria for revoking certification.

[cf.240.117and240.305]

A certified conductor who has failed to comply with railroad rules and practices shall have his or her certification revoked. The rule lists all of the violations that may be considered.

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

§ 242.405 Periods of revocation.

[cf. 240.11 7(g)-a]

The periods of revocation of a certificate are similar to those set forth in the locomotive engineer regulation.

§ 242.407 Process for revoking certification.

[cf. 240.307]

This sets out the procedures to be followed when revoking a certificate, including the requirement for a hearing.

Subpart E -Dispute Resolution Procedures

§242.501 Review board established.

[cf. 240.401]

(a) Any person who has been denied certification, denied recertification, or has had his or her certification revoked and believes that a railroad incorrectly determined that he or she failed to meet the certification requirements, may petition the Federal Railroad Administrator to review the railroad's decision.

(b) FRA Administrator has delegated initial responsibility for adjudicating such disputes to the Operating Crew Review Board.

(c) The Operating Crew Review Board shall be composed of at least ___ employees of the Federal Railroad Administration selected by the Administrator.

§ 242.503 Petition requirements.

[cf. 240.403]

Each petition for review of a railroad's decision is spelled out here. It is similar to the provisions in the locomotive engineer regulation.

§ 242.505 Processing certification review petitions.

[cf. 240.405]

Each petition for review will then be referred to the Operating Crew Review Board for a decision, and based on the record, the Board, acting upon the majority opinion of its members and with the advice of its Senior Counsel, shall grant, deny or remand the petition.

§ 242.507 Request for a hearing.

[cf. 240.407]

If adversely affected by the Operating Crew Review Board decision, either the petitioner before the Board or the railroad involved shall have a right to an administrative proceeding as prescribed by § 242.509 by filing a written request within 20 days.

The requirements that must be contained in the request for a hearing is set out in this section.

§ 242.509 Hearings.

[cf. 240.409]

An administrative hearing for a conductor certification petition shall be conducted by a presiding officer, who can be any person authorized by the Administrator, including an administrative law judge.

The hearings will be conducted similar to those in the locomotive engineer certification regulations.

§ 242.511 Appeals.

[cf. 240.411]

(a) Any party aggrieved by the presiding officer's decision may file an appeal. The appeal must be filed within 35 days of issuance of the decision with the Federal Railroad Administrator, 1200 New Jersey Avenue, SE., Washington, DC 20590 and with the Docket Clerk, U.S. Department of Transportation, Docket Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, D.C. 20590. 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. If no appeal is timely filed, the presiding officer's decision constitutes final agency action.

(b) 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.

(c) 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.

(d) 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.

(e) The Administrator may remand, vacate, affirm, reverse, alter or modify the decision of the presiding officer and the Administrator's 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.

(f) An appeal from an Operating Crew Review Board decision pursuant to § 242.503(d) must be filed within 35 days of issuance of the decision with the Federal Railroad Administrator, 1200 New Jersey Avenue, SE., Washington, DC 20590 and with the Docket Clerk, U.S. Department of Transportation, Docket Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, D.C. 20590. A copy of the appeal shall be served on each party. 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.

APPENDIX A TO PART 242—SCHEDULE OF CIVIL PENALTIES

This Appendix sets forth the penalties for violations.

APPENDIX B TO PART 242--PROCEDURES FOR SUBMISSION AND APPROVAL OF CONDUCTOR CERTIFICATION PROGRAMS

[cf. Appendix B to part 240]

This appendix establishes procedures for the submission and approval of a railroad's program concerning the training, testing, and evaluating of persons seeking certification or recertification as a conductor in accordance with the requirements of this part. It also contains guidance on how FRA will exercise its review and approval responsibilities.

**APPENDIX C TO PART 242—PROCEDURES FOR OBTAINING AND
EVALUATING MOTOR VEHICLE DRIVING RECORD DATA**
[cf. Appendix C to Part 240]

This appendix outlines the procedures available to individuals and railroads for complying with the requirements of §§ 242.109 and 242.111. Those provisions require that railroads consider the motor vehicle driving record of each person prior to issuing him or her certification or recertification as a conductor.

APPENDIX D TO PART 242—MEDICAL STANDARDS GUIDELINES
[cf. Appendix F to Part 240]

This appendix provides greater guidance on the procedures that should be employed in administering the vision and hearing requirements of § 242.117.

