


# CONDUCTOR CERTIFICATION REGULATION

49 CFR 242

United Transportation Union  
Regional Meeting  
Asheville, NC August 24, 2010





# Why?



## ***Railroad Safety Act of 2008 (49 U.S.C. 20163)***

Congress required the Secretary of DOT to prescribe regulations to establish a program requiring the certification of train conductors. This authority was delegated to the Federal Railroad Administrator (FRA).



# What?

# ***Statutory Requirements***

- Require FRA to develop and enact regulations requiring certification and training of conductors.
- Require railroads contractors and subcontractors to develop and submit training programs and qualification plans to FRA.
- Require 49 CFR 240 (Engineers) as the model for new regulation 49 CFR 242 (Conductors).



# How?

## ***RSAC 49 CFR 242 Working Group***

- **FRA developed “Straw Man” based on enhanced Part 240 for presentation to RSAC Working Group.**
- **RSAC Meetings:**
  - **July 21-23 Washington, DC**
  - **August 25-27 Overland Park, KS**
  - **September 15-17 Colorado Springs, CO**
  - **October 20-22 Arlington, VA**
  - **November 17-19 Scottsdale, AZ**
  - **December 16-19 Washington, DC**



# Where?



# ***RSAC Outcome***

**Consensus reached on regulatory text and preamble language from the RSAC working group members.**



## ***RSAC Outcome***

**Consensus language is a recommendation to the FRA.**

**FRA will issue a Notice of Proposed Rulemaking in the near future.**



## *Remaining Open Issue*

**Update and revise Locomotive Engineer Certification Regulations to conform with requirements of new Conductor Certification Regulations.**



# **The Consensus Recommendations**

**- *Highlights* -**

# *Definitions*

- **Conductor-** the crewmember in charge of a train or yard crew as defined in Part 218.
- **Passenger Conductor-** is a conductor who has also received emergency preparedness training under Part 239.

*Functional Approach, Regardless of Title*



# ***What's a Crew?***

**Part 218: “One or more railroad employees assigned a controlling locomotive, under the charge and control of one crew member;**

**called to perform service covered by Section 2 of the Hours of Service Act;**

**involved with the train or yard movement of railroad rolling equipment they are to work with as an operating crew;**



# ***What's a Crew?***

**...reporting and working together as a unit that remains in close contact if more than one employee;**

**and subject to the railroad operating rules and program of operational tests and inspections...”**

# ***Definition of Conductor does not cover:***

**Unless they perform the defined duties of a conductor, definition does not cover subordinate crewmembers, such as:**

- **Trainmen**
- ***Brakemen***
- **Yard Helpers**
- **Assistant Conductors**

***Functional Approach, Regardless of Title***

# Definitions

- **Job Aid-** 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.

A job aid may consist of ***training*** on the territory, ***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.***

- **On-the-job training-** job training that occurs in the work place. (*i.e., the employee learns the job while doing the job*).

# *Definitions*

- **Qualified-** a person who has successfully completed all instruction, training and examination programs required by the employer, the applicable parts of this chapter and that the person therefore may reasonably be expected to be proficient on all safety related tasks the person is assigned to perform.

# Definitions

- **Physical characteristics-** 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.

Includes *both main track physical characteristics and other than main track physical characteristics.*

# ***Definitions***

- **Qualified instructor-** a person who has demonstrated, pursuant to the railroad's written program, an adequate knowledge of the subjects under instruction and, where applicable, has the necessary operating experience to effectively instruct in the field, and has the following qualifications:
  - (1) Is a certified conductor under this part; and
  - (2) Has been selected as such by a designated railroad officer, in concurrence with the designated employee representative, where present; or
  - (3) In absence of concurrence provided in paragraph (2) of this definition, has a minimum of 12 months service working as a train service employee.

## ***Definitions***

- **Remote control operator (RCO)**- a certified locomotive engineer, as defined in § 240.7 of this chapter, trained by a railroad to operate remote control locomotives pursuant to §240.107 of this chapter.
- **Substance Abuse Professional (SAP)**- a person who meets the qualifications of a substance abuse professional, as provided in 49 CFR Part 40. As used in this rule, the SAP owes a duty to the railroad to make an honest and fully informed evaluation of the condition and progress of an employee.
- **Territorial qualifications**- 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.



# Questions?

# ***Part 242—Qualification and Certification of Conductors – Subpart A***

## **☑ General**

- Purpose and scope.
- Application and responsibility for compliance.
- Preemptive effect and construction.
- Definitions.
- Waivers.
- Penalties and consequences for noncompliance.
- Information collection requirements.

# ***Part 242—Qualification and Certification of Conductors – Subpart B***

## **☑ Program and Eligibility Requirements**

- Certification program is required and individual railroad programs must be approved by FRA.
- Determinations requirements:
  - Prior safety conduct as motor vehicle operator. (***DWI/ Test Refusal***)
  - Prior railroad safety conduct.
  - Substance abuse disorders and alcohol/drug rule compliance.
  - Vision and hearing acuity.
- Training and testing of knowledge.
- Monitoring operational performance.
- Joint operations determinations.

# ***Part 242—Qualification and Certification of Conductors – Subpart C***

## **☑ Administration of the Certification Program**

- Time limitations for certification. ***(36 Months)***
- Retaining information supporting determinations.
- Identification of certified persons and record keeping.
- Certificate components and maintenance of the certificate.
- Replacement of certificates.
- Multiple certifications; ***Engineer and conductor certificates can be conjoined into one “combined” or “compound” certificate.***
- Railroad oversight responsibilities.

## ***Time Limitations for Certification***

- ☑ All required data for certification eligibility furnished no more than 366 days prior to decision to certify.**
- ☑ Hearing acuity and medical examination conducted no more than 450 days prior to decision to certify.**
- ☑ Determination of knowledge and knowledge examination conducted not more than 366 days prior, and not more than 24 months for railroads that administer knowledge testing on a 24 month basis\*.**

**\*Does not apply to a railroad making a certification decision based on determination of another railroad; however, no railroad shall rely on a certification issued by another railroad that is more than 36 months old.**

## ***No Railroad Shall:***

- ☑ Permit or require a person to perform service as a certified conductor for more than 36 months, unless the person has been determined eligible, in accordance with requirements for certification eligibility.
- ☑ **Certify for more than 36 months.**
- ☑ Rely on a certification issued by another railroad that is more than 36 months old.
- ☑ With exception of initial implementation, certificates will be issued no later than 30 days from date of certification.

## ***Retaining Information Supporting Determinations***

**All relevant data collected including a person's prior safety conduct, motor vehicle driving record, data furnished by another railroad, data furnished by a the person seeking certification, hearing and vision acuity test results, and all other records required must be retained for a **period six (6) years** from the date of certification, recertification, denial, or revocation decision, and **made available to FRA upon request during normal business hours.****

## ***Identification of Certified Persons:***

- ☑ Identify each person designated as certified conductor, including type of service, and date of certification.
- ☑ Joint operations – **employing railroad** shall include the territorial qualifications of persons certified.
- ☑ Updated at least annually.
- ☑ Be maintained at the divisional or regional headquarters of the railroad.
- ☑ Be available to the FRA for inspection or copying during normal business hours.

# ***Certificate Components***

- ☑ Identify the railroad or parent company issuing it.**
- ☑ Identify the person it is issued to, including name, employee identification number, year of birth or photograph of person.**
- ☑ Identify any conditions or limitations, including type of service, or vision or hearing acuity deficiencies.**
- ☑ Show effective date of each type of certification held.**



# ***Certificate Components***

- Signed by designated person issuing the certificate, as authorized by the railroad or parent company.**
- Small size to fit wallet.**
- Additional information (above required information) is not prohibited on the certificate.**

## ***Certificate Maintenance and Responsibility***

- ☑ Each conductor issued must have certificate in their possession while on duty as a conductor.**
- ☑ Display certificate upon request from representative of FRA, State Inspector authorized under 49 CFR 212, an officer of the issuing railroad, or officer of another railroad during joint operations.**
- ☑ Any conductor called to service that will exceed certificate limitations shall immediately notify the railroad, and **it shall be unlawful for the railroad to require such service.****

# *Replacement of Certificates*

**A railroad shall:**

- ☑ **Have a system for prompt replacement of lost, stolen or mutilated certificates, at no cost to conductors.**
- ☑ **Reasonably accessible to certified conductors in need of replacement or temporary replacement certificate.**
- ☑ **A temporary replacement certificate must identify the person being issued, date of issuance, and authorized by designated supervisor.**
- ☑ **Temporary certificates may be delivered electronically and will be valid for a period no greater than 30 days.**

## ***Electronic Recordkeeping:***

- ☑ No record can be deleted or altered, and amendment(s) to record are stored separate or attached to the record it amends, without changing the original record.**
- ☑ Each record amendment identifies the person making the amendment.**
- ☑ The system permits reasonable access to the FRA, and can be provided in printed format and authenticated as a true and accurate copy of the railroad's records, if requested by the FRA.**

# ***Electronic Recordkeeping:***

- ☑ The program must be secured to protect data storage integrity, including prevention of unauthorized access.**
- ☑ Security system requires employee identification number and password for program access.**
- ☑ No two individuals have the same identity.**

## ***It Shall Be Unlawful To:***

- ☑ Make false entry on records.**
- ☑ Falsify records through misstatement, omission, or mutilation.**
- ☑ Require conductor to provide service that will exceed certificate limitations.**
- ☑ Certify for more than 36 months.**

## ***Part 242—Qualification and Certification of Conductors – Subpart D***

### Territorial Qualification and Joint Operations

The **employing railroad** shall not permit or require a person to serve as a conductor unless the railroad determines the person is certified as a conductor and possesses the necessary main track physical characteristic qualifications for the territory over which they will be serving as a conductor.

## *Individual's Responsibility*

- ☑ **Each person who is called to serve as a conductor shall:**
  - **Meet the territorial qualification requirements on the segment of main track upon which he or she will serve as a conductor.**
  - **Immediately notify the railroad upon which he or she is employed if he or she does not meet the required territorial qualifications.**

# *Assistance and Job Aids*

- If a conductor lacks qualification on **main track** physical characteristics, they shall be assisted by a person who is a certified as a conductor or locomotive engineer who meets the territorial qualification requirements for that main track physical characteristics.

# *Assistance and Job Aids*

- 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.

# ***Grandfathering***

## **Current Conductors Are Grandfathered**

- ***If retiring within 3 years – at employee's request.***
- ***Other employees – by railroad's schedule.***

# ***Lone Engineers***


**Except for specified emergencies (medical, police) a lone engineer must**

- **Be certified as both locomotive engineer and conductor, or**
- **Accompanied by a certified conductor, who attaches to the lone engineer.**

***Regulation is Crew Consist Neutral***



# Questions?



## ***Part 242—Qualification and Certification of Conductors – Subpart E***

### **☑ Denial and Revocation of Certification**

- Denial of certification.
- Criteria for revoking certification.
- Periods of revocation.
- Process for revoking certification.

# ***Prohibited Acts- Stop Signals***

- ☑ **When the conductor is located in the operating cab, or otherwise has knowledge of the signal indication, **failure to take appropriate action\* to prevent the locomotive engineer of the train the conductor is assigned to from failing to control a locomotive or train in accordance with a **signal indication that requires a complete stop before passing it,** excluding a hand or a radio signal indication or a switch.****

**\*Appropriate action does not mean that a conductor must prevent a violation from occurring at all costs; the duty may be met by warning an engineer of a potential or foreseeable violation.**

# ***Prohibited Acts- Speed***

- ☑ When the conductor is located in the operating cab, **failure to take appropriate action to prevent** the locomotive engineer of the train the conductor is assigned to from failing to **adhere to limitations concerning train speed:**
  - the speed at which the train was operated exceeds the maximum authorized limit by at least 10 miles per hour. Where restricted speed is in effect, railroads shall consider only those violations of the conditional clause of restricted speed rules.
  - When not in the operating cab, the conductor is deemed to have taken appropriate action when in compliance with all applicable Railroad Operating Rules and Special Instructions.



# ***Prohibited Acts- Brake Tests***

- Failure to perform or have knowledge that a required brake test was performed.**



# ***Prohibited Acts- Occupying a Segment of Main Track***

- Occupying main track or a segment of main track without proper authority or permission.**

# ***Prohibited Acts- Drug and Alcohol***

- Use of alcohol and/or drugs contrary to Federal Regulations (Rule G).**

# ***Prohibited Acts- Tampering***

**Failure to comply with prohibitions against tampering with locomotive mounted safety devices;**

- ☑ knowingly fail to take appropriate action to prevent the locomotive engineer from failing to comply with prohibitions against tampering with locomotive mounted safety devices;**
- ☑ knowingly fail to take appropriate action to prevent the locomotive engineer of the train from operating or permitting to be operated a train with an unauthorized disabled safety device in the controlling locomotive.**



# ***218 Subpart F Prohibited Acts***

## ***REPORTABLE ACCIDENTS OR INCIDENTS UNDER PART 225***

- 218.99- Shoving or pushing movements.
- 218.101- Leaving equipment in the clear.
- 218-103- Hand operated crossovers.
- 218.105- Hand operated main line switches.
- 218.107- Hand operated crossover switches.
- 218.109- Hand operated fixed derails.

# *Periods of Revocation*

- 1<sup>st</sup> event = 30 days
- 2<sup>nd</sup> event within 24 months = 6 months
- 3<sup>rd</sup> event within 36 months = 1 years
- 4<sup>th</sup> event within 36 months = 3 years

**Any period of revocation may consist of training.**



# ***Criteria for Reducing Periods of Ineligibility***

- (1) The denial or revocation of certification is for a period of one year or less;**
- (2) Certification is denied or revoked for reasons other than noncompliance with drug and alcohol.**
- (3) The person is evaluated by a railroad officer and determined to have received adequate remedial training;**
- (4) The person successfully completes any mandatory program of training or retraining prior to return to service;**
- (5) At least one half the specified period of ineligibility has elapsed.**

# ***Part 242—Qualification and Certification of Conductors – Subparts F***

## **☑ Dispute Resolution Procedures**

- Review board established.
- Petition requirements.
- Processing certification review petitions.
- Request for a hearing.
- Hearings.
- Appeals.

***Operating Crew Review Board (OCRB) replaces LERB***



# Questions?

# ***Comparison of Part 240 and Part 242***

## **Part 240**

- Program submitted to FRA for approval.
- Part 218 Subpart F violations not currently revocable events.

## **Part 242**

- Program submitted to FRA for approval and a copy submitted to the president of each labor organization that represents the railroad's employees subject to Part 242.
- Part 218 Subpart F violations may be revocable events

# ***Comparison of Part 240 and Part 242***

## **Part 240**

- **NDR check required**
- **Utilize EAP**

## **Part 242**

- **NDR not required**
- **Utilize SAP**

# ***Comparison of Part 240 and Part 242***

## **Part 240**

- **Flowback to conductor permitted when engineer certification is revoked**

## **Part 242**

- **Flowback to conductor is not permitted when engineer certification is revoked.**
- **Flowback to engineer is not permitted when conductor certification is revoked, except 218 Subpart F.**
- **Flowback to brakeman, trainman, yard helper, assistant conductor *is* permitted when either certification is revoked.**

# ***Comparison of Part 240 and Part 242***

## **Part 240**

- **Railroad revocation hearing may follow hearing procedures contained in applicable bargaining agreement**

## **Part 242**

- **Notwithstanding applicable collective bargaining agreement, railroad shall provide the conductor with a copy of written information and list of witnesses that the railroad will present at the hearing**



# Questions?