

# Part 240 Questions and Answers

## FRA Jurisdiction

The Rail Safety Improvement Act of 1988, Pub. L. 100-342, ("RSIA") amended the Federal Railroad Safety Act of 1970, 45 U.S.C. §§ 421, 431 et seq., to provide the Federal Railroad Administration (FRA) broader regulatory authority over the Nation's railroads. The term "railroad" as used in the Act means all forms of non-highway ground transportation that run on rails or electro-magnetic guideways, including (1) commuter or other short-haul rail passenger service in a metropolitan or suburban area, as well as any commuter rail service that was operated by the Consolidated Rail Corporation as of January 1, 1979, and (2) high-speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation. For policy reasons, FRA does not exercise jurisdiction under all of its regulations to the full extent permitted by statute. See 49 CFR Part 209, App. A.

## Plant Railroads

FRA's regulations exclude from their reach railroads whose entire operations are confined to an industrial installation (i.e., "plant railroads"), such as those in steel mills that do not go beyond the plant's boundaries. Other regulations (e.g., 49 C.F.R. §214.3, railroad workplace safety) exclude not only plant railroads, but also any railroad that is not operated as a part of, or over the lines of, the general railroad system of transportation. By "general railroad system of transportation," FRA refers to the network of standard gage track over which goods may be transported throughout the Nation and passengers may travel between cities and within metropolitan and suburban areas. 49 C.F.R. Part 209, App. A. Much of this network is interconnected, so that a rail vehicle may travel across the Nation without leaving the system. However, mere physical connection to the system does not bring trackage within the FRA's jurisdiction. For example, trackage within an industrial installation that is connected to the network only by a switch for the receipt of shipments over the system is not considered to be part of the general railroad system of transportation.

Even where a railroad operates outside the general system, other railroads that are part of that system may have occasion to enter the railroad's property (e.g., a major railroad goes into a chemical or auto plant to pick up or set out cars.) In such cases, the railroad that is part of the general system remains part of the system while inside the installation; therefore, all of its activities are covered by FRA's regulations during that period. The plant railroad itself, however, does not get swept into the general system by virtue of the other railroad's activity, except to the extent it is liable, as the track owner, for the condition of its track over which the other railroad operates during its incursion into the plant. Of course, in the opposite situation, where the plant railroad itself operates 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 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 operations on that trackage from the general system for purposes of FRA's regulations, as it would make that trackage part and parcel of the industrial installation. However, the track itself would have to meet FRA's standards if a general system railroad operates over it. 49 CFR Part 209, App. A.

Q. 1 - I operate a plant railroad that is currently excluded from FRA regulations. However, a building within the installation has been leased to a lumberyard for purposes of receiving and off-loading lumber cars. Will I lose my plant railroad status if I handle cars for this new operation in the plant and/or on the track adjacent to the plant track that I lease from the general system railroad?

Answer: **Yes.** The plant railroad exemption is for an operation that handles cars exclusively for its own operations. If a plant begins handling cars of other companies, it becomes a common carrier engaged in switching operations.

### **Tourist, Scenic, and Excursion Railroads**

FRA exercises jurisdiction over tourist, scenic, and excursion railroad operations whether or not they are conducted on the general railroad system of transportation. There are two exceptions: (1) operations of less than 24-inch gage (which, historically, have never been considered railroads under the Federal railroad safety laws); and (2) operations that are off the general system and "insular."

Q. 2 - What does insular mean?

Answer: Insularity is an issue only regarding tourist operations over trackage outside of the general system used exclusively for such operations. FRA considers a tourist railroad to be insular if its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of any member of the public "except a business guest, a licensee of the tourist operation or an affiliated entity, or a trespasser" would be affected by the operation.

Q. 3 - When is a tourist railroad not considered insular?

Answer: A tourist operation will not be considered insular if one or more of the following exists on its line:

- A public highway-rail crossing that is in use;
- An at-grade rail crossing that is in use;
- A bridge over a public road or waters used for commercial navigation; or
- A common corridor with a railroad, i.e., its operations are within 30 feet of those of any railroad.

Q. 4 - Do any of FRA's regulations apply to insular tourist railroads?

Answer: **No.** Many of FRA's regulations do not currently apply to tourist railroads. However, FRA's emergency order authority permits it to address a true safety emergency arising from conditions covered by those regulations or any other regulations that do not apply outside of the general railroad system. Thus, even off-the-general-system tourist railroads should understand that FRA has the jurisdiction to inspect their operations and to take emergency action if those operations pose an imminent hazard of death or injury.

Q. 5 - Do any of FRA's regulations apply to non-insular railroads?

Answer: **Yes.** The following regulations and laws apply: Federal signal inspection laws, hazardous materials regulations, noise emission regulations, freight car safety standards, accident/incident reports regulations, hours of service restrictions on duty hours, steam locomotive inspection regulations, grade crossing signal system safety regulations, and all general power and enforcement provisions of the rail safety statutes (e.g., subpoena authority, civil penalty authority, disqualification authority, and emergency order authority).

Q. 6 - How would a tourist railroad sever its connection to the general system?

Answer: It depends on each particular railroad's circumstances and operations. A railroad should contact FRA if it has questions about whether it is connected to the general system.

Generally, though, a tourist railroad would be considered to be operating off the general system if its operation is conducted only on track used exclusively for that purpose. That a tourist operation has a switch that connects to the general system does not make the tourist operation part of the general system if the tourist trains do not enter the general system and the general system does not use the tourist operation's trackage for any purpose other than delivering or picking up shipments to or from the tourist operation itself.

Q. 7 - I operate a tourist railroad and have just been given permission to operate an excursion train on a freight railroad's trackage as a separate business. How do I certify engineers for my operation?

Answer: You have several options. 1) You may have the freight railroad's engineers operate your train; 2) You may have the freight railroad certify your engineers under its program and issue your employees its own certificates; or 3) You may submit a certification program to FRA and certify your own engineers. Of course, as the freight railroad is the host railroad in these operations, it has a responsibility to determine that your engineers are properly certified and qualified to operate on its railroad.

### **Certification Issues (49 CFR Part 240) Certification Program Approval**

Q. 8 - I am starting up a new railroad. Is there a specified period that my certification program should be submitted to FRA?

Answer: **Yes.** The program should be submitted for approval at least 60 days before commencing

operations. 240.103(a).

Q. 9 - I filed my certification program with FRA. How do I know it has been approved?

Answer: Your program is approved if you do not hear from the FRA within 30 days of the filing date. You will not be notified in writing that the program is approved. 240.103(c).

Q. 10 - What if I materially modify my program after I submit it to FRA?

Answer: You must resubmit the modified program at least 30 days before implementing the modifications. 240.103(c).

### **Certification Exclusions**

Q. 11 - Are there any situations or conditions that would allow non-certified employees to operate a locomotive on the general system?

Answer: **Yes.** The answer is found in the definitions section of the regulation under "locomotive engineer." See 240.7. The regulation applies to "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 49 CFR 218.5 and 218.29(a)(1); or

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

Q. 12 - What do 49 CFR 218.5 and 218.29(a)(1) mean when referenced to a servicing area?

Answer: "49 CFR 218.5–Definitions" terms a locomotive servicing track area: 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. Emphasis added.

"49 CFR 218.29(a)(1)" defines the limits of the locomotive servicing area. This section of the regulation states, "A blue signal must be displayed at or near each switch providing entrance to or departure from the area." This provision of the regulation is used to define the limits of the locomotive servicing track area. A blue signal does not have to be actually displayed for this exclusion to take place.

Note: Sliding (moving) blue signal limits are not allowed. The designated switch or derail at the entrance to such facilities must be permanent. This is because locomotive service area limits are designated in some type of instruction to the employees. These limits may not expand and contract at will.

## **Eligibility Based on Prior Safety Conduct (240.109 and 240.225)**

Q. 13 - When I am considering a person for locomotive engineer (re)certification, what areas of safety conduct do I evaluate?

Answer: You are required to evaluate the person's: 1) prior safety conduct as a motor vehicle operator (240.115), 2) prior operating rules compliance (240.117), and 3) prior substance abuse disorders and alcohol/drug rules compliance (240.119).

Q. 14 - I am in the process of certifying an engineer that came from another railroad. The prior employing railroad has not furnished me with the employee's engineer certification records. What may I do?

Answer: First, the duty to furnish this information is on the person seeking certification or recertification, so you should make sure that person has provided written consent to the former employing railroad for providing it. 240.113. Second, you may notify the other railroad that this is a Federal requirement and the information must be provided or you are notifying FRA.

The primary purpose for requesting this information is to determine that the engineer is currently certified. While it would be better to get detailed information regarding training, testing, and qualifications, you may rely on less detailed written notification as long as the former employing railroad states that the engineer is certified. If the information is not provided, please make note of this in the employee's file and notify FRA. While you may continue with your certification process, before issuing a certificate on your railroad, you will need to verify the prior certification.

Q. 15 - When hiring an engineer from another railroad, is there any difference between utilizing that railroad's certification under 240.225, as opposed to performing a recertification on the engineer under Section 3 of the shortline program?

Answer: **Yes.** If you use the other railroad's certification, it will not be necessary to conduct the motor vehicle check, nor the hearing and visual acuity exams. However, you will still be required to give the engineer a knowledge test (240.125), a skills performance test (240.127), and train the engineer on the physical characteristics of your railroad (240.123). If you use another railroad's certification when issuing your own certificate, carry the expiration date on the old certificate to yours; by carrying over the expiration date, you will prevent an engineer from exceeding three years on the motor vehicle check, as well as the hearing and visual acuity exams.

Q. 16 - When performing the employee prior safety conduct evaluation, is there a specific time involved?

Answer: Yes, you may only consider incidents that occurred within a period of 36 consecutive months before the effective date of your certification decision. 240.117(d).

**State Department of Motor Vehicle (DMV) and National Driver Register (NDR) Evaluations (49 CFR 240.111 and 240.115).**

Q. 17 - Is there a specific period for evaluating an employee's motor vehicle driving incidents?

Answer: Yes, you may not consider driving incidents that occurred more than 36 consecutive months from the effective date of your certification decision. 240.115(b).

Q. 18 - May I consider license suspensions that involve speeding?

Answer: **No.** You may only consider license suspensions that result from drug and/or alcohol use or a refusal to test. 240.115(b).

Q. 19 - I am having trouble getting an engineer's motor vehicle records. May I certify an engineer before his motor vehicle records have been evaluated?

Answer: **No.** All components of certification must be fulfilled before you may certify the engineer. However, if you are having problems tracking down an incident that was identified by the NDR in another State, you may continue with the certification process. See 49 CFR 240, Appendix C, under Actions When a Probable NDR Match Occurs.

Q. 20 - Is an engineer required to report to the railroad that his/her license was suspended because of drugs or alcohol?

Answer: **Yes.** The engineer has 48 hours to report the suspension to the railroad after the conviction or completed State action. 240.111(h).

Q. 21 - Some States now suspend the motor vehicle operator's license on the spot. Is the engineer in this situation required to report the suspension to the railroad at that time?

Answer: **No.** Even though the State suspended the motor vehicle operator's license, the suspension is a temporary measure and not a completed State action. Once the State action is complete, assuming the engineer is convicted, he/she must report the suspension (or conviction, or the equivalent) to the railroad at that time. Of course, if the engineer intends to plead guilty to the charge, he/she may notify the railroad ahead of time to begin the evaluation process. 240.111(h).

Q. 22 - Once the engineer reports the suspension to the railroad, is the railroad required to immediately suspend the engineer's certificate? Is this a violation warranting a certificate revocation?

Answer: The answer is "No" to both questions. The railroad is required to suspend an engineer's certificate once it has reliable information that the engineer violated one of the six cardinal rules listed in the regulation. See 49 CFR 240.117(e). A motor vehicle license suspension is not a violation of any of these rules. Therefore, no certificate suspension or revocation is warranted. A driver's license suspension merely indicates that the engineer may have a substance abuse problem. The railroad's only obligation is to refer the engineer to an Employee Assistance Program (EAP) counselor for evaluation; however, this should be done within a reasonable time.

The employee should not be left working for weeks and months without having had an EAP counselor evaluation .

Q. 23 - I am hearing rumors that the NDR is not going to perform NDR searches anymore. Is this true?

Answer: Yes, but this will not take effect for some time. Since all States are now participants in the NDR program, the NDR intends to transfer these duties to the individual States. According to NDR sources, the NDR plans to hold a meeting sometime in the near future to coordinate this transfer. Until that time, the NDR will continue to do the searches.

### **Hearing and Visual Acuity Examinations (240.121, 240.207 and Part 240, app. F)**

Q. 24 - What is the railroad's obligation regarding the hearing and visual acuity tests?

Answer: The railroad must ensure that the person or clinic that is performing these tests has a copy of the test standards outlined in the regulation. The railroad may not assume that the clinic will use the correct standards. As a matter of fact, clinics perform many DOT commercial drivers' license tests, which have different standards. These clinics may see the DOT form and assume that engineers get the same tests. Railroads should verify with the clinics that the correct tests would be performed.

Q. 25 - If the employee fails the hearing and/or visual acuity test, is the railroad required to perform additional tests?

Answer: **Yes.** A person not meeting the hearing and visual acuity standards, upon request, shall be subject to further medical evaluation. 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. 240.121(e).

Q. 26 - If an engineer fails a hearing or visual acuity test, may the engineer still be certified?

Answer: **Yes.** If a railroad determines that the engineer can operate a locomotive or train safely without meeting the specific hearing and visual acuity standards set forth in 240.121(c) and (d), a railroad may still certify the engineer.

### **Knowledge Tests (49 CFR 240.125 and 240.209)**

Q. 27 - Is the knowledge test that is required prior to certification the typical railroad operating rule test that has been given for years?

Answer: Not quite. In addition to operating-rules questions, the test should also include questions on personal safety practices (safety rules), equipment inspections, Federal safety rules (any rules related to regulations), and train handling practices including familiarization with territorial physical characteristics.

Q. 28 - If an engineer is qualified on multiple divisions, must the engineer be tested on the physical characteristics of each of the divisions?

Answer: **Yes.** Engineers must be tested on all the territories they are currently qualified on at the time of the test.

Q. 29 - May the test be conducted in workbook fashion, where the engineers may refer to a book to answer questions?

Answer: **No.** The test must be closed book (proctored). However, if portions of the test are designed to test the engineer's ability to use reference materials such as timetables, then these materials may be referred to.

### **Performance Skill Tests (49 CFR 240.127 and 240.211)**

Q. 30 - What is the difference between a performance skills test (240.127) and an operational monitoring "check" ride (240.129)?

Answer: While the criteria for both tests could be the same, i.e., the engineer is observed while operating a train or Type I or II simulator, the performance skills test is intended to be a more thorough observational test than what is required in a monitoring "check" ride. Because it is a more thorough test, the performance skills test is only required every three years (prior to certification and recertification), while the check ride is required at least once each year.

Federal regulations require that no railroad shall permit or require a person who fails a skills test to operate as a locomotive or train service engineer until that person passes a skills test; meanwhile, failure to receive a check ride, while a violation of the regulation, does not affect an engineer's certification status.

Additionally, the skills test must be conducted in the most demanding class or type of service that the person will be permitted to perform while the check ride does not.

Q. 31 - May a railroad supervisor who is not an engineer conduct a skills test?

Answer: **No.** A Designated Supervisor of Locomotive Engineers (who must be an engineer) must conduct the test. However, please note that the supervisor does not need to be qualified on the physical characteristics of the territory over which the test will be conducted. 240.127(c)(2).

Q. 32 - May the railroad use a simulator to conduct the skills test?

Answer: **Yes.**

**Operational Monitoring Requirements Include Both (1) Operational Monitoring Observations, i.e., Check Rides, and (2) Unannounced Compliance Tests, i.e., Efficiency Tests (49 CFR 240.129 & 240.303)**



Q. 33 - How often is a railroad required to conduct operational monitoring check rides on each of its engineers?

Answer: A minimum of one check ride per engineer is required per calendar year. 240.303. Please remember that while only one check ride is required per year, a railroad is not limited to conducting only one such ride.

Q. 34 - May the check ride be conducted by someone who is not a DSLE?

Answer: **No.** However, please note that the supervisor does not need to be qualified on the physical characteristics of the territory over which the ride will be conducted. 240.129(b)(2).

Q. 35 - Must the DSLE always ride on the locomotive with an engineer to conduct a check ride?

Answer: **No.** The railroad may evaluate electronically recorded data, or have the engineer operate a type I or II simulator to fulfill these requirements. 240.129(c) and (d).

Q. 36 - Does the annual check ride fulfill all the requirements of monitoring the operational performance of engineers?

Answer: **No.** Railroads shall also conduct at least one unannounced compliance test, i.e., an operating rule efficiency test, each calendar year. 240.303(c).

Instead of simply observing the engineer or downloading the event recorder data (as a railroad would do in conducting a check ride), a properly conducted efficiency test would create a situation in which the engineer would need to affirmatively respond to less favorable conditions than those that existed prior to the initiation of a test. 240.303(d)(2). Efficiency tests shall test for an engineer's response to improperly displayed signals and those types of operating rule violations that caused reportable accidents or incidents in the preceding year. 240.303(d)(1) and (3). Efficiency tests shall be conducted without prior notice and distributed throughout whatever portion of a 24-hour day that the railroad conducts operations. 240.303(4) and (5).

Q. 37 - Does the regulation require that each efficiency test date be documented on the certificate?

Answer: **No.** Section 240.223 requires the date of the person's last operational monitoring test, which FRA considers to be the check ride and not the efficiency test. Admittedly, section 240.303(d)(6) seems to indicate that efficiency testing must be recorded on the certificate, but as this contradicts section 240.223, FRA has decided that the regulation only requires that the results of efficiency tests be entered on the record established under 240.215 (i.e., the certification records kept for each engineer) within 30 days of the day the test is administered. It is also acceptable to keep this information in a railroad's efficiency test records as long as the railroad may quickly conduct a thorough search and produce the records for each engineer upon FRA's request.

Q. 38 - I understand that the date of the last check ride is required to be documented on the certificate, but logistically the railroad may not or is having trouble adding it. Is there another option?

Answer: **Yes.** Although, most railroads include the date on the back of the certificate, the other option is for the date to be kept on supplementary documents that the engineer must have in his or her possession while operating a locomotive. 240.223(a)(7).

Q. 39 - If a skills test was performed during the last year of certification in preparation for issuing a new certificate, would this test satisfy the monitoring ride requirement for that year?

Answer: **Yes.** FRA approved a provision (Section 6) for the standard shortline program that addresses this issue.

### **Designated Supervisors of Locomotive Engineers (DSLE) (49 CFR 240.105)**

Q. 40 - Must a DSLE be an engineer?

Answer: Yes.

Q. 41 - Must a DSLE be qualified on the physical characteristics of a territory to administer a skills test or a monitoring ride?

Answer: **No.** The DSLE is not piloting the engineer, the DSLE is watching the engineer operate the locomotive or train to determine the engineer's compliance with the rules.

Q. 42 - Must a DSLE be qualified on the physical characteristics to qualify an engineer over a particular territory?

Answer: **Yes.** The DSLE must have an intimate knowledge of the territory if he/she is required to determine if an engineer is knowledgeable about the territory and may operate over it safely. 240.213(b)(3).

Q. 43 - I have a manager that is also an engineer, but he has little experience as an engineer. May I designate this manager as a DSLE?

Answer: This is the railroad's decision. However, the regulation is clear that DSLE's must be able to appropriately test and evaluate the knowledge and skills of locomotive engineers. They must also possess 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. This implies that the DSLE must have at least the same skills as the engineers being supervised and preferably better. See 49 CFR 240.105.

Q. 44 - As I have a new operation, how do I certify engineers? I do not have a DSLE to perform the skills test that is required prior to certification (see 49 CFR 240.127).

Answer: The regulation allows you to certify your first engineer and designate him/her as a DSLE by waiving the skills test requirements one time only. However, the chief operating officer of the company or other individual who is responsible for the operations must make a determination in writing that the DSLE possesses the necessary performance skills in accordance with 49 CFR 240.127. This determination should take into account any special operating characteristics that are unique to that railroad, e.g., heavy grades, high speed, etc. The determination should be kept in the DSLE's file. 240.105(c).

Q. 45 - Must the DSLE's signature be on the certificate, or supplementary documents in the engineer's possession, to indicate which DSLE conducted the previous check ride?

Answer: No. The regulation only requires the date to be entered on the certificate. However, most railroads have provided space for the DSLE's signature after the check ride date to document "who" performed the check ride. 240.223(a)(7).

Please do not confuse this issue with the requirement that, when issuing certificates, each certificate shall be signed by a DSLE or other individual designated by the railroad or the certificate will be considered invalid. 240.223(a)(6) and (b).

[Part 240 Questions and Answers Continued](#)