

Frequently Asked Questions

FRA Training Program Web Portal

Q. I heard FRA maintains a secure Web site where I can submit my training programs. Is that true?

A. Yes, on November 10, 2015, FRA posted a formal announcement in the Part 243 docket regarding the opening of a secure Web portal established to receive and process training programs from the regulated community. Employers (*i.e.*, railroads and contractors) with 400,000 employee work hours and TO/LIs must submit training programs (including model programs) electronically to FRA. **All employers, regardless of size, are encouraged to use the secure Web portal to facilitate processing and to ensure the required information is contained in the submission.** New users to the Web portal must register at: <http://safetydata.fra.dot.gov/SPAccountRequests/default.aspx?app=part243>. Once registration is complete and accepted, the Web portal may be accessed at: <https://rrsp.fra.dot.gov/Part243Training/>.

Q. Can I go to the Web portal to see what other employers' programs look like to get ideas?

A. No. Any training program is considered proprietary and/or confidential business information. You will need to contact the program submitter directly to see if it will share those documents with you.

Q. Can I go to the Web portal to see which employers, training organizations, and learning institutions have approved programs?

A. Yes, you can look at FRA's approval letters.

Q. Can I go to the Web portal to see what model programs have been approved?

A. Yes, and you can adopt a model program while you are on the Web portal. However, you must get authorization from the model program developer. The Web portal will guide you through the steps for contacting the developer if you decide to adopt a model program. Of course, if you adopt it, you need to implement and comply with it.

Small Entity Considerations

Q. Employees working for small employers perform a variety of safety-related tasks daily. Will small employers be expected to train new hires on every aspect of Federal railroad safety law, regulation, or order?

A. Yes, but only those aspects of Federal railroad safety law, regulation, or order that the employee is expected to apply. The training does not have to consist of covering an entire CFR part if the employee is only responsible for applying a specific subsection in connection with his or her duties. FRA believes model programs are likely to be a good fit for small

employers in that they can be tailored to meet the cross-functional nature of activities that employees on small railroads perform.

Q. Title 49 CFR Part 243 requires us to classify our employees by occupational category class, craft, or other suitable terminology. Our employees perform a variety of tasks that cross traditional occupational boundaries, making it difficult to classify our employees using traditional job titles. How do we overcome this obstacle?

A. In the context of 49 CFR Part 243, the job title you use to classify your employees is not necessarily a critical factor. As noted in the previous answer, the employee only needs to be trained on those aspects of Federal railroad safety law, regulation, or order that the employee is expected to apply. In other words, training is based on assignments and duties the employee performs.

Q. I have a shortline railroad with several highway/railroad-grade crossings and an interlocking with a Class I railroad. I have one employee that works as a general handyman and takes care of our signal systems. What type of training do I have to provide this individual?

A. The employee responsible for the installation, inspection, maintenance, and repair of any highway/railroad-grade crossing system or signal and train control system, device, or appliance must be trained on applicable sections of Part 234, Grade Crossing Safety, and Part 236, Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances, that apply to the equipment on your railroad.

Scope of Part 243 – Training Programs Required by Other FRA Regulations

Q. There are some Federal regulations that require employers to submit programs to FRA for review and/or approval, most notably, 49 CFR § 213.343, Continuous Welded Rail (CWR), 49 CFR Part 240, Qualification and Certification of Locomotive Engineers; 49 CFR Part 242, Qualification and Certification of Conductors; and 49 CFR Part 236, Subpart I, Positive Train Control Systems. Will employers be required to resubmit the training aspects of these programs to FRA under 49 CFR Part 243?

A. No. All three of the above-mentioned regulations have an equivalent, or more restrictive training requirement embedded in the rule text. Presumably, FRA has already reviewed and approved these programs. FRA suggest that you cross-reference other programs rather than resubmitting them under 49 CFR Part 243.

Q. I am an employer and I know that FRA has some other FRA regulations that have a training mandate that doesn't require the training program to be submitted for FRA review and approval, for example: (1) 49 CFR Part 214, (2) 49 CFR Part 232, and (3) 49 CFR Part 238. What is the purpose of 49 CFR Part 243 and am I required to do anything extra under this new training standards rule with regard to the types of regulations cited?

A. The regulation itself, in 49 CFR § 243.1, *Purpose and scope*, describes the purpose as ensuring “that any person employed by a railroad or a contractor of a railroad as a safety-related railroad employee is trained and qualified to comply with any relevant Federal railroad safety laws, regulations, and orders, as well as any relevant railroad rules and procedures promulgated to implement those Federal railroad safety laws, regulations, and orders.” Part 243 does not exempt any other training requirements and, because program submission was not previously required for those rules mentioned, the Part 243 rule requires a program submission.

Q. Does 49 CFR Part 243 cover hazardous materials training?

A. No.

Q. Are manufacturers or lessors of rolling stock covered by this regulation?

A. Yes, if your company has any contractual obligation to inspect, repair, or maintain the equipment for the railroad in compliance with Federal railroad safety laws, regulations, and orders, regardless of whether those actions are taken on or off railroad property. Otherwise, a company that merely sells or leases equipment would not be covered by this rule.

Q. Does this regulation require the employee to only know the rule or does it require the employee to perform the tasks in accordance with the applicable rules?

A. This rule is performance-based. As such, it requires “that employers of each safety-related railroad employee be required to qualify or otherwise document the proficiency of such employees in each class and craft regarding their knowledge of, and ability to comply with Federal railroad safety laws and regulations...” (see FR Volume 79; Number 216; Friday, November 7, 2014; Page 66460). The phrase “ability to comply” specifies that the employee be able to perform the task in accordance with the regulation, not just know what the regulation states. FRA will not expect safety-related railroad employees to be able to cite the specific CFR part and section.

Training Programs

Q. Am I required to submit my entire course curriculum to FRA or just certain parts?

A. No, you are not required to include your entire course curriculum associated with any particular training program submission. The easiest way to ensure you are covering all elements in your submission is to submit your program at the Web portal located at: <https://rrsp.fra.dot.gov/Part243Training/>. **Note:** FRA has the authority to request and review all or portions of your program courseware at any time.

Q. Title 49 CFR § 243.103(a)(2)(vi) mentions a syllabus of the course. Please clarify what the term “syllabus” means in this context. It appears that the information required by all of 49 CFR § 243.103 does in fact meet the needs of the course syllabus.

A. Agreed. But once again, the easiest way to ensure you are covering all elements in your submission is to submit your program at the Web portal located at: <https://rrsp.fra.dot.gov/Part243Training/>.

Q. I am a training manager for a Class I railroad and responsible for submitting our training program to FRA for approval. Does my employer have to wait on FRA approval before adopting and complying with the submitted training program?

A. No, your employer (railroad) may adopt and comply with any training program upon submission. However, your programs must be submitted to FRA no later than January 1, 2018.

Training Requirement Questions

Q. It appears that most Federal regulations pertaining to motive power and rolling stock are primarily limited to tasks that require inspection, testing, and the identification of defective conditions or components. What Federal law, regulation, or order requires an employer to also include the remediation or repair of defective conditions in our training curriculum?

A. With respect to Federal regulations pertaining to motive power and rolling stock, there are two. Title 49 CFR Part 232, Brake System Safety Standards for Freight, and 49 CFR Part 238, Passenger Equipment Safety Standards, requires employers to provide training to persons they designate as; Qualified Mechanical Inspector (QMI), and Qualified Maintenance Person (QMP), on various aspects of mechanical inspection, to include testing, troubleshooting, maintenance or repair. Please note that 49 CFR Part 243 does not supersede specific training requirements for persons designated as QMIs or QMPs pursuant to 49 CFR Parts 232 and 238 respectively. Parts 232 and 238 notwithstanding, 49 CFR Part 243 requires other safety-related railroad employees assigned to mechanical related duties to be trained on the correct application of the Federal safety standards pertaining to their work so they can identify deviations from standards, and initiate remedial action procedures such as tagging the defective locomotive or car for movement to a repair shop.

Q. I noticed this regulation mentioned amendments to 49 CFR Part 214, Subpart C, Roadway Worker Protection. What do the amendments to 49 CFR Part 214 entail and when is the effective date?

A. The amendments to 49 CFR Part 214 require roadway workers who operate roadway maintenance machines equipped with a boom or crane to be trained and qualified according to a training program adopted by the employer. The training must ensure that the operator understands either (1) the manufacturer's safety instructions found in the manual or (2) the safety instructions developed to replace the manual when the machine has been adapted for a specific railroad use. The training must address both safe movement of the vehicles and safe operation of the boom or crane. Training is required for new users and periodic retraining is required for those previously trained. The amendments to 49 CFR Part 214 offer a training compliance alternative to an existing OSHA mandate impacting roadway workers who operate roadway maintenance machines equipped with a boom or crane. Thus, employers have the option of complying with OSHA standards (29 CFR § 1926.1427, *Operator qualification and certification*) or FRA standards 49 CFR § 214.357, *Training and qualification for operators of roadway maintenance machines equipped with a crane*. The effective date of 49 CFR § 214.357 was January 6, 2015. Employers of roadway workers

who operate roadway maintenance machines equipped with a boom or crane should have established such training programs by January 6, 2015, *i.e.*, the effective date of the rule, and will need to submit such programs to FRA pursuant to the implementation dates in 49 CFR § 243.101.

Q. I have numerous contractors working on my railroad. How do I verify that the contractor's employees have received the required training?

- A. You must receive a document from the contractor indicating that the contractor's program was approved by FRA. It is the contractor's responsibility to ensure that the employees have been trained according to the contractor's approved plan. You are only responsible for ensuring that the contractor has an approved plan. For additional information, FRA intends to post all program approval letters at the Web portal located at: <https://rrsp.fra.dot.gov/Part243Training/>.

On-the-Job Training

Q. My concern has to do with OJT. Does my OJT program have to address observing and verifying proficiency in every aspect of a particular task and subtask?

- A. If you are referring to critical steps involved in performing the task correctly, the answer is yes. To illustrate, consider the critical steps establishing Blue Signal Protection for workers on other-than-main track at night. The critical steps are: (1) lining any manually operated switch or crossover switch against movement providing access to the track; (2) locking each manually operated switch with an effective locking device; (3) displaying a blue light at or near each manually operated switch; and (4) placing a Blue Signal on the controlling locomotive if one is present. There may be many other tasks, subtasks, expectations, and assumptions made before performing the critical tasks, but FRA will only require that the OJT program focus on the critical steps.

Q. Will FRA consider other OJT methodologies if employers can replicate the task, conditions, and standards and measure/observe task completion proficiency in an objective manner?

- A. FRA recognizes that a variety of training methodologies can teach new skills and objectively measure proficiency in learners. Please be certain to thoroughly explain the details of your OJT program in your training program submission so that FRA training experts can make an informed assessment regarding how your OJT program will be administered. Also, remember that safety-related railroad employees are still required to demonstrate OJT proficiency to the satisfaction of the designated instructor in order to become a qualified member of an occupational category or subcategory.

Q. Does all OJT have to be overseen by the designated instructor?

- A. No. A person (trainee) may perform OJT under the direct onsite observation of any qualified person, provided the qualified person has been advised of the circumstances and is capable of intervening if he or she observes any unsafe act or noncompliance with Federal railroad safety laws, regulations, or orders. An employee designated to provide formal training to

other employees (sometimes referred to as a peer trainer), and who is not a designated instructor, shall be qualified on the safety-related topics or tasks in accordance with the employer's training program and the requirements of 49 CFR Part 243.

Q. Can the designated instructor and qualified person be the same person?

A. Yes.

Informational Filings and Training Programs Revisions

Q. I understand that if an employer changes its previously approved program, it must file updates with FRA. However, I see that there are two different filing requirements for updates. Please help me understand what FRA is requiring when an employer needs to make updates to its training program.

A. In short, 49 CFR § 243.109(b) applies to minor modifications to an approved program while 49 CFR § 243.109(c) applies to substantial additions or revisions.

Minor modifications entail updates or modifications to existing programs because of new (or revisions to) safety-related Federal railroad laws, regulations or orders. A minor modification might also include the introduction of new safety-related technologies, equipment, or procedures resulting in a new knowledge requirement on the part of the end user (safety-related railroad employee). Because these types of modifications are considered minor, FRA is not requiring immediate notification every time a modification is made. Instead, the regulation allows these types of updates to be submitted at any time, but no later than 30 days after the end of the calendar year in which the modification occurred. The regulation refers to these updates as "informational filings" and the intent is to ease the regulatory burden by reducing the number of times the entire training program would need to be revised, resubmitted, and reviewed for approval on routine matters. An employer does not have to wait for FRA approval to implement these minor modifications.

Title 49 CFR § 243.109(c) defines substantial additions or revisions as those modifications made to a previously approved program "that are not described as informational filings in accordance with paragraph (b) of this section." For example, a substantial revision would include a change in program delivery such as instructor led training to self-study. Another substantial revision would be a training program which added or eliminated OJT. Although an employer does not have to wait for FRA approval to implement these substantial additions or revisions to a previously approved program, FRA will review the program in the same manner as it does new programs and will inform the employer whether the program is approved.

Grandfathering – Designating Safety-Related Railroad Employees and Refresher Training

Q. I am a brakeman for a very small railroad. My railroad employs only six train and engine service employees including me. I have been working in the same job since January 2013. Does this regulation mean I have to be trained all over again?

Training, Qualification, and Oversight for Safety-Related Railroad Employees Compliance Guide FAQ's

A. No, in your case, you would be grandfathered assuming your employer declared your occupational category/subcategory (job title) no later than February 1, 2020. However, you will be subject to refresher training either 3 calendar years from your previous training event or no later than December 31, 2023.

Q. What is required of railroads not in existence yet? For example, if a railroad goes into business on February 1, 2018, and it hires people with no previous railroad experience or training. What would FRA expect in terms of training?

A. In this case, before a new employee can become a qualified member of an occupational category/subcategory, the employee must first successfully complete all formal training curriculums for that occupational category/subcategory.

Q. In the context of 49 CFR § 243.201, *Employee qualification requirements*, what does designating a safety-related employee mean?

A. This phrase means that employers must declare which occupational category/subcategory its employees belong to, and thus the employer is confirming the employees are trained and qualified on relevant Federal railroad safety laws, regulations, and orders, as well as any relevant railroad rules and procedures to implement Federal railroad safety laws, regulations, and orders.

Q. I am a journeyman carman for a Class I railroad. I have been working in the same job since 1990. Does this regulation mean I have to be trained all over again?

A. No, in your case, you would be grandfathered assuming your employer declared your occupational category/subcategory (job title) no later than September 1, 2018. However, you will be subject to refresher training either 3 calendar years from your previous training event or no later than December 31, 2022.

Q. Are all grandfathered employees subject to refresher training?

- A. Yes, but the implementation and completion dates vary depending on the size of the employer (see the “Important Dates to Remember” refresher section in this guide). Please note that some FRA regulations require refresher training at more frequent intervals. Title 49 CFR Part 243 does not supersede those requirements.

Q. Of what exactly is refresher training supposed to consist?

- A. The elements of refresher training may consist of a variety of subjects and could be driven by several factors including, but not limited to, employer accident/incident data, FRA inspections noting noncompliance, FRA law, regulations or orders, and other safety-critical topics as determined by the employer.

Q. I noticed 49 CFR Part 243 requires refresher training every 3 years, but other FRA regulations require a shorter refresher training period. When there are competing periods, which applies?

- A. This final rule does not supersede any other FRA regulation that may have more stringent requirements. Thus, the shorter refresher period would apply.

Refresher Training for Trainers (i.e., “Designated Instructors”)

Q. I am an employer that sends my in-house trainers to a “Train the Trainer” seminar for Roadway Worker Protection (RWP). The seminar is provided by a learning institution or training organization with an FRA-approved RWP training program. If I send an associate or myself to the Train the Trainer seminar and use that person to train my associates on Roadway Worker Protection, how often do we have to repeat this process?

- A. An employer’s in-house trainers, once initially trained as trainers, will need to receive refresher “Train the Trainer” training at a minimum once every 3 calendar years in accordance with 49 CFR § 243.201(e). If the trainers are also roadway workers, the trainers will need the annual initial and recurrent training on the “on-track safety rules and procedures” required by 49 CFR § 214.343(b). Please note that 49 CFR Part 243 uses the term “designated instructor” instead of “trainer.”

Employee Records Are Lost/Missing

Q. I worked as a locomotive machinist and electrician for a large railroad for 20 years and performed all FRA inspections and tests required by the locomotive safety standards. I resigned my position because my railroad was purchased by another large railroad, and the locomotive shop was shut down after the sale. Four years later, the large railroad is now selling a portion of the railroad I used to work for, including the locomotive shop, to a small shortline railroad. The new railroad owns several locomotives and is restoring rail service to about a dozen lumber mills. The new railroad also intends to market locomotive maintenance service to the railroad industry. I would like to go work for the new railroad as a machinist/electrician, but it only wants experienced people. All my training records are lost. How can I prove I am qualified?

- A. The new railroad for which you wish to work could perform testing to ensure you have the knowledge necessary to become a member of the occupational category you seek. Assuming you pass the tests, a person designated by the railroad as the designated instructor will make the final determination as to whether or not you have the knowledge to be a member of the occupational category. In your case, testing might include an oral or written test, as well as your ability to inspect, identify, and initiate corrective action for defects associated with 49 CFR Part 229 Subparts B, Inspections and Tests, and C, Safety Requirements. The testing your employer performs to determine your qualifications must be recorded and entered into your personnel training file.

Previously Qualified or Trained Employees but Not by the Current Employer

Q. I own a company that conducts tests and inspections of signal systems for railroads. I have a potential applicant who appears to be qualified as a signal maintainer from another company. However, his training records were lost by his previous employer. He has been out of work for over 10 months, but I believe he's qualified based on the job interview I conducted with him. I read that 49 CFR § 243.201(d) requires testing if the employee has not performed his or her safety-related duties in the previous 180 days. Please explain what kind of testing is required.

- A. The requirement in 49 CFR § 243.201(d) is applicable when an entity other than the current employer determined that the person was previously qualified or trained. FRA does not expect this to be an extensive exercise. A designated instructor would likely begin the testing with a job briefing and a thorough discussion of the critical job tasks to be accomplished. Testing would include an observation of the tasks for a period of time until the designated instructor is satisfied that the signal maintainer has the knowledge to remain a member of that occupational category. Perhaps the easiest way to ensure that an employee is ready to perform safety-related duties would be for him or her to perform the periodic tests and inspections as required by 49 CFR Parts 234 and 236. The designated instructor could observe the individual performing the tests and inspections using an OJT task list as a guide to ensure the requisite level of proficiency is performed. Many of the tests and inspections required by 49 CFR Parts 234 and 236 are required monthly. Therefore, scheduling such observations could be combined with existing requirements. If the employee can successfully complete the tests and inspections, FRA believes you have satisfied the requirements of 49 CFR § 243.201(d)(1)(ii).

Periodic Oversight

Q. What is the difference between periodic oversight and annual reviews?

- A. Periodic oversight is more focused on and limited to tests and/or observations of safety-related railroad employees engaged in activities connected with 49 CFR Part 214, Railroad Workplace Safety; Part 218, Railroad Operating Practices; and Part 220, Railroad Communications. Annual reviews require analyzing larger data sets, including data derived from periodic oversight. Periodic oversight is required for both large and small employers (*conditions may apply; see next Q&A below*). Annual reviews only apply to railroads with 400,000 or more total annual employee work hours.

Q. In terms of periodic oversight, please summarize what I am responsible for as a transportation operations supervisor employed by a large railroad. We have railroad employees as well as contractors at the facility at which I work. One contractor on our property conducts inspections and air brake tests on our freight trains at an adjacent intermodal facility. Another contractor we use performs extensive track maintenance on our entire railroad division. I understand the contractors have a duty to conduct their own periodic oversight. Is that correct?

A. If a contractor on your railroad employs more than 15 employees, directly trains its own employees for safety-related duties, and employs supervisors capable of periodic oversight, the contractor is obliged to provide oversight of its own employees, not the railroad. In addition, please note that a contractor that is not required to conduct periodic oversight may voluntarily agree to provide such oversight of its own employees to relieve a railroad that would otherwise be required to provide the periodic oversight.

Furthermore, if the railroad for which you work does not employ supervisors qualified to conduct periodic oversight of contractor employees, the railroad cannot be required to provide the periodic oversight.

Note: If your railroad employs qualified supervisors, your railroad is not prohibited from conducting oversight of contractor employees.

Q. I am a Roadmaster and typically hire a small local contracting firm to do trenching, excavating, digging, and general housekeeping duties along the railroad right-of-way I am responsible for maintaining. Am I responsible for conducting periodic oversight of the contractor employees?

A. Generally, your railroad is responsible for conducting periodic oversight tests and inspections for a contractor's employees that are performing safety-related duties on railroad property, although there are several exceptions. For example, your railroad is exempt if it does not employ supervisory employees who are qualified to conduct the oversight of the contractor's employees. Your railroad would also be exempt if the contractor is required to provide its own periodic oversight or you have a written agreement with the contractor stating the contractor will provide the oversight. In determining whether a small local contracting firm is required to conduct its own periodic oversight, you would have to determine whether all three of the following conditions are met: (1) the contractor employs more than 15 employees, (2) the contractor trains and qualifies its own employees, and (3) the contractor employs supervisory safety-related railroad employees capable of oversight.

Please note that regardless of whether you are responsible for conducting periodic oversight of contractor employees, your railroad also has a duty to notify the contractor employee and his or her employer of any noncompliance observed.

Q. How often is periodic oversight required?

A. The employer is required to explain the details of periodic oversight strategy along with its submission of the training program to FRA. FRA recommends that each railroad consider

modeling its Periodic Oversight program similarly to how it drafted its program of operational tests and inspections under 49 CFR § 217.9, *Program of operational tests and inspections; recordkeeping*.

Note: Railroads may wish to modify its operational test program under 49 CFR § 217.9 to include Periodic Oversight to meet the requirements of 49 CFR § 243.205, *Periodic oversight*.

Q. When do I commence periodic oversight?

A. Periodic oversight must commence the day the employer files its training program with FRA pursuant to 49 CFR § 243.101(a) or on the day the employer commences operations pursuant to 49 CFR § 243.101(b).

Q. Does periodic oversight apply to locomotive engineers and conductors?

A. No, employees subject to 49 CFR Parts 240 and 242 are exempt, but railroads are required to use the results of assessments required by those parts to determine if changes in its training programs are necessary to close any proficiency gaps found during those assessments.

Annual Reviews

Q. When are annual reviews required?

A. Before September 1 of each year. **Note:** Annual reviews required by 49 CFR § 243.207, *Annual review*, may be conducted in conjunction with 49 CFR Part 217.

Q. Are small railroads required to conduct annual reviews?

A. No, annual reviews are not required on railroads with fewer than 400,000 total employee work hours annually.

Q. Are contractors required to conduct annual reviews?

A. No.

Q. Are railroads required to analyze specific data sources during annual reviews?

A. Yes, these data sources include:

- Periodic Oversight data (§ 243.205);
- Reportable accident/incident data (Part 225);
- FRA Inspection report data;
- Employee training feedback received through a course evaluation (if available); and
- Feedback from labor representatives (if available).

Q. What do we do with our annual review results?

- A. Depending on the results, a designated person shall coordinate any necessary adjustments to initial and refresher training programs.

Training Organizations and Learning Institutions

Q. When do I have to submit a training program for FRA to review and approve if I am a TO/LI?

- A. If you represent a TO/LI that has provided training to safety-related railroad employees before January 1, 2017, you may continue without FRA approval until January 1, 2018.
Note: You may not continue to offer training services beyond January 1, 2018, unless FRA has approved your programs.

Q. I own a very small training firm and I conduct air brake training for freight railroads. I heard that trainers will need to be recertified every 3 years. Who will recertify me?

- A. The “recertification” to which you refer is actually refresher training, not certification. Title 49 CFR Part 243 does not require safety-related railroad employees to be certified. In 49 CFR § 243.201(e), there is a requirement for refresher training every 3 years. In 49 CFR § 232.203(a)(8), there is a requirement that employers keep employee records and transfer those records to new employers. As a training consultant who is not an employee, neither requirement applies to you or your firm. Please be aware that it appears your business of providing air brake-related training to employers (railroads and possibly railroad contractors) would make your firm essentially a training organization, but probably without the brick-and-mortar business characteristics. Therefore, if you intend to provide training to safety-related railroad employees (as defined) in 49 CFR § 243.3, *Definitions*, you will need to submit your program to FRA per 49 CFR §§ 243.101, *Employer program required*; 243.103, *Training components identified in program*; and 243.111, *Approval of programs filed by training organizations or learning institutions*.

Q. Will FRA permit TO/LIs to develop and administer OJT in connection with its formal training programs for students wishing to acquire skills to become more attractive for a potential railroad employer?

- A. The regulation does not prohibit TO/LIs from developing OJT in conjunction with any training program submitted to FRA for approval. However, by definition, OJT means “job training that occurs in the workplace, i.e., the employee learns the job while doing the job.” (See 49 CFR § 243.5, *Definitions*)

Q. Will a learning institution, i.e., a college or university, be allowed to teach a CWR or similar type class that it has presented in the past without first submitting the curriculum to FRA for review? For example, a railroad calls a college for a CWR class which must be designed specifically for each entity. The contract is signed a week or two before the railroad or contractor needs it to be designed and delivered. Although better planning might have prevented the need for the training on such short notice, the

railroad or contractor has an immediate need for the training due to end of the year time constraints to meet annual FRA training requirements. The college would like to send the curriculum to FRA as soon as it is completed and would like near instantaneous feedback from FRA on whether it is approved. Would this be acceptable? If not, how much lead time would be required by FRA to receive and complete the review? The timing of the review, if it ran into several weeks or even months, could cost the college the contract. Does FRA have a methodology in place to request an expedited review?

- A. Training organizations, which include private for profit or not-for-profit businesses, associations, and learning institutions, are required to seek FRA approval before providing training. The rule was written with the expectation that these entities would be able to present any particular training program to FRA for approval before implementation. The question implies that the college asking the question has taught this training course before, but needs to tailor its course to each employer. As long as the college presented its general training course to FRA in its program with an explanation for how the program could be tailored to different employers, the program could be approved one time, and it would be unnecessary for FRA to review each time the program was tailored to a specific employer client.

However, other questions raised in the example ask whether FRA could perform an expedited review, at the last minute. The short answer is that FRA cannot promise any entity an expedited review. For that reason, FRA strongly suggests that each training organization and learning institution plan ahead as to the types of training it is qualified to offer and design at least the structure of any such training program to show FRA it has the potential to offer the training.

- Q. Once the learning organization/university has an approved CWR plan training curriculum on file with FRA, would FRA consider allowing the class to be taught pending review of a new submission for a different railroad, realizing that each railroad requesting a CWR class will require a class tailored to their individual CWR plan?**
- A. As stated in the previous answer, if FRA approves a general CWR program, that should suffice. No “tailor made” programs would need review.

Training Consultants

- Q. It is January 1, 2018. I worked in the railroad industry for almost 20 years and held many positions beginning with laborer, machine operator, track inspector, roadmaster, and track trainer. I developed numerous training programs for track workers during my last 5 years on the railroad. For the last 3 years, I have been working as a training consultant and I have several shortline railroads as my clients. I have developed a track worker training program that I can tailor to each of my shortline railroad clients. Am I required to do anything under FRA's Part 243 training regulation?**
- A. Although you could choose to do nothing and make each of your clients file for FRA approval with your program identified as the employer client's program, FRA believes it would be more beneficial to you and your clients if you submit your program under the 49

CFR § 243.111 provision for approval of programs filed by training organizations or learning institutions.

Benefits to you and your railroad clients if you are a training organization:

- You can tell current and prospective clients that your consultant business and program are FRA-approved.¹
- You can tell a client to provide your unique training program name and identifier, so the client does not have to submit your program to FRA.
- You or the client could seek FRA approval if any tailoring modifications to the program are necessary.
- Clients could still arrange for their own job-related practice or practice-related feedback sessions to supplement your training program as long as the client described the supplemental training to FRA in their submission.

Requirements for you if you are a training organization:

- You will need FRA approval before initiating any training for your clients.
- With any of your training programs submitted, you must provide FRA with the following information about your company:
 - Your full corporate or business name;
 - Your primary business and email address;
 - Your primary telephone number and point of contact;
 - A list of DIs;
 - A resume for each DI showing how subject matter expertise and training experience was acquired;
 - A list of references of employer clients if training services were provided before the date you are filing with FRA for approval; and
 - A brief but detailed summary statement indicating how you determined the knowledge, skills, and abilities necessary to develop training courses for safety-related railroad employees.
- Because training organizations and learning institutions are typically junior colleges or technical trade schools, FRA expects these organizations may accept independent students who are not affiliated with a railroad or contractor employer. For this reason, FRA requires that these organizations maintain records for each student and you will too unless you request a waiver from the requirements found in 49 CFR § 243.111(g) and (h), explaining that the employer has agreed to maintain the employees' records. See 49 CFR § 211.41, *Processing of petitions for waiver of safety rules* (describing the requirements for filing a waiver).

Q. I am a career railroad employee with more than 25 years of experience. My last position with the railroad was as a superintendent. For the last 5 years, I've been working as an independent consultant for various railroads. My principal duties

¹ Please note if you falsely claim you received approval, FRA may initiate civil enforcement action against you, including but not limited to imposing civil money penalties against you and your company.

consist of conducting observations or audits of railroad employees performing their work. I use Federal Regulations as the performance standard for measuring safety-related railroad employee performance. Observation examples include, train air brake tests, freight and passenger car inspections, Roadway Worker Protection, and Blue Signal Display. I provide a report of my observations to railroad management. How does 49 CFR Part 243 apply to me?

- A. Title 49 CFR Part 243 does not apply to you. You are not a safety-related railroad employee or railroad supervisor, nor does the work you do satisfy the requirements the railroad is obligated to perform under 49 CFR § 243.205. It might be wise for you to make certain that the railroads with which you do business understand they are still required to conduct periodic oversight of their safety-related railroad employees using their own supervisory employees.

Q. Following up on the previous question, but with slightly different circumstances. What if the railroads with which I do business hire me to conduct periodic oversight pursuant to 49 CFR § 243.205? How does 49 CFR Part 243 apply to me?

- A. Although the regulation is silent on such an arrangement, FRA believes you have two options: First, each railroad that hires you is required to determine your qualifications pursuant to 49 CFR § 243.201(d) and maintain a record of qualifications pursuant to 49 CFR § 243.203. Second, you may also petition FRA for a waiver and maintain your own qualification records.

Contractor Compliance

Q. We hire diverse individuals who may or may not be fluent in English. How will 49 CFR Part 243 impact our non-English speaking employees?

A. As an employer, you have a duty to ensure your employees have the knowledge to comply with FRA laws, regulations, and orders. There is no requirement in 49 CFR Part 243 that a safety-related railroad employee be proficient in English, but, as the employer, you have a duty to determine that your employees are qualified.

Q. I own a railroad contracting firm and we perform a variety of duties for railroads on and off the general system of transportation. We do not perform any inspection, test, maintenance, or repair duties in connection with railroad operations. However, we do perform duties associated with design, survey, assessments, permitting, staking, and construction observation management all along the railroad right-of-way. Our work does require us to foul live tracks. How does 49 CFR Part 243 apply to my organization?

A. With the exception of 49 CFR Part 214, Subpart C, Part 243 would have limited impact on your firm. If the duties you describe above involve fouling live tracks on the general system of transportation, RWP applies. Thus, your firm would be required to submit a training program to FRA that addresses the elements of Subpart C that apply to your employees. Please note that since RWP falls within "Workgroup Safety" your firm is also responsible for Periodic Oversight, unless you arrange an agreement with the railroad to perform the periodic oversight on your employees, or employ 15 or fewer safety-related railroad employees and meet two other requirements for a small employer exception found in 49 CFR § 243.205(g). In addition, refresher training for RWP is more restrictive than 49 CFR Part 243. RWP requires annual refresher training. Please note that 49 CFR Part 243 does not apply to activities off the general system of transportation.

Q. I work for a railroad and responsible for procuring contractors to perform some of the work on our property. For example, I am preparing to solicit bids from firms interested in performing inspection, maintenance, and repairs along our railroad right-of-way. We are also looking at contracting out some of our passenger car and locomotive maintenance. We are building a new maintenance facility on our property. Would it be a good idea to include a requirement in our future Request for Proposals that firms interested in doing business with us have appropriate training programs submitted to and approved by FRA?

A. Each railroad needs to make its own decisions about which contractors it wants to use, but a railroad that fails to inquire with a contractor about how the contractor's safety-related railroad employees are trained runs the risk of violating one or more provisions of 49 CFR Part 243. A prudent railroad will make inquiries about a contractor's training program, and abilities or intentions to conduct any periodic oversight, to prevent untrained workers from performing safety-related tasks required by Federal safety requirements on its property. Additionally, unless a railroad qualifies and keeps records for a contractor's employees, the railroad is required to maintain the contractor on a list of contractors pursuant to 49 CFR § 243.209, *Railroad maintained list of contractors utilized*. Thus, although FRA is not

dictating the terms of your RFPs, it might be useful to request that information from contractors and decide what the railroad's policy will be with respect to contractors that train themselves versus those who will need training from your railroad. In many situations, a railroad may have no choice but to train each contractor's employees on RWP rules that are tailored to that particular railroad but may be able to shift the burden of other types of training to the contractor, depending on the contractor's supervisory and training capabilities.

Q. Please clarify what constitutes a crane in the context of 49 CFR Part 243.

A. The answer can be found in 49 CFR § 214.7, *Definitions*, which reads; "any roadway maintenance machine with a crane or boom that can hoist, lower, and horizontally move a suspended load."

Q. I own a railroad track maintenance business and I routinely hire laborers from a third party organization on a per job basis to help with tasks such as digging, trenching, replacing rail, installing angle bars, replacing ties, driving spikes, and various other track-related tasks. Just to be clear, the laborers I hire are temporary and employed by my company on an as-needed basis. My company performs work on both passenger and freight railroads. How does 49 CFR Part 243 apply to my business with respect to the laborers I hire?

A. Based on the tasks you described above, 49 CFR Part 243 will likely have some impact on your business. Either you or the organization from which you hire laborers will need to submit a training program to FRA for review and approval. In addition, records will need to be maintained for each laborer to document qualifications pursuant to 49 CFR § 243.203, *Records*. The scope of work the laborers perform will dictate what FRA regulations must be covered in training. Compliance with 49 CFR Part 213 is the responsibility of the track owner. Each track owner must designate a qualified person to supervise certain renewals and inspect track (*see* 49 CFR § 213.7, *Designation of qualified persons to supervise certain renewals and inspect track*). FRA has never required training under 49 CFR Part 213 for every category or subcategory of employee working on the railroad right-of-way, including laborers. However, if the work involves operating on-track roadway maintenance machines or fouling live tracks, training on some aspects of 49 CFR Part 214 will likely apply. If the laborers are handling switches and derails, training on some aspects of 49 CFR Part 218, Subpart F, Handling Equipment, Switches, and Fixed Derails, will also apply.

Q. My company contracts with railroads around the nation. We perform various types of track restoration services. My question pertains specifically to on-track roadway maintenance machines since we use several different types at my company. My employees are cross-functional in that they will be called upon to operate different machines in any given work week. Am I required to provide comprehensive training to each employee regarding the operation of every single aspect of each machine?

A. No, 49 CFR § 214.341(b)(2) was amended on January 6, 2015, and addresses this issue. Part 243 does not require an operator to have comprehensive knowledge of every instruction associated with each machine. FRA expects each operator to have sufficient knowledge of the safety instructions to operate the machine under routine conditions, and know where to look in the machine's instruction manual for guidance when operation of the machine is not

routine. In addition, employers have a duty to amend safety instructions whenever a particular machine has been adapted for a specific railroad use.

Q. My contracting firm does business with many railroads. Our work primarily consists of wrecking operations in connection with derailments and track restoration. We currently use a variety of methods to meet our annual RWP training requirements. Some of our clients require my employees to attend their RWP training annually, other clients require us to take annual RWP training online, and we do some RWP training using our own resources. How do I reference all the above training situations in my program submission to FRA?

A. The presumption is that each training program you refer to above will have been approved by FRA under Part 243. Since your employees are being trained by several different sources, each program should be mentioned separately in your submission (*see 49 CFR § 243.107, Training program submission, introductory information required*).

Q. How will contractors who provide rail-flaw detection services to railroads be impacted by 49 CFR Part 243? The contractor operates a self-propelled high-rail vehicle over the track structure and is accompanied by a qualified (pilot) safety-related railroad employee employed by the railroad. The railroad employee is responsible for gaining track and time authority from the train dispatcher for the rail-flaw detection vehicle to operate over the railroad. Rail-flaw detection vehicles are equipped with systems that apply nondestructive examination (NDE) techniques on the rail as the vehicle is moving. The results of the NDE report are provided to the railroad for analysis and appropriate remedial action if necessary.

A. Title 49 CFR Part 243 requires entities that provide rail flaw detection services to submit the training program referenced in 49 CFR § 213.238, *Qualified operator*, to FRA for review and approval. Title 49 CFR Part 214, *Railroad Workplace Safety*, applies to employees of contractors whose duties require them to staff rail-flaw detection vehicles. Therefore, contractors providing these services are required to submit appropriate programs to FRA for review and approval. Please note that a rail-flaw detection contractor does not have to wait on FRA review and approval before adopting and implementing its program.

Tourist and Excursion

Q. How can a tourist, scenic, historic, or excursion railroad or a contractor to one of those types of operations readily determine if this rule applies to it?

A. If the railroad operates on the general railroad system of transportation and the employer (railroad or contractor) employs at least one employee required to comply with Federal railroad safety laws, regulations, or orders, then the employer must comply with 49 CFR Part 243.

Q. I have a limited liability company (LLC) and own several pieces of vintage passenger cars including steam locomotives. Most of my railroad operations remain insular, off the general system of transportation. However, on occasion, the equipment I own operates over the general system of transportation through a lease arrangement with a

Class II railroad in my State. The lease not only includes use of my steam locomotives and rolling stock, but employees of my LLC, including me. Some of the employees I use are volunteers. We perform all maintenance, repair, and inspection, including operation of the steam locomotives. Does 49 CFR Part 243 apply to my LLC?

- A. Yes, 49 CFR Part 243 does apply to your LLC, the railroad over which your equipment operates, or both, since the operation you describe entails use of the general system of transportation. Title 49 CFR Part 243 requires that your paid employees and volunteers, including yourself, be trained in accordance with all Federal rail-safety requirements that are currently applicable to your operation. Please review 49 CFR Part 209, Appendix A, Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws, regarding the extent and exercise of FRA's safety jurisdiction and FRA's policy on different operations that are similar to your LLC.

Bridge Inspections by Small Engineering Firms

Q. On page 66468 of the final rule (November 7, 2014) for Part 243, FRA indicated that the compliance guide would clarify requirements imposed by the rule and ease the burden on small engineering firms that conduct bridge inspections. How exactly does this compliance guide do that?

- A. After further consideration of this issue, FRA has concluded that the background to the final rule already addressed this concern by stating on page 66471 that:

FRA is aware that a person reading this rule might be persuaded to interpret that an employer would be required to adopt and comply with a training program to satisfy certain training requirements of 49 CFR part 237 that could not realistically be supported by an employer's training program because such training could only reasonably be afforded by a training organization or learning institution. For example, the rule does not require railroad bridge engineers to receive "in-house" training when an engineering degree is what is required by § 237.51(b). This rulemaking also does not change the bridge owner's authority under 49 CFR part 237 to determine whether the railroad bridge engineers, inspectors, and supervisors are technically competent. Training on 49 CFR part 237, subpart E – Bridge Inspection is required under this rule. A railroad bridge engineer, inspector, or supervisor would need to be trained on roadway worker protection requirements pursuant to this rule and 49 CFR part 214. So, . . . these individuals are covered by the final rule, and employers will need to submit plans explaining how training will be provided and what Federal laws, regulations, and orders will be covered during the training for each category of employee.

To clarify the explanation in the final rule, engineering firms that conduct bridge inspections are not expected to teach engineering or other technical training that typically involves earning a college degree. However, each track owner is required under 49 CFR § 237.31, *Adoption of bridge management programs*, to adopt a bridge safety management program that complies with 49 CFR § 237.33, *Content of bridge management programs*. Moreover, engineering firms must ensure that appropriate training is conducted for their employees to the extent a railroad bridge engineer under 49 CFR § 237.51, *Railroad bridge engineers*; a

railroad bridge inspector under 49 CFR § 237.53, *Railroad bridge inspectors*; or a railroad bridge supervisor under 49 CFR § 237.55, *Railroad bridge supervisors*, needs to understand that bridge safety management program to meet FRA's minimum requirements in 49 CFR Part 237, Bridge Safety Standards. That may mean that the engineering firm conducts some in-house training pursuant to a training program filed with FRA as required by 49 CFR Part 243, but it could also mean that the engineering firm uses a training organization, a learning institution, a railroad, or some other entity to fill any training gaps.

In most instances, FRA would expect that the best option for a small engineering firm that conducts bridge inspections is to adopt and implement a model Part 237 training program developed by another entity such as a railroad, association, training organization, or learning institution.

Of course, the Part 237 training is in addition to any roadway worker protection requirements under 49 CFR Part 214. FRA would expect small engineering firms to coordinate closely with each host/client railroad in developing any Part 214 training, and would also expect small engineering firms to adopt each host/client railroad's programs as a matter of safety necessity.

FRA Enforcement/Auditing

Q. I have a concern that FRA will not enforce 49 CFR Part 243 consistently across the nation. How can I be certain that my contracting business or railroad operating in California will be treated the same as my operations in Florida?

A. In order to maintain consistent enforcement, only designated FRA personnel with instructional design experience and Master Trainer accreditation will be involved in reviewing and approving training programs. Field audits will be led by the same designated FRA personnel, with the assistance of other FRA personnel. FRA personnel who do not have instructional design experience and Master Trainer accreditation will, however, have the authority to request copies of training records to ascertain the qualification status of any safety-related railroad employee.

Q. What will field audits entail?

A. FRA is in the process of developing audit procedures for 49 CFR Part 243 to ensure a systematic and consistent approach is applied by the FRA oversight team. FRA plans to begin scheduling routine audits 12 to 18 months after training program implementation. Additional audits will be scheduled as warranted by audit findings, or events such as accidents, fatalities, or other negative safety performance outcomes. FRA will likely engage in the following activities during most Part 243 audits:

- Attend classes and observe different types of training.
- Review periodic oversight records.
- Review annual review records.

- Review employee training records.
- Review training evaluation methods.
- Confirm that each employer is complying with its training program.

Q. Will FRA provide any grace period in terms of enforcement and citing violations?

A. As with all new regulations, FRA understands that it will take some time for employers to learn how to comply with this regulation. FRA will help employers, particularly small entities, comply with this regulation. However, FRA reserves the right to use its full enforcement authority to ensure compliance, especially in cases where gross disregard for compliance is observed.

Training, Qualification, and Oversight for Safety-Related Railroad Employees
Compliance Guide FAQ's