

Territorial Qualification Requirements for Designated Conductors

49 CFR Part 242

The Federal Railroad Administration (FRA) has received questions from labor organizations and railroad management regarding territorial qualification requirements for persons designated (*i.e.*, grandfathered) as conductors pursuant to FRA's conductor certification rule at title 49 of the Code of Federal Regulations, part 242 (Part 242). The purpose of this document is to provide guidance to interested parties regarding the handling of territorial qualifications with respect to grandfathered conductors.

Background

Part 242 requires each railroad to “grandfather” any person who has been authorized by the railroad to perform the duties of a conductor between January 1, 2012 and December 1, 2012 for the Class I and II railroads and between December 1, 2012 and April 1, 2013 for the Class III railroads. See § 242.105. After the December and April dates, no railroad may certify a person as a conductor “unless that person has been tested and evaluated in accordance with procedures that comply with subpart B” of Part 242.

The grandfathering provisions of Part 242 permit a railroad to certify its existing conductors for up to 36 months without performing the testing, training, and background checks required by subpart B of Part 242. See 49 CFR §§ 242.105 and 242.201. Among other things, subpart B requires railroads to ensure that (non-grandfathered) conductors are trained and territorially qualified pursuant to § 242.119.¹

In addition to being exempted from the subpart B requirements, including the requirements of § 242.119, grandfathered conductors are also not covered by the requirements in subpart D of Part 242. Among other things, subpart D provides that “a railroad . . . shall not permit or require a person to serve as a conductor unless that railroad determines that the person is certified as a conductor and possesses the necessary territorial qualifications for the applicable territory pursuant to § 242.119.” 49 CFR § 242.301(a) (emphasis added).

Although a person may be grandfathered as a conductor for up to 36 months, FRA expects that many railroads will begin testing and evaluating their conductors under subpart B well in advance of the 36-month period. Once a grandfathered conductor has been tested, evaluated, and certified under subpart B of Part 242, that person is no longer considered a “grandfathered” conductor and is subject to all of the requirements of Part 242 including those found in subparts B and D.

¹ Section 242.119(b) and (c)(3) provides that after December 1, 2012 or April 1, 2013, each railroad prior to the initial issuance of a conductor certificate shall determine that the person has demonstrated that he or she is “qualified on the physical characteristics of the railroad, or its pertinent segments, over which that person will perform service.” In addition, § 242.119 describes how a person may demonstrate that he or she is territorially qualified on a railroad or segment of the railroad and how they may become territorially qualified if not.

Guidance

Based on the questions FRA has received regarding territorial qualifications of grandfathered conductors, it appears that some parties believe that a grandfathered conductor is subject to the territorial requirements provided in §§ 242.119 and 242.301. Other parties appear to believe that the grandfathering provisions of Part 242 mean that each grandfathered conductor is not only certified as a conductor but also qualified on every territory for that railroad, even if the conductor has never operated over a territory before. It also appears that some parties may believe that territorial qualification requirements for conductors found in collective bargaining agreements (CBAs) are preempted or altered by the grandfathering provisions of Part 242. Those interpretations are not accurate and therefore, clarification of the grandfathering provisions of Part 242 is needed.

Purpose of Grandfathering

The purpose of the grandfathering provisions in Part 242 is to permit a person to continue to operate as a conductor on the territories that the railroad considered the person to be territorially qualified over on the day they were issued a certificate pursuant to Part 242 as a grandfathered conductor, without having to undergo the full Part 242 certification process. As a result, the provisions permit railroads to continue operations as they had prior to the effective date of Part 242 while providing the railroads time to develop conductor certification and training programs. In other words, the intent of the regulation was that grandfathering would maintain the status quo with respect to territorial qualifications, thereby permitting a person to continue to operate as a conductor on the territories the railroad considered the person to be qualified over on the day they were issued a certificate as a grandfathered conductor.

Territorial Qualifications of Grandfathered Conductors

A grandfathered conductor should not be considered territorially qualified on every territory covered by a railroad just because that person has been issued a certificate. Certification and territorial qualification are two distinct concepts that should not be merged. Certification means that a person has been determined to comply with the requirements of Part 242 and can reasonably be expected to perform the functions of a conductor safely. In contrast, “territorial qualifications” is defined as “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.” 49 CFR § 242.7. A certified conductor does not, necessarily, possess that knowledge for every territory covered by a railroad.²

² Interested parties should also note that being “qualified” as a conductor is not the same as having “territorial qualifications.” “Qualified” focuses on performing safety related tasks and means that a person “may reasonably be expected to be proficient on all safety related tasks” a conductor is assigned to perform. § 242.7. Alternatively, “territorial qualifications,” as discussed above, is concerned with knowledge of operating rules, instructions and physical characteristics of a specific territory. Just as a grandfathered conductor should not necessarily be considered territorially qualified on every territory covered by a railroad, neither should a grandfathered conductor necessarily be considered qualified on all territories. If a person serving as a conductor cannot reasonably be expected to be proficient on all safety related tasks the person is assigned to perform on a territory, then that person is not considered qualified for that assignment.

Moreover, nothing in the grandfathering provisions should be read to alter or preempt the territorial qualification requirements found in existing CBAs. See § 242.5. If a CBA provides terms or conditions for the territorial qualification of conductors and/or assistance for conductors, that agreement is not affected by the grandfathering provisions of Part 242.

Processes for Handling Grandfathered Conductors

Although a grandfathered conductor is not subject to the territorial requirements provided in §§ 242.119 and 242.301 (see Background discussion above), grandfathered conductors who are sent to serve as conductors over territory they have never worked on before or have not regularly traversed in the past couple of years should be provided with an appropriate form of assistance. For main track territory, an assistant who meets the territorial qualification requirements for the territory would be an appropriate form of assistance. Preferably, the assistant would be someone other than the assigned locomotive engineer who could become distracted from safely operating the train if they are constantly needed to assist the conductor. For other than main track territory, an assistant who meets the territorial qualification requirements for the territory, including the assigned locomotive engineer, or appropriate job aid³ could be utilized to assist the conductor.

This approach to “territorial qualification” is intended to be consistent with the approach of most railroads prior to the effective date of Part 242, but it also acknowledges that conductors, including grandfathered conductors, who are subject to decertification should be provided with as many tools and as much knowledge and oversight as possible to safely perform their jobs.⁴

FRA understands that prior to the issuance of Part 242, railroads may not have had standardized processes and records for determining the territories that a conductor was qualified to safely operate over without the need of assistance. However, pursuant to Part 242, all railroads are required or will be required to have approved conductor certification programs in place and FRA recommends that each railroad use its approved program as a guide to determine when a conductor, even a grandfathered conductor, should be given assistance on a territory. In addition, FRA recommends that each railroad create and maintain a territorial qualification database for its grandfathered conductors based on information collected from the conductors,

³ A “job aid” is defined in § 242.7 as “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 pursuant to § 242.119, maps, charts or visual aids of the territory, or a person or persons to contact who are qualified on the territory and who can describe the physical characteristics of the territory. At a minimum, a job aid must cover characteristics of a territory including: permanent close clearances, location of permanent derails and switches, assigned radio frequencies in use and special instructions required for movement, if any, and railroad-identified unique operating conditions.”

⁴ FRA notes that lack of territorial qualification might, under certain circumstances, constitute an intervening cause in a decertification case against a grandfathered conductor. For example, if a grandfathered conductor proved that he or she had been decertified while serving as a conductor on territory that he or she had never been over before or had not regularly traversed and that that lack of experience on the territory prevented or materially impaired the conductor from complying with the railroad operating rule for which they were revoked, FRA could find that the railroad’s decision to decertify was improper.

work assignment records, and other reliable sources. Such a database would provide a railroad with adequate means to determine where a grandfathered conductor is qualified and what level of assistance a conductor will need to safely perform the job.

In creating such a database, each railroad could have its grandfathered conductors fill out a survey listing the territories over which the conductors believe they are territorially qualified. This would not only help the railroads quickly populate the database with vital information, but may also help avoid conflicts regarding territorial qualifications ahead of time. When calling a person for an assignment as a conductor, FRA recommends that the railroad ascertain whether the individual has been over the territory previously and any safety concerns the individual may have about serving as the conductor. FRA recommends that discussion be noted in the database and, if the person is sent on the assignment despite raising concerns about his or her territorial qualification, the reason for sending the person out despite the concerns raised should be noted as well. Maintaining a record of such discussions will benefit the conductor, the railroad, and FRA if a decertification event occurs where a lack of territorial qualification is alleged.

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