

PA or HMGP under a specific Presidential declaration (major disaster or emergency for PA or major disaster for HMGP), and not in support of other programs such as community relations or Disaster Recovery Center staff, or staff supporting Individual Assistance programs. Unreimbursed costs do not include State cost shares required for sliding scale, Category Z, or indirect cost funding, nor do they include costs that were not reimbursed because they were inconsistent with applicable Federal rules and cost principles, such as OMB Circular No. A-87.

#### Request 2

FEMA requests that grantees and subgrantees submit available data on unreimbursed management costs incurred in the management and administration of Public Assistance (PA) and/or the Hazard Mitigation Grant Program (HMGP) under a specific Presidential declaration (major disaster or emergency for PA or major disaster for HMGP) since November 13, 2007. Specific costs and descriptions are needed and must be identified by FEMA declaration number.

#### Viewing the Docket

For access to the docket to submit comments, read the Notice of Proposed Rulemaking, Interim Rule, background documents and all comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov>. To the far right is a section titled "More Search Options." Below that title, click on "Advanced Docket Search." On the next screen, in the box provided for Docket ID, type "FEMA-2006-0035". The next screen will provide a link to the docket. Once viewing the docket, all documents are provided in chronological order, beginning with the 2002 Notice of Proposed Rulemaking. Submitted comments may also be inspected at Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Dated: August 22, 2008.

#### R. David Paulison

Administrator, Federal Emergency Management Agency.

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 240

#### Qualification and Certification of Locomotive Engineers

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Interpretation.

**SUMMARY:** FRA is issuing this notice of interpretation to inform interested parties of its application and enforcement of the requirements for each railroad responsible for controlling joint operations territory to maintain a list of person(s) certified as a qualified locomotive engineer for the purposes of the joint operations. FRA has discovered that a number of controlling railroads are not maintaining accurate lists primarily because foreign railroads are not providing the controlling railroads with accurate information and the controlling railroads are not demanding it. If an accurate list is not maintained, a controlling railroad has little chance of preventing an uncertified or unqualified person from operating a locomotive or train in the joint operations territory. This document is intended to inform interested parties of what information is required to be maintained on the required list and provides information as to how often the listings should be updated.

**ADDRESSES:** You may submit comments to Douglas Taylor, Staff Director, Operating Practices Division, or John Conklin, Program Manager Locomotive Engineer Certification, FRA Office of Safety Assurance and Compliance, by facsimile (202-493-6216) or e-mail ([douglas.taylor@dot.gov](mailto:douglas.taylor@dot.gov)) or ([john.conklin@dot.gov](mailto:john.conklin@dot.gov)). Comments may also be submitted to Alan Nagler, FRA Office of Chief Counsel, by facsimile (202-493-6068) or e-mail ([alan.nagler@dot.gov](mailto:alan.nagler@dot.gov)).

#### FOR FURTHER INFORMATION CONTACT:

Douglas H. Taylor, Staff Director, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue, SE., RRS-11, Mail Stop 25, Washington, DC 20590 (telephone 202-493-6255); John Conklin, Program Manager Locomotive Engineer Certification, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue, SE., RRS-11, Mail Stop 25, Washington, DC 20590 (telephone 202 493-6318); or Alan H. Nagler, Senior Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., RCC-11, Mail Stop 10,

Washington, DC 20590 (telephone 202-493-6038).

#### SUPPLEMENTARY INFORMATION:

##### I. General Background

In 1991, FRA published a final rule requiring each railroad to qualify and certify each person the railroad would allow to operate a locomotive or train over its system. *See* 56 FR 28228. The final rule also required a railroad to maintain written listings identifying each person designated by it as: (i) A supervisor of locomotive engineers, (ii) a certified locomotive engineer, and (iii) a certified and qualified locomotive engineer for the purposes of joint operations. *See* 49 CFR 240.221(a) through (c). For each certified engineer, the listing is required to indicate the class of service the railroad determines the person is qualified to perform and the date of the railroad's certification decision. The rule specifies that the listing required by paragraphs (a), (b), and (c) shall be updated at least annually and that a railroad may obtain approval from FRA to maintain the listing electronically. *See* § 240.221(d) and (f). The rule also specifies where these records are required to be kept so that FRA may inspect and copy them during regular business hours. The requirements found in § 240.221 have not been amended since they became effective on September 17, 1991.

Overall, the industry is in substantial compliance with the requirements for identification of qualified persons under § 240.221. FRA has not noticed significant non-compliance with maintaining the lists required for a railroad's own employees, i.e., its own supervisors of locomotive engineers or its own certified locomotive engineers. Again, for its own employees, most railroads periodically update the listing with all the required information "so that it retains its usefulness" which FRA described as the goal of the listing in the section-by-section analysis when the rule was published. *See* 56 FR at 28249.

The purpose of this document is to address issues related to maintaining the listing of those locomotive engineers employed by other railroads (foreign locomotive engineers) that have been designated as certified and qualified for the purposes of joint operations pursuant to § 240.221(c). Several railroads that have been found not properly maintaining a listing of foreign locomotive engineers certified and qualified for joint operations have taken some affirmative actions to come into compliance. However, the number of railroads in partial non-compliance is sufficiently wide-spread that FRA believes that clarification of the

regulatory requirements is necessary to ensure even greater industry-wide compliance.

Unless a foreign locomotive engineer solely operates in the joint operation with a certified pilot or the regulatory requirements for “minimal joint operations” exist, the foreign locomotive engineer is required to be certified and qualified for purposes of the joint operations and is required to be on the listing required by § 240.221(c). See § 240.229(a), (e) and (f). Even though the foreign locomotive engineer is not employed by the controlling railroad, the controlling railroad is required to determine that the person is certified and qualified for purposes of the joint operations. See § 240.229(a). The controlling railroad must choose between certifying and qualifying the person directly, or indirectly relying on the certification issued by another railroad under certain specific conditions. See § 240.229(b) and (c). FRA has previously provided guidance regarding steps a controlling railroad can take to ensure that any foreign locomotive engineers operating over its lines are properly trained for those joint operations if the controlling railroad would like to rely on the certification issued by another railroad. The guidance intimates that blind acceptance of a foreign railroad’s list of qualified engineers does not satisfy the intent of the regulation that permits a controlling railroad to indirectly certify and qualify a foreign railroads locomotive engineers. See Technical Bulletin OP–2000–01, redesignated as Technical Bulletin OP–04–21 (February 3, 2004) available on FRA’s Web site at <http://www.fra.dot.gov> After a person is certified and qualified for purposes of the joint operations, the controlling railroad must choose between issuing its own certificate to the foreign locomotive engineer or noting its “supplemental certificate decision” on the employing railroad’s “original certificate.” See § 240.229(a) and (d).

## II. Controlling Railroad’s Responsibility To Maintain an Accurate Listing

### A. What are the options for a controlling railroad?

A controlling railroad that directly certifies and qualifies foreign locomotive engineers is likely to be in compliance with maintaining the required listing because it controls the information that is needed to maintain the list under § 240.221(c). Controlling railroads that choose to directly certify and qualify foreign locomotive engineers are typically short line or regional railroads with either a small

number of foreign locomotive engineers or with limited joint operations. Railroads that choose to directly certify and qualify are able to maintain greater control over who is allowed to operate over the railroad’s system.

In contrast, a controlling railroad that indirectly certifies and qualifies foreign locomotive engineers is reliant on the foreign railroad to provide accurate and complete information. It is standard practice on the major railroads to indirectly certify and qualify foreign locomotive engineers. Controlling railroads that choose to indirectly certify and qualify are willing to relinquish some control over who is allowed to operate over the railroad’s system. Despite being reliant on another railroad for information about foreign locomotive engineers, a controlling railroad is obligated to maintain the required listing. Thus, the controlling railroad must ensure and demand that accurate and complete information is provided from foreign railroads that engage in joint operations.

### B. Why is an interpretation necessary?

FRA has not previously issued any specific written guidance on how to comply with the requirements related to maintaining accurate lists of qualified and certified locomotive engineers contained in § 240.221. FRA acknowledges that its personnel may have incorrectly instructed some controlling railroads that compliance was achieved when it accepted a complete list of each engineer certified by a foreign railroad even though the list failed to indicate which engineers were certified and qualified to operate in the joint operations territory. In order to ensure a consistent, nation-wide policy, we are publishing this notice of interpretation to clarify the agency’s position.

### C. What is FRA’s interpretation?

FRA’s interprets § 240.221(c) as requiring the controlling railroad to maintain a list that specifically identifies each foreign railroad locomotive engineer that is deemed certified and qualified to operate over the joint operation. Thus, it is unacceptable for a foreign railroad to simply provide a list of all its certified engineers without distinguishing which engineers are certified and qualified in the joint operations. Section 240.221(c) does not require that the listing kept by a controlling railroad of a joint operation identify each locomotive engineer that a foreign railroad has certified on the foreign railroad’s system. The regulation only requires that a person be added to the controlling

railroad’s listing if the person is a foreign locomotive engineer who is certified and qualified for the purposes of joint operations. Although railroads may choose to exchange more information that identifies different types of qualified persons than what is required by the regulation, a list that is over-inclusive is simply not an accurate list. If a foreign railroad decides to provide a controlling railroad with a complete listing of all its certified locomotive engineers, the foreign railroad and the controlling railroad must specifically distinguish those locomotive engineers who are certified and qualified to operate in the joint operations territory from those who are not so certified and qualified.

## III. Frequency of Listing Updates

### A. Why is an interpretation necessary?

The provision contained in § 240.221(d) states that “[t]he listing required by paragraphs (a), (b), and (c) shall be updated at least annually” and several railroads have complained that it is not useful to keep a listing that only needs to be updated annually. These parties have argued that even if a listing is updated annually, it will likely become outdated quickly because the number of certified and qualified engineers is in a constant state of flux. FRA disagrees with this interpretation and believes the rule requires maintenance of the listing so it retains its usefulness.

### B. What is FRA’s interpretation?

The plain language of the regulation does not state that the “listing only needs to be updated annually” but, instead, specifically requires that it “shall be updated *at least* annually.” § 240.221(d) (emphasis added). Thus, the plain language of the regulation contemplates updating the required listings more frequently than once a year and that, at a minimum, the listings must be updated annually. The only time the annual requirement is relevant is in those situations where a controlling railroad does not have any changes to make to its listing of qualified locomotive engineers over an entire year and then paragraph (d) would require that the listing be checked and updated at the end of the year. Moreover, FRA’s intent when publishing the final rule was to require the listings to be updated whenever a change to the listing occurs so that the listing remains current. The section-by-section analysis contained in the final rule explained that “FRA has specifically provided for the periodic updating of the list so that it retains its

usefulness.” 56 FR at 28249. FRA intended that the listing be updated whenever it does not accurately identify the person(s) certified and qualified (i.e., when the listing’s usefulness is diminished). Ideally, the listing should be updated each time a person is newly certified and qualified, and each time a person is no longer considered certified or qualified.

With regard to updating the listing of foreign locomotive engineers in joint operation territories, it should be noted that FRA considers it more important to remove the name of any foreign engineer who is no longer considered certified or qualified for joint operations territory than to fail to add a person who has recently become certified and qualified. When a controlling railroad questions a foreign engineer’s certification or qualifications and the engineer’s name is not found on the list, the controlling railroad would be expected to immediately contact the foreign railroad in order to confirm the person’s status before allowing the foreign engineer to proceed into the joint operations territory. Alternatively, if a controlling railroad were to question a foreign engineer’s certification or qualifications and the engineer’s name is found on the list, the controlling railroad would likely be expected to rely on the list and would be exercising due diligence in doing so. If the list is incorrect and the person’s name should have been removed, the controlling railroad cannot be expected to prevent an unqualified person from operating in the joint operations territory.

Several major railroads have voiced concern that because the listing is in such a constant state of flux, it would be extremely difficult to maintain an accurate listing at all times. In the joint operation context, a major railroad may face the challenge of coordinating a listing that includes separate lists submitted by more than 100 foreign railroads. Although FRA agrees that it will be challenging for some railroads that allow extensive joint operations to maintain an accurate written list, such railroads may find it easier to comply by maintaining the listing electronically. Maintaining the listing electronically has always been an option pursuant to § 240.221(f), but it has not been extensively utilized. There is no question that modern technology has greatly improved since the rule’s issuance in 1991, and thus the ability and desire to electronically maintain the listing should be much greater. For example, it is possible to maintain a secure Web site where a controlling railroad can search a foreign railroad’s uploaded list of locomotive engineers to

check: (1) Whether the person is certified and qualified for the joint operations territory; (2) the person’s class of service; and, (3) the date of the railroad’s certification decision. Another option may be for a foreign railroad to tap into its railroad crew management tracking system to produce a more detailed written or electronic list of its engineers to controlling railroads than what is currently being made available. Other electronically maintained options may be available and FRA encourages railroads controlling joint operations to consider options that would improve the usefulness of the required listing. Any railroad that would like to maintain the listing electronically is required to obtain approval from FRA pursuant to the requirements in § 240.221(f).

While FRA recognizes that recent changes in status to any particular engineer might not be reflected in the listing immediately, FRA expects the listing to be updated with enough regularity so that it retains its usefulness.

FRA believes that this notice provides sufficient information to guide parties that may have been confused by the requirements of § 240.221. However, FRA seeks comments on this notice from interested parties including any suggestions for providing more clarity, if necessary. Please refer to the Addresses section for additional information regarding the submission of comments.

Issued in Washington DC on August 21, 2008.

**Jo Strang,**

*Associate Administrator for Safety.*

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 541

[Docket No. NHTSA–2008–0049]

RIN 2127–AK31

#### **Federal Motor Vehicle Theft Prevention Standard; Final Listing of 2009 Light Duty Truck Lines Subject to the Requirements of This Standard and Exempted Vehicle Lines for Model Year 2009**

##### *Correction*

In rule document E8–18890 beginning on page 47847 in the issue of Friday, August 15, 2008, make the following correction:

#### **Appendix A–I to Part 541 [Corrected]**

On page 47849, in Appendix A–I to Part 541, in the second column of the table, in the 44th line entry, “Genesis<sup>3</sup>” should read “Genesis<sup>1</sup>”.

[FR Doc. Z8–18890 Filed 8–28–08; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

RIN 0648–XJ69

#### **Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; inseason retention limit adjustment.

**SUMMARY:** NMFS has determined that the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit should be adjusted for the September, October–November, and December time periods of the 2008 fishing year, based on consideration of the determination criteria regarding inseason adjustments.

**DATES:** The effective dates for the adjusted BFT daily retention limits are September 1, 2008, through December 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin or Brad McHale, 978–281–9260.

#### **SUPPLEMENTARY INFORMATION:**

Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the Consolidated Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP). The latest (2006) ICCAT recommendation for western Atlantic BFT included a U.S. quota of 1,190.12 mt, effective beginning in 2007, through 2008, and thereafter until changed (i.e., via a new ICCAT