

(a) The railroad adequately limits and controls accessibility to such information retained in its database system and identifies those individuals who have such access;

(b) The railroad has a terminal at the system headquarters and at each division headquarters;

(c) Each such terminal has a desk-top computer (*i.e.*, monitor, central processing unit, and keyboard) and either a facsimile machine or a printer connected to the computer to retrieve and produce information in a usable format for immediate review by representatives of FRA and States participating under part 212 of this chapter;

(d) The railroad has a designated representative who is authorized to authenticate retrieved information from the electronic system as true and accurate copies of the electronically kept records; and

(e) The railroad provides representatives of FRA and States participating under part 212 of this chapter with immediate access to these records for inspection and copying during normal business hours and provides printouts of such records upon request.

## **PART 240—QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE ENGINEERS**

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AUTHORITY: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461 note; and 49 CFR 1.89.

SOURCE: 56 FR 28254, June 19, 1991, unless otherwise noted.

### Subpart A—General

#### § 240.1 Purpose and scope.

(a) The purpose of this part is to ensure that only qualified persons operate a locomotive or train.

(b) This part prescribes minimum Federal safety standards for the eligibility, training, testing, certification and monitoring of all locomotive engineers to whom it applies. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

(c) The locomotive engineer certification requirements prescribed in this part apply to any person who meets the definition of locomotive engineer contained in § 240.7, regardless of the fact that the person may have a job classification title other than that of locomotive engineer.

[56 FR 28254, June 19, 1991, as amended at 64 FR 60988, Nov. 8, 1999; 85 FR 81307, Dec. 15, 2020]

#### § 240.3 Application and responsibility for compliance.

(a) This part applies to all railroads, except:

(1) Railroads that operate only on track inside an installation that is not part of the general railroad system of transportation (*i.e.*, plant railroads, as defined in § 240.7);

(2) Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation as defined in § 240.7; or

(3) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(b) Although the duties imposed by this part are generally stated in terms of the duty of a railroad, each person, including a contractor for a railroad, who performs any function covered by this part must perform that function in accordance with this part.

[85 FR 81307, Dec. 15, 2020]

#### § 240.5 Effect and construction.

(a) FRA does not intend, by use of the term locomotive engineer in this part, to alter the terms, conditions, or interpretation of existing collective bargaining agreements that employ other job classification titles when identifying a person authorized by a railroad to operate a locomotive.

(b) FRA does not intend by issuance of these regulations to alter the authority of a railroad to initiate disciplinary sanctions against its employees, including managers and supervisors, in the normal and customary manner, including those contained in its collective bargaining agreements.

(c) Except as provided in § 240.308, nothing in this part shall be construed to create or prohibit an eligibility or entitlement to employment in other service for the railroad as a result of denial, suspension, or revocation of certification under this part.

(d) Nothing in this part shall be deemed to abridge any additional procedural rights or remedies not inconsistent with this part that are available to the employee under a collective bargaining agreement, the Railway

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Labor Act, or (with respect to employment at will) at common law with respect to removal from service or other adverse action taken as a consequence of this part.

[85 FR 81307, Dec. 15, 2020]

### § 240.7 Definitions.

As used in this part—

*Administrator* means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

*Alcohol* means ethyl alcohol (ethanol) and includes use or possession of any beverage, mixture, or preparation containing ethyl alcohol.

*Conductor* means the crewmember in charge of a "train or yard crew" as defined in part 218 of this chapter.

*Controlled Substance* has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules I through V as they may be revised from time to time (21 CFR parts 1301-1316).

*Current Employee* is any employee with at least one year of experience in transportation service on a railroad.

*Designated Supervisor of Locomotive Engineers* is a person designated as such by a railroad in accordance with the provisions of § 240.105 of this part.

*Drug* means any substance (other than alcohol) that has known mind or function-altering effects on a human subject, specifically including any psychoactive substance and including, but not limited to, controlled substances.

*Drug and alcohol counselor (DAC)* means a person who meets the credentialing and qualification requirements of a "Substance Abuse Professional" (SAP), as provided in 49 CFR part 40.

*Dual purpose vehicle* means a piece of on-track equipment that is capable of moving railroad rolling stock and may also function as roadway maintenance equipment.

*File, filed and filing* mean submission of a document under this part on the date when the DOT Docket Clerk or FRA receives it, or if sent by mail, the date mailing was completed.

*FRA* means the Federal Railroad Administration.

*FRA Representative* means the FRA Associate Administrator for Railroad

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Safety/Chief Safety Officer and the Associate Administrator's delegate, including any safety inspector employed by the Federal Railroad Administration and any qualified State railroad safety inspector acting under part 212 of this chapter.

*Ineligible or ineligibility* means that a person is legally disqualified from serving as a certified locomotive engineer. The term covers a number of circumstances in which a person may not serve as a certified locomotive engineer. Revocation of certification pursuant to § 240.307 and denial of certification pursuant to § 240.219 are two examples in which a person would be ineligible to serve as a certified locomotive engineer. A period of ineligibility may end when a condition or conditions are met. For example, a period of ineligibility may end when a person meets the conditions to serve as a certified locomotive engineer following an alcohol or drug violation pursuant to § 240.119.

*Instructor engineer*, as used in this part:

(1) Means a person who has demonstrated, pursuant to the railroad's written program, an adequate knowledge of the subjects under instruction and, where applicable, has the necessary operating experience to instruct effectively in the field, and has the following qualifications:

(i) Is a certified locomotive engineer under this part; and

(ii) Has been selected as such by a designated railroad officer, in concurrence with the designated employee representative, where present, to teach others proper train handling procedures; or

(iii) In absence of concurrence provided in paragraph (1)(ii) of this definition, has a minimum of 12 months service working in the class of service for which the person is designated to instruct.

(2) If a railroad does not have designated employee representation, then a person employed by the railroad need not comply with paragraph (1)(ii) or (iii) of this definition to be an instructor engineer.

*Joint Operations* means rail operations conducted by more than one railroad on the same track regardless

of whether such operations are the result of—

- (1) Contractual arrangement between the railroads,
- (2) Order of a governmental agency or a court of law, or
- (3) Any other legally binding directive.

*Knowingly* means having actual knowledge of the facts giving rise to the violation or that a reasonable person acting in the circumstances, exercising due care, would have had such knowledge.

*Locomotive* means a piece of on-track equipment (other than specialized roadway maintenance equipment or a dual purpose vehicle operating in accordance with §240.104(a)(2)):

- (1) With one or more propelling motors designed for moving other equipment;
- (2) With one or more propelling motors designed to carry freight or passenger traffic or both; or
- (3) Without propelling motors but with one or more control stands.

*Locomotive engineer* means 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 distances of less than 100 feet and this incidental movement of a locomotive or locomotives is for inspection or maintenance purposes.

*Main track* means a track upon which the operation of trains is governed by one or more of the following methods of operation: timetable; mandatory directive; signal indication; or any form of absolute or manual block system.

*Medical examiner* means a person licensed as a doctor of medicine or doctor of osteopathy. A medical examiner can be a qualified, full-time salaried employee of a railroad, a qualified practitioner who contracts with the railroad on a fee-for-service or other basis, or a qualified practitioner designated by the railroad to perform functions in connection with medical

evaluations of employees. As used in this rule, the medical examiner owes a duty to make an honest and fully informed evaluation of the condition of an employee.

*On-the-job training (OJT)* means job training that occurs in the workplace, *i.e.*, the employee learns the job while doing the job.

*Person* means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

*Physical characteristics* means the actual track profile of and physical location for points within a specific yard or route that affect the movement of a locomotive or train. *Physical characteristics* includes both main track physical characteristics (*see* definition of “main track” in this section) and other than main track physical characteristics.

*Plant railroad* means a plant or installation that owns or leases a locomotive, uses that locomotive to switch cars throughout the plant or installation, and is moving goods solely for use in the facility’s own industrial processes. The plant or installation could include track immediately adjacent to the plant or installation if the plant railroad leases the track from the general system railroad and the 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. A plant or installation that operates a locomotive to switch or move cars for other entities, even if solely within the confines of the plant or installation, rather than for its own purposes or industrial processes, will not be considered a plant railroad because the performance of such activity makes the operation part of the general railroad system of transportation.

*Qualified* means a person who has successfully completed all instruction,

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

*Railroad* means any form of non-highway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

*Railroad Officer* means any supervisory employee of a railroad.

*Railroad rolling stock* is on-track equipment that is either a “railroad freight car” (as defined in § 215.5 of this chapter) or a “passenger car” (as defined in § 238.5 of this chapter).

*Roadway maintenance equipment* is on-track equipment powered by any means of energy other than hand power which is used in conjunction with maintenance, repair, construction or inspection of track, bridges, roadway, signal, communications, or electric traction systems.

*Segment* means any portion of a railroad assigned to the supervision of one superintendent or equivalent transportation officer.

*Serve or service*, in the context of serving documents, has the meaning given in Rule 5 of the Federal Rules of Civil Procedure as amended. Similarly, the computation of time provisions in Rule 6 of the Federal Rules of Civil Procedure as amended are also applicable in this part. *See also* the definition of “filing” in this section.

*Specialized roadway maintenance equipment* is roadway maintenance equipment that does not have the capability to move railroad rolling stock.

Any alteration of such equipment that enables it to move railroad rolling stock will require that the equipment be treated as a dual purpose vehicle.

*Substance abuse disorder* refers to a psychological or physical dependence on alcohol or a drug, or another identifiable and treatable mental or physical disorder involving the abuse of alcohol or drugs as a primary manifestation. A substance abuse disorder is “active” within the meaning of this part if the person is currently using alcohol or other drugs, except under medical supervision consistent with the restrictions described in § 219.103 of this chapter or has failed to complete primary treatment successfully or participate in aftercare successfully as directed by a DAC or SAP.

*Substance Abuse Professional (SAP)* means a person who meets the qualifications of a Substance Abuse Professional, as provided in part 40 of this title.

*Territorial qualifications* means 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.

*Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation* means a tourist, scenic, historic, or excursion operation conducted only on track used exclusively for that purpose (*i.e.*, there is no freight, intercity passenger, or commuter passenger railroad operation on the track).

*Type I Simulator* means a replica of the control compartment of a locomotive with all associated control equipment that:

(1) Functions in response to a person’s manipulation and causes the gauges associated with such controls to appropriately respond to the consequences of that manipulation;

(2) Pictorially, audibly and graphically illustrates the route to be taken;

(3) Graphically, audibly, and physically illustrates the consequences of control manipulations in terms of their effect on train speed, braking capacity,

and in-train force levels throughout the train; and

(4) Is computer enhanced so that it can be programmed for specific train consists and the known physical characteristics of the line illustrated.

*Type II Simulator* means a replica of the control equipment for a locomotive that:

(1) Functions in response to a person's manipulation and causes the gauges associated with such controls to appropriately respond to the consequences of that manipulation;

(2) Pictorially, audibly, and graphically illustrates the route to be taken;

(3) Graphically and audibly illustrates the consequences of control manipulations in terms of their effect on train speed braking capacity, and in-train force levels throughout the train; and

(4) Is computer enhanced so that it can be programmed for specific train consists and the known physical characteristics of the line illustrated.

*Type III Simulator* means a replica of the control equipment for a locomotive that:

(1) Functions in response to a person's manipulation and causes the gauges associated with such controls to appropriately respond to the consequences of that manipulation;

(2) Graphically illustrates the route to be taken;

(3) Graphically illustrates the consequences of control manipulations in terms of their effect on train speed braking capacity, and in-train force levels throughout the train; and

(4) Is computer enhanced so that it can be programmed for specific train consists and the known physical characteristics of the line illustrated.

[56 FR 28254, June 19, 1991, as amended at 58 FR 19002, Apr. 9, 1993; 60 FR 53136, Oct. 12, 1995; 64 FR 60989, Nov. 8, 1999; 65 FR 58483, Sept. 29, 2000; 67 FR 24, Jan. 2, 2002; 74 FR 68182, Dec. 23, 2009; 85 FR 81307, Dec. 15, 2020]

#### § 240.9 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that

requirement while the petition is being considered.

(b) Each petition for a waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

[56 FR 28254, June 19, 1991, as amended at 64 FR 60989, Nov. 8, 1999]

#### § 240.11 Penalties and consequences for noncompliance.

(a) A person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$1,086 and not more than \$35,516 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$142,063 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See FRA's website at [www.fra.dot.gov](http://www.fra.dot.gov) for a statement of agency civil penalty policy.

(b) A person who violates any requirement of this part or causes the violation of any such requirement may be subject to disqualification from all safety-sensitive service in accordance with part 209 of this chapter.

(c) A person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

(d) In addition to the enforcement methods referred to in paragraphs (a), (b), and (c) of this section, FRA may also address violations of this part by use of the emergency order, compliance order, and/or injunctive provisions of the Federal rail safety laws.

[56 FR 28254, June 19, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 240.11, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at [www.govinfo.gov](http://www.govinfo.gov).

## § 240.13

### § 240.13 Information collection requirements.

(a) The information collection requirements of this part were reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and are assigned OMB control number 2130-0533.

(b) The information collection requirements are found in the following sections: §§ 240.101, 240.103, 240.105, 240.107, 240.109, 240.111, 240.113, 240.115, 240.117, 240.119, 240.121, 240.123, 240.125, 240.127, 240.129, 240.201, 240.205, 240.207, 240.209, 240.211, 240.213, 240.215, 240.219, 240.221, 240.223, 240.227, 240.229, 240.301, 240.303, 240.305, 240.307, 240.309, 240.401, 240.403, 240.405, 240.407, 240.411.

[56 FR 28254, June 19, 1991, as amended at 58 FR 19003, Apr. 9, 1993]

## Subpart B—Component Elements of the Certification Process

### § 240.101 Certification program required.

(a) Each railroad subject to this part shall have in effect a written program for certifying the qualifications of locomotive engineers.

(b) Each railroad shall have such a program in effect prior to commencing operations.

(c) Each railroad shall have a certification program approved in accordance with § 240.103 that includes:

(1) A procedure for designating any person it determines to be qualified as a supervisor of locomotive engineers that complies with the criteria established in § 240.105;

(2) A designation of the classes of service that it determines will be used in compliance with the criteria established in § 240.107;

(3) A procedure for evaluating prior safety conduct that complies with the criteria established in § 240.109;

(4) A procedure for evaluating visual and hearing acuity that complies with the criteria established in § 240.121;

(5) A procedure for training that complies with the criteria established in § 240.123;

(6) A procedure for knowledge testing that complies with the criteria established in § 240.125;

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(7) A procedure for skill performance testing that complies with the criteria established in § 240.127; and

(8) A procedure for monitoring operational performance that complies with the criteria established in § 240.129.

[56 FR 28254, June 19, 1991, as amended at 74 FR 68182, Dec. 23, 2009]

### § 240.103 Approval of design of individual railroad programs by FRA.

(a) Each railroad shall submit its written certification program and a description of how its program conforms to the specific requirements of this part in accordance with the procedures contained in appendix B to this part and shall submit this written certification program for approval at least 60 days before commencing operations. The primary method for a railroad's submission is by email to [FRAOPCERTPROG@dot.gov](mailto:FRAOPCERTPROG@dot.gov). For those railroads that are unable to send the program by email, the program may be sent to the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

(b) Each railroad shall:

(1) Simultaneous with its filing with FRA, provide a copy of the submission filed pursuant to paragraph (a) of this section, a resubmission filed pursuant to paragraph (f) of this section, or a material modification filed pursuant to paragraph (g) of this section to the president of each labor organization that represents the railroad's employees subject to this part; and

(2) Include in its submission filed pursuant to paragraph (a) of this section, a resubmission filed pursuant to paragraph (f) of this section, or a material modification filed pursuant to paragraph (g) of this section a statement affirming that the railroad has provided a copy to the president of each labor organization that represents the railroad's employees subject to this part, together with a list of the names and addresses of persons provided a copy.

(c) Not later than 45 days from the date of filing a submission pursuant to paragraph (a) of this section, a resubmission pursuant to paragraph (f) of

this section, or a material modification pursuant to paragraph (g) of this section, any designated representative of railroad employees subject to this part may comment on the submission, re-submission, or material modification.

(1) Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding;

(2) Each comment shall be submitted by email to *FRAOPCERTPROG@dot.gov* or by mail to the Associate Administrator for Railroad Safety/Chief Safety Officer, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590; and

(3) The commenter shall affirm that a copy of the comment was provided to the railroad.

(d) The submission required by paragraph (a) of this section shall state the railroad's election either:

(1) To accept responsibility for the training of student engineers and thereby obtain authority for that railroad to certify initially a person as an engineer in an appropriate class of service, or

(2) To recertify only engineers previously certified by other railroads.

(e) A railroad that elects to accept responsibility for the training of student engineers shall state in its submission whether it will conduct the training program or employ a training program conducted by some other entity on its behalf but adopted and ratified by that railroad.

(f) A railroad's program is considered approved and may be implemented 30 days after the required filing date (or the actual filing date) unless the Administrator notifies the railroad in writing that the program does not conform to the criteria set forth in this part.

(1) If the Administrator determines that the program does not conform, the Administrator will inform the railroad of the specific deficiencies.

(2) If the Administrator informs the railroad of deficiencies more than 30 days after the initial filing date, the original program may remain in effect until 30 days after approval of the revised program is received so long as the railroad has complied with the requirements of paragraph (g) of this section.

(g) A railroad shall resubmit its program within 30 days after the date of such notice of deficiencies. A failure to resubmit the program with the necessary revisions will be considered a failure to implement a program under this part.

(1) The Administrator will inform the railroad in writing whether its revised program conforms to this part.

(2) If the program does not conform, the railroad shall resubmit its program.

(h) A railroad that intends to modify materially its program after receiving initial FRA approval shall submit a description of how it intends to modify the program in conformity with the specific requirements of this part at least 60 days prior to implementing such a change.

(1) A modification is material if it would affect the program's conformance with this part.

(2) The modification submission shall contain a description that conforms to the pertinent portion of the procedures contained in appendix B of this part.

(3) The modification submission will be handled in accordance with the procedures of paragraphs (b) and (c) of this section as though it were a new program.

[85 FR 81309, Dec. 15, 2020]

**§ 240.104 Criteria for determining whether movement of roadway maintenance equipment or a dual purpose vehicle requires a certified locomotive engineer.**

(a) A railroad is not required to use a certified locomotive engineer to perform the following functions:

(1) Operate specialized roadway maintenance equipment; or

(2) Operate a dual purpose vehicle that is:

(i) Being operated in conjunction with roadway maintenance and related maintenance of way functions, including traveling to and from the work site;

(ii) Moving under authority of railroad operating rules designated for the movement of roadway maintenance equipment that ensure the protection of such equipment from train movements; and

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(iii) Being operated by an individual trained and qualified in accordance with §§ 214.341, 214.343, and 214.355 of this chapter.

(b) A railroad is required to use a certified locomotive engineer when operating a dual purpose vehicle other than in accordance with paragraph (a)(2) of this section.

[64 FR 60990, Nov. 8, 1999]

### **§ 240.105 Criteria for selection of designated supervisors of locomotive engineers.**

(a) Each railroad's program shall include criteria and procedures for implementing this section.

(b) The railroad shall examine any person it is considering for qualification as a supervisor of locomotive engineers to determine that he or she:

(1) Knows and understands the requirements of this part;

(2) Can appropriately test and evaluate the knowledge and skills of locomotive engineers;

(3) Has 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; and

(4) Is a certified engineer who is qualified on the physical characteristics of the portion of the railroad on which that person will perform the duties of a Designated Supervisor of Locomotive Engineers.

(c) If a railroad does not have any Designated Supervisors of Locomotive Engineers, and wishes to hire one, the chief operating officer of the railroad shall make a determination in writing that the Designated Supervisor of Locomotive Engineers designate possesses the necessary performance skills in accordance with § 240.127. This determination shall take into account any special operating characteristics which are unique to that railroad.

(d) Each railroad is authorized to designate a person as a designated supervisor of locomotive engineers with additional conditions or operational restrictions on the service the person may perform.

[56 FR 28254, June 19, 1991, as amended at 64 FR 60990, Nov. 8, 1999; 85 FR 81309, Dec. 15, 2020]

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### **§ 240.107 Types of service.**

(a) Each railroad's program shall state which of the three classes of service, provided for in paragraph (b) of this section, that it will cover.

(b) A railroad may issue certificates for any or all of the following classes of service:

(1) Train service engineers,

(2) Locomotive servicing engineers, and

(3) Student engineers.

(c) The following operational constraints apply to each class of service:

(1) Train service engineers may operate locomotives singly or in multiples and may move them with or without cars coupled to them;

(2) Locomotive servicing engineers may operate locomotives singly or in multiples but may not move them with cars coupled to them; and

(3) Student engineers may operate only under direct and immediate supervision of an instructor engineer.

(d) Each railroad is authorized to impose additional conditions or operational restrictions on the service an engineer may perform beyond those identified in this section provided those conditions or restrictions are not inconsistent with this part.

(e) A railroad shall not reclassify the certification of any type of certified engineer to a more restrictive class of certificate or a student engineer certificate during the period in which the certification is otherwise valid.

[56 FR 28254, June 19, 1991, as amended at 74 FR 68182, Dec. 23, 2009; 85 FR 81309, Dec. 15, 2020]

### **§ 240.109 General criteria for eligibility based on prior safety conduct.**

(a) Each railroad's program shall include criteria and procedures to implement this section.

(b) A railroad shall evaluate the prior safety conduct of any person it is considering for qualification as a locomotive engineer and the program shall require that a person is ineligible if the person has an adverse record of prior safety conduct as provided for in § 240.115, § 240.117, or § 240.119.

(c) The program shall require evaluation of data which reflect the person's prior safety conduct as a railroad employee and the person's prior safety

conduct as an operator of a motor vehicle, provided that there is relevant prior conduct. The information to be evaluated shall include:

(1) The relevant data furnished from the evaluating railroad's own records, if the person was previously an employee of that railroad;

(2) The relevant data furnished by any other railroad formerly employing the person; and

(3) The relevant data furnished by any governmental agency with pertinent motor vehicle driving records.

(d) The railroad's process for evaluating information concerning prior safety conduct shall be designed to conform wherever necessary with the procedural requirements of §§ 240.111, 240.113, 240.115, 240.117, 240.119, and 240.217.

(e) When evaluating a person's motor vehicle driving record or a person's railroad employment record, a railroad shall not consider information concerning motor vehicle driving incidents or prior railroad safety conduct that occurred at a time other than that specifically provided for in § 240.115, § 240.117 or § 240.119 of this subpart.

(f) A railroad's program shall provide a candidate for certification or recertification a reasonable opportunity to review and comment in writing on any record which contains information concerning the person's prior safety conduct, including information pertinent to determinations required under § 240.119 of this subpart, if the railroad believes the record contains information that could be sufficient to render the person ineligible for certification under this subpart.

(g) The opportunity for comment shall be afforded to the person prior to the railroad's rendering its eligibility decision based on that information. Any responsive comment furnished shall be retained by the railroad in accordance with § 240.215 of this part.

(h) The program shall include a method for a person to advise the railroad that he or she has never been a railroad employee or obtained a license to drive a motor vehicle. Nothing in this section shall be construed as imposing a duty or requirement that a person have prior railroad employment experience or obtain a motor vehicle

driver's license in order to become a certified locomotive engineer.

(i) Nothing in this section, § 240.111, or § 240.113 shall be construed to prevent persons subject to this part from entering into an agreement that results in a railroad's obtaining the information needed for compliance with this subpart in a different manner than that prescribed in § 240.111 or § 240.113.

[56 FR 28254, June 19, 1991, as amended at 74 FR 68182, Dec. 23, 2009]

**§ 240.111 Individual's duty to furnish data on prior safety conduct as motor vehicle operator.**

(a) Except for persons covered by § 240.109(h), each person seeking certification or recertification under this part shall, within 366 days preceding the date of the railroad's decision on certification or recertification:

(1) Take the actions required by paragraphs (b) through (f) or paragraph (g) of this section to make information concerning his or her driving record available to the railroad that is considering such certification or recertification; and

(2) Take any additional actions, including providing any necessary consent required by State, Federal, or foreign law to make information concerning his or her driving record available to that railroad.

(b) Each person seeking certification or recertification under this part shall:

(1) Request, in writing, that the chief of each driver licensing agency identified in paragraph (c) of this section provide a copy of that agency's available information concerning his or her driving record to the railroad that is considering such certification or recertification; and

(2) Request, in accordance with the provisions of paragraph (d) or (e) of this section, that a check of the National Driver Register be performed to identify additional information concerning his or her driving record and that any resulting information be provided to that railroad.

(c) Each person shall request the information required under paragraph (b)(1) of this section from:

(1) The chief of the driver licensing agency of any jurisdiction, including a State or foreign country, which last

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issued that person a driver's license; and

(2) The chief of the driver licensing agency of any other jurisdiction, including states or foreign countries, that issued or reissued him or her a driver's license within the preceding five years.

(d) Each person shall request the information required under paragraph (b)(2) of this section from the Chief, National Driver Register, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 in accordance with the procedures contained in appendix C of this part unless the person's motor vehicle driving license was issued by a State or the District of Columbia.

(e) If the person's motor vehicle driving license was issued by one of the driver licensing agencies of a State or the District of Columbia, the person shall request the chief of that driver licensing agency to perform a check of the National Driver Register for the possible existence of additional information concerning his or her driving record and to provide the resulting information to the railroad.

(f) If advised by the railroad that a driver licensing agency or the National Highway Traffic Safety Administration has informed the railroad that additional information concerning that person's driving history may exist in the files of a State agency or foreign country not previously contacted in accordance with this section, such person shall:

(1) Request in writing that the chief of the driver licensing agency which compiled the information provide a copy of the available information to the prospective certifying railroad; and

(2) Take any additional action required by State, Federal, or foreign law to obtain that additional information.

(g) Any person who has never obtained a motor vehicle driving license is not required to comply with the provisions of paragraph (b) of this section but shall notify the railroad of that fact in accordance with procedures of the railroad that comply with § 240.109(d).

(h) Each certified locomotive engineer or person seeking initial certifi-

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cation shall report motor vehicle incidents described in § 240.115(h)(1) and (2) to the employing railroad within 48 hours of being convicted for, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license for, such violations. For purposes of this paragraph (h) and § 240.115(h), "State action" means action of the jurisdiction that has issued the motor vehicle driver's license, including a foreign country. For the purposes of engineer certification, no railroad shall require reporting earlier than 48 hours after the conviction, or completed State action to cancel, revoke, or deny a motor vehicle driver's license.

[56 FR 28254, June 19, 1991, as amended at 64 FR 60990, Nov. 8, 1999; 74 FR 25175, May 27, 2009; 74 FR 68182, Dec. 23, 2009; 85 FR 81309, Dec. 15, 2020]

### **§ 240.113 Individual's duty to furnish data on prior safety conduct as an employee of a different railroad.**

(a) Except for persons covered by § 240.109(h), each person seeking certification or recertification under this part shall, within 366 days preceding the date of the railroad's decision on certification or recertification:

(1) Request, in writing, that the chief operating officer or other appropriate person of the former employing railroad provide a copy of that railroad's available information concerning his or her service record pertaining to compliance or non-compliance with §§ 240.111, 240.117, and 240.119 to the railroad that is considering such certification or recertification; and

(2) Take any additional actions, including providing any necessary consent required by State or Federal law to make information concerning his or her service record available to that railroad.

(b) [Reserved]

[85 FR 81310, Dec. 15, 2020]

### **§ 240.115 Criteria for consideration of prior safety conduct as a motor vehicle operator.**

(a) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including, but not limited to,

each railroad, railroad officer, supervisor, and employee) violates any requirement of a program that complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(b) Except as provided in paragraphs (c) through (f) of this section, each railroad, prior to initially certifying or recertifying any person as a locomotive engineer for any type of service, shall determine that the person meets the eligibility requirements of this section involving prior conduct as a motor vehicle operator.

(c) A railroad shall initially certify a person as a locomotive engineer for 60 days if the person:

(1) Requested the information required by paragraph (h) of this section at least 60 days prior to the date of the decision to certify that person; and

(2) Otherwise meets the eligibility requirements provided in § 240.109.

(d) A railroad shall recertify a person as a locomotive engineer for 60 days from the expiration date of that person's certification if the person:

(1) Requested the information required by paragraph (h) of this section at least 60 days prior to the date of the decision to recertify that person; and

(2) Otherwise meets the eligibility requirements provided in § 240.109.

(e) Except as provided in paragraph (f) of this section, if a railroad which certified or recertified a person pursuant to paragraph (c) or (d) of this section does not obtain and evaluate the information required pursuant to paragraph (h) of this section within 60 days of the pertinent dates identified in paragraph (c) or (d) of this section, that person will be ineligible to perform as a locomotive engineer until the information can be evaluated.

(f) If a person requests the information required pursuant to paragraph (h) of this section but is unable to obtain it, that person or the railroad certifying or recertifying that person may petition for a waiver of the requirements of paragraph (b) of this section in accordance with the provisions of part 211 of this chapter. A railroad shall certify or recertify a person during the pendency of the waiver request if the person otherwise meets the eligi-

bility requirements provided in § 240.109.

(g) When evaluating a person's motor vehicle driving record, a railroad shall not consider information concerning motor vehicle driving incidents that occurred more than 36 months before the month in which the railroad is making its certification decision or at a time other than that specifically provided for in § 240.111, § 240.117, § 240.119, or § 240.205.

(h) A railroad shall only consider information concerning the following types of motor vehicle incidents:

(1) A conviction for, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license for, operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance; or

(2) A conviction for, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license for, refusal to undergo such testing as is required by State or foreign law when a law enforcement official seeks to determine whether a person is operating a vehicle while under the influence of alcohol or a controlled substance.

(i) If such an incident is identified:

(1) The railroad shall provide the data to the railroad's DAC, together with any information concerning the person's railroad service record, and shall refer the person for evaluation to determine if the person has an active substance abuse disorder;

(2) The person shall cooperate in the evaluation and shall provide any requested records of prior counseling or treatment for review exclusively by the DAC in the context of such evaluation; and

(3) If the person is evaluated as not currently affected by an active substance abuse disorder, the subject data shall not be considered further with respect to certification. However, the railroad shall, on recommendation of the DAC, condition certification upon participation in any needed aftercare and/or follow-up testing for alcohol or drugs deemed necessary by the DAC consistent with the technical standards specified in § 240.119(d)(3).

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(4) If the person is evaluated as currently affected by an active substance abuse disorder, the provisions of § 240.119(b) will apply.

(5) If the person fails to comply with the requirements of paragraph (i)(2) of this section, the person shall be ineligible to perform as a locomotive engineer until such time as the person complies with the requirements.

[85 FR 81310, Dec. 15, 2020]

### § 240.117 Criteria for consideration of operating rules compliance data.

(a) Each railroad shall adopt and comply with a program which meets the requirements of this section. When any person including, but not limited to, each railroad, railroad officer, supervisor, and employee violates any requirement of a program that complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(b) A person who has demonstrated a failure to comply, as described in paragraph (e) of this section, with railroad rules and practices for the safe operation of trains shall not be currently certified as a locomotive engineer.

(c)(1) A certified locomotive engineer who has demonstrated a failure to comply with railroad rules and practices described in paragraph (e) of this section shall have his or her certification revoked.

(2) A Designated Supervisor of Locomotive Engineers, a certified locomotive engineer pilot or an instructor engineer who is monitoring, piloting or instructing a locomotive engineer and fails to take appropriate action to prevent a violation of paragraph (e) of this section, shall have his or her certification revoked. Appropriate action does not mean that a supervisor, pilot or instructor must prevent a violation from occurring at all costs; the duty may be met by warning an engineer of a potential or foreseeable violation. A Designated Supervisor of Locomotive Engineers will not be held culpable under this section when this monitoring event is conducted as part of the railroad's operational compliance tests as defined in §§ 217.9 and 240.303 of this chapter.

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(3) A certified locomotive engineer who is called by a railroad to perform the duty of a train crew member other than that of locomotive engineer or conductor shall not have his or her certification revoked based on actions taken or not taken while performing that duty.

(d) In determining whether a person may be or remain certified as a locomotive engineer, a railroad shall consider as operating rule compliance data only conduct described in paragraphs (e)(1) through (5) of this section that occurred within a period of 36 consecutive months prior to the determination. A review of an existing certification shall be initiated promptly upon the occurrence and documentation of any conduct described in this section.

(e) A railroad shall only consider violations of its operating rules and practices that involve:

(1) Failure to control a locomotive or train in accordance with a signal indication, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it;

(2) Failure to adhere to limitations concerning train speed when the speed at which the train was operated exceeds the maximum authorized limit by at least 10 miles per hour. Where restricted speed is in effect, railroads shall consider only those violations of the conditional clause of restricted speed rules (*i.e.*, the clause that requires stopping within one half of the locomotive engineer's range of vision), or the operational equivalent thereof, which cause reportable accidents or incidents under part 225 of this chapter, except for accidents and incidents that are classified as "covered data" under § 225.5 of this chapter (*i.e.*, employee injury/illness cases reportable exclusively because a physician or other licensed health care professional either made a one-time topical application of a prescription-strength medication to the employee's injury or made a written recommendation that the employee: Take one or more days away from work when the employee instead reports to work (or would have reported had he or she been scheduled) and takes no days away from work in connection with the injury or illness;

work restricted duty for one or more days when the employee instead works unrestricted (or would have worked unrestricted had he or she been scheduled) and takes no other days of restricted work activity in connection with the injury or illness; or take over-the-counter medication at a dosage equal to or greater than the minimum prescription strength, whether or not the employee actually takes the medication, as instances of failure to adhere to this section;

(3) Failure to adhere to procedures for the safe use of train or engine brakes when the procedures are required for compliance with the Class I, Class IA, Class II, Class III, or transfer train brake test provisions of 49 CFR part 232 or when the procedures are required for compliance with the Class I, Class IA, Class II, or running brake test provisions of 49 CFR part 238;

(4) Occupying main track or a segment of main track without proper authority or permission;

(5) Failure to comply with prohibitions against tampering with locomotive mounted safety devices, or knowingly operating or permitting to be operated a train with an unauthorized disabled safety device in the controlling locomotive. (*See* 49 CFR part 218, subpart D, and appendix C to part 218); or

(6) Incidents of noncompliance with § 219.101 of this chapter; however, such incidents shall be considered as a violation only for the purposes of paragraphs (g)(2) and (3) of this section.

(f)(1) If in any single incident the person's conduct contravened more than one operating rule or practice, that event shall be treated as a single violation for the purposes of this section.

(2) A violation of one or more operating rules or practices described in paragraph (e)(1) through (e)(5) of this section that occurs during a properly conducted operational compliance test subject to the provisions of this chapter shall be counted in determining the periods of ineligibility described in paragraph (g) of this section.

(3) An operational test that is not conducted in compliance with this part, a railroad's operating rules, or a railroad's program under § 217.9 of this chapter, will not be considered a legiti-

mate test of operational skill or knowledge, and will not be considered for certification, recertification or revocation purposes.

(4) A railroad shall not be permitted to deny or revoke an employee's certification based upon additional conditions or operational restrictions imposed pursuant to § 240.107(d).

(g) A period of ineligibility described in this paragraph shall:

(1) Begin, for a person not currently certified, on the date of the railroad's written determination that the most recent incident has occurred; or

(2) Begin, for a person currently certified, on the date of the railroad's notification to the person that recertification has been denied or certification has been revoked; and

(3) Be determined according to the following standards:

(i) In the case of a single incident involving violation of one or more of the operating rules or practices described in paragraphs (e)(1) through (5) of this section, the person shall have his or her certificate revoked for a period of 30 calendar days.

(ii) In the case of two separate incidents involving a violation of one or more of the operating rules or practices described in paragraphs (e)(1) through (5) of this section, that occurred within 24 months of each other, the person shall have his or her certificate revoked for a period of 180 calendar days.

(iii) In the case of three separate incidents involving violations of one or more of the operating rules or practices, described in paragraphs (e)(1) through (e)(6) of this section, that occurred within 36 months of each other, the person shall have his or her certificate revoked for a period of one year.

(iv) In the case of four separate incidents involving violations of one or more of the operating rules or practices, described in paragraphs (e)(1) through (e)(6) of this section, that occurred within 36 months of each other, the person shall have his or her certificate revoked for a period of three years.

(v) Where, based on the occurrence of violations described in paragraph (e)(6)

of this section, different periods of ineligibility may result under the provisions of this section and § 240.119, the longest period of revocation shall control.

(h) Any or all periods of revocation provided in this section may consist of training.

(i) Future eligibility to hold certificate. A person whose certification has been denied or revoked shall be eligible for grant or reinstatement of the certificate prior to the expiration of the initial period of revocation only if:

(1) The denial or revocation of certification in accordance with the provisions of paragraph (g)(3) of this section is for a period of one year or less;

(2) Certification was denied or revoked for reasons other than non-compliance with § 219.101 of this chapter;

(3) The person has been evaluated by a Designated Supervisor of Locomotive Engineers and determined to have received adequate remedial training;

(4) The person has successfully completed any mandatory program of training or retraining, if that was determined to be necessary by the railroad prior to return to service; and

(5) At least one half the pertinent period of ineligibility specified in paragraph (g)(3) of this section has elapsed.

[64 FR 60990, Nov. 8, 1999, as amended at 68 FR 10139, Mar. 3, 2003; 74 FR 68182, Dec. 23, 2009; 85 FR 81311, Dec. 15, 2020]

**§ 240.119 Criteria for consideration of data on substance abuse disorders and alcohol/drug rules compliance.**

(a) *Program requirement.* Each railroad shall adopt and comply with a program which complies with the requirements of this section. When any person, including, but not limited to, each railroad, railroad officer, supervisor, and employee, violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(b) *Determination requirement.* Each railroad, prior to initially certifying or recertifying any person as a locomotive engineer for any type of service, shall determine that the person meets the eligibility requirements of this section.

(c) *Recordkeeping requirement.* In order to make the determination required under paragraph (d) of this section, a railroad shall have on file documents pertinent to that determination, including a written document from its DAC which states his or her professional opinion that the person has been evaluated as not currently affected by a substance abuse disorder or that the person has been evaluated as affected by an active substance abuse disorder.

(d) *Fitness requirement.* (1) A person who has an active substance abuse disorder shall be denied certification or recertification as a locomotive engineer.

(2) Except as provided in paragraph (g) of this section, a certified locomotive engineer who is determined to have an active substance abuse disorder shall be ineligible to hold certification. Consistent with other provisions of this part, certification may be reinstated as provided in paragraph (f) of this section.

(3) In the case of a current employee of the railroad evaluated as having an active substance abuse disorder (including a person identified under the procedures of § 240.115), the employee may, if otherwise eligible, voluntarily self-refer for substance abuse counseling or treatment under the policy required by § 219.1001(b)(1) of this chapter; and the railroad shall then treat the substance abuse evaluation as confidential except with respect to ineligibility for certification.

(e) *Prior alcohol/drug conduct; Federal rule compliance.* (1) In determining whether a person may be or remain certified as a locomotive engineer, a railroad shall consider conduct described in paragraph (e)(2) of this section that occurred within a period of 60 consecutive months prior to the review. A review of certification shall be initiated promptly upon the occurrence and documentation of any incident of conduct described in this paragraph (e)(1).

(2) A railroad shall consider any violation of § 219.101 or § 219.102 of this chapter and any refusal to provide a breath or body fluid sample for testing under the requirements of part 219 of this chapter when instructed to do so by a railroad representative.

(3) A period of ineligibility described in this paragraph (e) shall begin:

(i) For a person not currently certified, on the date of the railroad's written determination that the most recent incident has occurred; or

(ii) For a person currently certified, on the date of the railroad's notification to the person that recertification has been denied or certification has been revoked.

(4) The period of ineligibility described in this section shall be determined in accordance with the following standards:

(i) In the case of a single violation of § 219.102 of this chapter, the person shall be ineligible to hold a certificate during evaluation and any required primary treatment as described in paragraph (f) of this section. In the case of two violations of § 219.102 of this chapter, the person shall be ineligible to hold a certificate for a period of two years. In the case of more than two such violations, the person shall be ineligible to hold a certificate for a period of five years.

(ii) In the case of one violation of § 219.102 of this chapter and one violation of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of three years.

(iii) In the case of one violation of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of 9 months (unless identification of the violation was through a qualifying referral program described in § 219.1001 of this chapter and the locomotive engineer waives investigation, in which case the certificate shall be deemed suspended during evaluation and any required primary treatment as described in paragraph (f) of this section). In the case of two or more violations of § 219.101 of this chapter, the person shall be ineligible to hold a certificate for a period of five years.

(iv) A refusal to provide a breath or body fluid sample for testing under the requirements of part 219 of this chapter when instructed to do so by a railroad representative shall be treated, for purposes of ineligibility under this paragraph (e), in the same manner as a violation of:

(A) Section 219.102 of this chapter, in the case of a refusal to provide a body fluid specimen for testing; or

(B) Section 219.101 of this chapter, in the case of a refusal to provide a breath sample for alcohol testing or a blood specimen for mandatory post-accident toxicological testing.

(f) *Future eligibility to hold certificate following alcohol/drug violation.* The following requirements apply to a person who has been denied certification or who has had certification suspended or revoked as a result of conduct described in paragraph (e) of this section:

(1) The person shall not be eligible for grant or reinstatement of the certificate unless and until the person has:

(i) Been evaluated by a SAP to determine if the person currently has an active substance abuse disorder;

(ii) Successfully completed any program of counseling or treatment determined to be necessary by the SAP prior to return to service; and

(iii) In accordance with the testing procedures of subpart H of part 219 of this chapter, has had an alcohol test with an alcohol concentration of less than .02 and presented a body fluid sample that tested negative for controlled substances assayed.

(2) A locomotive engineer placed in service or returned to service under the above-stated conditions shall continue in any program of counseling or treatment deemed necessary by the SAP and shall be subject to a reasonable program of follow-up alcohol and drug testing without prior notice for a period of not more than 60 months following return to service. Follow-up tests shall include not fewer than 6 alcohol tests and 6 drug tests during the first 12 months following return to service.

(3) Return-to-service and follow-up alcohol and drug tests shall be performed consistent with the requirements of subpart H of part 219 of this chapter.

(4) This paragraph (f) does not create an entitlement to utilize the services of a railroad SAP, to be afforded leave from employment for counseling or treatment, or to employment as a locomotive engineer. Nor does it restrict any discretion available to the railroad

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to take disciplinary action based on conduct described herein.

(g) *Confidentiality protected.* Nothing in this part shall affect the responsibility of the railroad under § 219.1003(f) of this chapter to treat qualified referrals for substance abuse counseling and treatment as confidential; and the certification status of a locomotive engineer who is successfully assisted under the procedures of that section shall not be adversely affected. However, the railroad shall include in its referral policy, as required pursuant to § 219.1003(j) of this chapter, a provision that, at least with respect to a certified locomotive engineer or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the SAP or DAC official notice of the substance abuse disorder and shall suspend or revoke the certification, as appropriate) if the person at any time refuses to cooperate in a recommended course of counseling or treatment.

[85 FR 81311, Dec. 15, 2020, as amended at 88 FR 27652, May 2, 2023]

### § 240.121 Criteria for vision and hearing acuity data.

(a) Each railroad shall adopt and comply with a program which complies with the requirements of this section. When any person, including, but not limited to, each railroad, railroad officer, supervisor, and employee, violates any requirement of a program that complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(b) In order to be currently certified as a locomotive engineer, except as permitted by paragraph (e) of this section, a person's vision and hearing shall meet or exceed the standards prescribed in this section and appendix F to this part. It is recommended that each test conducted pursuant to this section should be performed according to any directions supplied by the manufacturer of such test and any American National Standards Institute (ANSI) standards that are applicable.

(c) Except as provided in paragraph (e), each person shall have visual acuity that meets or exceeds the following thresholds:

- (1) For distant viewing either
    - (i) Distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or
    - (ii) Distant visual acuity separately corrected to at least 20/40 (Snellen) with corrective lenses and distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses;
  - (2) A field of vision of at least 70 degrees in the horizontal meridian in each eye; and
  - (3) The ability to recognize and distinguish between the colors of railroad signals as demonstrated by successfully completing one of the tests in appendix F to this part.
- (d) Except as provided in paragraph (e) of this section, each person shall have a hearing test or audiogram that shows the person's hearing acuity meets or exceeds the following thresholds: The person does not have an average hearing loss in the better ear greater than 40 decibels with or without use of a hearing aid, at 500 Hz, 1,000 Hz, and 2,000 Hz. The hearing test or audiogram shall meet the requirements of one of the following:

- (1) As required in 29 CFR 1910.95(h) (Occupational Safety and Health Administration);
- (2) As required in § 227.111 of this chapter; or
- (3) Conducted using an audiometer that meets the specifications of and is maintained and used in accordance with a formal industry standard, such as ANSI S3.6, "Specifications for Audiometers."

(e) A person not meeting the thresholds in paragraphs (c) and (d) of this section shall, upon request, be subject to further medical evaluation by a railroad's medical examiner to determine that person's ability to safely operate a locomotive. In accordance with the guidance prescribed in appendix F to this part, 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. The railroad shall provide its medical examiner with a copy of this part, including all appendices. If,

after consultation with one of the railroad's designated supervisors of locomotive engineers, the medical examiner concludes that, despite not meeting the threshold(s) in paragraphs (c) and (d) of this section, the person has the ability to safely operate a locomotive, the person may be certified as a locomotive engineer and such certification conditioned on any special restrictions the medical examiner determines in writing to be necessary.

(f) As a condition of maintaining certification, each certified locomotive engineer shall notify his or her employing railroad's medical department or, if no such department exists, an appropriate railroad official if the person's best correctable vision or hearing has deteriorated to the extent that the person no longer meets one or more of the prescribed vision or hearing standards or requirements of this section. This notification is required prior to any subsequent operation of a locomotive or train which would require a certified locomotive engineer.

[56 FR 28254, June 19, 1991, as amended at 64 FR 60992, Nov. 8, 1999; 85 FR 81312, Dec. 15, 2020]

#### § 240.123 Training.

(a) Each railroad shall adopt and comply with a program that meets the requirements of this section. When any person, including, but not limited to, each railroad, railroad officer, supervisor, and employee, violates any requirement of a program that complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(b) A railroad shall provide for the continuing education of certified locomotive engineers to ensure that each engineer maintains the necessary knowledge, skill and ability concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics as determined by a qualified Designated Supervisor of Locomotive Engineers), and relevant Federal safety rules.

(c) A railroad that elects to train a previously untrained person to be a locomotive engineer shall provide initial

training that, at a minimum, complies with the program requirements of § 243.101 of this chapter and:

(1) Is composed of classroom, skill performance, and familiarization with physical characteristics components;

(2) Includes both knowledge and performance skill testing;

(3) Is conducted under the supervision of a qualified class instructor;

(4) Is subdivided into segments or periods of appropriate duration to effectively cover the following subject matter areas:

(i) Personal safety;

(ii) Railroad operating rules and procedures;

(iii) Mechanical condition of equipment;

(iv) Train handling procedures (including use of locomotive and train brake systems);

(v) Familiarization with physical characteristics including train handling; and

(vi) Compliance with Federal railroad safety laws, regulations, and orders; and

(5) Is conducted so that the performance skill component shall meet the following conditions:

(i) Be under the supervision of a qualified instructor engineer located in the same control compartment whenever possible;

(ii) Place the student engineer at the controls of a locomotive for a significant portion of the time; and

(iii) Permit the student to experience whatever variety of types of trains are normally operated by the railroad.

(d) Pursuant to paragraphs (b) and (c) of this section, a person may acquire familiarity with the physical characteristics of a territory through the following methods if the specific conditions included in the description of each method are met. The methods used by a railroad for familiarizing its engineers with new territory while starting up a new railroad, starting operations over newly acquired rail lines, or reopening of a long unused route, shall be described in the railroad's locomotive engineer qualification program required under this part and submitted according to the procedures described in Appendix B to this part.

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(1) If ownership of a railroad is being transferred from one company to another, the engineer(s) of the acquiring company may receive familiarization training from the selling company prior to the acquiring railroad commencing operation; or

(2) Failing to obtain familiarization training from the previous owner, opening a new rail line, or reopening an unused route would require that the engineer(s) obtain familiarization through other methods. Acceptable methods of obtaining familiarization include using hyrail trips or initial lite locomotive trips in compliance with what is specified in the railroad's locomotive engineer qualification program required under this part and submitted according to the procedures described in Appendix B to this part.

(e) A railroad shall designate in its program required by this section the time period in which a locomotive engineer must be absent from a territory or yard, before requalification on physical characteristics is required.

(f) A railroad's program shall include the procedures used to qualify or requalify a person on the physical characteristics.

[56 FR 28254, June 19, 1991, as amended at 64 FR 60992, Nov. 8, 1999; 85 FR 81312, Dec. 15, 2020]

**§ 240.125 Knowledge testing.**

(a) Each railroad shall adopt and comply with a program that meets the requirements of this section. When any person, including, but not limited to, each railroad, railroad officer, supervisor, and employee, violates any requirement of a program that complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(b) A railroad shall have procedures for testing a person being evaluated for qualification as a locomotive engineer in either train or locomotive service to determine that the person has sufficient knowledge of the railroad's rules and practices for the safe operation of trains.

(c) The testing methods selected by the railroad shall be:

(1) Designed to examine a person's knowledge of the railroad's rules and

practices for the safe operation of trains;

(2) Objective in nature;

(3) Administered in written form;

(4) Cover the following subjects:

(i) Personal safety practices;

(ii) Operating practices;

(iii) Equipment inspection practices;

(iv) Train handling practices including familiarity with the physical characteristics of the territory; and

(v) Compliance with Federal railroad safety laws, regulations, and orders;

(5) Sufficient to accurately measure the person's knowledge of the covered subjects; and

(6) Conducted without open reference books or other materials except to the degree the person is being tested on his or her ability to use such reference books or materials.

(d) The conduct of the test shall be documented in writing and the documentation shall contain sufficient information to identify the relevant facts relied on for evaluation purposes.

(e) For purposes of paragraph (c) of this section, the railroad must provide the person(s) being tested with an opportunity to consult with a supervisory employee, who possesses territorial qualifications for the territory, to explain a question.

(f) The documentation shall indicate whether the person passed or failed the test.

(g) If a person fails to pass the test, no railroad shall permit or require that person to function as a locomotive engineer prior to that person's achieving a passing score during a reexamination of the person's knowledge.

[56 FR 28254, June 19, 1991, as amended at 85 FR 81313, Dec. 15, 2020]

**§ 240.127 Criteria for examining skill performance.**

(a) Each railroad shall adopt and comply with a program which complies with the requirements of this section. When any person, including, but not limited to, each railroad, railroad officer, supervisor, and employee, violates any requirement of a program that complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(b) A railroad shall have procedures for examining the performance skills of a person being evaluated for qualification as a locomotive engineer in either train or locomotive service to determine whether the person has the skills to safely operate locomotives and/or trains, including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains, in the most demanding class or type of service that the person will be permitted to perform.

(c) The testing procedures selected by the railroad shall be:

(1) Designed to examine a person's skills in safely operating locomotives or trains including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains when performing the most demanding class or type of service that the person will be permitted to perform;

(2) Conducted by a Designated Supervisor of Locomotive Engineers, who does not need to be qualified on the physical characteristics of the territory over which the test will be conducted;

(3) Cover the following subjects during the test period

- (i) Operating practices;
- (ii) Equipment inspection practices;
- (iii) Train handling practices; and
- (iv) Compliance with Federal safety rules;

(4) Be of sufficient length to effectively evaluate the person's ability to operate trains; and

(5) Conducted when the person either

(i) Is at the controls of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification or

(ii) Is at the controls of a Type I or Type II simulator programmed to replicate the responsive behavior of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification.

(d) The conduct of the test shall be documented in writing by the des-

ignated supervisor and the documentation shall contain:

(1) The relevant facts concerning the train being operated;

(2) The constraints applicable to its operation; and

(3) The factors observed and relied on for evaluation purposes by the designated supervisor.

(e) Each railroad's program shall indicate the types of actions the railroad will take in the event that a person fails an initial examination or a reexamination of his or her performance skills in accordance with the procedures required under § 240.211.

(f) Each railroad's program shall describe the scoring system used by the railroad during a skills test administered in accordance with the procedures required under § 240.211. The description shall include the skills to be tested and the weight or possible score that each skill will be given.

[56 FR 28254, June 19, 1991, as amended at 64 FR 60992, Nov. 8, 1999; 74 FR 68183, Dec. 23, 2009; 85 FR 81313, Dec. 15, 2020]

**§ 240.129 Criteria for monitoring operational performance of certified engineers.**

(a) Each railroad shall adopt and comply with a program which complies with the requirements of this section. When any person, including, but not limited to, each railroad, railroad officer, supervisor, and employee, violates any requirement of a program which complies with the requirements of this section, that person shall be considered to have violated the requirements of this section.

(b) Each railroad shall have a program to monitor the operational performance of those it has determined as qualified as a locomotive engineer in any class of service. The program shall include procedures to address the testing of certified engineers who are not given both an operational monitoring observation and an unannounced compliance test in a calendar year pursuant to paragraph (h) of this section. At a minimum, such procedures shall include the following:

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(1) A requirement that an operational monitoring observation and an unannounced compliance test must be conducted within 30 days of a return to service as a locomotive engineer; and

(2) The railroad must retain a written record indicating the date that the engineer stopped performing service that requires certification pursuant to this part, the date that the engineer returned to performing service that requires certification pursuant to this part, and the dates that the operational monitoring observation and the unannounced compliance test were performed.

(c) The procedures for the operational monitoring observation shall:

(1) Be designed to determine that the person possesses and routinely employs the skills to safely operate locomotives and/or trains, including the proper application of the railroad's rules and practices for the safe operation of locomotives and trains;

(2) Be designed so that each engineer shall be monitored each calendar year by a Designated Supervisor of Locomotive Engineers, who does not need to be qualified on the physical characteristics of the territory over which the operational monitoring observation will be conducted;

(3) Be designed so that the locomotive engineer is either accompanied by the designated supervisor for a reasonable length of time or has his or her train handling activities electronically recorded by a train operations event recorder;

(d) The operational monitoring observation procedures may be designed so that the locomotive engineer being monitored either:

(i) Is at the controls of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to operate in the normal course of events after certification or

(ii) Is at the controls of a Type I or Type II simulator programmed to replicate the responsive behavior of the type of train normally operated on that railroad or segment of railroad and which this person might be permitted or required by the railroad to

operate in the normal course of events after certification.

(e) The unannounced compliance test program shall:

(1) Be designed so that, except for as provided in paragraph (h) of this section, each locomotive engineer shall be given at least one unannounced compliance test each calendar year;

(2) Designed to test:

(i) Engineer compliance with provisions of the railroad's operating rules that require response to signals that display less than a "clear" aspect, if the railroad operates with a signal system that must comply with part 236 of this chapter;

(ii) Engineer compliance with provisions of the railroad's operating rules, timetable or other mandatory directives that require affirmative response by the locomotive engineer to less favorable conditions than that which existed prior to initiation of the test; or

(iii) Engineer compliance with provisions of the railroad's operating rules, timetable or other mandatory directives violation of which by engineers were cited by the railroad as the cause of train accidents or train incidents in accident reports filed in compliance with part 225 of this chapter in the preceding calendar year;

(3) Designed so that the administration of these tests is effectively distributed throughout whatever portion of a 24-hour day that the railroad conducts its operations; and

(4) Designed so that individual tests are administered without prior notice to the engineer being tested.

(f) Each railroad's program shall indicate the types of actions the railroad will take in the event that it finds deficiencies with a locomotive engineer's performance during an operational monitoring observation or unannounced compliance test administered in accordance with the procedures required under § 240.303.

(g) Each railroad's program shall describe the scoring system used by the railroad during an operational monitoring observation or unannounced compliance test administered in accordance with the procedures required under § 240.303.

(h) A certified engineer who is not performing a service that requires certification pursuant to this part need not be given an unannounced compliance test or operational monitoring observation. However, when the certified engineer returns to a service that requires certification pursuant to this part, that certified engineer must be tested pursuant to this section and § 240.303 within 30 days of his or her return.

[56 FR 28254, June 19, 1991, as amended at 64 FR 60992, Nov. 8, 1999; 74 FR 68183, Dec. 23, 2009; 85 FR 81313, Dec. 15, 2020]

### Subpart C—Implementation of the Certification Process

#### § 240.201 Implementation.

(a) Each railroad shall designate in writing any person(s) it deems qualified as a designated supervisor of locomotive engineers. Each person so designated shall have demonstrated to the railroad through training, testing or prior experience that he or she has the knowledge, skills, and ability to be a designated supervisor of locomotive engineers.

(b) Each railroad shall designate in writing all persons that it will deem to be qualified as certified locomotive engineers for the purpose of initial compliance with paragraph (d) of this section, except as provided for in paragraph (h) of this section.

(1) Each person so designated shall have demonstrated to the railroad through training, testing or prior experience that he or she has the knowledge and skills to be a certified locomotive engineer.

(2) Each railroad shall issue a certificate that complies with § 240.223 to each person that it designates as qualified under the provisions of paragraph (b) of this section.

(c) No railroad shall permit or require a person, designated as qualified for certification under the provisions of paragraph (b) of this section, to perform service as a certified locomotive or train service engineer for more than a 36-month period unless that person has been determined to be qualified in accordance with procedures that comply with subpart C.

(d) No railroad shall permit or require any person to operate a locomotive in any class of locomotive or train service unless that person has been certified as a qualified locomotive engineer and issued a certificate that complies with § 240.223.

(e) No Class I railroad (including the National Railroad Passenger Corporation) or railroad providing commuter service shall designate any person it deems qualified as a designated supervisor of locomotive engineers or initially certify or recertify a person as a locomotive engineer in either locomotive or train service unless that person has been tested, evaluated, and determined to be qualified in accordance with procedures that comply with subpart C.

(f) No Class II railroad shall designate any person it deems qualified as a designated supervisor of locomotive engineers or initially certify or recertify a person as a locomotive engineer in any class of locomotive or train service unless that person has been tested, evaluated and determined to be qualified in accordance with procedures that comply with subpart C.

(g) No Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall designate any person it deems qualified as a designated supervisor of locomotive engineers or initially certify or recertify a person as a locomotive engineer in any class of locomotive or train service unless that person has been tested, evaluated and determined to be qualified in accordance with procedures that comply with subpart C.

(h) Each person designated as a locomotive engineer shall be issued a certificate that complies with § 240.223 prior to being required or permitted to operate a locomotive.

[74 FR 68183, Dec. 23, 2009]

#### § 240.203 Determinations required as a prerequisite to certification.

(a) Except as provided in paragraph (b), each railroad, prior to initially certifying or recertifying any person as an engineer for any class of service, shall, in accordance with its FRA-approved program determine in writing that:

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(1) The individual meets the eligibility requirements of §§ 240.115, 240.117 and 240.119; and

(2) The individual meets the vision and hearing acuity standards of § 240.121;

(3) The individual has the necessary knowledge, as demonstrated by successfully completing a test that meets the requirements of § 240.125;

(4) The individual has the necessary applied knowledge and operating performance skills, as demonstrated by successfully completing an operational performance test that meets the requirements of § 240.127; and

(5) Where a person has not previously been certified, that the person has completed a training program that meets the requirements of § 240.123.

(b) A railroad may certify a person as a student engineer after determining that the person meets the vision and hearing acuity standards of § 240.121. A railroad may subsequently certify that student engineer as either a locomotive servicing engineer or a train service engineer without further review of his or her acuity status provided it determines that:

(1) The person successfully completed a training program that complies with § 240.123;

(2) The person meets the eligibility requirements of §§ 240.109 and 240.119; and

(3) A period of not more than twenty-four months has elapsed since the student engineer certification was issued.

[56 FR 28254, June 19, 1991, as amended at 60 FR 53136, Oct. 12, 1995; 74 FR 68183, Dec. 23, 2009]

## § 240.205 Procedures for determining eligibility based on prior safety conduct.

(a) Each railroad, prior to initially certifying or recertifying any person as an engineer for any class of service other than student, shall determine that the person meets the eligibility requirements of § 240.115 involving prior conduct as a motor vehicle operator, § 240.117 involving prior conduct as a railroad worker, and § 240.119 involving substance abuse disorders and alcohol/drug rules compliance.

(b) In order to make the determination required under paragraph (a) of

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this section, a railroad shall have on file documents pertinent to the determinations referred to in paragraph (a) of this section, including a written document from its DAC either reflecting his or her professional opinion that the person has been evaluated as not currently affected by a substance abuse disorder or that the person has been evaluated as affected by an active substance abuse disorder and is ineligible for certification.

[85 FR 81314, Dec. 15, 2020]

## § 240.207 Procedures for making the determination on vision and hearing acuity.

(a) Each railroad, prior to initially certifying or recertifying any person as an engineer for any class of service, shall determine that the person meets the standards for visual acuity and hearing acuity prescribed in § 240.121.

(b) In order to make the determination required under paragraph (a), a railroad shall have on file either:

(1) A medical examiner's certificate that the individual has been medically examined and meets these acuity standards; or

(2) A written document from its medical examiner documenting his or her professional opinion that the person does not meet one or both acuity standards and stating the basis for his or her determination that:

(i) The person can nevertheless be certified under certain conditions; or

(ii) The person's acuity is such that he or she cannot safely operate a locomotive even with conditions attached.

(c) Any examination required for compliance with this section shall be performed by or under the supervision of a medical examiner or a licensed physician's assistant such that:

(1) A licensed optometrist or a technician responsible to that person may perform the portion of the examination that pertains to visual acuity; and

(2) A licensed or certified audiologist or a technician responsible to that person may perform the portion of the examination that pertains to hearing acuity.

(d) If the examination required under this section discloses that the person needs corrective lenses or a hearing

aid, or both, either to meet the threshold acuity levels established in § 240.121 or to meet a lower threshold determined by the railroad's medical examiner to be sufficient to safely operate a locomotive or train on that railroad, that fact shall be noted on the certificate issued in accordance with the provisions of this part.

(e) Any person with such a certificate notation shall use the relevant corrective device(s) while operating a locomotive in locomotive or train service unless the railroad's medical examiner subsequently determines in writing that the person can safely operate without using the device.

[56 FR 28254, June 19, 1991, as amended at 74 FR 68184, Dec. 23, 2009; 85 FR 81314, Dec. 15, 2020]

**§ 240.209 Procedures for making the determination on knowledge.**

(a) Each railroad, prior to initially certifying or recertifying any person as an engineer for any class of train or locomotive service, shall determine that the person has, in accordance with the requirements of § 240.125 of this part, demonstrated sufficient knowledge of the railroad's rules and practices for the safe operation of trains.

(b) In order to make the determination required by paragraph (a) of this section, a railroad shall have written documentation showing that the person either:

(1) Exhibited his or her knowledge by achieving a passing grade in testing that complies with this part; or

(2) Did not achieve a passing grade in such testing.

(c) If a person fails to achieve a passing score under the testing procedures required by this part, no railroad shall permit or require that person to operate a locomotive as a locomotive or train service engineer prior to that person's achieving a passing score during a reexamination of his or her knowledge.

[56 FR 28254, June 19, 1991, as amended at 74 FR 68184, Dec. 23, 2009; 85 FR 81314, Dec. 15, 2020]

**§ 240.211 Procedures for making the determination on performance skills.**

(a) Each railroad, prior to initially certifying or recertifying any person as an engineer for any class of train or locomotive service, shall determine that the person has demonstrated, in accordance with the requirements of § 240.127 of this part, the skills to safely operate locomotives or locomotives and trains, including the proper application of the railroad's rules and practices for the safe operation of locomotives or trains, in the most demanding class or type of service that the person will be permitted to perform.

(b) In order to make this determination, a railroad shall have written documentation showing the person either:

(1) Exhibited his or her knowledge by achieving a passing grade in testing that complies with this part; or

(2) Did not achieve a passing grade in such testing.

(c) If a person fails to achieve a passing score under the testing and evaluation procedures required by this part, no railroad shall permit or require that person to operate a locomotive as a locomotive or train service engineer prior to that person's achieving a passing score during a reexamination of his or her performance skills.

(d) No railroad shall permit a designated supervisor of locomotive engineers to test, examine or evaluate his or her own performance skills when complying with this section.

[56 FR 28254, June 19, 1991, as amended at 74 FR 68184, Dec. 23, 2009; 85 FR 81314, Dec. 15, 2020]

**§ 240.213 Procedures for making the determination on completion of training program.**

(a) Each railroad, prior to the initial issuance of a certificate to any person as a train or locomotive service engineer, shall determine that the person has, in accordance with the requirements of § 240.123 of this part, the knowledge and skills to safely operate a locomotive or train in the most demanding class or type of service that the person will be permitted to perform.

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(b) In making this determination, a railroad shall have written documentation showing that:

(1) The person completed a training program that complies with § 240.123 of this part;

(2) The person demonstrated his or her knowledge and skills by achieving a passing grade under the testing and evaluation procedures of that training program; and

(3) A qualified Designated Supervisor of Locomotive Engineers has determined that the person is familiar with the physical characteristics of the railroad or its pertinent segments.

[56 FR 28254, June 19, 1991, as amended at 64 FR 60992, Nov. 8, 1999; 74 FR 68184, Dec. 23, 2009]

### § 240.215 Retaining information supporting determinations.

(a) A railroad that issues, denies, or revokes a certificate after making the determinations required under § 240.203 shall maintain a record for each certified engineer or applicant for certification that contains the information the railroad relied on in making the determinations.

(b) The information concerning eligibility that the railroad shall retain includes:

(1) Any relevant data from the railroad's records concerning the person's prior safety conduct;

(2) Any relevant data furnished by another railroad;

(3) Any relevant data furnished by a governmental agency concerning the person's motor vehicle driving record; and

(4) Any relevant data furnished by the person seeking certification concerning his or her eligibility.

(c) The information concerning vision and hearing acuity that the railroad shall retain includes:

(1) The relevant test results data concerning acuity; and,

(2) If applicable, the relevant data concerning the professional opinion of the railroad's medical examiner on the adequacy of the person's acuity.

(d) The information concerning demonstrated knowledge that the railroad shall retain includes:

(1) Any relevant data from the railroad's records concerning the person's

success or failure of the passage of knowledge test(s); and

(2) A sample copy of the written knowledge test or tests administered.

(e) The information concerning demonstrated performance skills that the railroad shall retain includes:

(1) The relevant data from the railroad's records concerning the person's success or failure on the performance skills test(s) that documents the relevant operating facts on which the evaluation is based including the observations and evaluation of the designated supervisor of locomotive engineers;

(2) If a railroad relies on the use of a locomotive operations simulator to conduct the performance skills testing required under this part, the relevant data from the railroad's records concerning the person's success or failure on the performance skills test(s) that documents the relevant operating facts on which the determination was based including the observations and evaluation of the designated supervisor of locomotive engineers; and

(3) The relevant data from the railroad's records concerning the person's success or failure on tests the railroad performed to monitor the engineer's operating performance in accordance with § 240.129.

(f) If a railroad is relying on successful completion of an approved training program conducted by another entity, the relying railroad shall maintain a record for each certified engineer that contains the relevant data furnished by the training entity concerning the person's demonstration of knowledge and performance skills and relied on by the railroad in making its determinations.

(g) If a railroad is relying on a certification decision initially made by another railroad, the relying railroad shall maintain a record for each certified engineer that contains the relevant data furnished by the other railroad which it relied on in making its determinations.

(h) All records required under this section shall be retained for a period of six years from the date of the certification, recertification, denial or revocation decision and shall be made available to FRA representatives upon request during normal business hours.

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(i) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on the record(s) required by this section; or

(2) Otherwise falsify such records through material misstatement, omission, or mutilation.

(j) Nothing in this section precludes a railroad from maintaining the information required to be retained under this section in an electronic format provided that:

(1) The railroad maintains an information technology security program adequate to ensure the integrity of the electronic data storage system, including the prevention of unauthorized access to the program logic or individual records;

(2) The program and data storage system must be protected by a security system that utilizes an employee identification number and password, or a comparable method, to establish appropriate levels of program access meeting all of the following standards:

(i) No two individuals have the same electronic identity; and

(ii) A record cannot be deleted or altered by any individual after the record is certified by the employee who created the record;

(3) Any amendment to a record is either:

(i) Electronically stored apart from the record that it amends; or

(ii) Electronically attached to the record as information without changing the original record;

(4) Each amendment to a record uniquely identifies the person making the amendment;

(5) The system employed by the railroad for data storage permits reasonable access and retrieval of the information in usable format when requested to furnish data by FRA representatives; and

(6) Information retrieved from the system can be easily produced in a printed format which can be readily provided to FRA representatives in a timely manner and authenticated by a designated representative of the railroad as a true and accurate copy of the

railroad's records if requested to do so by FRA representatives.

[56 FR 28254, June 19, 1991, as amended at 58 FR 19003, Apr. 9, 1993; 74 FR 68184, Dec. 23, 2009; 85 FR 81314, Dec. 15, 2020]

**§ 240.217 Time limitations for making determinations.**

(a) A railroad shall not certify or recertify a person as a qualified locomotive engineer in any class of train or engine service, if the railroad is making a determination concerning:

(1) Eligibility and the eligibility data being relied on was furnished more than 366 days before the date of the railroad's certification decision;

(2) Visual and hearing acuity and the medical examination being relied on was conducted more than 450 days before the date of the railroad's recertification decision;

(3) Demonstrated knowledge and the knowledge examination being relied on was conducted more than 366 days before the date of the railroad's certification decision;

(4) Demonstrated knowledge and the knowledge examination being relied on was conducted more than 24 months before the date of the railroad's certification decision if the railroad administers a knowledge testing program pursuant to §240.125 at intervals that do not exceed 24 months; or

(5) Demonstrated performance skills and the performance skill testing being relied on was conducted more than 366 days before the date of the railroad's certification decision.

(b) The time limitations of paragraph (a) of this section do not apply to a railroad that is making a certification decision in reliance on determinations made by another railroad in accordance with paragraph (c)(2) of this section, § 240.227, or § 240.229.

(c) Except as provided in §240.201 concerning implementation dates for initial certification decisions and paragraph (b) of this section, no railroad shall:

(1) Certify a person as a qualified locomotive engineer for an interval of more than 36 months; or

(2) Rely on a certification issued by another railroad that is more than 36 months old.

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(d) A railroad shall issue each person designated as a certified locomotive engineer a certificate that complies with § 240.223 no later than 30 days from the date of its decision to certify or recertify that person.

[56 FR 28254, June 19, 1991, as amended at 58 FR 19003, Apr. 9, 1993; 60 FR 53137, Oct. 12, 1995; 64 FR 60992, Nov. 8, 1999; 74 FR 68184, Dec. 23, 2009; 85 FR 81314, Dec. 15, 2020]

### § 240.219 Denial of certification.

(a) A railroad shall notify a candidate for certification or recertification of information known to the railroad that forms the basis for denying the person certification and provide the person a reasonable opportunity to explain or rebut that adverse information in writing prior to denying certification. A railroad shall provide the locomotive engineer candidate with any written documents or records, including written statements, related to failure to meet a requirement of this part that support its pending denial decision.

(b) This section does not require further opportunity to comment if the railroad's denial is based solely on factors addressed by §§ 240.115, 240.117, and 240.119 and the opportunity to comment afforded by those sections has been provided.

(c) If a railroad denies a person certification or recertification, it shall notify the person of the adverse decision and explain, in writing, the basis for its denial decision. The basis for a railroad's denial decision shall address any explanation or rebuttal information that the locomotive engineer candidate may have provided in writing pursuant to paragraph (a) of this section. The document explaining the basis for the denial shall be served on the person within 10 days after the railroad's decision and shall give the date of the decision.

(d) A railroad shall not deny the person's certification for failing to comply with a railroad operating rule or practice that constitutes a violation under § 240.117(e)(1) through (5) if sufficient evidence exists to establish that an intervening cause prevented or materially impaired the engineer's ability to

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comply with that railroad operating rule or practice.

[56 FR 28254, June 19, 1991, as amended at 85 FR 81315, Dec. 15, 2020]

### § 240.221 Identification of qualified persons.

(a) A railroad shall maintain a written record identifying each person designated by it as a supervisor of locomotive engineers.

(b) A railroad shall maintain a written record identifying each person designated as a certified locomotive engineer. That listing of certified engineers shall indicate the class of service the railroad determines each person is qualified to perform and date of the railroad's certification decision.

(c) If a railroad is responsible for controlling joint operations territory, the listing shall include person(s) certified in accordance with § 240.229.

(d) The listing required by paragraphs (a), (b), and (c) of this section shall:

(1) Be updated at least annually;

(2) Be available at the divisional or regional headquarters of the railroad; and

(3) Be available for inspection or copying by FRA during regular business hours.

(e) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on the list required by this section; or

(2) Otherwise falsify such list through material misstatement, omission, or mutilation.

(f) Nothing in this section precludes a railroad from maintaining the list required under this section in an electronic format provided that:

(1) The railroad maintains an information technology security program adequate to ensure the integrity of the electronic data storage system, including the prevention of unauthorized access to the program logic or the list;

(2) The program and data storage system must be protected by a security system that utilizes an employee identification number and password, or a comparable method, to establish appropriate levels of program access meeting all of the following standards:

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(i) No two individuals have the same electronic identity; and

(ii) An entry on the list cannot be deleted or altered by any individual after the entry is certified by the employee who created the entry;

(3) Any amendment to the list is either:

(i) Electronically stored apart from the entry on the list that it amends; or

(ii) Electronically attached to the entry on the list as information without changing the original entry;

(4) Each amendment to the list uniquely identifies the person making the amendment;

(5) The system employed by the railroad for data storage permits reasonable access and retrieval of the information in usable format when requested to furnish data by FRA representatives; and

(6) Information retrieved from the system can be easily produced in a printed format which can be readily provided to FRA representatives in a timely manner and authenticated by a designated representative of the railroad as a true and accurate copy of the railroad's records if requested to do so by FRA representatives.

[56 FR 28254, June 19, 1991, as amended at 74 FR 68184, Dec. 23, 2009; 85 FR 81315, Dec. 15, 2020]

**§ 240.223 Criteria for the certificate.**

(a) As a minimum, each certificate issued in compliance with this part shall:

(1) Identify the railroad or parent company that is issuing it;

(2) Indicate that the railroad, acting in conformity with this part, has determined that the person to whom it is being issued has been determined to be qualified to operate a locomotive;

(3) Identify the person to whom it is being issued (including the person's name, employee identification number, the year of birth, and either a physical description or photograph of the person);

(4) Identify any conditions or limitations, including the class of service or conditions to ameliorate vision or hearing acuity deficiencies, that restrict the person's operational authority;

(5) Show the effective date of each certification held;

(6) Be signed by a supervisor of locomotive engineers or other individual designated in accordance with paragraph (b) of this section;

(7) Show the date of the person's last operational monitoring event as required by §§ 240.129(c) and 240.303(b), unless that information is reflected on supplementary documents which the locomotive engineer has in his or her possession when operating a locomotive; and

(8) Be of sufficiently small size to permit being carried in an ordinary pocket wallet.

(b) Each railroad to which this part applies shall designate in writing any person, other than a supervisor of locomotive engineers, that it authorizes to sign the certificates described in this section. The designation can identify such persons by name or job title.

(c) Nothing in paragraph (a) of this section shall prohibit any railroad from including additional information on the certificate or supplementing the certificate through other documents.

(d) It shall be unlawful for any railroad to knowingly or any individual to willfully:

(1) Make, cause to be made, or participate in the making of a false entry on that certificate; or

(2) Otherwise falsify that certificate through material misstatement, omission, or mutilation.

[56 FR 28254, June 19, 1991, as amended at 58 FR 19003, Apr. 9, 1993; 64 FR 60993, Nov. 8, 1999; 85 FR 81315, Dec. 15, 2020]

**§ 240.225 Reliance on qualification determinations made by other railroads.**

(a) A railroad that is considering certification of a person as a qualified engineer may rely on determinations made by another railroad concerning that person's qualifications. The railroad's certification program shall address how the railroad will administer the training of previously uncertified engineers with extensive operating experience or previously certified engineers who have had their certification expire. If a railroad's certification program fails to specify how it will train a previously certified engineer hired

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from another railroad, then the railroad shall require the newly hired engineer to take the hiring railroad's entire training program.

(b) A railroad relying on another's certification shall determine that:

(1) The prior certification is still valid in accordance with the provisions of §§ 240.201, 240.217, and 240.307;

(2) The prior certification was for the same classification of locomotive or train service as the certification being issued under this section;

(3) The person has received training on and visually observed the physical characteristics of the new territory in accordance with § 240.123;

(4) The person has demonstrated the necessary knowledge concerning the railroad's operating rules in accordance with § 240.125; and

(5) The person has demonstrated the necessary performance skills concerning the railroad's operating rules in accordance with § 240.127.

[85 FR 81315, Dec. 15, 2020]

### § 240.227 Reliance on qualification requirements of other countries.

(a) A railroad that conducts joint operations with a Canadian railroad may certify, for the purposes of compliance with this part, that a person is qualified to be a locomotive or train service engineer provided it determines that:

(1) The person is employed by the Canadian railroad; and

(2) The person meets or exceeds the qualifications standards issued by Transport Canada for such service.

(b) Any Canadian railroad that is required to comply with this regulation may certify that a person is qualified to be a locomotive or train service engineer provided it determines that:

(1) The person is employed by the Canadian railroad; and

(2) The person meets or exceeds the qualifications standards issued by Transport Canada for such service.

### § 240.229 Requirements for joint operations territory.

(a) Except for minimal joint operations provided for in paragraph (f) of this section, no railroad that is responsible for controlling the conduct of joint operations with another railroad shall permit or require any person to

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operate a locomotive in any class of train or engine service unless that person has been certified as a qualified locomotive engineer for the purposes of joint operations and issued a certificate that complies with § 240.223.

(b) Each railroad that is responsible for controlling the conduct of joint operations with another railroad shall certify a person as a qualified locomotive engineer for the purposes of joint operations either by making the determinations required under subpart C of this part or by relying on the certification issued by another railroad under this part.

(c) A railroad that controls joint operations may rely on the certification issued by another railroad under the following conditions:

(1) The controlling railroad shall determine:

(i) That the person has been certified as a qualified engineer under the provisions of this part by the railroad which employs that individual;

(ii) That the person certified as a locomotive engineer by the other railroad has demonstrated the necessary knowledge concerning the controlling railroad's operating rules, if the rules are different;

(iii) That the person certified as a locomotive engineer by the other railroad has the necessary operating skills concerning the joint operations territory; and

(iv) That the person certified as a locomotive engineer by the other railroad has the necessary familiarity with the physical characteristics for the joint operations territory; and,

(2) The railroad which employs the individual shall determine that the person called to operate on the controlling railroad is a certified engineer who is qualified to operate on that track segment; and

(3) Each locomotive engineer who is called to operate on another railroad shall:

(i) Be qualified on the segment of track upon which he or she will operate in accordance with the requirements set forth by the controlling railroad; and,

(ii) Immediately notify the railroad upon which he or she is employed if he

or she is not qualified to perform that service.

(d) A railroad that controls joint operations and certifies locomotive engineers from a different railroad may comply with the requirements of paragraph (a) of this section by noting its supplemental certification decision on the original certificate as provided for in § 240.223(c).

(e) A railroad responsible for controlling the conduct of joint operations with another railroad shall be deemed to be in compliance with paragraph (a) of this section when it provides a qualified person to accompany a locomotive engineer who lacks joint operations certification during that engineer's operations in joint operations territory. As used in this section qualified person means either a designated supervisor of locomotive engineers or a certified train service engineer determined by the controlling railroad to have the necessary knowledge concerning the controlling railroad's operating rules and to have the necessary operating skills including familiarity with its physical characteristics concerning the joint operations territory.

(f) A railroad that is responsible for controlling the conduct of joint operations with another railroad may permit a certified locomotive engineer to operate a locomotive in any class of train or engine service without determining that the person has been certified as a qualified locomotive engineer for the purposes of joint operations when a minimal joint operation is involved. For the purposes of this section a minimal joint operation exists when a locomotive or train belonging to one railroad is being operated on the same track on which operations are conducted by the railroad controlling operations, under the following conditions:

(1) The maximum authorized speed for operations on the track does not exceed 20 miles per hour;

(2) The track is other than a main track;

(3) Operations are conducted under operating rules that require every locomotive and train to proceed at a speed that permits stopping within one half the range of vision of the locomotive engineer; and

(4) The maximum distance for joint operations on the track does not exceed one mile.

[56 FR 28254, June 19, 1991, as amended at 58 FR 19003, Apr. 9, 1993; 64 FR 60993, Nov. 8, 1999]

**§ 240.231 Requirements for locomotive engineers unfamiliar with physical characteristics in other than joint operations.**

(a) Except as provided in paragraph (b) of this section, no locomotive engineer shall operate a locomotive over a territory unless he or she is qualified on the physical characteristics of the territory pursuant to the railroad's certification program.

(b) Except as provided in paragraph (c) of this section, if a locomotive engineer lacks qualification on the physical characteristics required by paragraph (a) of this section, he or she shall be assisted by a pilot qualified over the territory pursuant to the railroad's certification program.

(1) For a locomotive engineer who has never been qualified on the physical characteristics of the territory over which he or she is to operate a locomotive or train, the pilot shall be a person qualified and certified as a locomotive engineer who is not an assigned crew member.

(2) For a locomotive engineer who was previously qualified on the physical characteristics of the territory over which he or she is to operate a locomotive or train, but whose qualification has expired, the pilot may be any person, who is not an assigned crew member, qualified on the physical characteristics of the territory.

(c) Pilots are not required if the movement is on a section of track with an average grade of less than 1% over 3 continuous miles, and

(1) The track is other than a main track; or

(2) The maximum distance the locomotive or train will be operated does not exceed one mile; or

(3) The maximum authorized speed for any operation on the track does not exceed 20 miles per hour; or

(4) Operations are conducted under operating rules that require every locomotive and train to proceed at a speed that permits stopping within one half

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the range of vision of the locomotive engineer.

[64 FR 60993, Nov. 8, 1999]

### Subpart D—Administration of the Certification Program

#### § 240.301 Replacement of certificates.

(a) A railroad shall have a system for the prompt replacement of lost, stolen or mutilated certificates at no cost to engineers. That system shall be reasonably accessible to certified locomotive engineers in need of a replacement certificate or temporary replacement certificate.

(b) At a minimum, a temporary replacement certificate must identify the person to whom it is being issued (including the person's name, identification number and year of birth); indicate the date of issuance; and be authorized by a supervisor of locomotive engineers or other individual designated in accordance with § 240.223(b). Temporary replacement certificates may be delivered electronically and are valid for a period no greater than 30 days.

[85 FR 81316, Dec. 15, 2020]

#### § 240.303 Operational monitoring requirements.

(a) Each railroad to which this part applies shall, prior to FRA approval of its program in accordance with § 240.201, have a program to monitor the conduct of its certified locomotive engineers by performing both operational monitoring observations and by conducting unannounced operating rules compliance tests.

(b) The program shall be conducted so that each locomotive engineer, except as provided in § 240.129(h), shall be given at least one operational monitoring observation by a qualified supervisor of locomotive engineers in each calendar year.

(c) The program shall be conducted so that each locomotive engineer, except as provided in § 240.129(h), shall be given at least one unannounced, compliance test each calendar year.

(d) The unannounced test program shall:

(1) Test engineer compliance with:

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(i) One or more provisions of the railroad's operating rules that require response to signals that display less than a "clear" aspect, if the railroad operates with a signal system that must comply with part 236 of this chapter;

(ii) One or more provisions of the railroad's operating rules, timetable or other mandatory directives that require affirmative response by the locomotive engineer to less favorable conditions than that which existed prior to initiation of the test; or

(iii) Provisions of the railroad's operating rules, timetable or other mandatory directives the violations of which by engineers were cited by the railroad as the cause of train accidents or train incidents in accident reports filed in compliance with part 225 of this chapter for the preceding year;

(2) Be conducted so that the administration of these tests is effectively distributed throughout whatever portion of a 24-hour day that the railroad conducts its operations;

(3) Be conducted so that individual tests are administered without prior notice to the locomotive engineer being tested; and

(4) Be conducted so that the results of the test are recorded on the certificate and entered on the record established under § 240.215 within 30 days of the day the test is administered.

[56 FR 28254, June 19, 1991, as amended at 74 FR 68184, Dec. 23, 2009; 85 FR 81316, Dec. 15, 2020]

#### § 240.305 Prohibited conduct.

(a) It shall be unlawful to:

(1) Operate a locomotive or train past a signal indication, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it; or

(2) Operate a locomotive or train at a speed which exceeds the maximum authorized limit by at least 10 miles per hour. Where restricted speed is in effect, only those violations of the conditional clause of restricted speed rules (i.e., the clause that requires stopping within one half of the locomotive engineer's range of vision), or the operational equivalent thereof, which cause reportable accidents or incidents under

part 225 of this chapter, shall be considered instances of failure to adhere to this section; or

(3) Operate a locomotive or train without adhering to procedures for the safe use of train or engine brakes when the procedures are required for compliance with the Class I, Class IA, Class II, Class III, or transfer train brake test provisions of 49 CFR part 232 or when the procedures are required for compliance with the class 1, class 1A, class II, or running brake test provisions of 49 CFR part 238;

(4) Fail to comply with any mandatory directive concerning the movement of a locomotive or train by occupying main track or a segment of main track without proper authority or permission;

(5) Fail to comply with prohibitions against tampering with locomotive mounted safety devices, or knowingly operate or permit to be operated a train with an unauthorized disabled safety device in the controlling locomotive. (See 49 CFR part 218, subpart D, and appendix C to part 218);

(6) Be a Designated Supervisor of Locomotive Engineers, a certified locomotive engineer pilot or an instructor engineer who is monitoring, piloting or instructing a locomotive engineer and fails to take appropriate action to prevent a violation of paragraphs (a)(1) through (a)(5) of this section. Appropriate action does not mean that a supervisor, pilot or instructor must prevent a violation from occurring at all costs; the duty may be met by warning an engineer of a potential or foreseeable violation. A Designated Supervisor of Locomotive Engineers will not be held culpable under this section when this monitoring event is conducted as part of the railroad's operational compliance tests as defined in §§ 217.9 and 240.303 of this chapter.

(b) Each locomotive engineer who has received a certificate required under this part shall:

(1) Have that certificate in his or her possession while on duty as an engineer; and

(2) Display that certificate upon the receipt of a request to do so from:

(i) A representative of the Federal Railroad Administration;

(ii) A State inspector authorized under part 212 of this chapter;

(iii) An officer of the issuing railroad; or

(iv) An officer of another railroad when operating a locomotive or train in joint operations territory.

(c) Any locomotive engineer who is notified or called to operate a locomotive or train and such operation would cause the locomotive engineer to exceed certificate limitations, set forth in accordance with subpart B of this part, shall immediately notify the railroad that he or she is not qualified to perform that anticipated service and it shall be unlawful for the railroad to require such service.

(d) During the duration of any certification interval, a locomotive engineer who has a current certificate from more than one railroad shall immediately notify the other certifying railroad(s) if he or she is denied recertification by a railroad or has his or her certification revoked by a railroad.

(e) Nothing in this section shall be deemed to alter a certified locomotive engineer's duty to comply with other provisions of this chapter concerning railroad safety.

[56 FR 28254, June 19, 1991, as amended at 58 FR 19004, Apr. 9, 1993; 64 FR 60993, Nov. 8, 1999; 74 FR 68184, Dec. 23, 2009; 85 FR 81316, Dec. 15, 2020]

#### § 240.307 Revocation of certification.

(a) Except as provided for in § 240.119(e), a railroad that certifies or recertifies a person as a qualified locomotive engineer and, during the period that certification is valid, acquires reliable information regarding violation(s) of § 240.117(e) or § 240.119(c) shall revoke the person's engineer certificate.

(b) Pending a revocation determination under this section, the railroad shall:

(1) Upon receipt of reliable information regarding violation(s) of § 240.117(e) or § 240.119(c), immediately suspend the person's certificate;

(2) Prior to or upon suspending the person's certificate, provide notice of the reason for the suspension, the pending revocation, and an opportunity for a hearing before a presiding officer other than the investigating officer.

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The notice may initially be given either orally or in writing. If given orally, it must be confirmed in writing and the written confirmation must be made promptly. Written confirmation which conforms to the notification provisions of an applicable collective bargaining agreement shall be deemed to satisfy the written confirmation requirements of this section. In the absence of an applicable collective bargaining agreement provision, the written confirmation must be made within 96 hours.

(3) Convene the hearing within the deadline prescribed by either paragraph (c)(1) of this section or the applicable collective bargaining agreement as permitted under paragraph (d) of this section;

(4) No later than the convening of the hearing and notwithstanding the terms of an applicable collective bargaining agreement, the railroad convening the hearing shall provide the person with a copy of the written information and list of witnesses the railroad will present at the hearing. If requested, a recess to the start of the hearing will be granted if that information is not provided until just prior to the convening of the hearing. If the information was provided through statements of an employee of the convening railroad, the railroad will make that employee available for examination during the hearing required by paragraph (b)(3) of this section. Examination may be telephonic where it is impractical to provide the witness at the hearing;

(5) Determine, on the record of the hearing, whether the person no longer meets the certification requirements of this part stating explicitly the basis for the conclusion reached;

(6) When appropriate, impose the pertinent period of revocation provided for in § 240.117 or § 240.119; and

(7) Retain the record of the hearing for 3 years after the date the decision is rendered.

(c) Except as provided for in paragraphs (d), (f), (i) and (j) of this section, a hearing required by this section shall be conducted in accordance with the following procedures:

(1) The hearing shall be convened within 10 days of the date the certificate is suspended unless the locomotive

engineer requests or consents to delay in the start of the hearing.

(2) The hearing shall be conducted by a presiding officer, who can be any proficient person authorized by the railroad other than the investigating officer.

(3) The presiding officer will exercise the powers necessary to regulate the conduct of the hearing for the purpose of achieving a prompt and fair determination of all material issues in controversy.

(4) The presiding officer shall convene and preside over the hearing.

(5) Testimony by witnesses at the hearing shall be recorded verbatim.

(6) All relevant and probative evidence shall be received unless the presiding officer determines the evidence to be unduly repetitive or so extensive and lacking in relevancy that its admission would impair the prompt, orderly, and fair resolution of the proceeding.

(7) The presiding officer may:

(i) Adopt any needed procedures for the submission of evidence in written form;

(ii) Examine witnesses at the hearing;

(iii) Convene, recess, adjourn or otherwise regulate the course of the hearing; and

(iv) Take any other action authorized by or consistent with the provisions of this part and permitted by law that may expedite the hearing or aid in the disposition of the proceeding.

(8) Parties may appear and be heard on their own behalf or through designated representatives. Parties may offer relevant evidence including testimony and may conduct such examination of witnesses as may be required for a full disclosure of the relevant facts.

(9) The record in the proceeding shall be closed at the conclusion of the hearing unless the presiding officer allows additional time for the submission of information. In such instances, the record shall be left open for such time as the presiding officer grants for that purpose.

(10) No later than 10 days after the close of the record, a railroad official, other than the investigating officer,

shall prepare and sign a written decision in the proceeding.

(11) The decision shall:

(i) Contain the findings of fact as well as the basis therefor, concerning all material issues of fact presented on the record and citations to all applicable railroad rules and practices;

(ii) State whether the railroad official found that a revocable event occurred and the applicable period of revocation with a citation to §240.117 or §240.119; and

(iii) Be served on the employee and the employee's representative, if any, with the railroad to retain proof of that service.

(12) The railroad shall have the burden of proving that the locomotive engineer's conduct was not in compliance with the applicable railroad operating rule or practice or part 219 of this chapter.

(d) A hearing required by this section which is conducted in a manner that conforms procedurally to the applicable collective bargaining agreement shall be deemed to satisfy the procedural requirements of this section.

(e) A hearing required under this section may be consolidated with any disciplinary or other hearing arising from the same facts, but in all instances a railroad official, other than the investigating officer, shall make separate findings as to the revocation required under this section.

(f) A person may waive the right to the hearing provided under this section. That waiver shall:

(1) Be made in writing;

(2) Reflect the fact that the person has knowledge and understanding of these rights and voluntarily surrenders them; and

(3) Be signed by the person making the waiver.

(g) A railroad that has relied on the certification by another railroad under the provisions of §240.227 or §240.229, shall revoke its certification if, during the period that certification is valid, the railroad acquires information that convinces it that another railroad has revoked its certification in accordance with the provisions of this section. The requirement to provide a hearing under this section is satisfied when any single railroad holds a hearing and no ad-

ditional hearing is required prior to a revocation by more than one railroad arising from the same facts.

(h) The period of certificate suspension prior to the commencement of a hearing required under this section shall be credited towards satisfying any applicable revocation period imposed in accordance with the provisions of §240.117.

(i) A railroad:

(1) Shall not revoke the person's certification as provided for in paragraph (a) of this section if sufficient evidence exists to establish that an intervening cause prevented or materially impaired the locomotive engineer's ability to comply with the railroad operating rule or practice that constitutes a violation under §240.117(e)(1) through (5); or

(2) May decide not to revoke the person's certification as provided for in paragraph (a) of this section if sufficient evidence exists to establish that the violation of §240.117(e)(1) through (5) was of a minimal nature and had no direct or potential effect on rail safety.

(j) The railroad shall place the relevant information in the records maintained in compliance with §240.309 for Class I (including the National Railroad Passenger Corporation) and Class II railroads, and §240.215 for Class III railroads if sufficient evidence meeting the criteria provided in paragraph (i) of this section, becomes available either:

(1) Prior to a railroad's action to suspend the certificate as provided for in paragraph (b)(1) of this section; or

(2) Prior to the convening of the hearing provided for in this section.

(k) Provided that the railroad makes a good faith determination after a reasonable inquiry that the course of conduct provided for in paragraph (i) of this section is appropriate, the railroad which does not suspend a locomotive engineer's certification, as provided for in paragraph (a) of this section, is not in violation of paragraph (a) of this section.

[58 FR 19004, Apr. 9, 1993, as amended at 60 FR 53137, Oct. 12, 1995; 64 FR 60994, Nov. 8, 1999; 74 FR 68185, Dec. 23, 2009; 85 FR 81316, Dec. 15, 2020]

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**§ 240.308 Multiple certifications.**

(a) A person may hold both conductor and locomotive engineer certification.

(b) A railroad that issues multiple certificates to a person, shall, to the extent possible, coordinate the expiration date of those certificates.

(c) Except as provided in paragraph (d) of this section, a locomotive engineer, including a remote control operator, who is operating a locomotive without an assigned certified conductor must either be:

(1) Certified as both a locomotive engineer under this part and as a conductor under part 242 of this chapter; or

(2) Accompanied by a person certified as a conductor under part 242 of this chapter but who will be attached to the crew in a manner similar to that of an independent assignment.

(d) If the conductor is removed from a passenger train for a medical, police or other such emergency after the train departs from an initial terminal, the train may proceed to the first location where the conductor can be replaced without incurring undue delay without the locomotive engineer being a certified conductor. However, an assistant conductor or brakeman must be on the train and the locomotive engineer must be informed that there is no certified conductor on the train prior to any movement.

(e) During the duration of any certification interval, a person who holds a current conductor and/or locomotive engineer certificate from more than one railroad shall immediately notify the other certifying railroad(s) if he or she is denied conductor or locomotive engineer recertification under § 240.219 or § 242.401 of this chapter or has his or her conductor or locomotive engineer certification revoked under § 240.307 or § 242.407 of this chapter by another railroad.

(f) A person who holds a current conductor and locomotive engineer certificate and who has had his or her conductor certification revoked under § 242.407 of this chapter for a violation of § 242.403(e)(1) through (5) or (12) of this chapter may not work as a locomotive engineer during the period of revocation. However, a person who holds a current conductor and loco-

motive engineer certificate and who has had his or her conductor certification revoked under § 242.407 of this chapter for a violation of § 242.403(e)(6) through (11) may work as a locomotive engineer during the period of revocation.

(1) For purposes of determining the period for which a person may not work as a certified locomotive engineer due to a revocation of his or her conductor certification, only violations of § 242.403(e)(1) through (5) or (12) of this chapter will be counted. Thus, a person who holds a current conductor and locomotive engineer certificate and who has had his or her conductor certification revoked three times in less than 36 months for two violations of § 242.403(e)(6) and one violation of § 242.403(e)(1) would have his or her conductor certificate revoked for 1 year, but would not be permitted to work as a locomotive engineer for one month (*i.e.*, the period of revocation for one violation of § 242.403(e)(1)).

(g) A person who holds a current conductor and locomotive engineer certificate and who has had his or her locomotive engineer certification revoked under § 240.307 may not work as a conductor during the period of revocation.

(h) A person who has had his or her locomotive engineer certification revoked under § 240.307 may not obtain a conductor certificate pursuant to part 242 of this chapter during the period of revocation.

(i) A person who had his or her conductor certification revoked under § 242.407 of this chapter for violations of § 242.403(e)(1) through (5) or (12) of this chapter may not obtain a locomotive engineer certificate pursuant to this part 240 during the period of revocation.

(j) A railroad that denies a person conductor certification or recertification under § 242.401 of this chapter shall not, solely on the basis of that denial, deny or revoke that person's locomotive engineer certification or recertification.

(k) A railroad that denies a person locomotive engineer certification or recertification under § 240.219 shall not, solely on the basis of that denial, deny or revoke that person's conductor certification or recertification.

(l) In lieu of issuing multiple certificates, a railroad may issue one certificate to a person who is certified as a conductor and a locomotive engineer. The certificate must comply with § 240.223 and § 242.207 of this chapter.

(m) A person who holds a current conductor and locomotive engineer certification and who is involved in a revocable event under § 240.307 or § 242.407 of this chapter may only have one certificate revoked for that event. The determination by the railroad as to which certificate to revoke for the revocable event must be based on the work the person was performing at the time the event occurred.

[85 FR 81317, Dec. 15, 2020]

**§ 240.309 Railroad oversight responsibilities.**

(a) No later than March 31 of each year, each Class I railroad (including the National Railroad Passenger Corporation and a railroad providing commuter service) and Class II railroad shall conduct a formal annual review and analysis concerning the administration of its program for responding to detected instances of poor safety conduct by certified locomotive engineers during the prior calendar year.

(b) Each review and analysis shall involve:

(1) The number and nature of the instances of detected poor safety conduct including the nature of the remedial action taken in response thereto;

(2) The number and nature of FRA reported train accidents attributed to poor safety performance by locomotive engineers;

(3) The number and type of operational monitoring test failures and observations of inadequate skill performance recorded by supervisors of locomotive engineers; and

(4) If the railroad conducts joint operations with another railroad, the number of locomotive engineers employed by the other railroad(s) that were involved in events described in this paragraph (b) and were determined to be certified and to have possessed the necessary territorial qualifications for joint operations purposes by the controlling railroad.

(c) Based on that review and analysis each railroad shall determine what ac-

tion(s) it will take to improve the safety of train operations to reduce or eliminate future incidents of that nature.

(d) If requested in writing by FRA, the railroad shall provide a report of the findings and conclusions reached during such annual review and analysis effort.

(e) For reporting purposes, information about the nature of detected poor safety conduct shall be capable of segregation for study and evaluation purposes into the following categories:

(1) Incidents involving noncompliance with part 218 of this chapter;

(2) Incidents involving noncompliance with part 219 of this chapter;

(3) Incidents involving noncompliance with the procedures for the safe use of train or engine brakes when the procedures are required for compliance with the Class I, Class IA, Class II, Class III, or transfer train brake test provisions of 49 CFR part 232 or when the procedures are required for compliance with the Class 1, Class 1A, Class II, or running brake test provisions of 49 CFR part 238;

(4) Incidents involving noncompliance with the railroad's operating rules involving operation of a locomotive or train to operate at a speed that exceeds the maximum authorized limit;

(5) Incidents involving noncompliance with the railroad's operating rules resulting in operation of a locomotive or train past any signal, excluding a hand or a radio signal indication or a switch, that requires a complete stop before passing it;

(6) Incidents involving noncompliance with the provisions of restricted speed, and the operational equivalent thereof, that must be reported under the provisions of part 225 of this chapter;

(7) Incidents involving occupying main track or a segment of main track without proper authority or permission;

(8) Incidents involving the failure to comply with prohibitions against tampering with locomotive mounted safety devices, or knowingly operating or permitting to be operated a train with an unauthorized or disabled safety device in the controlling locomotive; and

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(9) Incidents involving noncompliance with the railroad's operating practices (including train handling procedures) resulting in excessive in-train force levels.

(f) For reporting purposes, an instance of poor safety conduct involving a person who holds both conductor certification pursuant to part 242 of this chapter and locomotive engineer certification pursuant to this part need only be reported once (either under § 242.215 of this chapter or this section). The determination as to where to report the instance of poor safety conduct should be based on the work the person was performing at the time the conduct occurred.

(g) For reporting purposes, each category of detected poor safety conduct identified in paragraph (b) of this section shall be capable of being annotated to reflect the following:

(1) The nature of the remedial action taken and the number of events subdivided so as to reflect which of the following actions was selected:

- (i) Imposition of informal discipline;
- (ii) Imposition of formal discipline;
- (iii) Provision of informal training;

or

- (iv) Provision of formal training; and

(2) If the nature of the remedial action taken was formal discipline, the number of events further subdivided so as to reflect which of the following punishments was imposed by the railroad:

- (i) The person was withheld from service;
- (ii) The person was dismissed from employment; or
- (iii) The person was issued demerits.

If more than one form of punishment was imposed only that punishment deemed the most severe shall be shown.

(h) For reporting purposes, each category of detected poor safety conduct identified in paragraph (b) of this section which resulted in the imposition of formal or informal discipline shall be annotated to reflect the following:

(1) The number of instances in which the railroad's internal appeals process reduced the punishment initially imposed at the conclusion of its hearing; and

(2) The number of instances in which the punishment imposed by the rail-

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road was reduced by any of the following entities: The National Railroad Adjustment Board, a Public Law Board, a Special Board of Adjustment or other body for the resolution of disputes duly constituted under the provisions of the Railway Labor Act.

(i) For reporting purposes, each category of detected poor safety conduct identified in paragraph (b) of this section shall be capable of being annotated to reflect the following:

(1) The total number of incidents in that category;

(2) The number of incidents within that total which reflect incidents requiring an FRA accident/incident report under part 225 of this chapter; and

(3) The number of incidents within that total which were detected as a result of a scheduled operational monitoring effort.

[56 FR 28254, June 19, 1991, as amended at 64 FR 60994, Nov. 8, 1999; 74 FR 68185, Dec. 23, 2009; 85 FR 81317, Dec. 15, 2020]

### Subpart E—Dispute Resolution Procedures

#### § 240.401 Review board established.

(a) Any person who has been denied certification, denied recertification, or has had his or her certification revoked and believes that a railroad incorrectly determined that he or she failed to meet the certification requirements of this part when making the decision to deny or revoke certification, may petition the Federal Railroad Administrator to review the railroad's decision.

(b) The Administrator has delegated initial responsibility for adjudicating such disputes to the Operating Crew Review Board.

(c) The Operating Crew Review Board shall be composed of employees of the Federal Railroad Administration selected by the Administrator.

[85 FR 81318, Dec. 15, 2020]

#### § 240.403 Petition requirements.

(a) To obtain review of a railroad's decision to deny certification, deny recertification, or revoke certification, a person shall file a petition for review that complies with this section.

(b) Each petition shall:

- (1) Be in writing;

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(2) Be filed with the Docket Clerk, U.S. Department of Transportation, Docket Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590. The form of such request may be in written or electronic form consistent with the standards and requirements established by the Federal Docket Management System and posted on its website at *http://www.regulations.gov*;

(3) Contain all available information that the person thinks supports the person's belief that the railroad acted improperly, including:

- (i) The petitioner's full name;
- (ii) The petitioner's current mailing address;
- (iii) The petitioner's daytime telephone number;
- (iv) The petitioner's email address (if available);
- (v) The name and address of the railroad; and

(vi) The facts that the petitioner believes constitute the improper action by the railroad, specifying the locations, dates, and identities of all persons who were present or involved in the railroad's actions (to the degree known by the petitioner);

(4) Explain the nature of the remedial action sought;

(5) Be supplemented by a copy of all written documents in the petitioner's possession or reasonably available to the petitioner that document that railroad's decision;

(6) Be filed in a timely manner; and

(7) Be supplemented, if requested by the Operating Crew Review Board, with a copy of the information under 49 CFR 40.329 that laboratories, medical review officers, and other service agents are required to release to employees. The petitioner must provide written explanation in response to an Operating Crew Review Board request if written documents that should be reasonably available to the petitioner are not supplied.

(c) A petition seeking review of a railroad's decision to deny certification or recertification or revoke certification in accordance with the procedures required by §240.307 filed with FRA more than 120 days after the date the railroad's denial or revocation de-

cision was served on the petitioner will be denied as untimely except that the Operating Crew Review Board for cause shown may extend the petition filing period at any time in its discretion:

(1) Provided that the request for extension is filed before the expiration of the period provided in this paragraph (c); or

(2) Provided that the failure to file timely was the result of excusable neglect.

(d) A party aggrieved by a Board decision to deny a petition as untimely or not in compliance with the requirements of this section may file an appeal with the Administrator in accordance with §240.411.

[56 FR 28254, June 19, 1991, as amended at 64 FR 60995, Nov. 8, 1999; 64 FR 70196, Dec. 16, 1999; 74 FR 25175, May 27, 2009; 85 FR 81318, Dec. 15, 2020]

**§ 240.405 Processing certification review petitions.**

(a) Each petition shall be acknowledged in writing by FRA. The acknowledgment shall contain the docket number assigned to the petition and a statement of FRA's intention that the Board will attempt to render a decision on this petition within 180 days from the date that the railroad's response is received or from the date upon which the railroad's response period has lapsed pursuant to paragraph (c) of this section.

(b) Upon receipt of the petition, FRA will notify the railroad that it has received the petition and where the petition may be accessed.

(c) Within 60 days from the date of the notification provided in paragraph (b) of this section, the railroad may submit to FRA any information that the railroad considers pertinent to the petition. Late filings will only be considered to the extent practicable.

(d) A railroad that submits such information shall:

(1) Identify the petitioner by name and the docket number of the review proceeding and provide the railroad's email address (if available);

(2) Serve a copy of the information being submitted to FRA to the petitioner and petitioner's representative, if any; and

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(3) File the information with the Docket Clerk, U.S. Department of Transportation, Docket Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590. The form of such information may be in written or electronic form consistent with the standards and requirements established by the Federal Docket Management System and posted on its website at <http://www.regulations.gov>.

(e) Each petition will then be referred to the Operating Crew Review Board for a decision.

(f) Based on the record, the Board shall have the authority to grant, deny, dismiss, or remand the petition.

(g) If the Board finds that there is insufficient basis for granting or denying the petition, the Board shall issue an order affording the parties an opportunity to provide additional information or argument consistent with its findings.

(h) When considering factual issues, the Board will determine whether there is substantial evidence to support the railroad's decision, and a negative finding is grounds for granting the petition.

(i) When considering procedural issues, the Board will determine whether the petitioner suffered substantial harm that was caused by the failure to adhere to the dictated procedures for making the railroad's decision. A finding of substantial harm is grounds for reversing the railroad's decision. To establish grounds upon which the Board may grant relief, Petitioner must show:

(1) That procedural error occurred; and

(2) The procedural error caused substantial harm.

(j) Pursuant to its reviewing role, the Board will consider whether the railroad's legal interpretations are correct based on a *de novo* review.

(k) The Board will determine whether the denial or revocation of certification or recertification was improper under this part (*i.e.*, based on an incorrect determination that the person failed to meet the certification requirements of this part) and grant or deny the petition accordingly. The Board will not otherwise consider the pro-

priety of a railroad's decision, *i.e.*, it will not consider whether the railroad properly applied its own more stringent requirements.

(1) The Board's written decision shall be served on the petitioner, including the petitioner's representative, if any, and the railroad.

[85 FR 81318, Dec. 15, 2020]

**§ 240.407 Request for a hearing.**

(a) If adversely affected by the Operating Crew Review Board's decision, either the petitioner before the Board or the railroad involved shall have a right to an administrative proceeding as prescribed by § 240.409.

(b) To exercise that right, the adversely affected party shall, within 20 days of service of the Board's decision on that party, file a written request with the U.S. Department of Transportation, Docket Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. The form of such request may be in written or electronic form consistent with the standards and requirements established by the Federal Docket Management System and posted on its web site at <http://www.regulations.gov>.

(c) If a party fails to request a hearing within the period provided in paragraph (b) of this section, the Operating Crew Review Board's decision will constitute final agency action.

(d) If a party elects to request a hearing, that person shall submit a written request to the Docket Clerk containing the following:

(1) The name, address, telephone number, and email address (if available) of the respondent and the requesting party's designated representative, if any;

(2) The specific factual issues, industry rules, regulations, or laws that the requesting party alleges need to be examined in connection with the certification decision in question; and

(3) The signature of the requesting party or the requesting party's representative, if any.

(e) Upon receipt of a hearing request complying with paragraph (d) of this section, FRA shall arrange for the appointment of a presiding officer who

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shall schedule the hearing for the earliest practicable date.

[60 FR 53137, Oct. 12, 1995, as amended at 64 FR 70196, Dec. 16, 1999; 74 FR 25175, May 27, 2009; 85 FR 81319, Dec. 15, 2020]

**§ 240.409 Hearings.**

(a) An administrative hearing for a locomotive engineer certification petition shall be conducted by a presiding officer, who can be any person authorized by the Administrator, including an administrative law judge.

(b) The presiding officer may exercise the powers of the Administrator to regulate the conduct of the hearing for the purpose of achieving a prompt and fair determination of all material issues in controversy.

(c) The presiding officer shall convene and preside over the hearing. The hearing shall be a *de novo* hearing to find the relevant facts and determine the correct application of this part to those facts. The presiding officer may determine that there is no genuine issue covering some or all material facts and limit evidentiary proceedings to any issues of material fact as to which there is a genuine dispute.

(d) The presiding officer may authorize discovery of the types and quantities which in the presiding officer's discretion will contribute to a fair hearing without unduly burdening the parties. The presiding officer may impose appropriate non-monetary sanctions, including limitations as to the presentation of evidence and issues, for any party's willful failure or refusal to comply with approved discovery requests.

(e) Every petition, motion, response, or other authorized or required document shall be signed by the party filing the same, or by a duly authorized officer or representative of record, or by any other person. If signed by such other person, the reason therefor must be stated and the power of attorney or other authority authorizing such other person to subscribe the document must be filed with the document. The signature of the person subscribing any document constitutes a certification that he or she has read the document; that to the best of his or her knowledge, information and belief every statement contained in the document is true and

no such statements are misleading; and that it is not interposed for delay or to be vexatious.

(f) After the request for a hearing is filed, all documents filed or served upon one party must be served upon all parties. Each party may designate a person upon whom service is to be made when not specified by law, regulation, or directive of the presiding officer. If a party does not designate a person upon whom service is to be made, then service may be made upon any person having subscribed to a submission of the party being served, unless otherwise specified by law, regulation, or directive of the presiding officer. Proof of service shall accompany all documents when they are tendered for filing.

(g) If any document initiating, filed, or served in, a proceeding is not in substantial compliance with the applicable law, regulation, or directive of the presiding officer, the presiding officer may strike or dismiss all or part of such document, or require its amendment.

(h) Any party to a proceeding may appear and be heard in person or by an authorized representative.

(i) Any person testifying at a hearing or deposition may be accompanied, represented, and advised by an attorney or other representative, and may be examined by that person.

(j) Any party may request to consolidate or separate the hearing of two or more petitions by motion to the presiding officer, when they arise from the same or similar facts or when the matters are for any reason deemed more efficiently heard together.

(k) Except as provided in § 240.407(c) of this part and paragraph (u)(4) of this section, whenever a party has the right or is required to take action within a period prescribed by this part, or by law, regulation, or directive of the presiding officer, the presiding officer may extend such period, with or without notice, for good cause, provided another party is not substantially prejudiced by such extension. A request to extend a period which has already expired may be denied as untimely.

(l) An application to the presiding officer for an order or ruling not otherwise specifically provided for in this

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part shall be by motion. The motion shall be filed with the presiding officer and, if written, served upon all parties. All motions, unless made during the hearing, shall be written. Motions made during hearings may be made orally on the record, except that the presiding officer may direct that any oral motion be reduced to writing. Any motion shall state with particularity the grounds therefor and the relief or order sought, and shall be accompanied by any affidavits or other evidence desired to be relied upon which is not already part of the record. Any matter submitted in response to a written motion must be filed and served within fourteen (14) days of the motion, or within such other period as directed by the presiding officer.

(m) Testimony by witnesses at the hearing shall be given under oath and the hearing shall be recorded verbatim. The presiding officer shall give the parties to the proceeding adequate opportunity during the course of the hearing for the presentation of arguments in support of or in opposition to motions, and objections and exceptions to rulings of the presiding officer. The presiding officer may permit oral argument on any issues for which the presiding officer deems it appropriate and beneficial. Any evidence or argument received or proffered orally shall be transcribed and made a part of the record. Any physical evidence or written argument received or proffered shall be made a part of the record, except that the presiding officer may authorize the substitution of copies, photographs, or descriptions, when deemed to be appropriate.

(n) The presiding officer shall employ the Federal Rules of Evidence for United States Courts and Magistrates as general guidelines for the introduction of evidence. Notwithstanding paragraph (m) of this section, all relevant and probative evidence shall be received unless the presiding officer determines the evidence to be unduly repetitive or so extensive and lacking in relevancy that its admission would impair the prompt, orderly, and fair resolution of the proceeding.

(o) The presiding officer may:

(1) Administer oaths and affirmations;

(2) Issue subpoenas as provided for in § 209.7 of part 209 in this chapter;

(3) Adopt any needed procedures for the submission of evidence in written form;

(4) Examine witnesses at the hearing;

(5) Convene, recess, adjourn or otherwise regulate the course of the hearing; and

(6) Take any other action authorized by or consistent with the provisions of this part and permitted by law that may expedite the hearing or aid in the disposition of the proceeding.

(p) The petitioner before the Operating Crew Review Board, the railroad involved in taking the certification action, and FRA shall be parties at the hearing. All parties may participate in the hearing and may appear and be heard on their own behalf or through designated representatives. All parties may offer relevant evidence, including testimony, and may conduct such cross-examination of witnesses as may be required to make a record of the relevant facts.

(q) The party requesting the administrative hearing shall be the "hearing petitioner." The hearing petitioner shall have the burden of proving its case by a preponderance of the evidence. Hence, if the hearing petitioner is the railroad involved in taking the certification action, that railroad will have the burden of proving that its decision to deny certification, deny recertification, or revoke certification was correct. Conversely, if the petitioner before the Operating Crew Review Board is the hearing petitioner, that person will have the burden of proving that the railroad's decision to deny certification, deny recertification, or revoke certification was incorrect. Between the petitioner before the Operating Crew Review Board and the railroad involved in taking the certification action, the party who is not the hearing petitioner will be a respondent.

(r) FRA will be a mandatory party to the administrative hearing. At the start of each proceeding, FRA will be a respondent.

(s) The record in the proceeding shall be closed at the conclusion of the evidentiary hearing unless the presiding officer allows additional time for the

submission of additional evidence. In such instances the record shall be left open for such time as the presiding officer grants for that purpose.

(t) At the close of the record, the presiding officer shall prepare a written decision in the proceeding.

(u) The decision:

(1) Shall contain the findings of fact and conclusions of law, as well as the basis for each concerning all material issues of fact or law presented on the record;

(2) Shall be served on the hearing petitioner and all other parties to the proceeding;

(3) Shall not become final for 35 days after issuance;

(4) Constitutes final agency action unless an aggrieved party files an appeal within 35 days after issuance; and

(5) Is not precedential.

[60 FR 53137, Oct. 12, 1995, as amended at 85 FR 81319, Dec. 15, 2020]

#### § 240.411 Appeals.

(a) Any party aggrieved by the presiding officer's decision may file an appeal in the presiding officer's docket. The appeal must be filed within 35 days of issuance of the decision. A copy of the appeal shall be served on each party. The appeal shall set forth objections to the presiding officer's decision, supported by reference to applicable laws and regulations and with specific reference to the record. If no appeal is timely filed, the presiding officer's decision constitutes final agency action.

(b) A party may file a reply to the appeal within 25 days of service of the appeal. The reply shall be supported by reference to applicable laws and regulations and with specific reference to the record, if the party relies on evidence contained in the record.

(c) The Administrator may extend the period for filing an appeal or a response for good cause shown, provided that the written request for extension is served before expiration of the applicable period provided in this section.

(d) The Administrator has sole discretion to permit oral argument on the appeal. On the Administrator's own initiative or written motion by any party, the Administrator may grant the parties an opportunity for oral argument.

(e) The Administrator may remand, vacate, affirm, reverse, alter or modify the decision of the presiding officer and the Administrator's decision constitutes final agency action except where the terms of the Administrator's decision (for example, remanding a case to the presiding officer) show that the parties' administrative remedies have not been exhausted.

(f) An appeal from an Operating Crew Review Board decision pursuant to § 240.403(d) must be filed in the Board's docket within 35 days of issuance of the decision. A copy of the appeal shall be served on each party. The Administrator may affirm or vacate the Board's decision, and may remand the petition to the Board for further proceedings. An Administrator's decision to affirm the Board's decision constitutes final agency action.

[56 FR 28254, June 19, 1991, as amended at 60 FR 53138, Oct. 12, 1995; 64 FR 60995, Nov. 8, 1999; 74 FR 25175, May 27, 2009; 85 FR 81319, Dec. 15, 2020]

#### APPENDIX A TO PART 240 [RESERVED]

#### APPENDIX B TO PART 240—PROCEDURES FOR SUBMISSION AND APPROVAL OF LOCOMOTIVE ENGINEER QUALIFICATION PROGRAMS

This appendix establishes procedures for the submission and approval of a railroad's program concerning the training, testing, and evaluating of persons seeking certification or recertification as a locomotive engineer in accordance with the requirements of this part (*see* §§ 240.101, 240.103, 240.105, 240.107, 240.123, 240.125, 240.127, and 240.129). It also contains guidance on how FRA will exercise its review and approval responsibilities.

##### *Submission by a Railroad*

As provided for in § 240.101, each railroad must have a program for determining the certification of each person it permits or requires to operate a locomotive. In designing its program, a railroad must take into account the trackage and terrain over which it operates, the system(s) for train control that are employed, and the operational design characteristics of the track and equipment being operated including train length, train makeup, and train speeds. Each railroad must submit its individual program to FRA for approval as provided for in § 240.103. Each

program must be accompanied by a request for approval organized in accordance with this appendix. Requests for approval must contain appropriate references to the relevant portion of the program being discussed. Requests can be in letter or narrative format. The primary method for a railroad's submission is by email to *FRAOPCERTPROG@dot.gov*. For a railroad that is unable to send the program by email, the program shall be sent to the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Simultaneous with its filing with FRA, each railroad must provide a copy of its submission to the president of each labor organization that represents the railroad's employees subject to this part.

A railroad that electronically submits an initial program or new portions or revisions to an approved program required by this part shall be considered to have provided its consent to receive approval or disapproval notices from FRA by email. FRA may electronically store any materials required by this part regardless of whether the railroad that submits the materials does so by delivering the written materials to the Associate Administrator and opts not to submit the materials electronically. A railroad that opts not to submit the materials required by this part electronically, but provides one or more email addresses in its submission, shall be considered to have provided its consent to receive approval or disapproval notices from FRA by email or mail.

#### Organization of the Submission

Each request should be organized to present the required information in the following standardized manner. Each section must begin by giving the name, title, telephone number, and email and mailing addresses of the person to be contacted concerning the matters addressed by that section. If a person is identified in a prior section, it is sufficient merely to repeat the person's name in a subsequent section.

#### Section 1 of the Submission: General Information and Elections

The first section of the request must contain the name of the railroad, the person to be contacted concerning the request (including the person's name, title, telephone number, and email and mailing addresses) and a statement electing either to accept responsibility for educating previously untrained persons to be qualified locomotive engineers or recertify only engineers previously certified by other railroads. § 240.103(b).

If a railroad elects not to provide initial locomotive engineer training, the railroad is obligated to state so in its submission. A railroad that makes this election will be lim-

ited to recertifying persons initially certified by another railroad. A railroad that makes this election can rescind it by obtaining FRA approval of a modification of its program. § 240.103(e).

If a railroad elects to accept responsibility for training persons not previously trained to be locomotive engineers, the railroad is obligated to submit information on how such persons will be trained but has no duty to conduct such training. A railroad that elects to accept the responsibility for the training of such persons may authorize another railroad or a non-railroad entity to perform the actual training effort. The electing railroad remains responsible for assuring that such other training providers adhere to the training program the railroad submits.

This section must also state which class or classes of service the railroad will employ. § 240.107.

#### Section 2 of the Submission: Selection of Supervisors of Locomotive Engineers

The second section of the request must contain information concerning the railroad's procedure for selecting the person or persons it will rely on to evaluate the knowledge, skill, and ability of persons seeking certification or recertification. As provided for in § 240.105, each railroad must have a procedure for selecting supervisors of locomotive engineers which assures that persons so designated can appropriately test and evaluate the knowledge, skill, and ability of individuals seeking certification or recertification.

Section 240.105 provides a railroad latitude to select the criteria and evaluation methodology it will rely on to determine which person or persons have the required capacity to perform as a supervisor of locomotive engineers. The railroad must describe in this section how it will use that latitude and evaluate those it designates as supervisors of locomotive engineers so as to comply with the performance standard set forth in § 240.105(b). The railroad must identify, in sufficient detail to permit effective review by FRA, the criteria for evaluation it has selected. For example, if a railroad intends to rely on one or more of the following, a minimum level of prior experience as an engineer, successful completion of a course of study, or successful passage of a standardized testing program, the submission must state which criteria it will employ.

#### Section 3 of the Submission: Training Persons Previously Certified

The third section of the request must contain information concerning the railroad's program for training previously certified locomotive engineers. As provided for in

§240.123(b) each railroad must have a program for the ongoing education of its locomotive engineers to assure that they maintain the necessary knowledge concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics), and relevant Federal safety rules.

Section 240.123(b) provides a railroad latitude to select the specific subject matter to be covered, duration of the training, method of presenting the information, and the frequency with which the training will be provided. The railroad must describe in this section how it will use that latitude to assure that its engineers remain knowledgeable concerning the safe discharge of their train operation responsibilities so as to comply with the performance standard set forth in §240.123(b). This section must contain sufficient detail to permit effective evaluation of the railroad's training program in terms of the subject matter covered, the frequency and duration of the training sessions, the type of formal training employed (including, but not limited to, classroom, computer-based, correspondence, OJT, simulator, or laboratory training) and which aspects of the program are voluntary or mandatory.

Without assistance from automation, safe train handling involves both abstract knowledge about the appropriate use of engine controls and the application of that knowledge to trains of differing composition traversing varying terrain. Time and circumstances have the capacity to diminish both abstract knowledge and the proper application of that knowledge to discrete events. Time and circumstances also have the capacity to alter the value of previously obtained knowledge and the application of that knowledge. In formulating how it will use the discretion being afforded, each railroad must design its program to address both loss of retention of knowledge and changed circumstances, and this section of the submission to FRA must address these matters.

For example, locomotive engineers need to have their fundamental knowledge of train operations refreshed periodically. Each railroad needs to advise FRA how that need is satisfied in terms of the interval between attendance at such training, the nature of the training being provided, and methods for conducting the training. A matter of particular concern to FRA is how each railroad acts to ensure that engineers remain knowledgeable about safe train handling procedures if the territory over which a locomotive engineer is authorized to operate is territory from which the engineer has been absent. The railroad must have a plan for the familiarization training that addresses the question of how long a person can be absent before needing more education and, once that threshold is reached, how the person

will acquire the needed education. Similarly, the program must address how the railroad responds to changes such as the introduction of new technology, new operating rule books, or significant changes in operations including alteration in the territory engineers are authorized to operate over.

#### Section 4 of the Submission: Testing and Evaluating Persons Previously Certified

The fourth section of the request must contain information concerning the railroad's program for testing and evaluating previously certified locomotive engineers. As provided for in §§240.125 and 240.127, each railroad must have a program for the ongoing testing and evaluating of its locomotive engineers to ensure that they have the necessary knowledge and skills concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics), and relevant Federal safety rules. Similarly, each railroad must have a program for ongoing testing and evaluating to ensure that its locomotive engineers have the necessary vision and hearing acuity as provided for in §240.121.

Sections 240.125 and 240.127 require that a railroad rely on written procedures for determining that each person can demonstrate his or her knowledge of the railroad's rules and practices and skill at applying those rules and practices for the safe operation of a locomotive or train. Section 240.125 directs that, when seeking a demonstration of the person's knowledge, a railroad must employ a written test that contains objective questions and answers and covers the following subject matters: (i) Personal safety practices; (ii) operating practices; (iii) equipment inspection practices; (iv) train handling practices (including familiarity with the physical characteristics of the territory); and (v) compliance with relevant Federal safety rules. The test must accurately measure the person's knowledge of all of these areas.

Section 240.125 provides a railroad latitude in selecting the design of its own testing policies (including the number of questions each test will contain, how each required subject matter will be covered, weighting (if any) to be given to particular subject matter responses, selection of passing scores, and the manner of presenting the test information). The railroad must describe in this section how it will use that latitude to ensure that its engineers will demonstrate their knowledge concerning the safe discharge of their train operation responsibilities so as to comply with the performance standard set forth in §240.125.

Section 240.127 directs that, when seeking a demonstration of the person's skill, a railroad must employ a test and evaluation procedure conducted by a designated supervisor

of locomotive engineers that contains an objective evaluation of the person's skills at applying the railroad's rules and practices for the safe operation of trains. The test and evaluation procedure must examine the person's skills in terms of all of the following subject matters: (i) Operating practices; (ii) equipment inspection practices; (iii) train handling practices (including familiarity with the physical characteristics of the territory); and (iv) compliance with relevant Federal safety rules. The test must be sufficient to examine effectively the person's skills while operating a train in the most demanding type of service which the person is likely to encounter in the normal course of events once he or she is deemed qualified.

Section 240.127 provides a railroad latitude in selecting the design of its own testing and evaluation procedures (including the duration of the evaluation process, how each required subject matter will be covered, weighing (if any) to be given to particular subject matter response, selection of passing scores, and the manner of presenting the test information). However, the railroad must describe the scoring system used by the railroad during a skills test administered in accordance with the procedures required under §240.211. The description shall include the skills to be tested and the weight or possible score that each skill will be given. The section should also provide information concerning the procedures which the railroad will follow that achieve the objectives described in FRA's recommended practices (*see* appendix E to this part) for conducting skill performance testing. The section also gives a railroad the latitude to employ either a Type 1 or a Type 2 simulator (properly programmed) to conduct the test and evaluation procedure. A railroad must describe in this section how it will use that latitude to assure that its engineers will demonstrate their skills concerning the safe discharge of their train operation responsibilities so as to comply with the performance standard set forth in §240.127.

Section 240.121 provides a railroad latitude to rely on the professional medical opinion of the railroad's medical examiner concerning the ability of a person with substandard acuity to operate a locomotive safely. The railroad must describe in this section how it will ensure that its medical examiner has sufficient information concerning the railroad's operations to make appropriate conclusions about the ability of a particular individual to operate a train safely.

**Section 5 of the Submission: Training, Testing, and Evaluating Persons Not Previously Certified**

Unless a railroad has made an election not to accept responsibility for conducting the

initial training of persons to be locomotive engineers, the fifth section of the request must contain information concerning the railroad's program for educating, testing, and evaluating persons not previously trained as locomotive engineers. As provided for in §240.123(c), a railroad that is issuing an initial certification to a person to be a locomotive engineer must have a program for the training, testing, and evaluating of its locomotive engineers to ensure that they acquire the necessary knowledge and skills concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics), and relevant Federal safety rules.

Section 240.123 establishes a performance standard and gives a railroad latitude in selecting how it will meet that standard. A railroad must describe in this section how it will use that latitude to ensure that its engineers will acquire sufficient knowledge and skill and demonstrate their knowledge and skills concerning the safe discharge of their train operation responsibilities. This section must contain the same level of detail concerning initial training programs as that described for each of the components of the overall program contained in sections 2 through 4 of this appendix. A railroad that plans to accept responsibility for the initial training of locomotive engineers may authorize a non-railroad entity to perform the actual training effort as long as the other entity complies with the requirements for training organizations and learning institutions in §243.111 of this chapter. The authorizing railroad may submit a training program developed by that authorized trainer but the authorizing railroad remains responsible for ensuring that such other training providers adhere to the training program submitted. Railroads that elect to rely on other entities, to conduct training away from the railroad's own territory, must indicate how the student will be provided with the required familiarization with the physical characteristics for its territory.

**Section 6 of the Submission: Monitoring Operational Performance by Certified Engineers**

The final section of the request must contain information concerning the railroad's program for monitoring the operation of its certified locomotive engineers. As provided for in §240.129, each railroad must have a program for the ongoing monitoring of its locomotive engineers to ensure that they operate their locomotives in conformity with the railroad's operating rules and practices including methods of safe train handling and relevant Federal safety rules.

Section 240.129 requires that a railroad annually observe each locomotive engineer

demonstrating his or her knowledge of the railroad's rules and practices and skill at applying those rules and practices for the safe operation of a locomotive or train. Section 240.129 directs that the observation be conducted by a designated supervisor of locomotive engineers but provides a railroad latitude in selecting the design of its own observation procedures (including the duration of the observation process, reliance on event recorder downloads that record the specifics of train operation, and the specific aspects of the engineer's performance to be covered). The section also gives a railroad the latitude to employ either a Type 1 or a Type 2 simulator (properly programmed) to conduct monitoring observations. A railroad must describe in this section how it will use that latitude to assure that the railroad is monitoring that its engineers demonstrate their skills concerning the safe discharge of their train operation responsibilities. A railroad must also describe the scoring system used by the railroad during an operational monitoring observation or unannounced compliance test administered in accordance with the procedures required under §240.303. A railroad that intends to employ train operation event recorder tapes to comply with this monitoring requirement shall indicate in this section how it anticipates determining what person was at the controls and what signal indications or other operational constraints, if any, were applicable to the train's movement.

**Section 7 of the Submission: Procedures for Routine Administration of the Engineer Certification Program**

The final section of the request must contain a summary of how the railroad's program and procedures will implement the various specific aspects of the regulatory provisions that relate to routine administration of its certification program for locomotive engineers. At a minimum, this section needs to address the procedural aspects of the rule's provisions identified in the following paragraph.

Section 240.109 provides that each railroad must have procedures for review and comment on adverse prior safety conduct, but allows the railroad to devise its own system within generalized parameters. Sections 240.115, 240.117 and 240.119 require a railroad to have procedures for evaluating data concerning prior safety conduct as a motor vehicle operator and as railroad workers, yet leave selection of many details to the railroad. Sections 240.203, 240.217, and 240.219 place a duty on the railroad to make a series of determinations but allow the railroad to select what procedures it will employ to assure that all of the necessary determinations have been made in a timely fashion; who will be authorized to conclude that person is or is

not qualified; and how it will communicate adverse decisions. Documentation of the factual basis the railroad relied on in making determinations under §§240.205, 240.207, 240.209, 240.211, and 240.213 is required, but these sections permit the railroad to select the procedures it will employ to accomplish compliance with these provisions. Sections 240.225 and 240.227 permit reliance on qualification determinations made by other entities and permit a railroad latitude in selecting the procedures it will employ to ensure compliance with these provisions. Similarly, §240.229 permits use of railroad selected procedures to meet the requirements for certification of engineers performing service in joint operations territory. Sections 240.301 and 240.307 allow a railroad a certain degree of discretion in complying with the requirements for replacing lost certificates or the conduct of certification revocation proceedings.

This section of the request should outline in summary fashion the manner in which the railroad will implement its program so as to comply with the specific aspects of each of the rule's provisions described in the preceding paragraph.

**FRA Review**

The submissions made in conformity with this appendix will be deemed approved within 30 days after the required filing date or the actual filing date whichever is later. No formal approval document will be issued by FRA. The brief interval for review reflects FRA's judgment that railroads generally already have existing programs that will meet the requirements of this part. FRA has taken the responsibility for notifying a railroad when it detects problems with the railroad's program. FRA retains the right to disapprove a program that has obtained approval due to the passage of time as provided for in section §240.103.

Rather than establish rigid requirements for each element of the program, FRA has given railroads discretion to select the design of their individual programs within a specified context for each element. The rule, however, provides a good guide to the considerations that should be addressed in designing a program that will meet the performance standards of this rule. In reviewing program submissions, FRA will focus on the degree to which a particular program deviates from the norms set out in its rule. To the degree that a particular program submission materially deviates from the norms set out in its rule, FRA's review and approval process will be focused on determining the validity of the reasoning relied on by a railroad for selecting its alternative approach and the degree to which the alternative approach is

likely to be effective in producing locomotive engineers who have the knowledge, skill, and ability to operate trains safely.

[85 FR 81320, Dec. 15, 2020]

APPENDIX C TO PART 240—PROCEDURES FOR OBTAINING AND EVALUATING MOTOR VEHICLE DRIVING RECORD DATA

The purpose of this appendix is to outline the procedures available to individuals and railroads for complying with the requirements of section 4(a) of the Railroad Safety Improvement Act of 1988 and §§240.109, 240.111, and 240.205. Those provisions require that railroads consider the motor vehicle driving record of each person prior to issuing him or her certification or recertification as a locomotive engineer.

To fulfill that obligation, a railroad must review a certification candidate's recent motor vehicle driving record. Generally, that will be a single record on file with the State agency that issued the candidate's current license. However, it can include multiple records if the candidate has been issued a motor vehicle driving license by more than one State agency or foreign country. In addition, the railroad must determine whether the certification candidate is listed in the National Driver Register and, if so listed, to review the data that caused the candidate to be so listed.

*Access to State Motor Vehicle Driving Record Data*

The right of railroad workers, their employers, or prospective employers to have access to a State motor vehicle licensing agency's data concerning an individual's driving record is controlled by State law. Although many States have mechanisms through which employers and prospective employers such as railroads can obtain such data, there are some States in which privacy concerns make such access very difficult or impossible. Since individuals generally are entitled to obtain access to driving record data that will be relied on by a State motor vehicle licensing agency when that agency is taking action concerning their driving privileges, FRA places responsibility on individuals who want to serve as locomotive engineers to request that their current State driver licensing agency or agencies furnish such data directly to the railroad considering certifying them as a locomotive operator. Depending on the procedures adopted by a particular State agency, this will involve the candidate's either sending the State agency a brief letter requesting such action or executing a State agency form that accomplishes the same effect. It will normally involve payment of a nominal fee established by the State agency for such a

records check. In rare instances, when a certification candidate has been issued multiple licenses, it may require more than a single request.

*The National Driver Register*

In addition to seeking an individual State's data, each engineer candidate is required to request that a search and retrieval be performed of any relevant information concerning his or her driving record contained in the National Driver Register (NDR). The NDR is a system of information created by Congress in 1960. In essence, it is a nationwide repository of information on problem drivers that was created in an effort to protect motorists. It is a voluntary State/Federal cooperative program that assists motor vehicle driver licensing agencies in gaining access to data about actions taken by other State agencies concerning an individual's motor vehicle driving record. The NDR is designed to address the problem that occurs when chronic traffic law violators, after losing their license in one State travel to and receive licenses in another State. Today, each State and the District of Columbia are required to send information on all revocations, suspensions, and license denials within 31 days of receipt of the convictions from the courts to the NDR and each of these driver licensing agencies has the capability to provide NDR's data. 49 U.S.C. 30304. The NDR data can also be obtained by contacting the National Highway Traffic Safety Administration (NHTSA) of the Department of Transportation directly.

The information submitted to NHTSA contains, at a minimum, three specific pieces of data: The identification of the State authority providing the information, the name of the person whose license is being affected, and the date of birth of that person. It may be supplemented by data concerning the person's height, weight, color of eyes, and social security account number, if a State collects such data.

*Access to NDR Data*

Essentially only individuals and State licensing agencies, including the District of Columbia, can obtain access to the NDR data. Since railroads have no direct access to the NDR data, FRA requires that individuals seeking certification as a locomotive engineer request that an NDR search be performed and direct that the results be furnished to the railroad. FRA requires that each person request the NDR information directly from NHTSA unless the prospective operator has a motor vehicle driver license issued by a State motor vehicle licensing agency or the District of Columbia. Participating States and the District of Columbia can directly access the NDR data on behalf of the prospective engineer.

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### *Requesting NHTSA To Perform the NDR Check*

The procedures for requesting NHTSA performance of an NDR check are as follows:

1. Each person shall submit a written request to the National Highway Traffic Safety Administration at the following address: Chief, National Driver Register, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

2. The request must contain:

- (a) The full legal name;
- (b) Any other names used by the person (*e.g.*, nickname or professional name);
- (c) The date of birth;
- (d) Sex;
- (e) Height;
- (f) Weight;
- (g) Color of eyes; and
- (h) Driver's license number (unless that is not available).

3. The request must authorize NHTSA to perform the NDR check and to furnish the results of the search directly to the railroad.

4. The request must identify the railroad to which the results are to be furnished, including the proper name of the railroad, and the proper mailing address of the railroad.

5. The person seeking to become a certified locomotive engineer shall sign the request, and that signature must be notarized.

FRA requires that the request be in writing and contain as much detail as is available to improve the reliability of the data search. Any person may supply additional information to that being mandated by FRA. Furnishing additional information, such as the person's social security account number, will help to identify more positively any records that may exist concerning the requester. Although no fee is charged for such NDR checks, a minimal cost may be incurred in having the request notarized. The requirement for notarization is designed to ensure that each person's right to privacy is being respected and that records are only being disclosed to legally authorized parties.

### *Requesting a State Agency To Perform the NDR Check*

As discussed earlier in connection with obtaining data compiled by the State agency itself, a person can either write a letter to that agency asking for the NDR check or can use the agency's forms for making such a request. If a request is made by letter the individual must follow the same procedures required when directly seeking the data from NHTSA. Since it would be more efficient for a prospective locomotive engineer to make a single request for both aspects of the information required under this rule, FRA anticipates that a State agency inquiry should be the predominant method for making these NDR checks. Requests to State agencies may involve payment of a nominal fee established

by the State agency for such a records check.

State agencies normally will respond in approximately 30 days or less and advise whether there is or is not a listing for a person with that name and date of birth. If there is a potential match and the inquiry State was not responsible for causing that entry, the agency normally will indicate in writing the existence of a probable match and will identify the State licensing agency that suspended, revoked or canceled the relevant license or convicted the person of one of the violations referenced earlier in this appendix.

### *Actions When a Probable NDR Match Occurs*

The response provided after performance of an NDR check is limited to either a notification that no potential record match was identified or a notification that a potential record match was identified. If the latter event occurs, the notification will include the identification of the State motor vehicle licensing authority which possesses the relevant record. If the NDR check results indicate a potential match and that the State with the relevant data is the same State which furnished detailed data (because it had issued the person a driving license), no further action is required to obtain additional data. If the NDR check results indicate a potential match and the State with the relevant data is different from the State which furnished detailed data, it then is necessary to contact the individual State motor vehicle licensing authority that furnished the NDR information to obtain the relevant record. FRA places responsibility on the railroad to notify the engineer candidate and on the candidate to contact the State with the relevant information. FRA requires the certification candidate to write to the State licensing agency and request that the agency inform the railroad concerning the person's driving record. If required by the State agency, the person may have to pay a nominal fee for providing such data and may have to furnish written evidence that the prospective operator consents to the release of the data to the railroad. FRA does not require that a railroad or a certification candidate go beyond these efforts to obtain the information in the control of such a State agency, and a railroad may act upon the pending certification without the data if an individual State agency fails or refuses to supply the records.

If the non-issuing State licensing agency does provide the railroad with the available records, the railroad must verify that the record pertains to the person being considered for certification. It is necessary to perform this verification because in some instances only limited identification information is furnished for use in the NDR and this

might result in data about a different person being supplied to the railroad. Among the available means for verifying that the additional State record pertains to the certification candidate are physical description, photographs, and handwriting comparisons.

Once the railroad has obtained the motor vehicle driving record(s) which, depending on the circumstance, may consist of more than two documents, the railroad must afford the prospective engineer an opportunity to review that record and respond in writing to its contents in accordance with the provisions of §240.219. The review opportunity must occur before the railroad evaluates that record. The railroad's required evaluation and subsequent decision making must be done in compliance with the provisions of this part.

[85 FR 81322, Dec. 15, 2020]

#### APPENDIX D TO PART 240—IDENTIFICATION OF STATE AGENCIES THAT PERFORM NATIONAL DRIVER REGISTER CHECKS

Under the provisions of §240.111, each person seeking certification or recertification as a locomotive operator must request that a check of the National Driver Register (NDR) be conducted and that the resulting information be furnished to his or her employer or prospective employer. Under the provisions of paragraphs (d) and (e) of §240.111, each person seeking certification or recertification as a locomotive engineer must request that the National Highway Traffic Safety Administration (NHTSA) conduct the NDR check, unless he or she was issued a motor vehicle driver license by one of the State agencies that perform such checks, which today includes all State agencies and the District of Columbia. If the certification candidate received a license from one of the State agencies or the District of Columbia, he or she must request the State agency to perform the NDR check. Since these State agencies can more efficiently supply the desired data and, in some instances, can provide a higher quality of information, FRA requires that certification candidates make use of this method in preference to contacting NHTSA directly.

[85 FR 81323, Dec. 15, 2020]

#### APPENDIX E TO PART 240—RECOMMENDED PROCEDURES FOR CONDUCTING SKILL PERFORMANCE TESTS

FRA requires (see §240.127 and §240.211) that locomotive engineers be given a skill performance test prior to certification or recertification and establishes certain criteria for the conduct of that test. Railroads are

given discretion concerning the manner in which to administer the required testing. FRA has afforded railroads this discretion to allow individual railroad companies latitude to tailor their testing procedures to the specific operational realities. This appendix contains FRA's recommendations for the administration of skill performance testing that occurs during operation of an actual train. It can be modified to serve in instances where a locomotive simulator is employed for testing purposes. These recommended practices, if followed, will ensure a more thorough and systematic assessment of locomotive engineer performance.

##### *The Need for a Systematic Approach*

There are numerous criteria that should be monitored when a designated supervisor of locomotive engineers is observing a person to determine whether that individual should be certified or recertified as a qualified locomotive engineer. The details of those criteria will vary for the different classes of service, types of railroads, and terrain over which trains are being operated. At a minimum, the attention of a designated supervisor of locomotive engineers should concentrate on several general areas during any appraisal. Compliance with the railroad's operating rules, including its safety directives and train handling rules, and compliance with Federal regulations should be carefully monitored. But, in order to effectively evaluate employees, it is necessary to have something against which to compare their performance. In order to hold a locomotive engineer accountable for compliance, a railroad must have adequate operating, safety and train handling rules. Any railroad that fails to have adequate operating, safety, or train handling rules will experience difficulty in establishing an objective method of measuring an individual's skill level. Any railroad that requires the evaluation of an individual's performance relative to its train handling rules needs to have established preferred operating ranges for throttle use, brake application, and train speed. The absence of such criteria results in the lack of a meaningful yardstick for the designated supervisor of locomotive engineers to use in measuring the performance of locomotive engineers. It also is essential to have a definite standard so that the engineer and any reviewing body can know what the certification candidate is being measured against.

Evaluating the performance of certain train operation skills will tend to occur in all situations. For example, it would be rare for a designated supervisor of locomotive engineers to observe any operator for a reasonable period of time and not have some opportunity to review that engineer's compliance with some basic safety rules, compliance with basic operating rules, and performance

of a brake test. As the complexity of the operation increases, so does the number of items that the operator must comply with. Higher speeds, mountainous terrain, and various signal systems place increased emphasis on the need for operator compliance with more safety, operating, and train handling rules. Accounting for such variables in any universal monitoring scheme immediately results in a fairly complex system.

FRA therefore recommends that designated supervisors of locomotive engineers employ a written aid to help record events and procedures that as a minimum should be observed for when conducting a skills performance test. FRA is providing the following information to assist railroads in developing such a written aid so as to ensure meaningful testing. When conducting a skills performance test, a designated supervisor of locomotive engineers should be alert to the following:

- Does the employee have the necessary books (Operating Rules, Safety Rules, Timetable, etc.)?
- Are predeparture inspections properly conducted (Radio, Air Brake Tests, Locomotive, etc.)?
- Does the employee comply with applicable safety rules?
- Does the employee read the bulletins, general orders, etc.?
- Enroute, does the employee:
  - Comply with applicable Federal Rules?
  - Monitor gauges?
  - Properly use the horn, whistle, headlight?
  - Couple to cars at a safe speed?
  - Properly control in train slack and buff forces?
  - Properly use the train braking systems?
  - Comply with speed restrictions?
  - Display familiarity with the physical characteristics?
  - Comply with signal indications?
  - Respond properly to unusual conditions?
- At the conclusion of the trip, does the employee:
  - Apply a hand brake to the locomotives?
  - Properly report locomotive defects?

Obviously, the less sophisticated the railroad's operations are, the fewer the number of identified practices that would be relevant. Hence, this list should be modified accordingly.

*The Need for Objectivity, Use of Observation Form*

It is essential that railroads conduct the performance skills testing in the most objective manner possible, whether this testing is the locomotive engineer's initial qualification testing or periodic retesting. There will always be some potential for the subjective views, held by the designated supervisor of locomotive engineers conducting the testing,

to enter into evaluations concerning the competency of a particular individual to handle the position of locomotive engineer. Steps can be taken, and need to be taken, to minimize the risk that personality factors adversely influence the testing procedure.

One way to reduce the entry of subjective matters into the qualification procedures is through the use of a document that specifies those criteria that the designated supervisor of locomotive engineers is to place emphasis on. The use of an observation form will reduce but not eliminate subjectivity. Any skill performance test will contain some amount of subjectivity. While compliance with the operating rules or the safety rules is clear in most cases, with few opportunities for deviation, train handling offers many options with few absolute right answers. The fact that an engineer applies the train air brakes at one location rather than a few yards away does not necessarily indicate a failure but a question of judgment. The use of dynamic braking versus air brakes at a particular location may be a question of judgment unless the carrier has previously specified the use of a preferred braking method. In any case the engineer's judgment, to apply or not apply a braking system at a given location, is subject to the opinion of the designated supervisor of locomotive engineers.

A railroad should attempt to reduce or eliminate such subjectivity through use of some type of observation or evaluation. For railroads developing any evaluation form, the areas of concern identified earlier will not be relevant in all instances. Railroads that do not have sophisticated operations would only need a short list of subjects. For example, most smaller railroads would not require line items pertaining to compliance with signal rule compliance or the use of dynamic brakes. Conversely, in all instances the observation forms should include the time and location that the observer started and ended the observation. FRA believes that there should be a minimum duration for all performance skills examinations. FRA allows railroads to select a duration appropriate for their individual circumstances, requiring only that the period be "of sufficient length to effectively evaluate the person." In exercising its discretion FRA suggests that the minimums selected by a railroad be stated in terms of a distance since the examination has to be of a sufficient duration to adequately monitor the operator's skills in a variety of situations. FRA also suggests that the format for the observation form include a space for recording the observer's comments. Provision for comments ideally would allow for the inclusion of "constructive criticism" without altering the import of the evaluation and would permit subjective comments where merited.

APPENDIX F TO PART 240—MEDICAL STANDARDS GUIDELINES

(1) The purpose of this appendix is to provide greater guidance on the procedures that should be employed in administering the vision and hearing requirements of §§240.121 and 240.207.

(2) In determining whether a person has the visual acuity that meets or exceeds the requirements of this part, the following test-

ing protocols are deemed acceptable testing methods for determining whether a person has the ability to recognize and distinguish among the colors used as signals in the railroad industry. The acceptable test methods are shown in the left hand column and the criteria that should be employed to determine whether a person has failed the particular testing protocol are shown in the right hand column.

Accepted tests	Failure criteria
<b>PSEUDOISCHROMATIC PLATE TESTS</b>	
American Optical Company 1965 .....	5 or more errors on plates 1–15.
AOC—Hardy-Rand-Ritter plates—second edition .....	Any error on plates 1–6 (plates 1–4 are for demonstration—test plate 1 is actually plate 5 in book)
Dvorine—Second edition .....	3 or more errors on plates 1–15
Ishihara (14 plate) .....	2 or more errors on plates 1–11.
Ishihara (16 plate) .....	2 or more errors on plates 1–8.
Ishihara (24 plate) .....	3 or more errors on plates 1–15.
Ishihara (38 plate) .....	4 or more errors on plates 1–21.
Richmond Plates 1983 .....	5 or more errors on plates 1–15.
<b>MULTIFUNCTION VISION TESTER</b>	
Keystone Orthoscope .....	Any error.
OPTEC 2000 .....	Any error.
Titmus Vision Tester .....	Any error.
Titmus II Vision Tester .....	Any error.

(3) In administering any of these protocols, the person conducting the examination should be aware that railroad signals do not always occur in the same sequence and that “yellow signals” do not always appear to be the same. It is not acceptable to use “yarn” or other materials to conduct a simple test to determine whether the certification candidate has the requisite vision. No person shall be allowed to wear chromatic lenses during an initial test of the person’s color vision; the initial test is one conducted in accordance with one of the accepted tests in the chart and §240.121(c)(3).

(4) An examinee who fails to meet the criteria in the chart, may be further evaluated as determined by the railroad’s medical examiner. Ophthalmologic referral, field testing, or other practical color testing may be utilized depending on the experience of the examinee. The railroad’s medical examiner will review all pertinent information and, under some circumstances, may restrict an examinee who does not meet the criteria from operating the train at night, during adverse weather conditions or under other circumstances. The intent of §240.121(e) is not to provide an examinee with the right to make an infinite number of requests for fur-

ther evaluation, but to provide an examinee with at least one opportunity to prove that a hearing or vision test failure does not mean the examinee cannot safely operate a locomotive or train. Appropriate further medical evaluation could include providing another approved scientific screening test or a field test. All railroads should retain the discretion to limit the number of retests that an examinee can request but any cap placed on the number of retests should not limit retesting when changed circumstances would make such retesting appropriate. Changed circumstances would most likely occur if the examinee’s medical condition has improved in some way or if technology has advanced to the extent that it arguably could compensate for a hearing or vision deficiency.

(5) Engineers who wear contact lenses should have good tolerance to the lenses and should be instructed to have a pair of corrective glasses available when on duty.

[64 FR 60996, Nov. 8, 1999]

APPENDIX G TO PART 240—APPLICATION OF REVOCABLE EVENTS

Part 240 and Part 242 Revocable Events	Application of Part 240 and Part 242 Revocable Events						
	Periods of Revocation				Employees with Multiple Certifications		
	Main Track				Other than Main Track Where Restricted Speed or the Operational Equivalent Is in Effect	Main Track or Other than Main Track	
	1st Offense	2nd Offense Within 24 Months	3rd Offense Within 36 Months	4th Offense Within 36 Months	No Offense Within Previous 12 Months	Offense (as a Conductor)	Offense (as an Engineer)
1 Signal Requiring Complete Stop before Passing	30 Days	6 Months	1 Year	3 Years	Not Applicable	Employee May <u>Not</u> Work as an Engineer During the Period of Revocation	Employee May <u>Not</u> Work as a Conductor During the Period of Revocation
2 Restricted Speed & Speed, 10 mph over					Half Revocation Period	Employee May Work as an Engineer During the Period of Revocation	Not applicable
3 Required Air Brake Test							
4 Occupying Main Track without Authority							
5 Disabling a Safety Device					Half Revocation Period	Employee May Work as an Engineer During the Period of Revocation	Not applicable
6 Shoving Movements							
7 Equipment Fouling Adjacent Tracks							
8 Hand Operated Switches (Crossovers)					Half Revocation Period	Employee May Work as an Engineer During the Period of Revocation	Not applicable
9 Hand Operated Switches Connected to Main Track							
10 Hand Operated Crossover Switches (before & after movement)							
11 Hand Operated Derails					Different periods of revocation may be applied (see §§ 240.117, 240.119, 242.403, & 242.115)	Not Applicable	Employee May <u>Not</u> Work as an Engineer During the Period of Revocation
12 Drug & Alcohol							

[85 FR 81323, Dec. 15, 2020]

**PART 241—UNITED STATES LOCAL REQUIREMENT FOR DISPATCHING OF UNITED STATES RAIL OPERATIONS**

- Sec.
- 241.1 Purpose and scope.
- 241.3 Application and responsibility for compliance.
- 241.5 Definitions.
- 241.7 Waivers.
- 241.9 Prohibition against extraterritorial dispatching; exceptions.
- 241.11 Prohibition against conducting a railroad operation dispatched by an extraterritorial dispatcher; exceptions.
- 241.13 Prohibition against track owner's requiring or permitting use of its line for a railroad operation dispatched by an extraterritorial dispatcher; exceptions.
- 241.15 Penalties and other consequences for noncompliance.
- 241.17 Preemptive effect.
- 241.19 Information collection.

APPENDIX A TO PART 241—LIST OF LINES BEING EXTRATERRITORIALLY DISPATCHED IN ACCORDANCE WITH THE REGULATIONS CONTAINED IN 49 CFR PART 241, REVISED AS OF OCTOBER 1, 2002

APPENDIX B TO PART 241 [RESERVED]

APPENDIX C TO PART 241—GEOGRAPHICAL BOUNDARIES OF FRA'S REGIONS AND ADDRESSES OF FRA'S REGIONAL HEAD-QUARTERS

AUTHORITY: 49 U.S.C. 20103, 20107, 21301, 21304, 21311; 28 U.S.C. 2461 note; 49 CFR 1.89.

SOURCE: 67 FR 75960, Dec. 10, 2002, unless otherwise noted.

**§ 241.1 Purpose and scope.**

(a) The purpose of this part is to prevent railroad accidents and incidents, and consequent injuries, deaths, and property damage, that would result from improper dispatching of railroad operations in the United States by individuals located outside of the United States.

(b) This part prohibits extraterritorial dispatching of railroad operations, conducting railroad operations that are extraterritorially dispatched, and allowing track to be used for such operations, subject to certain stated exceptions. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

**§ 241.3 Application and responsibility for compliance.**

(a) Except as provided in paragraph (b) of this section, this part applies to all railroads.

(b) This part does not apply to—  
 (1) A railroad that operates only on track inside an installation that is not