

§ 246.111

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(2) The individual meets the eligibility requirements of §§ 246.115 and 246.303;

(3) The individual meets the visual and hearing acuity standards of §§ 246.117 and 246.118;

(4) If applicable, the individual has completed a training program that meets the requirements of § 246.119;

(5) The individual meets the qualification requirements of § 246.120; and

(6) The individual has the necessary knowledge, as demonstrated by successfully completing testing and practical demonstration that meet the requirements of § 246.121.

(b) Nothing in this section, § 246.111, or § 246.113 shall be construed to prevent persons subject to this part from entering into an agreement that results in a railroad obtaining the information needed for compliance with this subpart in a different manner than that prescribed in § 246.111 or § 246.113.

§ 246.111 Prior safety conduct as motor vehicle operator.

(a) Except as provided in paragraphs (b) through (e) of this section, after FRA has approved a railroad's signal employee certification program, the railroad, prior to certifying or recertifying any person as a signal employee, shall determine that the person meets the eligibility requirements of this section involving prior conduct as a motor vehicle operator.

(b) A railroad shall certify a person as a signal employee for 60 days if the person:

(1) Requested the information required by paragraph (g) 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 § 246.109(a)(1) through (6).

(c) A railroad shall recertify a person as a signal employee for 60 days from the expiration date of that person's certification if the person:

(1) Requested the information required by paragraph (g) 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 § 246.109(a)(1) through (6).

(d) Except as provided in paragraph (e) of this section, if a railroad who certified or recertified a person for 60 days pursuant to paragraph (b) or (c) of this section does not obtain and evaluate the information requested pursuant to paragraph (g) of this section within those 60 days, that person will be ineligible to perform as a certified signal employee until the information can be evaluated by the railroad.

(e) If a person requests the information required pursuant to paragraph (g) 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 (a) 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 eligibility requirements provided in § 246.109(a)(1) through (6).

(f) Except for persons designated as signal employees under § 246.105(c) or (d) or for persons covered by paragraph (j) of this section, each person seeking certification or recertification under this part shall, no more than one year prior to the date of the railroad's decision on certification or recertification:

(1) Take the actions required by paragraphs (g) through (i) of this section to make information concerning their 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 their driving record available to that railroad.

(g) Each person seeking certification or recertification under this part shall request, in writing, that the chief of each driver licensing agency identified in paragraph (h) of this section provide a copy of that agency's available information concerning their driving record to the railroad that is considering such certification or recertification.

(h) Each person shall request the information required under paragraph (g) of this section from:

(1) The chief of the driver licensing agency of any jurisdiction, including a

State or foreign country, which last 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, where the person held a driver's license within the preceding three years.

(i) If advised by the railroad that a driver licensing agency 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.

(j) Any person who has never obtained a motor vehicle driver's license is not required to comply with the provisions of paragraph (g) of this section but shall notify the railroad of that fact in accordance with procedures established by the railroad in its certification program.

(k) Each certified signal employee or person seeking certification as a signal employee shall report motor vehicle incidents described in paragraphs (m)(1) and (2) of this section to the certifying 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 (k) and paragraph (m) of this section, "State action" means action of the jurisdiction that has issued the motor vehicle driver's license, including a foreign country. For purposes of signal employee certification, no railroad shall require reporting earlier than 48 hours after the conviction, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license.

(l) When evaluating a person's motor vehicle driving record, a railroad shall not consider information concerning motor vehicle driving incidents that occurred:

(1) Prior to July 22, 2024; or

(2) More than three years before the date of the railroad's certification decision; or

(3) At a time other than that specifically provided for in § 246.111, § 246.113, § 246.115, or § 246.303.

(m) When evaluating a person's motor vehicle driving record, 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.

(n) If such an incident, described in paragraph (m) of this section, is identified:

(1) The railroad shall provide the data to the railroad's Drug and Alcohol Counselor (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.

(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 49 CFR part 219, subpart H, as well as 49 CFR part 40.

(4) If the person is evaluated as currently affected by an active substance

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abuse disorder, the provisions of §246.115(c) will apply.

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

(o) Each railroad shall adopt and comply with a program meeting the requirements of this section. When any person (including but not limited to a railroad; any manager, supervisor, official, or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any employee of such owner, manufacturer, lessor, lessee, or independent contractor or subcontractor) 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.

§246.113 Prior safety conduct with other railroads.

(a) After FRA has approved a railroad's signal employee certification program, the railroad shall determine, prior to issuing any person a signal employee certificate, that the certification candidate meets the eligibility requirements of this section.

(b) If the certification candidate has not been employed or certified by any other railroad in the previous five years, they do not have to submit a request in accordance with paragraph (c) of this section, but they must notify the railroad of this fact in accordance with procedures established by the railroad in its certification program.

(c) Except as provided for in paragraph (b) of this section, each person seeking certification or recertification under this part shall submit a written request to each railroad that employed or certified the person within the previous five years to provide the following information to the railroad that is considering whether to certify or recertify that person as a signal employee:

(1) Information about that person's compliance with §246.111 within the three years preceding the date of the request;

(2) Information about that person's compliance with §246.115 within the five years preceding the date of the request; and

(3) Information about that person's compliance with §246.303 within the five years preceding the date of the request.

(d) Each person submitting a written request required by paragraph (c) of this section shall:

(1) Submit the request no more than one year before the date of the railroad's decision on certification or recertification; and

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

(e) Within 30 days after receipt of a written request that complies with paragraph (c) of this section, a railroad shall provide the information requested to the railroad designated in the written request.

(f) If a railroad is unable to provide the information requested within 30 days after receipt of a written request that complies with paragraph (c) of this section, the railroad shall provide an explanation, in writing, of why it cannot provide the information within the requested time frame. If the railroad will ultimately be able to provide the requested information, the explanation shall state approximately how much more time the railroad needs to supply the requested information. If the railroad will not be able to provide the requested information, the railroad shall provide an adequate explanation for why it cannot provide this information. Copies of this explanation shall be provided to the railroad designated in the written request and to the person who submitted the written request for information.

(g) When evaluating a person's prior safety conduct with a different railroad, a railroad shall not consider information concerning prior safety conduct that occurred:

(1) Prior to July 22, 2024; or

(2) At a time other than that specifically provided for in §246.111, §246.113, §246.115, or §246.303.

(h) Each railroad shall adopt and comply with a program that complies