

§ 240.113

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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 or Federal 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 which last issued that person a driver's license; and

(2) The chief of the driver licensing agency of any other state or states 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, 400 Seventh Street, SW., Washington, DC 20590 in accordance with the procedures contained in appendix C unless the person's motor vehicle driving license was issued by one of the driver licensing agencies identified in appendix D.

(e) If the person's motor vehicle driving license was issued by one of the driver licensing agencies identified in appendix D, 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 not previously contacted in accordance with this section, such person shall:

(1) Request in writing that the chief of the state 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 or Federal 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 certification shall report motor vehicle incidents described in § 240.115 (b)(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 drivers license for, such violations. 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 drivers license.

[56 FR 28254, June 19, 1991, as amended at 64 FR 60990, Nov. 8, 1999]

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

(a) Except for initial certifications under paragraphs (b), (h), or (i) of § 240.201 or for persons covered by § 240.109(h), each person seeking certification 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 paragraph (b) of this section to make information concerning his or her prior railroad service 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 or Federal law to make information concerning his or her service record available to that railroad.

(b) Each person seeking certification or recertification under this part shall 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 to the railroad that is considering such certification or recertification.

[56 FR 28254, June 19, 1991, as amended at 64 FR 60990, Nov. 8, 1999]

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

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

(b) 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 and 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 drivers license for, operating a motor vehicle while under the influence of or impaired by alcohol or a controlled substance;

(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 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.

(c) If such an incident is identified,

(1) The railroad shall provide the data to the railroad's EAP Counselor,

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 EAP Counselor 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 EAP Counselor, condition certification upon participation in any needed aftercare and/or follow-up testing for alcohol or drugs deemed necessary by the EAP Counselor consistent with the technical standards specified in § 240.119(d)(3) of this part.

(4) If the person is evaluated as currently affected by an active substance abuse disorder, the person shall not be currently certified and the provisions of § 240.119(b) will apply.

§ 240.117 Criteria for consideration of operating rules compliance data.

(a) Each railroad's program shall include criteria and procedures for implementing 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 engineer 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 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