

## § 240.211

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

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

(ii) 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.

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

(a) After the pertinent date specified in paragraph (e), (f), or (g) of § 240.201, 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

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

(ii) 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

## 49 CFR Ch. II (10-1-02 Edition)

or her own performance skills when complying with this section.

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

(a) After the pertinent date specified in paragraph (e), (f), or (g) of § 240.201, 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.

(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]

### **§ 240.215 Retaining information supporting determinations.**

(a) After the pertinent date in paragraphs (e), (f) or (g) of § 240.201, 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.

(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 adequately limits and controls those who have access to such information;

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

(3) Information retrieved from the system can be easily produced in a printed format which can be readily provided to FRA representatives 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]