

Federal Railroad Administration, DOT

§ 240.405

(b) The Federal Railroad Administrator has delegated initial responsibility for adjudicating such disputes to the Locomotive Engineer Review Board.

(c) The Locomotive Engineer Review Board shall be composed of at least three employees of the Federal Railroad Administration selected by the Administrator.

[56 FR 28254, June 19, 1991, as amended at 58 FR 19005, Apr. 9, 1993]

§ 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;

(2) Be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW, Washington, DC 20590;

(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 name and address of the railroad; and

(v) 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 that document that railroad's decision; and

(6) Be filed in a timely manner.

(c) A petition seeking review of a railroad's decision to deny certification or recertification filed with FRA more than 180 days after the date of the railroad's denial decision will be denied as untimely.

(d) A petition seeking review of a railroad's decision to revoke certifi-

cation in accordance with the procedures required by §240.307 filed with FRA more than 120 days after the date of the railroad's revocation decision will be denied as untimely except that the Locomotive Engineer Review Board for cause shown may extend the petition filing period at any time in its discretion:

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

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

(e) A party aggrieved by a Board decision to deny a petition as untimely 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]

§ 240.405 Processing qualification 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 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 provide the railroad with a copy of the petition.

(c) The railroad will be given a period of not to exceed 60 days to 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;

(2) Provide a copy of the information being submitted to FRA to the petitioner.

(3) Submit the information in triplicate to the Docket Clerk, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590;

§ 240.407

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

(f) The Board will determine whether the denial or revocation of certification or recertification was improper under this regulation (*i.e.*, based on an incorrect determination that the person failed to meet the qualification requirements of this regulation) and grant or deny the petition accordingly. The Board will not otherwise consider the propriety of a railroad's decision, *i.e.*, it will not consider whether the railroad properly applied its own more stringent requirements.

(g) Notice of that decision will be provided in writing to both the petitioner and the railroad. The decision will include findings of fact on which it is based.

[56 FR 28254, June 19, 1991, as amended at 64 FR 60995, Nov. 8, 1999]

§ 240.407 Request for a hearing.

(a) If adversely affected by the Locomotive Engineer Review Board 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 Docket Clerk, Department of Transportation Central Docket Management System, Nassif Building, Room P1-401, 400 Seventh Street, S.W., Washington, D.C. 20590. The form of such request may be in written or electronic form consistent with the standards and requirements established by the Central Docket Management System and posted on its web site at <http://dms.dot.gov>.

(c) The result of a failure to request a hearing within the period provided in paragraph (b) of this section is that the Locomotive Engineer 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, and telephone number of the respondent and the re-

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

questing 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 shall schedule the hearing for the earliest practicable date.

[60 FR 53137, Oct. 12, 1995, as amended at 64 FR 70196, Dec. 16, 1999]

§ 240.409 Hearings.

(a) An administrative hearing for a locomotive engineer qualification 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