

§ 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