

(4) This paragraph does not create an entitlement to utilize the services of a railroad EAP Counselor, to be afforded leave from employment for counseling or treatment, or to employment as a locomotive engineer. Nor does it restrict any discretion available to the railroad to take disciplinary action based on conduct described herein.

(e) *Confidentiality protected.* Nothing in this part shall affect the responsibility of the railroad under § 219.403 of this chapter (“Voluntary Referral Policy”) to treat voluntary referrals for substance abuse counseling and treatment as confidential; and the certification status of an engineer who is successfully assisted under the procedures of that section shall not be adversely affected. However, the railroad shall include in its voluntary referral policy required to be issued pursuant to § 219.403 of this chapter a provision that, at least with respect to a certified locomotive engineer or a candidate for certification, the policy of confidentiality is waived (to the extent that the railroad shall receive from the EAP Counselor official notice of the substance abuse disorder and shall suspend or revoke the certification, as appropriate) if the person at any time refuses to cooperate in a recommended course of counseling or treatment.

[56 FR 28254, June 19, 1991, as amended at 60 FR 53136, Oct. 12, 1995; 62 FR 63467, Dec. 1, 1997]

§ 240.121 Criteria for vision and hearing acuity data.

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

(b) *Fitness requirement.* In order to be currently certified as a locomotive engineer, except as permitted by paragraph (e) of this section, a person’s vision and hearing shall meet or exceed the standards prescribed in this section and appendix F to this part. It is recommended that each test conducted pursuant to this section should be performed according to any directions supplied by the manufacturer of such test and any American National Standards Institute (ANSI) standards that are applicable.

(c) Except as provided in paragraph (e), each person shall have visual acuity that meets or exceeds the following thresholds:

(1) For distant viewing either

(i) Distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or

(ii) Distant visual acuity separately corrected to at least 20/40 (Snellen) with corrective lenses and distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses;

(2) A field of vision of at least 70 degrees in the horizontal meridian in each eye; and

(3) The ability to recognize and distinguish between the colors of railroad signals as demonstrated by successfully completing one of the tests in appendix F to this part.

(d) Except as provided in paragraph (e) of this section, each person shall have hearing acuity that meets or exceeds the following thresholds when tested by use of an audiometric device (calibrated to American National Standard Specification for Audiometers, S3.6-1969): the person does not have an average hearing loss in the better ear greater than 40 decibels at 500Hz, 1,000 Hz, and 2,000 Hz with or without use of a hearing aid.

(e) A person not meeting the thresholds in paragraphs (c) and (d) of this section shall, upon request, be subject to further medical evaluation by a railroad’s medical examiner to determine that person’s ability to safely operate a locomotive. In accordance with the guidance prescribed in appendix F to this part, a person is entitled to one retest without making any showing and to another retest if the person provides evidence substantiating that circumstances have changed since the last test to the extent that the person could now arguably operate a locomotive or train safely. The railroad shall provide its medical examiner with a copy of this part, including all appendices. If, after consultation with one of the railroad’s designated supervisors of locomotive engineers, the medical examiner concludes that, despite not meeting the threshold(s) in paragraphs (c) and (d) of this section, the person has the ability to safely operate a locomotive, the person may be certified as

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a locomotive engineer and such certification conditioned on any special restrictions the medical examiner determines in writing to be necessary.

(f) As a condition of maintaining certification, each certified locomotive engineer shall notify his or her employing railroad's medical department or, if no such department exists, an appropriate railroad official if the person's best correctable vision or hearing has deteriorated to the extent that the person no longer meets one or more of the prescribed vision or hearing standards or requirements of this section. This notification is required prior to any subsequent operation of a locomotive or train which would require a certified locomotive engineer.

[56 FR 28254, June 19, 1991, as amended at 64 FR 60992, Nov. 8, 1999]

§ 240.123 Criteria for initial and continuing education.

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

(b) A railroad shall provide for the continuing education of certified locomotive engineers to ensure that each engineer maintains the necessary knowledge, skill and ability concerning personal safety, operating rules and practices, mechanical condition of equipment, methods of safe train handling (including familiarity with physical characteristics as determined by a qualified Designated Supervisor of Locomotive Engineers), and relevant Federal safety rules.

(c) A railroad that elects to train a previously untrained person to be a locomotive engineer shall provide initial training which, at a minimum:

(1) Is composed of classroom, skill performance, and familiarization with physical characteristics components;

(2) Includes both knowledge and performance skill testing;

(3) Is conducted under the supervision of a qualified class instructor;

(4) Is subdivided into segments or periods of appropriate duration to effectively cover the following subject matter areas:

(i) Personal safety,

(ii) Railroad operating rules,

(iii) Mechanical condition of equipment,

(iv) Train handling procedures (including use of locomotive and train brake systems),

(v) Familiarization with physical characteristics including train handling, and

(vi) Compliance with Federal regulations;

(5) Is conducted so that the performance skill component shall

(i) Be under the supervision of a qualified instructor engineer located in the same control compartment whenever possible;

(ii) Place the student engineer at the controls of a locomotive for a significant portion of the time; and

(iii) Permit the student to experience whatever variety of types of trains are normally operated by the railroad.

(d) Pursuant to paragraphs (b) and (c) of this section, a person may acquire familiarity with the physical characteristics of a territory through the following methods if the specific conditions included in the description of each method are met. The methods used by a railroad for familiarizing its engineers with new territory while starting up a new railroad, starting operations over newly acquired rail lines, or reopening of a long unused route, shall be described in the railroad's locomotive engineer qualification program required under this part and submitted according to the procedures described in Appendix B to this part.

(1) If ownership of a railroad is being transferred from one company to another, the engineer(s) of the acquiring company may receive familiarization training from the selling company prior to the acquiring railroad commencing operation; or

(2) Failing to obtain familiarization training from the previous owner, opening a new rail line, or reopening an unused route would require that the engineer(s) obtain familiarization through other methods. Acceptable methods of obtaining familiarization include using hyrail trips or initial live locomotive trips in compliance with what is specified in the railroad's locomotive engineer qualification program required under this part and submitted