

(b) No later than November 1, 1991, each railroad shall designate in writing all persons that it will deem to be qualified as certified locomotive engineers for the purpose of initial compliance with paragraph (d) of this section, except as provided for in paragraph (h) of this section.

(1) Each person so designated shall have demonstrated to the railroad through training, testing or prior experience that he or she has the knowledge and skills to be a certified locomotive engineer.

(2) Each railroad shall issue, no later than December 31, 1991, a certificate that complies with § 240.223 to each person that it designates as qualified under the provisions of paragraph (b) of this section.

(c) No railroad shall permit or require a person, designated as qualified for certification under the provisions of paragraph (b) of this section, to perform service as a certified locomotive or train service engineer for more than the 36-month period beginning on the pertinent date for compliance with the mandatory procedures for testing and evaluation set forth in the applicable provisions of paragraph (e), (f) or (g) of this section unless that person has been determined to be qualified in accordance with procedures that comply with subpart C.

(d) After December 31, 1991, no railroad shall permit or require any person to operate a locomotive in any class of locomotive or train service unless that person has been certified as a qualified locomotive engineer and issued a certificate that complies with § 240.223.

(e) After December 31, 1991, no Class I railroad (including the National Railroad Passenger Corporation) or railroad providing commuter service shall designate any person it deems qualified as a designated supervisor of locomotive engineers or initially certify or recertify a person as a locomotive engineer in either locomotive or train service unless that person has been tested, evaluated, and determined to be qualified in accordance with procedures that comply with subpart C.

(f) After May 31, 1992 no Class II railroad shall designate any person it deems qualified as a designated supervisor of locomotive engineers or ini-

tially certify or recertify a person as a locomotive engineer in any class of locomotive or train service unless that person has been tested, evaluated and determined to be qualified in accordance with procedures that comply with subpart C.

(g) After November 30, 1992 no Class III railroad (including a switching and terminal or other railroad not otherwise classified) shall designate any person it deems qualified as a designated supervisor of locomotive engineers or initially certify or recertify a person as a locomotive engineer in any class of locomotive or train service unless that person has been tested, evaluated and determined to be qualified in accordance with procedures that comply with subpart C.

(h) A railroad may continue to designate any person it deems qualified as a designated supervisor of locomotive engineers or as a certified engineer, on the basis of paragraph (b) determinations, prior to the pertinent date by which a railroad of its class must comply with the procedures for testing and evaluating persons required under subpart C. Each person designated as a locomotive engineer shall be issued a certificate that complies with § 240.223 prior to being required or permitted to operate a locomotive.

(i) A railroad commencing operations prior to the pertinent date for compliance by a railroad of its class may designate any person it deems qualified as a designated supervisor of locomotive engineers or as a certified locomotive engineer on the basis of paragraph (b) until the pertinent date for compliance with the procedures for testing and evaluating required under subpart C. Each person designated as a locomotive engineer shall be issued a certificate that complies with § 240.223 prior to being required or permitted to operate a locomotive.

**§ 240.203 Determinations required as a prerequisite to certification.**

(a) Except as provided in paragraph (c), 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 service, shall,

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in accordance with its FRA-approved program determine in writing that:

(1) The individual meets the eligibility requirements of §§ 240.115, 240.117 and 240.119; and

(2) The individual meets the vision and hearing acuity standards of § 240.121;

(3) The individual has the necessary knowledge, as demonstrated by successfully completing a test that meets the requirements of § 240.125;

(4) The individual has the necessary applied knowledge and operating performance skills, as demonstrated by successfully completing an operational performance test that meets the requirements of § 240.127; and

(5) Where a person has not previously been certified, that the person has completed a training program that meets the requirements of § 240.123.

(b) A railroad may certify a person as a student engineer after determining that the person meets the vision and hearing acuity standards of § 240.121. A railroad may subsequently certify that student engineer as either a locomotive servicing engineer or a train service engineer without further review of his or her acuity status provided it determines that:

(1) The person successfully completed a training program that complies with § 240.123;

(2) The person meets the eligibility requirements of §§ 240.109 and 240.119; and

(3) A period of not more than twenty-four months has elapsed since the student engineer certification was issued.

[56 FR 28254, June 19, 1991, as amended at 60 FR 53136, Oct. 12, 1995]

## § 240.205 Procedures for determining eligibility based on prior safety conduct.

(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 service, shall determine that the person meets the eligibility requirements of § 240.115 involving prior conduct as a motor vehicle operator, § 240.117 involving prior conduct as a railroad worker, and § 240.119 involving substance abuse dis-

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orders and alcohol/drug rules compliance.

(b) In order to make the determination required under paragraph (a) of this section, a railroad shall have on file documents pertinent to the determinations referred to in paragraph (a) of this section, including a written document from its EAP Counselor either a document reflecting his or her professional opinion that the person has been evaluated as not currently affected by a substance abuse disorder or that the person has been evaluated as affected by an active substance abuse disorder and is ineligible for certification.

## § 240.207 Procedures for making the determination on vision and hearing acuity.

(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 service, shall determine that the person meets the standards for visual acuity and hearing acuity prescribed in § 240.121.

(b) In order to make the determination required under paragraph (a), a railroad shall have on file either:

(1) A medical examiner's certificate that the individual has been medically examined and meets these acuity standards; or

(2) A written document from its medical examiner documenting his or her professional opinion that the person does not meet one or both acuity standards and stating the basis for his or her determination that

(i) The person can nevertheless be certified under certain conditions or

(ii) The person's acuity is such that he or she cannot safely operate a locomotive even with conditions attached.

(c) Any examination required for compliance with this section shall be performed by or under the supervision of a medical examiner or a licensed physician's assistant such that:

(1) A licensed optometrist or a technician responsible to that person may perform the portion of the examination that pertains to visual acuity; and