



Memorandum

U.S. Department
of Transportation

Federal Railroad
Administration

Date: **MAR 11 2009**

Reply to Attn of: **OP-09-02**

Subject: Safety Guidance on Title 49 Code of Federal Regulations Part 240: Qualification and Certification of Locomotive Engineers

From: Edward Pritchard, RRS-10
Director, Office of Safety Assurance and Compliance

To: Regional Administrators

This technical bulletin (TB), OP-09-02, addresses issues pertaining to the application of Title 49 Code of Federal Regulations (CFR) Part 240, *Qualification and Certification of Locomotive Engineers*. All affected personnel are to utilize this bulletin as guidance when dealing with these issues. Legal conclusions stated here are supported by legal analysis provided by our Office of Chief Counsel. This TB will also be distributed to the Association of American Railroads, the American Short Line and Regional Railroad Association, the United Transportation Union, and the Brotherhood of Locomotive Engineers. It will also be posted on FRA's Web site.

Please distribute to Deputy Regional Administrators, Operating Practices Specialists, Principal Regional Inspectors, Operating Practices Inspectors/Trainees, and State Inspectors within your regions. If there are any questions concerning this TB, please contact John Conklin, Engineer Certification Program Manager, at (202) 493-6318.

The Federal Railroad Administration (FRA) has received questions from rail labor and management regarding the requirement that an individual seeking engineer certification must furnish data on prior safety conduct as a motor vehicle operator, pursuant to 49 CFR Part 240. All references to provisions of Part 240 are to provisions of Part 240 as amended to date.

General Requirements

Section 240.111, Individual's Duty to Furnish Data on Prior Safety Conduct as Motor Vehicle Operator, states that, except in circumstances that are not relevant in this instance, each person seeking certification or recertification must do the following within 366 days preceding the date of the railroad's decision on certification or recertification: (1) request, in writing, that the chief of the driver's licensing agency that last issued the applicant a driver's

license provide a copy of the agency's available information concerning the applicant's driving record to the railroad that is considering such certification or recertification; (2) request, in writing, that the chief of the driver licensing agency of any other State or States that issued or reissued the applicant a driver's license within the preceding 5 years, provide a copy of the available information concerning the applicant's driving record to the railroad that is considering such certification or recertification; and (3) request that the chief of the National Driver Register at the National Highway Traffic Safety Administration perform a search of the National Driver Register database to identify additional information concerning the applicant's driving record and that any resulting information be provided to the railroad considering certification or recertification. See 49 CFR § 240.111(b)-(d).

Question 1: What must a Mexican citizen who has never held a U.S. driver's license do to fulfill the requirements of § 240.111?

Answer 1: Pursuant to § 240.111(c)(1), a Mexican citizen without a U.S. driver's license record must request a copy of the available information concerning his/her driving record from the chief of the driver's licensing agency in the United Mexican States that last issued the applicant a driver's license. Such a person must also request a copy of the available information concerning his/her driving record from the chief of the driver licensing agency of any other jurisdiction, in Mexico or elsewhere, that issued the applicant a driver's license within the preceding 5 years. See § 240.111(c)(2). Such an applicant must also request, under § 240.111(d), that the National Driver Register database be searched and that any resulting information be provided to the railroad considering certification or recertification.

Question 2: What must a Canadian citizen who has never held a U.S. driver's license do to fulfill the requirements of § 240.111?

Answer 2: A Canadian citizen who has never held a U.S. driver's license and who wishes to be certified under Part 240 must request a copy of the available information concerning his/her driving record from the chief of the driver's licensing agency in the Canadian Province that last issued the applicant a driver's license. Such an applicant must also request a copy of the available information concerning his/her driving record from the chief of the driver's licensing agency of any other jurisdiction, in Canada or elsewhere, that issued the applicant a driver's license within the preceding 5 years. See § 240.111(c)(2). Such an applicant must also request, under § 240.111(d), that the National Driver Register database be searched and that any resulting information be provided to the railroad considering certification or recertification.

Question 3: What must an American citizen who, within the preceding 5 years, has held a driver's license from another country do to fulfill the requirements of § 240.111?

Answer 3: In addition to requesting a copy of the required information from the chief of the driver's licensing agency in the United States that last issued the applicant a driver's license, the applicant must also request a copy of the required information from any other jurisdiction that issued him/her a driver's license in the preceding 5 years. The applicant must also

request, under § 240.111(d), that the National Driver Register database be searched and that any resulting information be provided to the railroad considering certification or recertification.

Question 4: How must a certified locomotive engineer with a current Canadian or Mexican driver's license, or a person with a current Canadian or Mexican driver's license seeking initial certification under Part 240, comply with the disclosure requirements of § 240.111(h)?

Answer 4: Such a person must disclose any incidents described in §§ 240.115(b)(1) and (2) involving specified convictions or completed state actions by a Canadian or Mexican jurisdiction.

Section 240.111(h) requires the person to report to the employing railroad motor vehicle incidents described in §§ 240.115(b)(1) and (2) within 48 hours after "a conviction for, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license for operating a motor vehicle while impaired by alcohol or a controlled substance" (per § 240.115(b)(1)); or 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" (per § 240.115(b)(2)).

FRA is interpreting "State action" to mean action of the jurisdiction that has issued the motor vehicle driver's license. A person with a Canadian driver's license must disclose the above-described actions of the Canadian jurisdiction that issued the license, and a person with a Mexican driver's license must disclose the above-described actions of the Mexican jurisdiction that issued the license.