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Guest Comment

## The FRA says...

### An assessment of the Locomotive Engineer certification regulations a year after implementation

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On January 7, 2000, the Federal Railroad Administration issued revised regulations governing Locomotive Engineer Certification requirements. These regulations were developed cooperatively with significant input from the Brotherhood of Locomotive Engineers and other railroad industry stakeholders through the Railroad Safety Advisory Committee. With more than a year's worth of experience under our belt, we can now begin to assess the impact resulting from the rule changes effecting Part 240 that became final last January. Although there are numerous changes, we believe that it is worthwhile to focus on those changes that are most important to BLE members.

#### Time Limits

Under the new rule, the time limits for filing a petition have been reduced from 180 days to 120 days after the railroad's revocation decision. Every year, a number of petitions are denied because they are submitted after the time has expired. Given the hard work that goes into the average petition, it is unfortunate to deny that work for untimeliness, however, that decision is required in our regulation. Therefore, petitioners are urged to submit petitions as soon as possible after reinstatement. Locomotive Engineer Certification regulations do permit extensions of time limits for good cause, such as extended hospitalization, but the obligation to request special consideration rests with the petitioner or the petitioner's representative. If you believe that your petition will be or may be over the time limit, it is in your best interest to explain the reasons for delay at the time of your submission. Failure to provide justification as to why a petition has been filed late will very likely result in the denial of the petition.

#### Reporting

Locomotive engineers are now required to report any suspension or revocation of their driver's license resulting from the use or possession of alcohol or drugs within

48 hours to the railroad. This requirement does not apply to a driver's license suspension or revocation for other causes.

### **Revocation Periods**

Revocation periods have been reduced under the new rule. The following are the new revocation periods:

- For a first offense, the revocation period is 30 days, which can be reduced by the railroad to 15 days.
- For the second offense within a 24-month period, your license can be revoked for six months. However, at the railroad's option, it can be reduced to three months.
- After a 24 month period, the revocation period for a second offense is 30 days.
- For a third offense within a 36-month period, the suspension is one year, but it can be reduced to six months, at the railroad's option.
- A fourth offense within a 36-month period brings a three year revocation without an option for reduction by the railroad.
- The five-year penalty has been eliminated except for multiple alcohol or drug offenses.

### **Decertification Events**

The new rule clarifies that switches, switch targets, derails, hand signals and movement instructions given via radio are not stop signals for the purpose of decertification.

Violations for excessive speed now occur only if the speed exceeds 10 mph or more above the maximum authorized speed. The reference in the old rule covering "... more than one half the authorized speed" has been removed.

When operations are governed by an operating rule that requires "stopping within half the range of vision," a minor accident/incident does not automatically become a decertification event.

An accident/incident becomes a potential decertification event if it is reportable under FRA's Accident/Incident Reporting Regulations, Part 225. Currently, this means the accident/incident must have resulted in damage of \$6,600 or more to railroad structures and equipment, or that it caused a reportable employee injury under FRA guidelines.

The rule was also clarified to specifically include FRA-required passenger train air brake tests.

### **Visual Acuity**

A list of approved color vision screening tests has also been added to the regulation. Additionally, engineers are now required to notify the railroad if their vision or hearing no longer meet the standards required by the regulation.

The regulation now prohibits the use of Chromatic Lenses during the initial color vision screening tests, but does not prohibit the use of such lenses on any subsequent tests.

### **Pilots**

The requirements for the use of qualified engineer pilots have been addressed in greater detail in the new regulations.

When operating in joint operations territory, pilots must always be qualified engineers. However, the pilot may be a promoted engineer performing service as a conductor and can be an assigned crew member. That is to say, a conductor who is both a certified engineer and is qualified on the territory may pilot the engineer in joint operations territory.

When operating on their home road, engineers who are qualifying over territory where they have never been qualified must be accompanied by a pilot. The pilot must be a qualified engineer and someone other than an assigned crew member.

Also, when engineers are "re-qualifying" on home road territory account time limits have expired, engineers must be accompanied by a pilot who must be qualified on the territory but need not be a qualified locomotive engineer. The pilot may not be a crew member. Additionally, the railroad's certification program must address how these individuals will become qualified on the territory.

Pilots are not required when the average grade is less than one percent over three continuous miles, and:

1. The track is other than main track; or
2. The maximum distance the train will operate does not exceed one mile; or
3. The maximum authorized speed for any operation on the track does not exceed 20 mph; or
4. Operations are at restricted speed (movements must be prepared to stop within half the range of vision).

The above criteria must be permanent and cannot be temporarily manipulated for the purposes of avoiding the application of this regulation.

### **Clarifications**

The new regulations also clarify previously existing regulations.

The rule covering main track authority now reads "occupying main track or a segment of main track without proper authority or permission." This is not a new rule, but it is a restatement of the existing regulation. The Locomotive Engineer Review Board (Board) has always denied decertification petitions for entering working limits or controlled yard limits without permission. The change merely clarifies that the terms "authority" and "permission" mean the same thing.

The tampering portion of the regulation is unchanged. However, knowingly operating a locomotive or train with an inoperative safety device, without authorization or permission, is also considered tampering. Before accepting equipment with an inoperative safety device, the best course of action is to know who gave permission and that proper authorization was given to deactivate the device.

There were no changes to the alcohol and drug provisions of the regulation, however, it is important to note that conductors or other individuals who hold certification cards are ineligible for service as locomotive engineers for nine months if they are found in violation of Rule G (§219.101).

Several other unchanged items which seem to cause confusion are ditch lights and end-of-train devices (EOTs). Engineers are prohibited from operating faster than 20 mph over public crossings when both ditch lights have failed. Under these conditions, operating over a crossing at 30 mph or more would result in a certificate revocation event.

In cases where EOTs are required but fail en route, engineers are prohibited from operating above 30 mph. Under these conditions, operating at 40 mph or more would result in a certificate revocation event.

### **A Few Final Thoughts**

From 1998 to 2000, the average time for completion of petition reviews dropped from 182 days to the present 159 days, matching 1999 as the shortest review time in the Board's history. Overall, the Board has granted 43 percent of the petitions and denied 54 percent, while the remaining 3 percent were dismissed. Very few cases have been appealed beyond the Board.

For the most part, petitions presented to the Board are well organized, clearly communicated, and effectively presented. In a few cases, however, it seems there were misunderstandings. The Board does not exercise a right of discovery. That is to say that the Board works strictly from the written information presented by the petitioner and the railroad. The Board does not seek out additional information from sources within or outside FRA, nor do we supplement the record with personal knowledge.

The standards of review for the Board include review of substantive (factual) issues, and procedural issues. Factual review involves a determination that each element of the violation or regulation has been proven in the record. Brotherhood representatives nearly always handle these matters very well. Procedural matters are a little more difficult. The Board is charged not only with a determination as to whether procedures were violated, but also it must determine that substantial harm to the petitioner occurred as a result of the procedural error. Some of the more common examples of "substantial harm" include failure by the railroad to provide an opportunity for a hearing, and failure of the railroad to prove that the Petitioner waived his rights to a hearing in conformity with the regulation. Other events include when the hearing is presided over by the charging officer (although we do not necessarily view the officer that signs a statement of charges as the "charging officer"). FRA views the charging officer as either the railroad's main witness or the railroad's "prosecutor."

Perhaps the most frequent "substantial harm" issues occur when a presiding officer does not allow a witness to testify when the witness's testimony, taken in the most favorable light to the engineer, may provide a defense to the alleged violation. However, it may not be enough to simply call a witness and rely on the Board's possible understanding of the harm caused by a hearing officer's refusal to allow the witness to testify. For example, failure of the hearing officer to call a signal maintainer as a witness may or may not cause substantial harm, should the railroad elect to call a signal supervisor qualified at the location in question, and who has knowledge of the event. It is the Board's practice to look into the petitioner's line of questioning to see if it suggests that vital aspects of the event did not come to light

as a result of the substitution. A petition is always stronger when a showing of the actual harm is included in the transcript, or at least in the petition.

Finally, I'd like to reiterate that the Brotherhoods are doing an excellent job representing petitioners, and the few suggestions listed above are intended only to make a good process better.

Many, many thanks to President Dubroski, the Office of the President, and the International Division for giving us the opportunity to share this information with you. ·

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**As the eldest of three children, JOHN MEGARY was born in Baltimore, Md., in 1946. His family moved to metropolitan Philadelphia shortly afterward, where he resided for many years with his wife, Mary. The FRA recently transferred Mr. Megary and his family to Texas.**

**After an active tour of duty with the U.S. Army railroad battalion, he hired on with the Pennsylvania Railroad in 1965. Over the course of his career, he worked as a brakeman, conductor, operator, train director, dispatcher and freight agent. He was first elected president of his local lodge in 1967, and went on to serve as secretary-treasurer and a member of the protective committee for more than 10 years.**

**In 1979, he hired on with the Federal Railroad Administration as a hazardous materials inspector. Several years later, he was appointed to the position of regional operating practices specialist. In 1988, he was appointed deputy regional director for FRA's Region 2. The following year, he became regional director, recently re-titled regional administrator.**

**FRA's Region 5 includes Texas, New Mexico, Oklahoma, Arkansas and Louisiana. This is the second Guest Comment by Mr. Megary published in the Locomotive Engineers Journal, the first appearing in the Fall 1995 issue.**

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