



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

VIA E-MAIL ONLY

April 10, 2020

Mr. Michael J. Rush
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Ms. Jo Strang
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Mr. Narayana Sundaram
Senior Director
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**Re: Request for Emergency Relief Affecting All Railroads in the U.S., Emergency Docket
FRA-2020-0002**

Dear Mr. Rush, Ms. Strang, and Mr. Sundaram:

This letter is in reply to the April 3, 2020, letter (Petition) the Federal Railroad Administration (FRA) received in Docket No. FRA-2020-0002 from the Association of American Railroads (AAR), the American Short Line and Regional Railroad Association (ASLRRRA), and the American Public Transportation Association (APTA) (together referred to as the “Petitioners”). Specifically, Petitioners, on behalf of their member railroads, request temporary emergency relief from Title 49 Code of Federal Regulations (CFR) §240.127, *Criteria for Examining Skill Performance*, due to the public health emergency concerning the coronavirus disease 2019 (COVID-19).

On March 13, 2020, FRA Administrator Ronald L. Batory activated the emergency relief docket (ERD) in response to the COVID-19 public health emergency occurring throughout the United States. FRA considered Petitioners’ request under the provisions of 49 CFR § 211.45, *Petitions*

for Emergency Waivers of Safety Rules. A copy of Petitioners' request is available for public review and comment in the ERD.

49 CFR § 240.127 requires railroads' locomotive engineer certification programs to include criteria and procedures for examining the performance skills of persons being evaluated under 49 CFR Part 240 for qualification as locomotive engineers, including candidates for recertification under Part 240. As part of those procedures, paragraph (c)(5) of § 240.127 requires a designated supervisor of locomotive engineers (DSLE) to perform certification rides with a candidate at the controls of a train, or to perform an evaluation of a candidate on a simulator, under conditions designed to assess the candidate's ability to perform the most demanding class or type of service that person will be permitted to perform, and for a sufficient length of time to evaluate the person's ability to operate a train. Petitioners note that both methods of evaluating a locomotive engineer certification candidate's skills require the DSLE and the candidate to be in relatively close physical proximity to each other, making social distancing, as currently recommended by the Centers for Disease Control and Prevention¹ (CDC), virtually impossible.

As an alternative to the certification check rides or simulator evaluations required by § 240.127(c)(5), consistent with the CDC's current recommendations for social distancing, Petitioners ask that FRA allow railroads to evaluate the performance of engineer recertification candidates remotely, utilizing locomotive event recorders. Petitioners assert that event recorders provide data on all pertinent aspects of train handling and are capable of providing that data essentially in real-time. To further ensure the sufficiency of the remote testing, AAR members suggest that the waiver could be conditioned to require analysis of recorder data for fifty miles, or at least two hours, on the most demanding section of the recertification candidate's territory. In addition, Petitioners note that because the requested relief would apply only to candidates for recertification, operational safety will be maintained because the recertification candidate is already an experienced engineer and has already undergone operational testing in his or her previous railroad service.

FRA notes that by a letter dated March 25, 2020, in this docket (Document No. FRA-2020-0002-0025), the agency has already granted Petitioners temporary, emergency relief from the requirements of § 240.127 due to COVID-19. FRA understands, however, that Petitioners' current request is to enable railroads to meet the requirements of paragraph (c) of § 240.127 without having to wait until the COVID-19 public health emergency subsides. Petitioners assert that the requested relief is designed to minimize person-to-person exposure and facilitate social distancing consistent with current CDC guidance. Petitioners further explain the requested relief will help railroads avoid, or cope with, anticipated COVID-19-related staffing shortages, particularly among the relatively small cadre of DSLEs that exist in the railroad labor force.

FRA considered Petitioners' request for emergency relief, and all associated information, and has found that subject to certain conditions, granting Petitioners' request for relief, as outlined below, is in the public interest, necessary to address the COVID-19 public health emergency, and is not inconsistent with railroad safety.

¹ <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>

FRA hereby grants temporary relief from the requirements of § 240.127(c)(5), and permits railroads to use event recorders to conduct the skill performance examination of candidates for recertification under Part 240. Relief is limited to the method of conducting the skill performance examination in paragraph (c)(5) of § 240.127. Railroads must comply with the remainder of § 240.127 and the terms of this relief if they choose to conduct skill performance evaluations during the duration of this waiver. The relief is subject to the following conditions:

1. Each railroad utilizing this relief must maintain a continuously updated list of the certified employees affected, made available to FRA upon request.
2. Each employee's certification record must note that the individual's skill performance evaluation was done under the terms of this waiver.
3. Each railroad utilizing this relief must analyze the event recorder data for at least fifty miles, or at least two hours, in the most demanding class or type of service that the person will be permitted to perform.
4. This relief is limited to only those locomotive engineers whose recertification is due during the period of this waiver. The railroad may not use this relief until all other recertification activities are complete and the skill examination is the final remaining requirement to be completed.
5. Each railroad utilizing this relief must assure the next annual monitoring ride required by § 240.129 includes the criteria required in a skill performance test in compliance with § 240.127(c), including paragraph (c)(5).
6. Railroads must submit the records described in number 1 above in an Excel file format to FRA by email (christian.holt@dot.gov) upon the cessation of this waiver.

As demonstrated by the President's declaration of a nationwide emergency, the impacts of the COVID-19 public health emergency have become extensive and widespread throughout the United States. Accordingly, FRA finds that limiting the relief granted in this letter to only Petitioners' member railroads would be insufficient to address the current emergency situation. As a result, the relief granted in this letter is intended to supplement the relief previously granted to the railroad industry through FRA's March 25, 2020, and March 30, 2020, letters to AAR, ASLRRA and APTA, and all railroads operating within the United States may operate under the terms of this emergency waiver upon notice to the docket. FRA's March 25, 2020, and March 30, 2020, letters are available for review in the docket.²

FRA reserves the right to reopen any docket and reconsider any decision made pursuant to these emergency procedures based upon its own initiative or based upon information or comments otherwise received. *See* 49 CFR § 211.45(j)(1).

This emergency waiver expires 60 days from the date of this letter, or when the FRA Administrator's Emergency Declaration is revoked, whichever is sooner. FRA reserves the

² FRA-2020-0002-0025; FRA-2020-0002-0030.

right to amend or revoke this waiver upon receipt of information pertaining to the safety of railroad operations, or in the event of non-compliance with any condition of this waiver.

The point of contact for this action is Christian B. Holt, Staff Director, Operating Practices Division. Mr. Holt can be reached at 202-366-0978, or at christian.holt@dot.gov. In any future correspondence regarding this waiver, please refer to Docket Number FRA-2020-0002.

Sincerely,

Karl Alexy
Associate Administrator for Railroad Safety
Chief Safety Officer