



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

VIA E-MAIL ONLY

September 18, 2020

Mr. Michael J. Rush
Senior Vice President
Safety and Operations
Association of American Railroads
mrush@aar.org

Re: Request for Longer-term Relief due to COVID-19, Docket Number FRA-2020-0059

Dear Mr. Rush:

On August 5, 2020, the Federal Railroad Administration (FRA) published notice of a request from the Association of American Railroads (AAR) for FRA to extend the relief that FRA previously granted to AAR in the Agency's emergency relief docket (ERD; docket number FRA-2020-0002).¹ Specifically, in a letter dated July 10, 2020,² AAR, on behalf of its member railroads,³ requested that FRA renew the relief previously granted from certain provisions of 49 CFR Parts 213, 214, 217, 218, 220, 228, 232, 236, 240, 242 and 243. FRA considered AAR's request for renewal under the provisions of 49 CFR § 211.45, *Petitions for Emergency Waivers*, and extended the existing emergency relief for 60 days (i.e., until September 18, 2020).⁴ Recognizing AAR's indication that it would need longer-term relief,⁵ FRA instituted a separate waiver proceeding under 49 CFR § 211.41 to evaluate AAR's request for relief on a more long-term basis. FRA assigned that separate waiver proceeding docket number FRA-2020-0059, and this letter responds to the request in that docket.

On September 4, 2020, AAR filed comments in the docket supporting and clarifying its request for relief.⁶ FRA received no other comments in response to its August 5, 2020 public notice.

¹ <https://www.regulations.gov/document?D=FRA-2020-0059-0002>.

² <https://www.regulations.gov/document?D=FRA-2020-0059-0001>.

³ AAR petitions on behalf of its membership, including the Class I railroads, the Genesee and Wyoming railroads, Pan Am Railways, and the National Railroad Passenger Corporation (Amtrak). This letter does not modify or in any way affect the relief granted in docket number FRA-2020-0002 to any entities other than those represented by AAR.

⁴ <https://www.regulations.gov/document?D=FRA-2020-0002-0093>.

⁵ AAR's July 10, 2020 letter notes that the need to practice social distancing will likely continue for a "considerable time," and that "AAR anticipates requesting renewals of the emergency relief intended to facilitate social distancing by railroad employees so long as [the Centers for Disease Control and Prevention (CDC)] guidance recommending social distancing remains in place."

⁶ <https://www.regulations.gov/document?D=FRA-2020-0059-0003>.

In its comments, AAR noted that granting longer-term relief beyond the 60-day increments allowed under FRA's emergency waiver procedures (49 CFR § 211.45) would "facilitate railroad industry compliance with social distancing guidelines issued by [the CDC] and other authorities," and "would remove the need to continue to address these requests every 60 days." In support of its request, AAR notes that some activities required by FRA regulations are at odds with the CDC's social distancing guidelines (*e.g.*, refresher training conducted with groups of railroad employees, or tasks performed by railroad supervisors that do not allow for social distancing in a locomotive cab). Citing the low overall number of railroad employees who have tested positive for coronavirus disease 2019 (COVID-19) so far, AAR also asserts that the emergency relief FRA has granted to date in the ERD has assisted in protecting employee safety during the COVID-19 public health emergency. AAR further notes that FRA safety data for the first six months of 2020 (through June 30, 2020) show that safety has not been adversely impacted by the emergency waivers, and that the "railroad industry is currently on course to exceed prior years' safety performance."

AAR's September 4, 2020 comments further clarify that AAR is not seeking to renew the relief FRA previously granted from certain track inspection requirements of 49 CFR Part 213 (specifically, 49 CFR §§ 213.234 and 213.237). AAR notes that employee safety policies adopted by railroads have allowed for the safe conduct of the inspections required under these sections and, accordingly, continued relief from these requirements is not necessary at this time. AAR's comments, however, clarify and reiterate the railroads' request for relief from the following requirements: (1) certain recurrent/refresher training requirements; (2) operational testing under 49 CFR § 217.9 and corresponding regulatory provisions elsewhere in FRA's rail safety regulations; (3) the quick tie-up provisions of 49 CFR Part 228; and (4) certain provisions of FRA's locomotive engineer and conductor certification regulations (49 CFR Parts 240 and 242). In its comments, AAR also requests that FRA grant the requested waiver "for the duration of the Pandemic, and for six months thereafter," and that FRA reduce the required waiver utilization reporting requirement from weekly to monthly.

Due to the unpredictable nature of the COVID-19 public health emergency, FRA believes it is necessary to provide a certain amount of relief from regulatory requirements to allow railroads the flexibility to respond to their unique operational situations in a safe manner. Since FRA's initial issuance of relief in its ERD due to COVID-19, FRA has closely tracked and monitored railroads' use of the relief authorized. Based on the weekly and more detailed monthly reporting required in FRA's initial grants of relief, FRA has found that the railroads have judiciously exercised the relief as appropriate, exercising relief from certain training and certification requirements more often than relief from safety-critical inspections and operational requirements. The narrowly-tailored conditions of the relief previously granted in the ERD, including the reporting requirements, has enabled FRA to closely monitor implementation of the relief by the industry as a whole, as well as each individual railroad's implementation of the relief.

Specifically, based on AAR's reports of waiver utilization for its members, since FRA initially granted relief in the ERD, a total of six AAR member Class 1 railroads have reported exercising some form of the relief, predominantly related to the training and testing of employees. Four AAR member railroads have reported utilizing, on an intermittent basis, the relief related to

operations and maintenance (including relief from Part 217), and six have reported utilizing, on an intermittent basis, relief related to the training and testing of employees (including relief from Parts 240 and 242, among others).⁷

After careful consideration of AAR's request for relief and all associated information, including relevant comments previously submitted in the ERD, as well as the waiver usage reported for AAR members, FRA finds that, subject to certain conditions and limitations, extending the requested relief is in the public interest and consistent with railroad safety. FRA finds that granting the requested relief for a period of one year, or until three months after the FRA Administrator rescinds the existing Emergency Declaration related to the COVID-19 public health emergency, whichever is sooner, is justified. FRA does not believe that providing an open-ended grant of relief, as AAR requests, is justified. Given that the duration of the COVID-19 public health emergency is unknown and unpredictable at this point, FRA believes that limiting the relief to the shorter of a one-year period, or three months after rescission of the Emergency Declaration, provides the railroad industry sufficient time and flexibility to adjust their operations and practices to address regulatory requirements that they are capable of fulfilling (*e.g.*, to complete any missing refresher training or any outstanding engineer or conductor certification issues). If the COVID-19 public health emergency ends before the expiration of the one-year period, railroads will need time to come back into compliance and complete any outstanding regulatory requirements. Accordingly, FRA grants the requested relief as outlined below, subject to the General Conditions listed below and the specific conditions listed under each subject heading.⁸

General Conditions of Relief

1. The relief granted in this letter is provided to support railroads' ability to operate consistent with the CDC's recommendations for social distancing and limiting the touching of common surfaces. Railroads that find it necessary to utilize the regulatory relief provided by this letter must document the basis on which they concluded that availing themselves of the relief was necessary.
2. Any railroad utilizing any aspect of this waiver is required to report weekly to FRA the following information:
 - a. Railroad;
 - b. Location (Territory/Subdivision/Yard); and
 - c. List of each individual waiver utilized in this location, including the following information:
 - i. Date of occurrence;
 - ii. Anticipated duration; and
 - iii. Conditions necessitating the use of the waiver.

⁷ <https://railroads.dot.gov/coronavirus>.

⁸ FRA notes that, unless indicated otherwise, the conditions of the relief specified in this letter are generally consistent with the conditions FRA imposed on the related relief granted in the ERD.

Railroads using this waiver must report this information through AAR, which must integrate this information and provide it in Microsoft Excel format via e-mail to FRA (karl.alexey@dot.gov) on the Friday following the week being reported.

Recurrent/Refresher Training

By letter dated March 30, 2020, FRA initially granted the railroads relief from the recurrent/refresher training requirements of 14 different CFR parts (Parts 213, 214, 217, 218, 220, 227, 228, 229, 232, 236, 238, 239, 240, and 242).⁹ FRA subsequently extended and clarified that relief in letters dated May 22, 2020¹⁰ and July 20, 2020.¹¹ In its current request for relief, AAR asks FRA to extend this existing relief, and to grant relief from the training requirements of 49 CFR § 270.103(i)(3), which were issued as part of FRA’s System Safety Program (SSP) final rule in March 2020.

Noting that, to comply with COVID-19 directives and guidance, and to protect the health and safety of railroad employees and the public, railroads generally have suspended traditional classroom training and testing, FRA finds that granting relief from the recurrent/refresher training requirements listed in the chart below,¹² subject to certain conditions, is justified.

| 49 CFR Part | 213 | 214 | 217 | 218 | 220 | 227 | 228 | 229 | 232 | 236 | 238 | 239 | 240 | 242 |
|--|----------------|------------|------------|----------------|----------------|------------|------------|------------|----------------|------------|----------------|----------------|------------|------------|
| Frequency (calendar year) or other | 1 ¹ | 1 | N | 3 ² | 3 ² | 1 | N | N | 3 ³ | N | 3 ³ | 2 ³ | C | C |
| ¹ Persons designated by track owner under 49 CFR §§ 213.7(c), 213.305(c) only. ² May integrate with § 217.11(a). ³ Requires classroom, testing, and “hands-on” component. N = Needs based on operational requirements of the employer, employees, or location, or stated in program. Also, may include identified skill gaps from analysis or changes in regulatory requirements. C = Continuing education and frequency as stated in program submission to ensure locomotive engineers and conductors comply with applicable Federal laws, regulations, orders, and railroad safety/operational rules, and are familiar with the physical characteristics of a territory. | | | | | | | | | | | | | | |

Accordingly, consistent with the relief previously granted, FRA grants Petitioners temporary relief from the refresher/recurrent training requirements as depicted in the chart above, subject to the following specific conditions:

1. To the extent practicable, a railroad must meet refresher training requirements by use of computer-based, web-based, or other training methods that can be taken in isolation, at home, or in another controlled environment; and
2. A railroad utilizing this relief must maintain a continuously updated list of employees whose training becomes due during the duration of this waiver, but are

⁹ <https://www.regulations.gov/document?D=FRA-2020-0002-0030>.

¹⁰ <https://www.regulations.gov/document?D=FRA-2020-0002-0073>.

¹¹ <https://www.regulations.gov/document?D=FRA-2020-0002-0093>.

¹² The chart below is based on the chart of refresher/retraining requirements published on page 23 of FRA’s Part 243, “Training, Qualification, and Oversight for Safety-Related Railroad Employees; Compliance Guide” issued in May 2019.

not trained due to the railroad's suspension of a portion of its refresher/recurrent training programs. The training records of each affected employee must be marked to show that the employee's training is being postponed under the terms of this waiver.

Regarding AAR's request for relief from the training requirements of Part 243, FRA is not granting that relief because the first implementation deadline for refresher training in Part 243 is December 31, 2024.

FRA notes that AAR requested that railroads be allowed six months from "the end of the Pandemic" to complete any missed refresher training. Given the uncertainty as to when the COVID-19 public health emergency may end, FRA finds that granting such a request could result in the delay of refresher/recurrent training for an indefinite period; accordingly, FRA does not believe such a request is justified. FRA here requires railroads that avail themselves of relief from the refresher/recurrent training requirements, under the terms of this waiver, ensure individuals whose refresher/recurrent training is delayed as a result of the COVID-19 public health emergency receive the required training by the end of the waiver period.

Regarding AAR's request for relief from the training requirements of § 270.103(i)(3), FRA notes that § 270.103 generally requires railroad employees and others "utilizing or providing significant safety-related services" to be trained on a passenger rail operation's SSP. Paragraph (i)(3) of that section requires a passenger rail operation's SSP training plan to "describe the frequency and content of the system safety program training" that positions receive. Section 270.103 further specifically provides that the training "may include, but is not limited to, classroom, computer-based, or correspondence training." Given the flexibility Part 270 already provides passenger rail operations in developing and delivering training to employees under the SSP rule, and the critical nature of this training as it relates to implementing a successful SSP program, FRA finds that granting AAR's request for relief from the training requirement of § 270.103 is not justified. Accordingly, FRA denies AAR's request for relief from the training requirements of § 270.103(i)(3).

Operational Testing

By letter dated March 25, 2020,¹³ FRA granted the railroads relief from the operational testing requirements of 49 CFR § 217.9 and the related operational testing requirements in Parts 214, 218, 220, 236, 239, 240, and 242. FRA subsequently extended that relief in its letters dated May 22, 2020 and July 20, 2020. In its current request, AAR asks to extend that relief, noting in its September 4, 2020 comments that railroads have not and do not intend to suspend operational testing in its entirety due to the COVID-19 public health emergency. Instead, AAR requests relief to enable railroads to suspend their operational testing programs (or particular aspects of their programs) "as necessary to achieve appropriate social distancing."

Given the CDC's guidance recommending that individuals continue to practice social distancing for the foreseeable future, FRA finds that the railroads' request for relief is justified. Accordingly, FRA grants the railroads relief from the operational testing requirements of 49 CFR § 217.9, and the related operational testing requirements in Parts 214, 218, 220, 236, 239,

¹³ <https://www.regulations.gov/document?D=FRA-2020-0002-0025>.

240, and 242. As with the short-term emergency relief granted in the ERD, railroads shall continue to address any observed operating and safety rule violations as required under normal railroad procedures and continue to require employees to report safety hazards as required under existing railroad procedures.

Any railroad suspending any aspect of an FRA-mandated operational testing and/or inspection program must retain a record of each instance, including the date on which the program was suspended and the date on which the program was reactivated. Railroads must retain these records for a period of one year and, upon request, provide copies of the records to FRA via e-mail.

Quick Tie-Ups Under Part 228

By letter dated March 25, 2020, FRA granted the railroads relief from §§ 228.5 and 228.203(a)(1), which limit the use of quick tie-up procedures, including verbal quick tie-up procedures, to certain circumstances. FRA subsequently extended that relief in its May 22, 2020 and July 20, 2020 letters. In its September 4, 2020 comments, AAR noted that several railroads utilized this relief as provided in the ERD without adverse safety impacts. Further, AAR noted that this relief can reduce the need for railroad employees to work at a computer in a terminal facility from two times per shift to one time per shift, which means that employees are able to avoid unnecessary interactions with other employees from different shifts/jobs and exercise appropriate social distancing as recommended by the CDC.

FRA agrees that continued relief from §§ 228.5 and 228.203(a)(1)'s restrictions on the use of quick tie-up procedures is consistent with the CDC's recommendations for continued social distancing. Further, railroads are required under 49 CFR Part 228, Appendix A, to employ due diligence to avoid or limit excess service. Accordingly, FRA grants relief from §§ 228.5 and 228.203(a)(i)(ii) to allow railroad employees to conduct verbal tie-ups at the end of any duty tour, subject to the following conditions:

1. For any duty tour 12 hours or more, the railroad requires the employee to provide only limited information, not to exceed the following: board placement time; relieved location, date, and time; final release location, date, and time; contact information for the employee during the statutory off-duty period; request for rest in addition to the statutory minimum, if provided by collective bargaining agreement or local practice;
2. Any employee who conducts a verbal quick tie-up must, at the beginning of the next duty tour, complete and certify the hours of service record for the previous duty tour; and
3. The railroad must have an adequate and functioning system in place, allowing employees to contact a designated officer of the railroad to provide tie-up information.

Locomotive Engineer and Conductor Certification (Parts 240 and 242)

By letter dated March 25, 2020, FRA granted relief from certain aspects of Parts 240 and 242 concerning locomotive engineer and conductor certification. That relief extended multiple deadlines throughout Parts 240 and 242 for 60 days, including an extension to complete any

locomotive engineer skill performance examinations required by § 240.127(c)(5) for currently certified engineers. Subsequently, on April 10, 2020, in response to a separate waiver request, FRA modified the relief to also allow railroads to use event recorder downloads from the trains of locomotive engineer recertification candidates to serve as the skill performance examination of those candidates, provided the downloads covered “at least 50 miles or two hours on the most demanding section” of a candidate’s territory. FRA subsequently extended that relief in additional increments of 60 days in its May 22, 2020 and July 20, 2020 letters.

In its September 4, 2020 comments submitted to this docket, AAR requests that FRA extend and amend the previously granted relief in three ways. First, AAR requests that the relief for various deadlines specified in Parts 240 and 242 be extended,¹⁴ and that the existing 36-month certification period for both locomotive engineers and conductors be extended to 48 months. Second, AAR requests that FRA eliminate the conditions FRA imposed in the ERD related to the relief previously granted from 49 CFR § 240.127(c)(5). Third, AAR requests that the relief previously granted from §§ 240.231 and 242.301 in the ERD be extended to obviate the need for an additional train crew member (an engineer pilot or conductor assistant) to be present in the cab of a locomotive, facilitating social distancing.

In support of its requests for relief to extend the deadlines in specific sections of Part 240 and 242, and to extend the recertification deadline of Parts 240 and 242 from 36 months to 48 months, AAR asserts that the tasks required by the identified sections of Parts 240 and 242 continue to present social distancing challenges and concerns, and will continue to do so as long as the CDC’s guidance recommending social distancing remains in place. For example, citing a memorandum from the U.S. Occupational Safety and Health Administration, AAR notes that the availability of clinics or medical professionals to conduct required hearing and visual exams under §§ 240.121 and 242.117 continues to be impacted by the COVID-19 public health emergency. Additionally, AAR asserts that “various education, examination, and operational monitoring requirements [of Parts 240 and 242], have traditionally involved tasks which . . . run afoul of social distancing guidelines.” As examples, AAR cites to Part 240’s requirements for designated supervisors of locomotive engineers to conduct onboard skills evaluations and operational monitoring activities.

FRA agrees that, given the ongoing impacts of the COVID-19 public health emergency, extending the recertification period applicable to currently certified locomotive engineers and conductors, and the corresponding individual deadlines in the identified sections of Parts 240 and 242, is justified. FRA also agrees that extending the relief from §§ 240.231 and 242.301, previously granted in the ERD, to continue to enable railroad employees to practice appropriate social distancing is justified. Regarding AAR’s request to extend the relief from section 240.127(c)(5) and to eliminate the conditions that FRA imposed on that relief in the ERD, FRA agrees that extending the relief is justified, but given the longer-term nature of AAR’s request,

¹⁴ The specific sections from which AAR requests relief are: §§ 240.115 and 242.111 (prior conduct as a motor vehicle operator); §§ 240.121 and 242.117 (vision and hearing); § 240.123 (monitoring for operational performance); §§ 240.123(b) and 242.119(i) (continuing education); §§ 240.125 and 242.121 (knowledge exam); § 240.127 (skills performance exam); § 240.129 (criteria for monitoring operational performance of certified engineers); §§ 240.201(c) and 242.105(c) (36-month certification period for engineers and conductors); §§ 240.217(c)(1) and 242.201(c)(1) (36-month certification period); §§ 240.223 and 242.209 (possession of certificate); and §§ 240.231 and 242.301 (physical characteristics and territorial qualifications).

the conditions on that relief cannot be eliminated. FRA is, however, revising the applicable conditions to ensure that employees are appropriately made aware of how a railroad intends to implement this relief.

Accordingly, as outlined below, FRA extends the deadlines of Parts 240 and 242 for any locomotive engineer or conductor whose recertification becomes due during the duration of this waiver, subject to the following conditions and limitations:

1. Relief from the 36-month certification period of §§ 240.217(c)(1) and 242.201(c)(1) is granted for any locomotive engineer or conductor currently certified under Part 240 or 242, whose certification becomes due during the duration of this waiver, provided the railroad maintains a continuously updated list of the certified employees affected and each employee's certification record is marked to show that individual's compliance with this waiver;
2. The deadlines in §§ 240.405(c) and 242.505(c) are extended 60 days;
3. Relief from §§ 240.223 and 242.209, requiring that certified employees physically possess a certificate, is granted for all employees who may require a new or replacement certificate during the duration of this waiver, provided the railroad maintains a continuously updated list of the certified employees affected and each employee's certification record is marked to show compliance with this waiver. FRA also recommends that railroads send/upload copies of a new or replacement certificate to the employee's railroad-supplied electronic device when available/possible; and
4. The deadlines set forth in the remainder of the Part 240 and 242 sections referenced in footnote 13 may be extended as necessary, provided no individual's recertification period exceeds 48 months.

By the 15th of each month, any railroad that utilized the relief described directly above during the previous month must submit to FRA a list of the certified employees affected. The list must be submitted by e-mail in Microsoft Excel file format to FRA's Operating Practices Staff Director (christian.holt@dot.gov).

Additional Conditions Applicable to Relief from §§ 240.231 and 242.301

Regarding AAR's request for continued relief from §§ 240.231 and 242.301, FRA finds that granting the requested relief subject to the same conditions and limitations as outlined in the ERD to facilitate the ability of railroad employees to practice social distancing is justified.

Accordingly, FRA grants Petitioners' request for relief from § 240.231(a) and (b) and § 242.301(c)'s employee qualification requirements, subject to the following specific conditions:

1. The railroad must determine that no territorial qualified engineer or conductor is available;
2. Engineers or conductors that were qualified on the territory, but whose qualifications have lapsed, must be assigned over an engineer or conductor that was not initially qualified over the territory;

3. An engineer that is certified in the most demanding service should be assigned ahead of those engineers with a less demanding service as documented in their individual records;
4. If the locomotive engineer is qualified on the portion of track to be operated over, and the conductor is not qualified or had a previous qualification on the portion of track that has expired, the train may be operated without restriction;
5. If neither the locomotive engineer nor conductor is qualified on a portion of track, but the train is positive train control (PTC) active/engaged, the train must operate at a speed not to exceed 40 MPH (Key trains will not exceed 30 MPH), with an up-to-date job aid (track chart);
6. If neither the locomotive engineer nor conductor is qualified on a portion of track, and the train is not PTC active, the crew must operate at restricted speed with an up-to-date job aid (track chart);
7. If an engineer is called to work a territory that the engineer is not currently qualified on, to the extent possible, that engineer must only operate a train that is similar to a train (e.g., tonnage and length) that the engineer normally operates;
8. Crew members and managers must conduct a thorough job briefing prior to train movement and if any member of the train crew is unsure of the movement, the train must be stopped;
9. Railroads must report to FRA by e-mail (FRAOPCERTPROG@dot.gov) within 24 hours of any occurrence of a PTC enforcement, decertification event, or any incident or accident below the reporting threshold that occurs when neither the locomotive engineer nor the conductor is qualified on a portion of track; and
10. Railroads must maintain for a period of 1 year a record of each instance where relief from §§ 240.231 or 242.301 is used. The record must contain the following information:
 - a. Railroad;
 - b. Train Symbol/ID;
 - c. Name of Engineer and/or Conductor;
 - d. Date/Time Crewmembers ordered into service;
 - e. Territory/Subdivision;
 - f. Train Type, Tonnage, Length, HAZMAT, and placement;
 - g. Conventional or DPU;
 - h. Afforded Job Aids, Track Profiles, Bulletins, Special Instructions, Playbooks etc.;
 - i. PTC Speed Limit (40/30 MPH);
 - j. Any PTC Enforcement (must be reported to FRA as described below); and
 - k. Any Accident/Incident, including non-reportable Accident/Incidents, and any emergency brake applications (must be reported to FRA as described below).

By the 15th of each month, any railroad that utilized the relief described directly above during the previous month must submit to FRA the records described above for the certified employees affected. The list must be submitted by e-mail in Microsoft Excel file format to FRA's Operating Practices Staff Director (christian.holt@dot.gov).

FRA reminds railroads that once the COVID-19 public health emergency has ended, employees not qualified on particular territories, but who operate over those territories under the terms of this waiver, are not considered qualified under either §§ 240.231 or 242.301. For those

employees to become qualified on any territory they operated over pursuant to the terms of this waiver, full compliance with §§ 240.231 and 242.301 is required.

Conditions Applicable to Relief from § 240.127(c)(5)

As previously granted in the ERD, the relief from § 240.127(c)(5) allows railroads to use locomotive event recorder downloads to meet the requirements for periodic locomotive engineer skills rides to support the recertification of locomotive engineers, provided certain conditions are met.¹⁵ First, the existing relief is limited to situations where all other recertification activities are complete (*e.g.*, vision and hearing screening). Second, the existing relief is also limited to situations where a locomotive engineer's recertification becomes due during the waiver period. AAR asserts that these two conditions limit "the ability of railroads to use event recorder data to comply with" § 240.127(c)(5). AAR notes that many employees do not complete the other required certification activities (such as vision and hearing screening) until the deadline for recertification is near. As a result, limiting the applicability of the relief to situations where all other aspects of an individual's recertification have been completed, AAR asserts, "significantly limits the waiver's utility." Similarly, AAR argues that limiting the waiver's applicability to locomotive engineers whose recertification becomes due during the waiver period would prevent railroads from "taking proactive action to timely maintain compliance with required recertification activities for employees whose certification" expires outside of the waiver period. Accordingly, AAR asks FRA to eliminate these two conditions.

FRA finds that granting the requested relief from § 240.127(c)(5) is consistent with the CDC's guidance for social distancing and is justified. The relief enables designated supervisors of locomotive engineers to evaluate a locomotive engineer recertification candidate's skills remotely, as opposed to being in close proximity to the candidate in a locomotive or on a simulator). For the practical reasons noted in AAR's request for relief, FRA also finds that eliminating the existing conditions associated with this relief in the ERD is justified. However, given the longer-term nature of the relief being requested, FRA believes it is necessary to ensure employees are made aware of how a railroad is implementing this relief and individual employees should be made aware when a railroad intends to utilize a locomotive event recorder download for purposes of conducting a skills evaluation of the employee. Accordingly, FRA grants AAR's request for relief from section 240.127(c)(5), subject to the following conditions:

1. Before implementing this relief, a railroad must develop and submit to FRA a document (plan) demonstrating how it will utilize an event recorder download to meet the requirements of section 240.211 (*e.g.*, how a railroad will evaluate an individual's performance based on an event recorder download);
2. A railroad's plan must:
 - a. Include a process for notifying employees prior to the use of an event recorder download under the terms of this waiver;
 - b. Provide for the railroad's evaluation of the employee's skills to be completed before that employee can operate another train; and
3. Concurrently with submission to FRA, a railroad must submit a copy of its plan, and a certification that the plan complies with the conditions of this waiver, to the docket for this waiver proceeding (docket number FRA-2020-0002).

¹⁵ <https://www.regulations.gov/document?D=FRA-2020-0002-0052>.

By the 15th of each month, any railroad that utilized the relief described directly above during the previous month, must submit to FRA a report including: (1) the name of any employee evaluated under this relief; (2) the date, time, and assigned territory over which the employee was evaluated; and (3) the results of the evaluation (*i.e.*, pass/fail). The report must be submitted by e-mail in Microsoft Excel file format to FRA's Operating Practices Staff Director (christian.holt@dot.gov).

FRA reminds railroads that once the COVID-19 public health emergency has ended, employees not qualified on particular territories, but who operate over those territories under the terms of this waiver, are not considered qualified under either §§ 240.231 or 242.301. For those employees to become qualified on any territory they operated over pursuant to the terms of this waiver, full compliance with §§ 240.231 and 242.301 is required.

The relief granted in this letter expires 12 months from the date of this letter, or 3 months after the FRA Administrator's rescission of the existing Emergency Declaration related to the COVID-19 public health emergency, whichever is sooner.

FRA reserves the 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. FRA also reserves the right to reopen any docket and reconsider any decision made, based upon its own initiative or based upon information or comments otherwise received.

FRA looks forward to working with you to help ensure the continued safety of railroad operations during this national emergency. If you have questions, I can be reached at 202-493-6282, or at karl.alexey@dot.gov.

Sincerely,

Karl Alexy
Associate Administrator for Railroad Safety
Chief Safety Officer