



U.S. Department  
of Transportation

**Federal Railroad  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

VIA E-MAIL ONLY

September 18, 2020

Jo Strang  
Senior Vice President  
Safety & Regulatory Policy  
American Short Line and Regional Railroad Association  
JStrang@aslrri.org

**Re: Docket Number FRA-2020-0063**

Dear Ms. Strang:

On August 5, 2020, the Federal Railroad Administration (FRA) published notice of a request from the American Short Line and Regional Railroad Association (ASLRRA) for FRA to extend certain aspects of the relief the Agency previously granted to ASLRRA in FRA's emergency relief docket (ERD; docket number FRA-2020-0002).<sup>1</sup> Specifically, in a letter dated July 14, 2020, ASLRRA, on behalf of its member railroads, 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.<sup>2</sup> FRA considered ASLRRA'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).<sup>3</sup> Recognizing ASLRRA's indication that it would need longer-term relief,<sup>4</sup> FRA instituted a separate waiver proceeding under 49 CFR § 211.41 to evaluate ASLRRA's request for relief on a more long-term basis. FRA assigned that separate waiver proceeding docket number FRA-2020-0063, and this letter responds to the request in that docket.

ASLRRA's letter enclosed a chart indicating that ASLRRA requests renewal of the relief from the following regulatory provisions as previously granted by letter dated May 22, 2020, and extended on July 20, 2020:

- Track (Time-based track/rail inspections):
  - § 213.233(c), inspection frequencies for main line track including sidings

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<sup>1</sup> <https://www.regulations.gov/document?D=FRA-2020-0063-0002>.

<sup>2</sup> <https://beta.regulations.gov/document/FRA-2020-0002-0092>. ASLRRA did not, in its July 14, 2020, letter, seek to renew relief involving the non-training aspects of 49 CFR Parts 229, 232, 234, or 236.

<sup>3</sup> <https://www.regulations.gov/document?D=FRA-2020-0002-0093>.

<sup>4</sup> ASLRRA's July 14, 2020 letter notes that the Centers for Disease Control and Prevention (CDC) guidance on social distancing is expected to remain in place for the "foreseeable future."

- § 213.234, automated quarterly, semiannual, or yearly inspections of track constructed with concrete cross-ties
- § 213.237, internal rail quarterly, semiannual, or yearly inspections
- Operational Testing
  - Part 214, Operational Tests
  - § 217.9, Operational Tests and Inspections of Employees
  - Part 218, Operational Tests
  - Part 220, Operational Tests
  - Part 236, Operational Tests
  - Part 240, Operational Tests
  - Part 242, Operational Tests
- Training
  - § 213.7(c)(2), Continuous Welded Rail Training
  - § 214.343, Training and qualification, general
  - § 214.345, Training for all roadway workers
  - § 214.347, Training and qualification for lone workers
  - § 214.349, Training and qualification of watchmen/lookouts
  - § 214.351, Training and qualification of flagmen
  - § 214.353, Training and qualification of each roadway worker in charge
  - § 214.355, Training and qualification of each roadway worker in on-track safety for operators of roadway maintenance machines
  - § 214.357, Training and qualification for operators of roadway maintenance machines equipped with a crane
  - § 217.11, Program of instruction on operating rules; recordkeeping; electronic recordkeeping
  - § 232.203(b)(8), brake inspection and testing requirements – training
  - [Part] 243, Training, qualification, and oversight for safety-related railroad employees
- Quick Tie-Ups
  - § 228.5, Quick tie-ups
  - § 228.203(a)(i)(ii), Quick tie-up – verbal / facsimile or other electronic means
- Engineer Certification
  - § 240.115, prior conduct as a motor vehicle operator
  - § 240.121, vision and acuity
  - § 240.123, monitoring for operational performance
  - § 240.123(b), continuing education
  - § 240.125, knowledge exam
  - § 240.127, skills performance exam
  - § 240.129, criteria for monitoring operational performance of certified engineers
  - § 240.201(c), 36-month certification period engineer
  - § 240.217(c)(1), 36-month certification period
  - § 240.223, engineer must possess a certificate
  - § 240.231, physical characteristics
- Conductor Certification
  - § 242.105(c), 36-month certification period conductor
  - § 242.111, prior conduct as a motor vehicle operator

- § 242.119(i), continuing education
- § 242.117, vision and acuity
- § 242.121, knowledge exam
- § 242.201(c)(1), conductor must possess a certificate
- § 242.209, criteria for certification of conductor
- § 242.301, territorial qualifications
- § 242.401, time limitations for making determinations<sup>5</sup>

In support of its request for relief, ASLRRA noted that FRA had previously granted short line railroads two types of emergency relief due to the coronavirus disease 2019 (COVID-19) public health emergency: (1) relief to enable railroad employees to practice social distancing as recommended by the CDC; and (2) relief in the event railroads face workforce shortages as a direct result of COVID-19 (*i.e.*, due to employee illness or quarantine).<sup>6</sup> ASLRRA further noted that the need to observe social distancing is expected to remain in place for the foreseeable future, and asserted that “[e]xtending the relief from regulations granted for social distancing purposes will enable the railroads and their employees to maintain safe workplace practices consistent with social distancing requirements.” Further, ASLRRA asserted that short line railroads utilize contractors for track, signal, and locomotive inspections, and that, as a result of COVID-19, contracting companies have implemented travel restrictions out of concern for employee health and safety. Due to contractor-related travel restrictions, some short line railroads have been unable to meet the required inspection intervals under FRA’s track safety standards and have had to use the relief previously granted in the ERD to remain in compliance with Federal safety requirements.

ASLRRA’s July 14, 2020 letter also requests clarification of the scope of the relief previously provided in the ERD from certain training requirements. Specifically, citing the need for relief from annual continuous welded rail training under 49 CFR § 213.7(c)(2) and refresher training for roadway workers under 49 CFR §§ 214.343–214.357, ASLRRA asks if such relief was included in the previously granted relief, and assuming it is within the scope of the previously granted relief, ASLRRA asks that relief from these requirements be extended.

No comments were received in response to the August 5, 2020 public notice.

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,

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<sup>5</sup> By the reference to “time limitations for making determinations,” FRA understands ASLRRA to be referring to section 242.201, not section 242.401 (which addresses the denial of a conductor’s certification).

<sup>6</sup> The majority of the regulatory relief that ASLRRA seeks to extend in this proceeding supports social distancing. Only the relief from Part 213 is predicated on the existence of a workforce shortage.

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 reporting for short line railroads (including reporting from ASLRRRA and individual short line railroads), since FRA initially granted relief in the ERD, a total of 23 short line railroads have reported exercising some form of the relief, predominantly related to the training and testing of employees. Of those 23 short line railroads, seven have reported utilizing the relief related to testing and inspection intervals (including relief from Parts 213, 229, 234, and 236), seven have reported utilizing the relief related to operations and maintenance (including relief from Part 217), and 22 have reported using relief related to the training and testing of employees (including relief from Parts 240 and 242, among others).<sup>7</sup>

After careful consideration of ASLRRRA's request for relief and all associated information, including relevant comments previously submitted in the ERD and the reported waiver usage for short line railroads, FRA finds that, subject to certain conditions and limitations, extending the requested relief is in the public interest and consistent with railroad safety. Specifically, FRA finds that granting the relief as detailed below, for a period of one year or three months after the FRA Administrator rescinds the existing Emergency Declaration related to the COVID-19 public health emergency, whichever is sooner, 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.<sup>8</sup>

### **General Conditions of Relief**

1. With certain exceptions, as specified below, the relief granted in this letter is generally conditioned on the existence of workforce shortages and other constraints as a direct result of the impacts of the COVID-19 public health emergency, preventing individual railroads from timely completing all federally mandated railroad safety tests and inspections, or other requirements.<sup>9</sup> 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.

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

<sup>8</sup> 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.

<sup>9</sup> Relief is granted from section 217.9 and the other operational testing requirements identified, certain recurrent training requirements, and Parts 240 and 242 (not including §§ 240.231 and 242.301) regardless of the availability of an adequate workforce. This is because such relief supports the CDC's recommendations for social distancing and limiting the touching of common surfaces, as noted below.

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. List of staff/manpower shortages or other conditions necessitating the use of the waiver.

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

### **Specific Conditions of Relief**

#### ***Part 213 – Track Safety Standards***

As explained in ASLRRA’s July 14, 2020 letter, and as noted above, short line railroads, unlike larger railroads, often depend on contractor personnel to conduct track inspections. The COVID-19 public health emergency has resulted in contracting companies implementing travel restrictions out of concern for employee health and safety. Due to these ongoing contractor-related travel restrictions, some short line railroads are currently unable to meet the required inspection intervals under FRA’s track safety standards and accordingly ASLRRA asked that FRA extend the previously-granted relief from those standards. Each of ASLRRA’s specific track-related extension requests are discussed below.

#### **213.233, 213.234, 213.237 (track inspection time-interval-dependent requirements)**

Given significant workforce shortages, and consistent with previously granted relief,<sup>10</sup> ASLRRA requests that FRA grant relief from the following track inspection time-interval-dependent requirements in Part 213:

- a. Inspection frequencies specified in § 213.233 for main line track including sidings;
- b. § 213.234 automated quarterly, semiannual, or yearly inspections of track constructed with concrete crossties; and
- c. § 213.237 internal rail quarterly, semiannual, or yearly inspections.

Consistent with the relief previously granted, FRA grants the railroads relief from the provisions of §§ 213.233(c), 213.234, and 213.237, subject to the following specific conditions:

1. The railroad track owner must first determine that no qualified track inspector or qualified contractor and/or manager as defined in section 213.7 is available;

<sup>10</sup> <https://www.regulations.gov/document?D=FRA-2020-0002-0025>.

2. When no qualified track inspector or qualified contractor and/or manager as defined in section 213.7 is available, the following table replaces the section 213.233(c) table, which defines the required track inspection schedule:

<b>Class of track*</b>	<b>Type of track</b>	<b>Required frequency</b>
Excepted track and Class 1, 2, and 3 track	Main track and sidings	Every two (2) weeks with at least a six (6) calendar day interval between inspections, or Before use, if the track is used less than once a week, or Weekly with at least a five (5) calendar day interval between inspections, if the track carries passenger trains or more than 10 million gross tons of traffic during the preceding calendar year.
Excepted track and Class 1, 2, and 3 track	Other than main track and sidings	Every six (6) weeks with at least a 20-calendar day interval between inspections.
Class 4 and 5 track		Weekly with at least a five (5) calendar day interval between inspections.

\*Any railroad implementing this relief on Class 2 track or above must reduce the track speed of the affected track to the next lower track class; and

3. During periods of significant workforce shortages resulting from the COVID-19 public health emergency that limit a Petitioner's ability to perform the inspection within a territory, subdivision, or area of track within the timeframes required under section 213.234(b) or 213.237, petitioners are permitted to reschedule the regulatory required inspections for up to 60 days.

### ***Part 217- Railroad Operating Rules and Operational Testing Generally***

In its letter dated March 25, 2020, 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<sup>11</sup> and July 20, 2020.<sup>12</sup>

Consistent with the relief previously granted,<sup>13</sup> 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, 240, and 242. As with the short-term emergency relief granted in the ERD, railroads shall continue to address any observed operating and safety

<sup>11</sup> <https://www.regulations.gov/document?D=FRA-2020-0002-0072>.

<sup>12</sup> <https://www.regulations.gov/document?D=FRA-2020-0002-0095>.

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

rule violations as required under normal railroad procedures, and must 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.

### ***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).<sup>14</sup> FRA subsequently extended that relief in letters dated May 22, 2020 and July 20, 2020.

FRA notes that its May 22, 2020 and July 20, 2020 letters did not include the chart specifying the 14 different CFR parts for which it was waiving the requirements for refresher training that was contained in FRA's March 30, 2020 letter. Instead, in those letters, FRA merely referred to Part 243, FRA's training standards rule. However, referencing Part 243 was an inadvertent error as the first implementation date for refresher training under Part 243 is not until December 31, 2024. Accordingly, in this letter, FRA is correcting this error by reproducing the chart of specific CFR Parts for which relief from the refresher training requirements is granted. FRA intends this chart to clarify the scope of relief previously granted from the refresher/recurrent training requirements, and FRA specifically notes that the previously granted relief includes relief from 49 CFR §§ 213.7(c)(2) and 214.343 – 214.357.

Consistent with the previous relief granted, FRA finds that granting relief from the recurrent/refresher training requirements listed in the chart below, subject to certain conditions, is justified. This action is appropriate to facilitate the railroads' efforts to comply with COVID-19 directives and guidance, and to protect the health and safety of railroad employees and the public. In addition, FRA recognizes that railroads generally have suspended traditional classroom training and testing in light of the public health emergency.

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<sup>14</sup> <https://www.regulations.gov/document?D=FRA-2020-0002-0030>.

<b>49 CFR Part</b>	<b>213</b>	<b>214</b>	<b>217</b>	<b>218</b>	<b>220</b>	<b>227</b>	<b>228</b>	<b>229</b>	<b>232</b>	<b>236</b>	<b>238</b>	<b>239</b>	<b>240</b>	<b>242</b>
Frequency (calendar year) or other	1 <sup>1</sup>	1	N	3 <sup>2</sup>	3 <sup>2</sup>	1	N	N	3 <sup>3</sup>	N	3 <sup>3</sup>	2 <sup>3</sup>	C	C
<sup>1</sup> Persons designated by track owner under 49 CFR §§ 213.7(c), 213.305(c) only. <sup>2</sup> May integrate with § 217.11(a). <sup>3</sup> 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 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 ASLRRRA’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.

### ***Part 228 – Quick Tie-Ups***

By letter dated March 25, 2020,<sup>15</sup> 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.

FRA finds 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:

<sup>15</sup> <https://www.regulations.gov/document?D=FRA-2020-0002-0025>.



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.

***Part 240 - Locomotive Engineer Certification and Part 242 - Conductor Certification***

In its letter dated March 25, 2020, FRA granted the railroads 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 section 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.

Given the ongoing nature of the COVID-19 public health emergency, FRA finds that extending the relief previously granted is justified. Further, FRA notes that the Association of American Railroads (AAR) requested a similar extension of existing relief in docket number FRA-2020-0059. Among other requests, AAR requested that the relief for various deadlines specified in Parts 240 and 242 be extended,<sup>16</sup> and that the existing 36-month certification time period for both locomotive engineers and conductors be extended to 48 months.

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 asserted that the tasks required by the identified sections of Parts 240 and 242 noted above 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

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<sup>16</sup> 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).

example, citing a memorandum from the U.S. Occupational Safety and Health Administration, AAR noted 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 noted 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 cited to Part 240’s requirements for designated supervisors of locomotive engineers to conduct onboard skills evaluations and operational monitoring activities.

FRA finds that AAR’s arguments in support of its request for an extension of the relief granted in the ERD related to Parts 240 and 242 apply equally to ASLRRRA’s request for relief. FRA finds 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.

Accordingly, as outlined below, FRA extends the recertification deadline of existing 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. With the exception of §§ 240.231 and 242.301, which are discussed below, the deadlines set forth in the remainder of the Part 240 and 242 sections referenced in footnote 15 that come due during the duration of this waiver may be extended as necessary, provided no individual’s recertification period exceeds 48 months.

By the 15<sup>th</sup> 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](mailto:christian.holt@dot.gov)).

Additional Conditions Applicable to Relief from §§ 240.231 and 242.301

Regarding ASLRRRA'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 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 with 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 miles per hour (Key trains will not exceed 30 miles per hour), 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](mailto: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 shall 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 15<sup>th</sup> 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](mailto: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](mailto:karl.alexey@dot.gov).

Sincerely,

Karl Alexy  
Associate Administrator for Railroad Safety  
Chief Safety Officer