June 30, 2020

VIA ELECTRONIC MAIL

Ronald L. Batory
Administrator
Federal Railroad Administration
U.S. Department of Transportation
1200 New Jersey Avenue, S.E. Washington, D.C.
20590

RE: Petition for Rulemakings; Executive Order No. 13924

Dear Administrator Batory:

The Association of American Railroads\(^1\) (AAR) and the American Short Line and Regional Railroad Association (ASLRRA), on behalf of themselves and their member railroads (the railroads), petition FRA for rulemakings under the President’s Executive Order No. 13924 (EO 13924) and the procedures at 49 C.F.R. Part 211.\(^2\) As you are aware, the President has declared a nationwide emergency pursuant to 42 U.S.C. § 5191(b). This declaration is in response to Coronavirus Disease 2019 (COVID-19) outbreaks. COVID-19 impacts on the citizens of the United States, and resultant social distancing guidelines and widespread stay-at-home orders have resulted in significant economic impacts to our country, including to the railroad industry.\(^3\)

As such, on May 19, 2020, the President issued EO 13924, which directed regulatory agencies to identify and temporarily or permanently rescind, modify, or waive regulatory requirements where appropriate to help promote economic growth and job creation.\(^4\) EO 13924 also requires regulatory agencies to review regulatory standards they have temporarily rescinded, suspended,

\(^1\) AAR is a trade association whose membership includes freight railroads that operate 83% of the line-haul mileage, employ 95% of the workers, and account for 97% of the freight revenues of all railroads in the United States; and passenger railroads that operate intercity passenger trains and provide commuter rail service. ASLRRA is a non-profit trade association representing the interests of approximately 600 short line and regional railroad members and railroad supply company members in legislative and regulatory matters. Short lines operate 47,500 miles of track in 49 states, or approximately 29% of the national freight network, touching in origin or destination one out of every five cars moving on the national railroad system, serving customers who otherwise would be cut off from the national railroad network. Short lines provide 100% of freight transportation in five states, and more than 25% in thirty-six states, keeping small town and rural America connected to the U.S. economy and beyond.


\(^3\) See AAR WEEKLY RAIL TRAFFIC FOR THE WEEK ENDING JUNE 6, 2020; available online at: https://www.aar.org/news/weekly-rail-traffic-for-the-week-ending-june-6-2020/.

modified, or waived during COVID-19, and “... determine which, if any, would promote economic recovery if made permanent.”

At the outset, the railroads encourage FRA and the U.S. Department of Transportation to take regulatory actions consistent with EO 13924 that allow for further adoption of modernized railroad inspection, maintenance, operating, and training practices that would enable overall improved railroad safety and increased efficiencies and freight network fluidity during any economic conditions, assisting in economic recovery. More efficient service for railroad customers would encourage economic growth and job creation not only within railroads, but up and down the vast supply chains involving the thousands of customers the freight railroad industry serves. Today, U.S. rail network accounts for 40 percent or more of long distance U.S. freight movements by ton-miles. As recently as 2017, the operations and capital investment of America’s major freight railroads supported approximately 1.1 million jobs (nearly eight jobs for every railroad job), $219 billion in economic output, and $71 billion in wages. Railroads also generated over $25 billion in tax revenues.

Regulations that facilitate modernized practices further enable railroads to build on the outstanding safety record the industry has realized in recent years. For example, in light of modern track inspection and maintenance practices, the track-caused accident rate in the railroad industry have fallen by 50% in the last two decades. With benefit of modernized training, safety oversight programs and use of newer safety technologies, the occurrence of human factor-caused accidents in recent years has represented roughly half the number of occurrences of 15 years ago. Further, the railroad employee injury rate is down 46% in the last twenty years. This fact is emphasized by the chart below comparing casualty data from various industries, and is a testament to the existing preventative safety and compliance programs railroads have in place:

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5 Id. at 31,355.
7 Bureau of Transportation Statistics, FREIGHT FACTS AND FIGURES; available online at: https://datahub.transportation.gov/stories/s/45xw-qksz.
8 Supra note 6.
10 Id.
11 Id.
Actions taken under EO 13924 to promote economic recovery would assist railroads in driving continued safety improvements while also fulfilling the regulatory modernization efforts underway across government. More efficient and safer railroad operations allow for better customer service, benefitting the significant portion of the U.S. economy touched by freight railroad transportation.

Under EO 13924, in the areas of temporary waivers that have been granted during COVID-19, in March and April 2020, the railroads petitioned FRA for emergency relief under FRA’s COVID-19 emergency relief docket. See Docket No.’s FRA-2020-0002-0022 and -0039. FRA granted such relief, and, on May 22, 2020, renewed the social distancing-related temporary COVID-19 waivers upon request by the railroads. Docket No. FRA-2020-0002-0073. Since issuance of EO 13924, the railroads have evaluated the temporary waivers that have been granted during COVID-19, and other traditional waivers that have been issued over time by the FRA Railroad Safety Board (Safety Board).

The railroads have identified two regulations that are temporarily waived due to COVID-19 that we petition FRA here to make permanent by rule, as well as one additional regulation that is currently waived for several railroads under 49 C.F.R. § 211.41 by the Safety Board. The railroads petition FRA to promulgate interim final rules for good cause making permanent the allowances to: 1) utilize the “quick tie-up” provisions in 49 C.F.R. Part 228 on a more regular basis; 2) permit railroads to use locomotive event recorder downloads to conduct the skills performance examination of candidates for locomotive engineer recertification under §
240.127(c)(5); and, 3) use web-based simulation training to fulfill the 49 C.F.R. § 232.203 requirements to provide “hands-on” training to employees performing certain air-brake related tasks. Codification of these temporarily-waived provisions is consistent with safety and will enable conditions conducive to improving overall railroad efficiency to encourage economic recovery.

49 C.F.R. Part 228 – Quick Tie-Up

In the railroads’ initial petition for temporary relief under the FRA COVID-19 emergency relief docket, we requested relief from the “quick tie-up” provisions in 49 C.F.R. §§ 228.5 and 228.203(a)(1)(ii) for railroads that employ electronic or automated hours of service recordkeeping systems. These provisions only allow for the use of a verbal quick tie-up in limited circumstances for certain employees subject to existing part 228. The March 21 request for temporary relief was to expand the use of verbal quick tie-ups to include any time prior to the twelve-hour on-duty mark for a subject railroad employee’s completion of a duty tour. This request was intended to minimize person-to-person exposure and facilitate social distancing to limit the potential spread of COVID-19 (reduced use of common high-touch surfaces (e.g., computer terminal keyboards)). FRA granted this relief, and it is currently due to expire on July 21. The relief granted by FRA specified that:

- A railroad must employ due diligence to avoid or limit excess service as required under 49 C.F.R. Part 228, Appendix A;
- For any duty tour twelve hours or more, the railroad requires the employee to provide only limited information not to exceed 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;
- An employee who conducts a verbal quick tie-up, shall, at the beginning of his or her next duty tour, complete and certify his or her hours of service record for the prior duty tour; and
- The railroad has an adequate and functioning system in place allowing employees to contact a designated railroad officer to provide tie-up information.

During the course of the pandemic, as has been reported to FRA on a weekly basis, several railroads have utilized this temporary relief without adverse safety impacts. The waiver is largely administrative and non-controversial in nature, merely providing for an alternate, abbreviated, method of appropriately tying up and reduces the need to work at a computer in a terminal facility from two times per shift to one time per shift. In addition to that efficiency, this method of tying up also benefits railroad employees. Use of a quick tie-up procedure permits railroad employees to be off duty and off railroad property sooner than otherwise when burdened with standard tie-up procedures under existing part 228. Further, given the uncertain course of COVID-19 and how long the pandemic may last, making this relief permanent would alleviate burdens on both FRA and the industry to again address this relief in the future. By not requiring employees to re-enter a terminal facility at the end of an on-duty period, employees are able to avoid unnecessary social interactions with other employees from different shifts/jobs, increasing employee safety. The railroads request FRA adopt an interim final rule that would amend part
228 to allow for the use of quick tie-up procedures in any circumstance when an employee’s duty tour ends, regardless of the time on-duty. The conditions specified above in FRA’s temporary grant of relief on this topic are agreeable to the railroads to govern the use of this procedure on a permanent basis.

49 C.F.R. § 240.127 – Recertification/Locomotive Event Recorder Downloads

Next, the railroads petition FRA to permanently codify the allowance to utilize a locomotive event recorder download to comply with the existing requirement at 49 C.F.R. § 240.127(c)(5) that a designated supervisor of locomotive engineers (DSLE) perform skills performance recertification rides with a candidate at the controls of a train or a simulator. Use of a locomotive event recorder download is already permitted to be used under corresponding § 240.129 for monitoring the operational performance of locomotive engineers. Event recorders provide data on all pertinent aspects of train handling, and via modern technology not generally available upon part 240’s initial promulgation, are now capable of providing that data to a DSLE in essentially real-time, and of providing more operational and safety parameters for review by a DSLE than do simulators in some instances.

Per the conditions specified in FRA’s April 10, 2020, temporary grant of relief on this subject, the railroads proffer that if permanently codified a DLSE conducting recertification under this provision would be required to analyze recorder data for fifty miles, or at least two hours, on the most demanding section of service for the locomotive engineer being recertified (or, if on smaller or commuter railroads these distance/time parameters are not possible, on the longest and most demanding service present that the locomotive engineer would operate a train over). Docket No. FRA-2020-0002-0052. Reviewing an event recorder download of an actual run over the territory a locomotive engineer operates over may be more beneficial than the currently permitted simulator evaluations, which may not necessarily reflect the actual physical characteristics of a specific territory to which an engineer is assigned. Also, the ability to review an event recorder download is similar to recertification skills performance evaluations conducted via simulator, where a DSLE may review simulator read-outs in making recertification decisions as multiple recertification candidates conduct simulated runs at one time at a railroad facility.

As also specified in the temporary grant of relief, this proposed amendment to § 240.127 would apply only to candidates for recertification. Operational safety would not be affected because the recertification candidate is already an experienced locomotive engineer who has previously undergone initial certification under part 240 and has been the subject of ongoing operational monitoring under § 240.129 and parts 217, 218, & 220. Practically, the only difference between § 240.127 and 240.129 in this regard is § 240.127 specifies the skills examination must be performed on the most demanding class or type of service the engineer will perform. Candidates for recertification will also have had to have previously passed required written knowledge exams under existing § 240.125. As FRA stated in its April 10 grant of temporary relief on this topic, such allowance under part 240 is not inconsistent with safety.

Several of the conditions specified in FRA’s April 10 grant of relief would no longer be necessary if FRA permanently codified this proposal. For example, railroads would not have to keep a list of locomotive engineers recertified in this manner for purposes of tracking a temporary waiver. Rather, the recertification records maintained by railroads for each
locomotive engineer under § 240.127(d) would specify the manner in which the recertification evaluation ride was conducted. It would also no longer be necessary or relevant for the recertification evaluation ride conducted by event recorder download to be the last step in the recertification process. Further, this proposal would significantly increase efficiency of use of railroad DSLE resources, as in many instances they would no longer be constrained by logistical considerations of physically traveling on a train to an outlying location to conduct a recertification ride, a limiting factor under the current regulation in accomplishing this task. This amendment would result in significant time, cost, and travel resource savings for railroads utilizing this method to recertify locomotive engineers, and would enable DSLEs to spend their time more efficiently handling other important safety-related tasks.

49 C.F.R. § 232.203 - Web-Based Training

Last, consistent with existing industry waivers that have been granted by FRA’s Railroad Safety Board, the railroads petition FRA to make permanent the allowance to substitute web-based simulation training for the existing “hands-on” training currently contemplated by 49 C.F.R. § 232.203. FRA has granted this relief in different form to numerous railroads (under various § 232.203 provisions and as applicable to different crafts of railroad employees) via its traditional waiver process. See, e.g., Docket No.’s FRA-2011-0074, FRA-2018-0100 & FRA-2020-0001. In light of the capability of modern technology and the apparent need to continually renew the existing waivers on this subject, the allowance to use web-based training to comply with § 232.203 should be permanently codified. It is often difficult for railroads to provide a consistent training environment when the equipment selection and defects present are wholly dependent on the types of rolling equipment that happen to be available at a specific location on an individual railroad. Web-based simulations to conduct such training virtually does not so limit the training to only those specific car-types and defects that might be physically present at any given time.

Further, in the industry’s experience with this topic, a group setting is necessarily required to conduct efficient “hands-on” training under existing part 232. This setting is not nearly as conducive for effective training in most instances as the more individualized virtual training the railroads petition for here. Use of web-based simulations enables railroad employees to conduct individualized virtual brake equipment-related inspections, allowing railroads to objectively evaluate an employee’s level of proficiency at such. This more controlled training environment allows railroad training instructors to observe and evaluate a user's ability under all circumstances (and regardless of current network conditions) to display the required railroad knowledge and skills that pertain to the testing and inspection of air brake systems.

In general, the current methods of "hands-on" brake system training are inefficient and outdated, necessitating the use of the numerous FRA waivers on this subject that are currently in place. The railroads’ experience has shown that the allowance to use systematic and well-developed web-based simulations to perform training under § 232.203 increases employee proficiency, ultimately reducing air brake defects across the U.S. rail network. As has been discussed in the existing waiver proceedings on this topic, the proposed codification of these waivers also parallels the longstanding and safe use of simulators to train and certify locomotive engineers who operate trains, as codified in existing 49 C.F.R. Part 240. In codifying this proposal (and all of the proposals described in this petition), no economic costs will be passed onto the public or
government agencies. The railroads alone bear the cost of developing these modernized training systems with the aim of improving employee proficiency and overall railroad safety.

Thank you for your consideration in this matter, and please contact us if you require any further information.

Respectfully submitted,

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