



April 9, 2020

The Honorable Ronald Batory  
Administrator  
Federal Railroad Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Administrator Batory:

On March 13<sup>th</sup>, the FRA opened the Emergency Relief Docket (FRA-2020-0002) for Novel Coronavirus (COVID-19), activating the provisions of 49 CFR § 211.45. These provisions grant the FRA wide latitude to expeditiously waive its regulations, including those that concern rail safety and the wellbeing and fair treatment of employees. For these reasons, we are carefully monitoring requests for relief made to the docket and may file additional comments on present or future petitions.

In many of the requests filed thus far, Petitioners cite potential COVID-19-related reductions in staffing levels as necessitating regulatory relief. In summarizing the joint request filed by AAR, ASLRRA, and APTA, FRA writes that that the organizations claim that such reductions will “affect railroads’ ability to keep freight trains carrying critical goods and materials necessary for the country’s welfare.” The Labor Organizations recognize that in some instances employee unavailability may result in regulatory compliance challenges. It is encouraging that in considering these waivers, such as the one referenced above, FRA specifies that:

*“With certain exceptions... 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 pandemic, preventing individual railroads from timely completing all Federally-mandated railroad safety tests and inspections, or other requirements. Railroads that find it necessary to utilize the waiver relief provided here must document the basis on which they concluded that availing themselves of the relief was necessary.”*

In these considerations, there must be a strong burden of proof for rail carriers to demonstrate that there is a true labor shortage. At a time in which working families across the country are struggling to make ends meet, FRA must not reward carriers with regulatory relief who have not exhausted all possible avenues to fill positions, including the recall of any furloughed employee of the impacted craft or class. These furloughed employees must be offered the opportunity to fill any shortfalls before a carrier can “conclude that relief is necessary.”

As FRA is aware, over the course of the past several years, freight rail carriers have furloughed thousands of highly qualified employees across all crafts. In fact, overall rail employment numbers stand at the lowest in modern history. If a carrier finds itself short on active employees, its first option must be found in the abundant supply of out of work railroaders, not in administrative intervention to be exempted from safety-critical regulations. We request that FRA make clear that a workforce shortage cannot be declared until these terms are met, and that this requirement be considered an amendment to all waivers granted contingent on workforce shortages. FRA should prohibit the use of any waiver for a carrier who is found to be noncompliant with the amended terms.

In as much as furloughed employees are currently prohibited from returning to work due to the expiration of qualification, retraining, or refresher requirements, we request that FRA grant relief comparable to what it previously granted carriers in its March 30<sup>th</sup> “Emergency Waiver Letter – Training”, which largely waives such requirements.<sup>1</sup> We strongly support the contingencies outlined in that docket—that training requirements are still met to the extent practicable, that railroads maintain a list of employees whose training is due, and that these employees must receive their regular training within 60 days of the expiration of the waiver.

Finally, we note that the terms of FRA’s regulatory relief allow a carrier to “conclude[d] that availing themselves of the relief was necessary” as opposed to evaluating each carrier’s individual needs. As a balance, FRA will require that entities using the waivers report every Tuesday on each individual waiver used at a location, when it was used, and a list of manpower shortages or other conditions necessitating the use of the waiver.”

While the Labor Organizations support reporting on regulatory waivers, it is highly unlikely that FRA will have the ability to oversee compliance with the established conditions at every property in which they are in use. The only entity capable of providing this confirmation is the impacted employees at such a location. Therefore, we also request that the FRA provide copies of these reports to the headquarters of all duly certified labor organizations that represent employees at the affected locations. Further, FRA should use the emergency docket to allow labor organizations to challenge claims made in these reports. If these challenges are deemed to be justified, FRA must revoke the applicability of the waiver for that location, or in its entirety if evidence exists of widespread noncompliance. Finally, before FRA grants the extension of any waiver, we request the agency provide a reasonable period for review by the Labor Organizations, via publication within the Emergency Relief Docket.

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<sup>1</sup> Requirements found in Parts 213, 214, 217, 218, 220, 227, 228, 229, 232, 236, 238, 239, 240 and 242

We look forward to working with the FRA to guarantee the continued operations of the rail network in these difficult and unprecedented times. We urge you to ensure that relief offered by the agency be conditioned on an actual shortage of workers, be individually justified and subject to oversight, and allow furloughed railroaders to step up and return to work. Thank you for your consideration.

Sincerely,

American Train Dispatchers Association

Brotherhood of Locomotive Engineers and Trainmen

Brotherhood of Maintenance of Way Employes Division

Brotherhood of Railroad Signalmen

International Association of Machinists and Aerospace Workers

International Association of Sheet Metal, Air, Rail and Transportation Workers- Mechanical Division

International Association of Sheet Metal, Air, Rail and Transportation Workers- Transportation Division

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers

International Brotherhood of Electrical Workers

National Conference of Firemen and Oilers, SEIU

Transportation Communications Union/IAM

Transportation Trades Department, AFL-CIO

Transport Workers Union of America

CC: Karl Alexy, Associate Administrator for Railroad Safety & Chief Safety Officer