



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

April 21, 2020

VIA E-MAIL PDF ONLY

F. Leo McCann
President, American Train Dispatchers Association

Dennis R. Pierce
National President, Brotherhood of Locomotive Engineers and Trainmen

Freddie N. Simpson
President, Brotherhood of Maintenance of Way Employees Division

Jerry C. Boles
President, Brotherhood of Railroad Signalmen

Robert Martinez, Jr.
International President, International Association of Machinists and Aerospace Workers

Jeremy R. Ferguson
President, International Association of Sheet Metal, Air, Rail and Transportation Workers –
Transportation Division

Newton B. Jones
International President, International Brotherhood of Boilermakers, Iron Ship Builders,
Blacksmiths, Forgers and Helpers

Lonnie R. Stephenson
International President, International Brotherhood of Electrical Workers

John R. Thacker
President, National Conference of Firemen and Oilers, SEIU

Richard A. Johnson
General President, Transportation Communications Union/IAM

Larry I. Willis
President, Transportation Trades Department, AFL-CIO

John Samuelsen
International President, Transport Workers Union of America

Messrs. McCann, Pierce, Simpson, Boles, Martinez, Ferguson, Jones, Stephenson, Thacker, Johnson, Willis, and Samuelsen:

This letter responds to the letter from American Train Dispatchers Association; Brotherhood of Locomotive Engineers and Trainmen; Brotherhood of Maintenance of Way Employees Division; Brotherhood of Railroad Signalmen; International Association of Machinists and Aerospace Workers; International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division, and the Mechanical and Engineering Department; 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; and Transport Workers Union of America (collectively “Labor Organizations”) dated April 9, 2020, commenting on waiver petitions submitted to the emergency relief docket (ERD) activated on March 13, 2020, in response to the Coronavirus Disease 2019 (COVID-19) public health emergency occurring throughout the United States.¹ In the comments, the Labor Organizations request that the Federal Railroad Administration (FRA) take several actions with respect to those waiver petitions and the regulatory relief granted by FRA in response.² FRA has thoroughly reviewed the comments and has concluded that no changes to the regulatory relief granted by FRA in response to the waiver petitions is required at this time.

The Labor Organizations’ comment notes that FRA granted regulatory relief to the Association of American Railroads, the American Short Line and Regional Railroad Association, and the American Public Transportation Association (collectively referred to as the “Associations”) subject to certain conditions and limitations.³ Among other conditions, FRA provided that the relief granted is generally conditioned on the existence of workforce shortages as a direct result of the COVID-19 public health emergency and that any railroad utilizing the waiver relief must document the need for the relief. The Labor Organizations request that FRA make clear that a railroad cannot conclude that it has a workforce shortage and utilize the waiver relief unless it has offered furloughed employees the opportunity to fill any shortfalls. Moreover, the Labor Organizations request that FRA consider this requirement to be an amendment to all waivers granted contingent on workforce shortages.

¹ See Docket No. FRA-2020-0002.

² See Docket No. FRA-2020-0002-0051.

³ See Letter from Karl Alexy, FRA, Associate Administrator for Railroad Safety and Chief Safety Officer, to the Associations (March 25, 2020), Docket No. FRA-2020-0002-0025 (available at <https://www.regulations.gov/document?D=FRA-2020-0002-0025>).

Although FRA understands the Labor Organizations' concern with railroads' maintaining adequate staffing levels for the duration of the COVID-19 public health emergency, FRA has no legal authority to require railroads to recall personnel from furlough to fill workforce shortages caused by COVID-19. FRA expects railroads to ensure the safety of railroad operations and maintenance during this national emergency. In the event localized workforce shortages resulting from COVID-19 occur, FRA believes the limited, temporary relief provided to the industry in the ERD will allow railroads to operate safely and ensure the safety of railroad employees at the same time. However, as noted by the Labor Organizations, FRA generally conditioned its relief to the Associations on the existence of workforce shortages as a direct result of the COVID-19 public health emergency. FRA explained in Safety Advisory 2020-01 (Safety Precautions Related to Coronavirus Disease 2019 (COVID-19)) that workforce shortages involve situations where "employees are out sick or quarantined."⁴ Any railroad that utilizes the waiver relief must document the basis on which it concluded that availing themselves of the relief was necessary and report weekly a list of manpower shortages or other conditions necessitating the use of the waiver. FRA will use the information from these reports and other oversight activities to monitor railroads' compliance with this condition. If FRA finds a railroad is not complying with this generally applicable condition, FRA will take appropriate action.

With respect to furloughed employees who may be prohibited from returning to work due to the expiration of qualification, retraining, or refresher requirements, the Labor Organizations request that FRA grant relief comparable to what it previously granted the Associations in a March 30, 2020, emergency waiver letter.⁵ Although FRA has not received such a waiver petition from any railroads under 49 CFR § 211.45 (Petitions for Emergency Waiver of Safety Rules), FRA will consider any such petition if it is filed.

The Labor Organizations also note in their comment that FRA is requiring entities that utilize the regulatory relief granted in response to the Associations' waiver petition to submit a weekly report providing the date of the use of the waiver, the anticipated duration, and a list of manpower shortages or other conditions necessitating the use of the waiver.⁶ The Labor Organizations request that FRA provide copies of these reports to the headquarters of all duly certified labor organizations that represent employees at the affected locations. Further, the Labor Organizations request that FRA use the ERD to allow the Labor Organizations to challenge claims made in the reports. If the challenges are deemed to be justified by FRA, the Labor Organizations request that FRA revoke the applicability of the waiver for that location, or in its entirety if evidence exists of widespread noncompliance.

FRA will post summaries of the information in these reports on FRA's COVID-19 webpage <https://railroads.dot.gov/coronavirus> and in the ERD. After reviewing the reports, the Labor Organizations are free to comment on the information contained in the reports. FRA will

⁴ 85 FR 20335, 20336 (April 10, 2020).

⁵ FRA granted the Associations temporary emergency relief from certain training requirements as detailed in the Letter from Karl Alexy, FRA, Associate Administrator for Railroad Safety and Chief Safety Officer, to the Associations (March 30, 2020), Docket No. FRA-2020-0002-0030 (available at <https://www.regulations.gov/document?D=FRA-2020-0002-0030>).

⁶ See Letter from Karl Alexy, FRA, Associate Administrator for Railroad Safety and Chief Safety Officer, to the Associations (March 25, 2020), Docket No. FRA-2020-0002-0025 (available at <https://www.regulations.gov/document?D=FRA-2020-0002-0025>).

consider any comments filed on the reports in determining whether the waiver is being appropriately utilized.

Finally, the Labor Organizations request that before granting an extension of any waiver, FRA provide a reasonable period for review by the Labor Organizations, via publication in the ERD. By the express terms of the waivers, and consistent with the statutory authority⁷ under which they are issued, the term of an FRA emergency waiver is limited to 60 days before it must be renewed. This waiver term provides the Labor Organizations the opportunity to develop any comments they wish to submit on a request to renew a waiver.⁸ Moreover, as noted in each emergency waiver decision granting relief, under FRA's emergency waiver procedures, FRA has the authority to reopen and reconsider any decision made under § 211.45 on its own initiative or based on information received from others.⁹ Accordingly, an additional comment period beyond the term of the existing waiver is neither required nor advisable. Any request for a hearing on an emergency waiver granted by FRA should be received within 72 hours of the waiver grant posting in the ERD.¹⁰

Railroads are a critical infrastructure industry, and railroad employees are essential to enabling railroads to meet their responsibilities during times such as the current COVID-19 public health emergency. Accordingly, FRA will continue to work with both railroads and railroad employees to ensure the continuity of railroad operations and the safety and health of railroad employees and the traveling public during this critical time.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Batory". The signature is stylized with a large, looping initial "R" and "B".

Ronald L. Batory
Administrator

⁷ 49 U.S.C. § 20103(g)(2).

⁸ See 49 CFR § 211.45(j)(3).

⁹ See 49 CFR § 211.45(j)(1).

¹⁰ See 49 CFR § 211.45(i).