U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

VIA E-MAIL ONLY

July 20, 2020

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

Re: Request for Renewal of COVID-19 Emergency Relief, Emergency Docket FRA-2020-0002

Dear Ms. Strang:

This letter is in reply to the July 14, 2020, letter (Petition) the Federal Railroad Administration (FRA) received in Docket No. FRA-2020-0002 from the American Short Line and Regional Railroad Association (ASLRRA). Specifically, ASLRRA, on behalf of its member railroads, requests to renew temporary emergency relief FRA previously granted in this docket. That relief, initially granted in FRA letters dated March 25, March 30, and April 10, 2020, provided railroads, subject to certain conditions, relief from some requirements of FRA's rail safety regulations in response to the coronavirus disease 2019 (COVID-19) public health emergency occurring throughout the United States.[1] In a letter dated May 22, 2020, attached, FRA renewed certain aspects of the previously granted relief based on the continued need for social distancing among railroad employees and certain relief predicated on the existence of workforce shortages as a direct result of the COVID-19 public health emergency.[2] The relief granted in FRA's May 22, 2020, letter is scheduled to expire on July 22, 2020.

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[1] On March 13, 2020, FRA Administrator Ronald L. Batory activated the emergency relief docket (ERD) in response to the COVID-19 public health emergency. On March 21, 2020, the Association of American Railroads, ASLRRA, and the American Public Transportation Association (APTA), petitioned FRA for emergency relief from certain regulations due to the COVID-19 public health emergency. On March 25, 2020, FRA granted emergency relief from multiple regulations in response to the joint petition from the associations. Subsequently, on March 30, 2020, FRA granted additional relief from certain training requirements. On April 10, 2020, FRA allowed for the use of locomotive event recorders to meet the requirements for periodic locomotive engineer monitoring rides to support the recertification of locomotive engineers. *See* Document nos. FRA-2020-0002-0025, -0030, and -0052 on www.regulations.gov.

[2] *See* https://www.regulations.gov/document?D=FRA-2020-0002-0072. Relief granted in this letter includes specific relief from portions of 49 CFR Parts 213, 214, 217, 218, 220, 228, 229, 232, 234, 236, 240, 242, and 243.

FRA considered ASLRRA's request for renewal under the provisions of 49 CFR § 211.45, *Petitions for Emergency Waivers of Safety Rules*.[3] A copy of ASLRRA's July 14, 2020, renewal request is available for public review and comment in the emergency relief docket (ERD).[4] In its renewal request, ASLRRA explains that it seeks renewal of relief FRA previously granted for social distancing purposes, asserting that the relief is "necessary to protect railroad workers." Further ASLRRA explains that short line railroads use contractors to perform certain required inspections and the COVID-19 public health emergency has led contracting companies to implement travel restrictions. As a result, some short line railroads have found it necessary to use previously granted relief predicated on employee shortages (e.g., relief from certain aspects of 49 CFR Part 213).[5] Noting that the guidance from the Centers for Disease Control (CDC) related to social distancing is likely to remain in place for the foreseeable future and the uncertain nature of the COVID-19 public health emergency, ASLRRA asks FRA to extend the previously granted relief from 49 CFR Parts 213, 228, 240, 242, and certain training requirements for an indefinite time.[6]

In its July 14, 2020, letter, ASLRRA also requests that FRA provide relief from § 213.7(c) requiring annual training related to continuous welded rail and to clarify the relief previously granted from certain other refresher/recurrent training requirements. With regard to the relief FRA previously granted related to certain training requirements, ASLRRA notes that it interprets the reference to Part 243 in FRA's May 22, 2020, letter as "encompassing all the refresher/recurrent training requirements that FRA had granted relief from on March 30, 2020." In response to this request for clarification, FRA notes that yes, the reference to "Part 243" in its May 22, 2020, letter was intended to encompass all the specific CFR parts referenced in FRA's March 30, 2020, letter, including relief from the refresher/recurrent training requirements of Parts 213 and 214, including § 213.7 and §§ 214.343 – 214.357. Accordingly, FRA concludes that ASLRRA's request for relief from the training requirements of § 213.7(c) is unnecessary.

As explained in FRA's original letters granting relief,[7] as well as the May 22, 2020, renewal letter, FRA determined the relief granted was either (1) necessary to enable railroads to operate consistent with the CDC's recommendations for social distancing and limiting the touching of common surfaces to protect railroad employees;[8] or (2) predicated on the existence of workforce shortages as a direct result of the COVID-19 public health emergency. FRA agrees with ASLRRA's recognition of the anticipated continued need to practice social distancing for a considerable period of time and the potential for continued workforce shortages in the short line railroad industry as a direct result of the COVID-19 public health emergency. FRA notes, however, that relief issued under FRA's emergency waiver authority is limited to 60 days before

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[3] By the express terms of the waivers, and consistent with the statutory authority, 49 U.S.C. § 20103(g)(2), under which they are issued, the term of an FRA emergency waiver is limited to 60 days before it must be renewed. *See* 49 CFR § 211.45(j)(3).

[4] *See* https://www.regulations.gov/document?D=FRA-2020-0002-0092.

[5] See the *Summaries of Railroad Use of Emergency Relief* on FRA's webpage at https://railroads.dot.gov/coronavirus.

[6] ASLRRA's July 14, 2020, letter notes that its members are specifically not requesting FRA extend the previously granted relief from Parts 229, 232, 234, and 236.

[7] *See* Document nos. FRA-2020-0002-0025, -0030, and -0052 on www.regulations.gov.

[8] *See* https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf.

it must be renewed. *See* 49 CFR § 211.45(j)(3). Accordingly, with this letter, with the exception of the relief from Parts 229, 232, 234 and 236, FRA is renewing the existing relief detailed in its May 22, 2020, letter to ASLRRA for 60 days, subject to the same terms and conditions of that letter.[9] Concurrent with this decision, however, FRA is instituting a separate waiver proceeding under 49 CFR § 211.41 to evaluate the ASLRRA's request for relief on a more long-term basis. That request is assigned Docket Number FRA-2020-0063.

In sum, as discussed above, after consideration of ASLRRA's extension request and all available information, except as detailed above, FRA extends for 60 days, the specific emergency relief provided in its May 22, 2020, letter to ASLRRA.

FRA reserves the right to reopen any docket and reconsider any decision made pursuant to these emergency procedures, based upon its own initiative or based upon information or comments otherwise received. *See* 49 CFR § 211.45(j)(1).

This emergency waiver extension expires 60 days from the date of this letter, when the FRA Administrator's Emergency Declaration is rescinded, or when FRA issues a waiver decision in Docket Number FRA-2020-0063, 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 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.alexy@dot.gov.

Sincerely,

Karl Alexy
Associate Administrator for Railroad Safety
Chief Safety Officer

[9] FRA notes that its May 22, 2020, letter inadvertently referenced § 242.105(c) twice in the list of regulatory provisions from which FRA was granting relief. One reference indicated: "§ 242.201(c)(1), conductor must possess certificate" and the second reference indicated: "§ 242.105(c), 36-month certification period conductor." FRA notes that the second reference to that section was an inadvertent error and that the initial reference to § 242.105(c) should have read "§ 242.201, time limitations for certification."