



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

VIA E-MAIL ONLY

September 30, 2021

Mr. Brian K. Saltz
Assistant Deputy General Counsel
Long Island Rail Road
BSaltz@lirr.org

Re: Docket Number FRA-2021-0076

Dear Mr. Saltz:

This letter responds to the July 8, 2021, request from Long Island Rail Road (LIRR) to the Federal Railroad Administration (FRA) asking FRA to extend to LIRR a portion of the relief the agency previously granted to the American Public Transportation Association (APTA), on behalf of its member railroads. Although LIRR filed its request in the FRA docket pertaining to APTA's waiver related to COVID-19 (Docket Number FRA-2020-0060), because LIRR's request is a new request for relief, FRA assigned it a new docket number (Docket Number FRA-2021-0076).¹

LIRR requests that FRA extend to it as an individual railroad the relief previously granted to APTA from the recurrent/refresher training requirements of 49 CFR Parts 239, 240, and 242 for approximately 30 higher-level Transportation Department employees. As discussed below, FRA is granting LIRR's request for relief from the recurrent/refresher training requirements of Part 239 (49 CFR § 239.101(a)(2)) for a limited number of employees.

LIRR stated that in following social distancing guidelines during the pandemic, it limited classroom capacity for training sessions, which created a backlog in employees' requiring training. LIRR noted that, to date, it had successfully trained its Engineering Department employees, Maintenance of Equipment employees, Transportation Department train crews, and lower-level Transportation Department supervisors, but it does not expect to have trained its higher-level Transportation Department employees by the expiration date of the APTA relief, September 18, 2021. LIRR further stated that it expects to complete all necessary training by December 31, 2021, but requires relief until that date.

¹ <https://www.regulations.gov/document/FRA-2021-0076-0001>.

Although LIRR asks for relief specifically from the recurrent/refresher training requirements of Parts 239, 240, and 242, LIRR subsequently clarified to FRA that the railroad was seeking relief only from the recurrent/refresher training requirements of Part 239 (49 CFR § 239.101(a)(2)) for the limited number of employees identified.

FRA published notice of LIRR's request on August 25, 2021.² FRA received no comments in response to that published notice.

After considering LIRR's request, the ongoing COVID-19 pandemic and related CDC guidance particularly related to social distancing as referenced by LIRR, FRA finds that granting LIRR's request for relief is justified. FRA notes that in a letter dated September 20, 2021, in Docket Number FRA-2020-0060, the agency denied APTA's request to further extend the relief previously granted to APTA member railroads from several recurrent/refresher training intervals, including those of Part 239. In denying that relief, FRA noted that it expected railroads to appropriately adjust their training processes and procedures to ensure compliance with CDC recommendations and timely completion of all training requirements. FRA also noted that if an individual railroad finds that accomplishing the required training while complying with CDC recommendations is not possible (e.g., if a railroad lacks sufficient physical classroom space to do so), that individual railroad may petition FRA for relief from the relevant requirement or timeline. FRA finds that the circumstances LIRR outlines in its July 8, 2021, letter justify granting the requested relief to LIRR individually. Accordingly, FRA grants LIRR the requested relief from the deadline to complete the required training for the 30 higher-level Transportation Department employees referenced in its petition, subject to the following conditions:

1. 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.
2. All training postponed in accordance with this waiver must be completed by December 31, 2021.
3. At the completion of the required trainings, LIRR must notify FRA in writing that each employee subject to this waiver has received the required training. That notification must be submitted by e-mail to John C. Robertson, Passenger Equipment Safety Specialist, at john.robertson@dot.gov.

The relief granted in this letter expires on December 31, 2021.

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 (including the conditions of this waiver requiring reporting to FRA). FRA notes that if LIRR fails to accurately report its use of the relief provided in this waiver, FRA reserves the right to take enforcement action for violation of the underlying substantive regulation waived. 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.

² <https://www.regulations.gov/document/FRA-2021-0076-0003>.

In any future correspondence regarding this waiver, please refer to Docket Number FRA-2021-0076. If you have questions, please contact John C. Robertson, Passenger Train Emergency Preparedness Specialist, at 734-834-2337, or at john.robertson@dot.gov.

Sincerely,

Karl Alexy
Associate Administrator for Railroad Safety
Chief Safety Officer