

**U. S. DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION**

**FRA 2020 EMERGENCY RELIEF DOCKET
DOCKET No. FRA-2020-0002**

**PETITION FOR WAIVER FROM COMPLIANCE WITH
49 C.F.R. § 240.403 AND 49 C.F.R. § 242.503**

The Brotherhood of Locomotive Engineers and Trainmen (“BLET”) and the Transportation Division of the International Association of Sheet Metal, Air, Rail, and Transportation Workers (“SMART TD”) (collectively “the Unions”), on behalf of themselves and their members who are certified locomotive engineers and/or certified conductors,¹ hereby petition the Federal Railroad Administration (“FRA”) for relief from federal railroad safety regulations governing the filing of petitions for review of railroads’ decision to deny certification or recertification, or decisions to revoke certification. Specifically, we seek a 60-day extension of time limits set forth in 49 C.F.R. § 240.403, for filing petitions for review by the Locomotive Engineer Review Board (“LERB”), and 49 C.F.R. § 242.503 for filing petitions for review by the Operating Crew Review Board (“OCRB”).

On March 21, 2020, the American Public Transportation Association (“APTA”), the American Short Line and Regional Railroad Association (“ASLRRA”), and the Association of American Railroads (“AAR”) (collectively “the Associations”) jointly filed a petition to this Emergency Docket that requested relief of an unprecedented nature from numerous railroad safety regulations.

¹ Jointly, the Unions represent certified locomotive engineers and certified conductors operating on over 95% of the railroad industry’s route miles.

See FRA-2020-0002-0022 (“Associations’ Petition”). Particularly relevant to the Unions’ Petition, the Associations requested—and were granted—a 60-day extension of the time frame within which their members are required to respond to petitions for review filed with the LERB or the OCRB.² Association’s Petition at 8. The relief was requested “[d]ue to the uncertainty of staff availability during COVID-19 emergency; and, the consequent impact of gathering additional relevant information and drafting a proper response.” *Id.* The relief is intended to “assist the railroads in properly managing the review process so that pertinent information is safely gathered and submitted to the OCRB and LERB”, and the Associations requested that the waiver be made retroactively, to take effect several days before the Associations’ Petition was even filed. *Id.*

FRA granted the waiver, as requested. See FRA-2020-0002-0025 (“FRA Waiver”) at 7. In fact, FRA went further, granting 60-day extensions to all “deadlines set forth in the remainder of the Part 240 and 242 sections referenced above [including § 240.405(c) and § 242.505(c)] that come due within the next 60 days.” *Id.* at 8. However, neither § 240.405 nor § 242.505 include any other deadlines. Therefore, the broader 60-day extension appears to have no further application to Subpart E of Part 240 or Subpart F of Part 242.

This places locomotive engineers and conductors whose certification has been revoked or denied (and their Union representatives) in an untenable position. Presently, the LERB is compelled by regulation to deny any petition seeking review of denial of certification or recertification that is filed late. See § 240.403(c). In revocation cases, the LERB has discretion to extend the filing period when an extension of the filing period is requested prior to the deadline, or upon a

² The Part 240 deadline for responses to the LERB is published at 49 C.F.R. § 240.405(c), and the Part 242 deadline for responses to the OCRB is published at 49 C.F.R. § 242.505(c).

showing of excusable neglect in an individual case. *See* § 240.403(d). The OCRB has this same discretion for all denials of certification or recertification, as well as in revocation cases. *See* § 242.503(e).

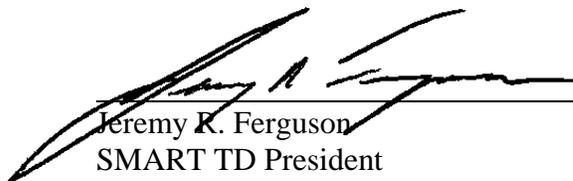
Because of the COVID-19 pandemic, the Unions and their members face even greater difficulty in timely filing petitions for review than the Associations and their members claim to have. We will have even greater “uncertainty of staff availability during COVID-19 emergency”, which have a negative “consequent impact [on] gathering additional relevant information and drafting a proper” petition. The Unions’ standing and their relationship to their certified crewmembers is identical to the Associations’ standing and their relationship to their railroad members.

Accordingly, it is appropriate, necessary, and consistent with railroad safety that we be granted the same relief. We thank you in advance for your most serious consideration.

Respectfully submitted,



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Filed: March 30, 2020