



U.S. Department  
of Transportation

**Federal Railroad  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

VIA E-MAIL ONLY

April 2, 2020

Mr. Jeremy R. Ferguson  
President  
SMART Transportation Division  
jferguson@smart-union.org

Mr. Dennis R. Pierce  
National President  
Brotherhood of Locomotive Engineers and Trainmen  
pierce@ble-t.org

**Re: Labor Concerns about Emergency Relief Requests in Docket Number FRA-2020-0002 related to Coronavirus Disease 2019 (COVID-19)**

Dear Mr. Ferguson and Mr. Pierce:

Thank you for your March 27, 2020 letter and your March 30, 2020 filing requesting a public hearing and an extension of time to comment on the emergency relief requests (petitions) from the Association of American Railroads, the American Short Line and Regional Railroad Association, and the American Public Transportation Association to the Federal Railroad Administration (FRA). The petitions requested temporary emergency waivers of compliance from certain requirements of FRA's rail safety regulations due to the COVID-19 public health emergency.

As you know, on March 13, 2020, noting the President's declaration of a national emergency related to COVID-19 and the World Health Organization's characterization of COVID-19 as a pandemic, FRA activated the emergency relief docket (Docket No. FRA-2020-0002). Under the emergency waiver procedures of 49 C.F.R. § 211.45, FRA may grant a petition for waiver without prior notice and comment if FRA determines it is in the public interest, the waiver is not inconsistent with railroad safety, and the waiver is necessary to address an actual or impending emergency situation or event. *See* § 211.45(j).

After careful consideration of the petitions for relief, and all data, information, and recommendations of other government agencies (including the Centers for Disease Control and Prevention (CDC) and the actions of various State governments in response to the COVID-19 public health emergency), on March 25, 2020, FRA granted conditional relief from certain safety requirements only in the event the COVID-19 public health emergency causes workforce

shortages or other constraints that prevent individual railroads from timely complying with certain railroad safety requirements. *See* Docket No. FRA-2020-0002-00025.

Stated plainly, with certain exceptions, the use of the relief contained within the FRA Waiver Letter is conditioned on the existence of workforce shortages and other constraints as a direct result of the impacts of the COVID-19 public health emergency. Generally, if a railroad finds it necessary to use the waiver relief provided, it must document the basis on which it concluded that using the relief was necessary. The only exceptions to this requirement provide relief that supports the CDC's recommendations for social distancing and minimizing the touching of common surfaces. The FRA Waiver Letter is not "carte blanche." Rather, any relief provided must be directly tied to these emergency circumstances, and cannot be used for non-emergency justifications. Further, any railroad using any aspect of the waiver must report to FRA certain information regarding the use of relief and the justification for doing so on a weekly basis.

As explained in the FRA Waiver Letter, FRA reserves the right to reopen any docket and reconsider any decision made pursuant to FRA's emergency procedures based upon its own initiative or based upon information or comments otherwise received. *See* § 211.45(j)(1). FRA determined that the need to provide immediate and urgent relief justified issuing an emergency waiver from certain requirements without prior notice and opportunity to comment, as provided in § 211.45(h). FRA may amend this relief, if necessary, to address safety or logistics concerns raised in any subsequent comments.

In response to your joint filing in the emergency relief docket, requesting both a public hearing and additional time to comment on FRA's grant of emergency waivers, please note that § 211.45(h) does not impose a time limit for filing comments; so, your suggested date of April 10, 2020, for filing comments is acceptable. Upon review of your comments, FRA will evaluate whether a public hearing or conference call should be scheduled and/or whether amendment of the waiver is necessary.

Thank you again for your letter and your interest in railroad safety. If you have questions or need further information, please contact Karl Alexy, FRA's Associate Administrator for Railroad Safety and Chief Safety Officer, at 202-493-6282 or [karl.alex@dot.gov](mailto:karl.alex@dot.gov).

Sincerely,

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

Ronald L. Batory  
Administrator