



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

VIA E-MAIL ONLY

April 11, 2020

Mr. Jason Gill
Vice President of Operations
TNW Corp.
jgill@tnw-rr.com

**Re: Request for Relief in FRA Emergency Docket FRA-2020-0002 related to
COVID-19 Public Health Emergency**

Dear Mr. Gill:

This letter responds to three TNW Corp. (TNW) petitions, on behalf of the Texas Rock Crusher Railway, Texas Northwestern Railway, and the Texas Gonzales and Northern Railway, for emergency relief from certain Federal Railroad Administration (FRA) rail safety requirements. TNW requested temporary emergency relief from several requirements of Title 49 of the Code of Federal Regulations (CFR) related to random alcohol and drug testing, efficiency testing, hours of service limitations, signal testing, track and equipment inspections, and locomotive engineer and conductor certification requirements.

As noted in your petitions, on March 13, 2020, FRA Administrator Ronald L. Batory activated the emergency relief docket (ERD) in response to the Coronavirus 2019 (COVID-19) public health emergency occurring throughout the United States. FRA considered TNW's requests under the provisions of 49 CFR § 211.45, *Petitions for Emergency Waiver of Safety Rules*. A copy of TNW's petitions are available for public review and comment in the ERD (Docket Number FRA-2020-0002, Document Number FRA-2020-0002-0015).

FRA notes that the Association of American Railroads, the American Short Line and Regional Railroad Association, and the American Public Transportation Association (together referred to as the "Associations") requested similar relief. By letter dated March 25, 2020, FRA granted the Associations the requested relief subject to certain conditions and limitations. A copy of FRA's March 25, 2020, letter is attached for your reference and is available for review in the docket on www.regulations.gov.¹

As noted in FRA's March 25, 2020, letter, because the impacts of COVID-19 are expected to

¹ <https://www.regulations.gov/document?D=FRA-2020-0002-0025>. FRA also granted the Associations temporary emergency relief from certain training requirements as detailed in a March 30, 2020, letter in this docket (<https://www.regulations.gov/document?D=FRA-2020-0002-0030>).

be extensive and widespread throughout the United States, FRA has granted all railroads operating in the United States the ability to operate under the terms of the emergency relief granted. Specifically, if a railroad is not a member of the Associations, that railroad may become party to the emergency waiver and operate under the terms of the waiver by providing notice to the docket (Docket No. FRA-2020-0002 which can be accessed via www.regulations.gov). FRA considers the relief already granted to the Associations in this docket responsive to TNW's petitions as related to efficiency testing, signal testing, track and equipment inspections, and locomotive engineer and conductor certification requirements.

With regard to your request for relief from FRA's random drug and alcohol testing requirements, FRA notes that on March 23, 2020, the Department of Transportation (DOT) Office of Drug and Alcohol Policy and Compliance (ODAPC) issued *DOT Guidance on Compliance with Drug and Alcohol Testing Regulations*² (*ODAPC Guidance*) to provide clarity on DOT drug and alcohol testing requirements given concerns about the COVID-19 public health emergency. The *ODAPC Guidance* indicates that DOT-regulated employers must comply with applicable DOT testing requirements, which include FRA's alcohol and drug testing regulations at 49 CFR Part 219. Nevertheless, the *ODAPC Guidance* acknowledges that compliance with regulations such as Part 219 may not be possible due to various COVID-19-related concerns, and directs employers to "applicable modal regulations" that might apply in situations where testing cannot be completed.

Consistent with ODAPC's guidance, on March 30, 2020, FRA denied the Associations' request for relief from the random alcohol and drug testing requirements of 49 CFR Part 219, but provided guidance on FRA's interpretation of its regulations.³ FRA has also posted this information on our website: *FRA Guidance on Drug and Alcohol Testing Requirements During the COVID-19 Public Health Emergency*⁴ (*FRA Testing Guidance*), a copy which is attached for your convenience. Consistent with the *ODAPC Guidance*, the *FRA Testing Guidance* discusses how FRA regulations might apply in situations where testing cannot be completed. Specifically, the *FRA Testing Guidance* notes that Part 219, Subpart G provides railroads⁵ with a certain amount of flexibility in implementing Part 219 programs in situations such as those presented by the current COVID-19 public health emergency.

Consistent with the *ODAPC Guidance* and FRA's denial of the Associations' request for relief from the random alcohol and drug testing requirements of Part 219, FRA denies TNW's request for relief from Part 219, but notes that the *FRA Testing Guidance* is applicable to all railroads operating in the United States. FRA therefore refers TNW to the *FRA Testing Guidance* on how Part 219, Subpart G provides flexibility in implementing random testing requirements during the COVID-19 public health emergency.

With regard to TNW's request for relief from the hours of service requirements, FRA notes that the hours of service requirements applicable to railroad employees are based in statute. As such, FRA is unable to waive those requirements. However, the statute itself (49 U.S.C. Chapter 211) provides flexibility to respond to certain emergency situations, such as the

² <https://www.transportation.gov/odapc/compliance-with-dot-drug-and-alcohol-testing-regulations>.

³ FRA's response to the Associations was posted to the docket on March 30, 2020 (doc. no. FRA-2020-0002-0032).

⁴ <https://railroads.dot.gov/elibrary/fra-guidance-drug-and-alcohol-testing-requirements-during-covid-19-public-health-emergency>

⁵ These provisions also apply to railroad contractors and subcontractors conducting FRA random alcohol and drug testing.

current COVID-19 public health emergency. *See* 49 U.S.C. § 21102(a). FRA notes that railroads would be required to employ due diligence to reduce or eliminate excess service. In addition, FRA's hours of service recordkeeping regulations require railroads to identify the reason for each instance of excess service, even where excess service may be appropriate for relief under the statute (e.g., in this instance, where the excess service was unavoidable and a direct result of the impact of the COVID-19 public health emergency on a particular railroad).

In conclusion, upon submission of a notice to FRA's emergency relief docket (Docket Number FRA-2020-0002 available online at www.regulations.gov), TNW's railroads may become a party to the relief FRA issued on March 25, 2020 (and if desired, the relief FRA issued on March 30, 2020), and TNW's railroads may operate consistent with the conditions and limitations of that relief. Note that the waiver contains certain generally applicable conditions for relief and certain specific conditions for relief, along with specific reporting requirements. If TNW's railroads find it necessary to operate under the terms of this relief, TNW's railroads will need to comply with all conditions and limitations of the relief granted.

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.alex@dot.gov.

Sincerely,

Karl Alexy
Associate Administrator for Railroad Safety
Chief Safety Officer