



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

VIA E-MAIL ONLY

May 22, 2020

Jo Strang
Senior Vice President
Safety & Regulatory Policy
American Short Line and Regional Railroad Association
JStrang@aslrta.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 letter (Petition) the Federal Railroad Administration (FRA) received on May 14, 2020, 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.¹ That relief 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.²

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.³ As noted in FRA's March 25, 2020, letter, FRA granted all railroads operating within the United States the ability to operate under the terms of this emergency waiver. Subsequently, on March 30, 2020, FRA granted additional relief from certain training requirements.⁴ On April 10, 2020, FRA allowed for the use of locomotive event recorders to meet the requirements for periodic locomotive

¹ This letter does not modify or in any way affect the relief granted in this docket to any entities other than those represented by ASLRRA.

² See Docket No. FRA-2020-0002.

³ See Letter from Karl Alexy, FRA, Associate Administrator for Railroad Safety and Chief Safety Officer, to the Associations (March 25, 2020), Document No. FRA-2020-0002-0025 (available at <https://www.regulations.gov/document?D=FRA-2020-0002-0025>).

⁴ See <https://www.regulations.gov/document?D=FRA-2020-0002-0030>.

engineer monitoring rides to support the recertification of locomotive engineers.⁵ These emergency waivers require railroads utilizing the relief to comply with strict conditions and included tracking processes for any relief exercised. The emergency relief granted is scheduled to expire 60 days from the date of issuance, or on May 24, May 29, and June 9, 2020, respectively.

FRA's letters provided two types of emergency relief: (1) relief necessary to enable railroads to operate consistent with recommendations of the Centers for Disease Control and Prevention (CDC) for social distancing and limiting the touching of common surfaces; and (2) relief specifically predicated on the existence of workforce shortages as a direct result of the COVID-19 public health emergency.

FRA considered ASLRRA's request for renewal under the provisions of 49 CFR § 211.45, *Petitions for Emergency Waivers of Safety Rules*.⁶ A copy of ASLRRA's renewal request is available for public review and comment in the ERD.⁷ In its renewal request, ASLRRA explains that it seeks renewal of relief FRA granted for social distancing purposes, and certain portions of March 25, 2020, relief FRA predicated on the existence of workforce shortages as a direct result of the COVID-19 public health emergency. In support of its request to renew the emergency relief, ASLRRA notes that social distancing is likely to remain in effect on a broad basis, and continuing the relief to comply with these measures is necessary to protect railroad employees.⁸ Additionally, ASLRRA notes that, unlike the Class 1 railroads, some short line railroads use contractors for track, signal, and locomotive inspections and the COVID-19 public health emergency has led contracting companies to implement travel restrictions to protect their employees' health and safety. Extending the relief from specific regulations granted for employee shortages will allow short line railroads to continue operations during this time of limited contractor availability as a result of COVID-19.

Specifically, ASLRRA's letter enclosed a chart indicating that ASLRRA requests renewal of the relief from the following regulatory provisions:

- Track (Time-based track/rail inspections):
 - § 213.233(c), inspection frequencies for main line track including sidings
 - § 213.234, automated quarterly, semiannual or yearly inspections of track constructed with concrete crossties
 - § 213.237, internal rail quarterly, semiannual or yearly inspections
- Operational Testing
 - Part 214, Operational Tests
 - § 217.9, Operational Tests and Inspections of Employees
 - Part 218, Operational Tests
 - Part 220, Operational Tests

⁵ See <https://www.regulations.gov/document?D=FRA-2020-0002-0052>.

⁶ 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).

⁷ See <https://www.regulations.gov/document?D=FRA-2020-0002-0070>.

⁸ See <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>.

- Part 236, Operational Tests
- Part 240, Operational Tests
- Part 242, Operational Tests
- Training
 - § 217.11, Program of instruction on operating rules; recordkeeping; electronic recordkeeping
 - § 232.203(b)(8), Brake inspection and testing requirements - training
 - Part 243, Training, Qualification, and Oversight for Safety-Related Railroad Employees
- Quick tie-ups
 - § 228.5, Quick tie-ups
 - § 228.203(a)(i)(ii), Quick tie up - verbal / facsimile or other electronic means
- Time-based locomotive inspections
 - § 229.23, locomotive periodic inspection
 - § 229.25, locomotive details of periodic inspections
 - § 229.27, locomotive annual tests
 - § 229.29, locomotive air brake/calibration
- Time-based grade crossing signal inspections
 - § 234.249, ground test
 - § 234.251, standby power
 - § 234.253, flashing light units and lamp voltage
 - § 234.255, gate arm and gate arm mechanism
 - § 234.257, warning system operation
 - § 234.259, warning time
 - § 234.261, highway traffic signal pre-emption
 - § 234.263, relays
 - § 234.265, timing relays and timing devices
 - § 234.267, insulation resistance tests, wires in trunking and cables
 - § 234.269, cut-out circuits
 - § 234.271, insulated rail joints, bond wires, and track components
 - § 236.102 to 236.109, inspection of signal devices such as searchlight, signals, circuit controllers
 - § 236.576, gaging of roadway elements
 - § 236.588, periodic test of locomotive ATC, train control, cab signals.⁹
- Engineer Certification
 - § 240.115, prior conduct as a motor vehicle operator
 - § 240.121, vision and acuity
 - § 240.123, monitoring for operational performance
 - § 240.123(b), continuing education
 - § 240.125, knowledge exam
 - § 240.127, skills performance exam
 - § 240.129, criteria for monitoring operational performance of certified engineers

⁹ FRA notes that ASLRRA also requested that FRA extend relief from “§ 234 and 236 Highway-rail crossing warning device failures.” This is an incomplete reference and FRA is not sure what regulation ASLRRA is referring to here. FRA notes, however, that it is extending all the relief granted from Parts 234 and 236 in its March 25, 2020, letter, except relief from §§ 236.376 through 236.387 and § 236.589.

- § 240.201(c), 36-month certification period engineer
- § 240.217(c)(1), 36-month certification period
- § 240.223, engineer must possess a certificate
- § 240.231, physical characteristics
- Conductor Certification
 - § 242.105(c), 36-month certification period conductor
 - § 242.111, prior conduct as a motor vehicle operator
 - § 242.119(i), continuing education
 - § 242.117, vision and acuity
 - § 242.121, knowledge exam
 - § 242.201(c)(1), conductor must possess a certificate
 - § 242.209, criteria for certification of conductor
 - § 242.301, territorial qualifications
 - § 242.105(c), 36-month certification period conductor

By letter dated April 10, 2020, the American Train Dispatchers Association, Brotherhood of Locomotive Engineers and Trainmen, Brotherhood of Maintenance of Way Employees Division, Brotherhood of Railroad Signalmen, Brotherhood of Railway Carmen Division – Transportation Communications Union, and the International Association of Sheet Metal, Air, Rail and Transportation Workers – Transportation Division (collectively “Labor Organizations”) commented on the relief FRA granted in the ERD. In their comments, the Labor Organizations ask FRA to revise, and in some cases rescind, certain portions of the relief granted. Below, FRA is addressing the Labor Organizations’ comments regarding specific provisions that ASLRRRA requests be renewed.

FRA considered ASLRRRA’s request to renew this emergency relief, the public comments received from the Labor Organizations, and all associated information, and has found that, subject to certain conditions, extending the requested emergency relief is in the public interest, is necessary to address the COVID-19 public health emergency, and is not inconsistent with railroad safety. Given the CDC’s recommendations to continue social distancing efforts and the resulting impacts on travel, with one exception, FRA is renewing the above listed emergency relief, as ASLRRRA requests, subject to the same conditions as outlined within FRA’s March 25, 2020, March 30, 2020, and April 10, 2020, letters, for an additional 60 days. The one exception is the relief from § 213.233(c), which FRA is modifying in this letter.

General Conditions of Relief¹⁰

1. With certain exceptions, as specified below, the relief granted in this letter is generally conditioned on the existence of workforce shortages and other constraints as a direct result of the impacts of the COVID-19 public health emergency, preventing individual railroads from timely completing all Federally-mandated railroad safety tests and

¹⁰ FRA has included the General Conditions of Relief from the March 25, 2020, waiver, for ease of reference. FRA has modified the reporting condition to only apply to ASLRRRA and its members and to require reporting every Friday, as opposed to every Tuesday.

inspections, or other requirements.¹¹ Railroads that find it necessary to utilize the waiver relief provided here must document the basis on which they concluded that availing themselves of the relief was necessary.

2. Any railroad utilizing any aspect of this waiver is required to report weekly the following information:
 - a. Railroad;
 - b. Territory/Subdivision/Yard;
 - c. List of each individual waiver utilized in this location, including the following information:
 - i. Date of occurrence,
 - ii. Anticipated duration, and
 - iii. List of manpower shortages or other conditions necessitating the use of the waiver.

A railroad shall report this information through ASLRRA, who shall integrate this information and provide in excel format via email to FRA (karl.alexey@dot.gov) on the Friday following the week being reported.

Track Inspections

§ 213.233(c), inspection frequencies for main line track including sidings

Section 213.233 sets forth general requirements for the frequency and method of performing required visual track inspections on various types of track. Specifically, depending on the class of track involved and the type and volume of traffic over that particular track, § 213.233 generally requires track to be inspected either weekly or twice a week, with a certain number of days between inspections.

Recognizing that a workforce shortage may prevent a railroad from being able to meet these inspection timelines, FRA's March 25, 2020, letter provided railroads with additional time to complete the inspections, if necessary. For example, FRA provided relief such that track normally required to be inspected weekly, with at least 3 calendar days between inspections, could be inspected every two weeks, with at least 6 calendar days between inspections.

The Labor Organizations assert that this reduction in manual visual inspection frequency will lead to increased risk. As such, the Labor Organizations suggest that FRA condition this relief on a requirement that, if a railroad utilizes this relief, the railroad lower the track speed on any affected track by at least one-track class.

¹¹ Relief is granted from § 217.9 and the other operational testing requirements identified, §§ 228.5 and 228.203(a)(1)(ii), and Parts 240 and 242 (not including §§ 240.231 and 242.301) regardless of the availability of an adequate workforce, because, as noted below, such relief supports the CDC's recommendations for social distancing and limiting the touching of common surfaces.

FRA believes the Labor Organizations' suggestion has merit. As such, FRA is revising the relief granted from § 213.233(c) in FRA's March 25, 2020, letter, to include a condition applicable to class 2 track and above, requiring track speeds to be reduced to the next track class, in addition to the conditions outlined on pages 4 through 6 of that letter related to Part 213.

§ 213.234, automated quarterly, semiannual or yearly inspections of track constructed with concrete crossties

Section 213.234 sets forth general requirements for conducting automated inspections of track constructed with concrete crossties and, depending on the class of track, paragraph (b) requires railroads to perform such inspections either once or twice per year. FRA's March 25, 2020, letter authorized railroads to reschedule any inspection under § 213.234(b) for up to 60 days if a workforce shortage resulting from COVID-19 limits a railroad's ability to timely complete the inspection.

The Labor Organizations assert that the allowed reduction in inspection frequency will lead to increased risk. As such, the Labor Organizations suggest that FRA condition this relief on a requirement that a railroad lower its track speeds by a minimum of one track class.

FRA conditioned the relief from § 213.234(b) to instances where the required inspection frequencies could not be maintained because of "significant workforce shortages" caused by COVID-19. FRA understands that ASLRRRA's renewal request is based on the fact that this relief promotes social distancing and is not related to workforce shortages. FRA understands ASLRRRA's concern is that automated inspection of track requires personnel to operate in close proximity to each other in the inspection vehicle. FRA agrees with ASLRRRA's conclusion that the relief from § 213.234(b) supports appropriate social distancing measures.

FRA's March 25, 2020, grant of relief from § 213.234(b) provides railroads flexibility in the timing to conduct the required inspections. The relief provided does not reduce the number of inspections required to be conducted. FRA notes that inspections under § 213.234 are designed to identify rail seat abrasion, a potential defect in concrete crossties that grows over time. FRA notes that manual, visual inspections are still required under § 213.233, and the terms of FRA's emergency relief waiver. For these reasons, and because the relief supports social distancing, FRA declines to adopt the Labor Organizations' recommendation for modifying the relief granted as unnecessary to maintain safety, and grants ASLRRRA's request to renew the relief.

§ 213.237, internal rail quarterly, semiannual or yearly inspections

Section 213.237 generally requires railroads to conduct internal rail inspections sufficient to maintain specific service failure rates, but generally at intervals not to exceed either 370 days or 18 months depending on the type and volume of traffic moving over the rails. The purpose of internal rail inspections is to locate defects in rails (e.g., broken rails and welds) before they are visible externally. Similar to the relief related to § 213.234(b) discussed above, FRA's March 25, 2020, letter authorized railroads to reschedule any inspection under § 213.237 for up to 60 days, if a workforce shortage resulting from COVID-19 limits a railroad's ability to timely

complete the inspection.

The Labor Organizations assert that broken rails and welds are more than twice as likely to cause a mainline train derailment as any other cause, and that the allowed reduction in inspection frequency will lead to increased risk. As such, the Labor Organizations suggest that FRA condition this relief on a requirement that a railroad lower its track speeds to 10 miles per hour (mph).

ASLRRA indicates in its renewal request that this relief is related to promoting social distancing, and is not related to workforce shortages. FRA understands ASLRRA's concern is that generally internal rail inspections require personnel to operate in close proximity to each other in the inspection vehicle. FRA agrees with ASLRRA's conclusion that the relief from § 213.237 supports social distancing.

FRA's March 25, 2020, grant of relief from § 213.237 provides railroads some flexibility in the timing to conduct the required inspections. The relief provided does not reduce the number of inspections that are required to be conducted. Given that internal rail inspections are, at most, required to be conducted every 370 days, FRA does not believe extending the time for completing any one inspection by an additional 60 day-period poses any significant risk. For these reasons and because the relief supports social distancing, FRA declines to adopt the Labor Organizations' recommendation for modifying the relief granted as unnecessary to maintain safety, and grants ASLRRA's request to extend the relief of § 213.237.

Operational Testing (Parts 214, 217, 218, 220, 236, 240, 242)

FRA's March 25, 2020, letter authorized railroads to temporarily suspend their operational testing and inspection programs under Part 217. The Labor Organizations noted that they do not object to this relief, but suggest that if a railroad utilizes the relief, employees should be notified of how they could be affected by such a change. FRA believes this is an enforcement issue, not an issue that impacts individual employees. Regulations require railroads to comply with their own operational testing programs, and the testing required under those programs often requires railroad personnel to be in close proximity to each other. By allowing railroads to temporarily suspend their programs (or particular aspects of their programs), FRA is enabling railroads to adjust their practices consistent with the current need to achieve social distancing. Employees will not be affected, except that for the duration of this emergency waiver, their employing railroad may not conduct operational testing at the level the operational testing program technically requires. However, as noted in FRA's March 25, 2020, letter, FRA expects railroads to continue to address any observed operating and safety rule violations in accordance with normal railroad procedures and employees are still required to report any safety hazards as required under existing railroad procedures. Thus, FRA does not believe modifying the granted relief is necessary.

FRA notes that it granted this relief to enable railroads and railroad employees to increase social distancing, and provide relief from meeting monthly testing requirements and types of testing that are not consistent with social distancing, as operational testing can involve close employee interaction. While FRA provides emergency relief from a railroad's monthly/quarterly

operational testing requirements, the relief does not necessarily allow railroads to forgo all operational testing. Given the above, FRA grants ASLRRA's request to extend the relief regarding operational testing for an additional 60 days.

Part 228, Quick Tie-up Provisions

FRA's March 25, 2020, letter granted railroads temporary relief from §§ 228.5 and 228.203(a)(1)(ii), which limit the use of quick tie-up procedures, including verbal quick tie-up procedures, to certain circumstances (i.e., when there is no computer terminal at a particular location, when a computer terminal is unavailable due to technical issues, or access to a computer terminal is delayed). The Labor Organizations assert that the waiver is not necessary, as regulations already allow railroads to use quick tie-up procedures when necessary and without regard to workforce shortages.¹²

FRA notes that it granted this relief to enable railroads and railroad employees to increase social distancing and reduce the use of common high-touch surfaces (i.e., computer terminal keyboards) consistent with guidance from the CDC and the U.S. Occupational Safety and Health Administration. This relief is not conditioned on the existence of workforce shortages and the relief provides railroads and railroad employees additional flexibility beyond that allowed in the regulation. Allowing railroad employees to conduct quick tie-ups whenever possible (as opposed to only when no computer terminal is available at a particular location, when a computer terminal is unavailable due to technical issues, or access to a computer terminal is delayed, as the regulation currently allows), supports the CDC's recommendations for social distancing and limiting the touching of common surfaces (i.e., railroad employees do not have to re-enter railroad facilities at the end of their shifts and touch a common computer terminal to input their tie-up information). FRA recognizes that if an employee must wait on hold for an excessive time to reach a crew dispatcher to conduct the tie-up over the phone, there may be hours of service implications. As such, FRA conditioned this grant of relief on railroads employing due diligence to avoid or limit excess service. Given that the quick-tie up relief supports social distancing, FRA grants ASLRRA's request to extend the quick-tie up relief for an additional 60 days.

Part 229, Railroad Locomotive Safety Standards

FRA's March 25, 2020, letter granted railroads conditional relief from certain time-based locomotive maintenance and inspection requirements when railroads' "resources [are] excessively reduced during the COVID-19 [public health emergency]." Specifically, FRA provided relief from the requirements of § 229.21 (daily inspection), §§ 229.23 and 229.25 (inspections and tests during periodic inspection), § 229.27 (annual tests), and § 229.29 (air brake calibration). ASLRRA's May 14, 2020, letter requests that FRA extend the relief granted from Part 229, with the exception of § 229.21's daily locomotive inspection requirement.

¹² The Labor Organizations also express concern about "the waiver of relief from 49 U.S.C. § 21105" imposing limitations on duty hours of dispatching service employees. FRA notes that 49 U.S.C. § 21105 is a statutory requirement and, as such, FRA does not have the authority to waive the requirement. FRA's March 25, 2020, letter referred to some flexibility that may be available in the statute, but does not purport to waive the statutory limitations.

The Labor Organizations express the general concern about the relief being used in circumstances where it is not justified (i.e., in circumstances where COVID-19 has not directly caused a workforce shortage). As noted above, FRA's March 25, 2020, letter imposes specific conditions designed to ensure that railroads exercise the relief only when necessary (i.e., only when staffing shortages result from the direct impacts of COVID-19) and that the railroads that use the relief must document the need for its use and report its use to FRA. These conditions enable FRA to closely monitor railroads' operations under the waiver and, as such, FRA believes the existing conditions are sufficient to ensure that the relief is utilized only when necessary. FRA grants ASLRRRA's request to extend the relief granted from Part 229, with the exception of § 229.21's daily locomotive inspection requirement.

Parts 234 and 236

With regard to the relief granted in FRA's March 25, 2020, letter pertaining to Parts 234 and 236, the Labor Organizations express concern about the relief being used in circumstances where it is not justified and recommend that FRA require railroads, before utilizing the relief, to communicate with representatives of the relevant Labor Organization and to document that communication. The Labor Organizations also reiterate the recommendation that FRA's grant of relief related to these parts be conditioned on railroads bringing back all furloughed employees before exercising the relief. As FRA has stated in previous communications to the Labor Organizations, the agency has no legal authority to require railroads to recall personnel from furlough to fill workplace shortages caused by COVID-19.¹³ In the event localized workforce shortages resulting from COVID-19 occur, FRA believes the limited, temporary relief provided to the industry will allow railroads to operate safely and ensure the safety of railroad employees at the same time. As noted above, any railroad that utilizes the waiver relief must document the basis on which it concluded that availing itself of the relief was necessary, and report weekly a list of manpower shortages or other conditions necessitating the use of the waiver. Accordingly, for these reasons, FRA declines to adopt the Labor Organizations' recommendations related to the relief granted from certain provisions in Parts 234 and 236, and grants ASLRRRA's request to extend that relief.

Parts 240 and 242, Engineer and Conductor Certification

§ 240.127, skills performance exam

FRA's March 25, 2020, letter granted railroads conditional relief from certain aspects of Parts 240 and 242 concerning locomotive engineer and conductor certification. That relief included the extension of multiple deadlines throughout Parts 240 and 242, including a 60-day extension to complete any locomotive engineer skill performance examinations required by § 240.127(c)(5) for currently-certified locomotive engineers. Subsequently, on April 10, 2020, in response to a separate waiver request, FRA modified that relief to also allow railroads to use event recorder downloads from the trains of locomotive engineer recertification candidates covering at least 50 miles or two hours on the most demanding section of a recertification candidate's territory, to serve as the skill performance examination of candidates for

¹³ See Docket No. FRA-2020-0002, Document No. FRA-2020-0002-0064 (letter from Ronald L. Batory to various labor organizations, dated April 21, 2020).

recertification under Part 240.¹⁴

The Labor Organizations assert that rather than allowing a railroad to review an event recorder download, FRA should amend the waiver to provide more time for a certified employee to recertify his or her certification should it become due during the COVID-19 public health emergency.

FRA notes that FRA's March 25, 2020, letter already provides more time for certified employees to be recertified if his or her certification becomes due during the COVID-19 public health emergency. Accordingly, as ASLRRRA requested, FRA renews the relief granted for these sections, and FRA encourages the Labor Organizations, and employees themselves, to coordinate with the relevant certifying railroads to determine the best course of action on an individual basis.

§ 240.231, physical characteristics, and § 242.301, territorial qualifications

FRA's March 25, 2020, letter also granted railroads conditional relief from §§ 240.231 and 242.301, which generally requires engineers and conductors to be qualified on the physical characteristics of the territories over which they operate. Under these sections, if an engineer or conductor is not qualified over a territory, he or she may still operate over that territory if accompanied by a pilot (in the case of an unqualified engineer) or an assistant (in the case of an unqualified conductor) and certain other conditions are met. FRA imposed several conditions on this grant of relief, including a condition limiting a railroad's ability to use the relief to situations where a workforce shortage or other constraint directly resulting from COVID-19 prevents a railroad from complying with the existing relevant requirements. In a series of additional conditions, FRA set speed limits for the operations as follows:

- If neither the locomotive engineer nor conductor is qualified on a portion of track but the train is positive train control (PTC) active/engaged, the train must operate at a speed not to exceed 40 mph, (Key trains must not exceed 30 mph), with an up-to-date job aid (i.e., track charts, timetables);
- If neither the locomotive engineer nor conductor is qualified on a portion of track and the train is not PTC active, the crew must operate at restricted speed (i.e., the clause that requires stopping within one half of the locomotive engineer's range of vision) with an up-to-date job aid (i.e., track charts, timetables).

ASLRRRA seeks to extend this conditional relief for social distancing purposes.

The Labor Organizations assert that PTC could act as a distraction to the crew "if the PTC has not been cut out because of the need to travel at restricted speed." The Labor Organizations recommend that FRA revise the applicable conditions to limit all movements made with an unqualified engineer to restricted speed, and limit movements made with an unqualified conductor to 50% of the maximum authorized speed for the territory. The Labor Organizations also recommend that as a condition to any relief from Parts 240 and 242, railroads should be required to implement several other safety redundancies (i.e., wayside and warning signs, job

¹⁴ See <https://www.regulations.gov/document?D=FRA-2020-0002-0052>.

aids). Finally, the Labor Organizations state that once the current emergency has ended, employees not qualified on particular territories, but who operate over those territories under the terms of this waiver, should not be considered Part 240 or 242-qualified over those territories going forward.

FRA believes a functioning PTC system provides an added level of safety justifying operations up to 30 and 40 mph, even if a crew is not territorially qualified. PTC systems are designed to accommodate operations at all speeds. FRA does not believe PTC is a distraction to the operator, rather it is an additional layer of safety. Among other benefits, a functioning PTC system will prevent train-to-train collisions, over-speed derailments, and a train's movement through a mainline switch in an improper position. FRA believes these added safety features, along with a certified engineer's general knowledge and demonstrated train handling skills, are sufficient to ensure safety at speeds up to 40 mph.

Under the terms of FRA's emergency waiver letter, if an engineer is not qualified on a territory and he or she is operating a train without a functioning PTC system, the train's speed is limited to restricted speed, which is consistent with the Labor Organizations' comment. When a territorially qualified engineer is operating a train, but the conductor is not territorially qualified, FRA does not believe operational restrictions are necessary.

Regarding the recommendation that as a condition to any relief from Parts 240 and 242, railroads should be required to implement several other safety redundancies like wayside and warning signs or job aids, FRA notes that the recommended redundancies are good practice. FRA also notes that railroads have already implemented many of these measures and the installation of additional wayside and warning signs would be time-consuming and not a practical solution that would yield immediate safety benefits in light of the current emergency situation. FRA agrees with the Labor Organizations' assertion that job aids should be available for use at any time, and notes that FRA's March 25, 2020, letter specifically requires railroads to provide locomotive engineers and conductors operating under the terms of the waiver with up-to-date job aids.

Finally, FRA agrees with the Labor Organizations' assertion that once the COVID-19 public health emergency has ended, employees not qualified on particular territories, but who operate over those territories under the terms of this waiver, are not considered qualified under either §§ 240.231 or 242.301. For those employees to become qualified on any territory they operated over pursuant to the terms of this waiver, full compliance with §§ 240.231 and 242.301 is required. Given the above discussion, FRA grants ASLRRRA's request to extend the conditional relief granted in FRA's March 25, March 30, and April 10, 2020, letters regarding 49 CFR Parts 240 and 242.

In sum, as discussed above, after consideration of ASLRRRA's extension request and all available information and comments received, FRA extends the specific emergency relief as described above to promote social distancing consistent with the CDC's guidance and in the event of the occurrence of localized workforce shortages that are a direct result of the COVID-19 public health emergency. All conditions in FRA's March 25, March 30, and April 10, 2020, letters related to these specific grants of relief continue to apply, except as modified in this

letter. Additionally, the grant of relief from FRA's March 25, 2020, letter is amended to revise condition number 2 related to relief from 49 CFR § 213.233(c) to require any railroad implementing the relief on Class 2 track or above, to reduce the track speed of the affected track to the next lower track class, in addition to the conditions outlined on pages 4 through 6 of that letter related to Part 213. Relief granted to ASLRRA member railroads in FRA's March 25, March 30, and April 10, 2020, letters, not specifically referenced above, is considered rescinded with the issuance of this letter.

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, or when the FRA Administrator's Emergency Declaration is rescinded, 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.alex@dot.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Karl Alexy', with a stylized flourish at the end.

Karl Alexy
Associate Administrator for Railroad Safety
Chief Safety Officer