



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

VIA E-MAIL ONLY

September 20, 2021

Mr. Mike Prince
Director of Operating Practices
Terminal Railroad Association of St. Louis
MPrince@terminalrailroad.com

Re: Docket Number FRA-2021-0083

Dear Mr. Prince:

This letter responds to the August 10, 2021, letter¹ from the Terminal Railroad Association of St. Louis (TRRA) to the Federal Railroad Administration (FRA) asking FRA to extend to TRRA a portion of the relief the agency previously granted to the American Short Line and Regional Railroad Association (ASLRRA), on behalf of its member railroads. Although TRRA cited FRA's calendar year 2020 emergency relief docket (Docket Number FRA-2020-0002) in its letter, because TRRA's request is a new request for relief, FRA assigned it a new docket number (Docket Number FRA-2021-0083).² As discussed below, FRA grants the requested relief.

As TRRA notes in its letter, as a result of the coronavirus disease 2019 (COVID-19) pandemic, in a letter dated September 18, 2020, FRA granted ASLRRA relief from certain sections of Title 49 Code of Federal Regulations (CFR) Parts 240, Qualification and Certification of Locomotive Engineers, and 242, Qualification and Certification of Conductors.³ TRRA requests that FRA extend to it as an individual railroad the relief previously granted to ASLRRA from the engineer and conductor certification requirements in 49 CFR § 240.121, *Criteria for vision and hearing acuity data*, and § 242.117, *Vision and hearing acuity*. TRRA stated that it has performed multiple searches to locate a clinic to perform the in-person vision and hearing acuity testing required, but it has identified only one available clinic. TRRA further notes that the increase in cases of COVID-19 and the possibility of increased State restrictions could worsen the clinic's availability.

¹ <https://www.regulations.gov/document/FRA-2021-0083-0001>.

² <https://www.regulations.gov/document/FRA-2021-0083-0001>.

³ <https://www.regulations.gov/document/FRA-2020-0063-0003>.

Although TRRA asks for relief specifically from the requirements of §§ 240.121 and 242.117, FRA understands the railroad to be asking for flexibility to complete the required tests beyond the normal due dates required by Parts 240 and 242 in the event the one identified clinic available to the railroad is unable to perform the required tests in a timely manner.

Accordingly, FRA understands TRRA to be asking FRA, generally, to extend the deadlines of Parts 240 and 242 for any locomotive engineer or conductor whose recertification becomes due during the duration of this waiver, but for whom the railroad is unable to complete the required vision and/or hearing acuity tests.

FRA notes that granting TRRA's request for relief would be consistent with FRA's treatment of both Association of American Railroads and American Public Transportation Association member railroads in Docket Numbers FRA-2020-0059⁴ and FRA-2020-0060.⁵ In those decisions, FRA granted an extension of relief of §§ 240.217(c)(1) and 242.201(c)(1), with similar conditions. FRA agrees that several of the tasks required by Parts 240 and 242 for a railroad to make recertification decisions continue to present social distancing challenges and concerns, and likely will continue to do so as long as the need for social distancing remains. FRA finds that continuing to extend the recertification time limits up to an additional year (i.e., 48 months instead of 36 months) should relieve some of the challenges involved with ensuring recertification candidates can access the required medical clinics and other facilities necessary to complete the recertification process. FRA notes that for the duration of this waiver, railroads have reported using this relief sparingly and have provided FRA monthly lists of the certified employees affected enabling FRA to provide effective oversight. Accordingly, FRA finds that granting TRRA's request for relief is justified, and FRA grants the requested relief, subject to the following conditions and limitations:

1. The 36-month certification period of §§ 240.217(c)(1) and 242.201(c)(1) may be extended for up to an additional 12 months for any locomotive engineer or conductor currently certified under Part 240 or 242, whose certification becomes due during the duration of this waiver and for whom the railroad is unable to complete the recertification process due to the inability to complete the required vision and/or hearing acuity tests required under either §§ 240.121 or 242.117.
2. If TRRA extends an employee's certification beyond 36 months in accordance with condition 1, TRRA must maintain a continuously updated list of the certified employees affected and each employee's certification record must be marked to show the extension of that individual's certification period under this waiver.
3. By the 15th of each month, if TRRA utilized the relief described in this letter during the previous month, TRRA must submit to FRA the list of certified employees affected maintained under condition 2. The list must be submitted by e-mail in Microsoft Excel file format to FRA's Operating Practices Staff Director, Chris Holt, at christian.holt@dot.gov.

⁴ <https://www.regulations.gov/document/FRA-2020-0059-0004>.

⁵ <https://www.regulations.gov/document/FRA-2020-0060-0005>.

The relief granted in this letter expires three months after the rescission or expiration of the President's declaration of a national emergency concerning the COVID-19 pandemic.⁶

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 TRRA 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.

In any future correspondence regarding this waiver, please refer to Docket Number FRA-2021-0083. If you have questions, please contact Mr. Christian Holt, FRA, Operating Practices Staff Director at 202-366-0978 or christian.holt@dot.gov.

Sincerely,

Karl Alexy
Associate Administrator for Railroad Safety
Chief Safety Officer

⁶ On February 24, 2021, President Biden issued a notice that he was continuing the national emergency declared in Proclamation 9994 concerning the COVID-19 pandemic. 86 FR 11599 (Feb. 26, 2021).