



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

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VIA E-MAIL PDF ONLY

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Mr. Ferguson and Mr. Pierce:

This letter is in reply to the two Petitions^{1,2} the Federal Railroad Administration (FRA) received on March 20, 2020, from the Transportation Division of the International Association of Sheet, Metal, Air, Rail and Transportation Workers and the Brotherhood of Locomotive Engineers and Trainmen (together referred to as Petitioners), asking that FRA issue an emergency order related to the novel coronavirus 2019 (COVID-19) public health emergency.

Petitioners seek an emergency order “to standardize and define the best protocols across the [railroad] industry for mitigation of the spread of the virus and the protection of both passengers and employees.” Petitioners also seek to ensure railroads maintain sufficient staffing levels for the duration of the COVID-19 public health emergency. In support of the requests, Petitioners cite to the President’s declaration of a national emergency due to COVID-19 and FRA’s activation of its emergency relief docket (ERD) to provide expedited consideration of requests for waivers of railroad safety regulations during the COVID-19 public health emergency. The Petitions list a variety of safety precautions that Petitioners believe railroads should implement to mitigate the spread of the virus and protect employees and passengers. Those precautions include standardized protocols for: locomotive, coach, passenger car, and sleep car sanitation; common room sanitation; employee temperature observation; food and lodging for employees at away from home terminals; crew transportation; responding to employees and/or passengers who develop COVID-19 symptoms; and furlough recall.

¹ <https://railroads.dot.gov/about-fra/smartblet-petition-emergency-order-related-covid-19-passenger-operations>.

² <https://railroads.dot.gov/about-fra/smartblet-petition-emergency-order-related-covid-19-freight-operations>.

FRA has thoroughly reviewed the Petitions and evaluated Petitioners' recommendations in light of the President's Coronavirus Guidelines for America and recommendations of the Centers for Disease Control and Prevention (CDC) and the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA). Although FRA believes that many safety precautions included in the Petitions could constitute best practices that should be applied in the railroad industry, FRA does not believe that an emergency order is justified.

49 U.S.C. § 20104 authorizes FRA to issue an emergency order when an "unsafe condition or practice, or a combination of unsafe conditions and practices, causes an emergency situation involving a hazard of death, personal injury, or significant harm to the environment." Although COVID-19 presents challenges to ensure that railroad employees and passengers are protected from the spread of the virus, those challenges are not unique to the railroad industry, and thus not the type of rail safety issue where FRA would typically exercise its emergency order authority.³ Therefore, on Friday, April 10, 2020, FRA published a Safety Advisory⁴ recommending that railroads develop and implement procedures and practices consistent with the President's Coronavirus Guidelines for America and the recommendations and guidelines of CDC and OSHA related to COVID-19.

As discussed more fully below, FRA has taken a number of other actions to mitigate the impact of COVID-19 on railroad employees and railroad operations. As Petitioners noted, last month, FRA activated its ERD in response to the COVID-19 public health emergency.⁵ Since activation of the docket, FRA has utilized its emergency waiver procedures to provide limited, temporary relief from specific regulatory requirements to ensure railroad operations, to the extent possible, are carried out consistent with the CDC's recommendations for social distancing and limiting the touching of common surfaces.⁶ For example, FRA has authorized the use of quick tie-up procedures whenever possible, enabling railroad employees to avoid unnecessarily entering railroad facilities at the end of their shifts for the sole purpose of reporting off duty in accordance with the hours of service requirements.⁷ This allows individual railroad employees to avoid unnecessary contact with other employees from different shifts and/or jobs in a terminal facility and reduces employees' needs to work at shared computer terminals. FRA has also granted relief from certain training, operational testing, and locomotive engineer and conductor certification requirements for consistency with the CDC's recommendations.⁸

FRA has granted railroads temporary, emergency relief from other regulatory requirements on a much more limited basis: on the existence of workforce shortages or other constraints directly

³ See, for example, FRA Emergency Orders: 31 (Controlling Amtrak train speeds on the Northeast Corridor - 80 FR 30534), 30 (Maximum speed in high-threat urban areas for flammable liquid trains - 80 FR 23321), 29 (Train speed and staffing on Metro-North - 78 FR 75442), and 28 (Securement and attendance of trains on mainline track - 78 FR 48218).

⁴ 85 FR 20335 (available at <https://railroads.dot.gov/elibrary/safety-advisory-2020-01-safety-precautions-related-coronavirus-disease-2019-covid-19>).

⁵ See Docket No. FRA-2020-0002.

⁶ See Letters from Karl Alexy, FRA, Associate Administrator for Railroad Safety and Chief Safety Officer, to the Association of American Railroads, American Short Line and Regional Railroad Association, and the American Public Transportation Association (March 25 and 30, 2020), FRA-2020-0002-0025; FRA-2020-0002-0032.

⁷ See *id.*

⁸ See *id.*

resulting from the COVID-19 public health emergency, meaning that individual railroads may utilize the relief only in situations where COVID-19 has caused workforce shortages (i.e., employees are out sick or quarantined) or where COVID-19 otherwise prevents railroads from complying with the regulations.⁹ FRA notes that Petitioners express concern with railroads maintaining adequate staffing levels for the duration of the COVID-19 public health emergency. Although FRA understands Petitioners' concerns in this regard, FRA has no legal authority to do as Petitioners request and order railroads to recall personnel from furlough in anticipation of the spread of COVID-19. FRA expects railroads to ensure the safety of railroad operations and maintenance during this national emergency. In the event localized workforce shortages resulting from COVID-19 occur, FRA believes the limited, temporary relief provided to the industry in the ERD will allow railroads to operate safely and ensure the safety of railroad employees at the same time.

Railroads are a critical infrastructure industry, and railroad employees are essential to enabling railroads to meet their responsibilities during times such as the current COVID-19 public health emergency. Accordingly, FRA stands ready to work with both railroads and railroad employees to ensure the continuity of railroad operations and the safety and health of railroad employees and the traveling public during this critical time.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald L. Batory". The signature is stylized with large, flowing loops and a long horizontal stroke at the end.

Ronald L. Batory
Administrator

⁹ See *id.*