



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

VIA E-MAIL ONLY

May 22, 2020

Paul P. Skoutelas
President and CEO
American Public Transportation Association
PSkoutelas@apta.com

Re: Request for Renewal of COVID-19 Emergency Relief, Emergency Docket FRA-2020-0002

Dear Mr. Skoutelas:

This letter is in reply to the letter (Petition) the Federal Railroad Administration (FRA) received on May 15, 2020, in Docket No. FRA-2020-0002 from the American Public Transportation Association (APTA). Specifically, APTA, 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, April 6, 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, the American Short Line and Regional Railroad Association, and 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 use the relief granted. Subsequently, on March 30, 2020, FRA granted additional relief from certain training requirements⁴ and on April 6, 2020, in response to a request from APTA, FRA granted additional relief to all railroads providing passenger service in the United

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 APTA.

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>.

States.⁵ On April 10, 2020, FRA allowed for the use of locomotive event recorders to meet the requirements for periodic locomotive engineer monitoring rides to support the recertification of locomotive engineers.⁶ 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, June 5, 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 APTA's request for renewal under the provisions of 49 CFR § 211.45, *Petitions for Emergency Waivers of Safety Rules*.⁷ A copy of APTA's renewal request is available for public review and comment in the ERD.⁸ In its renewal request, APTA explains that it seeks renewal of relief FRA granted for social distancing purposes, and certain portions of the 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, APTA 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.⁹ Additionally, APTA notes that, as a result of COVID-19, commuter railroads are operating with a much-reduced workforce, as over 2,500 commuter rail employees have tested positive and/or self-quarantined over the last 45 days. Further, APTA notes that, although passenger railroads have utilized only a very small portion of the emergency relief FRA has granted in this docket, the changing dynamics of COVID-19 impacts and the potential re-opening of city centers around the country may require utilizing the relief in the near future. Accordingly, APTA requested that FRA extend certain relief previously granted.

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

- Track (Time-based track/rail inspections):
 - §§ 213.7(a)(1)(i), (ii), (b)(1)(i), (ii), and (c)(1), (2), (4), designation of qualified persons to supervise certain renewals and inspect track
 - § 213.9(b), requirements, which require carriers to repair non-class specific defects within 30 days from time of discovery
 - § 213.119(c)(3)(ii), continuous welded rail track repairs
 - § 213.233(c), inspection frequencies for main line track including sidings

⁵ See <https://www.regulations.gov/document?D=FRA-2020-0002-0041>.

⁶ See <https://www.regulations.gov/document?D=FRA-2020-0002-0052>.

⁷ 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).

⁸ See <https://www.regulations.gov/document?D=FRA-2020-0002-0071>.

⁹ See <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>.

- § 213.234, automated quarterly, semiannual or yearly inspections of track constructed with concrete cross-ties
- § 213.237, internal rail quarterly, semiannual or yearly inspections
- Railroad Workplace Safety
 - §§ 214.343(b) and (d), 214.357(c), 214.523(b), 214.347(b), 214.349(b), 214.353(b), 214.355(b), and 214.357, training
 - § 214.527(c)(1)-(5), operation of on-track roadway maintenance machine with non-complying condition
- Operational Testing
 - Part 214, Operational Tests
 - § 217.9, Operational Tests and Inspections of Employees
 - Part 218, Operational Tests
 - Part 220, Operational Tests
 - Part 236, Operational Tests
 - Part 238, 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
- Accident/Incident Reporting
 - § 225.12, accident/incident reports alleging employee human factor as cause
 - § 225.21, forms
 - § 225.25(f), (h), and (i), recordkeeping
- Passenger Train Employee Hours of Service
 - §§ 228.405(a)(3)(i) and (b)(4), limitations on duty hours of train employees engaged in commuter or intercity rail passenger transportation
- Time-based locomotive inspections
 - § 229.21, locomotive daily inspection
 - § 229.23, locomotive periodic inspection
 - § 229.27, locomotive annual tests
 - § 229.29, locomotive air brake/calibration
 - § 229.33, out-of-use credit¹⁰
- 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

¹⁰ FRA notes that APTA requested that FRA extend relief related to § 229.25. That section sets forth the required inspections and tests to be performed at a locomotive's periodic inspection. FRA did not previously grant relief from this section and FRA has concluded that specific relief from § 229.25 is not necessary, as FRA has granted relief from § 229.23, the underlying inspection requirement.

- § 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
- Signal and Train Control Inspection
 - §§ 236.102 to 236.109, inspection of signal devices such as searchlight, signals, circuit controllers
 - §§ 236.376 to 236.387, inspection / tests of interlocking, route locking, etc.
 - § 236.576, gaging of roadway elements
 - § 236.588, periodic test of locomotive ATC, train control, cab signals
 - § 236.589, relays.¹¹
- Time-based passenger equipment inspections
 - § 238.303, exterior calendar day mechanical inspection of passenger equipment
 - § 238.305, interior calendar day mechanical inspection of passenger cars
 - § 238.307, periodic mechanical inspection of passenger cars and unpowered vehicles used in passenger trains
 - § 238.309, periodic brake equipment maintenance
 - § 238.311(e)(1), single car test
 - § 238.313 (including § 238.313(j)(2)), Class 1 brake test
 - § 238.321, out-of-service credit
- Passenger train emergency preparedness
 - § 239.103, passenger train emergency simulations
- 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
 - § 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
 - § 240.405(c), 60-day deadline to respond to petitions submitted to LERB
- 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

¹¹ FRA notes that APTA 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 APTA 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.

- § 242.121, knowledge exam
- § 242.201(c)(1), conductor must possess a certificate
- § 242.209, criteria for certification of conductor
- § 242.301, territorial qualifications
- § 242.401, time limitations for making determinations
- § 242.505(c), 60-day deadline to respond to petitions to FRA

By letter dated April 10, 2020, the American Train Dispatchers Association, Brotherhood of Locomotive Engineers and Trainmen, Brotherhood of Maintenance of Way Employes 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. FRA has addressed the Labor Organizations’ comments regarding specific provisions APTA requests be renewed in letters responding to similar requests for renewal from AAR and ASLRRRA, which were also issued today.

FRA considered APTA’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 APTA requests, subject to the same conditions as outlined within FRA’s March 25, 2020, March 30, 2020, April 6, 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 Relief¹²

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 inspections, or other requirements.¹³ 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.

¹² FRA has included the General Conditions of Relief from the March 25, 2020, waiver, for ease of reference. FRA modified the reporting condition to only apply to APTA and its members, removed references to provisions APTA has not requested to renew (specifically, Part 228, quick tie-up provisions), and to require reporting every Friday, as opposed to every Tuesday.

¹³ Relief is granted from § 217.9 and the other operational testing requirements identified, 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.

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 APTA, 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.

Modification of Relief from § 213.233(c)

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.

For the reasons outlined in FRA's May 22, 2020, letters, to AAR and ASLRRRA, 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.

In sum, as discussed above, after consideration of APTA'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 deal with any localized workforce shortages that are a direct result of the COVID-19 public health emergency. All conditions in FRA's March 25, March 30, April 6, 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 § 213.233(c) in FRA's March 25, 2020, letter is amended to revise condition number 2 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 APTA and all other passenger railroads operating in the United States in FRA's March 25,

March 30, April 6, 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', written in a cursive style.

Karl Alexy
Associate Administrator for Railroad Safety
Chief Safety Officer