



U.S. Department  
of Transportation

**Federal Railroad  
Administration**

1200 New Jersey Avenue, SE  
Washington, DC 20590

VIA E-MAIL ONLY

April 21, 2020

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

**Re: FRA Docket Nos. FRA-2020-0002 and FRA-2011-0060**

Dear Mr. Skoutelas:

This letter replies to the petition from the American Public Transportation Association (APTA), dated April 2, 2020, requesting that the Federal Railroad Administration (FRA) delay certain deadlines in the System Safety Program (SSP) final rule (Title 49 Code of Federal Regulations (CFR) Part 270). For reasons discussed below, FRA denies APTA's petition.

## **BACKGROUND**

APTA's petition requests that FRA extend the regulatory deadline for submitting a petition for reconsideration of the SSP rule by 90 days to August 4, 2020. APTA also requests that FRA extend the following two deadlines in the SSP rule by six months each: (1) the July 2, 2020, deadline for holding a preliminary consultation meeting and notifying directly affected employees of the meeting at least 60 days before it is held (*see* 49 CFR § 270.107(a)(3)(i)); and (2) the March 4, 2021 deadline for filing the SSP plan (*see* 49 CFR § 270.201(a)(1)).

In support of its request, APTA states that its member railroads and the communities serviced by those railroads are currently being adversely impacted by the coronavirus disease 2019 (COVID-19) public health emergency. Further, APTA notes that state and local "shelter in place" orders complicate the efforts of many of APTA's commuter rail members to comply with the provisions of the final rule. APTA believes that the inability of people to gather prevents the commuter railroads from complying with the final rule.

## **DISCUSSION**

### **APTA's Request for an Extension of the Deadline for Submitting Petitions for Reconsideration of the SSP Final Rule**

Under 49 CFR § 211.29(a), petitions for reconsideration must be submitted by the earlier of 60 days after publication or 10 days prior to the effective date of a rule, "[e]xcept for good cause

shown.” Because the SSP final rule was published on March 4, 2020 (85 FR 12826) with an effective date of May 4, 2020, the deadline for submitting petitions for reconsideration is April 24, 2020.

While APTA alleges that the focus on responding to the COVID-19 public health emergency has profoundly impacted commuter railroads and limited the industry’s ability to sufficiently review and analyze the revised provisions in the SSP final rule, APTA has not provided any specific examples of why either APTA or its individual members have good cause for submitting a late petition for reconsideration on the SSP final rule. FRA therefore declines to preemptively extend the deadline for submitting petitions for reconsideration. Consistent with 49 CFR § 211.29(a), however, APTA or an individual passenger rail operation may submit a petition for reconsideration after the deadline if that party can demonstrate good cause specific either to APTA or the individual passenger rail operation.

### **APTA’s Request for an Extension of Deadlines in the SSP Final Rule**

As an initial matter, FRA notes that it cannot extend the deadlines in the SSP final rule as requested by APTA under FRA’s emergency waiver procedures. While APTA generally requests extending various SSP deadlines by 6 months, 49 CFR § 211.45(j)(3) limits the relief FRA can grant as an emergency waiver to “a period of not more than 60 days.” The relief APTA requests therefore extends beyond the 60-day time-period FRA’s regulations allow for emergency waivers. To provide the relief APTA seeks, FRA would either need to amend the deadlines in the SSP rule through rulemaking or issue a waiver under the process described in 49 CFR § 211.11. For reasons discussed below, FRA declines to either amend the SSP rule or grant a general waiver to APTA’s members.

FRA has observed a dramatic downturn in ridership and, as such, a drop in scheduled trains. FRA understands the necessary restrictions preventing large face-to-face gatherings. However, 49 CFR § 270.107 does not require that the meeting(s) with directly affected employees be in-person meetings. FRA believes that, through the use of web meetings and/or conference calls, the information and comments can be disseminated and productive meetings can result. Thus, FRA denies APTA’s request to extend by 6 months the deadline for the required initial employee consultation meeting. However, if any individual passenger rail operation believes that an effective initial consultation meeting can only be achieved through an in-person meeting, that individual passenger rail operation may petition FRA for a waiver of the preliminary meeting deadline in 49 CFR § 270.107, *Consultation requirements*. In accordance with FRA’s Rules of Practice (49 CFR Part 211), FRA would expect that any such waiver request would contain an explanation as to why an in-person meeting is essential for complying with the regulatory requirements.

FRA notes that 49 CFR Part 270 does not require any SSP plan to be filed until March 2021. Because of this long lead time and APTA stating that many passenger railroads have mature SSP plans already, FRA believes passenger rail operations will have ample time to respond to the current COVID-19 public health emergency and return to normal operations before reviewing, revising, and filing their SSP plan. FRA, therefore, is denying APTA’s request to delay the implementation date of the rule and the deadline for filing the SSP plan.

If you have any questions on this letter, please contact Mr. Devin Rouse, Staff Director, Passenger Rail Division. Mr. Rouse can be reached at 202-493-6185, or at [devin.rouse@dot.gov](mailto:devin.rouse@dot.gov). In any future correspondence regarding this decision, please refer to Docket Number FRA-2020-0002.

Sincerely,

Karl Alexy  
Associate Administrator for Railroad Safety  
Chief Safety Officer