



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

VIA E-MAIL ONLY

May 22, 2020

Mr. Michael J. Rush
Senior Vice President
Safety and Operations
Association of American Railroads
mrush@aar.org

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

Dear Mr. Rush:

This letter is in reply to the May 12, 2020, letter (Petition) the Federal Railroad Administration (FRA) received in Docket No. FRA-2020-0002 from the Association of American Railroads (AAR). Specifically, AAR, on behalf of its member railroads,¹ requests to renew temporary emergency relief FRA previously granted in this docket. 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, AAR, the American Short Line and Regional Railroad Association (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

¹ AAR petitions on behalf of its membership, including the Class I railroads, the Genesee and Wyoming railroads, Pan Am Railways, and the National Railroad Passenger Corporation (Amtrak). This letter does not modify or in any way affect the relief granted in this docket to any entities other than those represented by AAR.

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>).

requirements.⁴ 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.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 AAR's request for renewal under the provisions of 49 CFR § 211.45, *Petitions for Emergency Waivers of Safety Rules*.⁶ A copy of AAR's renewal request is available for public review and comment in the ERD.⁷ In its renewal request, AAR explains that it only seeks renewal of relief FRA granted for social distancing purposes, and is not seeking to renew relief granted to address potential employee shortages. In support of its request to renew certain portions of the emergency relief granted, AAR 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

Specifically, AAR's May 12, 2020, letter enclosed a chart indicating that AAR requests renewal of relief from the following regulatory provisions, asserting that relief of these sections enables employees to maintain social distancing efforts:

- Track (Time-based track/rail inspections):
 - § 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
 - Part 236, Operational Tests
 - Part 240, Operational Tests
 - Part 242, Operational Tests
- Training

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

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-2020-0002-0068>.

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

- § 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
- 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
- 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

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. FRA is addressing below the Labor Organizations’ comments regarding specific provisions that AAR requests be renewed.

FRA considered AAR’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, FRA is renewing the above-listed emergency relief, as AAR 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.

General Conditions of Relief⁹

1. The relief granted in this letter is provided regardless of the availability of an adequate workforce, because such relief supports the CDC's recommendations for social distancing and limiting the touching of common surfaces. Railroads that find it necessary to utilize the waiver relief provided here from timely completing all Federally-mandated railroad safety tests and inspections, or other requirements, 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 conditions necessitating the use of the waiver.

A railroad shall report this information through AAR, 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.

Conditions specific to the regulatory provisions for which relief is renewed remain in effect.

Track Inspections

§ 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

⁹ FRA has modified the General Conditions of Relief from the March 25, 2020, waiver, to reflect that the relief renewed is to support social distancing and is not based on workforce shortages. The reporting condition is also modified to only apply to AAR and its members and to require reporting every Friday, as opposed to every Tuesday.

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. AAR indicates in its renewal request that this relief promotes social distancing and is not related to workforce shortages. FRA understands AAR’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 AAR’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 AAR’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).

AAR indicates in its renewal request that this relief is related to promoting social distancing, and is not related to workforce shortages. FRA understands AAR’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 AAR’s conclusion that the relief from § 213.237 supports appropriate social distancing measures.

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 AAR's request to extend the relief of § 213.237.

Therefore, FRA renews the relief AAR requested from § 213.234 and § 213.237, subject to the following specific conditions:¹⁰

1. The railroad track owner must first determine that no qualified track inspector or qualified contractor and/or manager as defined in § 213.7 is available;
2. If a railroad is unable to perform the inspection within a territory, subdivision or area of track within the timeframes required under § 213.234(b), petitioners are permitted to reschedule the regulatory required inspections for up to 60 days; and
3. If a railroad is unable to perform the inspection within a territory, subdivision or area of track within the timeframes required under § 213.237, petitioners are permitted to reschedule the regulatory required inspection of for up to 60 days.

Railroad track owners must maintain a record of each instance this waiver is implemented for a period of 1 year. The record shall contain the following information:

- a. Railroad track owner;
- b. Date inspection is due;
- c. Type of inspection;
- d. Milepost or marker;
- e. Territory/Subdivision;
- f. Date/Time of inspection; and
- g. Results of inspection.

Railroad track owners shall submit the records in an Excel file format to FRA by email (Yujiang.zhang@dot.gov) upon the cessation of this waiver.

Part 217 and Operational Testing (Parts 214, 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 require 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

¹⁰ These specific conditions have been modified from the March 25, 2020, letter, to reflect that AAR is not requesting renewal of other provisions in Part 213, and that the relief for § 213.234 and § 213.237 are not conditioned upon workforce shortages.

employing railroad may not conduct operational testing at the level that 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 AAR's request to extend the relief regarding operational testing for an additional 60 days.

As described in the March 25, 2020, waiver, any railroad suspending an FRA-mandated program of operational tests and/or inspections must retain a record of each instance, including the date on which the program was suspended and the date on which the program was reactivated. Railroads must retain these records for a period of 1 year. Railroads shall submit the records in an Excel file format to FRA by email (christian.holt@dot.gov) upon the cessation of this waiver.

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.¹¹

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

¹¹ 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.

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 AAR's request to extend the quick-tie up relief for an additional 60 days.

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 recertification under Part 240.¹²

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 AAR 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:

¹² See <https://www.regulations.gov/document?D=FRA-2020-0002-0052>.

- 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).

AAR 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 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 AAR'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 AAR'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 current guidance. 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. Relief granted to AAR 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.alexey@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