U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

VIA E-MAIL ONLY

July 20, 2020

Mr. 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 July 13, 2020, letter (Petition) the Federal Railroad Administration (FRA) received 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. That relief, initially 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.[1] In a letter dated May 22, 2020, attached, FRA renewed certain aspects of the previously granted relief based on the continued need for social distancing among railroad employees and the traveling public and certain relief predicated on the existence of workforce shortages as a direct result of the COVID-19 public health emergency.[2] The relief granted in FRA's May 22, 2020, letter is scheduled to expire on July 22, 2020.

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[1] 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, APTA, along with the Association of American Railroads, and the American Short Line and Regional Railroad Association, 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. Subsequently, on March 30, 2020, FRA granted additional relief from certain training requirements and on April 6, 2020, FRA granted APTA certain relief related to commuter and passenger rail specific requirements. 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. *See* Document nos. FRA-2020-0002-0025, -0030, -0041, and -0052 on www.regulations.gov.

[2] *See* https://www.regulations.gov/document?D=FRA-2020-0002-0074. Relief granted in this letter includes specific relief from portions of 49 CFR Parts 213, 214, 217, 218, 220, 225, 228, 229, 232, 234, 236, 238, 239, 240, 242, and 243.

FRA considered APTA's request for renewal under the provisions of 49 CFR § 211.45, *Petitions for Emergency Waivers of Safety Rules*. A copy of APTA's July 13, 2020, renewal request is available for public review and comment in the emergency relief docket (ERD).[3] In its renewal request, APTA explains that it seeks renewal of relief FRA previously granted because the relief "enables commuter and passenger railroads to operate consistent with recommendations of the Centers for Disease Control (CDC) for social distancing and limiting the touching of common surfaces." Further, APTA notes that commuter railroads are "still operating with a much-reduced workforce" as over 4,250 commuter rail employees have tested positive for SARS-CoV-2, the virus that causes COVID-19, and/or self-quarantined or self-isolated over the last three and a half months. As a result, APTA further notes that the CDC's guidance is expected to remain in place for the foreseeable future and, although commuter and passenger railroads have utilized a "very small portion of the relief granted by FRA," given the uncertain nature of the COVID-19 public health emergency, APTA asks FRA to extend the existing relief for one year.

As explained in FRA's original letters granting relief,[4] as well as the May 22, 2020, renewal letter, FRA determined the relief granted was either (1) necessary to enable railroads to operate consistent with the CDC's recommendations for social distancing and limiting the touching of common surfaces to protect railroad employees;[5] or (2) predicated on the existence of workforce shortages as a direct result of the COVID-19 public health emergency. FRA agrees with APTA's recognition of the anticipated continued need to practice social distancing for a considerable period of time. FRA notes, however, that relief issued under FRA's emergency waiver authority is limited to 60 days before it must be renewed. *See* 49 CFR § 211.45(j)(3). Accordingly, with this letter, FRA is renewing the existing relief detailed in its May 22, 2020, letter to APTA for 60 days, subject to the same terms and conditions of that letter. Concurrent with this decision, however, FRA is instituting a separate waiver proceeding under 49 CFR § 211.41 to evaluate APTA's request for relief on a more long-term basis. That request is assigned Docket Number FRA-2020-0060.

In sum, as discussed above, after consideration of APTA's extension request and all available information, FRA extends for 60 days, the specific emergency relief provided in its May 22, 2020, letter to APTA.

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, when the FRA Administrator's Emergency Declaration is rescinded, or when FRA issues a waiver decision in Docket Number FRA-2020-0060, 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.

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[3] *See* https://www.regulations.gov/document?D=FRA-2020-0002-0091.
[4] *See* Document nos. FRA-2020-0002-0025, -0030, -0041, and -0052 on www.regulations.gov.
[5] *See* https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf.

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.alexy@dot.gov.

Sincerely,

Karl Alexy
Associate Administrator for Railroad Safety
Chief Safety Officer