



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
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**Re: FRA's Position on Conducting Safety Inspections during COVID-19 Public Health
Emergency**

Gentlemen:

This letter is in reply to your September 30, 2020, letter to the Federal Railroad Administration (FRA) regarding FRA's position on conducting safety inspections during the coronavirus disease 2019 (COVID-19) public health emergency. In that letter, the American Chemistry Council, the Fertilizer Institute, and the Chlorine Institute ("the Associations") asked FRA to change certain aspects of its position published in August 2020 on the conduct of FRA safety inspections during the COVID-19 public health emergency.¹ Specifically, the Associations ask FRA to reconsider its position that regulated entities may not require FRA safety inspectors to fill out questionnaires, waivers, or documents of any kind, whether written or oral, as a condition of entry or access, and request that FRA inspectors comply with reasonable requests for health checks prior to entering regulated facilities.

Although FRA shares the Associations' concern for the health and well-being of both employees of regulated entities and FRA safety inspectors, FRA declines to modify its position as the Associations request. As noted in FRA's August 2020 position statement, FRA's authority to regulate and enforce the Federal railroad safety laws and implementing regulations includes a right of entry to regulated entities' premises to conduct inspections to determine

¹ FRA's August 2020 position statement can be found at: <https://railroads.dot.gov/elibrary/fras-position-conducting-safety-inspections-during-covid-19-public-health-emergency>.

compliance with these Federal railroad safety requirements, subject only to the condition that inspections occur at reasonable times, in a reasonable manner, and with a display of proper credentials (upon request).² Federal law does not permit regulated entities to impose additional requirements on the exercise of FRA's safety inspection authority.

As detailed in FRA's August 2020 position statement, however, FRA requires its employees to follow applicable guidance from the Centers for Disease Control and Prevention (CDC) and other Federal public health agencies. FRA safety inspectors are required to adhere to social distancing; use appropriate personal protective equipment (PPE); and stay home if they feel sick or experience any COVID-19 symptoms (e.g., fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion, or runny nose). Consistent with CDC guidance, any FRA inspector who feels sick or experiences any symptoms of COVID-19 must: notify the appropriate supervisor, self-isolate until the CDC's criteria to discontinue home isolation³ are met, consult with a healthcare provider, and comply with any applicable State and local government health requirements. Also, consistent with CDC guidance, an FRA inspector who suspects personal exposure to COVID-19, or tests positive for COVID-19, must comply with the CDC's recommendations to help prevent the spread of COVID-19 before returning to work.⁴ Further, an FRA inspector who becomes sick at work must go home and follow the applicable CDC guidance discussed above.

As noted in FRA's August 2020 position statement, the U.S. Department of Transportation maintains a robust internal reporting procedure in the event any employee, including an FRA inspector, is diagnosed with COVID-19 or comes into contact with someone diagnosed with COVID-19. If an FRA inspector is diagnosed with COVID-19 or comes into contact with someone who has been diagnosed with COVID-19, the Department, and FRA specifically, will work to support the contact tracing efforts of the relevant public health agency in the State(s) where the inspector works.

Prior to entering a regulated entity's facility for an inspection or on-site audit, all FRA inspectors will continue to follow CDC guidance on maintaining social distancing, exercising proper hygiene, and self-monitoring for potential symptoms of, or exposure to, COVID-19. FRA inspectors will also, to the extent possible and without interfering with FRA's inspection and oversight responsibilities, adhere to specific regulated entities' policies designed to mitigate the spread of COVID-19. For instance, if a regulated entity requires its employees to wear a particular form of PPE, FRA inspectors will do the same if the facility provides the PPE. However, as FRA's August 2020 position statement makes clear, FRA does not find requests for health checks, including temperature checks and health questionnaires, to be reasonable under the law.

FRA is confident that the measures already in place appropriately provide for employee

² See 49 U.S.C. §§ 20107(b), 5121(a) & (c).

³ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html>.

⁴ https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fabout%2Fsteps-when-sick.html.

safety during the COVID-19 public health emergency. Should concerns arise regarding granting any individual FRA inspector access to a regulated entity's facility because of COVID-19, FRA will make appropriate staff available to address those concerns. FRA encourages any regulated entity with such concerns to contact Mr. Mark Maday, Staff Director, FRA Office of Railroad Safety, Hazardous Materials Division, at mark.maday@dot.gov or (202) 493-0479.

FRA looks forward to working with you to help ensure safety during this national public health emergency.

Sincerely,

Karl Alexy
Associate Administrator for Railroad Safety
Chief Safety Officer