



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

VIA E-MAIL ONLY

September 20, 2021

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

Re: Docket Number FRA-2020-0060

Dear Mr. Skoutelas:

This letter responds to the August 19, 2021, letter from the American Public Transportation Association (APTA), requesting that the Federal Railroad Administration (FRA) extend the conditional relief previously granted to APTA member railroads related to COVID-19.¹ Although APTA cited FRA's emergency relief docket (Docket Number FRA-2020-0002) in its letter, FRA notes that the appropriate docket reference is FRA-2020-0060. In its letter, APTA asks FRA to extend the relief previously granted from certain provisions of 49 CFR Parts 213, 214, 217 (and associated operational testing requirements), 225, 228, 229, 234, 236, 238, 239, 240, 242, and various recurrent/refresher training requirements. As discussed below, FRA is granting in part and denying in part APTA's request.

In support of its request for extension, APTA asserts that the existing relief allows for "operational adaptations needed to maintain public and railroad employee health and safety" and enables passenger railroads to operate consistent with recommendations of the Centers for Disease Control and Prevention (CDC). Additionally, APTA notes the uncertainty the COVID-19 delta variant presents and the fact that commuter railroads in particular are still operating with a much-reduced workforce, with over 12,000 commuter rail employees testing positive and/or self-quarantining over the last 17 months. Citing the "changing dynamics" of the pandemic, APTA asks that FRA renew the existing relief for one year.

At the outset, FRA notes that to help prevent the spread of COVID-19 in the railroad industry, the agency granted the existing relief in this docket approximately one year ago to support railroads' ability to operate consistent with CDC's recommendations for social distancing and limiting the touching of common surfaces. Although COVID-19 remains at pandemic levels in the United States, and variants of the virus have emerged which have proven to spread more easily and quickly than initial strains of the virus, actions to mitigate the spread of the virus have been taken by Federal, State, and local governments, private industries, and members of

¹ <https://www.regulations.gov/document/FRA-2020-0060-0009>.

the public. For example, over the past year, vaccines have been developed to protect against COVID-19, and over one-half the adult population in the United States has now been fully vaccinated against the virus. Consistent with CDC guidance and other government mandates,² private industries have adopted requirements for employees to wear masks in certain situations. Additionally, industries, including the rail industry, have adopted voluntary measures such as enhanced cleaning and sanitizing practices and improved ventilation and maintenance, to help protect employees and the general public from further spread of COVID-19.³ Nonetheless, COVID-19 remains a pressing threat to the public health throughout the United States and within the railroad industry. Data submitted to FRA shows over the past several months, a consistent rise in the number of railroad employees reporting having contracted COVID-19. For example, recent data indicates that approximately 1,500 railroad employees report, as of September 4, 2021, having COVID-19, close to the approximately 1,900 employees reported at the previous peak in January 2021.⁴

FRA considered APTA's request for renewal under the provisions of 49 CFR § 211.41 and published notice of APTA's request in the *Federal Register* on August 25, 2021.⁵ In response to that notice, the Transportation Division of the International Association of Sheet Metal, Air, Rail, and Transportation Workers (SMART-TD), submitted to the docket a copy of the comments the organization submitted in response to the Association of American Railroads' (AAR) request to extend similar certain regulatory relief in Docket Number FRA-2020-0059.⁶ Attached is a copy of FRA's response to AAR in Docket Number FRA-2020-0059 which addresses the comments raised by SMART-TD.

After considering APTA's request, SMART-TD's comments in response to AAR's similar request for relief, the ongoing COVID-19 pandemic and related CDC guidance, as well as the railroads' use of the relief granted in this docket to date, as outlined below, FRA is granting in part and denying in part APTA's request. In sum, FRA is denying APTA's request to extend the existing relief from the following regulatory provisions:

- Parts 213, 225, 234, 239;
- § 214.527(c);
- Part 217 and Operational Testing Generally;
- §§ 240.223 and 242.209, 240.231 and 242.301, 240.127(c)(5), 240.405(c) and 242.505(c); and
- The relief previously granted from the deadlines to complete certain recurrent/refresher training requirements.

² See, e.g., FRA Emergency Order No. 32, *Emergency Order Requiring Face Mask Use in Railroad Operations*, 86 FR 11,888 (Mar. 1, 2021).

³ See, e.g., <https://www.apta.com/covid-19-resource-hub/>.

⁴ Workbook: COVID-19 Weekly Railroad Reports (dot.gov) (Dashboard Report is available at: <https://explore.dot.gov/views/COVID-19WeeklyRailroadReports/IllnessandUtilization?:isGuestRedirectFromVizportal=y&:embed=y#1>).

⁵ <https://www.regulations.gov/document/FRA-2020-0060-0010>.

⁶ <https://www.regulations.gov/document/FRA-2020-0060-0012>.

With certain modifications, FRA is extending the existing relief from: (1) Parts 228, 229, 236, and 238; and (2) the 36-month certification deadline in FRA’s locomotive engineer and conductor certification regulations (Parts 240 and 242), subject to conditions consistent with those imposed in its September 18, 2020, decision letter in this docket.⁷ FRA believes this relief will provide passenger railroads the necessary flexibility to continue to operate, while at the same time, ensuring the safety of the industry’s workforce during the COVID-19 pandemic.

Relief Denied

Part 213 – Track Safety Standards

FRA’s September 18, 2020, waiver in this docket provided APTA member railroads relief from various provisions of Part 213, including certain provisions of §§ 213.7, 213.9, 213.119, 213.233, 213.234, and 213.237.

FRA notes that for the duration of the relief provided in this docket, APTA member railroads reported minimal use of this relief, and only early on during the pandemic.⁸ Such minimal use shows that a waiver that covers all of APTA’s members is unnecessary. Accordingly, FRA finds that continuing the existing relief is not necessary or justified, and FRA denies APTA’s request to extend this relief.

Part 225 – Railroad Incidents/Accidents Reporting Requirements

The existing relief in this docket includes limited, conditional relief from certain provisions of FRA’s accident/incident reporting regulations (49 CFR Part 225). Specifically, FRA’s September 18, 2020, letter granted APTA member railroads limited, conditional relief from the requirements of §§ 225.12, 225.21, 225.25(f), (h), and (i). FRA notes that APTA member railroads reported minimal use of this relief, and only early on during the pandemic. Accordingly, FRA finds that continuing the existing relief is not necessary or justified, and FRA denies APTA’s request to extend this relief.

Part 234 – Grade Crossing Safety

The existing relief in this docket includes limited, conditional relief from the time-interval dependent inspection and testing requirements of Part 234 (specifically, §§ 234.249 through 234.271). To date, no APTA member railroad has reported the need to utilize this relief. Accordingly, FRA finds that continuing the existing relief is not necessary or justified, and FRA denies APTA’s request to extend this relief.

Part 239 – Passenger Train Emergency Preparedness

The existing relief in this docket provided temporary relief from § 239.103’s requirement for railroads to periodically conduct full-scale emergency simulations to determine the organizations’ capability to execute their emergency preparedness plans. Although FRA finds that this relief was justified as railroads scaled back operations (both the frequency of operations and the capacity of those operations) because of COVID-19, as passenger railroads are currently

⁷ <https://www.regulations.gov/document/FRA-2020-0060-0005>.

⁸ The existing waiver includes a reporting requirement, which requires any railroad utilizing any aspect of the waiver to provide the date of occurrence, anticipated duration, and conditions necessitating the use of the waiver, among other things. See <https://www.regulations.gov/document/FRA-2020-0060-0005> at 6-7.

expanding operations towards more normal levels and in some cases, have already returned to those levels, FRA finds that continuing this relief is not justified. Accordingly, FRA denies APTA's request to extend the relief.

If, as a result of COVID-19, a railroad has not conducted a full-scale emergency simulation in either calendar year 2020 or 2021, a railroad subject to § 239.103(b)(2) or (b)(3) (i.e., a railroad providing passenger service over at least 150 route miles or at least 200 million passenger miles annually or a railroad providing intercity passenger service) must conduct such a simulation by June 30, 2022. A railroad subject to § 239.103(b)(1) (i.e., any other railroad providing passenger service under Part 239) must conduct such a simulation by September 30, 2022.

FRA recognizes that the current COVID-19 pandemic will necessarily present certain challenges in conducting these simulations, but FRA finds that the benefits to be gained in ensuring that passenger railroads can successfully implement their emergency preparedness plans, especially given the passage of time, outweigh the risks presented. Additionally, FRA stands ready to assist any railroad or other stakeholder in developing appropriate protocols and processes for such simulations in light of the risks COVID-19 presents.

Part 214 – Roadway Workplace Safety

The existing relief in this docket includes limited, conditional relief from § 214.527(c)(1)-(5), which requires on-track roadway maintenance machines to be inspected prior to use, and, if necessary, repaired within certain time frames. FRA notes that to date, no APTA member railroads have reported using this existing relief. Accordingly, FRA finds that continuing the existing relief is not necessary or justified, and FRA denies APTA's request to extend this relief.

Part 217 and Operational Testing Generally

The existing relief in this docket includes limited, conditional relief from the operational testing requirements of 49 CFR § 217.9, and the related operational testing requirements in Parts 214, 218, 220, 236, 239, 240, and 242. FRA initially granted this relief noting that many railroads were suspending their operational testing programs to allow railroad managers more time to ensure railroads were able to remain operational while addressing anticipated challenges in terms of workforce shortages or other constraints as a result of COVID-19.⁹ As noted above in relation to the previously granted relief from Part 239, FRA finds that this relief was justified in the short term as railroads first adjusted operations in light of COVID-19, but as railroads expand operations towards more normal levels and in some cases, have already returned to full service levels, FRA finds that continuing this relief is not justified. As passenger operations return to normal service levels and employees are put back into service after what may have been substantial breaks from their former duties, FRA finds that operational testing will play a critical part in ensuring the safety of the increasing railroad operations. Accordingly, FRA finds that continuing the existing relief is not necessary or justified, and FRA denies APTA's request to extend this relief.

⁹ <https://www.regulations.gov/document/FRA-2020-0002-0025>.

Parts 240 and 242 – Locomotive Engineer and Conductor Certification (§§ 240.223 and 242.209, 240.231 and 242.301, 240.127(c)(5), 240.405(c) and 242.505(c))

With regard to APTA's request to extend the previously granted relief from §§ 240.223 and 242.209, FRA notes that to date, no APTA member railroads reported utilizing this relief. Accordingly, FRA finds that continuing the existing relief is not necessary or justified. Additionally, FRA finds that extending the relief is unnecessary to support CDC's recommendations for social distancing and limiting the touching of common surfaces. FRA denies APTA's request to extend this relief.

With regard to APTA's request to extend the previously granted relief from §§ 240.231 and 242.301, FRA notes that it imposed several conditions on this relief designed to ensure that railroads would only utilize this relief when no territorial qualified engineer or conductor was available and then, only to support CDC's recommendations for social distancing. FRA notes that APTA member railroads have reported minimal use of this relief and only early in the pandemic. Accordingly, FRA finds that continuing the existing relief is not necessary or justified, and FRA denies APTA's request to extend this relief.

The existing relief from § 240.127(c)(5) in this docket allows railroads, under certain conditions, to use locomotive event recorder downloads to meet the requirements for periodic locomotive engineer skills rides to support the recertification of locomotive engineers. FRA notes that no APTA member railroads have reported using this relief. Accordingly, FRA finds that continuing the existing relief is not necessary or justified, and FRA denies APTA's request to extend the relief.

The existing relief from §§ 240.405(c) and 242.505(c) in this docket extends the 60-day deadline for railroads to respond to petitions submitted to the Locomotive Engineer Review Board and Operating Crew Review Board. FRA notes that to date, no railroad has reported using this relief. As such, FRA finds that it is not necessary to extend the relief. FRA is therefore denying this aspect of APTA's request.

Recurrent/Refresher Training

FRA previously granted APTA-member railroads limited relief from the recurrent/refresher training intervals of 14 different CFR parts (Parts 213, 214, 217, 218, 220, 227, 228, 229, 232, 236, 238, 239, 240, and 242). FRA based this regulatory relief on the need to comply with COVID-19 directives and guidance, particularly related to social distancing and noting that in response to the COVID-19 pandemic, railroads initially suspended traditional classroom training and testing to protect the health and safety of railroad employees and the public.

Outside of the continuing education requirements of Parts 240 and 242 applicable to certified locomotive engineers and conductors (§§ 240.123(b) and 242.119(i)), railroads have not reported significant use of this relief. FRA finds that this relief was justified at the outset of the pandemic, but given the importance of ensuring railroad employees are properly and timely trained, FRA finds that continuing the existing relief is not justified. Accordingly, FRA is denying APTA's request to extend this relief. FRA acknowledges that providing all employees with the training required under FRA's regulations, while complying with CDC recommendations for social distancing, does present challenges. FRA expects that railroads

will appropriately adjust their training processes and procedures to ensure compliance with CDC recommendations and timely completion of all training requirements. If an individual railroad finds that accomplishing required training while complying with CDC recommendations is not possible (e.g., if a railroad does not have sufficient physical classroom space to conduct the required training or is unable to implement small group trainings or other appropriate changes), that individual railroad may petition FRA for relief from the relevant training requirement or timeline.

Relief Extended and Applicable Conditions

As noted above, after considering APTA's request to extend the existing relief in this docket, FRA finds that it is in the public interest and consistent with railroad safety to extend, with certain modifications, the existing relief from Parts 228, 229, 236, 238, and the 36-month certification deadline in FRA's locomotive engineer and conductor certification regulations (Parts 240 and 242).

Accordingly, in response to APTA's August 19, 2021, request, FRA grants APTA member railroads relief as outlined below, subject to the General Conditions listed below, and the specific conditions listed under each subject heading.

General Conditions of Relief:

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 pandemic, preventing individual railroads from timely completing all federally mandated railroad safety tests and inspections, or other requirements.¹⁰ Railroads that find it necessary to utilize the regulatory relief provided by this letter 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 to FRA the following information:
 - a. Railroad;
 - b. Location (Territory/Subdivision/Yard); and
 - 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 staff/manpower shortages or other conditions necessitating the use of the waiver.

Railroads using this waiver must report this information through APTA, which must integrate this information and provide it in Microsoft Excel format via e-mail to FRA (karl.alexey@dot.gov) on the Friday following the week being reported.

¹⁰ Relief is granted from certain aspects of Parts 240 and 242, 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.

Specific Conditions

Part 228 – Passenger Train Employees Hours of Service

The existing relief in this docket includes limited, conditional relief from § 228.405. That section sets forth limitations on duty hours of train employees engaged in commuter or intercity rail passenger transportation. Although to date, no APTA railroad has reported the need to use this relief, FRA finds that providing a certain amount of flexibility as to the duty hours of train employees engaged in commuter or intercity rail passenger transportation is justified in the event of a localized workforce shortage caused by COVID-19. FRA finds that with the service and capacity levels of commuter and intercity rail operations increasing, the potential for localized COVID-19 outbreaks impacting an operation's workforce in a specific geographic location remains. Accordingly, FRA finds that extending the existing relief is justified.

Accordingly, consistent with the relief previously granted, FRA grants relief from § 228.405(a)(3)(i) to allow train employees engaged in commuter or intercity rail passenger transportation who work Type 1 assignments to work more than 16 consecutive calendar days before requiring 2 calendar days free from initiating a duty tour, subject to the following specific conditions:

1. A railroad utilizing this relief continues to report any excess service as required under 49 CFR § 228.19;
2. A railroad utilizing this relief must still employ due diligence to avoid or limit such excess service as required under 49 CFR Part 228, Appendix A; and
3. This relief does not apply to train employees who work one or more Type 2 assignments within the 16-day series.

Additionally, consistent with the relief previously granted, FRA grants relief from § 228.405(b)(4) to allow a deadhead from an "other than regular reporting point," to a place of final release, to be counted as limbo time, subject to the condition that petitioning railroads must employ due diligence to avoid or limit such service, as required under 49 CFR Part 228, Appendix A.

Part 229 – Railroad Locomotive Safety Standards

The existing relief in this docket includes limited, conditional relief from certain test and inspection requirements of Part 229. Specifically, the existing relief includes conditional relief from § 229.21 (locomotive daily inspections), §§ 229.23, 229.27, 229.29 (periodic tests and inspections), and § 229.33 (out-of-use credit). FRA notes that with the exception of relief from § 229.21, APTA member railroads have reported the need to utilize this relief on multiple occasions because of workforce shortages due to COVID-19. Accordingly, FRA finds that extending the existing relief as it relates to the periodic test and inspection requirements of §§ 229.23, 229.27, and 229.29, and the out-of-use credits of § 229.33 is justified, but that extending the relief from § 229.21 is not necessary or justified. Accordingly, FRA grants the requested relief as follows:

1. §§ 229.23, 229.27, and 229.29 – Relief is provided to the extent that the inspection intervals required by each section may be extended up to 60 days.
2. § 229.33 – Relief is provided from the requirements to calculate out-of-service credit when passenger locomotive equipment is out of service for a period of 7 consecutive days, and will be allowed to extend maintenance intervals on a day-for-day basis, thereafter.

A railroad utilizing any of the relief from Part 229 provided above must:

1. Provide a copy of this waiver to all train crews, and the railroad must notify every train crew operating equipment under any terms of this waiver. This may be accomplished by a paper copy or distribution by Bulletin Order;
2. Provide to FRA, by the 15th of each month, a spreadsheet of the passenger locomotive equipment utilizing this relief, to include reporting marks and numbers, inspection due date, anticipated inspection date, and actual inspection date. The spreadsheet must be forwarded to Mr. Gary Fairbanks, FRA's MP&E Staff Director, via e-mail at gary.fairbanks@dot.gov; and
3. Provide appropriate notice to their Mechanical and Operating Departments, or other relevant personnel, of this temporary change of inspection procedures.

Part 236 – Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances

The existing relief in this docket provides APTA member railroads limited, conditional relief from the time-interval dependent inspection and testing requirements of Part 236 in situations where a workforce shortage or other constraints directly resulting from COVID-19 prevent a railroad from complying with the timeframes established in that Part. To date, only one APTA member railroad has reported the need to utilize relief from Part 236, and the only relief necessary was relief from the periodic testing requirements of § 236.588 as a result of that railroad having a large number of employees in COVID-19 quarantine. Accordingly, FRA finds that in the event of potential localized COVID-19 outbreaks, continuing to extend the existing relief from § 236.588 is justified subject to the following conditions:

1. Relief is provided from § 236.588 to complete any required test within 30 days of its due date;
2. A required § 236.588 test must be completed in accordance with the timeframes established in Part 236 when any equipment or system subject to Part 236 is placed in service, or modified, or disarranged; and
3. If, at any point, an essential component of a signal system subject to Part 236 fails to perform its intended function or malfunctions, the system must be removed from service and must not be returned to service until it is tested to ensure that the operating characteristics are in accordance with the limits within which it is designed to operate.

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

- a. Railroad;
- b. Date inspection or test is due;
- c. Equipment type;
- d. Type of Inspection or test;
- e. Milepost or marker;
- f. Territory/Subdivision;
- g. Date/Time of inspection or test; and
- h. Results of inspection or test.

Before exercising any of the relief from Part 236 provided in this letter, the railroad must ensure that all previous instances of use have been reported in accordance with the conditions of FRA's September 18, 2020, letter in this docket. Thereafter, by the 15th of each month, any railroad that utilized the relief described directly above during the previous month, must submit to FRA a list of the equipment affected in enough detail to enable FRA to review the related records. The list must be submitted by e-mail in Microsoft Excel file format to FRA's Signal and Train Control Division (either richard.d.scott@dot.gov or gabe.neal@dot.gov).

Part 238 – Passenger Equipment Safety Standards

The existing relief in this docket provides APTA member railroads limited, conditional relief from certain provisions of Part 238 that contain periodic and time-based intervals addressing passenger equipment maintenance and inspection requirements. For the duration of the existing relief, APTA railroads have reported the need to use this relief on a limited basis, primarily as related to §§ 238.307 (periodic mechanical inspections), 238.309 (periodic brake equipment maintenance), 238.311 (single car test), and 238.321 (out-of-service credit). Accordingly, FRA finds that continuing the existing relief as applied to §§ 238.307, 238.309, 238.311, and 238.321, is justified in the event of potential localized COVID-19 outbreaks that substantially reduce a railroad's workforce at any particular location, but that but that extending the relief from §§ 238.303, 238.305, and 238.313 is not necessary or justified. Accordingly, FRA grants the requested relief as follows:

1. § 238.307—Relief is provided from the requirements to conduct periodic mechanical inspections due to insufficient qualified manpower to complete periodic inspections within their due date. Equipment that missed a 92-day or 184-day periodic inspection must be brought into compliance within 60 days.
2. § 238.309—Relief is provided from the requirements to conduct periodic brake equipment maintenance due to insufficient qualified manpower to complete periodic brake equipment maintenance within the due date. Equipment that missed the date for periodic maintenance must be brought into compliance within 60 days.
3. § 238.311(e)(1)—Relief is provided from the requirements to conduct a single car airbrake test due to insufficient qualified manpower to perform the required testing when a car is put back in service after being out of service for 30 days or more. A car may return to service without performing a single car test, provided the car receives a Class 1 brake test per § 238.313, and calendar day inspection per §§

238.303 and 238.305 by a Qualified Maintenance Person, including a pit inspection, prior to putting the cars in service. Equipment that did not have a single car test must have one at the next scheduled 184-day inspection.

4. § 238.321—Relief is provided from the requirements of calculating out-of-service credit when a piece of passenger equipment is out of service for a period of 7 consecutive days (in lieu of the required 30 days), and will be allowed to extend maintenance intervals on a day-for-day basis, thereafter.

Parts 240 and 242 - Locomotive Engineer and Conductor Certification

FRA finds that with the certain exceptions discussed above, continuing to extend the 36-month certification deadlines specified in Parts 240 and 242 for both locomotive engineers and conductors to 48 months is justified. FRA agrees that several of the tasks required by Parts 240 and 242 for a railroad to make recertification decisions continue to present social distancing challenges and concerns, and likely will continue to do so as long as the need for social distancing remains. FRA finds that continuing to extend the recertification time limits up to an additional year (i.e., 48 months instead of 36 months) should relieve some of the challenges involved with ensuring recertification candidates can access the required medical clinics and other facilities necessary to complete the recertification process. FRA notes that for the duration of this waiver, railroads have reported using this relief sparingly and have provided FRA monthly lists of the certified employees affected enabling FRA to provide effective oversight. Accordingly, consistent with the existing relief in this docket, FRA is granting APTA's request to extend the deadlines of Part 240 and 242 for any locomotive engineer or conductor whose recertification becomes due during the duration of this waiver, subject to the following conditions and limitations:

1. The 36-month certification period of §§ 240.217(c)(1) and 242.201(c)(1) may be extended for up to an additional 12 months for any locomotive engineer or conductor currently certified under Parts 240 or 242, whose certification becomes due during the duration of this waiver.
2. A railroad extending an employee's certification beyond 36 months in accordance with condition 1, must maintain a continuously updated list of the certified employees affected and each affected employee's certification record must be marked to show the extension of that individual's certification period under this waiver.
3. By the 15th of each month, any railroad that utilized this relief during the previous month must submit to FRA the list of the certified employees affected maintained under condition 2. The list must be submitted by e-mail in Microsoft Excel file format to FRA's Operating Practices Staff Director (christian.holt@dot.gov).

The relief granted in this letter expires three months after the rescission or expiration of the President's declaration of a national emergency concerning the COVID-19 pandemic.¹¹

¹¹ On February 24, 2021, President Biden issued a notice that he was continuing the national emergency declared in Proclamation 9994 concerning the COVID-19 pandemic. 86 FR 11599 (Feb. 26, 2021).

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 (including the conditions of this waiver requiring reporting to FRA). FRA notes that if a railroad fails to accurately report its use of the relief provided in this waiver, FRA reserves the right to take enforcement action for violation of the underlying substantive regulation waived. FRA also reserves the right to reopen any docket and reconsider any decision made, based upon its own initiative or based upon information or comments otherwise received.

Given the nature of the ongoing COVID-19 pandemic, FRA recognizes that individual railroads may face unique challenges in complying with specific requirements of FRA's regulations not waived in this letter. If a railroad encounters such a situation (e.g., a situation where the effects of a localized COVID-19 outbreak impedes the railroad's ability to comply with certain FRA regulations), a railroad may file for emergency relief in FRA's calendar year 2021 emergency relief docket (Docket Number FRA-2021-0001). In accordance with FRA's Rules of Practice, for FRA to consider any such request on an emergency basis, such a request must explain how the petition relates to the COVID-19 pandemic, and to the extent practicable, contain the information required under § 211.9.¹²

FRA looks forward to continuing to work with you to help ensure the 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,

Karl Alexy
Associate Administrator for Railroad Safety
Chief Safety Officer

¹² 49 CFR 211.45.