



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

VIA E-MAIL ONLY

September 18, 2020

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

Re: Docket Number FRA-2020-0060

Dear Mr. Skoutelas:

On August 5, 2020, the Federal Railroad Administration (FRA) published notice of a request from the American Public Transportation Association (APTA) for FRA to extend the relief previously granted to APTA in the Agency's emergency relief docket (ERD; docket number FRA-2020-0002) as a result of the coronavirus disease 2019 (COVID-19) public health emergency.¹ Specifically, in a letter dated July 13, 2020, APTA, on behalf of its member railroads,² requested that FRA renew the relief previously granted from certain provisions of 49 CFR Parts 213, 214, 217, 218, 220, 225, 228, 229, 232, 234, 236, 238, 239, 240, and 242 for one year. Recognizing that the relief FRA granted to APTA in the ERD is issued under FRA's emergency waiver authority (49 CFR § 211.45), and that FRA's own regulations limit that relief to 60 days before it must be renewed,³ FRA granted APTA's request in the ERD to extend the existing relief for 60 days (*i.e.*, until September 18, 2020), and concurrently with that decision, FRA instituted a separate waiver proceeding under 49 CFR § 211.41 to evaluate APTA's request for relief on a more long-term basis. FRA assigned that separate waiver proceeding docket number FRA-2020-0060, and this letter responds to the request in that docket.

APTA's letter enclosed a chart indicating that APTA requests renewal of the relief from the following regulatory provisions, as previously granted by letter dated May 22, 2020, in FRA's ERD:

- Track (Time-based track/rail inspections):
 - §§ 213.7(a)(1)(i), (ii), (b)(1)(i), (ii), and (c)(1), (2), (4), designation of qualified persons to supervise certain renewals and inspect track
 - § 213.9(b), requirements, which require carriers to repair non-class specific defects within 30 days from time of discovery

¹ <https://www.regulations.gov/document?D=FRA-2020-0060-0002>.

² <https://www.regulations.gov/document?D=FRA-2020-0060-0001>.

³ 49 CFR § 211.45(j)(3).

- § 213.119(c)(3)(ii), continuous welded rail track repairs
- § 213.233(c), inspection frequencies for main line track including sidings
- § 213.234, automated quarterly, semiannual, or yearly inspections of track constructed with concrete crossties
- § 213.237, internal rail quarterly, semiannual, or yearly inspections
- Railroad Workplace Safety
 - §§ 214.343(b) and (d), 214.357(c), 214.523(b), 214.347(b), 214.349(b), 214.353(b), 214.355(b), and 214.357, training
 - § 214.527(c)(1)-(5), operation of on-track roadway maintenance machine with non-complying condition
- 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 238, Operational Tests
 - Part 240, Operational Tests
 - Part 242, Operational Tests
- Training
 - § 217.11, program of instruction on operating rules; recordkeeping; electronic recordkeeping
 - § 232.203(b)(8), brake inspection and testing requirements – training
 - Part 243
- Accident/Incident Reporting
 - § 225.12, accident/incident reports alleging employee human factor as cause
 - § 225.21, forms
 - § 225.25(f), (h), and (i), recordkeeping
- Passenger Train Employee Hours of Service
 - §§ 228.405(a)(3)(i) and (b)(4), limitations on duty hours of train employees engaged in commuter or intercity rail passenger transportation
- Time-based locomotive inspections
 - § 229.21, locomotive daily inspection
 - § 229.23, locomotive periodic inspection
 - § 229.27, locomotive annual tests
 - § 229.29, locomotive air brake/calibration
 - § 229.33, out-of-use credit
- Time-based grade crossing signal inspections
 - § 234.249, ground test
 - § 234.251, standby power
 - § 234.253, flashing light units and lamp voltage
 - § 234.255, gate arm and gate arm mechanism
 - § 234.257, warning system operation
 - § 234.259, warning time
 - § 234.261, highway traffic signal pre-emption
 - § 234.263, relays

- § 234.265, timing relays and timing devices
- § 234.267, insulation resistance tests, wires in trunking and cables
- § 234.269, cut-out circuits
- § 234.271, insulated rail joints, bond wires, and track components
- Signal and Train Control Inspection
 - §§ 236.102 to 236.109, inspection of signal devices such as searchlight, signals, circuit controllers
 - §§ 236.376 to 236.387, inspection / tests of interlocking, route locking, etc.
 - § 236.576, gaging of roadway elements
 - § 236.588, periodic test of locomotive ATC, train control, cab signals
 - § 236.589, relays.
- Time-based passenger equipment inspections
 - § 238.303, exterior calendar day mechanical inspection of passenger equipment
 - § 238.305, interior calendar day mechanical inspection of passenger cars
 - § 238.307, periodic mechanical inspection of passenger cars and unpowered vehicles used in passenger trains
 - § 238.309, periodic brake equipment maintenance
 - § 238.311(e)(1), single car test
 - § 238.313 (including § 238.313(j)(2)), Class 1 brake test
 - § 238.321, out-of-service credit
- Passenger train emergency preparedness
 - § 239.103, passenger train emergency simulations
- 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
 - § 240.405(c), 60-day deadline to respond to petitions submitted to LERB
- 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

- § 242.401, time limitations for making determinations⁴
- § 242.505(c), 60-day deadline to respond to petitions to FRA

In support of its request for relief, in its July 13, 2020 request, APTA asserted that the relief granted in the ERD related to the COVID-19 public health emergency has enabled commuter and passenger 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. Further, APTA noted that the CDC’s existing recommendations for social distancing and limiting the touching of common surfaces are expected to remain in place for the “foreseeable future,” and that commuter railroads are still operating with a “much-reduced workforce,” with over 4,250 commuter rail employees having tested positive and/or self-quarantined over the last three and a half months. Finally, APTA noted that, as demonstrated by the weekly waiver usage reports APTA submits to FRA,⁵ commuter and passenger railroads have utilized a very small portion of the relief FRA has granted. According to APTA, this limited waiver usage demonstrates APTA member railroads’ commitment to safety, and shows that the relief has only been utilized when a railroad had no other option. However, considering the changing dynamics and uncertain nature of the COVID-19 public health emergency, APTA requests that FRA renew the relief previously granted in the ERD for a period of one year.

In response to the August 5, 2020 public notice of APTA’s request for relief, FRA received comments from the Transportation Trades Department, AFL-CIO (TTD).⁶ TTD opposed APTA’s request for renewal of the existing relief in the ERD because APTA “requests exemption from important safety rules and would allow APTA members to implement the relief at their sole discretion.” Further, TTD asserted that “by not applying through the established ERD, the petition [circumvents] oversight of the usage or need for the relief.” TTD further asserted that oversight of COVID-19 relief is “firmly the responsibility of FRA and not the regulated entity.” Noting that APTA explains in its petition that member railroads have used only a “very small portion” of the relief already granted, TTD’s comments implied that relief not currently being used by APTA railroads should not be extended, but instead, that APTA should request and justify the relief when, and if, it became necessary to use the relief.⁷

In response to TTD’s comments, FRA notes that APTA did submit its July 13, 2020 extension request to the ERD. FRA considered APTA’s request for renewal under the provisions of 49 CFR § 211.45, *Petitions for Emergency Waivers*, and on July 20, 2020, issued a 60-day extension of the emergency relief.⁸ Recognizing the longer-term nature of APTA’s request for relief, however, as noted in FRA’s July 20, 2020 letter to APTA, concurrent with its decision on a short-term extension of relief in the ERD, FRA instituted a separate waiver proceeding under 49 CFR § 211.41 to evaluate APTA’s request for relief on a more long-term basis. FRA further

⁴ By the reference to “time limitations for making determinations,” FRA understands APTA to be referring to section 242.201, not section 242.401 (which addresses the denial of a conductor’s certification).

⁵ <https://railroads.dot.gov/coronavirus>.

⁶ <https://www.regulations.gov/document?D=FRA-2020-0060-0003>.

⁷ TTD also objects to APTA’s waiver request because it includes a request for relief from “certain drug and alcohol testing requirements that have not been previously granted.” FRA notes that, as outlined above, APTA has not requested any relief from FRA’s drug and alcohol testing requirements (49 CFR Part 219), and no relief is granted in this letter from such requirements.

⁸ <https://www.regulations.gov/document?D=FRA-2020-0002-0094>.

notes that whether a waiver request is processed under the emergency waiver procedures of 49 CFR § 211.45, or FRA's normal waiver procedures at 49 CFR § 211.41, FRA maintains oversight of a waiver's implementation, and FRA closely monitors railroads' compliance with any conditions imposed. In the case of the existing relief related to COVID-19 granted to APTA member railroads in the ERD, FRA imposed conditions narrowly tailored to ensure that railroads would only use the relief as necessary either to comply with the health and safety recommendations of the CDC and other governmental agencies, or to address workforce shortages directly resulting from COVID-19. To ensure that railroads adhere to those narrowly tailored conditions, FRA required railroads to report weekly each time the railroad utilizes a waiver.⁹ FRA may impose such conditions regardless of whether a petition is handled through emergency waiver procedures or through FRA's standard waiver procedures.

FRA notes that COVID-19 continues to present passenger railroads with unique challenges as the virus continues to be present throughout the United States, and at the same time, cities and communities have begun to open their economies, business centers, and schools. With these openings, passenger railroads are facing new challenges to ensure the safety of their employees and the travelling public. Due to the unpredictable nature of the COVID-19 public health emergency, FRA believes it is necessary to provide a certain amount of relief from regulatory requirements to allow railroads the flexibility to respond to their unique operational situations in a safe manner. Since FRA's initial issuance of relief in its ERD due to COVID-19, FRA has closely tracked and monitored railroads' use of the relief authorized. Based on the weekly and more detailed monthly reporting required in FRA's initial grants of relief, FRA has found that the railroads have judiciously exercised the relief as appropriate, exercising relief from certain training and certification requirements more often than relief from safety-critical inspections and operational requirements. The narrowly-tailored conditions of the relief previously granted in the ERD, including the reporting requirements, has enabled FRA to closely monitor implementation of the relief by the industry as a whole, as well as each individual railroad's implementation of the relief.

Specifically, based on APTA's reports of waiver utilization for passenger railroads, since FRA initially granted relief in the ERD, nine APTA member railroads have reported exercising some form of the relief, predominantly related to the training and testing of employees. Four of these nine APTA member railroads have reported utilizing, on a limited basis, the relief related to testing and inspection intervals (including relief from Parts 213, 229, 234, and 236) and the same number have reported utilizing, on a limited basis, the relief related to operations and maintenance (including relief from Parts 217 and 225). In all, six of the nine railroads have reported using the relief related to the training and testing of employees (including relief from Parts 240 and 242, among others).¹⁰

⁹ See <https://railroads.dot.gov/coronavirus> for summary reports of waiver utilization.

¹⁰ <https://railroads.dot.gov/coronavirus>.

Accordingly, after careful consideration of APTA's request for relief and all associated information, including TTD's comments submitted in this docket and relevant comments previously submitted in FRA's ERD, as well as the reported waiver usage for APTA member railroads, FRA has found that, subject to certain conditions and limitations, extending the requested relief is in the public interest and consistent with railroad safety. Specifically, FRA finds that granting the relief as detailed below, for a period of one year or three months after the FRA Administrator rescinds the existing Emergency Declaration related to the COVID-19 public health emergency, whichever is sooner, is justified. Given that the duration of the COVID-19 public health emergency is unknown and unpredictable at this point, FRA believes that limiting the relief to the shorter of a one-year period, or three months after rescission of the Emergency Declaration, provides the railroad industry sufficient time and flexibility to adjust their operations and practices to address regulatory requirements that they are capable of fulfilling (*e.g.*, to complete any missing refresher training or any outstanding engineer or conductor certification issues). If the COVID-19 public health emergency ends before the expiration of the one-year period, railroads will need time to come back into compliance and complete any outstanding regulatory requirements. Accordingly, FRA grants the requested relief as outlined below, subject to the General Conditions listed below and the specific conditions listed under each subject heading.¹¹

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 public health emergency, preventing individual railroads from timely completing all federally mandated railroad safety tests and inspections, or other requirements.¹² 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.

¹¹ FRA notes that unless indicated otherwise, the conditions of the relief specified in this letter are generally consistent with the conditions FRA imposed on the related relief granted in the ERD.

¹² Relief is granted from section 217.9 and the other operational testing requirements identified, certain recurrent training requirements, and Parts 240 and 242 (not including §§ 240.231 and 242.301), 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.

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.

Specific Conditions

The specific regulatory provisions FRA is waiving and the specific conditions applicable to this relief are as follows:

Part 213 – Track Safety Standards

Passenger railroads, unlike large freight railroads, often depend on contractor personnel to conduct track inspections. The COVID-19 public health emergency has resulted in contracting companies implementing travel restrictions out of concern for employee health and safety. Due to these ongoing contractor-related travel restrictions, some passenger railroads are currently unable to meet the required inspection intervals under FRA’s track safety standards and accordingly APTA asked that FRA extend the previously-granted relief from those standards. Each of APTA’s specific track-related extension requests are discussed below.

§ 213.7(a)(1)(i), (b)(1)(i), (ii), and (c)(1), (2), (4)

Section 213.7 requires track owners to designate qualified persons to inspect track and supervise certain track restorations and renewals, and specifies the records related to these designations a track owner must maintain. Paragraphs (a) and (b) of this section address the qualification of persons responsible for inspecting track and supervising track restorations and renewals generally, and paragraph (c) addresses the qualification of persons responsible for inspecting and supervising the installation, adjustment, and maintenance of continuous welded rail track. As FRA noted in its April 6, 2020 letter to APTA,¹³ FRA does not believe a blanket waiver of the minimum qualification requirements under paragraphs (a) and (b) of section 213.7 is justified. If a railroad has a specific need for potential alternative requirements under § 213.7(a) and (b), that railroad must identify the desired alternative qualification requirements and request FRA approval to use such alternative qualification requirements.

To provide flexibility as to how a railroad designates qualified persons, however, consistent with the relief previously granted, FRA is providing relief from the designation aspects of § 213.7(a), (b), and (c) for qualified persons by waiving the requirements of § 213.7(e)(1) and (2), provided that the railroad maintains documentation justifying why a person is considered qualified (*e.g.*, resume, training certificate).

§§ 213.9(b), 213.233, 213.234, 213.237 (track inspection time-interval-dependent requirements)

On March 25, 2020,¹⁴ recognizing that during a period with significant workforce shortages, railroads may not be capable of maintaining certain time-interval-dependent inspection

¹³ <https://www.regulations.gov/document?D=FRA-2020-0002-0041>.

¹⁴ <https://www.regulations.gov/document?D=FRA-2020-0002-0025>.

requirements, FRA granted APTA relief from the following track inspection time-interval-dependent requirements in Part 213:

- a. Inspection frequencies specified in § 213.233 for main line track including sidings;
- b. § 213.234 automated quarterly, semiannual, or yearly inspections of track constructed with concrete cross-ties;
- c. § 213.237 internal rail quarterly, semiannual, or yearly inspections; and
- d. § 213.9(b) requirements, which require carriers repair non-class specific defects within 30 days from the time of discovery.

On May 22, 2020, FRA subsequently modified the conditions applicable to the grant of relief from section 213.233.¹⁵

Consistent with the relief previously granted, FRA grants Petitioners relief from the provisions of §§ 213.233(c), 213.234, and 213.237, subject to the following specific conditions:

1. The railroad track owner must first determine that no qualified track inspector or qualified contractor and/or manager as defined in section 213.7 is available;
2. When no qualified track inspector or qualified contractor and/or manager as defined in section 213.7 is available, the following table replaces the section 213.233(c) table, which defines the required track inspection schedule:

Class of track*	Type of track	Required frequency
Excepted track and Class 1, 2, and 3 track	Main track and sidings	Every two (2) weeks with at least a six (6) calendar day interval between inspections, or Before use, if the track is used less than once a week, or Weekly with at least a five (5) calendar day interval between inspections, if the track carries passenger trains or more than 10 million gross tons of traffic during the preceding calendar year.
Excepted track and Class 1, 2, and 3 track	Other than main track and sidings	Every six (6) weeks with at least a 20-calendar day interval between inspections.
Class 4 and 5 track		Weekly with at least a five (5) calendar day interval between inspections.

*Any railroad implementing this relief on Class 2 track or above must reduce the track speed of the affected track to the next lower track class; and

3. During periods of significant workforce shortages resulting from the COVID-19 public health emergency that limit a Petitioner's ability to perform the inspection within a

¹⁵ <https://www.regulations.gov/document?D=FRA-2020-0002-0074>.

territory, subdivision or area of track within the timeframes required under sections 213.234(b) or 213.237, petitioners are permitted to reschedule the regulatory required inspections for up to 60 days.

FRA notes that APTA requested an extension of the relief from the requirements of section 213.9(b), initially granted in FRA's March 25, 2020 letter in the ERD. FRA has concluded, however, that continuation of that relief is not justified. If a segment of track does not at least meet the requirements for Class 1 track, section 213.9(b) already allows railroads, under certain conditions, to continue operations at Class 1 speeds for up to 30 days. FRA finds that specific to the continuation of passenger operations during this COVID-19 public health emergency, 30 days is a reasonable time frame for a railroad to make appropriate repairs.

§ 213.119(c)(3)(ii)

Paragraph (c)(3) of section 213.119 specifies the remedial action required in the case of a bolted joint in continuous welded rail experiencing a service failure. Paragraph (c)(3)(ii) of this section authorizes a track owner in such an instance to replace the broken bar(s), replace the broken bolts, adjust the anchors, and within 30 days, weld the joint. Consistent with the relief previously granted, FRA is granting relief from the 30-day deadline in section 213.119(c)(3)(ii) to allow up to an additional 60 days to perform the required weld.

Railroad track owners 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 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.

By the 15th of each month, any railroad that utilized any of the relief from Part 213 provided above during the previous month must submit the above-described records to FRA. The records must be submitted by e-mail in Microsoft Excel file format to FRA's Track Division Staff Director (Yujiang.zhang@dot.gov).

Part 214 – Roadway Workplace Safety

§ 214.527(c)(1)-(5)

This section requires on-track roadway maintenance machines to be inspected prior to use, and if necessary, repaired within certain time frames depending on the repairs necessary. Consistent with the relief previously granted, FRA is granting relief from the 7- and 30-day deadlines of this section to procure necessary parts and to make the actual repairs, provided that the railroad exercises due diligence to procure promptly any required parts and repair the machines within the timeframes of the regulations. Consistent with the relief previously granted, relief is provided for a period not to exceed 30 days.

Part 217 and Operational Testing Generally

In its letter dated March 25, 2020,¹⁶ FRA granted the Petitioners 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 subsequently extended that relief in its letters dated May 22, 2020 and July 20, 2020.

Consistent with the relief previously granted, FRA grants the railroads 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. As with the short-term emergency relief granted in the ERD, railroads shall continue to address any observed operating and safety rule violations as required under normal railroad procedures, and must continue to require employees to report safety hazards as required under existing railroad procedures.

Any railroad suspending an aspect of an FRA-mandated operational testing and/or inspection program 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 one year and, upon request, provide copies of the records to FRA via e-mail.

Recurrent/Refresher Training

By letter dated March 30, 2020, FRA initially granted the railroads relief from the recurrent/refresher training requirements of 14 different CFR parts (Parts 213, 214, 217, 218, 220, 227, 228, 229, 232, 236, 238, 239, 240, and 242).¹⁷ FRA subsequently extended that relief in letters dated May 22, 2020¹⁸ and July 20, 2020.¹⁹

Consistent with the previous relief granted, FRA finds that granting relief from the recurrent/refresher training requirements listed in the chart below, subject to certain conditions, is justified. This action is appropriate to facilitate the railroads' efforts to comply with COVID-19 directives and guidance, and to protect the health and safety of railroad employees and the public. In addition, FRA recognizes that railroads generally have suspended traditional classroom training and testing in light of the public health emergency.

¹⁶ <https://www.regulations.gov/document?D=FRA-2020-0002-0025>.

¹⁷ <https://www.regulations.gov/document?D=FRA-2020-0002-0030>.

¹⁸ <https://www.regulations.gov/document?D=FRA-2020-0002-0074>.

¹⁹ <https://www.regulations.gov/document?D=FRA-2020-0002-0094>. FRA notes that its May 22, 2020 and July 20, 2020 letters did not include the chart specifying the 14 different CFR parts for which it was waiving the requirements for refresher training. Instead, in those letters, FRA merely referred to Part 243, FRA's training standards rule. However, referencing Part 243 was an error, as the first implementation date for refresher training under Part 243 is not until December 31, 2024. Accordingly, in this letter, FRA is correcting this error by reproducing the chart of specific CFR Parts affected.

49 CFR Part	213	214	217	218	220	227	228	229	232	236	238	239	240	242
Frequency (calendar year) or other	1 ¹	1	N	3 ²	3 ²	1	N	N	3 ³	N	3 ³	2 ³	C	C
¹ Persons designated by track owner under 49 CFR §§ 213.7(c), 213.305(c) only. ² May integrate with § 217.11(a). ³ Requires classroom, testing, and “hands-on” component. N = Needs based on operational requirements of the employer, employees, or location, or stated in program. Also, may include identified skill gaps from analysis or changes in regulatory requirements. C = Continuing education and frequency as stated in program submission to ensure locomotive engineers and conductors comply with applicable Federal laws, regulations, orders, and railroad safety/operational rules, and are familiar with the physical characteristics of a territory.														

Accordingly, consistent with the relief previously granted, FRA grants Petitioners temporary relief from the refresher training requirements as depicted in the chart above, subject to the following specific conditions:

1. To the extent practicable, a railroad must meet refresher training requirements by use of computer-based, web-based, or other training methods that can be taken in isolation, at home, or in another controlled environment; and
2. A railroad utilizing this relief must maintain a continuously updated list of employees whose training becomes due during the duration of this waiver, but are not trained due to the railroad’s suspension of a portion of its refresher/recurrent training programs. The training records of each affected employee must be marked to show that the employee’s training is being postponed under the terms of this waiver.

Regarding APTA’s request for relief from the training requirements of Part 243, FRA is not granting that relief because the first implementation deadline for refresher training in Part 243 is December 31, 2024.

Part 225 – Railroad Incidents/Accidents Reporting Requirements

§§ 225.12, 225.21, 225.25(f), and (i)

Part 225 requires railroads to report certain accidents and incidents on specific U.S. Office of Management and Budget-approved forms within certain timeframes. Consistent with the relief previously granted, FRA is extending the reporting time limits for 60 days as they relate to the FRA form numbers referenced below with the associated conditions:

1. *FRA F 6180.55, FRA F 6180.55a, FRA F 6180.54, FRA F 6180.57, and FRA F 6180.81* – once the 60-day period has expired, any railroad that utilized this relief must submit the required forms and attachments to FRA under a separate cover letter, noting the late submission and referring to this waiver.
2. *FRA F 6180.78, FRA F 6180.98, FRA F 6180.97, FRA F 6180.107, FRA F 6180.150* – once the 60-day period has expired, any railroad that utilized this relief will initiate

the process for completing the required reports, records, forms and attachments that were not completed under this waiver's time frame.

§ 225.25(h)

This section generally requires a railroad to post a listing of all injuries and occupational illnesses reported to FRA as having occurred at an establishment to be posted at that establishment within 30 days after the expiration of the month during which the injuries and illnesses occurred. Consistent with the relief previously granted, the 30-day deadline for posting injuries and illness is extended for an additional 60 days.

Part 228 – Passenger Train Employees Hours of Service

§ 228.405(a)(3)(i), (b)(4)

Section 228.405 sets forth limitations on duty hours of train employees engaged in commuter or intercity rail passenger transportation. Consistent with the relief previously granted, FRA grants relief from section 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 section 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 excess service, as required under 49 CFR Part 228, Appendix A.

Part 229 – Railroad Locomotive Safety Standards

APTA requests renewal of the relief from certain provisions of Part 229. Consistent with the relief previously provided, and to be used only when there is insufficient qualified manpower as a result of COVID-19 to perform required inspections or maintenance, FRA grants the requested relief as follows:

1. § 229.21 – Relief is provided from the requirement to conduct daily inspections due to insufficient qualified manpower for the inspection within their due date. Passenger railroads are granted the ability for equipment to remain in service past the scheduled

calendar day inspection, provided a calendar inspection is conducted within 24 hours after a missed inspection.

2. §§ 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.
3. § 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 234 – Grade Crossing Safety and Part 236 – Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Signal and Train Control Systems, Devices, and Appliances

Petitioners request to extend the previously granted temporary relief from the time-interval-dependent inspection (and testing) requirements of Parts 234 and 236. This includes the time-based inspection and testing requirements in §§ 234.249 through 234.271, §§ 236.102 through 236.109, §§ 236.376 through 236.387, § 236.576, § 236.577, § 236.588, and § 236.589. Consistent with the previously granted relief in the ERD,²⁰ FRA finds that providing additional time and flexibility for railroads to complete the required tests and inspections is justified. Accordingly, FRA grants Petitioners' request for relief from the time-interval-dependent inspection and testing requirements of Parts 234 and 236 in situations where a workforce shortage or other constraints directly resulting from the COVID-19 public health emergency prevent the railroad from complying with the timeframes established in Parts 234 and 236, subject to the following conditions:

1. Any time-interval-dependent test or inspection required by Parts 234 and 236, specifically §§ 234.249 through 234.271, §§ 236.102 through 236.109, §§ 236.376 through 236.387, § 236.576, § 236.577, § 236.588, and § 236.589, must be completed within 30 days of its due date;
2. All required tests and inspections must be completed in accordance with the timeframes established in Parts 234 and 236 when any equipment or system subject to Part 234 or 236 is placed in service, or modified or disarranged;

²⁰ <https://www.regulations.gov/document?D=FRA-2020-0002-0025>.

3. If, at any point, an essential component of any highway-rail grade crossing warning system or signal system subject to Part 234 or 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; and
4. Upon a credible report of a highway/rail grade crossing warning system malfunction, the requirements of Part 234, Subpart C must be adhered to, including providing an alternative means of actively warning highway users of an approaching train.

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.

This relief does not apply to any other tests or inspections required by Parts 234 or 236 (*e.g.*, all section 236.587 departure tests must be performed as required).

Before exercising any of the relief from Parts 234 or 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 March 25, 2020 letter in the ERD. 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 certified employees affected. 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

APTA requests renewal of the relief from the provisions of 49 CFR Part 238 that contain periodic and time-based intervals addressing passenger equipment maintenance and inspection requirements. Specifically, APTA requests FRA permit railroads to reduce the frequency of inspections and tests, due to limited qualified personnel availability, within the time periods specified in 49 CFR §§ 238.303, 238.305, 238.307, 238.309, 238.311(e)(1), 238.313 (including 238.313(j)(2)), and 238.321.

Consistent with the relief previously granted, FRA grants relief from the above-referenced sections as noted below, and subject to the following conditions:

1. §§ 238.303, 238.305—Relief is provided from the requirements to conduct calendar day inspections due to insufficient qualified manpower to complete daily inspection and air

tests. This relief will allow passenger railroad equipment to remain in service past the scheduled calendar day inspection, provided a calendar inspection is conducted within 24-hours after a missed inspection.

2. § 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.
3. § 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.
4. § 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 section 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.
5. § 238.313—Relief is provided from the requirements to conduct a Class I brake test (Class I) due to insufficient qualified manpower to complete required air brake inspections and air tests. Passenger railroads may permit equipment to remain in service past the scheduled calendar day Class I inspection period, provided that a Class I inspection is conducted within 24-hours after a missed inspection. However, no relief is provided for §§ 238.315 and 238.317. These tests must continue to be performed when required and must be completed by a Qualified Person when a section 238.313 test is not performed. This relief can only be used when there is insufficient qualified manpower to perform the Class I inspection when required.
6. § 238.313(j)(2) —Relief is provided from the requirements to conduct a Class I brake test where inspection locations are not equipped with pit areas to conduct undercarriage inspections. Daily inspections and testing must continue to be carried out at the railroad's field operation locations. Passenger railroads must continue to conduct and perform five-day undercarriage inspections as scheduled. However, if a five-day undercarriage inspection cannot be performed because no adequately-equipped inspection location is available, a maximum extension of 72 hours (3 additional days) is granted.
7. § 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.

Part 239 – Passenger Train Emergency Preparedness

§ 239.103

Section 239.103 requires passenger railroads to conduct full-scale emergency simulations periodically to determine their capability to execute their emergency preparedness plans. Consistent with the relief previously granted, FRA does not expect railroads to conduct full-scale emergency simulations during the course of the current COVID-19 public health emergency. Accordingly, FRA grants relief from this requirement.

Part 240 - Locomotive Engineer Certification and Part 242 - Conductor Certification

In its letter dated March 25, 2020, FRA granted the railroads relief from certain aspects of Parts 240 and 242 concerning locomotive engineer and conductor certification. That relief extended multiple deadlines throughout Parts 240 and 242 for 60 days, including an extension to complete any locomotive engineer skill performance examinations required by section 240.127(c)(5) for currently certified engineers. Subsequently, on April 10, 2020, in response to a separate waiver request, FRA modified the relief also to allow railroads to use event recorder downloads from the trains of locomotive engineer recertification candidates to serve as the skill performance examination of those candidates, provided that the downloads covered “at least 50 miles or two hours on the most demanding section” of a candidate’s territory. FRA subsequently extended that relief in additional increments of 60 days in its May 22, 2020 and July 20, 2020 letters.

Given the ongoing nature of the COVID-19 public health emergency, FRA finds that extending the relief previously granted is justified. Further, FRA notes that the Association of American Railroads (AAR) requested a similar extension of existing relief in docket number FRA-2020-0059. Among other requests, AAR requested that the relief for various deadlines specified in Parts 240 and 242 be extended,²¹ and that the existing 36-month certification time-period for both locomotive engineers and conductors be extended to 48 months.

In support of its requests for relief to extend the deadlines in specific sections of Parts 240 and 242, and to extend the recertification deadline of Parts 240 and 242 from 36 months to 48 months, AAR asserted that the tasks required by the identified sections of Parts 240 and 242 noted above continue to present social distancing challenges and concerns, and will continue to do so as long as the CDC’s guidance recommending social distancing remains in place. For example, citing a memorandum from the U.S. Occupational Safety and Health Administration, AAR noted that the availability of clinics or medical professionals to conduct required hearing and visual exams under §§ 240.121 and 242.117 continues to be impacted by the COVID-19

²¹ The specific sections from which AAR requested relief are: §§ 240.115 and 242.111 (prior conduct as a motor vehicle operator); §§ 240.121 and 242.117 (vision and hearing); § 240.123 (monitoring for operational performance); §§ 240.123(b) and 242.119(i) (continuing education); §§ 240.125 and 242.121 (knowledge exam); § 240.127 (skills performance exam); § 240.129 (criteria for monitoring operational performance of certified engineers); §§ 240.201(c) and 242.105(c) (36-month certification period for engineers and conductors); §§ 240.217(c)(1) and 242.201(c)(1) (36-month certification period); §§ 240.223 and 242.209 (possession of certificate); and §§ 240.231 and 242.301 (physical characteristics and territorial qualifications).

public health emergency. Additionally, AAR noted that “various education, examination, and operational monitoring requirements [of Parts 240 and 242], have traditionally involved tasks which . . . run afoul of social distancing guidelines.” As examples, AAR cited to Part 240’s requirements for designated supervisors of locomotive engineers to conduct onboard skills evaluations and operational monitoring activities.

FRA finds that AAR’s arguments in support of its request for an extension of the relief granted in the ERD related to Parts 240 and 242 apply equally to APTA’s request for relief. FRA finds that, given the on-going impacts of the COVID-19 public health emergency, extending the recertification period applicable to currently certified locomotive engineers and conductors and the corresponding individual deadlines in the identified sections of Parts 240 and 242 is justified.

Accordingly, as outlined below, FRA extends the recertification deadline of Parts 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. Relief from the 36-month certification period of §§ 240.217(c)(1) and 242.201(c)(1) is granted for any locomotive engineer or conductor currently certified under Part 240 or 242 whose certification becomes due during the duration of this waiver, provided that the railroad maintains a continuously updated list of the certified employees affected, and each employee’s certification record is marked to show that individual’s compliance with this waiver;
2. The deadlines in §§ 240.405(c) and 242.505(c) are extended 60 days;
3. Relief from §§ 240.223 and 242.209, requiring that certified employees physically possess a certificate, is granted for all employees who may require a new or replacement certificate during the duration of this waiver, provided the railroad maintains a continuously updated list of the certified employees affected and each employee’s certification record is marked to show compliance with this waiver. FRA also recommends that railroads send/upload copies of a new or replacement certificate to the employee’s railroad-supplied electronic device when available/possible; and
4. With the exception of §§ 240.231 and 242.301, which are discussed below, the deadlines set forth in the remainder of the Part 240 and 242 sections referenced in footnote 20 that come due during the duration of this waiver may be extended as necessary, provided no individual’s recertification period exceeds 48 months.

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 certified employees affected. The list must be submitted by e-mail in Microsoft Excel file format to FRA’s Operating Practices Staff Director (christian.holt@dot.gov).

Additional Conditions Applicable to Relief from §§ 240.231 and 242.301

Regarding APTA's request for continued relief from §§ 240.231 and 242.301, FRA finds that granting the requested relief subject to the same conditions and limitations as outlined in the ERD is justified.

Accordingly, FRA grants Petitioners' request for relief from § 240.231(a) and (b) and section 242.301(c)'s employee qualification requirements, subject to the following specific conditions:

1. The railroad must determine that no territorial qualified engineer or conductor is available;
2. Engineers or conductors that were qualified on the territory, but whose qualifications have lapsed, must be assigned over an engineer or conductor that was not initially qualified over the territory;
3. An engineer that is certified with the most demanding service should be assigned ahead of those engineers with a less demanding service as documented in their individual records;
4. If the locomotive engineer is qualified on the portion of track to be operated over, and the conductor is not qualified or had a previous qualification on the portion of track that has expired, the train may be operated without restriction;
5. 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 miles per hour (Key trains will not exceed 30 miles per hour), with an up-to-date job aid (track chart);
6. 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 with an up-to-date job aid (track chart);
7. If an engineer is called to work a territory that the engineer is not currently qualified on, to the extent possible that engineer must only operate a train that is similar to a train (e.g., tonnage and length) that the engineer normally operates;
8. Crew members and managers must conduct a thorough job briefing prior to train movement and if any member of the train crew is unsure of the movement, the train must be stopped;
9. Railroads must report to FRA by email (FRAOPCERTPROG@dot.gov) within 24 hours of any occurrence of a PTC enforcement, decertification event, or any incident or accident below the reporting threshold that occurs when neither the locomotive engineer nor the conductor is qualified on a portion of track; and
10. Railroads must maintain for a period of 1 year a record of each instance where relief from §§ 240.231 or 242.301 is used. The record must contain the following information:
 - a. Railroad;
 - b. Train Symbol/ID;
 - c. Name of Engineer and/or Conductor;
 - d. Date/Time Crewmembers ordered into service;
 - e. Territory/Subdivision;
 - f. Train Type, Tonnage, Length, HAZMAT and placement;
 - g. Conventional or DPU;

- h. Afforded Job Aids, Track Profiles, Bulletins, Special Instructions, Playbooks etc.;
- i. PTC Speed Limit (40/30 mph);
- j. Any PTC Enforcement (must be reported to FRA as described below); and
- k. Any Accident/Incident including non-reportable Accident/Incidents, and any emergency brake applications (must be reported to FRA as described below).

By the 15th of each month, any railroad that utilized the relief described directly above during the previous month, must submit to FRA the records described above for the certified employees affected. The list must be submitted by e-mail in Microsoft Excel file format to FRA's Operating Practices Staff Director (christian.holt@dot.gov).

FRA reminds railroads 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.

The relief granted in this letter expires 12 months from the date of this letter, or 3 months after the FRA Administrator's rescission of the existing Emergency Declaration related to the COVID-19 public health emergency, 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 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.

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,

Karl Alexy
Associate Administrator for Railroad Safety
Chief Safety Officer