



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

VIA E-MAIL ONLY

March 25, 2020

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Re: Request for Relief in FRA Emergency Docket FRA-2020-0002 related to Coronavirus Disease 2019 (COVID-19)

Dear Mr. Rush, Ms. Strang, and Mr. Sundaram:

This letter is in reply to the March 21, 2020, letter (Petition) the Federal Railroad Administration (FRA) received in Docket No. FRA-2020-0002 from the Association of American Railroads (AAR), the American Short Line and Regional Railroad Association (ASLRRA), and the American Public Transportation Association (APTA) (together referred to as the “Petitioners”).

In your letter, Petitioners requested temporary emergency relief from certain requirements of FRA’s rail safety regulations due to the COVID-19 pandemic. Specifically, Petitioners, on

behalf of their member railroads, request relief from certain requirements of 49 CFR Parts 213, 214, 217, 218, 219, 220, 228, 229, 232, 234, 236, 239, 240, and 242.¹

On March 13, 2020, noting the President's declaration of a national emergency related to COVID-19 and the World Health Organization's (WHO) characterization of COVID-19 as pandemic, FRA Administrator Ronald L. Batory activated the emergency relief docket (ERD) (Docket No. FRA-2020-0002). Activation of the ERD enables FRA to utilize its emergency waiver procedures found at 49 CFR § 211.45. Under that section, once the Administrator activates the ERD, FRA may grant a petition for waiver without prior notice and comment if the Administrator determines it is in the public interest, the waiver is not inconsistent with railroad safety, and the waiver is necessary to address an actual or impending emergency situation or event. *See* 49 CFR § 211.45(j).

Petitioners filed their Petition in accordance with § 211.45 and a copy of the Petition is available for review and comment in the ERD.² Together, Petitioners represent the vast majority of railroads operating in the United States.³

In support of their request for relief, citing the President's declaration of a national emergency under 42 U.S.C. § 5191(b) and noting the COVID-19 pandemic across the country and the immediate risk outbreaks present to public health, safety, and welfare throughout the United States, Petitioners assert that railroads expect their staffing levels to be significantly reduced as fewer railroad employees and contractors will be available to perform necessary duties due to illness and the need to quarantine. Petitioners assert that a reduction in availability of employees due to the COVID-19 pandemic will affect railroads' ability to keep freight trains carrying critical goods and materials necessary for the country's welfare operating during this emergency, and that compliance with all Federal railroad safety regulations, with the expected workforce shortage, would significantly hinder railroads' ability to operate. Additionally, Petitioners note that limited resources or directives imposed on a geographic location by other government

¹ FRA notes that on March 23, 2020, the U.S. Department of Transportation's Office of Drug and Alcohol Policy & Compliance (ODAPC) issued guidance on compliance with DOT Drug and Alcohol Testing Requirements in light of the COVID-19 pandemic. Accordingly, FRA will address Petitioners' request for relief from certain provisions of Part 219 in a separate communication consistent with ODAPC's guidance.

² Petitioners' request was posted to the docket on March 23, 2020. The Petition is available for public review and comment, and under 49 CFR § 211.45(h), any comments on the petition will be considered to the extent practicable. If any party desires a public hearing on the Petition, that party must notify FRA by the end of the day on March 28, 2020.

³ AAR is a trade association whose membership includes freight railroads that operate 83 percent of the line-haul mileage, employ 95 percent of the workers, and account for 97 percent of the freight revenues of all railroads in the United States. AAR also represents passenger railroads that operate intercity passenger trains and provide commuter rail service. ASLRRA is a trade association that represents approximately 465 Class II and III railroads in the United States, as well as numerous suppliers and contractors to the short line and regional railroad industry. APTA is a nonprofit group of approximately 1,500 public and private sector member organizations that promote and advocate for the interest of public transportation in the United States, including commuter railroads.

agencies could lead to operational limitations that could result in undue delay to the transportation of critical commodities during this nationwide crisis.

As such, Petitioners request relief from certain FRA safety requirements in the event the COVID-19 pandemic causes workforce shortages or other constraints that prevent individual railroads from timely completing all Federally-mandated railroad safety tests and inspections, and complying with other requirements related to employee training and qualification.

After careful consideration of Petitioners' requests for relief, and all data, information, and recommendations of other government agencies (including the Centers for Disease Control (CDC) and Prevention and the actions of various State governments in response to the COVID-19 pandemic), FRA has determined, that subject to certain conditions, granting Petitioners' requests for relief as outlined below is in the public interest, necessary to address the current nationwide emergency situation involving the COVID-19 pandemic, and is not inconsistent with railroad safety. Accordingly, FRA grants Petitioners relief from the regulatory requirements identified below and subject to the following general conditions and the specific conditions relating to each regulation identified below.

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.⁴ Railroads that find it necessary to utilize the waiver relief provided here must document the basis on which they concluded that availing themselves of the relief was necessary.
2. Any railroad utilizing any aspect of this waiver is required to report weekly the following information:
 - a. Railroad;
 - b. Territory/Subdivision/Yard;
 - c. List of each individual waiver utilized in this location, including the following information:
 - i. Date of occurrence,
 - ii. Anticipated duration, and

⁴ Relief is granted from § 217.9 and the other operational testing requirements identified below, §§ 228.5 and 228.203(a)(1)(ii), 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.

- iii. List of manpower shortages or other conditions necessitating the use of the waiver.

A railroad shall report this information through their respective industry association (AAR, APTA or ASLRRRA) who shall integrate this information and provide in excel formation via email to FRA (karl.alexey@dot.gov) on the Tuesday following the week being reported. If a railroad is not affiliated with one of the identified associations, this information shall be provided in excel format via email to FRA (karl.alexey@dot.gov) each Tuesday following the week being reported.

Specific Conditions of Relief

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

Part 213

Petitioners request temporary relief from the following track inspection time-interval-dependent requirements in Part 213, as those frequencies may not be capable of being maintained during a period with significant workforce shortages:

- 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 crossties;
- 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.

Accordingly, FRA grants relief from certain provisions of § § 213.233(c), 213.234, 213.237 and 213.9(b) 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 § 213.7 is available;
- 2. When no qualified track inspector or qualified contractor and/or manager as defined in § 213.7 is available, the following table replaces the § 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.

3. During periods of significant workforce shortages resulting from the COVID-19 pandemic that limit a Petitioner’s ability to perform the inspection within a territory, subdivision or area of track within the timeframes required under § 213.234(b), petitioners are permitted to reschedule the regulatory required inspections for up to 60 days;
4. During periods of significant workforce shortages resulting from the COVID-19 pandemic that limit a Petitioner’s ability to perform the inspection within a territory, subdivision or area of track within the timeframes required under § 213.237, petitioners are permitted to reschedule the regulatory required inspection of for up to 60 days; and
5. During periods of significant workforce shortages resulting from the COVID-19 pandemic that limit a Petitioner’s ability to perform the inspection within a territory, subdivision or area of track within the timeframes required under § 213.9(b), the timeframe to continue Class I speeds is modified as follows:

If a segment of track does not meet all of the requirements for its intended class, it is reclassified to the next lowest class of track for which it does meet all of the requirements of Part 213. However, if the segment of track does not at least meet the requirements for Class 1 track, operations may continue at Class 1 speeds for a period of not more than 60 days without bringing the track into compliance, under the authority of a person designated under § 213.7(a), who has at least one year of supervisory experience in railroad track maintenance, after that person determines that operations may safely continue and subject to any limiting conditions specified by such person.

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

- a. Railroad track owner;
- b. Date inspection is due;

- c. Type of inspection;
- d. Milepost or marker;
- e. Territory/Subdivision;
- f. Date/Time of inspection; and
- g. Results of inspection.

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

Part 217 and Operational Tests Generally

Petitioners ask that FRA temporarily suspend the requirements to conduct operational tests and inspections of employees under § 217.9, and where similarly required under Parts 214, 218, 220, 236, 239, 240, and 242. Petitioners note that suspending these programs would allow railroad managers more time to ensure railroads remain operational while addressing anticipated challenges in terms of potential workforce shortages or other constraints as a result of COVID-19. FRA also notes that temporarily suspending these programs is consistent with CDC guidance related to social distancing. Additionally, FRA notes that Petitioners have indicated that they will continue to address any observed operating and safety rule violations in accordance with normal railroad procedures and employees will still be required to report any safety hazards as required under existing railroad procedures. Accordingly, FRA finds that granting the requested relief is justified.

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

Part 218

Petitioners request relief in certain circumstances from § 218.22(c)(5)'s current restrictions imposed on utility employees. FRA believes that in the limited circumstances where railroads experience workforce shortages as a result of the COVID-19 pandemic at specific locations, Petitioners' request is justified, provided only one utility employee at a time is attached to a train or yard crew. Accordingly, FRA grants relief from 218.22(c)(5)'s restrictions subject to the following specific condition:

Only one utility employee may be assigned to a train or yard crew at any given time.

Railroads must retain a record of each instance this waiver is implemented for a period of 1 year. The record shall contain the date and location of the relief utilized. Railroads shall submit the records in an Excel file format to FRA by email (christian.holt@dot.gov) upon the cessation of this waiver.

Parts 240 and 242

Petitioners request relief from various provisions of Parts 240 and 242. Specifically, Petitioners request relief from the requirements of sections:

- a. 240.201(c) and 242.105(c) (36-month certification period for locomotive engineers and conductors);
- b. 240.223 and 242.209 (criteria for the certification of locomotive engineers and conductors); and
- c. 240.405(c) and 242.505(c) (60-day deadline for responding to petitions submitted to the Locomotive Engineer Review Board and the Operating Crew Review Board).

Petitioners further request a 180-day extension to the certification criteria timelines set forth in the following sections of Parts 240 and 242:

- a. 240.125 and 242.121 (knowledge exam);
- b. 240.127 (skills performance examination);
- c. 240.129 (criterial for monitoring operational performance of certified engineers);
- d. 240.123 (monitoring for operational performance);
- e. 240.121 and 242.117 (vision and acuity);
- f. 240.123(b) and 242.119(l) (continuing education);
- g. 240.115 and 242.111 (prior conduct as a motor vehicle operator); and
- h. 240.217 and 242.401 (time limitations for making determinations).

In light of the challenges presented by the COVID-19 pandemic, FRA finds that granting the requested relief, subject to certain conditions, is justified, but notes that relief granted under § 211.45 is limited to 60 days.⁵ Accordingly, FRA grants the requested relief for a period of 60-days as follows and subject to the following specific conditions:

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 within the next 60 days, provided the railroad maintains a continuously updated list of the certified employees affected and each employee's certification record must be 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 within the next 60 days, provided the railroad maintains a continuously updated list of the certified employees affected and each employee's

⁵ See 49 CFR § 211.45(j)(3). Although Petitioners ask FRA to waive the 60-day relief limitation of § 211.45(j), this requirement is derivative from statute (49 U.S.C. 20103(g)(2)), and thus cannot be waived.

certification record is marked to show that individual's compliance with this waiver. FRA also recommend railroads send/upload copies of a new or replacement certificate to the employee's railroad-supplied electronic device when available/possible; and

4. The deadlines set forth in the remainder of the Part 240 and 242 sections referenced above that come due within the next 60 days are extended 60 days.

Railroads shall submit the list of the certified employees affected by this waiver in an Excel file format to FRA by email (christian.holt@dot.gov) upon the cessation of this waiver.

240.231 and 242.301

Petitioners also requested temporary relief from §240.231 and 242.301, which define the requirements for locomotive engineers unfamiliar with physical characteristics in other than joint operation and requirements for territorial qualifications (respectively).

In the event the COVID-19 pandemic cause workforce shortages or other constraints that prevent individual railroads from complying with the requirements related to employee qualification, the petitioner requests temporary relief from § 240.231 and § 242.301 in operating scenarios where: 1) track speeds are greater than 20 MPH; and 2) the movement will exceed 1 mile in distance (note: this request does not apply to portions of track with a grade of greater than 1% for 3 or more miles).

Accordingly, FRA grants Petitioners' request for relief from § 240.231 and § 242.301 employee qualification requirements in operating scenarios defined above, subject to the following specific conditions:

1. The railroad must first determine that no territorial qualified engineer or conductor is available;
2. Engineers or conductors that were qualified on the territory, but their 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 conductor is not qualified or whose previous qualification on the portion of track 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 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 he/she 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) he or she normally operates; and
8. Railroads shall 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 conductor is qualified on a portion of track.

Railroads shall maintain for a period of 1 year a record of each instance where relief from § 240.231 or § 242.301 is used. The record shall 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 outlined below);
- k. Any Accident/Incident including non-reportable Accident/Incidents, and any emergency brake applications (must be reported to FRA as outlined below);
- l. Crew members and managers must conduct a thorough job briefing prior to train movement;
- m. If the train crew feels unsure of the movement, the train must be stopped; and
- n. Railroads must assign a Point-of-Contact for Key trains.

Railroads shall submit the records in an Excel file format to FRA by email (christian.holt@dot.gov) upon the cessation of this waiver.

Part 228

Petitioners request temporary relief from §§ 228.5 and 228.203(a)(1)(ii), which limit the use of quick tie-up procedures, including verbal quick tie-up procedures, to certain circumstances. To increase social distancing and reduce the use of common high-touch surfaces (e.g., computer terminal keyboards), Petitioners request that employees be able to perform a quick tie-up whenever possible.⁶ Petitioners assert that by allowing employees to use quick-tie up procedures whenever possible, employees will not be required to re-enter terminal facilities at the end of their on-duty period, thus avoiding unnecessary contact with other employees from different shifts and/or jobs in the terminal facility and reducing an employee's need to work at a computer in a terminal facility from two times per shift to one time per shift. Such reductions are consistent with current CDC guidelines.

Accordingly, FRA grants relief from §§ 228.5 and 228.203(a)(i)(ii) to allow railroad employees to conduct verbal quick tie-ups at the end of any duty tour subject to the following specific conditions:

1. The railroad employs due diligence to avoid or limit excess service as required under 49 CFR Part 228, Appendix A;
2. For any duty tour twelve hours or more, the railroad requires the employee to provide only limited information not to exceed board placement time, relieved location, date, and time, final release location, date, and time, contact information for the employee during the statutory off-duty period, request for rest in addition to the statutory minimum, if provided by collective bargaining agreement or local practice;
3. Any employee who conducts a verbal quick tie-up, shall, at the beginning of his or her next duty tour, complete and certify his or her hours of service record for that duty tour at the beginning of his or her next duty tour; and
4. The railroad has an adequate and functioning system in place allowing employees to contact a designated officer of the railroad for the purpose of providing tie-up information.

Part 229

Petitioners request relief from the requirements of 49 CFR Part 229 that contain periodic and time-based intervals addressing locomotive maintenance and inspection requirements. Specifically, Petitioners request that FRA permit them to move locomotives between facilities where the locomotives have not had inspections and tests within the time periods specified in 49 CFR §§ 229.21, 229.23, 229.25, 229.27, and 229.29.

⁶ Although not explicitly stated in the Petition, FRA understands that Petitioners request for relief is to use verbal quick tie-up procedures whenever possible.

Accordingly, FRA grants relief from §§ 229.21, 229.23, 229.25, 229.27, and 229.29, subject to the following conditions:

1. A spreadsheet of the locomotives utilizing this relief, to include each locomotive's reporting mark and number, inspection due date, anticipated inspection date, and actual inspection date must be forwarded on a daily basis to Mr. Gary Fairbanks, FRA's MP&E Staff Director, via e-mail at gary.fairbanks@dot.gov. At the end of the relief period, a final spreadsheet indicating an actual inspection date for all locomotives utilizing this relief must also be e-mailed to Mr. Fairbanks.
2. The railroads must provide appropriate notice to their Mechanical and Operating Departments, or other relevant personnel, of this temporary change of inspection procedures.
3. A copy of this waiver letter must be placed adjacent to FRA Form F6180.49A in the cab of each of the affected locomotives.

Part 232 and Other Mechanical Requirements

Petitioners request relief from various mechanical requirements of 49 CFR Part 232. Specifically, Petitioners request relief from §§ 232.15(a), 232.103(d), 232.207(a), 232.207 and 232.213, 232.205(a)(3) and 232.217(c)(1), 232.215, 232.205(a)(2)(i)-(ii), 232.205(a)(5)(i)-(ii) and 232.213(a)(5), 215.13, 232.303(a)(1)-(2) and 232.305(b)(2), 232.107, 232.217(d), 232.305(b)(2) and (c)-(d), 232.309, and 232.409(d).

As an initial matter, FRA notes that because § 232.15(a)'s limitation on the movement of defective equipment to the "nearest available location where necessary repairs can be performed" is based on a statutory requirement, FRA does not have the authority to waive this requirement. *See* 49 U.S.C. § 20303(a). Because the COVID-19 pandemic is nationwide, FRA understands that as outbreaks occur in particular geographic locations, railroads may experience workforce shortages and other constraints limiting staffing and resources at particular repair locations. Accordingly, FRA will not take exception to any railroad moving defective equipment to the next forward location where necessary repairs can be performed (i.e., where there is adequate staffing and resources available to make the required repairs in a safe manner). Railroads must endeavor to repair defective equipment at locations where qualified mechanical inspectors are present.⁷

Similarly, FRA has interpreted the 100% operative brake requirement of § 232.103(d) as a statutory mandate. Accordingly, FRA is not waiving the 100% operative brakes requirement of § 232.103(d) as Petitioners' request, but for the same reasons noted above related to § 232.15(a), FRA will not take exception to a railroad operating a train from its initial terminal with 95% operative brakes. Railroads must, however, comply with the remainder of the requirements of §

⁷ To the extent that any relief in this letter conflicts with a statutory requirement FRA has not identified, the response will be treated as an exercise of FRA enforcement discretion under the same terms.

232.103, including §232.103(e), which requires trains to have at least 85% operable brakes en route.

After careful consideration of the remainder of Petitioners' request for relief, FRA grants relief subject to the following conditions and limitations:

1. Relief from §§ 232.207(a) and 232.213 is granted as follows:
 - a. Relief from § 232.207(a) is granted to allow trains subject to its mileage limitation to travel up to 1,200 miles without an intermediate Class IA brake inspection;
 - b. Relief from § 232.213 is granted to allow trains subject to its mileage limitation (i.e., trains designated as extended haul trains under § 232.213(a)(1) and meeting the requirements of § 232.213(a)(2)-(a)(4)) to travel up to 2,000 miles without an intermediate Class IA brake test.

This relief is only granted for those trains, locations, or geographic areas where such extended mileage is necessary due to the impacts of the COVID-19 pandemic.

See paragraph no. 4 below related to set-offs and pick-ups.

2. §§ 232.205(a)(3) and 232.217(c)(1) - Relief is provided from the requirement that limits off-air time to not more than 4 hours. This relief extends the limits to 24 hours, and 48 hours with notification to the appropriate FRA regional office with an explanation of why it was necessary to exceed 24 hours.
3. § 232.215 - Relief is provided from the requirement to conduct a transfer test if a train is operating between yards that are 20 miles or less apart provided a Class III brake test is performed and the brake pipe pressure on the rear car is 75 psi or greater after the brakes are released during that test. Otherwise, this relief does not modify the definition or requirements for a transfer train or its operation.
4. §§ 232.205(a)(2)(i)-(ii), 232.205(a)(5)(i)-(ii) and 232.213(a)(5) – Relief is provided from the limits on single block pick-ups and single block set-offs in each of these sections, such that railroads may add or remove more than a single block of cars to a train and those cars may be added to any location within a train consist or set-out from any location within a train consist, consistent with the railroad's train make up requirements. With regard to extended haul trains operating under § 232.213, if a train picks up cars that have received a Class I brake test by a QMI, the train may travel up to 2,000 miles. If the cars picked up were instead inspected by a Qualified Person (QP) (as defined in Part 232), those train may travel a maximum of 1,200 miles before a new brake test is required (the type of brake test that would be required would depend on the distance remaining to destination). The most restrictive car or block of cars in a train determines the location of the required brake test. This relief is limited to situations involving mechanical and train crew workforce shortages during the COVID-19 outbreak, such that QMIs are not

available at particular locations. See paragraph no. 1 directly above for relief related to mileage limitations.

5. § 215.13 - Relief is provided from the requirements governing pre-departure inspections when combining two existing trains (i.e., when combining two separate consists including one or more cars and one or more locomotives) that have been properly inspected and tested in compliance with all applicable regulations (i.e. both trains have had a Class I brake test under § 232.205, Class IA brake test under § 232.207, or have been designated as extended haul trains § 232.213 and are compliant with all requirements of that section, with the exception of those requirements waived in this letter). This relief provides railroads the ability to combine two existing, operating trains without additional inspections, other than a Class III brake test. This same relief applies to any subsequent separation of the two consists, provided a record of the original consists remains intact.
6. Relief is granted from the inspection and testing requirements of §§ 232.107, 232.217(d), 232.305, 232.309 and 232.409 as follows:
 - a. Relief is granted from the requirement of § 232.107(a)(2)(i) to inspect each yard air source at least two times per year.
 - b. Relief is granted from the requirement of § 232.217(d) to periodically calibrate yard air test devices and gauges.
 - c. Relief is granted from the requirements of § 232.305(b)(2) and (c)-(d) to perform single car air brake tests at certain intervals and under certain conditions.
 - d. Relief is granted from the testing and calibration requirements of § 232.309.
 - e. Relief is granted from the requirement of § 232.409(d) for the testing and calibration of telemetry equipment every 368 days.

Any railroad utilizing this relief, must retain a record for a period of one year of each instance of when the relief was used and must develop a plan to return any affected equipment to required service intervals after this relief expires.

Parts 234 and 236

Petitioners request 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. In support of their request, Petitioners explain that they will “make every good faith effort to comply with [the] time-dependent requirements and inspections” but that without “sufficient signal staff, completion of the requirements under all existing timelines specified by Parts 234 and 236 may not be possible.”

Although FRA understands Petitioners' concerns and the challenges presented by a potential workforce shortage or other constraints as a result of the COVID-19 pandemic, FRA cannot grant a blanket waiver of these inspection and testing requirements as requested by Petitioners.

FRA does, however, find 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 pandemic 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;
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 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 shall 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 § 236.587 departure tests must be performed as required).

Railroads shall submit the records in Excel file format to FRA by email (richard.d.scott@dot.gov or gabe.neal@dot.gov) upon the cessation of this waiver.

Conclusion and Scope of Relief

As demonstrated by the President's declaration of a nationwide emergency, the impacts of COVID-19 are expected to be extensive and widespread throughout the United States. Accordingly, FRA finds that limiting the relief granted in this letter to only Petitioners' membership would be insufficient to address the current emergency situation. As a result, FRA is granting all railroads operating within the United States the ability to operate under the terms of this emergency waiver. If a railroad that is not a member of Petitioners' organizations experiences a workforce shortage or other constraints as a result of the COVID-19 pandemic that prevents it from timely completing any of the Federally-mandated railroad safety tests or inspections, or complying with other requirements addressed in this letter, upon notice to the docket (FRA Docket Number 2020-0002) that railroad may become party to this waiver and operate under the terms of this emergency waiver.⁸ Likewise, for the duration of this waiver, any railroad operating in the United States may operate consistent with the relief granted from §§ 228.5 and 228.203(a)(1)(ii), upon notice to the docket. To ensure compliance with the terms of the conditional relief granted herein, Petitioners must maintain a record of each member railroad that uses the relief provided in this emergency waiver.

Although Petitioners did not specifically request relief from the hours of service requirements of 49 U.S.C. Chapter 211, FRA notes that the statute itself provides flexibility to respond to certain emergency situations, such as the COVID-19 pandemic. *See* 49 U.S.C. § 21102(a). However, FRA notes that railroads would be required to employ due diligence to reduce or eliminate excess service. In addition, FRA's hours of service recordkeeping regulations require railroads to identify the reason for each instance of excess service, even where excess service may be appropriate for relief under the statute (e.g., in this instance, where the excess service was unavoidable and a direct result of the impact of the COVID-19 pandemic on a particular railroad).

Additionally, FRA notes that as related to train crews on commuter or intercity passenger railroads, whose hours of service limitations are found at 49 C.F.R. § 228.405, FRA's regulations provide flexibility as related to emergency situations, similar to the flexibility provided in statute for freight railroads. *See* 49 U.S.C. § 228.403(a).

⁸ FRA has received many individual railroad requests for emergency relief. With the relief granted herein to the railroad industry as a whole, FRA believes those separate petitions have been sufficiently addressed.

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).⁹

Any railroad operating under the conditions of this waiver must report immediately to FRA's Office of Railroad Safety any accident/incident and or injury to any railroad employee that involves infrastructure, equipment, or operations covered by this waiver.

This emergency waiver expires 60 days from the date of this letter. *See* 49 CFR § 211.45(j)(3). 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.

The point of contact for this waiver is Mr. Karl Alexy, FRA Associate Administrator for Railroad Safety and Chief Safety Officer. Mr. Alexy can be reached at 202-493-6282, or at karl.alex@dot.gov. In any future correspondence regarding this waiver, please refer to Document Number FRA-2020-0002-0022.

Sincerely,

Karl Alexy
Associate Administrator for Railroad Safety
Chief Safety Officer

⁹ Although FRA may waive compliance with any part of a regulation prescribed or order issued without prior notice and comment, comments may be submitted. *See* 49 CFR § 211.45(h). Given the need to provide immediate, urgent relief, FRA issues this relief without prior notice and opportunity to comment. However, FRA may amend this relief, if necessary, to address safety or logistics concerns raised in any subsequent comments.