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PUBLIC
TRANSPORTATION
ASSOCIATION**

March 28, 2020

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Ronald L. Batory
Administrator
Federal Railroad Administration
U.S. Department of Transportation
1200 New Jersey Ave S.E.
Washington, D.C. 20590

Subject: Emergency Relieve Docket (FRA-2020-0002)

Dear Administrator Batory:

The American Public Transportation Association (APTA) on behalf of our member railroads, petition the Federal Railroad Administration (FRA) for relief from the below-listed federal railroad safety regulations¹.

On March 11, 2020, the World Health Organization declared coronavirus a pandemic stating "this is not just a public health crisis, it is a crisis that will touch every sector. . . So, every sector and every individual must be involved in the fight." Shortly thereafter, on March 13, 2020, the President of the United States declared a national emergency because of the coronavirus. Based on information pertaining to the spread of COVID-19, railroads are already facing reduced staffing levels and further anticipate staffing levels to drop as the peak of this pandemic affects the country. Compliance with all federal railroad safety regulations in light of a workforce shortage in this emergency situation would significantly hinder the railroads' ability to operate.

The need for transportation for essential personnel (medical staff, police, fire, etc.) to their work locations is of the utmost importance. This role is played by APTA's commuter railroad members and other public transportation agencies. Many commuter railroads also provide hosting services to essential freight operations.

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¹ The attached Appendix lists the APTA member railroads that may utilize any relief granted by FRA in response to this petition.

The relief requested below will allow for operational adaptations needed to maintain public health and safety (e.g., transportation of emergency and essential personnel and transportation of goods necessary to sustain life) while rapidly evolving government and private health and safety efforts disrupt normal operational patterns and staff availability.

In light of this unprecedented emergency situation, the railroads request expedited handling of the below-listed requests for relief from the federal railroad safety regulations.

49 C.F.R. Part 213 – Track Safety Standards

Designation of qualified persons to supervise certain renewals and inspect track - §213.7 (a)(1)(i), (ii) and (b)(1)(i), (ii)

Depending on the severity of the pandemic and the number of qualified personnel no longer available to supervise restoration or renewal and track inspections, commuter railroads may be forced to hire contractors or consultants that cannot meet the requirements posed by this section.

Designation of qualified persons to supervise certain renewals and inspect track - §213.7 (b)(1)(i), (ii)

Depending on the severity of the pandemic and the number of qualified personnel no longer available to perform track inspections, commuter railroads may be forced to hire contractors or consultants that cannot meet the requirements posed by this section.

Designation of qualified persons to supervise certain renewals and inspect track - §213.7 (c)(1), (2) and (4)

Depending on the severity of the pandemic and the number of qualified personnel no longer available to perform track inspections of continuous welded rail (CWR) or to supervise the installation, adjustment or maintenance of CWR, commuter railroads may be forced to hire contractors or consultants that cannot meet the requirements posed by this section. Although written authorization by the owner may be possible, the training and requirements to successfully complete a recorded exam may not be realistic as railroads rush to fill personnel needed to fill open positions.

Continuous welded rail (CWR); plan contents - §213.119 (b)(3)

Commuter railroads will require relief from the 30-day requirement to weld the joint if option (ii) is selected after a service failure or broken bar in CWR because of the potential of having a limited number of MOW and supervisory personnel available to perform such functions.

Continuous welded rail (CWR); plan contents - §213.119 (h)(6)(i)

Potential for limited number of qualified personnel to conduct CWR periodic joint inspections due to onset of illness may make it impossible to conduct the required inspections at the designated frequency provided in the table.

Continuous welded rail (CWR); plan contents. - §213.119 (i)

Lack of available training personnel due to the pandemic illness may make it impossible for commuter railroads, who have limited staff knowledgeable and capable of delivering the required CWR training to meet the requirement of delivering the training on an annual basis.

Inspection of switches, track crossings, and lift rail assemblies or other transition devices on moveable bridges- §213.235 (a), (b), (c)

Commuter railroads, realizing the importance of performing turnout inspections and possessing a significant number of turnouts and moveable bridges within relatively short segments, may not be able to muster enough qualified inspectors to perform these inspections on a monthly basis, particularly as the pandemic period grows in length. Commuter railroads propose that each switch, turnout, track crossing, and moveable bridge lift rail assembly or other transition device in main track shall be inspected on foot at least once every 45 days. Additionally, except as provided in paragraph 49 CFR 213.235 (c), each switch, turnout, track crossing, and moveable bridge lift rail assembly or other transition device in other than main track or sidings, shall be inspected on foot at least once every 60 days. The APTA request allows for a risk-based approach to conduct these inspections efficiently with a reduced, qualified manpower.

49 C.F.R. Part 214 – Roadway Workplace Safety

Training and qualification, general - §214.343

As the pandemic progresses, commuter railroads will be forced to utilize temporary workers on a regular basis to fulfill the work required of track, B&B and possibly signal gang laborers. Commuter railroads anticipate heavy turnover in these positions. While the industry recognizes the importance of a roadway worker qualifications regarding the requirements in 214.345, it may be forced to secure compliance with 214.343(a) by an extended job briefing covering the six elements noted in 214.345.

Training and qualification, general - §214.343 (b)

The recurrent annual training of roadway workers may have to be postponed. Qualified trainers are in short supply. Once the pandemic is over, again depending on its length, it may not be possible to provide the annual training to all affected employees by close of the year.

Maintenance of records for (1) Training and qualification, general, (2) for operators of roadway maintenance machines equipped with a crane, and (3) Hi-rail vehicles - §214.343 (d), §214.357 (c), and §214.523 (b)

Maintenance of the records during the pandemic is a task that requires either data entry into a database or a manual entry on a hard card in the employee's file. This task requires clerical input that commuter railroads may not have an employee on-site to perform these functions. Once the pandemic has ended this function could be completed in 120 days.

Training and qualification for (1) a lone worker, (2) a watchman/lookout, and (3) a RWIC - §214.347 (b), §214.349 (b), and §214.353 (b)

The commuter railroad industry believes that is necessary to meet the requirements specified in 214.347 (a) and (b) for initial training of a lone worker, 214.349 (a) and (b) for a watchman/lookout,

and 214.353 (a) and (b) for a RWIC during the pandemic period. Due to the pandemic, however, the commuter railroads request relief from requalification of a lone worker as specified by a railroad's approved RWP plan because of the lack of availability of qualified lone workers, watchmen/lookouts, and RWIC's.

Training and qualification of each roadway worker in on-track safety for operators of roadway maintenance machines, including roadway maintenance machines equipped with a crane - §214.355 (b), §214.357 (b)

It may be necessary because of lack of qualified operators due to illness to place a roadway worker on a roadway maintenance machine, including those equipped with a crane, the commuter industry believes that the requirements of 214.355 (a) and (b) as well as 214.357 (a) and (b) must be met for initial training of RMM operators. Until Part 243 is in effect, compliance can be achieved out on the track under the direction of an experienced RMM operator, work equipment mechanic or supervisor. The length of time needed for instruction and demonstration of proficiency will vary based on the complexity of the machine. The commuter railroads request relief from the periodic qualification requirements, as currently determined by each commuter railroads approved RWP plan.

Hi-rail vehicles. - §214.523 (a) and (b)

Because qualified vendors or employees capable of performing the required hi-rail inspection will be unavailable during the duration of the pandemic, railroads will be unable to meet the 14-month inspection requirements.

Likewise, due to the unavailability of personnel capable of repairing or parts necessary for repairs means the 7-day requirement is not achievable.

(1) On-track roadway maintenance machines; inspection for compliance and schedule for repairs & (2) Schedule of repairs; general - §214.527 (C)(1), (2), (3), (4) and (5) as well as §214.531

The required repairs within 7 days may not be feasible due to the unavailability of qualified personnel or repair parts. Relief is being requested from this obligation. Industry recommends that repairs would be completed within 30 days or the machine would be removed from service.

Schedule of repairs subject to availability of parts - §214.533 (a), (b), (c), and (d)

Relief from the 7-day requirement after receipt of parts is necessary as skilled personnel to make the repairs may not be available during and immediately after the pandemic period. Similarly, the requirement to either repair the machine within 30 days or remove it from service does not consider the inability to order parts from shuttered vendors and thus receive parts within 30 days. Within 120 days upon the ending of the pandemic, railroads commit to repairing the machines. In addition, this allows vendors to handle the backlog of parts ordered and railroads enough time to order, receive and install parts.

Also, the limited clerical capability of commuter railroads to enter data during the pandemic, the unavailability of vendors to receive orders and/or ship parts may make it impossible to comply the recordkeeping requirements with during the pandemic period.

49 C.F.R. Part 219 – Drug & Alcohol Testing

APTA would request the Office of Drug & Alcohol Policy & Compliance (ODAPC) and the FRA help the railroads to meet the intent of important safety requirements towards drug and alcohol testing in light of the Centers for Disease Control guidelines to maintain a six foot distance. In particular, labor unions are particularly concerned about the breath alcohol testing. While the commuter rail industry understands the importance of drug testing, it requests ODAPC exercise some flexibility during this pandemic to avoid unnecessarily exposing employees to the coronavirus.

49 C.F.R. Part 225 – Railroad Incidents/Accidents Reporting Requirements

49 CFR Part 225.12: Rail Equipment Accident/Incident Reports

The commuter rail industry is also requesting relief from the specific reporting requirements outlined in 49 CFR Part 225.12 pertaining to Form 6180.78 (related to Form 6180.8181). Currently, this form is required to be completed and sent first class mail or hand delivered to the applicable employee identified by human factor cause code on the applicable 54 Form within 45 days after the end of the month in which the rail accident/incident occurred.

49 CFR 225.21: Forms

The commuter rail industry seeks an exemption from the specific reporting requirements outlined in 49 CFR Part 225.21 related to Forms 6180.54, 6180.55, 6180.55a, 6180.57, and 6180.81. Currently these forms are required to be completed and submitted before the end of the next month, following the month in which the event occurred requiring their applicability. Specific to Form 6180.150, relief is requested from the time limits outlined in 225.21(k), requiring notification of highway users following a grade crossing incident.

49 CFR 225.25(f): Recordkeeping

Considering the current circumstances, relief is requested from the provision of 49 CFR Part 225.25(f) requiring the railroad to enter each reportable and accountable injury and illness and each reportable and accountable rail equipment accident/incident no later than seven working days after receiving information or acquiring knowledge an injury, illness, or rail accident/incident occurred.

49 CFR Part 225.25(i) : Recordkeeping

Relief is requested from the specific reporting requirements outlined in 49 CFR Part 225.25 pertaining to Form 6180.107 and Form 6180.150. Specific to Form 6180.107, relief is requested from the 7-day, 15-day, and 45-day respective time limits associated with recording an occupational illness, documenting additional information related to an occupational illness, and re-evaluating an initial claim of an occupational illness.

49 CFR Part 225.25(h) : Recordkeeping

Relief is requested from the requirements outlined in 49 CFR Part 225.25(h), associated with Injury/Illness Establishment Summary Postings. Currently railroads are required to post establishment reports within 30 days after the expiration of the month during which the injuries and illnesses occurred.

For all the above Part 225 requests, APTA, on behalf of its commuter rail members, requests the maximum 60-day exemption allowed under the FRA emergency relief docket. The pandemic circumstances dictate that the designated reporting officers employed by the railroads for compliance with 49 CFR Part 225, may need to be reassigned to other duties essential to the continuity of rail service as well as the possibility of a prolonged period of sickness/quarantine. Reporting of all cases in the interim period would be reported as soon as practical.

49 C.F.R. Part 228 – Passenger Train Employees Hours of Service

49 CFR §§ 228.19(d)(1) - Dispatcher Hours of Service Waiver

Commuter railroads would like to request relief from 9 maximum hours in any 24-hour period at an office where two or more shifts are employed.

- Increase the duty tour limit from 9-hours to 13-hours as provided in Appendix A to Part 228 under Emergencies.
- Additionally, industry also requests relief from the limitation of the 3 days maximum in the event of dispatcher exposure to COVID-19 and potential for multiple dispatchers to be quarantined up to 14 days.
- Every effort would still be made to limit dispatchers to 9 hours/day or 13 hours/day no more than 3 days maximum. However, with this unprecedented pandemic, the need to exceed these limitations could become necessary. APTA would like FRA to consider invoking the Act of God provision in the statute given the statutory limitations on this craft.

49 CFR Part 228.5 and 228.405(b)(4) - Hours of Service: Train and Engine Crew

Commuter railroads are seeking a waiver to provisions of 49 CFR Part 228.5 and 228.405(b)(4) respectively, which references time spent in deadhead to a duty assignment location is time on duty and time spent travelling to their “other than regular reporting point” is time on duty when required to operate the deadhead vehicle. Due to the existing pandemic, commuter railroads are unable to predict manpower availability. Relief from this section will allow commuter railroads to use available crew resources more efficiently. Commuter railroads have various assignments that typically work ten (10) to eleven (11) hours. Commuter railroads would like to request relief from counting the deadhead time to and from a reporting location as time on duty. Instead, we request that all such time be considered as commuting. If granted relief under this part, commuter railroads will have greater flexibility to provide service to those communities we serve.

Granting approval of this request will eliminate the need to utilize more employees than is necessary to fill vacant assignments. The approval of this waiver will lead to the following benefits without having any impact on safety:

- Improved efficiency in the utilization of available manpower;
- Less confusion for both crew callers, train and engine employees; and
- Reduction in the number of crews risking possible exposure to COVID-19.

49 CFR Part 228.405(a)(3)(i) - Hours of Service: Consecutive Duty Tour Days

Commuter railroads would like to request relief for TYPE 1 assignments only, to work past 14 consecutive calendar days. Commuter railroads would like to add 2 calendar days to extend to 16

consecutive calendar days. The employee would then assume their normal rest cycle after the 16 consecutive calendar days.

For all above hours of service waiver requests, commuter railroads commit to meeting all regulatory requirements related to excessive hours of service including filing a monthly report documenting the excessive duty tours on FRA Form F6180.3.

49 C.F.R. Part 238 – Passenger Equipment Safety Standards

49 CFR 238.17: Movement of passenger equipment with other than power brake defects.

Relief from this section would be due in part to insufficient manpower to complete repairs to other than power brake defects. Commuter railroads are requesting a 60-day relief exemption for this part.

49 CFR 238.303, 238.305 - Calendar Day Inspections

Relief for this section would be due in part to insufficient manpower to complete daily inspection and air tests. Commuter railroads are requesting the ability for equipment to remain in service past the scheduled calendar day inspection, provided that a calendar inspection would be conducted within 24-hours past a missed inspection. It is possible that a train would need to turn in a terminal just before the previous calendar day inspection expires. If there are no mechanical personnel to perform the daily inspection, the railroads would like the ability to proceed in service. One authority lost from service all mechanical department employees at one location in a one-hour time period due to a single employee testing positive for Covid-19. If this happens at a key terminal, any trains close to their calendar day limit will not be able to be released from the terminal. **This extension would only be utilized when there is insufficient manpower to perform the inspections when required.**

49 CFR 238.307 – Periodic Mechanical Inspections

Relief for this section would be due in part to insufficient manpower to complete periodic inspections within their due date. Commuter railroads inspection periodicities would guarantee to not extend beyond 244 days for passenger equipment scheduled at a 184-day periodicity.

49 CFR 238.309 - Periodic brake equipment maintenance

Relief for this section would be due in part to insufficient manpower to complete periodic brake equipment maintenance within their due date. Commuter railroads brake equipment maintenance would guarantee to not extend beyond 60 days of its scheduled due date.

49 CFR 238.311(e)(1) – Single Car Test

Relief for this section would be due in part to insufficient manpower to perform the required testing when a car is put back in service after being out of service for 30 days or more. Commuter railroads are requesting the ability to return a car to service without performing a

single car test provided the car receives a class 1 brake test per 238.313, and calendar day inspection per 238.303 and 238.305 prior to putting the cars in service. In addition, the car will receive a single car test in accordance with 238.311 within 184 days after the date the car is returned to service. As a result of the virus, railroads will be taking many cars out of service for an extended period of time. When the virus emergency is lifted, railroads expect to put many cars back in service at the same time. Performing a single car brake test on many cars at the same time will not be possible.

49 CFR 238.313 – Brake Testing (Class I)

Relief for this section would be due in part to insufficient manpower to complete required air brake inspections and air tests. Commuter railroads are requesting the ability for equipment to remain in service past the scheduled calendar day class I inspection period, provided that a class I inspection would be conducted within 24-hours after a missed inspection. It is possible that a train would need to turn in a terminal just before the previous calendar day inspection expires. If there are no mechanical personnel to perform the class I inspection, the railroads would like the ability to turn the train in the terminal and proceed in service. There is no request for relief 238.315 and 238.317 so these tests will continue to be performed when required and will be completed by the train crew when 238.313 is not done. **This relief would only be utilized when there is insufficient manpower to perform the Class I inspection when required.**

238.313 (j)(2) – Class 1 Brake test

Not all commuter rail inspection locations are equipped with pit areas to conduct undercarriage inspections. In the event of a manpower shortage, it would be difficult to conduct train movements to designated areas to complete these inspections. Daily inspections and testing will continue to be carried out at the railroad's field operations locations. The railroads request an extension from five days to eight days for the undercarriage inspection. This request is with the understanding that commuter railroads will continue to conduct and perform five-day undercarriage inspections as scheduled, if an inspection could not be performed, a maximum extension of 72 hours (three additional days) is requested.

49 CFR 238.321 – Out of Service Credit

Relief for this section would be due in part to insufficient manpower to complete periodic inspections within their due dates as identified in this section. The relief requested is to get credit on a day to day basis instead of needing to be out of service for a minimum of 30 days prior to qualifying for credit parked cars as they are not experiencing any wear associated with operation and should therefore be allowed to extend maintenance intervals on a day-by-day basis, without the need to be out of service for a minimum of 30 days.

49 CFR 229.21 – Daily Inspection

Relief for this section would be due in part to insufficient manpower to complete daily inspections within their due date. Commuter railroads are requesting the ability for equipment to remain in service past the scheduled calendar day inspection, provided that a calendar inspection

will be conducted within 24-hours after a missed inspection. It is possible that a train would need to turn in a terminal just before the previous calendar day inspection expires. If there are no mechanical personnel to perform the daily inspection, railroads would like the ability to proceed in service. One authority lost from service all mechanical department employees at one location in a one-hour time period due to a single employee testing positive for COVID-19. If this happens at a key terminal, any trains close to their calendar day limit will not be able to be released from the terminal. **This extension would only be utilized when there is insufficient manpower to perform the inspections when required.**

49 CFR 229.23 – Periodic Inspection: general

Relief for this section would be due in part to insufficient manpower to complete periodic inspections within their due date. Commuter railroads inspection periodicities would not extend beyond 152 days for locomotives qualified under a 92-day inspection and 244 days for locomotives qualified under a 184-day inspection.

49 CFR 229.27 – Annual Inspection

Relief for this section would be due in part to insufficient manpower to complete periodic inspections within their due date. Commuter railroads are requesting a 60-day relief exemption for this part.

49 CFR 229.29: Air brake system calibration, maintenance, and testing

Relief for this section would be due in part to insufficient manpower to complete periodic inspections within their due date. Commuter railroads are requesting a 60-day relief exemption for this part.

49 CFR 229.33 – Out of Service Credit

Relief for this section would be due in part to insufficient manpower to complete periodic inspections within their due dates as identified in this section. The relief requested is to get credit on a day-to-day basis instead of needing to be out of service for a minimum of 30 days prior to qualifying for credit parked cars as they are not experiencing any wear associated with operation and should therefore be allowed to extend maintenance intervals on a day-by-day basis without the need to be out of service for a minimum of 30 days.

Additionally, commuter railroads request that the third condition specified in the waiver response to AAR, ASLRRA, and APTA for part 229 relief (“ A copy of this waiver letter must be placed adjacent to FRA Form F6180.49A in the cab of each of the affected locomotives”) be replaced with the following:

A copy of the waiver letter will be provided to all train crews, and the train crew will be notified by the authority when a waiver is implemented on the equipment that they are

operating.

Providing a paper copy of the waiver letter to all crews when implemented will be difficult. This alternate method of communication will ensure that all train crews know about the waiver letter and when it will be implemented.

49 C.F.R. Part 239 – Passenger Train Emergency Preparedness

Passenger train emergency simulations – 49 CFR §§ 239.101 (a)(2)

The relief requested under 239.101 (a)(2) is an exemption from the two-year periodic training requirement for passenger train evacuation preparedness. When necessary, railroads are requesting to exceed the maximum time period between re-training intervals not to exceed 60 days.

Passenger train emergency preparedness refresher training and certification required under 49 CFR Part 239.105 is covered during regularly scheduled block training every two years. This is a consecutive five-day period scheduled at the beginning of each calendar year. Due to the anticipated manpower shortages associated with the COVID-19 pandemic impacting both operating personnel (passenger conductors, assistant conductors, locomotive engineers, train dispatchers, etc.) and qualified training instructors, certification and training intervals may be interrupted.

Passenger train emergency simulations – 49 CFR §§ 239.103

Industry requests relief from the requirements to conduct full-scale emergency simulations, in order to determine its capability to execute the emergency preparedness plan under the variety of scenarios that could reasonably be expected to occur on its operation, and ensure coordination with all emergency responders who voluntarily agree to participate in the emergency simulations. Commuter railroads request an additional four months to conduct these simulations.

Debriefing and critique – 49 CFR §§ 239.105

Relief is requested from requirements that require each railroad operating passenger train service to conduct a debriefing and critique session after each passenger train emergency event or full-scale simulation to determine the effectiveness of its emergency preparedness plan. Commuter railroads commit to conducting the debrief virtually or delay it by an additional four months. This limits the amount of time an employee is potentially exposed to an outside environment, maximizing an individual's ability to avoid social gatherings.

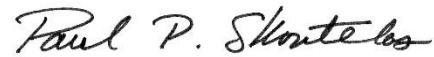
Where workforce levels remain adequate the railroads intend to operate as normal under existing FRA railroad safety regulations, except for such requests that are for purposes of social distancing efforts. The railroads to which relief is granted under this petition only intend to use such relief when workforce shortages and other impacts of the COVID-19 outbreaks necessitate such use.

Thank you for your consideration in this matter, and please contact us if you require any further information. APTA and its member commuter railroads appreciate the urgency shown by FRA staff during the discussions of these various aspects prior to the submission by APTA.

Ronald L. Batory
March 28, 2020
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If you have any questions regarding this letter, please contact APTA's Senior Director of Engineering, Mr. Narayana Sundaram, at nsundaram@apta.com or (202) 496-4813.

Sincerely,

A handwritten signature in black ink that reads "Paul P. Skoutelas". The signature is written in a cursive style with a prominent initial "P".

Paul P. Skoutelas
President and CEO

Appendix - Commuter and Passenger Rail Members of APTA

Alaska Railroad Company
Amtrak
Caltrain
Capital Metropolitan Transportation Authority
Central Florida Rail Corridor (CFRC) - SunRail
Coaster (NCTD)
Connecticut DOT
Dallas Area Rapid Transit (DART) for TRE
Denton County Transportation Authority (DCTA)
Long Island Rail Road (LIRR)
Maryland Transit Administration (MARC)
Massachusetts Bay Transportation Authority (MBTA)
Northeast Illinois Regional Commuter Railroad Corporation (Metra)
Metrolink (SCRRA)
Metro-North Commuter Railroad (MNR)
Music City Star (NERR)
New Jersey Transit Corporation (NJT)
New Mexico Department of Transportation (Railrunner Express)
Northern Indiana Commuter Transit District (NICTD)
Metro Transit (Northstar Commuter Rail)
Port Authority Trans Hudson (PATH)
Regional Transportation District Denver
Sonoma Marin Area Rail Transit (SMART)
Sound Transit
Southeastern Pennsylvania Transportation Authority
Trinity Metro (TEXRail)
TriMet (WES Commuter Rail)
South Florida Regional Transportation Authority (SFRTA)
Utah Transit Authority
Virginia Railway Express