



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

VIA E-MAIL ONLY

March 30, 2020

Mr. Michael J. Rush
Senior Vice President
Safety and Operations
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Jo Strang
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American Short Line and Regional Railroad Association
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Narayana Sundaram
Senior Director
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American Public Transportation Association
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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 supplements FRA's March 25, 2020, response to the March 21, 2020, letter the Federal Railroad Administration (FRA) received in Docket No. FRA-2020-0002 from the Association of American Railroads, the American Short Line and Regional Railroad Association, and the American Public Transportation Association (together referred to as the "Petitioners").

In your March 21, 2020, letter, Petitioners, on behalf of their members, requested temporary emergency relief from certain requirements of FRA’s rail safety regulations due to the COVID-19 pandemic, including requirements related to recurrent and refresher training. FRA’s March 25, 2020, decision letter (FRA-2020-0002-0025) responded to many of Petitioners’ requests, but did not address Petitioners’ request for temporary relief from the training requirements at 49 C.F.R. Part 243 (Part 243). This letter addresses Petitioners’ specific requests related to recurrent and refresher training requirements.

In the March 21, 2020, letter, Petitioners specifically request that any “recurrent training requirements in the federal railroad safety regulations that are currently due to be fulfilled be suspended during the pendency of the COVID-19 crisis and that when the crisis ends, the railroads be given time to reinstitute recurrent training in an organized manner.”

In support of this request for relief, Petitioners note that to protect the health and safety of their employees and the public during the ongoing COVID-19 pandemic, railroads have suspended classroom training and testing programs along with other programs requiring gatherings of people or interstate travel.

Consistent with FRA’s consideration of Petitioners’ other requests in the March 21, 2020, letter, FRA has considered the request for relief, and all data, information and recommendations of other government agencies (including the Centers for Disease Control and Prevention and the actions of various State governments in response to the COVID-19 pandemic), and has determined that, subject to certain conditions, granting Petitioners’ temporary request for relief from the refresher/recurrent training requirements contained in the Federal railroad safety regulations 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.

In FRA’s Part 243, “Training, Qualification, and Oversight for Safety-Related Railroad Employees; Compliance Guide” issued in May 2019 (page 23), FRA published the chart below, with endnotes included, which references all Federal railroad safety regulations that require refresher/recurrent training at varying intervals with a “Y”.¹

¹ Part 243 is not depicted in the chart because the first implementation deadline for refresher training in Part 243 is December 31, 2024, well beyond the 60-day emergency waiver window (applicable to each Class I railroad, and each intercity or commuter passenger railroad with 400,000 or more total employee work hours annually; for all other railroads and railroad contractors, the first implementation deadline is December 31, 2025). Part 270 is also omitted from the chart because the rule is not in effect until May 4, 2020.

49 CFR Part*	213	214	217	218	220	227	228	229	232	236	238	239	240	242
Refresher	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Frequency (CY) or other	1 ¹	1	N	3 ²	3 ²	1	N	N	3 ³	N	3 ³	2	C	C

Accordingly, FRA grants Petitioners’ temporary relief from the refresher/recurrent training requirements as depicted in the chart above, subject to the following specific conditions:

1. To the extent practicable, the railroad must meet refresher training requirements, e.g., computer-based, which can be taken in isolation, at home, or in a controlled environment;
2. The railroad maintains a continuously updated list of the employees whose training becomes due during the duration of this waiver, but are not trained due to the railroad’s suspension of its training programs. The training records of each employee so affected must be marked to show that the employee’s training is being postponed under the terms of this waiver; and
3. All employees who missed training must be trained within 60 days from the expiration of this relief.

Petitioners ask that FRA grant relief for at least 60 days and that given the uncertainty of the duration of the current COVID-19 emergency situation, FRA waive the 60-day time limit. Although FRA understands the uncertainty surrounding the duration of the current emergency situation, consistent with 49 C.F.R. § 211.45, and FRA’s March 25, 2020, decision letter, this relief is granted for a period of 60 days. FRA will reevaluate this time limit as necessary.

* The following are the endnotes that pertain to the refresher/recurrent training chart:

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.

As noted in FRA's March 25, 2020, letter, FRA is granting all railroads operating within the United States the ability to operate under the terms of this emergency waiver.² If a railroad that is not a member of Petitioners' organizations wishes to utilize the relief granted in this letter, it may do so by submitting to the docket (FRA-2020-0002) notice of its intent to operate under this waiver, and must comply with all applicable conditions noted in this letter, and as applicable, FRA's March 25, 2020, letter.³

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 C.F.R. § 211.45(j)(1).

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

² 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 April 2, 2020.

³ FRA notes that the "Conclusion" of its March 25, 2020, letter indicates that "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)" without a showing of a workforce shortage or other constraints as a result of the COVID-19 pandemic. FRA notes that, as outlined throughout its March 25, 2020, letter, the same applies for relief from § 217.9 and other operational testing requirements, and Parts 240 and 242 (not including §§ 240.231 and 242.301).