



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

March 22, 2019

Ms. Connie Roseberry
Senior Counsel
Union Pacific Railroad Company
1400 Douglas Street, MS1580
Omaha, NE 68179

Re: Emergency Docket FRA 2019-0001

Dear Ms. Roseberry,

This reply is in reference to Union Pacific Railway Company's (UPRR) letter of March 21, 2019, requesting temporary emergency relief from the requirements of various sections of Title 49 Code of Federal Regulations (CFR) due to extreme flooding in the midwestern United States. In your letter, you explain that the extreme flooding has resulted in infrastructure damage that will require extensive remediation. You also note that rivers are expected to continue to rise and affect adjacent states as the flood waters move through waterways and reservoir networks. The UPRR expects the effects of this flooding to be felt for a significant period of time, limiting the safety and reliability of your network. FRA Administrator Ronald L. Batory issued a determination declaring this flooding to be an emergency event under § 211.45 on March 19, 2019. *See* FRA-2019-0001-0013.

UPRR is seeking temporary relief only in areas affected by the flooding which, was indicated in the waiver request, and includes approximately 1,900 miles of track. The UPRR system is currently holding approximately 300 trains and estimates the impacted equipment to include 500 locomotives and associated rail cars. The trains will traverse primarily between North Platte and Chicago, and to a lesser extent between North Platte and Kansas City.

Because of the uncertainty of the state of the network, UPRR requested the ability to increase or modify its request for regulatory relief should the situation require.

UPRR requested temporary relief from the following regulatory requirements. To expedite the processing of UP's petition, the Federal Railroad Administration's (FRA) Railroad Safety Board (Board) considered this issue under the provisions of 49 CFR § 211.45, *Petitions for Emergency Waivers of Safety Rules*, and utilized the Emergency Relief Docket for Calendar Year 2019 (Docket Number FRA-2019-0001). On March 21, 2019, the Board, along with subject matter experts from FRA's Regions and Headquarters met with UPRR representatives to discuss the

requested relief. The following summarizes the decision for each request and conditions for approval:

- 49 CFR § 228.19, Hours of Service excess service relief – the Board denies this request because the Board is unable to grant relief from a statutory requirement. UPRR must evaluate, on a case-by-case basis, all circumstances in which exceedance of the maximum allowable hours of service is proposed. Further, all cases must be documented and submitted to FRA. The Board cautions UPRR that the regulatory requirements for hours of service places the burden on the railroad to identify the specific conditions that cause excessive hours to be worked in response to an emergency. Carte blanche extension of work hours for all crews working in the affected area is an inappropriate application of the emergency provision (“Act of God”) relief provided by the statute. *See* 49 CFR Part 228, App. A.
- 49 CFR § 232.211, Class III air in place of yard transfer test – UPRR explained that this waiver would be applied only where it was unsafe for personnel performing FRA-required inspections to walk the train and complete the inspection. The Board grants this waiver with the condition that UPRR provide documentation of when, where, and why the provisions of this waiver are used.
- 49 CFR § 232.213, Extended haul trains (required inspections and repairs to be performed in major terminals or designated inspection locations such as, but not limited to, North Platte, Chicago, and Kansas City) – The Board grants this relief with the condition UPRR provides documentation of the train symbol and when, where, and why the provisions of this waiver are used, using the requirement of § 232.307(c)(2). Other requirements of § 232.213, including the use of qualified mechanical inspectors for inspections, will remain in place.
- 49 CFR § 215.9, Movement of defective equipment (for “pick up and go” cars) – Defective equipment is estimated to be up to 100 cars. The Board grants this waiver, with the condition that UPRR establish a mechanical desk in the Harriman Dispatching Center to determine the critical nature of all defective conditions and what cars are safe to move (with any appropriate restrictions to movement), using information provided by the train crew. Further, UPRR will provide documentation of when the provisions of this waiver are used.
- 49 CFR § 174.14, Expedited movements – This is a requirement of the Hazardous Materials Regulations. FRA does not have delegated regulatory authority to grant relief. However, on March 22, 2019, The Pipeline and Hazardous Materials Safety Administration granted emergency Waiver Order No. 12 providing relief from the requirements of 49 CFR § 174.14 for operations within the Nebraska Severe Winter Storm, Straight-line Winds, and Flooding disaster area.
- 49 CFR § 232.103(n)(6), leaving “key train” equipment unattended – UPRR indicated this relief will be used on the Council Bluffs, Marysville, Trenton, Boone, and Clinton Subdivisions. Current securement and locomotive locking/securement procedures will be

strictly followed. The Board grants this relief with the condition that UPRR provides the location, by Subdivision and milepost, where equipment will be left unattended. In high-risk areas, UPRR will inform local or responsible law enforcement jurisdictions of parked and secured trains that pose vandalism and related exposure hazards.

- 49 CFR § 242.301, Requirement for territorial qualification – conductors will have certified and territorial qualified pilots on unfamiliar territories. In rare and extenuating circumstances, conductors not qualified on territories may, under this waiver, utilize an additional territorial qualified locomotive engineer to assist with familiarity. In cases where extra boards are sufficiently staffed, UPRR will utilize territorial qualified personnel first when calling crews. The Board grants the relief with the condition that UPRR provides specific Subdivisions affected as well as the operational processes put in place to mitigate risk.
- 49 CFR § 236.566 and § 236.567, ATC, CCS restrictions en route – UPRR is to operate under wayside signals at timetable speed and in accordance with mandatory directives, with absolute block protection. The Board grants this relief with the condition that UPRR provides specific locations by Subdivision and milepost in which this relief is used.
- 49 CFR Part 213, subparts B, C, D, and F, specifically rules governing track and ballast conditions, inspection frequencies and timeframes required to repair defects found – This request is denied and may be resubmitted with additional information on affected locations and alternate procedures to be used.
- UPRR requested that all time-dependent signal inspection requirements be deferred for 30 days – The Board grants this requested relief for 15 days for specified (defined by mileposts) segments only. UPRR will take every precaution to ensure the integrity of signaling systems in areas with flood damage. All signals and crossing active warning devices that are reconstructed due to flood damage will be inspected prior to operation in accordance with 49 CFR Parts 236 and 234. Upon a credible report of a Highway/Rail Grade Crossing warning system malfunction, UPRR will investigate and initiate efforts to warn highway users and railroad employees in accordance with 49 CFR Part 234 Subpart C, including either flagging or reducing speeds to 15 mph prior to traversing the crossings. Reports of malfunctioning signal or crossing systems will be subject to the requirements of 49 CFR Part 234, Subpart C.

UPRR will apply these waivers for areas directly affected by the flooding. Waiver relief will not extend into the Chicago Metropolitan (including commuter operations) area or other major population centers or Subdivisions not directly affected by the flood conditions and this emergency. The primary subdivisions expected to be impacted by this waiver are the Council Bluffs, Marysville, Trenton and, in limited cases, the Boone and Clinton Subdivisions.

For each condition above, UPRR will develop and promulgate specific procedures to be strictly complied with. In an effort to provide guidance to the UPRR for implementing the provisions of this Emergency Waiver, FRA is providing dedicated support personnel. These personnel will be

stationed, 24 hours per day, at a location designated by UPRR within the Harriman dispatching center in Omaha, NE. Additionally, FRA will assign dedicated personnel to each of the affected subdivisions identified in this waiver approval letter. FRA reserves the right to amend or revoke all or part of this emergency 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 reserves the right to take enforcement action under 49 U.S.C. § 20111 for non-compliance with any condition of this waiver or applicable Federal regulations.

The point of contact for this action is Mr. Karl Alexy, Deputy Associate Administrator, FRA Office of Railroad Safety. 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 Docket Number FRA-2019-0001.

Sincerely,

A handwritten signature in black ink, appearing to read "Karl Alexy" with a small "for" written below it.

Robert C. Lauby
Associate Administrator for Safety
Chief Safety Officer