

Federal Railroad Administration, DOT

§ 211.45

(c) *Grants.* If the Railroad Safety Board determines that the petition complies with the requirements of §211.9 and that a waiver is justified, it grants the petition. Conditions may be imposed on the grant of waiver if the Board concludes they are necessary to assure safety or are in the public interest.

(d) *Denials.* If the Railroad Safety Board determines that the petition does not comply with the requirements of §211.9 or that a waiver is not justified, it denies the petition.

(e) *Notification.* Whenever the Railroad Safety Board grants or denies a petition, a notice of that grant or denial is sent to the petitioner. When a petition has been decided, interested persons are also notified or a notice is published in the FEDERAL REGISTER.

(f) *Petition for reconsideration.* Any person may petition for reconsideration of the grant or denial of a waiver under procedures set forth in §211.57. Each petition shall be processed in accordance with §211.59.

§ 211.43 Processing of other waiver petitions.

(a) *General.* Except as provided in §211.41, each petition for a permanent or temporary waiver of a rule, regulation or standard shall be filed and processed as prescribed in §§211.7 and 211.9.

(b) *Notice and hearing.* If required by statute or the Administrator deems it desirable, a notice is published in the FEDERAL REGISTER, an opportunity for public comment is provided, and a hearing is held in accordance with §211.25, before the petition is granted or denied.

(c) *Grants.* If the Administrator determines that the petition complies with the requirements of §211.9 and that a waiver is justified, he grants the waiver. Conditions may be imposed on the grant of waiver if the Administrator concludes they are necessary to achieve the purposes of programs affected by the grant of waiver or are otherwise in the public interest.

(d) *Denials.* If the Administrator determines that the petition does not comply with the requirements of §211.9 or that a waiver is not justified, he denies the waiver.

(e) *Notification.* Whenever the Administrator grants or denies a petition, a notice of the grant or denial is sent to the petitioner. When a petition has been decided, interested persons are also notified or a notice is published in the FEDERAL REGISTER.

(f) *Petitions for reconsideration.* Any person may petition for reconsideration of the grant or denial of a waiver under procedures set forth in §211.57. Each petition shall be processed in accordance with §211.59.

§ 211.45 Petitions for emergency waiver of safety rules.

(a) *General.* This section applies only to petitions for waiver of a safety rule, regulation, or standard that FRA determines are directly related to the occurrence of, or imminent threat of, an emergency event. For purposes of this section an emergency event could be local, regional, or national in scope and includes a natural or manmade disaster, such as a hurricane, flood, earthquake, mudslide, forest fire, significant snowstorm, terrorist act, biological outbreak, release of a dangerous radiological, chemical, or biological material, war-related activity, or other similar event.

(b) *Emergency Relief Docket.* Each calendar year FRA creates an Emergency Relief Docket (ERD) in the publicly accessible DOT Document Management System (DMS). The DMS can be accessed 24 hours a day, seven days a week, via the Internet at the docket facility's Web site at <http://dms.dot.gov>. All documents in the DMS are available for inspection and copying on the Web site or are available for examination at the DOT Docket Management Facility, Room PL-401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590 during regular business hours (9 a.m.-5 p.m.). By January 31st of each year, FRA publishes a notice in the FEDERAL REGISTER identifying by docket number the ERD for that year. A notice will also be published in the previous year's ERD identifying the new docket number.

(c) *Determining the existence of an emergency event.* If the Administrator determines that an emergency event identified in paragraph (a) of this section has occurred, or that an imminent

threat of it occurring exists, and determines that public safety or recovery efforts require that the provisions of this section be implemented, the Administrator will activate the Emergency Relief Docket identified in paragraph (d) of this section. In determining whether an emergency exists, the Administrator may consider declarations of emergency made by local, state, or Federal officials, and determinations by Federal government that a credible threat of a terrorist attack exists.

(d) *Additional notification.* When possible, FRA will post the FRA Administrator's determination described in paragraph (b)(1) of this section on its Web site at <http://www.fra.dot.gov>. FRA will also publish a notice in the FEDERAL REGISTER alerting interested parties of the FRA Administrator's determination as soon as practicable.

(e) *Content of petitions for emergency waivers.* Petitions submitted to FRA pursuant to this section should specifically address how the petition is related to the emergency, and to the extent practicable, contain the information required under §211.9(a) and (b). The petition should at a minimum describe the following: How the petitioner or public is affected by the emergency (including the impact on railroad operations); what FRA regulations are implicated by the emergency (e.g. movement of defective equipment); how waiver of the implicated regulations would benefit petitioner during the emergency; and how long the petitioner expects to be affected by the emergency.

(f) *Filing requirements.* Petitions filed under this section, shall be submitted using any of the following methods:

(1) Direct e-mail to FRA at: RRS.Correspondence@fra.dot.gov;

(2) Direct fax to FRA at: 202-493-6309; or

(3) To FRA Docket Clerk, Office of Chief Counsel, RCC-10, Mail Stop 10, 1120 Vermont Avenue, NW., Washington, DC 20590, fax no. (202) 493-6068.

(g) *FRA Handling and Initial Review.* Upon receipt and initial review of a petition for waiver, to verify that it meets the criteria for use of these emergency procedures, FRA will add the petition to the ERD. The DMS numbers each document that is added

to a docket. (For example, the first document submitted to the docket in 2006 will be identified as FRA-2006-XXX-1.) Thus, each petition submitted to the ERD will have a unique document number which should be identified on all communications related to petitions contained in this docket. If FRA determines that the petition does not meet the criteria for use of these emergency procedures, FRA will notify the petitioner and will process the petition under normal waiver procedures of this subpart.

(h) *Comments.* Comments should be submitted within 72-hours from the time the petition is entered into and available on the DMS. Any comment received after that period will be considered to the extent practicable. All comments should identify the appropriate ERD and should identify the specific document number of the petition designated by the DMS in the ERD. Interested parties commenting on a petition under this section should also include in their comments to the ERD telephone numbers at which their representatives may be reached. Interested parties may submit their comments using any of the following methods:

(1) Direct e-mail to FRA at: RRS.Correspondence@fra.dot.gov.

(2) Direct fax to FRA at: 202-493-6309.

(3) Submission of comments to the Docket Clerk, DOT Docket Management Facility, Room PL-401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590 or electronically via the Internet at <http://dms.dot.gov>. Any comments or information sent directly to FRA will be immediately provided to the DOT DMS for inclusion in the ERD.

(i) *Request for hearing.* Parties desiring a public hearing on any petition being processed under this section must notify FRA through the comment process identified in paragraph (h) of this section within 72-hours from the time the petition is entered into and available on the DMS. In response to a request for a public hearing, FRA will arrange a telephone conference between all interested parties to provide an opportunity for oral comment. The conference will be arranged as soon as practicable. After such conference, if a

party stills desires a public hearing on the petition, then a public hearing will be arranged as soon as practicable pursuant to the provisions contained in 49 CFR part 211.

(j) *Decisions.* FRA may grant a petition for waiver prior to conducting a public hearing if such action is in the public interest and consistent with safety or in situations where a hearing request is received subsequent to the 72-hour comment period. In such an instance, FRA will notify the party requesting the public hearing of its decision and will arrange to conduct such hearing as soon as practicable.

(1) 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 received subsequent to the 72-hour comment period or at a later scheduled public hearing.

(2) FRA decision letters, either granting or denying a petition, will be posted in the appropriate ERD and will reference the document number of the petition to which it relates.

(3) Relief granted shall not extend for more than nine months.

(4) For matters that may significantly impact the missions of the Department of Homeland Security, FRA consults with the Department of Homeland Security as soon as practicable.

[71 FR 51521, Aug. 30, 2006]

Subpart D—Emergency Orders

§211.47 Review procedures.

(a) As specified in section 203, Public Law 91-458, 84 Stat. 972 (45 U.S.C. 432), opportunity for review of Emergency orders issued under that section will be provided in accordance with section 554 of title 5 of the U.S.C. Petitions for such review must be submitted in writing to the Office of Chief Counsel, Federal Railroad Administration, Washington, DC 20590. Upon receipt of a petition, FRA will immediately contact the petitioner and make the necessary arrangements for a conference to be held at the earliest date acceptable to the petitioner. At this conference, the petitioner will be afforded an opportunity to submit facts, arguments and

proposals for modification or withdrawal of the Emergency order. If the controversy is not resolved at the conference and a hearing is desired, the petitioner must submit a written request for a hearing within 15 days after the conference. The hearing will commence within 14 calendar days of receipt of the request and will be conducted in accordance with sections 556 and 575, title 5, U.S.C. Each petition for review shall be decided not later than 3 months after receipt.

(b) Unless stayed or modified by the Administrator, the requirements of each Emergency order shall remain in effect and be observed pending decision on a petition for review.

Subpart E—Miscellaneous Safety-Related Proceedings and Inquiries

§211.51 Tests.

(a) Pursuant to the Department of Transportation Act (80 Stat. 931, 49 U.S.C. 1651 *et seq.*), the Federal Railroad Safety Act of 1970 (84 Stat. 971, 45 U.S.C. 421, 431-441), or both, the Administrator may temporarily suspend compliance with a substantive rule of the Federal Railroad Administration, if:

(1) The suspension is necessary to the conduct of a Federal Railroad Administration approved test program designed to evaluate the effectiveness of new technology or operational approaches or instituted in furtherance of a present or proposed rulemaking proceeding;

(2) The suspension is limited in scope and application to such relief as may be necessary to facilitate the conduct of the test program; and

(3) The suspension is conditioned on the observance of standards sufficient to assure safety.

(b) When required by statute, a notice is published in the FEDERAL REGISTER, an opportunity is provided for public comment, and a hearing is held in accordance with §211.25, before the FRA approved test program is implemented.

(c) When the Administrator approves suspension of compliance with any rule in connection with a test program, a