

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