



U.S. Department of Transportation
Federal Railroad Administration

Guidance on Submitting Requests for Waivers, Block Signal Applications, and Other Approval Requests to FRA

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Disclaimer: *This document is intended to provide information regarding existing requirements and best practices when submitting requests for waivers, block signal applications, and other special approval requests to FRA. This document replaces any previous guidance issued on this subject, including the document titled “Waivers, Block Signal Applications, and Special Approvals” last updated on September 28, 2012. Except when referencing laws, regulations, policies, or orders, the contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way.*

The Federal Railroad Administration (FRA) has broad discretionary authority to waive or suspend the requirement to comply with any rule, regulation, or order upon a finding that doing so is “in the public interest and consistent with railroad safety.” 49 U.S.C. § 20103(d) (Statute).¹ FRA also has the authority to approve requests to discontinue, decrease the limits of, or materially modify railroad signal or train control systems (commonly referred to as “block signal applications” or “BSAPs”), and issue other special approvals as identified in FRA’s regulations. 49 U.S.C. §§ 20103 (waivers and other special approvals), 20502 (BSAPs).

Within FRA, decisional authority for waivers, BSAPs, and certain special approvals rests with FRA’s Railroad Safety Board (Board). 49 CFR § 211.41(a). FRA’s Rules of Practice, 49 CFR part 211, set forth the general requirements for petitions to the Board and the general outline of the Board’s processes. 49 CFR part 211, subpart C (§§ 211.41 – 211.45). More specific requirements and processes for certain special approvals are found within the specific applicable regulatory provisions (e.g., 49 CFR §§ 215.203, 232.305). Regardless of the type of approval request (waiver, BSAP, or special approval), the burden of proving the request is justified rests with the petitioner.

FRA considers every request for waiver or other approval on its own merits. Although similarities in the types of relief or approvals petitioners request may exist, FRA’s analysis of each request is fact specific and unique, taking into consideration the information and data the petitioner presents, any public comments received, the results of FRA’s own technical analysis and, if appropriate, field investigation. For these reasons, for FRA to effectively consider a petition for waiver or other approval, every petition must contain adequate information, data, and justification for the request.

This document outlines the general statutory and regulatory requirements applicable to FRA’s exercise of its waiver or suspension authority under 49 U.S.C. § 20103, as well as other rail-safety related approvals within the authority of the Board. This document also provides guidance on best practices for regulated entities to use when developing and submitting waiver, suspension, and other approval requests, and best

¹ Statute authorizes the Secretary of Transportation to issue such waivers or suspensions and the Secretary has delegated that authority to FRA. 49 U.S.C. § 20103(d)(1) and 49 CFR § 1.89(a).

practices impacted stakeholders (e.g., railroad employees and labor organizations) may use to ensure their views, concerns, and comments are thoroughly considered throughout the process.

Statutory Requirements

Statute provides FRA the discretionary authority to waive or suspend a requirement to comply with any rule, regulation, or order only upon a finding that doing so is “in the public interest and consistent with railroad safety,”² which is the standard applied by the Board when deciding whether to grant a waiver or suspension request. FRA applies this same standard to BSAPs and, unless a specifically applicable statute or regulation provides otherwise, the Board applies the same standard to other approval requests. FRA has long interpreted this statutory standard as a standard focused on safety, including the safety of rail operations, the safety of those potentially affected by those operations (e.g., railroad employees, motor vehicle operators, pedestrians, and passengers), and the safety and well-being of the public at large (e.g., a request’s potential effect on communities through which a railroad operates or whether a particular waiver or approval is necessary to maintain certain levels of rail service in a geographic area).

Statute also requires FRA to: (1) provide an opportunity for public notice and comment on all waiver and suspension requests; (2) make available all nonconfidential data on which the request is based; and (3) publish the reasons for granting any waiver or suspension request. 49 U.S.C. § 20103(d)(2).

Finally, the Infrastructure Investment and Jobs Act amended 49 U.S.C. 20103(d) to require FRA to periodically review longstanding waivers and suspensions of rules to determine if issuing a rule, consistent with the waivers or suspensions, would be in the public interest and consistent with railroad safety. In conducting such a review, FRA is required to consider: “(i) the relevant safety record under the waiver or suspension; (ii) the likelihood that other entities would have similar outcomes; (iii) the materials submitted in the applications, including any comments received; and (iv) related rulemaking activities.” When FRA is reviewing a waiver or suspension for potential inclusion into its regulations, FRA may find that any pending related waiver or suspension requests are best addressed through the notice and comment rulemaking process, as opposed to an individual waiver or other approval.

Regulatory Requirements

Similar to the statutory requirement to publish notice of all incoming waiver requests, FRA’s regulations require the agency to publish notice of all BSAPs filed with the agency (49 CFR § 235.14). Additionally, many FRA regulations that authorize FRA to issue special approvals require FRA to provide an opportunity for public notice and comment, though some do not.³ As a matter of policy, when seeking public comment on requests before the Board, FRA will generally allow 60 days for public comment, but may shorten or extend that period depending on the complexity of the issue(s) involved and other relevant factors.⁴

FRA’s Rules of Practice set minimum requirements for waiver petitions related to railroad safety. Specifically, § 211.9 provides that every waiver petition must: (1) specifically identify the rule, regulation, or standard that the petition seeks to have waived; (2) explain the nature and extent of the relief sought and identify and describe the persons, equipment, installations, and locations to be covered

² 49 U.S.C. § 20103(d).

³ For example, 49 CFR § 215.203 provides for FRA approval of the continued use of identified overage freight cars without public notice, while § 232.307 requires FRA to provide public notice and provide a 60-day comment period for approvals under § 232.307 (allowing for the modification of single car air brake test procedures).

⁴ FRA notes that individual regulatory provisions governing certain FRA approvals have timelines that make providing a 60-day comment period impractical. In those instances, FRA will adjust the comment period as necessary.

by the waiver; and (3) contain sufficient supporting information, including an analysis of the costs and benefits of the request and relevant safety data.

Similarly, FRA's regulations set minimum requirements for BSAPs and other special approval petitions. For example, FRA regulations require BSAPs to contain the information § 211.9 requires, as well as specific documents and data listed in §§ 235.10 and 235.12. Individual special approval provisions (e.g., 49 CFR §§ 215.203 and 232.17) similarly outline minimum content requirements for each of those petitions.

Guidance

FRA strives to act on waiver and other approval petitions in as timely a manner as possible. Annually, the Board decides approximately 100-125 waiver, BSAP, and other special approval requests. FRA investigates and analyzes the facts and circumstances of each petition to determine whether granting the requested relief or issuing the requested approval is justified.

Petition Requirements

FRA's internal processes require FRA staff to conduct a preliminary review of each incoming petition and request for approval to determine whether it meets the minimum regulatory requirements and provides enough information to be actionable by FRA. Historically, if FRA found a waiver petition or other application failed to meet the minimum regulatory requirements, or otherwise failed to contain enough information to enable the agency to effectively investigate and analyze the merits of the request, FRA worked with each individual petitioner to correct those deficiencies and gather any additional information necessary. However, given the resource-intensive nature of this process, FRA has revised its internal procedures to allow for the return of any petition or other request for approval, before referral to the Board, if the minimum requirements of the regulations are not met. Only after FRA has determined the petition meets the applicable regulatory requirements, and provides enough information to enable FRA to effectively analyze, and as appropriate, investigate the request, will FRA consider a petition complete. FRA will provide notice to the petitioner no later than 30 days after receipt of an incoming petition, and complete petitions will be considered to be filed with FRA on the date FRA provides this notice.

If FRA's preliminary review shows an incoming request to the Board does not meet the minimum regulatory requirements, does not clearly define the scope of the relief or approval sought, or contain sufficient information to enable FRA to effectively investigate and analyze the request, FRA will return the petition without referring it to the Board, and with no further action on FRA's part. In such an instance, a petitioner is free to revise the petition and resubmit it to FRA for consideration. To help petitioners develop complete petitions, the attached Appendix is a listing of common requests to FRA for waivers or other approvals and a breakdown of the data and type of information generally required to support such a request.

FRA often finds incoming petitions, on their face, meet the minimum content requirements of FRA's regulations (e.g., 49 CFR § 211.9) but do not provide enough information and data to enable FRA to effectively evaluate the merits of the request. In these instances, FRA may begin an evaluation and investigation of an incoming petition, but then find that the facts or circumstances described in the petition do not provide a complete picture of the relief or approval being requested. For example, the petition may not accurately describe the scope of the relief or approval requested, or the extent or anticipated impact of the request. Similarly, FRA often finds that stakeholders, potentially impacted by a requested waiver or approval, have safety concerns that the petitioner has not addressed. This often leads to extensive efforts on FRA's part to work with the petitioner and other affected parties to gather sufficient information and data to evaluate the request, and if appropriate, determine under what conditions the relief or approval could be granted to ensure safety.

Petitioners can minimize the need for this additional work by ensuring petitions submitted to FRA are clear on: (1) what relief or approval is being requested; (2) the extent and scope of the request; and (3) what the anticipated impacts of FRA granting the request for relief or approval would be on railroad operations, railroad employees, and all other potentially affected stakeholders. A petition must also provide data and other supporting information sufficient to demonstrate that FRA's grant of the request would be in the public interest and consistent with railroad safety, including identification and evaluation of the anticipated effects of the relief or potential approval on railroad safety and the general welfare of the public. In presenting this information, a petitioner should explain the rationale underlying any conclusions presented; for example, to support an assertion that rail safety will be improved, and the public interest benefitted if a request is granted, a petition should explain the basis for this conclusion and include all underlying rationale and supporting data and information. Petitions relying on economic or business considerations (e.g., cost savings to a petitioner or increased efficiency of rail operations) must show that existing levels of safety will be maintained or improved, and that FRA's grant of a request would be in the public interest. A petition seeking a waiver or other FRA approval (e.g., a test program under § 211.51) to test, evaluate, or implement a new technology or new operational approach, in lieu of complying with existing regulatory requirements, should include an explanation of why compliance with existing regulatory provisions would not be possible or would interfere with the testing, evaluation, or use of the subject technology or operational approach.

As FRA approvals are generally public processes, with specific requirements for public notice and comment, petitions must include sufficient information, data, and justification to allow for meaningful comment by all stakeholders (e.g., railroad employees and their respective labor organizations, local communities, motor vehicle operators, and members of the public). Statute requires any nonconfidential data underlying a waiver or suspension request be made available to interested parties. 49 U.S.C. § 20103(d)(2)(B). Given this statutory requirement, FRA expects all petitions for waiver, or other approval requests, to contain all nonconfidential data the petitioner is relying on to justify the request, which at a minimum, should: (1) describe the full scope of the request; (2) enable meaningful analysis and investigation of the request; and (3) when required, enable informed public comment on the request.

Although FRA has found the vast majority of waiver and other approval requests to FRA do not require the disclosure of confidential data, because sufficient non-confidential data and rationale is available in the public docket to support the requests, if a petitioner requests any data underlying such a request be treated as confidential, the Board will coordinate with FRA's Office of the Chief Counsel to carefully review any claim of confidentiality to ensure it is justified. FRA notes that any such review may extend the time required for FRA to conclude that an application is complete and actionable.

While FRA's regulations provide for the protection of appropriately identified confidential information,⁵ in certain instances, FRA notes it may be unable to base an approval decision on confidential data, if the confidential nature of the request did not allow for informed public comment on the relief sought. The Board, in coordination with FRA's Office of the Chief Counsel, reserves the right to require any party claiming confidentiality to provide a detailed explanation of its justification and citations to specific legal authority to justify the request for confidentiality. The Board may also require a petitioner claiming confidentiality of any data or information underlying a waiver or other approval request, to post to the public docket a high-level summary of the confidential information not otherwise available to commenters.

As noted above, FRA often finds that incoming petitions do not address the potential impacts of the request on stakeholders other than the petitioner. This too often leads to extensive efforts on the part of both FRA and individual petitioners to work with these stakeholders to understand and address their concerns. Petitioners can minimize this additional work by consulting and coordinating with all

⁵ 49 CFR 209.11.

potentially affected stakeholders prior to filing a petition with FRA, and then documenting these efforts in their petition. For example, virtually every request from a railroad for a waiver from a safety regulation will impact at least some of that railroad's employees. Accordingly, prior to filing a waiver petition or other approval request with FRA, a railroad should consult with any potentially impacted employees, and the local and national levels of any labor organizations that represent them, and document the extent and outcome of its consultation in any incoming petition.

The Comment Process

As noted above, FRA's approval processes are generally public processes, with opportunities for public notice and comment provided as appropriate. For example, in the context of waiver requests, consistent with statute and FRA's Rules of Practice, FRA publishes notice of all incoming requests under consideration, typically providing a 60-day comment period. If a railroad works with its relevant stakeholders to address their concerns prior to submission of a petition, FRA expects the review process will proceed more quickly.

Any interested party may submit comments; FRA considers all comments timely filed within the public comment period, and considers late-filed comments to the extent practicable. To ensure a commenter's concerns are fully considered during the decision-making process, any comments submitted should: (1) address the specific facts of the request (including any data or information referenced in the petition, or any data or information the commenter has that may not be referenced in the petition); and (2) state the commenter's position on the request, and explain the commenter's underlying rationale for its position. General comments that an individual or organization is opposed to, or supportive of, a particular request, with no substantive justification for that position, are of limited value to FRA's decision-making process. Accordingly, FRA encourages all commenters to include all relevant data and explanations underlying their comments.

FRA's Evaluation and Decision

Concurrent with the public comment period on any incoming request before the Board, FRA conducts an appropriate technical analysis, and if necessary, field investigation of the request. During these technical analyses and field investigations, FRA's subject matter experts (SMEs) independently evaluate the safety impacts of the request (including an evaluation of all data submitted in support of the request and any comments received) to inform the agency's decision-making process. Based on this evaluation and analysis, and the particular requirements of any applicable regulation, the relevant SMEs will provide their technical recommendations to the Board.

After consideration of all relevant information and data, including any public comments received, FRA regulations authorize the Board to issue a decision on the incoming request, explaining the reasons for granting or denying the request.

FRA's Rules of Practice provide that any person may petition the FRA Administrator for reconsideration of a grant or denial of a waiver. 49 CFR §§ 211.41(f); 211.57. A petition for reconsideration must specify the grounds for the requested modification or reversal of the Board's action at issue. The FRA Administrator may reaffirm, modify, or revoke the Board's action, with no further involvement from the Board. In considering a petition for reconsideration, the Administrator may invite public comment or seek input from the initial petitioner.

Appendix

Recommended Content of Petitions, Applications, and Requests for FRA Approval

FRA regulations detail the required content for all Petitions, Applications, and Requests to FRA's Railroad Safety Board (Board). This document is intended to provide guidance on those requirements and share additional best practices the Board has identified to help expedite the consideration and processing of such requests. This document does not comprehensively address requirements for all incoming petitions and requests, but instead includes specific references to some of the most common or complex types of requests to the Board and the basic elements that are most often needed for those types of requests. Because the Board considers every individual request on its own merits, the information identified below is not a comprehensive listing of all information the Board may need to effectively evaluate every incoming petition. FRA staff will routinely request from a petitioner additional information not listed below if that information is necessary to enable the agency to effectively evaluate a petitioner's specific request. FRA notes that the guidance contained in this Appendix is equally applicable to both new requests for relief and approval and requests to extend or expand existing grants of relief or approvals.

Each petition, application, and other request for approval to the Board should be submitted electronically at FRAWaivers@dot.gov.

- I. General Content for Petitions, Applications, and Requests for FRA Approval (including waiver and special approval petitions, Block Signal Applications (BSAPs), and requests for suspension of any FRA safety regulation) (see generally 49 CFR § 211.7 and 211.9):
 - a. The proper corporate name and principal business address of each petitioner or applicant;
 - b. A point of contact of each petitioner or applicant responsible for the petition and available to provide additional information as needed (including name, phone number, and e-mail address);
 - c. Applicable statute, regulation, or FRA order at issue (citation to specific CFR or U.S.C. section required);
 - d. The manner in which each petitioner or applicant is involved and that petitioner or applicant's interest in the proceeding;
 - e. A complete description of the proposed relief, project, or approval (e.g., affected location(s) (e.g., track or facility), equipment, regulated functions, and/or employees);
 - f. Identification of any alternative safety measures proposed to be implemented to be consistent with railroad safety;
 - g. Thoroughly explain if the safety of railroad operations would be affected, in what ways, and how the alternative safety measures will mitigate safety risk. Petitions must include data or information supporting this conclusion. If no data or information is available, a logic-based rationale justifying the request is required, including a demonstration of how the legitimacy of that logic-based rationale will be measured if approval or relief is granted; and
 - h. Identification of potentially impacted stakeholders and evidence of consultation/coordination with those stakeholders.

II. Additional Information for Over-age Car Approvals (49 CFR § 215.203)

- a. A complete and accurate list of all cars involved (including the number of cars, type, capacity, reporting marks, equipment identification numbers, year built, types of bearings, and any other pertinent information on the condition of the cars);
- b. The name and address of the entity that controls the operation and maintenance of the car(s) involved;
- c. The car(s)' condition, status, and age measured from the date of original construction;
- d. The maximum load that the car(s) would carry;
- e. The maximum speed at which the car(s) would be operated;
- f. A statement that each car has been examined and has been found to be safe to operate under the conditions given in the petition; and
- g. The territorial limits within which the car(s) are to be operated and the name of each railroad (if any) that will receive the cars in interchange.

III. Additional Information for Safety Glazing Waivers (49 CFR Part 223)

- a. The specifications of the window material currently installed on the locomotive(s), caboose(s), or passenger car(s);
- b. Estimate of the cost to replace current window materials with compliant glazing material, including frames;
- c. Description of the operating environment of the equipment involved (e.g., maximum operating speed, type of service, number of grade crossings equipment would traverse); and
- d. Accident and personal injury history where glazing material was involved or could have possibly prevented injury.

IV. Additional Information for Reflectorization Waivers (49 CFR Part 224)

- a. The number, type, reporting marks, and equipment identification numbers of the equipment involved;
- b. The service in which the equipment is used (e.g., passenger, tourist and excursion, freight);
- c. Characteristics of operating environment (e.g., maximum authorized speed of equipment, whether equipment travels over grade crossings and if so, characteristics of those crossings and signal system, if applicable); and
- d. Whether equipment is operated solely during daytime hours or may be operated during nighttime or other hours of limited visibility.

V. Additional Information for BSAPs or Requests for Relief from Part 236 (49 CFR §§ 235.10 and 235.12)

1. The corporate name of each applicant;
2. The manner in which each applicant is involved;
3. The location of the project, including name of operating division and nearest station, and as a practical matter, the geographic location of the project with sufficient specificity (e.g., city and state) to allow FRA to investigate the request;
4. The track or tracks involved;

5. Train traffic levels over involved tracks, hazardous materials car counts, and type(s) of hazardous materials transported over impacted area;
6. Whether impacted area is a part of the Strategic Rail Network (STRACNET);
7. A complete description of proposed changes as they would affect existing infrastructure or operations, or identification of the regulatory section from which relief is sought;
8. The reason for the proposed changes or justification for relief from the identified requirements;
9. The approximate dates of beginning and completion of project, if applicable;
10. Changes in operating practices that will result from granting the application or relief, if any, and whether those changes are temporary or permanent;
11. Thorough explanation of how the safety of the operation will be affected and in what ways, including whether any positive train control (PTC) system would be impacted by the proposed project. Sufficient data, information, or explanation to demonstrate the validity of the conclusion is required;
12. If the proposed changes will conform to the requirements of Part 236;
13. The additional information and prints required by § 235.12. The prints may be sent electronically. They must be to scale, or dimensions indicated, using Association of American Railroads (AAR) graphic symbols and contain the substantive information required by paragraphs (b) and (c) of § 235.12;
14. Number and characteristics of highway-rail grade crossings in the impacted area;
15. If any railroads other than the petitioner may potentially be impacted by the application or request for relief. If so, evidence of those railroads' concurrence or concerns with the BSAP or proposed project or relief must be included; and
16. If the proposed project or relief would impact other aspects of railroad operations in the impacted area.

VI. Additional Information for Petitions to Suspend a Safety Regulation under 49 CFR § 211.51 (Tests) or for Petitions for Waiver from Existing Regulatory Requirements to Enable the Evaluation of the Effectiveness of New Technology or Operational Approaches

- a. Comprehensive Test Program designed to evaluate the effectiveness of new technology or operational approaches, including:
 1. A complete description of the technology or operational approaches to be tested;
 2. Proposed test methodology and procedures, including underlying assumptions, any necessary pre-conditions, operational or other controls and variables;
 3. Steps or phases of the test program including metrics, pass/fail criteria, and prerequisites for transitioning to the next test phase;
 4. Data to be collected and the analysis methodology for the data to validate functionality, reliability, and safety;
 5. Alternative safety measures to ensure safety of the test, including the safety of test personnel and equipment;
 6. Expected result;
 7. Process for submitting the actual results of the test;
 8. Post-conditions; and
 9. Identification of metrics to measure success of program.
- b. Identification of requirements (by CFR cite) for which suspension or waiver is requested and justification for such request (i.e., why it is necessary to suspend the identified requirement(s) to conduct the test program or evaluate new technology or operational approach);

- c. Demonstration that the proposed Test Program is limited in scope as necessary to carry out the Test Program; and
- d. Identification of stakeholders potentially impacted by Test Program (e.g., railroad employees, local communities, law enforcement, emergency responders) and if any stakeholders have identified concerns with the proposed Test Program, the submission should include an evaluation of the concerns and any mitigating measures proposed.