

**FREQUENTLY ASKED QUESTIONS REGARDING
HOW TO REQUEST FRA REVIEW
BEYOND THE LOCOMOTIVE ENGINEER REVIEW BOARD
(49 C.F.R. §§ 240.7, 240.407, 240.409 AND 240.411)
AND THE OPERATING CREW REVIEW BOARD
(49 C.F.R. §§ 242.7, 242.507, 242.509 AND 242.511)
(14 C.F.R. Part 302)
Updated May 22, 2013**

NOTE: This document is meant only as an aid in understanding the administrative process beyond the Locomotive Engineer Review Board (Part 240) and Operating Crew Review Board (Part 242). For complete information as to the regulatory requirements, please refer to 49 C.F.R. Parts 240 and 242.

Who may request further FRA review from a Locomotive Engineer Review Board or Operating Crew Review Board (Board) decision?

- A party adversely affected by the Board decision has the right to request that FRA provide an administrative hearing. Thus, if the Board finds in favor of the railroad, the locomotive engineer or conductor has the right to request a hearing. If the Board finds in favor of the engineer or conductor, the railroad may request a hearing. 49 C.F.R. §§ 240.407(a) or 242.507(a).
- If the Board denies a petition as untimely, the aggrieved party may file an appeal directly with the FRA Administrator in accordance with 49 C.F.R. §§ 240.403(e) and 240.411 (Locomotive Engineer Review Board), or 49 C.F.R. §§ 242.503(d) and 242.511 (Operating Crew Review Board). Where a party files an appeal from a Board decision pursuant to §§ 240.403(e) or 242.503(d), the Administrator may affirm or vacate the Board's decision, and may remand the petition to the Board for further proceedings. An Administrator's decision to affirm the Board's decision constitutes final agency action. 49 C.F.R. §§ 240.411(e) and (f), or 242.511(e) and (f). *Note: The section offering guidance for filing an appeal to the Administrator is described in this document after the section offering guidance for filing a request for an administrative hearing.*

REQUEST FOR ADMINISTRATIVE HEARING

How much time do I have to file a request for an administrative hearing?

- The adversely affected party has 23 days from the date the Board's decision was mailed (as indicated by the postmark, or the date of the certificate of service, whichever is later if they are not the same) to file such a request. Twenty-three days are provided, rather than the 20 days stated in the regulations, in order to account for the added mailing period. Please note that

you are encouraged to retain the envelope from the Board's decision in case there arises an allegation that you did not file a timely request.

- In computing the 23rd day, please do not count the date the Board's decision was mailed.
- If the 23rd day falls on a day that the DOT's Docket Operations office is closed [i.e., a Saturday, a Sunday or Federal holiday] you must file your request before the end of the next day in which the DOT's Docket Operations office is open and accessible. (It is advisable to provide a written explanation with your submission if the 23rd day falls on a day on which weather or other conditions have made the DOT's Docket Operations office arguably inaccessible.)

Where do I file my petition for an administrative hearing?

- A written request for an administrative hearing must be filed with the U.S. Department of Transportation, Docket Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, D.C. 20590, or an electronic request for an administrative hearing must be posted at <http://www.regulations.gov>. 49 C.F.R. §§ 240.407(b) or 242.507(b). More detailed instructions for submitting acceptable requests for an administrative hearing are answered in response to the next question. **Please note that for locomotive engineer cases this office is different than the filing address for the earlier Board review. DO NOT FILE YOUR REQUEST FOR AN ADMINISTRATIVE HEARING WITH FRA'S DOCKET CLERK - it will only delay the actual filing with the appropriate office listed above. Conductor cases will retain the same docket.**
- Background Information: When an administrative hearing is requested, a new docket for a locomotive engineer case is created that will be completely available electronically. While you should reference the FRA docket number used for the Board's review in your engineer submission, your administrative hearing docket submission will not be put into that FRA docket created just for the Board's review.
- As the docket will be available electronically to the public, FRA recommends that each party be careful to redact Social Security numbers, employee identification numbers that may be the same as a Social Security number, or any other information that is private in nature and should not be shared with the general public.

What are the acceptable forms of a request for an administrative hearing?

- Current acceptable forms of such a request include hand delivery, mailing, electronic submission, and fax.
- Hand delivery requires physically delivering your written request to the U.S. Department of Transportation, Docket Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., in Washington, D.C.
- Mailing requires sending your written request by United States Postal Service or private delivery service to the same address for hand delivery.
- Filers are encouraged to use the electronic submission system at <http://www.regulations.gov> but with the understanding that, for locomotive engineer cases, a docket must first be created before a document can be filed in it. To have a docket created, DOT's Docket Operations and FRA have developed a procedure by which a filer may electronically submit a document to a pre-existing docket called a "shell docket." When you go to <http://www.regulations.gov>, enter FRA's shell docket number "FRA-2007-0003" in the box for "Enter Keyword or ID." Once you search for this shell docket, you will open a new window for the shell docket and see that it is titled "Instructions on submitting comments for Guidance Documents to FRA." When you are viewing the shell docket, the abstract explains that you must click on the "Submit a Comment" button at the top of the page and follow the online instructions. FRA would expect that users will enter the required information and upload a file, although it may not be necessary to type a comment in the comment box provided.
- If you wish to file by fax, FRA recommends that you call DOT's Docket Operations at (202) 366-9826 or toll free at (800) 647-5527 to confirm that its fax number is (202) 493-2251. Filers should be aware that the quality of a scanned fax may not be as good as the scan of a mailed hard copy or uploaded file.
- No matter which acceptable form you use, FRA recommends that you retain a receipt or other proof of the date you filed your request.

Other information for properly filing a request for an administrative hearing.

- In response to acts of terrorism beginning on September 11, 2001, FRA amended the definition of "filing" so that delays in mail delivery would not unfairly result in the rejection of what would likely have been timely filed requests for further FRA review. 67 Fed. Reg. 22 (Jan. 2, 2002). The amended definition states that "[f]ile, filed and filing mean submission of a document under this part on the date when the Docket Clerk receives it, or if

sent by mail on or after September 4, 2001, the date mailing was completed.”

- Pursuant to this definition, if you file by hand delivery then you must make sure that DOT’s Docket Operations receives it no later than 5:00 p.m., eastern standard or daylight savings time, whichever is in effect in the District of Columbia at the time, on the date it is due. The business hours for DOT’s Docket Operations facility are Monday through Friday, 9:00 a.m. to 5:00 p.m., except Federal holidays.
- If you file by USPS or other mail services, you must make sure that the postmark or your receipt reflect that your request was mailed no later than the date it is due.
- If you file a request for a hearing electronically through www.regulations.gov then you must make sure that your electronic submission is received no later than midnight the date it is due.
- If you file a request for a hearing by fax, you must make sure that DOT’s Docket Operations receives it no later than 5:00 p.m., eastern standard or daylight savings time, whichever is in effect in the District of Columbia at the time, on the date it is due. The business hours for DOT’s Docket Operations facility are Monday through Friday, 9:00 a.m. to 5:00 p.m., except Federal holidays. A fax that is received after the DOT’s Docket Operations has closed for the day shall be deemed to be constructively received on the next DOT Docket Operations business day. 14 C.F.R. § 302.3(a)(2).

What information do I need to provide in my written request for an administrative hearing?

- Only a few core items of information are required in a written request for an administrative hearing. 49 C.F.R. §§ 240.407(d) or 242.507(d):
 - (1) Your name, address, telephone number, and email address (if available). If you are represented by an attorney or any other representative, you must also provide the same basic information for that person.
 - (2) The specific factual issues, industry rules, regulations, or laws that the requesting party alleges need to be examined in connection with the certification decision in question. Please note that this proceeding provides an aggrieved party a *de novo* hearing at which the relevant facts can be adduced and the correct application of Parts 240 or 242 can be applied. **This proceeding does not provide an appellate review of the Board’s decision or the railroad’s hearing; thus, the administrative proceeding will not cover alleged procedural errors which may have occurred at those earlier proceedings.** Furthermore, the party requesting the hearing has the burden of proving their case by a preponderance of the evidence. See 49 C.F.R. §§ 240.409(q) or 242.509(q).

(3) Your signature or your representative's signature. If filing electronically with www.regulations.gov "[t]he copies need not be signed, but the name of the person signing the original document, as distinguished from the firm or organization he or she represents, must also be typed or printed on all copies below the space provided for signature. Electronic filers need only submit one copy of the document." 14 C.F.R. § 302.3(c).

Do I need to provide anyone else with a copy of my hearing request?

- FRA's regulations do not require that you serve anybody else with a copy of your request. However, as a courtesy, it is recommended that you serve each party listed on the "service list" attached to the Board's decision letter.

What happens if I file a late request for an administrative hearing or decide not to file such a request at all?

- Failure to file a timely request for a hearing or the decision not to file any request at all, means that the Board's decision constitutes final agency action in the matter. 49 C.F.R. §§ 240.407(c) or 242.507(c).
- If you believe that the FRA Hearing Officer has incorrectly decided that your request was untimely filed, you may appeal that decision to the FRA Administrator. See 49 C.F.R. §§ 240.411 or 242.511.

APPEAL TO THE ADMINISTRATOR

Under what circumstances can someone appeal to the Administrator?

- Any party aggrieved by the FRA Hearing Officer's decision may file an appeal to the Administrator. 49 C.F.R. §§ 240.411(a) or 242.511(a).
- Also, if the Board denies a petition as untimely, the aggrieved party may file an appeal directly with the FRA Administrator in accordance with 49 C.F.R. §§ 240.411 or 242.511. 49 C.F.R. §§ 240.403(e) or 242.503(d).

How much time do I have to file an appeal to the FRA Administrator?

- An appeal must be filed within 35 days of the issuance of the adverse decision by either the FRA Hearing Officer or the Board, if the party is appealing a Board decision to deny a petition as untimely pursuant to 49 C.F.R. §§ 240.403(e) or 242.503(d). A copy of the appeal shall be served on each party.
- The Administrator may extend the period for filing an appeal for good cause shown, provided that the written request for extension is served before

expiration of the 35 day period in which to appeal. 49 C.F.R. §§ 240.411(c) or 242.511(c).

Where do I file the appeal to the FRA Administrator?

- An appeal to the Administrator must be filed directly with the FRA Administrator at the following address: 1200 New Jersey Avenue, SE., Washington, DC 20590. A copy of the appeal shall be served on each party. If no appeal is timely filed, the presiding officer's decision constitutes final agency action.
- It is also required for conductor cases that an appeal to the FRA Administrator be filed with the Docket Clerk, U.S. Department of Transportation, Docket Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590 or consistent with the standards and requirements established by the Federal Docket Management System and posted on its Web site at <http://www.regulations.gov>. Although not specified by the engineer regulation, FRA will provide DOT's Docket Operations with a copy of your appeal if you do not do so yourself; this extra step will provide all parties with the benefit of being able to track the progress of the appeal through www.regulations.gov.

What information must be included in the appeal to the FRA Administrator?

- The appeal shall set forth objections to the presiding officer's decision, supported by reference to applicable laws and regulations and with specific reference to the record. 49 C.F.R. §§ 240.411(a) or 242.511(a).
- A party challenging a Board decision to deny a petition as untimely should include all information and argument supporting the position that the Board made an improper decision with respect to the untimeliness of the petition's filing.

Do I have an opportunity to respond if another party files an appeal to the FRA Administrator?

- Yes. You may file a reply to the appeal within 25 days of service of the appeal. However, if you were served with a copy of the appeal by mail, you have 28 days from the date of the postmark to file your reply directly with the FRA Administrator at the following address: 1200 New Jersey Avenue, SE., Washington, DC 20590. In addition, a copy of the response to the appeal must be served on each party and the docket.

How can I review the applicable federal regulations myself?

- FRA's web site <http://www.fra.dot.gov/>, which is updated regularly, provides access to the regulations, the Federal Register notices in which the regulations were first published, or hotlinks to other web sites which maintain electronic copies of the Code of Federal Regulations (CFR) which is a codification of the regulations published in the Federal Register. The U.S. Government Printing Office (GPO) maintains a web site that contains both the Federal Register and the CFR in a manner that allows you to view recent and past publications, as well as conduct advanced searches of individual or multiple government publications at <http://www.gpo.gov/fdsys/search/home.action>. GPO also maintains an electronic CFR website at www.ecfr.gov. You may also purchase volumes of the CFR, or other government publications, through the GPO website at <http://www.gpo.gov/customers/p-i-sales.htm>, by e-mail at gpo@custhelp.com; by telephone at (202) 512-1800 or toll free at (866) 512-1800; and by fax at (202) 512-2104. Many public libraries, especially law libraries, also maintain a copy of the CFR.