

Waivers, Block Signal Applications, and Special Approvals

The Federal Railroad Administration (FRA) handles three kinds of requests for relief from obligations imposed by law or regulation: waivers, block signal applications, and special approvals. Decisional authority rests with the Associate Administrator for Safety (or that person's delegate), who chairs the Railroad Safety Board. The Board is an internal panel of safety and legal personnel who consider each petition, application or request (individual matter).¹ FRA processes approximately 100 to 125 individual matters each year.

Responsibility of Requesting Party

Each requesting party should thoroughly review applicable regulations on point, which can be found in the published *Code of Federal Regulations* or on-line at <http://www.gpoaccess.gov/cfr/index.html>. FRA's railroad safety regulations are found at CFR Parts 200-299. An electronic docket is established for each individual matter. Dockets can be accessed online at <http://www.regulations.gov>.

Waivers

A petition for *waiver* generally seeks an exception from compliance with a regulation that the petitioner believes is unnecessary or excessively burdensome under the specific circumstances. Although certain statutorily mandated requirements cannot be waived, in general FRA may issue a waiver from its regulations when it is in the public interest and consistent with railroad safety. 49 U.S.C. 20103(d). The burden of establishing that this test is met rests with the petitioner. Specific procedures for filing waiver petitions and instructions for what those should contain are set forth in 49 CFR part 211, FRA's Rules of Practice. In summary—

1. Any person may petition for a temporary or permanent waiver of any rule, regulation, or standard (not statute) (49 U.S.C 20101(c)). (Except for Hours of Service.)
2. A notice of each new waiver petition will be published in the Federal Register. Requests for an extension of an existing waiver will be noticed only to unless a change in conditions or operations is involved, and when the waiver has been in place for 10 years or more and a renewal is submitted.
3. Written comments submitted to the public docket will be considered.
4. FRA conducts a field investigation of most waiver petitions.
5. A public hearing will be conducted if FRA determines one is necessary.
6. Waivers are typically granted for a period not to exceed five years and may be subject to renewal upon request if warranted.

¹ Certain routine special approvals are handled without being referred to the Railroad Safety Board, such as approval of random alcohol/drug testing plans.

Block Signal Application (BSAP)

BSAPs are requests for discontinuance, decrease of the limits of, or material modification of railroad signal or train control systems. FRA regulations at 49 CFR part 235 specify in detail what kinds of actions require approval (and those that do not) and the procedures that apply. The statute that requires FRA approval of material modifications and discontinuances does not specify criteria governing FRA approval, but in general FRA applies criteria similar to those applicable to waivers. In summary—

1. A notice of each new BSAP will be published in the Federal Register. Requests for an extension of an existing application will not be noticed unless a change in conditions or operations is involved.
2. Written comments will be considered.
3. FRA conducts a field investigation of virtually all BSAPs, so the applicant may be contacted by an FRA signal and train control inspector and asked to respond to questions.
4. A public hearing will be conducted if needed.
5. BSAPs generally provide permanent relief, but in certain cases FRA may make the permanency of the relief contingent upon certain factors (e.g., no significant growth in rail traffic over the ensuing three years).

Special Approvals

An increasing number of FRA regulations make provision for special approvals. Depending on the subject matter, a request for special approval may seek relief from a particular restriction, with nothing else (e.g., permission to use restricted freight cars) or may seek to demonstrate that equivalent safety will be maintained using an entirely different approach than that mandated by the regulation (e.g., use of technology in lieu of specified procedures). Other recent FRA regulations provide for recognition of new private sector standards that are presented for FRA acceptance (i.e., as a new or alternative means of satisfying FRA's regulatory requirement). Special approvals handled through these procedures consist of the following:

1. Approval of Shared Use (49 CFR part 211, Appendix A);
2. Restricted Freight Cars (49 CFR 215.203);
3. Freight Power Brake Safety Standards (49 CFR 232.17);
4. Passenger Equipment Safety Standards (49 CFR 238.21); and
5. New Brake Technology (49 CFR 232.305).

Special approvals are generally granted for an indefinite duration.

Use of Conditions on Favorable Decisions

Approval of any waiver petition, block signal application, or special approval request may contain various conditions or requirements. These may include:

1. Time limits;
2. Immediate notification to FRA of accident or injury; and
3. Voiding of the approval if any of the conditions are violated.

Generic Instructions for Submitting Requests

The most common types of waiver petitions, block signal applications, and special approvals are addressed in the following template. Parties seeking a waiver of a regulation not contained in this document should use these broad guidelines to determine the type of material that FRA seeks.

For those parties seeking a continuation or renewal of an existing waiver, the request should reference the original identification number (e.g., FRA-2002-14085) in the heading of the request.

Contents of ALL Petitions, Applications and Requests. See 49 CFR §§ 211.7 and 211.9

- (a) The application may be submitted by letter and shall contain the following information where applicable:
 - 1) The corporate name of each applicant, or applicants;
 - 2) The manner in which applicant(s) is involved;
 - 3) The location of the project, giving name of operating division and nearest station;
 - 4) The track or tracks involved;
 - 5) A complete description of proposed changes as they would affect the existing facilities or of the section from which relief is sought;
 - 6) The reason for proposed changes or justification for relief from the requirements;
 - 7) The approximate dates of beginning and completion of project;
 - 8) Changes in operating practices, temporary or permanent;
 - 9) Whether safety of operation will be affected, and if so, how; and

- 10) Any attachments or exhibits as part of the application that will help clarify or illustrate the need for the relief (e.g. track charts, timetables, photographs, maps).

For ALL Track and Signal Waiver Applications and BSAPs (49 CFR Part 235)

Supplemental information prescribed and/or helpful to FRA in its investigation.

- 1) The associated railroad milepost(s), nearest city/town(s), and State where the application area is located;
- 2) The number and types of train movements daily, that operate over the application area;
- 3) The annual number of hazardous materials cars transported over the trackage involved in the application;
- 4) Whether the National Railroad Passenger Corporation (Amtrak) did or did not operate passenger trains over the trackage involved in the application on February 1, 1979; and
- 5) Whether the trackage involved in the application is part of the Strategic Rail Corridor Network (STRACNET).

Additional required information for Waivers of the Drug and Alcohol regulations (49 CFR part 219).

- (a) Number of employees covered by the Hours of Service Act and total number of employees.
- (b) Information on alternate plans to control the use of drugs and alcohol.

Additional required 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) Estimates of the cost to replace current window material with compliant glazing material.
- (c) Accident and personal injury history where glazing material was involved or could have possibly prevented the injury.

Additional required information for Hours of Service Waivers (Hours of Service Act, or 49 CFR part 228).

- (a) Number of employees covered by the Hours of Service Act and total number of employees.

Additional required information for 50-year-old-Cars (49 CFR section 215.203).

- (a) A complete and accurate list of all of the vehicles for which the waiver is requested. This list should include the year built, types of bearings, projected use of the vehicle, and any other pertinent information on the condition of the vehicle(s).

Additional required information — prints for Block Signal Applications (49 CFR parts 235/236).

Whether proposed changes will conform to the FRA's rules, Standards and Instructions of Title 49 CFR part 236.

- (a) A print or prints, size 8 inches by 10½ inches, or 8½ inches by 11 inches, or folded to 8 inches by 10½ inches or to 8½ inches by 11 inches, shall be furnished with each application.
- (b) The print or prints shall be to scale or by indicated dimensions, using Association of American Railroads graphic symbols.
- (c) The following information shall be shown on the print or prints:
- 1) Present and proposed arrangement of tracks and signal facilities;
 - 2) Name of carrier;
 - 3) Operating division;
 - 4) Place and State; and
 - 5) Timetable directions of movements.
- (d) If stopping distances are involved, the following information shall also be shown:
- 1) Curvature and grade;
 - 2) Maximum authorized speeds of trains; and
 - 3) Length of signal control circuits for each signal indication displayed.
- (e) The following color scheme is suggested on prints:
- 1) Installations, relocations, and added signal aspects should be colored, preferably in yellow;
 - 2) Removals, discontinuances, and abandonments should be colored, preferably in red; and

- 3) Existing facilities not pertinent to change proposed in application should be shown uncolored.

Additional required information for Shared Use Waiver Applications.

- (a) A listing of all FRA sections from which a waiver is sought and a corresponding explanation why. To be included in this list are the complying sections.

Filing procedure for ALL Waiver Petitions, Block Signal Applications, and Requests for Special Approval.

- (a) Applications or requests for reconsideration of an application shall be submitted by an authorized officer of the carrier or other requesting entity.
- (b) Each waiver, block signal application or request for special approval should be submitted to the FRA Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, West Building, 1200 New Jersey Avenue, SE, Room W31-109, Washington, D.C. 20590. The submissions can be submitted electronically at FRAWaivers@dot.gov.
- (c) A separate application shall be filed for each project.
- (d) At a joint facility where changes are proposed in the automatic block signal system, interlocking, traffic control system, automatic train stop, train control, or cab signal system on the tracks of more than one carrier, or if more than one carrier will be affected by the proposed changes or relief sought, a joint application signed by all carriers affected shall be filed. (49 CFR Part 235)
- (e) Where only one carrier at a joint facility is affected by the discontinuance or modification of the installation or relief sought, the carrier shall be responsible for filing the application. The carrier shall also certify that the other joint carriers have been notified of the filing of its application. (49 CFR Part 235)

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