

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Little River .....	At Wildwood Bridge .....	+859	Blount County (Unincorporated Areas), City of Townsend.
Pistol Creek .....	At Webb Road .....	+1045	City of Alcoa.
	At Carpenter's Grade Rd .....	+957	
	At Campground Bridge/Davey Crockett Drive .....	+1112	
Russell Branch .....	At Confluence with Little River .....	+826	City of Rockford.
	At Wright Rd .....	+911	City of Maryville.
Springfield Branch .....	At Eagleton Rd .....	+846	
	At Old Knoxville Pike .....	+869	
Unnamed Tributary to Brown Creek.	At confluence with Brown Creek .....	+919	City of Maryville.
	At Amerine Rd .....	+1002	Blount County (Unincorporated Areas), City of Maryville.
Unnamed Tributary to Laurel Bank Branch.	At confluence with Laurel Bank Branch .....	+871	
	At U.S. Hwy 129 .....	+1008	City of Maryville.
Unnamed Tributary to Springfield Branch.	At confluence with Springfield Branch .....	+842	
	At Harding St .....	+859	

\*National Geodetic Vertical Datum.

#Depth in feet above ground.

+North American Vertical Datum.

#### ADDRESSES

##### Blount County (Unincorporated Areas)

Maps are available for inspection at: Blount County Zoning Department, 1006 East Lamar Alexander Parkway, Maryville, Tennessee 37804.

##### City of Alcoa

Maps are available for inspection at: City of Alcoa Planning And Codes Department, 223 Associate Blvd., Alcoa, Tennessee 37701.

##### City of Maryville

Maps are available for inspection at: City of Maryville Engineering Department, 416 West Broadway Avenue, Maryville, Tennessee 37801.

##### City of Rockford

Maps are available for inspection at: Rockford Town Hall, 3719 Little River Road, Rockford, Tennessee 37853.

##### City of Townsend

Maps are available for inspection at: Townsend City Hall, 133 Tiger Drive, Townsend, Tennessee 37882.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: March 26, 2007.

##### David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7-6556 Filed 4-6-07; 8:45 am]

BILLING CODE 9110-12-P

#### DEPARTMENT OF TRANSPORTATION

##### Federal Railroad Administration

##### 49 CFR Part 211

[Docket No. FRA-2006-24838]

RIN 2130-AB79

##### Establishment of Emergency Relief Dockets and Procedures for Handling Petitions for Emergency Waiver of Safety Regulations

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** FRA is issuing procedures governing the creation of Emergency Relief Dockets (ERD) as well as procedures for obtaining waivers from a safety rule, regulation, or standard during an emergency situation or event. FRA's purpose for establishing the ERD

and emergency waiver procedures is to provide an expedited process for FRA to address the needs of the public and the railroad industry during emergency situations or events.

**DATES:** This final rule is effective April 9, 2007; petitions for reconsideration must be received on or before June 8, 2007. Petitions received after that date will be considered to the extent possible without incurring additional expense or delay.

**ADDRESSES:** *Petitions for reconsideration:* Any petitions for reconsideration related to Docket No. FRA-2006-24838, may be submitted by any of the following methods:

- Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building,

Room PL-401, Washington, DC 20590-001.

- *Hand Delivery:* Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All petitions for reconsideration must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://dms.dot.gov> including any personal information. Please see the General Information heading in the "Supplementary Information" section of this document for Privacy Act information related to any submitted petitions.

*Docket:* For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:**

Grady C. Cothen, Jr., Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW., RRS-2, Mail Stop 25, Washington, DC 20590 (Telephone 202-493-6302), or Michael Masci, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (Telephone 202-493-6037).

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 30, 2006, FRA published an interim final rule (IFR) establishing emergency waiver procedures that further the agency's ability to quickly address waiver requests in emergency situations while providing an opportunity for public input in the process. See 71 FR 51517. Based on comments received in response to the IFR and lessons learned from Hurricane Katrina, FRA is establishing procedures that allow the agency to expeditiously handle waiver requests that are directly related to an emergency situation or event. This will permit FRA to provide railroads necessary operational relief in a more timely manner during emergencies while at the same time maintaining public safety.

Due to the catastrophic and devastating damage inflicted on the southern portion of the United States in the aftermath of Hurricane Katrina, FRA published a notice in the **Federal Register** establishing a temporary means for handling petitions for waiver from the Federal rail safety regulations that were directly related to the effects of the hurricane or were necessary to effectively address the relief efforts being undertaken in the area. See 70 FR 53413 (September 8, 2005). FRA recognized that these types of petitions had to be afforded special consideration and had to be handled expeditiously in order to ensure that the emergency operational needs of the railroads were addressed while at the same time ensuring the safety of the public, including railroad employees. Such emergency waivers would help ensure that routine safety regulations would not stand in the way of railroad efforts to cope with the emergency and to provide timely relief and recovery efforts. FRA's procedures prior to the August 30, 2006 IFR related to the handling of petitions for waiver from the Federal rail safety regulations contained in 49 CFR part 211, did not lend themselves to quick and immediate decisions by the agency, nor were they intended to. The previous procedures contained in 49 CFR part 211, established a process whereby FRA publishes a notice of any petition for waiver in the **Federal Register**. This notice then allows interested parties a period of time in which to comment on any such petition, generally thirty (30) days, and provides for a public hearing should one be requested. This process generally takes several months to accomplish. Accordingly, FRA instituted a temporary set of expedited procedures for handling petitions for waivers that were directly related to the effects and aftermath of Hurricane Katrina. The subsequent IFR was based on those procedures.

To prepare for future emergencies, FRA is issuing procedures for handling petitions for waivers in emergency situations. These procedures are based on the temporary procedures that were instituted in response to Hurricane Katrina. FRA believes that the emergency procedures contained in this final rule provide the agency with the ability to promptly and effectively address waiver requests directly related to an emergency while ensuring that the public and all interested parties are afforded proper notice of any such request, and are provided a sufficient opportunity to comment on any such request.

When faced with a sudden emergency event or situation the Administrator may activate the emergency waiver procedures contained in this final rule. FRA will consider local, state and federal declarations of emergency when determining whether circumstances qualify as an emergency event. To declare that the emergency waiver procedures are in effect, the Administrator will issue a statement in the Document Management System (DMS) at <http://dms.dot.gov>. The DMS will automatically notify parties that have signed up for the Emergency Waiver Listserv. (Instructions on how to sign up for automatic notification of additions to a docket are found at <http://dms.dot.gov>.) In addition, FRA will make every effort to post the statement on its Web site (<http://www.fra.dot.gov/>). FRA will also publish a notice in the **Federal Register** alerting interested parties that the emergency waiver procedures will be utilized. FRA anticipates that the circumstances that constitute the occurrence of, or imminent threat of an emergency event will occur infrequently.

The types of emergency events intended to be covered by this final rule could be local, regional, national or international in scope and could include natural and manmade disasters, such as hurricanes, floods, earthquakes, mudslides, forest fires, snowstorms, terrorist acts, increased threat levels, chemical or biological attacks, pandemic outbreaks, releases of dangerous radiological, chemical, or biological material, or war-related activities. Not only will our Nation's railroads be directly affected by many emergency events, they will also play a key role in the aftermath of those events, by providing necessary supplies and by moving displaced families and relief personnel and supplies to and from an affected areas. Although the type of relief that might be granted under these provisions would vary greatly based on the type of emergency event involved, it is expected that the relief would generally involve such things as: Temporary postponement of required maintenance, repair, or inspection related to railroad equipment, track, and signals; temporary relief from certain record keeping or reporting requirements; or short-term relief from various operational requirements. Relief granted will not extend for more than nine months. For matters that may significantly impact the missions of the Department of Homeland Security (DHS), FRA will consult and coordinate with DHS as soon as practicable.

FRA will establish a new ERD each calendar year. FRA will publish a notice in the **Federal Register** identifying the new docket number by January 31st of each year. When the Administrator determines the occurrence of, or imminent threat of, an emergency event, FRA will accept emergency waiver petitions for review. If FRA determines that a petition is directly related to an emergency situation, the petition will be placed in the ERD for that year. FRA will receive comments on a petition for 72 hours from the close of business on the day that the petition is posted on the ERD. During that time, FRA will arrange a telephone conference for any party that requests a public hearing. If, after the telephone conference, a public hearing is still desired, then FRA will arrange for such a hearing pursuant to 49 CFR part 211 as soon as practicable. FRA may grant a petition for waiver prior to conducting a public hearing if such petition is in the public interest and consistent with safety. These procedures are intended to balance the need for expedited waiver procedures during an emergency event to ensure public safety, and the need for adequate time to allow full public participation. The ERD and emergency waiver procedures contained in this final rule do not waive any regulatory requirements. They only reduce the length of the notice and comment period to permit FRA to act on the request as quickly as possible.

FRA solicited written comments from the public based on the IFR in accordance with the Administrative Procedures Act (APA) 5 U.S.C. 553. Consideration of public comment allows FRA to access additional viewpoints from interested parties and include them when appropriate. By the close of the comment period on October 30, 2006, one set of comments was received. The comments were received on September 6, 2006 from the Brotherhood of Locomotive Engineers and Trainmen (BLET). The comments raise questions regarding two IFR sections: 49 CFR 211.45(i) providing a 72-hour period from when the petition is filed for interested parties to request a hearing; and, 49 CFR 211.45(g) describing the treatment of petitions for emergency waiver that do not meet the threshold requirements for consideration under 49 CFR 211.45. The BLET's comments are addressed in the relevant regulatory paragraphs of the section-by-section analysis below.

### Section-by-Section Analysis

#### *Processing of Emergency Waivers* § 211.45

*Section 211.45(a).* This paragraph makes clear that the emergency waiver procedures are intended to go into effect when there is an occurrence of, or imminent threat of, an emergency event and public safety would benefit from providing the railroad industry with operational relief. The types of emergency events intended to be covered by this final rule could be local, regional, national or international in scope and could include natural and manmade disasters, such as hurricanes, floods, earthquakes, mudslides, forest fires, snowstorms, terrorist acts, increased threat levels, chemical or biological attacks, pandemic releases of dangerous radiological, chemical, or biological material, or war-related activities.

*Section 211.45(b).* This paragraph contains information regarding FRA's creation of ERDs. Establishing a new ERD each year allows FRA to receive petitions for emergency waivers as soon as the occurrence of, or imminent threat of an emergency event is determined to have occurred. A yearly ERD is also a convenient way to organize the emergency waiver petitions and related documents. For reference purposes any petition can be located by the year in which the emergency event or situation occurred. The docket system will also provide notice to interested parties. The DMS Internet site that is identified in this final rule allows any interested party to subscribe, without fee, to the Emergency Waiver Listserv which will automatically notify the party via e-mail when documents are added to the designated ERD. This paragraph also makes clear that FRA will publish by January 31st of each year, a **Federal Register** notice identifying the ERD for that year. This will inform interested parties where to find petitions for emergency waiver during an emergency and will allow such parties to subscribe to the DMS Emergency Waiver Listserv. Publishing a notice in the previous year's ERD will allow the parties interested in the prior year to automatically receive the new docket number.

*Section 211.45(c).* This paragraph identifies the Administrator as the individual responsible for determining when the emergency waiver procedures will be utilized. The Administrator is the appropriate person to determine whether a situation or set of circumstances constitutes an emergency for purposes of FRA's use of the emergency waiver procedures. The

Administrator has a unique familiarity with the rail-industry through oversight of the following: Managing comprehensive safety programs and regulatory initiatives; enforcement of FRA safety regulations; development and implementation of national freight and passenger rail policy; and oversight of diverse research and development activities in support of improved railroad safety. During significant emergencies the Administrator has extensive interaction with the DHS, Director of National Intelligence, the Federal Bureau of Investigation, the Surface Transportation Board and other Federal agencies responsible for addressing public safety, health, security and welfare. In addition, the Administrator maintains contemporaneous communication with relevant rail transportation entities, including passenger and freight railroads. This experience and interaction provides a basis from which the Administrator can assess whether a situation or set of circumstances rises to the level of an emergency event that would necessitate activation of the emergency waiver procedures. FRA's statement declaring that emergency procedures are in effect will be issued in the appropriate ERD. The DMS Internet site that is identified in the rule text allows any subscribing interested party to subscribe, without fee, to the Emergency Waiver Listserv application which automatically notifies the party via e-mail when documents are added to the appropriate ERD. The Administrator's determination that emergency waiver procedures are in effect, would be one of those documents automatically transmitted to interested parties via e-mail. In determining whether an emergency exists the Administrator may consider states of emergency issued by a local, State, or Federal official, and determinations by the Federal government that a credible threat of a terrorist attack exists. A determination made by one of these officials that a state of emergency exists, indicates that special attention is needed to address the situation, and railroad operations may be implicated. The Administrator will consider whether such emergencies significantly affect railroad operations, and whether it would be beneficial to activate the emergency waiver procedures.

*Section 211.45(d).* This paragraph identifies other methods by which interested parties may be notified of FRA's determination to utilize the emergency waiver procedures. If conditions permit, FRA will issue the Administrator's determination on FRA's

Web site to quickly notify the public. FRA will also publish a notice in the **Federal Register** as soon as possible after the Administrator's determination to ensure full notification to all interested parties.

*Section 211.45(e).* This paragraph identifies the required content of a petition for emergency waiver. To be considered under the emergency waiver procedures, FRA must first determine that the petition is directly related to the occurrence of, or imminent threat of an emergency event. FRA will base its determination on the information provided in the petition. Thus, the petition should contain information that sufficiently demonstrates the relationship between the emergency event and the waiver relief being sought.

*Section 211.45(f).* This paragraph instructs the public how to submit a petition under the emergency waiver procedures. FRA is permitting submission by e-mail, fax, or mail. Permitting a variety of methods for submitting petitions for emergency waiver is intended to enhance the convenience and effectiveness of the process during the occurrence of, or imminent threat of an emergency event.

*Section 211.45(g).* This paragraph contains information regarding FRA's handling of waiver petitions under the emergency waiver procedures. After the FRA declares that the emergency procedures are in effect, it will accept petitions for emergency waivers. Petitions that are determined to be directly related to an emergency will be placed in the ERD for that year. The DMS numbers each document that is added to a docket. Thus, each petition submitted to the ERD will have a unique document number. For reference purposes, this document number should be identified on all communications related to that particular waiver petition.

One comment asserts that FRA's handling of petitions that do not qualify for emergency procedures under this paragraph will be different than the current requirements for non-emergency petitions under 49 CFR 211.9. Specifically, the commenter is concerned that 49 CFR 211.9(c) will not apply to these petitions, because compliance with that provision is not required as part of a petition for emergency waiver under 49 CFR 211.45(e). FRA believes that the IFR rule text explaining that non-emergency petitions will be processed "under normal waiver procedures of this subpart" addresses the commenter's concern. The IFR did not intend to change the content required for petitions under 49 CFR 211.9. The

information requirements under 49 CFR 211.9(c) remain unchanged. The requirements will apply equally to petitions that are submitted initially under 49 CFR 211.45, as it will for petitions submitted directly under 49 CFR 211.9.

*Section 211.45(h).* This paragraph explains the comment process. FRA believes that 72 hours is a reasonable length of time to consider comments in an emergency situation. During Hurricane Katrina, public safety was well served by FRA's expedited emergency waiver procedures. Similarly, during future emergency situations the public interest will require an expedited review process to ensure public safety. FRA believes that the emergency waiver procedures and the need to quickly address these types of waiver petitions fall within the good cause exemption under section 553 of the APA relating to providing prior notice and comment. Nonetheless, FRA is providing notice to interested parties and is permitting a short comment period prior to taking any agency action. Moreover, FRA is providing an opportunity for a public hearing as soon as practicable after initial consideration of an emergency waiver petition.

*Section 211.45(i).* FRA is clarifying the calculation of the 72-hour period as intended in this paragraph. A comment to the IFR noted that it would be difficult to ascertain the proper deadline for comments, because the DMS Web site indicates the date a filing is published, and not the time. Recognizing this limitation, FRA intends to receive comments on a petition for 72 hours from the close of business (5 p.m. eastern time) on the day that the petition is posted on the ERD. Consequently, the comment period will end at 5 p.m. on the third day of the comment period. Weekends and holidays will be included in the calculation.

FRA continues to believe that a 72-hour period is a sufficient amount of time to allow for public comment on petitions for emergency waiver. Allowing additional time would jeopardize the safety of the general public affected by the emergency. Some potential commenters may be unable to comment because of exposure to the emergency. FRA understands that this is a concern, but anticipates that other safeguards and options, as well as other parties with similar interests would likely be available during an emergency. These various available resources would be utilized to help determine appropriate relief from Federal regulations. The interim rule also provided multiple methods for

submitting comments to accommodate interested parties with limited capability to comment.

This paragraph describes how FRA will handle requests for hearing. FRA believes that a telephone conference will provide interested parties with an opportunity to present evidence regarding a particular petition to a neutral decision maker. If a party requests a public hearing after the telephone conference, FRA will provide one as soon as practicable. During an emergency the public interest requires that an expedited waiver process be utilized.

*Section 211.45(j).* This paragraph identifies the process by which FRA will make decisions on emergency waivers including: FRA's consideration of the petition; notification to the public of FRA's decision; and the limits of any relief granted under the procedures. The ability to grant or deny a petition without delay is essential to ensuring public safety during an emergency. The opportunity to reconsider a petition after the initial decision is made will ensure a robust deliberation. Under circumstances where reconsideration is appropriate, FRA will utilize additional time to consider the parties' input.

FRA's understanding of an emergency may change as the emergency event develops. Accordingly, the public will benefit from FRA's ability to reconsider decisions, and make appropriate adjustments based on further information. This will also ensure that FRA has the opportunity to address all relevant arguments made by interested parties anytime after its initial consideration of a petition. During an emergency it is a priority to address petitions for emergency waiver and make a decision without delay. Relevant comments may be submitted after the 72-hour comment period, and the public will benefit from ensuring that FRA has the opportunity to address those comments as soon as practicable.

Posting the decision letters in the appropriate ERD will provide notice to interested parties. The DMS Internet site that is identified in the rule text allows any interested party to subscribe, without fee, to its list serve application which will automatically notify the party via e-mail when documents are added, including the Administrator's determination that emergency waiver procedures are in effect, to the designated ERD.

This paragraph also makes clear that any relief granted under these procedures will be limited to no more than 9 months. If relief is needed for a period of time beyond 9 months, a petition can be submitted through the

traditional waiver process. Where issues of safety and security overlap it may be necessary for FRA to coordinate with DHS.

### General Information

This rule finalizes the interim rule that expedited the already-existing waiver process during an emergency with one minor clarification to the rule text in 49 CFR 211.45(i). Considering that the ERD and procedures for emergency waiver petitions were procedural modifications that did not change any regulatory requirements, together with the need to issue the procedural changes as soon as possible since we had entered the official hurricane season, FRA issued the IFR with a request for comments on August 30, 2006. Congress authored a good cause exemption to the informal rulemaking procedures to address emergencies (such as a response to a natural disaster) that might arise justifying issuance of a rule without prior public participation. As hurricane season began again, unfortunately, another emergency event could have occurred immediately. The public benefits from having the emergency waiver procedures in place before another emergency exists. Delay in the adoption of these procedures for expediting waivers could have caused serious harm to the public and the rail industry. In contrast to the potential harm that could be caused by delay, the impact of the procedural modifications on the public were minimal. Consequently, pursuant to 5 U.S.C. 553(b)(3)(B), FRA asserted its belief that good cause existed for finding that prior public notice of this action is both impracticable and unnecessary. However, FRA did request written comments on the content of the IFR and addressed the comment in the section-by-section portion of this document.

### Privacy

All potential petitioners for reconsideration should be aware that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://dms.dot.gov>.

### Regulatory Impact

#### *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This final rule has been evaluated in accordance with Executive Order 12866 and DOT policies and procedures. The modifications contained in this final rule are not considered significant because they are intended to merely institute an emergency relief docket, and establish internal FRA procedures for handling waivers directly related to an emergency. This final rule will not change any regulatory requirements. The economic impact of the procedures and establishment of the docket contained in this final rule will not affect the cost of compliance with the existing regulations.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this final rule does not have a significant impact on a substantial number of small entities. Because the procedures and the establishment of an emergency docket contained in this rule does not change regulatory requirements, FRA has concluded that there are no substantial economic impacts on small units of government, businesses, or other organizations.

#### *Paperwork Reduction Act*

This final rule does not change any of the information collection requirements.

#### *Environmental Impact*

FRA has evaluated this final rule in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c) of FRA's Procedures.

#### *Federalism Implications*

FRA believes it is in compliance with Executive Order 13132. Because the emergency docket and procedures for emergency waiver petitions will not change any regulatory requirements, this document will not have a substantial effect on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government. This final rule will not have federalism implications that impose any direct compliance costs on State and local governments.

#### *Unfunded Mandates Reform Act of 1995*

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$128,100,000 or more in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. Because the ERD and procedures for emergency waiver petitions will not change any regulatory requirements, this document will not result in the expenditure, in the aggregate, of \$128,100,000 or more in any one year, and thus preparation of such a statement is not required.

#### *Energy Impact*

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated the final rule in accordance with Executive Order 13211. Because the emergency docket and procedures

for emergency waiver petitions will not change any regulatory requirements, FRA has determined that this document will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

#### List of Subjects in 49 CFR Part 211

Administrative practice and procedure, Railroad safety.

#### Adoption of the Amendment

■ In consideration of the foregoing, the interim rule amending part 211 of Chapter II of Title 49 of the Code of Federal Regulations published at 71 FR 51521 on August 30, 2006 is adopted as a final rule with the following change:

#### PART 211—RULES OF PRACTICE

■ 1. The authority citation for part 211 continues to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 20114, 20306, 20502–20504, and 49 CFR 1.49.

■ 2. Section 211.45 is revised to read as follows:

#### § 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 the 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 website 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](mailto: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 close of business on the day that 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](mailto: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 close of business on the day that 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.

**Joseph H. Boardman,**

*Federal Railroad Administrator.*

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