
DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2005-22365]

Establishment of a Temporary Emergency Relief Docket and Procedures for Handling Petitions
for Emergency Waiver Relief From the Federal Regulations

Due to the catastrophic and devastating damage inflicted on the southern portion of the United States in the aftermath of hurricane Katrina, the Federal Railroad Administration (FRA) is establishing a temporary means for handling petitions for waiver from the federal regulations that are directly related to the effects of the hurricane or are necessary to effectively address the relief efforts being undertaken in the area. FRA recognizes that these types of petitions must be afforded special consideration and must be handled expeditiously in order to ensure that the safety of the public and the safety of those individuals and businesses providing aid to the region are immediately addressed. This document is intended to provide all interested parties notice of FRA's intent to establish a temporary Emergency Relief Docket which will be used to provide interested parties notice of the filing of such petitions for waiver. This document also contains the procedures for submitting and responding to such petitions for waiver as well as detailing the procedure that FRA will temporarily utilize to respond to these types of requests.

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 Thomas Herrmann, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (Telephone 202-493-6036).

Background Information

On August 29, 2005, hurricane Katrina hit the southern gulf region of the United States. The aftermath of the hurricane has revealed unprecedented damage to property and a constantly increasing loss of life. As the nation turns toward the task of saving lives, providing adequate living facilities for displaced families, and rebuilding the devastated areas, our nation's railroads will play a key role in these efforts by providing necessary supplies and by moving displaced families and relief personnel to and from the area. In an effort to ensure that this mission is safely, effectively, and timely performed, FRA believes it is necessary to establish a method by which FRA can quickly and efficiently handle requests for relief from the Federal regulatory requirements that are directly related to the effects of hurricane Katrina or that will impact the relief effort being undertaken in that segment of the United States.

FRA's existing procedures related to the handling of petitions for waiver from the Federal safety regulations contained in 49 CFR part 211, do not lend themselves to quick and immediate decisions by the agency, nor were they intended to. The existing procedures establish 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.

As noted above, this process would not be appropriate for handling petitions for waivers directly related to addressing the effects of hurricane Katrina, the outcome of which could have a serious impact on the health and safety of those members of the public directly affected by the hurricane as well as those individuals aiding the relief efforts. Thus, FRA is instituting temporary procedures for handling petitions for waivers that are directly related to the effects and aftermath of hurricane Katrina. FRA believes these temporary emergency procedures will provide the agency with the ability to promptly and effectively address waiver requests directly related to the hurricane 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.

Procedures

1. These emergency procedures will only be in effect for a period not to exceed nine (9) months from the date of publication of this document, unless later extended.
2. The procedures will only be used to address petitions for waivers that FRA determines are directly related to hurricane Katrina. Petitions submitted to FRA should specifically address how the petition is related to the aftermath of the hurricane or related relief efforts.
3. Any relief granted through these emergency procedures will only be effective for the nine (9) month period that these emergency procedures remain in place.
4. FRA has created the Emergency Relief Docket FRA-2005-22365 in the publicly accessible Department of Transportation (DOT) Document Management System (DMS). The docket 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 this docket 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.). The DMS internet site also 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 to the Emergency Relief Docket (FRA-2005-22365).
5. 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 Emergency Relief Docket (FRA-2005-22365). (If FRA determines that a petition meets the criteria for use of the emergency procedures it will so notify the petitioning party). The DMS numbers each document that is added to a docket. For example, the first document submitted to the docket will be identified as FRA-2005-22365-1. Thus, each petition submitted to the Emergency Relief Docket will have a unique document number which should be identified on all communications related to petitions contained in this docket.
6. FRA will allow a 72-hour comment period from the time the petition is entered into and available on the DMS. Any comment received after that period will be considered to the extent practicable.
7. Interested parties will be given multiple methods by which they may submit views, data or comment. All communications should identify the appropriate docket (FRA-2005-22365) and should identify the specific document number, discussed above. Interested parties may submit their comments using any of the following methods:
 - a. Direct e-mail to FRA at: RRS.Correspondence@fra.dot.gov.
 - b. Direct fax to FRA at: 202-493-6309.
 - c. Submission of comments to the Docket Clerk, DOT Docket Management Facility, Room PL-401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590.Any comments or information sent directly to FRA will be immediately provided to the DOT DMS for inclusion into the Emergency Relief Docket.
8. Parties interested in having a public hearing on any petition must notify FRA within 72 hours of the posting of the petition in the Emergency Relief Docket. If FRA receives a request for a public hearing from any interested party, FRA will immediately arrange for a telephone conference between all interested parties as soon as practicable. Thus, interested party submitting comments or information on any petition for waiver should include telephone numbers at which its representatives may be contacted should the need arise. After such conference,

should a party still request a public hearing one will be arranged as soon as practicable pursuant to the provisions contained in 49 CFR part 211.

9. 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 immediately notify the party requesting the public hearing and will arrange to conduct such hearing as soon as practicable.

10. 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.

11. All FRA decision letters, either granting or denying a petition, will be posted in the Emergency Relief Docket (FRA-2005-22365) and will reference the document number of the petition to which it relates.

FRA wishes to inform all interested parties that anyone is able to search the electronic form of all comments received into any of our dockets 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). The Statement may also be found at <http://dms.dot.gov>.

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Development.
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