



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 211

[Docket No. FRA-2024-0033]

RIN 2130-AC97

Federal Railroad Administration's Procedures for Waivers and Safety-related Proceedings

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would update FRA's procedures for waivers and safety-related proceedings to define the two components of the statutory waiver and suspension standard, "in the public interest" and "consistent with railroad safety." By defining these terms, FRA intends to clarify the standard the agency will apply when evaluating petitions for regulatory relief. FRA also proposes to require petitions for relief to include evidence of meaningful consultation with appropriate stakeholders.

Additionally, FRA proposes to make minor updates to agency rules of practice.

DATES: Written comments on this proposed rule must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: *Comments:* Comments related to Docket No. FRA-2024-0033 may be submitted by going to www.regulations.gov and following the online instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. All comments received will be posted without change to *www.regulations.gov*; this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov* and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Veronica Chittim, Senior Attorney, Office of the Chief Counsel, at *veronica.chittim@dot.gov*, 202-480-3410; or Lucinda Henriksen, Senior Advisor, Office of Railroad Safety, at *lucinda.henriksen@dot.gov*, 202-657-2842.

SUPPLEMENTARY INFORMATION:

I. Background

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).¹ Within FRA, decisional authority for waivers rests with FRA’s Railroad Safety Board (Board).² 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.³ The burden of proving the request is justified rests with the petitioner.⁴

¹ The Secretary of Transportation is authorized 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).

² 49 CFR 211.41(a).

³ 49 CFR part 211, subpart C (§§ 211.41 through 211.45).

⁴ See 49 CFR 211.9.

In January 2023, FRA published guidance pertaining to waiver procedures and process titled *Guidance on Submitting Requests for Waivers, Block Signal Applications, and Other Approval Requests to FRA* (Guidance).⁵ The Guidance outlined best practices for petitioners to use when developing and submitting waiver, suspension, and other approval requests, and best practices impacted stakeholders (e.g., the public, railroad employees, and labor organizations) may use to ensure their views, concerns, and comments are thoroughly considered throughout the process. This proposal would provide additional detail on portions of the guidance, and make certain recommendations therein mandatory, such as the recommended consultation prior to filing of a petition.

In this rulemaking, FRA is proposing to update its procedures for waivers and safety-related proceedings in 49 CFR part 211 to clarify the standard to be applied by FRA when deciding whether to grant a request for regulatory relief. Specifically, FRA is proposing to define both the “in the public interest” and “consistent with railroad safety” components of the statutory standard in 49 U.S.C. 20103(d), for purposes of evaluating waiver or suspension requests. Additionally, FRA is proposing to require petitions for regulatory relief to include evidence of meaningful consultation with stakeholders.

II. Section-by-Section Analysis

Part 211

§ 211.1 General

FRA proposes to make minor editorial amendments to § 211.1(a) to remove outdated language regarding the Federal Railroad Safety Act (concerning proceedings initiated after 1976). Further, FRA proposes to replace the obsolete statutory citation (45 U.S.C. 432) for emergency orders with the current citation, 49 U.S.C. 20104. FRA also proposes to clarify that a proceeding will be deemed to be initiated and the time period

⁵ <https://railroads.dot.gov/elibrary/guidance-submitting-requests-waivers-block-signal-applications-and-other-approval-requests>; 88 FR 1448 (Jan. 10, 2023).

for its disposition will begin on the date a petition or application that complies with the requirements of this chapter is confirmed to be complete (not merely the date it is received) by FRA.

FRA also proposes to make technical amendments to the definitions of “Safety Act,” “Docket Clerk,” and “Railroad Safety Board.” Specifically, in the definition of “Safety Act” in § 211.1(b)(3), FRA proposes to update the citation (45 U.S.C. 421 *et seq.*) to 49 U.S.C. ch. 201 *et seq.*, as the existing citation is obsolete. FRA proposes to add a cross-reference in § 211.1(a) to the proposed updated definition of “Safety Act” in § 211.1(b)(3). In the definition of “Docket Clerk” in § 211.1(b)(4), FRA proposes to (1) remove the reference to the “Office of Chief Counsel Docket Clerk,” as this position no longer exists at FRA, and (2) replace the physical address for the DOT Docket Clerk with the website *www.regulations.gov*. Within the definition of “Railroad Safety Board” in § 211.1(b)(5), FRA proposes to insert the word “Railroad” before “Safety” into the outdated term “Office of Safety.”

FRA proposes to amend § 211.1(b) to add specific definitions of “in the public interest” and “consistent with railroad safety” for purposes of this part. FRA has long interpreted the standard in 49 U.S.C. 20103(d)(1) of “in the public interest and consistent with railroad safety” as a standard focused on safety, including the safety of rail operations and those directly involved in those operations, as well as the safety and well-being of the public at large. However, neither 49 U.S.C. 20103 nor 49 CFR part 211 defines “in the public interest and consistent with railroad safety.” Thus, in § 211.1(b)(6) and (b)(7), FRA proposes to add definitions of “in the public interest” and “consistent with railroad safety” to clarify the standard and provide transparency and consistency as to how FRA will evaluate whether a petition meets that standard.

Overall, via the proposed definitions in § 211.1(b)(6) and (7), FRA expects requests for waivers, suspensions, and other safety-related proceedings for regulatory

relief to maintain or improve railroad safety and to align with one or more of DOT's priorities and innovation principles or other public interest factors.⁶ DOT's first innovation principle, to "Serve our policy priorities," includes a focus "around creating high quality jobs, achieving racial equity and increasing opportunity for all Americans, and tackling the climate crisis" to drive innovation. DOT's second innovation principle, "Help America win the 21st century," prioritizes future proofing infrastructure and also bringing legacy systems into the digital age and enabling adaptability and resiliency. Many FRA regulations were established prior to the digital age, providing an opportunity for future requests to show how certain practices can be updated and adapted appropriately consistent with this principle. DOT's third innovation principle, "Support workers," involves empowering workers on many levels, including expanding skills and training, as well as ensuring workers have a seat at the table to shape innovation. DOT's fourth innovation principle, "Allow for experimentation and learn from failure," supports open data and transparency and the ability to learn from experimentation and failures. DOT's fifth innovation principle, "Provide opportunities to collaborate," strives for an outcomes-based approach that is technology neutral, consistent with FRA's performance-based regulations. This principle embraces public private partnerships that foster innovation and protect the interests of the public, workers, and communities in a technology-neutral manner. Finally, DOT's sixth innovation principle, "Be flexible and adapt as technology changes," also reflects performance-based regulations and interoperability, and the need for a collaborative approach across transportation modes.

For purposes of this part, in § 211.1(b)(7), FRA proposes to define "consistent with railroad safety" to mean the proposal is "at least as safe as or safer than the status quo (i.e., without the proposed relief)." If a proposal would improve railroad safety and/or remove certain railroad operational risks, the prong "consistent with railroad

⁶ <https://www.transportation.gov/priorities/transformation/us-dot-innovation-principles>.

safety” would be satisfied as proposed here. At a minimum, FRA proposes that a petition must document and provide associated qualitative or quantitative analysis that demonstrates that with the regulatory relief, railroad operations would be at least as safe as they would have been without the relief. Under no circumstances could this standard be met if the safety provided under the applicable regulations is not maintained or is reduced. Additionally, consistent with DOT’s policy priorities, “innovations should reduce deaths and serious injuries on our Nation’s transportation network, while committing to the highest standards of safety across technologies.”⁷ Thus, in any petition seeking regulatory relief, petitioners should include safety analysis and any data demonstrating how the request aligns with the proposed definition of “consistent with railroad safety” in § 211.1(b)(7). Generally, FRA expects that a petition that would reduce the level of existing required human visual inspections or that would not meet current FRA requirements would not be consistent with railroad safety under the proposed § 211.1(b)(7). Thus, to demonstrate that a petition is consistent with railroad safety, the petition must show that the proposed process or technology will overcome that expected reduction in safety by being as safe or safer than the existing regulation would require.

For purposes of this part and for understanding the statutory standard, in § 211.1(b)(6), FRA proposes to define “in the public interest” to mean “the proposed request demonstrates positive factors including, but not limited to, empowering workers, ensuring equity, protecting the environment, creating robust infrastructure, enabling adaptability and resiliency, bringing legacy systems up to current standards, allowing for experimentation consistent with railroad safety, providing opportunities to collaborate, ensuring interoperability integration across transportation modes, and the well-being of the public at large.” FRA proposes that “in the public interest” signifies not only how a

⁷ <https://www.transportation.gov/priorities/transformation/us-dot-innovation-principles>.

proposal for regulatory relief may improve railroad operations, but also how the request may positively affect relevant stakeholders, including workers and communities. FRA notes that a request demonstrating any of these factors in the proposed definition may be seen to be “in the public interest,” because the proposal would align with one or more of DOT’s priorities and innovation principles.

To reflect whether the request is “in the public interest” as proposed in § 211.1(b)(6), FRA notes that petitioners should address these principles directly in their petitions. For example, the petition could explain how the proposal would reduce waste, re-use or recycle certain inputs, or reduce emissions, demonstrating that the proposal is “in the public interest.” Similarly, consistent with the principle to “Help America win the 21st century,” a petitioner could demonstrate how a request may create robust infrastructure, enable adaptability and resiliency, and bring legacy systems up to current standards. Likewise, the petitioner could show how the request would allow for experimentation to enable learning from both successes and failures (while still being consistent with railroad safety). The request could demonstrate how the petitioner has provided (and will continue to provide) opportunities to collaborate with workers and local communities. Moreover, such requests could show how the proposal would empower workers, such as through expanding access to skills, training, and/or the choice of a union. In line with these principles, FRA expects to continue its successful practice of encouraging stakeholder engagement through establishing test committees⁸ as a condition to granting regulatory relief, when appropriate. Historically, FRA has, in certain instances, required the establishment of a test committee as a condition of regulatory relief related to the use of technology or a new operational process in the

⁸ FRA has traditionally specified the membership of test committees in the conditions to the waiver, if applicable, ensuring that all relevant stakeholders are represented. Test committee membership may include, for example, representatives from equipment manufacturers, affected labor representatives, FRA personnel, railroad representatives, and Association of American Railroads committee members, etc.

railroad industry. As noted in footnote 8, a test committee typically involves a small group of diverse stakeholders that meet periodically to review safety data and consider related challenges and benefits of the relief. To show that a proposal is “in the public interest,” FRA proposes that a petitioner could provide evidence that the regulatory relief requested would not eliminate jobs or eliminate required visual inspections, but would add additional positions, or improve the existing positions. The petitioner could identify opportunities for interoperability among innovations and foster cross-modal integration, if possible. Accordingly, in any petition seeking regulatory relief, petitioners should demonstrate how the request aligns with the proposed definition of “in the public interest” in § 211.1(b)(6).

By incorporating definitions for “in the public interest” and “consistent with railroad safety” into FRA’s Rules of Practice, FRA intends to ensure consistency in how requests are evaluated going forward. For example, when reviewing whether a waiver request is “in the public interest and consistent with railroad safety,” the Board would assess the request’s commitment to both safety and the public interest. A petition showing only that a proposal may improve the efficiency of railroad operations or reduce costs will likely not meet the standard in the proposed definition of “in the public interest” without a separate showing that the request meets additional public interest factors as proposed in § 211.1(b)(6). The petitioner should be able to show there is a benefit to stakeholders, and, as described below, that the stakeholders had been consulted with before filing to ensure any potential concerns are addressed.

Further, if the request for regulatory relief would reduce the number of inspections being performed, the petition may not meet the “in the public interest” definition proposed here. In many cases, technology can be layered on top of the existing regulatory framework without necessitating a reduction in human inspections currently

being performed or relief from Federal regulations.⁹ Thus, if a petitioner proposes to incorporate a new technology or approach, but also requests relief to permit a reduction in the number of inspections, to demonstrate the request is “in the public interest,” the request would need to show both that the relief is necessary and that other factors outweigh the impacts of reduced inspections in the context of potential negative impacts to the “public interest.”

FRA also notes that the same statutory standard applies for initial requests for relief and renewal or modification requests. Generally, waivers or other approvals for regulatory relief are time limited and may be geographically limited, and renewals are discretionary, which means renewals and expansions of a waiver’s geographic scope are never automatic or guaranteed. Further, consistent with 49 U.S.C. 20103(d)(4), FRA reviews waivers or suspensions that have been in continuous effect for a six-year period and determines whether the waiver or suspension should be terminated, renewed, or incorporated into the regulations. Petitioners seeking to renew or expand an existing grant of relief should include in the application evidence of Petitioners’ compliance with the existing conditions of the relief (if any), and how the waiver, suspension, or other approval for relief has satisfied, and will continue to satisfy, the proposed standard of “in the public interest and consistent with railroad safety.” Additionally, FRA proposes (in § 211.9) to require petitions for renewal to contain specific data on the overall effectiveness of the waiver, suspension, or other grant of relief.

Upon review of a petition for regulatory relief, FRA would determine whether the factors in proposed § 211.1(b)(6) and (b)(7) have been addressed and meet the standard of “in the public interest and consistent with railroad safety.” If the factors have not been

⁹ <https://railroads.dot.gov/about-fra/communications/newsroom/press-releases/usdot-secretary-buttigieg-calls-rail-industry-0> (In a February 21, 2023, press release, Secretary Buttigieg called on the railroad industry to “[d]eploy new inspection technologies without seeking permission to abandon human inspections. . . . We need both [technology and human oversight] to keep our nation’s railroads safe.”).

addressed, FRA may dismiss the petition, primarily because FRA would be unable to evaluate whether the request meets the standard of “in the public interest and consistent with railroad safety.” If the petition addresses the factors proposed in § 211.1(b)(6) and (b)(7), FRA would then consider whether the requested regulatory relief satisfies the “in the public interest” and “consistent with railroad safety” standards as defined and would address these requirements in any decision letter issued.

Given this proposal, which would define and clarify the “public interest” component of the statutory standard, FRA seeks public comment on whether additional changes to the existing procedures for waivers, suspensions, and other safety-related proceedings for regulatory relief are necessary.

FRA intends the new definitions proposed in § 211.1(b) to be applicable for the evaluation of all waiver and suspension petitions filed pursuant to 49 U.S.C. 20103(d). Historically, FRA has applied the standard of “consistent with railroad safety” to FRA’s review of block signal applications (49 U.S.C. 20502; 49 CFR part 235). FRA does not intend to revise this historical practice, but intends to apply the definition of “consistent with railroad safety,” as proposed in § 211.1(b)(7).

§ 211.7 Filing requirements

In paragraph (b)(1), FRA proposes to remove the reference to the “FRA Docket Clerk,” and replace with “FRA via e-mail to *FRAWaivers@dot.gov*.” The position of “FRA Docket Clerk” no longer exists. FRA proposes to remove the reference in that section to “grandfathering,” and simply refer to “petitions for approval” under 49 CFR 238.203. Finally, FRA proposes modifying the phrase that the acknowledgment shall state “the date the petition or application was received” to be “the date FRA determined the petition or application was complete.”

§ 211.9 Content of waiver and other safety-related proceeding petitions

First, FRA proposes to make minor editorial amendments to § 211.9(a), (b), and (c) to remove the semi-colons at the end of each paragraph and account for the new proposed paragraphs (d) and (e). FRA also proposes to rename § 211.9 and revise the introductory language to reflect a broader application to waivers, and other safety-related proceedings seeking regulatory relief, such as block signal applications and requests for test programs under § 211.51 and remove the application to rulemakings. Specifically, FRA proposes to apply the new language to “each petition for waiver or other safety-related proceeding for regulatory relief.” FRA proposes to remove rulemaking petitions from the applicability of § 211.9 and add a new § 211.10 dedicated to the content requirements of rulemaking petitions. Additionally, in § 211.9(c), FRA proposes removing the language “each evaluation must include an estimate of resulting costs to the private sector, to consumers, and to Federal, State, and local governments as well as an evaluation of resulting benefits, quantified to the extent practicable.” While petitions for relief must evaluate the impacts of a proposed waiver, the existing language for a detailed cost benefit analysis is more applicable to petitions for rulemaking, and thus FRA proposes moving this language into § 211.10(c) pertaining to rulemakings.

Second, FRA proposes to amend § 211.9 to add a new paragraph (d) to require that petitioners must provide evidence that they have consulted with applicable stakeholders prior to submission of the application to FRA for consideration. In this proposal, any petition must contain documentation, such as a certification statement by the petitioner, with accompanying documentation demonstrating that the petitioner engaged in meaningful consultation with stakeholders. Specifically, FRA proposes § 211.9(d) to state that petitions must demonstrate: “meaningful good faith consultation with potentially affected stakeholders, including applicable rail labor stakeholders, on the proposed request for relief, prior to submission to FRA for evaluation and processing.” Should FRA finalize this proposed language, a petition that fails to document meaningful

consultation will likely be denied as incomplete. While meaningful consultation will generally entail consultation with rail labor stakeholders, affected stakeholders for a more localized request would likely include communities along the railroad's right-of-way. If a particular community would be affected, FRA expects the railroad to reach out to the community proactively before filing the request with FRA. If there are no specific localities affected, FRA otherwise expects the public to be informed through FRA's publication of the notice of the request in the *Federal Register*. The public at-large would then have the opportunity to comment on that notice and collaborate on the request.

FRA has found that incoming petitions frequently 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. FRA discussed this issue in its January 2023 Guidance, recommending that petitioners consult and coordinate with stakeholders prior to filing.¹⁰ This proposed rule would streamline the process by requiring petitioners to consult and coordinate with 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 petition with FRA, this proposal would require a railroad to meaningfully consult with potentially impacted employees, and the local and general chairmen as well as the State and national legislative levels of any labor organizations that represent them, and document the extent and outcome of its consultation in any petition.

¹⁰ <https://railroads.dot.gov/elibrary/guidance-submitting-requests-waivers-block-signal-applications-and-other-approval-requests>.

Meaningful consultation prior to submission would serve to educate stakeholders of the proposal and reduce the likelihood of any misunderstandings as to the requested relief. FRA expects petitioners to engage stakeholders in discussions about the relief proposed and genuinely seek stakeholders' input. FRA expects that consultation will be substantive, and not simply serve to check a box that stakeholders were informed of a proposal, as that would not constitute meaningful consultation. Meaningful consultation involves good faith and the best efforts of railroads to engage stakeholders in discussions about the proposed request for relief, the relief sought, and seek substantive input.¹¹ The intent of consultation is to engage with affected stakeholders at all stages of the proposal's development and then implementation of the relief, if granted. Ideally, railroads would consider their employees, and organization(s) representing those employees, as partners throughout the process rather than as reviewers of a finished product. Meaningful consultation should involve coordinating, gathering, and discussing employee and railroad input and considering feedback on the development of the proposed request.

To show that a railroad sought feedback from applicable stakeholders, a petition could include a statement with a detailed description of the process the petitioner used to consult with stakeholders as well as written correspondence, identify areas of agreement or non-agreement with the proposal, and include a service list to show which parties were consulted. Additionally, FRA expects that stakeholders would provide factual, well-supported feedback that demonstrates such meaningful collaboration.

Petitions that demonstrate consensus has been achieved with potentially affected stakeholders, including applicable rail labor organizations, would likely provide evidence of one factor that the application is "in the public interest."

¹¹ *Guidance on Railroad/Employee Consultation Requirements in 49 CFR Parts 270 and 271*, <https://railroads.dot.gov/elibrary/guidance-railroademployee-consultation-requirements-49-cfr-parts-270-and-271>.

Third, as discussed above, FRA proposes to add a new paragraph (e) to require that renewal and expansion petitions contain data on the overall effectiveness of the existing relief. While § 211.9(c) requires petitions to contain sufficient information to support the action sought, including an evaluation of anticipated impacts of the action sought, FRA notes that a renewal or expansion petition should also be able to demonstrate how effective the waiver or other grant of relief has been prior to the request for renewal or expansion. To assist petitioners in providing data on the effectiveness of a waiver or other relief, FRA proposes revising the last sentence in § 211.9(c) to require each petition pertaining to safety regulations to “contain relevant safety data and analysis to demonstrate the petition is in the public interest and consistent with railroad safety, and outline the metrics to be used to determine effectiveness of the waiver or other relief, if granted.” Given the petitioner’s experience implementing and using the waiver or other relief, a petitioner should have specific data to support the renewal or expansion request. This may include how railroad safety has improved because of the waiver or other grant of relief (e.g., the number of defects decreased, or a reduction in the risk of an infrequent, but catastrophic event), and how the public interest has been served. In § 211.9(e)(1), FRA proposes to make this expectation to provide data of the relief’s effectiveness a requirement for all renewal and expansion petitions. Moreover, in § 211.9(e)(2), FRA proposes to require that a renewal or expansion petition must also demonstrate compliance with any conditions that were included in the previous grant of relief. Finally, in § 211.9(e)(3), FRA proposes to require renewal and expansion requests for relief to “demonstrate how the waiver, suspension, or other approval for relief is, and will continue to be, in the public interest and consistent with railroad safety.”

§ 211.10 Content of rulemaking petitions.

FRA proposes to establish a new provision, § 211.10, to outline content requirements for rulemaking petitions. As discussed above, FRA proposes to remove

rulemaking petitions from § 211.9, and create a standalone § 211.10 to address rulemaking content requirements. The requirements proposed in § 211.10 are substantively similar to the existing § 211.9. Specifically, FRA proposes to require each petition for rulemaking to (a) “set forth the text or substance of the rule, regulation, standard, or amendment proposed, or specify the rule, regulation, or standard that the petitioner seeks to have repealed” and (b) “explain the interest of the petitioner, and the need for the action requested.” In proposed (c), each petition for rulemaking must “contain sufficient information to support the action sought including an evaluation of anticipated impacts of the action sought; each evaluation must include an estimate of resulting costs to the private sector, to consumers, and to Federal, State, and local governments as well as an evaluation of resulting benefits, quantified to the extent practicable.” In this manner, petitions for rulemaking would be required to evaluate the costs and benefits of the proposal.

§ 211.11 Processing of petitions for rulemaking.

FRA proposes updating the references in this provision from § 211.9 to § 211.10, to reflect the proposed bifurcation of petitions for waivers and petitions for rulemaking content requirements. In § 211.11(b) and (c), FRA proposes replacing references to the pronoun “he” with “the Administrator.” In § 211.11(d), FRA proposes to change the word “mailed” to “sent” to reflect the possibility of electronic transmittal of the notice of grant or denial.

§ 211.13 Initiation and completion of rulemaking proceedings.

FRA proposes updating the reference in this provision from § 211.9 to § 211.10, to reflect the proposed bifurcation of petitions for waivers and petitions for rulemaking content requirements. FRA proposes replacing references to the pronouns “his” and “he” with “the Administrator’s” and “the Administrator.”

§ 211.41 Processing of petitions for waiver of safety rules.

FRA proposes to update the language in § 211.41(b) to include an explicit standard comment period for notice of a waiver in the *Federal Register* to be 60 days. Moreover, FRA suggests removing the introductory language, “[i]f required by statute or the Administrator or the Railroad Safety Board deems it desirable.” Because publication of a notice is required for all such waiver petitions (*see* 49 U.S.C. 20103(d)(2)(C)), FRA finds this introductory language is unnecessary. The existing provision is silent on the length of an appropriate period of public comment; however, FRA has customarily used 60 days as a matter of practice. FRA also proposes to specify that any deviation from the proposed standard 60-day comment period will be subject to the Administrator’s approval.

§ 211.43 Processing of other waiver petitions

FRA proposes to update the language in § 211.43(b) to mirror the changes as discussed for § 211.41(b).

III. Regulatory Impact and Notices

A. Executive Order 12866 as Amended by Executive Order 14094 and DOT Regulatory Policies and Procedures

This proposed rule is a non-significant regulatory action within the meaning of Executive Order (E.O.) 12866 as amended by E.O. 14094, Modernizing Regulatory Review¹² and DOT’s Order, “Rulemaking and Guidance Procedures,” DOT 2100.6A (June 7, 2021). FRA concluded that this proposed rule would impart an annualized burden of approximately \$78,000 per year, for an estimated 70 waiver petitions annually, or about \$547,000 present value at 7 percent over 10 years. This estimate assumes an equal number of waiver consultations that take 1 hour and those that may take 4 hours, including administrative time of about 25 percent.

¹² 88 FR 21879 (Apr. 6, 2023) located at <https://www.federalregister.gov/documents/2023/04/11/2023-07760/modernizing-regulatory-review>.

Table III-1: Summary of Costs and Benefits Over the 10-Year Period (2023 Dollars)

Impact	Undiscounted	*PV 7%	PV 3%	PV 2%	**Annualized 7%, 3%, 2%
Data Analysis and Metrics	\$62,392	\$43,821	\$53,221	\$56,044	\$6,239
Consultation and Documentation	\$676,529	\$475,166	\$577,093	\$607,698	\$67,653
Waiver Renewal Effectiveness and Conditions Compliance	\$40,109	\$28,171	\$34,214	\$36,028	\$4,011
Total Costs	\$779,030	\$547,158	\$664,528	\$699,770	\$77,903
FRA Cost	Minimal overall change from baseline. Potentially more time to review additional waiver information may be offset by expected better-organized information explicitly addressing NPRM requirements.				
Qualitative Benefit	In general, addressing incomplete information and facilitating affected stakeholder input expected to better meet statutory standards of “in the public interest” and “consistent with railroad safety.”				

*PV = Present Value.

** Because the schedule of costs by year are the same, the annualized values are the same.

Figures in tables may not sum due to rounding.

Overall, FRA expects this rule will lead to higher-quality waiver applications that meet the positive objectives of DOT’s innovation principles. Because this rule would apply to a variety of relief applications, it is difficult to quantify the potential benefits from consultation on any particular request for relief.

1. Need for Regulatory Action

a. Inadequate or Asymmetric Information

For convenience, this analysis uses the term “waiver” request to encompass petitions for waiver, or other safety-related proceedings for regulatory relief, including

block signal applications (BSAPs), and waiver renewal requests subject to this rulemaking.

As stated in the Section-by-Section analysis for § 211.9 and FRA's Guidance,¹³ FRA has found that some submitted waiver requests on the surface seem to contain the information necessary under part 211 (and are therefore considered "received" by FRA), but in fact do not contain sufficient information for FRA to evaluate if a submitted waiver request meets the applicable legal standards and are therefore incomplete. For these waiver requests containing inadequate information, FRA expends resources to work with the petitioner and affected stakeholders to gather the necessary information. Although waiver requests, including requests for renewal and modification, are published in the *Federal Register* for comment, addressing these information needs early in the waiver development process would potentially result in a more streamlined and efficient waiver request "workflow," i.e., waiver disposition procedure.

By requiring petitioners and affected stakeholders to consult on a waiver request prior to submission to FRA, this NPRM would provide information to both parties that they may be lacking under the current waiver process. For example, a railroad petitioner may lack information on the full effects of the proposed waiver, and employees may misunderstand how a proposed waiver may be implemented or simply lack awareness of the waiver request. Meaningful consultation could avoid unexpected and unintended effects of the proposed waiver that another party may not have considered. Furthermore, if the waiver would involve several parties, for example, several railroad disciplines (e.g., operating practices, motive power and equipment), or more than one geographic district, consultation would enhance the distribution of information about the proposed waiver among these parties. Parties that may be potential petitioners, such as railroads and suppliers, and those that may be affected stakeholders, such as labor union

¹³ 88 FR 1448 (Jan. 10, 2023).

representatives and community rail associations, have shown a willingness and ability to provide information through their participation in the Railroad Safety Advisory Committee (RSAC)¹⁴ and submitting comments in notice-and-comment rulemakings. The burden to share information and consult on a proposed waiver rests primarily on the petitioner.

Through this NPRM, FRA is also proposing to define the terms “in the public interest” and “consistent with railroad safety” that are used in the statute, 49 U.S.C. 20103(d), but not previously defined. Defining these terms will help clarify for petitioners and affected stakeholders how FRA will decide whether waiver requests meet the statutory standard. By defining these terms, FRA expects that petitioners will be more likely to submit waiver requests providing the necessary and sufficient information for FRA to evaluate the waiver proposal. That may reduce the chances of a waiver being dismissed because a submitted waiver request did not meet these criteria.

b. Statutory Directive

The NPRM would also facilitate FRA’s implementation of 49 U.S.C. 20103(d)(4), requiring review and analysis of a waiver that has been in continuous effect for six years. Specifically, the analysis and metrics required under proposed § 211.9(c), and the data about how effective a waiver has been (when a waiver renewal is requested) under proposed § 211.9(e) will help FRA evaluate whether codifying the waiver is in the public interest and consistent with railroad safety. That is, whether the waiver continues to meet the statutory requirements.

2. Baseline

As background, FRA considers several types of waiver requests under FRA’s Rules of Practice and decides whether to grant, conditionally grant, or deny a submitted waiver request. If FRA’s preliminary review of a submitted petition for waiver shows it

¹⁴ <https://rsac.fra.dot.gov/>.

to lack sufficient information for further evaluation, the petition may be denied or returned to the petitioner, who may choose to resubmit it.

This analysis uses the environment without the NPRM as the baseline scenario. Without the NPRM's proposed requirements, FRA would continue to receive some waiver requests that are incomplete because they fail to address the statutory criteria of "in the public interest" and "consistent with railroad safety." FRA would continue to expend resources to gather the missing information from petitioners and affected stakeholders rather than the petitioner providing the necessary information. Petitioners may face uncertainty about the standards FRA is applying in FRA's waiver petition evaluation, and spend unnecessary resources supplementing a waiver petition the petitioner thought to be complete when initially submitted. When implementing the statutory directive to review waivers in operation for six years, FRA may lack some information to fully evaluate the effectiveness of the waiver.

Some categories of waivers already involve consultation with affected stakeholders and the procedure to evaluate these waivers will remain substantially the same under the baseline and the NPRM. These are waivers involving test committees, hours of service (HS) laws, and train horns.

3. *Methodology*

The proposed data analysis and consultation requirements apply to individual petitions for waivers. Therefore, this analysis used the additional labor time per waiver request to meet these requirements and the number of waiver requests as the basis to estimate the average per-waiver request cost and the overall costs of the NPRM.

The benefits estimate of potential time savings from "streamlining" the waiver process is qualitative because the benefits will depend on the nature of each waiver. Additionally, FRA does not have history to estimate the impact of the NPRM on FRA's waiver Rules of Practice to date. Although FRA's Guidance described much of the

NPRM's provisions as best practices, it was issued recently (2023). FRA notes petitioner and stakeholder experiences with waivers that already involve much consultation, such as those for which test committees were established, have been generally positive. These waiver requests that already involve much consultation are relatively few, numbering about 8 waiver requests from the years 2019 through 2022.

Data and Assumptions

To estimate the number of waivers that may be affected, FRA counted the number of *Federal Register* notices published pertaining to its Railroad Safety Board proceedings. From the years 2020 to 2024, a period of 4 years, there were 280 *Federal Register* notices or an average of 70 notices annually. Furthermore, by applying the percentage of waiver petitions filed by Class 1 railroads,¹⁵ FRA estimated that of these 70 total waiver petitions, 21 were Class I railroad waiver petitions, 28 were small railroad waiver petitions, 17.5 were commuter and passenger service railroad waiver petitions, and 3.5 were blanket waiver petitions (covering more than 1 entity) and other waiver petitions. Based on the waiver petitions that have been submitted to FRA in the past, most petitioners will be railroads and most affected stakeholders will be employees, who may be represented by labor unions. For a small number of waiver petitions, a community adjacent to a rail line segment or rail yard may be an affected stakeholder.

To estimate the additional labor hours per waiver petition, FRA estimated 1 hour per waiver request for petitioners to add the data analysis and metrics required under proposed § 211.9(c), which will support that the waiver would be aligned with the proposed definition of "consistent with railroad safety" in § 211.1(b). For documenting meaningful consultation and the prerequisite consultation with affected stakeholders, FRA estimated an equal number of consultations would take 1 hour and those that would

¹⁵ Separately, FRA reviewed its waiver management systems and found the number of incoming waiver petitions from Class I railroads has remained fairly consistent from the years 2019 through 2023, with a slight decrease only in 2023 (about 24 waiver petitions per year on average).

take 4 hours, for simple and more complex waiver requests respectively. FRA also estimated an administrative time of about 25 percent to schedule meetings and other logistics. The 50/50 split between simple and more complex waiver requests reflects the uncertainty around this estimate given that waiver requests vary and that this requirement would be new. The average consultation time is 2.5 hours per waiver request, and the average administrative time is 0.625 hours per waiver request, for a combined average time of 3.125 hours per waiver request. Furthermore, FRA estimated 2 employees from the petitioner and 2 employees from an affected stakeholder would each incur the opportunity cost to engage in the consultation, for a total of 12.5 hours per waiver request.

To monetize these additional labor hours, FRA used wage rates reported to the Surface Transportation Board (STB) by the Class I railroads, burdened by 75 percent. For this analysis FRA used the STB wage rates for the relevant employee groups. For data analysis and describing metrics costs, FRA used the wage rate of \$89.13, representing the Professional and Administrative employee group. For consultation costs, FRA used the wage rate of \$77.32, representing the total for all groups, because a waiver request can include several different types of employees or railroad disciplines.¹⁶

FRA used a 10-year period for this analysis, allowing for 1 original waiver petition and 1 waiver renewal request after a period of 5 years. FRA has found that some railroads may not seek renewals beyond 10 years, possibly because equipment may be over-age, the waiver codified, or other changes in operations or equipment covered under the waiver. FRA also used 2023 real dollars (i.e., a 2023 base year).

4. *Costs*

¹⁶ STB Quarterly Wage A&B Data (2023). Annual composite for All Railroads. Available: <https://www.stb.gov/reports-data/economic-data/quarterly-wage-ab-data/>. Calculations: Group 200 Professional & Administrative employees, \$50.93 per hour STB average straight time rate x 1.75 fringe benefit multiplier = \$89.13 per hour burdened wage rate. Similarly, for Group 700 Total All Groups employees, \$44.18 x 1.75 = \$77.32 per hour burdened wage rate.

The substantive changes from the baseline are found in following proposed sections:

- § 211.1(b) to add definitions of “in the public interest” and “consistent with railroad safety.”
- § 211.9(c) to require analysis and describe effectiveness metrics.
- § 211.9(d) to include documentation of meaningful consultation.
- § 211.9(e) to require waiver renewal requests to show waiver effectiveness and demonstrate compliance with conditions under which the waiver was granted.

Proposing to clarify the definitions of “in the public interest” and “consistent with railroad safety” in § 211.1(b) have no direct costs except the data analysis and metrics required under proposed § 211.9(c) support demonstrating the waiver request meets these criteria; the sections may be seen to work together. It may take some additional effort to explicitly show how the proposed waiver would meet these criteria, which is reflected in the data analysis, metrics, and consultation cost sections.

The title of § 211.9 is proposed to be revised to include “other safety-related proceedings petitions.” The revision would add proceedings such as those for BSAPs and test programs to this section. FRA has historically held BSAPs to the same safety standards as other waiver petitions. Also, as mentioned, waivers for which test committees are established include much consultation under the baseline. Therefore, this change would be administrative in nature and has no costs.

More significantly, proposed changes to § 211.9(c) would add requirements for (data) analysis and metrics. Although ensuring that a proposed waiver meets safety criteria has always been a part of FRA’s evaluation, the changes in this section emphasize that requirement. Waiver requests would need to include analysis and clearly identify safety impacts. In addition, the specified metrics can be used to determine if the waiver is achieving the intended goals, and meeting the “in the public interest” and “consistent

with railroad safety” standards. The metrics need not be complex, for example, accident/incident measures appropriate to the type of waiver proposed (i.e., discipline or railroad operation covered by the waiver), or relevant casualties. FRA estimated this cost as: *Cost of analysis and metrics = time to perform analysis and metrics x wage rate x no. of waivers*. Using 1 hour for the time, and the Professional and Administrative wage rate of \$89.13 per hour, yields an estimated cost of \$89.13 per waiver request, or \$6,239 for the estimated 70 waiver requests per year. The schedule of these costs is shown in the summary table below.

The documentation requirement proposed in § 211.9(d) requires meaningful consultation between the petitioner and affected stakeholders. FRA estimated this cost as: *Cost of consultation and documentation = (hours per waiver x wage rate x no. of employees) x no. of waivers*. The cost is incurred by both the petitioner and affected stakeholders. FRA assumes the cost is equal for both parties. Using an average time (including administrative time) of 3.125 hours per waiver request, a wage rate representing all employee types of \$77.32 per hour, 2 employees each for the petitioner and affected stakeholder(s), and 70 total waiver requests results in a cost of \$33,826 annually for each party. The cost per waiver request is \$483, again for each party. The total costs are shown in the summary table below.

Under the baseline, FRA expends resources to gather missing data from the waiver request that the proposed consultation should provide. Thus, some of FRA’s burden and associated cost may be transferred to the petitioner under the proposed requirements in the NPRM. However, FRA assumes that the time spent by FRA post-waiver request submittal is more than the time that would be spent by the petitioner pre-waiver request submittal. FRA reasons that the petitioner has direct knowledge of the subject proposed waiver and ready access to affected stakeholders who may be employees or employee representatives on the petitioner’s worksite or property.

Also under the baseline, petitioners wishing to renew a waiver are expected to provide enough information about its impacts (and under certain conditions, if so specified) to support its renewal. Proposed § 211.9(e) would require petitioners to show a waiver’s effectiveness over time and compliance with the specified waiver conditions explicitly. FRA expects there will be additional data available by the time a waiver is eligible for extension or renewal to demonstrate its effectiveness; the metrics developed in proposed § 211.9(c) would assist with that effort. FRA notes not all waivers are submitted to FRA for renewal because of the age of the equipment, changes in technology, codification of waivers, or other operational reasons. Based on the Reflectorization of Rail Freight Rolling Stock: Codifying Existing Waivers NPRM,¹⁷ about 64 percent of waivers are eligible for renewal. Applying that percentage to the 70 waiver requests used in this analysis yields about 45 waivers eligible for renewal annually. The cost is therefore accounted by: *Cost to show renewal effectiveness and compliance = time to provide data x wage rate x no. of renewals*. Using 1 hour for the time, similar to § 211.9(c) for the marginal data analysis and metrics development, \$89.13 to represent Professional and Administrative employees who may perform the data analysis, and 45 renewal requests, produces a cost of \$4,011 annually, or \$89.13 per waiver.

The schedule of NPRM costs is summarized in the table below.

Table III-2: Schedule of NPRM Costs (2023 Dollars)

Year	§ 211.9(c) Analysis and Metrics	§ 211.9(d) Consultation and Documentation	§ 211.9(e) Waiver Renewal Effectiveness and Compliance	Total
1	\$6,239	\$67,653	\$4,011	\$77,903
2	\$6,239	\$67,653	\$4,011	\$77,903

¹⁷ 87 FR 43467 (July 21, 2022).

3	\$6,239	\$67,653	\$4,011	\$77,903
...
10	\$6,239	\$67,653	\$4,011	\$77,903
Total	\$62,392	\$676,529	\$40,109	\$779,030
PV 7%	\$43,821	\$475,166	\$28,171	\$547,158
PV 3%	\$53,221	\$577,093	\$34,214	\$664,528
PV 2%	\$56,044	\$607,698	\$36,028	\$699,770
Annualized 7%, 3%, 2%	\$6,239	\$67,653	\$4,011	\$77,903

The figures for analysis of years 4 through 9 repeat and are not shown for brevity. Similarly, the annualized costs using discount rates of 7%, 3%, and 2% are the same.

Government Costs

FRA does not anticipate any additional significant costs under the NPRM. FRA may receive more data and analysis to evaluate, but expects it will be better organized to highlight the information needs addressed by the NPRM. Overall, FRA estimates minimal changes to the time needed for FRA’s evaluation of waiver requests, which are a part of FRA’s customary duties.

FRA invites comment on the inputs used to estimate the costs for the NPRM.

5. *Benefits*

Because FRA receives a variety of waiver requests covering different areas of the railroading environment, it is difficult to quantify the benefits of the NPRM. The benefits will depend on the increase in the quality of information FRA receives in submitted waiver requests. Generally, FRA expects more and better information that supports a waiver meets the overall statutory standard of safety vis-à-vis the criteria of “in the public interest’ and “consistent with railroad safety.”

6. *Other Effects*

Distributional Effects

The NPRM may have positive distributional effects. Through consultation and involvement of affected stakeholders, their concerns can be accounted for in evaluating a waiver request and setting conditions for its potential use. That may avoid concentrating the benefits of a waiver in a relatively small number of petitioners, while the costs may be spread among many affected stakeholders.

7. *Alternatives*

FRA considered two alternatives to the NPRM. First, FRA considered extending the time provided to stakeholders to comment on waiver requests. Second, FRA considered a process in which FRA would facilitate a discussion between a petitioner for waiver and affected stakeholders, in lieu of the consultation proposed in the NPRM.

For the first alternative, FRA would continue to publish *Federal Register* notices concerning waiver requests as it currently does under FRA's Rules of Practice. However, FRA could extend the time provided for affected stakeholders to comment on such *Federal Register* notices. The goal would be to expand the opportunity for affected stakeholders to provide information and share their concerns. This option would be a straightforward, low-cost alternative. However, simply extending the comment period time would not achieve FRA's regulatory objective because FRA would still likely receive waiver requests that lack the in-depth data needed for a thorough evaluation of a waiver request in light of the statutory standard.

FRA also considered an alternative modeled after the RSAC. RSAC membership consists of railroads, suppliers, labor union representatives, public interest groups, other governmental agencies, and other interested parties—essentially potential waiver petitioners and affected stakeholders. In the same way that RSAC members discuss assigned regulatory tasks, FRA could host a similar “roundtable” meeting for a petitioner and affected stakeholders to discuss a petitioner's proposed waiver. FRA would serve as host and facilitator, acting in the same role as it currently does for RSAC meetings.

However, this alternative may suggest a perception that FRA is bringing all parties together to eventually approve the waiver petition, rather than FRA serving as the arbiter of the petition. Simultaneously, in this alternative, FRA could also clarify the criteria of “in the public interest” and “consistent with railroad safety” that FRA uses to evaluate waiver requests. Similar to the NPRM, this alternative process could provide clarity, transparency, and input from stakeholders.

To account for the cost of the RSAC-like alternative, FRA reasoned that simple and routine proposed waivers could be discussed through virtual meetings, while more complex waiver requests would benefit from in-person meetings with an option to attend virtually, i.e., hybrid meetings. FRA conducts similar types of virtual and hybrid meetings for the RSAC. The costs for these meetings consist of administrative costs to plan meetings, and opportunity costs for the participants’ time to attend meetings. FRA calculated the average cost of a meeting to discuss a proposed petition and multiplied it by the estimated 70 waiver requests a year for an overall cost for this alternative, as enumerated below.

The administrative costs would vary by whether a meeting is virtual or hybrid. Based on a discussion with FRA’s RSAC program manager, the tasks for virtual meetings consist of scheduling the meeting, forming an agenda, and posting the meeting details on FRA’s website. In addition, FRA prepares meeting minutes after the meeting. For the scheduling, agenda, and website posting tasks, FRA estimated 1 hour of labor time; for the post-meeting minutes preparation, FRA estimated 3 hours of labor time; for a total of 4 hours. For the hybrid meetings, FRA would need to arrange for meeting space, and audio/visual (A/V) equipment and personnel to operate it. FRA generally pays a fixed price for these services. FRA estimated the cost to rent meeting space, including conference room set-up, to be \$5,000, and the cost for A/V equipment and the operator to be \$5,000 per day, for a total of \$10,000 per meeting (i.e., per complex waiver request).

For monetizing FRA time for planning the virtual meeting and for the opportunity cost to attend meetings (see below), this analysis used the General Schedule (GS) pay rate for grade GS-14, step 5 Federal employees in the Washington, DC area. This Federal employee pay rate of \$71.88 was burdened by 75 percent for fringe to yield a pay rate of \$125.79 per hour.¹⁸ The resulting administrative cost for a simple waiver request was estimated at \$503 per waiver request, and \$10,000 for a complex waiver request. For both virtual and hybrid meetings, FRA would bear all the administrative costs.

All parties would incur an opportunity cost to attend the meetings. FRA assumed two representatives from each party to a proposed petition would attend the consultation meeting, specifically two employees each from FRA, the petitioner, and affected stakeholders. For the petitioners and affected stakeholders, most of whom will be railroad employees, FRA used the same STB wage rates as used in the primary NPRM analysis. In general, the cost for attending a virtual or hybrid meeting is: *Cost to attend meeting = meeting hours x no. of employees x wage rate*, where the meeting hours will vary by type of meeting (virtual or hybrid) and the wage rate varies by type of employee (government or railroad). Using the inputs above, the FRA cost to attend a meeting for a simple waiver request would be \$1,006, and would be \$619 each for petitioners and stakeholders.¹⁹ The cost to attend a hybrid meeting for a complex waiver request is double the cost for virtual meetings because the time is doubled. Therefore, the FRA cost for a complex waiver request would be \$2,013, and the petitioner and stakeholder cost would be \$1,237 each.

Adding in the administrative cost to FRA's attendance cost resulted in an FRA cost per simple waiver request of \$1,509, and \$12,013 for a complex waiver request (with

¹⁸ Office of Personnel Management (OPM), Salary Table 2023-DCB (Jan. 2023). Available: https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/DCB_h.pdf. Calculation: \$71.88 per hour x 1.75 fringe benefit multiplier = \$125.79 per hour burdened rate.

¹⁹ Calculation: Cost to attend virtual meeting (FRA) = 4 hours x 2 employees x \$125.79 per hour = \$1,006.32. The petitioner cost equals the stakeholder cost = 4 hours x 2 employees x \$77.32 per hour = \$618.54.

the majority of complex waiver request costs resulting from conference room rental and A/V equipment and operator fees). The average cost would be \$6,761. For a petitioner and stakeholder that incur only the attendance cost, the average cost would be \$928 per waiver request.²⁰ Next, the respective average cost was multiplied by the estimated 70 waiver requests a year for estimated total costs for FRA, petitioner, and stakeholders. These costs would remain constant over the 10-year period of analysis. The table below shows the present values of these cost schedules. The expected benefit would be the same qualitative benefit as for the preferred NPRM option.

Table III-3: Alternative Option: Summary of Costs Over the 10-Year Period (2023 Dollars)

Proposed Waiver Party	Undiscounted	*PV 7%	PV 3%	PV 2%	**Annualized 7%, 3%, 2%
FRA (Gov't)	\$4,737,742	\$3,324,080	\$4,037,125	\$4,251,226	\$473,274
Petitioner	\$649,468	\$456,159	\$554,009	\$583,390	\$64,947
Stakeholder	\$649,468	\$456,159	\$554,009	\$583,390	\$64,947
Total Cost	\$6,031,678	\$4,236,398	\$5,145,144	\$5,418,006	\$603,168
Total Cost without FRA	\$1,298,936	\$912,318	\$1,108,019	\$1,166,781	<i>\$129,894</i>

*PV = Present Value.

** Because the schedule of costs by year are the same, the annualized values are the same.

To compare the RSAC-like alternative to the preferred NPRM option, the estimated annualized cost is highlighted. The annualized cost (without FRA) for this alternative of \$129,804 exceeds the cost of the NPRM option cost of \$77,903. The cost

²⁰ Sample calculation: Cost of simple waiver request (petitioner) = attendance cost only = \$618.54. Cost of complex waiver request = \$1,237.08. Average cost of waiver request = (\$618.54 + \$1,237.08)/2 = \$927.81 per waiver request. The stakeholder cost is the same as the petitioner cost.

of the alternative including FRA costs is much greater than the preferred NPRM option cost. Thus, the alternative would not reduce costs in comparison to the NPRM option.

7. *Sensitivity Analysis*

The costs are dependent on the number of waiver requests per year and the estimate of time to address the proposed requirements. The largest category of costs presented in Table III-2 is for the consultation and documentation provision in proposed § 211.9(d). FRA assumed an equal number of simple and complex waiver requests and therefore used a straight average to estimate the time required. If the stakeholders submit and therefore consult on simple or routine waiver requests more than complex waiver requests, then that cost might be overstated; the converse is true if petitioners and stakeholders consider relatively more complex waiver requests.

FRA's count of 70 waiver petitions a year may underestimate the amount of consultation because when petitioners are added to existing umbrella or blanket waivers, there may not be additional discrete *Federal Register* notices (upon which the estimate of 70 waiver petitions was based). On the other hand, such additional consultations for an existing waiver would be familiar and similar to previous consultations on the same blanket waiver, i.e., they would impose only a small burden. The number of blanket waiver requests is also small (3 waiver requests). Additionally, existing blanket waiver requests include an HS waiver,²¹ for which FRA expects consultation already occurs, mitigating the potential overestimate of costs.

8. *Conclusion*

In this NPRM, FRA is clarifying terms and proposing changes to provide more complete information for FRA's waiver proceedings. The NPRM addresses proposed waiver petitions received by FRA that lack description of the full range of impacts.

²¹ Docket Number FRA-2009-0078 (see, e.g., <https://www.regulations.gov/document/FRA-2009-0078-0216>).

FRA estimated the NPRM would result in costs with a present value of about \$547,000 using a 7 percent discount rate and \$665,000 using a 3 percent discount rate, over a 10-year period of analysis in 2023 dollars. The benefits are described qualitatively because the specific benefits would depend on the waiver under consideration. In general, FRA expects the proposed waivers it receives would include more and better information reflecting the impacts to affected stakeholders. The NPRM would establish a way to gather this information potentially more efficiently before a waiver proposal is submitted to FRA instead of FRA, petitioner, and stakeholders working to gather this information post-waiver request submittal to FRA. The additional information would facilitate FRA determining whether that waiver request meets the statutory standard in 49 U.S.C. 20103(d). FRA would also be better able to balance the interests of a petitioner and stakeholders in the overarching interest of public safety.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 ((RFA), 5 U.S.C. 601 *et seq.*) and E.O. 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. When an agency issues a rulemaking proposal, the RFA requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” which will “describe the impact of the proposed rule on small entities.” 5 U.S.C. 603(a).

1. Reasons for Considering Agency Action

In this NPRM, FRA is proposing changes to its waiver procedures so waiver petitions submitted to FRA contain more complete information and FRA is informed by sufficient coordination with potential affected stakeholders. As discussed above, this NPRM would apply to waiver requests and other safety-related proceedings for regulatory relief, including BSAPs, and waiver renewal requests. FRA has found that some petitions incompletely describe the impacts of a proposed waiver because they do

not address its potential impacts on affected stakeholders. The lack of sufficient information often requires extensive efforts by FRA, the petitioner, and affected stakeholders to gather this information after a waiver petition has been submitted to FRA or may result in dismissal of a petition due to lack of sufficient information. FRA is therefore proposing that petitioners requesting a waiver consult with affected stakeholders before submitting a waiver request to FRA. Petitioners would also need to provide documentation of consultation with affected stakeholders in their waiver request. See proposed § 211.9(d).

To aid petitioners requesting a waiver in providing the type of information sought by FRA, FRA is proposing to define the terms “in the public interest” and “consistent with railroad safety.” See proposed § 211.1(b)(6) and (7). The statute authorizing FRA to waive or suspend regulatory requirements uses these terms in setting the standard that FRA must use in its decision whether to grant a waiver request. However, these terms are not defined in the statute. 49 U.S.C. 20103(d).

Under the NPRM, a waiver request must contain analysis demonstrating how the proposed waiver would impact the overarching standard of safety. A waiver request also would need to describe the metrics used to measure its effectiveness. See proposed § 211.9(c). A waiver renewal request would be held to same standard, and the petitioner would be required to use data and metrics to show a waiver was effective from approval to request for renewal. See proposed § 211.9(e).

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The proposed rule seeks to provide clarity for petitioners requesting a waiver, and result in waiver requests submitted to FRA that provide more in-depth information upon which to base its evaluation. The proposed definitions of “in the public interest” and “consistent with railroad safety” would clarify for the regulated community and the

public the criteria FRA uses in deciding whether to grant a waiver request. Furthermore, the proposed requirement to include analysis and metrics in addition to the existing requirement to include relevant safety data would help show how a proposed waiver meets these two criteria. The safety data, analysis, and metrics would ultimately aid FRA in evaluating that a proposed waiver is in the public interest and consistent with railroad safety. Also, the proposed section requiring petitioners to consult with affected stakeholders prior to submitting a waiver request will help ensure the petition captures more complete information about a proposed waiver's impacts. FRA intends such a consultation would be a "two-way street," serving to gather information from, but also inform, affected stakeholders who otherwise may have minimal knowledge about the proposed waiver. Finally, the proposed requirements for waiver renewal requests would align with the proposed greater information needs for waiver requests, to show the original waivers were effective.

Regarding the legal basis, this NPRM would define the terms "in the public interest" and "consistent with railroad safety" to help gather information from petitioners facilitating FRA to implement the statutory standard (when determining whether to waive or suspend compliance with rules or regulations). 49 U.S.C. 20103(d). Furthermore, the statute requires FRA to consider issuing rules codifying waivers that have been in effect for 6 years. For codification, these 6-year-old waivers must also meet the criteria of being "in the public interest" and "consistent with railroad safety;" the data and metrics proposed in the NPRM will help FRA determine if these waivers meet the statutory standard. 49 U.S.C. 20103(d)(4).

3. *A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Applies*

The RFA requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant

economic impact on a substantial number of small entities. “Small entity” is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a “small entity” in the railroad industry includes a for-profit “line-haul railroad” that has fewer than 1,500 employees and a “short line railroad” with fewer than 1,500 employees.²²

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Under that authority, FRA has published a final statement of agency policy that formally establishes “small entities” or “small businesses” as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR part 1201, General Instruction 1-1, which is \$20 million or less in inflation-adjusted annual revenues; and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less.²³ The \$20 million limit is based on the STB’s revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR part 1201, General Instruction 1-1. The current threshold is \$46.4 million.²⁴ FRA is using this definition for the proposed rule.

Based on railroads that report to FRA under 49 CFR part 225 (Railroad Accidents/Incidents), FRA estimated the universe of small railroads consists of 812 Class III railroads. Because any railroad may request a waiver, all 812 Class III railroads may be affected by this proposed rule. Considering waiver requests actually submitted to

²² “Size Eligibility Provisions and Standards,” 13 CFR part 121, subpart A.

²³ 68 FR 24891 (May 9, 2003) (codified at 49 CFR part 209, appendix C).

²⁴ The Class III railroad revenue threshold is \$46,352,455 or less for 2022, the most recent year available. See STB, *Economic Data*. Available: <https://www.stb.gov/reports-data/economic-data/>.

FRA in the year 2023, about 40 percent of petitioners were small railroads, or on average about 28 out of the estimated 70 annual waiver petitions. As mentioned in the regulatory analysis for the NPRM, there are several categories of waiver requests that already require consultation and will mitigate the number of affected railroads. For example, about 215 Class III railroads participate in a waiver granting relief from provisions of 49 U.S.C. 21103(a)(4), regarding the required number of hours off-duty before initiating an on-duty period for train employees. When the association representing Class III railroads, the American Short Line and Regional Railroad Association (ASLRRA), petitioned to add more of its members to this waiver, ASLRRA noted the railroads had sought input from employees.²⁵ In addition, other rulemakings may codify waivers so that a small railroad would not need to submit a waiver request for the regulatory part covered by that rulemaking, making consultation unnecessary. For example, the Reflectorization of Rail Freight Rolling Stock (Reflectorization) NPRM would provide relief to railroads operating equipment used in Tourist, Historic, Excursion, Educational, Recreational, or Private (THEERP) operations. These are primarily small tourist railroads. As of 2022, FRA had received waiver requests from 12 railroads operating THEERP equipment; these railroads would not need to file waiver renewals under the Reflectorization rule. FRA also estimated the Reflectorization rulemaking could positively affect 123 tourist railroads.²⁶

FRA is also not aware of any commuter railroads that serve cities of less than 50,000 people and would thus qualify as small entities. As noted in the regulatory analysis for the proposed rule, waiver requests to establish a quiet zone under 49 CFR part 222 already would involve extensive discussions between the local public authority and railroad. Therefore, FRA expects few affected communities under the proposed rule.

²⁵ See Docket No. FRA-2009-0078. Available: <https://www.regulations.gov/document/FRA-2009-0078-0217>.

²⁶ 87 FR 43367 (July 21, 2022).

However, there may be situations where small communities adjacent to railroad property for which a railroad requests a waiver, may need to be consulted; FRA expects these situations to be minimal.

Another class of affected small entities may be small railroad suppliers that request a waiver. FRA estimated the North American Industry Classification System (NAICS) code 336510 Railroad Rolling Stock Manufacturing would best represent these suppliers because that classification includes firms engaged in manufacturing rail cars and equipment for both freight and passenger service.²⁷ The SBA size standard for NAICS code 336510 is 1,500 employees.²⁸ Combined with U.S. Census data, in this industry there are 119 out of 137 firms that would qualify as small entities.²⁹ Based on FRA's experience, FRA expects most suppliers that request waivers would be either large manufacturers or associated with large manufacturers that would exceed the employment threshold to qualify as a small entity. For example, suppliers such as Wabtec Corp. and New York Air Brake are a part of the larger firms GE Transportation and Knorr-Bremse, respectively. However, suppliers may include small entities such as small electronics equipment manufacturers.

Overall, a substantial number of small railroads may be affected by this NPRM, although that number is reduced by existing consultation requirements and codification of waivers under rulemakings. FRA invites comment on the number of small entities affected.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Class of

²⁷ U.S. Census Bureau, NAICS (2022). Available at: <https://www.census.gov/naics/?input=336510&year=2022&details=336510>.

²⁸ U.S. SBA, *Table of Small Business Size Standards Matched to North American Industry Classification Codes* (Mar. 2023). Available at: <https://www.sba.gov/document/support-table-size-standards>.

²⁹ U.S. Census Bureau, *2021 SUSB Annual Data Tables by Establishment Industry, Data by Enterprise Employment Size, U.S. & states, 6-digit NAICS* (Dec. 2023). Available at: <https://www.census.gov/data/tables/2021/econ/susb/2021-susb-annual.html>.

Small Entities That Will be Subject to the Requirements and the Type of Professional Skill Necessary for Preparation of the Report or Record

For this NPRM, the compliance costs for affected small entities mirror the costs for all affected entities. The cost categories remain the same as in the regulatory analysis and the cost is represented by: *Cost per waiver = cost of analysis and metrics + cost of consultation and documentation + cost to show waiver renewal effectiveness and compliance*. Using the same assumptions and inputs for time, number of employees, and wage rates as used in the regulatory analysis, the cost per waiver request is calculated by: $\text{Cost per waiver} = \$89.13 + \$483.24 + 483.24 + \$89.13 = \$1,145$ per waiver request. Given that almost all Class III railroads that submit a waiver request submit 1 waiver request per year, the cost per waiver equals the cost per small railroad per year. FRA expects the cost per small railroad supplier will be similar. The cost is the same \$1,145 per waiver request in annualized terms at 7 percent, 3 percent, and 2 percent if the same cost is used over a 10-year period of analysis.

ASLRRA reports that the average Class III railroad has an annual average revenue of \$4.75 million.³⁰ Thus, the estimated cost of the proposed rule per small entity is less than 0.05 percent of revenues. FRA determined that the cost would not represent a significant economic impact. FRA realizes the average revenues likely represent a wide variety of Class III railroads in terms of employment and annual revenues. Given these are private firms, it is difficult to further classify or “break down” these railroads by employment and revenue categories to assess the impact of the NPRM in more detail. FRA requests comment on how many Class III railroads may be classified by finer ranges of employees or revenues or both.

³⁰ ASLRRA, *Short Line and Regional Railroad Facts and Figures* (2019 reprint of 2017 edition), p. 12. Available at: <https://www.aslrra.org/about-us/industry-facts/facts-and-figures-book/>.

5. *Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict with the Proposed Rule*

Although waiver request notifications are currently published in the *Federal Register* and open for comment, addressing these information needs early in the waiver development process would potentially result in a more streamlined and efficient waiver request “workflow,” i.e., waiver disposition procedure. It would also assist FRA in adhering to the waiver review timeframe as stated in part 211.

FRA has issued guidance to characterize consultation in reference to the regulations for the Risk Reduction Program (RRP), System Safety Program (SSP), and Fatigue Risk Management Program (FRMP).³¹ That guidance refers to the terms “in good faith” and “best efforts” that are specifically noted in the statute requiring those regulations. 49 U.S.C. 20156. The terms referenced for this NPRM, “in the public interest” and “consistent with railroad safety” are different. Also, while the overall intent is for substantive “good” consultations, the information to be discussed in the consultation for this NPRM is different than the information for consultation for RRP, SSP, and FRMP. Therefore, the consultations that would be required in this NPRM would not be duplicative of the consultations described in the guidance.

6. *A Description of Significant Alternatives to the Proposed Rule*

In the regulatory evaluation, FRA considered an alternative modeled after its Railroad Safety Advisory Committee. In this scenario, FRA would serve as host and facilitator for potential petitioners and affected stakeholders to discuss a waiver request. FRA could clarify the terms “in the public interest” and “consistent with railroad safety” and engage parties to the waiver request for meaningful consultation. However, because FRA would be involved, rather than the petitioner and affected stakeholder

³¹ FRA, *Guidance on Railroad/Employee Consultation Requirements in 49 CFR Parts 270 and 271* (Oct. 2022). Available at: <https://railroads.dot.gov/elibrary/guidance-railroademployee-consultation-requirements-49-cfr-parts-270-and-271>.

communicating directly with each other, the alternative would have higher costs. In addition, for more complex waivers, the rental costs for meeting space and audio/visual equipment to enable a hybrid meeting would increase costs. Thus, the alternative would have higher total costs than the proposed rule.

C. Paperwork Reduction Act

The changes in this proposed rule, if adopted, would result in a burden increase for petitions for regulatory relief under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). FRA reports burden hours for waivers processed in accordance with part 211 of the CFR in each of the relevant individual information collection submissions.

The current number of burden hours reported for waiver submissions over 17 information collections is 674 hours. The additional hours estimated from this NPRM are 164 hours (838 - 674 = 164). The Office of Management and Budget (OMB) control numbers that would have revised requirements, as proposed in this NPRM, are listed in the table below and reflect the revised estimated burden hours. The revised burden requirements for each OMB number listed in the table will be updated in each of the relevant individual information collections, after issuance of the final rule.

OMB Control Number	Title	Total Annual Waiver Requests (A)	Average Time per Waiver (B)	Total Annual Burden Hours (C = A * B)	Wage Rate	Total Cost Equivalent in U.S. Dollars (D = C * wage rates)
2130-0010	Track Safety Standards	10	4.25	42.50	89.13	\$3,788.03
2130-0526	Control of Alcohol and Drug Use in Railroad Operations	3	4.25	12.75	89.13	\$1,136.41
2130-0524	Railroad Communications	2	3.25	6.50	89.13	\$579.35
2130-0560	Use of Locomotive Horns at	2	6.25	12.50	89.13	\$1,114.13

	Highway Rail Grade Crossings					
2130-0566	Reflectorization of Freight Rolling Stock	10	10.25	102.50	89.13	\$9,135.83
2130-0571	Occupational Noise Exposure for Railroad Operating Employees	0.3	3.25	0.98	89.13	\$86.90
2130-0005	Hours of Service	2	26.25	52.50	89.13	\$4,679.33
2130-0505	Inspection and Maintenance of Steam Locomotives	1	3.25	3.25	89.13	\$289.67
2130-0594	Railroad Safety Appliance Standards	3	18.25	54.75	89.13	\$4,879.87
2130-0008	Brakes Safety Standards	2	166	332.00	89.13	\$29,591.16
2130-0586	Bridge Safety Standards	0.3	6.25	1.88	89.13	\$167.12
2130-0544	Passenger Equipment Safety Standards	12	8.25	99.00	89.13	\$8,823.87
2130-0545	Passenger Train Emergency Preparedness	1	12.25	12.25	89.13	\$1,091.84
2130-0533	Certification of Locomotive Engineers	10	3.25	32.50	89.13	\$2,896.73
2130-0525	Certification of Glazing Materials	1	6.25	6.25	89.13	\$557.06
2130-0596	Conductor Certification	9	5.25	47.25	89.13	\$4,211.39
2130-0610	Risk Reduction Program	1	18.25	18.25	89.13	\$1,626.62
Total		70		838		\$74,655.29

D. Environmental Impact

FRA has evaluated this proposed rule in accordance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), FRA's regulations implementing NEPA, and other environmental statutes, E.O.s, and related regulatory requirements. FRA has determined that the proposed rule is categorically excluded from

detailed environmental review under 23 CFR 711.116(c)(5). FRA has also evaluated this NPRM under 23 CFR 771.116(b) to determine whether the rule would involve unusual circumstances including significant environmental impacts; substantial controversy on environmental grounds; significant impact on certain Federally protected properties; or inconsistencies with any Federal, State, or local law, requirement, or administrative determination related to the environmental aspects of the action. FRA has determined that no unusual circumstances exist with respect to this rule that might trigger the need for a more detailed environmental review. As a result, FRA finds that the proposed rule is not a major Federal action significantly affecting the quality of the human environment.

E. Environmental Justice

E.O. 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” requires DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. DOT Order 5610.2C (“U.S. Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”) instructs DOT agencies to address compliance with E.O. 12898 and requirements within the DOT Order 5610.2C in rulemaking activities, as appropriate, and also requires consideration of the benefits of transportation programs, policies, and other activities where minority populations and low-income populations benefit, at a minimum, to the same level as the general population as a whole when determining impacts on minority and low-income

populations.³² FRA has evaluated this NPRM under E.O.s 12898, 14096, and DOT Order 5610.2C, and has determined it will not cause disproportionate and adverse human health and environmental effects on communities with environmental justice concerns.

F. Federalism Implications

This NPRM 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. Thus, in accordance with E.O. 13132, Federalism (64 FR 43255, Aug. 10, 1999), preparation of a Federalism Assessment is not warranted.

G. Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure, in the aggregate, of \$100,000,000 or more, adjusted for inflation, in any one year by State, local, or Indian Tribal governments, or the private sector. Thus, consistent with section 202 of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4, 2 U.S.C. 1532), FRA is not required to prepare a written statement detailing the effect of such an expenditure.

H. Energy Impact

E.O. 13211 requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.” 66 FR 28355 (May 22, 2001). FRA has evaluated this proposed rule in accordance with E.O. 13211 and determined that this rule is not a “significant energy action” within the meaning of E.O. 13211.

I. Executive Order 13175 (Tribal Consultation)

FRA has evaluated this proposed rule in accordance with the principles and criteria contained in E.O. 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. The proposed rule would not have a substantial

³² E.O. 14096 “Revitalizing Our Nation’s Commitment to Environmental Justice,” issued on April 26, 2023, supplements E.O. 12898, but is not currently referenced in DOT Order 5610.2C.

direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal laws. Therefore, the funding and consultation requirements of E.O. 13175 do not apply, and a tribal summary impact statement is not required.

J. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

K. Privacy Act Statement

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov*, as described in the system of records notice, DOT/ALL-14 FDMS, accessible through *www.dot.gov/privacy*. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

L. Rulemaking Summary, 5 U.S.C. 553(b)(4)

As required by 5 U.S.C. 553(b)(4), a summary of this rulemaking can be found in the Abstract section of the Department's Unified Agenda entry for this rulemaking at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202404&RIN=2130-AC97>.

List of Subjects in 49 CFR Part 211

Administrative practice and procedure, Rules of practice.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 211 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

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 1.89.

2. Revise § 211.1 to read as follows:

§ 211.1 General.

(a) This part prescribes rules of practice that apply to rulemaking and waiver proceedings, review of emergency orders issued under 49 U.S.C. 20104, and miscellaneous safety-related proceedings and informal safety inquiries. Each proceeding under the Safety Act, as defined at paragraph (b)(3) of this section, shall be disposed of within 12 months after the date it is initiated. A proceeding shall be deemed to be initiated and the time period for its disposition shall begin on the date a petition or application that complies with the requirements of this chapter is confirmed to be complete by FRA.

(b) As used in this part –

(1) *Administrator* means the Federal Railroad Administrator or the Deputy Administrator or the delegate of either of them.

(2) *Waiver* includes exemption.

(3) *Safety Act* means the Federal Railroad Safety Act of 1970, as amended (49 U.S.C. ch. 201 *et seq.*).

(4) *Docket Clerk* means the Docket Clerk, U.S. Department of Transportation, Docket Operations, www.regulations.gov.

(5) *Railroad Safety Board* means the Railroad Safety Board, Office of Railroad Safety, Federal Railroad Administration, Washington, DC 20590.

(6) *In the Public Interest* means the proposed request demonstrates positive factors including, but not limited to, empowering workers, ensuring equity, protecting the environment, creating robust infrastructure, enabling adaptability and resiliency, bringing legacy systems up to current standards, allowing for experimentation consistent with railroad safety, providing opportunities to collaborate, ensuring interoperability, integrating across transportation modes, and the well-being of the public at large.

(7) *Consistent with railroad safety* means the proposal is at least as safe as or safer than the status quo (i.e., without the proposed relief).

(c) Records relating to proceedings and inquiries subject to this part are available for inspection as provided in part 7 of this title.

3. Amend § 211.7 by revising paragraph (b)(1) to read as follows:

§ 211.7 Filing requirements.

* * * * *

(b) * * *

(1) All petitions and applications subject to this part, including applications for special approval under §§ 211.55 and 238.21 of this chapter, petitions for approval under § 238.203 of this chapter, and signal applications under parts 235 and 236 of this chapter, shall be submitted to FRA via e-mail to FRAWaivers@dot.gov. Each petition and application received shall be acknowledged in writing. The acknowledgment shall contain the docket number assigned to the petition or application and state the date FRA

determined the petition or application was complete. Within 60 days following receipt, FRA will advise the petitioner or applicant of any deficiencies in its petition or application.

* * * * *

4. Revise § 211.9 to read as follows:

§ 211.9 Content of waiver and other safety-related proceeding petitions.

Each petition for waiver or other safety-related proceeding for regulatory relief must:

(a) Specify the rule, regulation, or standard that the petitioner seeks to have waived.

(b) Explain the interest of the petitioner, and the need for the action requested; explain the nature and extent of the relief sought, and identify and describe the persons, equipment, installations, and locations to be covered by the waiver.

(c) Contain sufficient information to support the action sought including an evaluation of anticipated impacts of the action sought. Each petition pertaining to safety regulations must also contain relevant safety data and analysis to demonstrate the petition is in the public interest and consistent with railroad safety, and outline the metrics to be used to determine effectiveness of the waiver or other relief, if granted.

(d) Include documentation demonstrating meaningful good faith consultation with potentially affected stakeholders, including applicable rail labor stakeholders, on the proposed request for relief, prior to submission to FRA for evaluation and processing.

(e) In any request for renewal or expansion:

(1) provide data on the overall effectiveness of the waiver or other relief;

(2) demonstrate compliance with any conditions that were included in the previous grant of relief; and

(3) demonstrate how the waiver, suspension, or other approval for relief is, and will continue to be, in the public interest and consistent with railroad safety.

5. Add § 211.10 to read as follows:

§ 211.10 Content of rulemaking petitions.

Each petition for rulemaking must:

(a) Set forth the text or substance of the rule, regulation, standard, or amendment proposed, or specify the rule, regulation, or standard that the petitioner seeks to have repealed.

(b) Explain the interest of the petitioner, and the need for the action requested.

(c) Contain sufficient information to support the action sought including an evaluation of anticipated impacts of the action sought; each evaluation must include an estimate of resulting costs to the private sector, to consumers, and to Federal, State, and local governments as well as an evaluation of resulting benefits, quantified to the extent practicable.

6. Revise § 211.11 to read as follows:

§ 211.11 Processing of petitions for rulemaking.

(a) *General.* Each petition for rulemaking filed as prescribed in §§ 211.7 and 211.10 is referred to the head of the office responsible for the subject matter of the petition to review and recommend appropriate action to the Administrator. No public hearing or oral argument is held before the Administrator decides whether the petition should be granted. However, a notice may be published in the *Federal Register* inviting written comments concerning the petition. Each petition shall be granted or denied not later than six months after its receipt by the Docket Clerk.

(b) *Grants.* If the Administrator determines that a rulemaking petition complies with the requirements of § 211.10 and that rulemaking is justified, the Administrator

initiates a rulemaking proceeding by publishing an advance notice or notice of proposed rulemaking in the *Federal Register*.

(c) *Denials*. If the Administrator determines that a rulemaking petition does not comply with the requirements of § 211.10 or that rulemaking is not justified, the Administrator denies the petition. If the petition pertains to railroad safety, the Administrator may also initiate an informal safety inquiry under § 211.61.

(d) *Notification; closing of docket*. Whenever the Administrator grants or denies a rulemaking petition, a notice of the grant or denial is sent to the petitioner. If the petition is denied, the proceeding is terminated and the docket for that petition is closed.

7. Revise § 211.13 to read as follows:

§ 211.13 Initiation and completion of rulemaking proceedings.

The Administrator initiates all rulemaking proceedings on the Administrator's own motion by publishing an advance notice of proposed rulemaking or a notice of proposed rulemaking in the *Federal Register*. However, the Administrator may consider the recommendations of interested persons or other agencies of the United States. A separate docket is established and maintained for each rulemaking proceeding. Each rulemaking proceeding shall be completed not later than 12 months after the initial notice in that proceeding is published in the *Federal Register*. However, if it was initiated as the result of the granting of a rulemaking petition, the rulemaking proceeding shall be completed not later than 12 months after the petition was filed as prescribed in §§ 211.7 and 211.10.

8. Amend § 211.41 by revising paragraph (b) to read as follows:

§ 211.41 Processing of petitions for waiver of safety rules.

* * * * *

(b) *Notice and hearing*. A notice is published in the *Federal Register*, an opportunity for public comment is provided (with a standard comment period of 60 days),

and a hearing is held in accordance with § 211.25, before the petition is granted or denied. Any comment period shorter than 60 days must be authorized by the Administrator.

* * * * *

9. Amend § 211.43 by revising paragraph (b) to read as follows:

§ 211.43 Processing of other waiver petitions.

* * * * *

(b) *Notice and hearing.* A notice is published in the *Federal Register*, an opportunity for public comment is provided (with a standard comment period of 60 days), and a hearing is held in accordance with § 211.25, before the petition is granted or denied. Any comment period shorter than 60 days must be authorized by the Administrator.

* * * * *

Issued in Washington, DC.

Amitabha Bose,

Administrator.

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