

notice and comment, parties desiring a public hearing on any petition being processed under this section must notify FRA through the comment process identified in paragraph (h) of this section within 72 hours from the close of business on the day that the petition is entered into and available on the FeP. In response to a request for a public hearing, FRA may:

- (1) Arrange a telephone conference between all interested parties to provide an opportunity for oral comment;
- (2) Arrange a public hearing pursuant to the provisions contained in 49 CFR part 211; or
- (3) Determine that a public hearing is unnecessary, inconsistent with safety, or not in the public interest.

(j) *Decisions.* FRA may grant a petition for waiver without prior notice and comment if the Administrator determines that it is in the public interest to grant the waiver; the waiver is not inconsistent with railroad safety; and the waiver is necessary to address an actual or impending emergency situation or emergency event. The Administrator will state in the decision issued under this section the reasons for granting the waiver.

(1) FRA reserves the right to reopen any docket and reconsider any decision made pursuant to these emergency procedures based upon its own initiative or based upon information or comments otherwise received.

(2) FRA decision letters, either granting or denying a petition, will be posted in the appropriate ERD and will reference the document number of the petition to which it relates.

(3) A waiver under this section may be issued for a period of not more than 60 days and may be renewed upon application to the Administrator only after notice and an opportunity for a hearing on the waiver. The Administrator will immediately revoke the waiver if continuation of the waiver would not be consistent with the goals and objectives of this part.

(4) In granting a waiver under this section, the Administrator will consult and coordinate with other Federal agencies, as appropriate, for matters that may significantly impact such agencies.

[74 FR 23335, May 19, 2009]

## Subpart D—Emergency Orders

### § 211.47 Review procedures.

(a) As specified in section 203, Public Law 91–458, 84 Stat. 972 (45 U.S.C. 432), opportunity for review of Emergency orders issued under that section will be provided in accordance with section 554 of title 5 of the U.S.C. Petitions for such review must be submitted in writing to the Office of Chief Counsel, Federal Railroad Administration, Washington, DC 20590. Upon receipt of a petition, FRA will immediately contact the petitioner and make the necessary arrangements for a conference to be held at the earliest date acceptable to the petitioner. At this conference, the petitioner will be afforded an opportunity to submit facts, arguments and proposals for modification or withdrawal of the Emergency order. If the controversy is not resolved at the conference and a hearing is desired, the petitioner must submit a written request for a hearing within 15 days after the conference. The hearing will commence within 14 calendar days of receipt of the request and will be conducted in accordance with sections 556 and 575, title 5, U.S.C. Each petition for review shall be decided not later than 3 months after receipt.

(b) Unless stayed or modified by the Administrator, the requirements of each Emergency order shall remain in effect and be observed pending decision on a petition for review.

## Subpart E—Miscellaneous Safety-Related Proceedings and Inquiries

### § 211.51 Tests.

(a) Pursuant to the Department of Transportation Act (80 Stat. 931, 49 U.S.C. 1651 *et seq.*), the Federal Railroad Safety Act of 1970 (84 Stat. 971, 45 U.S.C. 421, 431–441), or both, the Administrator may temporarily suspend compliance with a substantive rule of the Federal Railroad Administration, if:

- (1) The suspension is necessary to the conduct of a Federal Railroad Administration approved test program designed to evaluate the effectiveness of new technology or operational approaches or instituted in furtherance of a