

§ 238.21 Special approval procedure.

(a) *General.* The following procedures govern consideration and action upon requests for special approval of alternative standards under §238.103, §238.223, §238.229, §238.309, §238.311, §238.405, or §238.427; for approval of alternative compliance under §238.201, §238.229, or §238.230; and for special approval of pre-revenue service acceptance testing plans as required by §238.111. (Requests for approval of programs for the inspection, testing, and maintenance of Tier II passenger equipment are governed by §238.505.)

(b) *Petitions for special approval of alternative standard.* Each petition for special approval of an alternative standard shall contain—

(1) The name, title, address, and telephone number of the primary person to be contacted with regard to review of the petition;

(2) The alternative proposed, in detail, to be substituted for the particular requirements of this part;

(3) Appropriate data or analysis, or both, establishing that the alternative will provide at least an equivalent level of safety; and

(4) A statement affirming that the railroad has served a copy of the petition on designated representatives of its employees, together with a list of the names and addresses of the persons served.

(c) *Petitions for special approval of alternative compliance.* Each petition for special approval of alternative compliance shall contain—

(1) The name, title, address, and telephone number of the primary person to be contacted with regard to the petition;

(2) The elements prescribed in §§238.201(b), 238.229(j)(2), and 238.230(d); and

(3) A statement affirming that the railroad has served a copy of the petition on designated representatives of its employees, together with a list of the names and addresses of the persons served.

(d) *Petitions for special approval of pre-revenue service acceptance testing plan.* (1) Each petition for special approval of a pre-revenue service acceptance testing plan shall contain—

(i) The name, title, address, and telephone number of the primary person to be contacted with regard to review of the petition; and

(ii) The elements prescribed in §238.111.

(2) Each petition for special approval of the pre-revenue service acceptance testing plan shall be submitted to the Associate Administrator for Safety, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, DC 20590.

(e) *Federal Register notice.* FRA will publish a notice in the Federal Register concerning each petition under paragraphs (b) and (c) of this section.

(f) *Comment.* Not later than 30 days from the date of publication of the notice in the Federal Register concerning a petition under paragraphs (b) and (c) of this section, any person may comment on the petition.

(1) Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding.

(2) Each comment shall be submitted to the U.S. Department of Transportation, Docket Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, and shall contain the assigned docket number for that proceeding. The form of such submission may be in written or electronic form consistent with the standards and requirements established by the Federal Docket Management System and posted on its web site at <http://www.regulations.gov>.

(g) *Disposition of petitions.* (1) FRA will conduct a hearing on a petition in accordance with the procedures provided in §211.25 of this chapter.

(2) If FRA finds that the petition complies with the requirements of this section or that the proposed plan is acceptable or changes are justified, or both, the petition will be granted, normally within 90 days of its receipt. If the petition is neither granted nor denied within 90 days, the petition remains pending for decision. FRA may attach special conditions to the approval of the petition. Following the approval of a petition, FRA may reopen consideration of the petition for cause stated.

(3) If FRA finds that the petition does not comply with the requirements of this section, or that the proposed plan is not acceptable or that the proposed changes are not justified, or both, the petition will be denied, normally within 90 days of its receipt.

(4) When FRA grants or denies a petition, or reopens consideration of the petition, written notice is sent to the petitioner and other interested parties.

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