

**FREQUENTLY ASKED QUESTIONS REGARDING
HOW TO REQUEST FRA REVIEW BEYOND
THE LOCOMOTIVE ENGINEER REVIEW BOARD
(49 CFR §§ 240.7, 240.407, 240.409 AND 240.411)
(14 CFR Part 302)**

NOTE: This document is meant only as an aid in understanding the administrative process beyond the Locomotive Engineer Review Board. For complete information as to the regulatory requirements, please refer to 49 CFR Part 240.

REQUEST FOR ADMINISTRATIVE HEARING

Who may request further FRA review from a Locomotive Engineer Review Board (Board) decision?

- A party adversely affected by the Board decision has the right to request that FRA provide an administrative hearing. Thus, if the Board finds in favor of the railroad, the locomotive engineer has the right to request a hearing. If the Board finds in favor of the engineer, the railroad may request a hearing. 49 CFR 240.407(a).
- If the Board denies a petition as untimely, the aggrieved party may file an appeal directly with the FRA Administrator in accordance with 49 CFR 240.411. 49 CFR 240.403(e).

How much time do I have to file a request for an administrative hearing?

- The adversely affected party has 23 days from the date the Board's decision was mailed (as indicated by the postmark, or the date of the certificate of service, whichever is later if they are not the same) to file such a request. Twenty-three days are provided, rather than the 20 days stated in the regulations in order to account for the added mailing period. Please note that you are encouraged to retain the envelope from the Board's decision in case there arises an allegation that you did not file a timely request.
 - In computing the 23rd day, please do not count the date the Board's decision was mailed.
 - If the 23rd day falls on a day that the Docket Clerk's office is closed [i.e., a Saturday, a Sunday or Federal holiday] you must file your request before the end of the next day in which the Docket Clerk's office is open and accessible. (It is advisable to provide a written explanation with your submission if the 23rd day falls on a day on which weather or other

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conditions have made the office of the Docket Clerk arguably inaccessible.)

Where do I file my petition for an administrative hearing?

- A request for an administrative hearing must be filed with the Docket Clerk, Department of Transportation Central Docket Management System, Nassif Building, Room PL-401, 400 Seventh Street, S.W., Washington, D.C. 20590. 49 CFR 240.407(b). **Please note that this office is different than the filing address for the earlier Board review. DO NOT FILE YOUR REQUEST FOR AN ADMINISTRATIVE HEARING WITH FRA'S DOCKET CLERK - it will only delay the actual filing with the appropriate office listed above.**

What are the acceptable forms of a request for an administrative hearing?

- The form of such request may be in written or electronic form consistent with the standards and requirements established by the Central Docket Management System [DMS] and posted on its web site at <http://dms.dot.gov>.
- Current acceptable forms of such a request include hand delivery, mailing and electronic submission. Hand delivery requires physically delivering your written request to DMS at room PL-401, Plaza Level of the Nassif Building (400 Seventh Street, S.W.) in Washington, D.C. Mailing requires sending your written request by United States Postal Service or private delivery service to the address listed above. Filers are encouraged to use the electronic submission system on the DMS web site indicated above by clicking on "ES Submit" and following the online instructions. The DMS also accepts filing by fax. If you wish to file by fax, FRA recommends that you call DMS toll free at 1-800-647-5527 to confirm that DMS's fax number is (202) 493-2251.
- No matter which acceptable form you use, FRA recommends that you retain a receipt or other proof of the date you filed your request.

Other information for properly filing a request for an administrative hearing.

- In response to acts of terrorism beginning on September 11, 2001, FRA amended the definition of "filing" so that delays in mail delivery would not unfairly result in the rejection of what would likely have been timely filed requests for further FRA review. 67 Fed. Reg. 22 (Jan. 2, 2002). The amended definition states that "[f]ile, filed and filing mean submission of a document under this part on the date when the Docket Clerk receives it, or if sent by mail on or after September 4, 2001, the date mailing was completed."

- Pursuant to this definition, if you file by hand delivery then you must make sure that the DMS receives it no later than the date it is due. If you file by USPS or other mail services, you must make sure that the postmark or your receipt reflect that your request was mailed no later than the date it is due.
- A party that chooses to file its request for a hearing electronically or by fax must make sure that its electronic submission or fax is received no later than the date it is due and during the DMS facility's business hours [which are between the hours of 9:00 a.m. and 5:00 p.m., eastern standard or daylight savings time, whichever is in effect in the District of Columbia at the time, Monday through Friday, except on Federal holidays]. Electronic filings that are received after the specified Dockets Facility hours are deemed to be received on the next Dockets Facility business day. 14 CFR 302.3(a)(2).

What information do I need to provide in my written request for an administrative hearing?

- Only a few core items of information are required in a written request for an administrative hearing. 49 CFR 240.407(d):
 - (1) Your name, address, and telephone number. If you are represented by an attorney or any other representative, you must also provide the same basic information for that person.
 - (2) The specific factual issues, industry rules, regulations, or laws that the requesting party alleges need to be examined in connection with the certification decision in question. Please note that this proceeding provides an aggrieved party a *de novo* hearing at which the relevant facts can be adduced and the correct application of part 240 can be applied. **This proceeding does not provide an appellate review of the Board's decision or the railroad's hearing; thus, the administrative proceeding will not cover alleged procedural errors which may have occurred at those earlier proceedings.** Furthermore, the party requesting the hearing has the burden of proving their case by a preponderance of the evidence. See 49 CFR 240.409(q).
 - (3) Your signature or your representative's signature. If filing electronically with DMS "[t]he copies need not be signed, but the name of the person signing the original document, as distinguished from the firm or organization he or she represents, must also be typed or printed on all copies below the space provided for signature." 14 CFR 302.3(c).

Do I need to provide anyone else with a copy of my hearing request?

- The regulation does not require that you serve anybody else with a copy of your request. However, as a courtesy, you may wish to serve the parties listed on the “service list” at the back of the Board’s decision letter.

What happens if I file a late request for an administrative hearing or decide not to file such a request at all?

- Failure to file a timely request for a hearing or the decision not to file any request at all, means that the Board’s decision constitutes final agency action in the matter. 49 CFR 240.407(c).
- If you believe that the FRA Hearing Officer has incorrectly decided that your request was untimely filed, you may appeal that decision to the FRA Administrator. See 49 CFR 240.411.

APPEAL TO THE ADMINISTRATOR

Under what circumstances can someone appeal to the Administrator?

- Any party aggrieved by the FRA Hearing Officer’s decision may file an appeal to the Administrator. 49 CFR 240.411(a).

How much time do I have to file an appeal to the FRA Administrator?

- An appeal must be filed within 35 days after the FRA Hearing Officer signs the decision. A copy of the appeal must be provided to all parties.
- The Administrator may extend the period for filing an appeal for good cause shown, provided that the written request for extension is served before expiration of the 35 day period in which to appeal. 49 CFR 240.411(c).

Where do I file the appeal to the FRA Administrator?

- **An appeal to the Administrator must be filed directly with the FRA Administrator at the following address: 400 Seventh Street, S.W., Washington, D.C. 20590.**
- Although not specified by regulation, FRA will provide DMS with a copy of your appeal if you do not do so yourself; this extra step will provide all parties with the

benefit of being able to track the progress of the appeal through the DMS web site.

What information must be included in the appeal to the FRA Administrator?

- The appeal must set forth the objections to the FRA Hearing Officer's decision, supported by reference to applicable laws and regulations and with specific reference to the record. 49 CFR 240.411(a).

Do I have an opportunity to respond if another party files an appeal to the FRA Administrator?

- Yes. You may file a reply to the appeal within 25 days of service of the appeal. However, if you were served with a copy of the appeal by mail, you have 28 days from the date of the postmark to file your reply directly with the FRA Administrator at the following address: 400 Seventh Street, S.W., Washington, D.C. 20590.

How can I review the applicable federal regulations myself?

- FRA's web site at <http://www.fra.dot.gov/site/index.htm> provides access to the railroad safety regulations, the Federal Register notices in which the regulations were first published, or hotlinks to other web sites which maintain electronic copies of the Code of Federal Regulations (CFR) which is a codification of the regulations published in the Federal Register.
- The National Archives and Records Administration currently maintains a web site that contains the CFR and allows you to search it for information at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>. You may also purchase volumes of the CFR through the Government Printing Office (GPO) by e-mail at gpoaccess@gpo.gov; by telephone at (202) 512-1530 or toll free at (888) 293-6498; and by fax at (202) 512-1262.
- Many public libraries, especially law libraries, also maintain a copy of the CFR.