

Federal Railroad Administration

FRA's Waiver Process and the ETF Tier I Guidelines

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Robert C. Lauby, PE
Deputy Associate Administrator
Federal Railroad Administration
Washington, DC

- FRA's Waiver Authority
- FRA's Waiver Process
- Top Tips
- Engineering Task Force Tier I Guidelines
- Long Term Strategy

FRA's Authority for both rulemaking and waivers is included in 49 CFR 211.

Requirements for Rulemaking:

- 49 CFR 211 Subpart B

Requirements for Waivers:

- 49 CFR 211 Subpart C

Granting the Waiver:

- Must be “in the Public Interest.”
- Must not be “inconsistent with Railroad Safety.”

The Waiver Petition must be fully supported in the petition.

FRA Railroad Safety Board

- the Board has the authority to grant waivers.

The Safety Board Consists of:

- (1) Chairman (Lauby)
- (3) Members (McKeon, Blackmore, McCord)
- (1) Counselor (Henriksen/Stewart)

The FRA Railroad Safety Board Meets about every 6 weeks and makes determinations on about 200 waiver petitions per year.

Waiver Petitions are:

- Received by the Docket Clerk
- Assigned a Docket Number
- Placed in the Public Docket
- Published in the Federal Register – 45 Day Comment Period
- Available at [regulations.gov](https://www.regulations.gov)

Regional Staff

- Review and investigate the Waiver Petition
- Recommend Approval or Disapproval

Headquarters Technical Staff:

- Review and investigate the Waiver Petition
- Draft the Federal Register Notice
- Review any Public Comments
- Organize a Public Hearing (if requested)
- Create a brief to summarize the issues
- Summarize Regional Investigators Position
- Recommend Approval or Disapproval

Petitioners should submit Waivers:

- Four to Six months before a determination is required.
- More time if the waiver petition is significant (such as an ETF Tier I guideline determination.)

Top Tips:

1. Start Early – Especially on major waivers.
2. Contact and Communicate with FRA Staff for Guidance.
 - Describe what you intend to do.
 - Describe why you need a waiver.
3. Meet with FRA on major waivers before you make a submission.
4. Accurately describe the operating environment and any conditions or restrictions.
5. **Justify - Justify – Justify** your request based on Railroad Safety and the Public Interest.
6. Only submit a formal Waiver Petition after any technical issues are resolved.

Top Tips:

1. Start late – Especially on major waivers.
2. Purchase the equipment before you ask for the waiver.
3. Don't Communicate with FRA Staff for Guidance – Just send the Waiver Petition in and hope for the best.
4. Don't meet with FRA on major waivers before you make a submission.
5. Submit your waiver petition without any explanation about the operating environment – let FRA guess about how the equipment or system will be used.
6. Don't provide a justification for the waiver – just say you want a waiver. Ask for the moon!
7. Submit the formal petition and then request a technical meeting to work out the details.

FRA has technical staff willing to discuss your needs and to help you to determine if:

1. The waiver petition is justified.
2. The waiver petition is adequately supported.

However, Technical Staff do not make the determination on granting a waiver – only the FRA Railroad Safety Board can make a determination!

Possible Outcomes for your Waiver Petition

You receive a Letter that says:

DETERMINATION	TRANSLATION
Approved	Congratulations!
Approved with Conditions	FRA has some concerns but has still approved your waiver with the stated conditions.
Denied without Prejudice	Your waiver is disapproved because it is most likely incomplete. It can be saved - consider resubmitting.
Denied	Sorry!

Engineering Task Force Tier I Guidelines:

The Tier I Guidelines describe a method to analyze alternatively designed equipment to demonstrate equivalent safety to Tier I compliant equipment.

Manufacturers who successfully demonstrate compliance with the Tier I Guidelines will be deemed equivalent and will be allowed to have the same access to the General Railroad System as compliant Tier I equipment.

IMPORTANT:

FRA assumes that the trainset is in compliance with all other FRA regulations and requirements.

- FRA is working with DCTA to get their DMU qualified under the Tier I guidelines.
- The Engineering Task Force is now working on Tier III requirements for HSR equipment.
- The long term plan is to incorporate all the work of the Engineering Task Force in 49 CFR.

Questions?