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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. FRA-1999-5685, Notice No. 1]

Federal Transit Administration

RIN 2130-AB33

**PROPOSED JOINT STATEMENT OF AGENCY POLICY
CONCERNING SHARED USE OF THE GENERAL
RAILROAD SYSTEM BY CONVENTIONAL RAILROADS
AND LIGHT RAIL TRANSIT SYSTEMS**

AGENCIES: Federal Railroad Administration, Federal Transit Administration (FTA),
DOT.

ACTION: Proposed Statement of Policy

SUMMARY: The Federal Railroad Administration (FRA) and the Federal Transit Administration (FTA) have been working together to develop a policy concerning safety issues related to light rail transit operations that take place, or are planned to take place, on the general railroad system. This policy explains how the two agencies intend to coordinate use of their respective safety authorities with regard to such shared use operations. The policy also summarizes how the process of obtaining waivers of FRA's safety regulations may work, especially where the light rail and conventional rail operations occur at different times of day. FRA will soon issue a separate proposed statement of policy providing more details on its jurisdiction and a more detailed

explanation of issues that will be addressed in the waiver process related to shared use of the general system.

The agencies are not required by law to provide notice and opportunity for comment on a statement of policy. However, given the number of shared use operations being planned around the nation and the level of interest in how the safety of those operations will be assured, the agencies concluded that they could benefit from receiving comments before drafting their policy in final. The agencies do not plan to hold a hearing, but will discuss the proposed statement with interested groups.

DATES: Submit written comments on or before July 30, 1999.

ADDRESSES: Procedures for written comments: Submit one copy to the Department of Transportation Central Docket Management Facility located in room PL-401 at the Plaza level of the Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. All docket material on the proposed statement will be available for inspection at this address and on the Internet at <http://doms.dot.gov>. (Docket hours at the Nassif Building are Monday-Friday, 10 a.m. to 5 p.m., excluding Federal holidays.) Persons desiring notification that their comments have been received should submit a stamped, self-addressed postcard with their comments. The postcard will be returned to the addressee with a notification of the date on which the comments were received.

FOR FURTHER INFORMATION CONTACT: Gregory B. McBride, Deputy Chief Counsel, FTA, TCC-2, Room 9316, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: (202) 366-4063; and Daniel C. Smith, Assistant Chief Counsel for Safety, FRA, RCC-10, 1120 Vermont Avenue, N.W., Mail Stop 10, Washington, D.C. 20590 (telephone: (202) 493-6029).

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In many areas of the United States, local communities are considering, planning, or developing light rail, street-level transit systems similar to those now in operation in Portland, Oregon; Sacramento, California; Dallas, Texas; San Diego, California; and Baltimore, Maryland. Patterned on the trolleys that operated along the streets of hundreds of American cities and towns earlier in the century, these newer light rail systems promote more livable communities by serving those who live and work in urban areas without adding additional congestion to the nation's crowded highways.

Like the existing systems in San Diego and Baltimore, some of the planned light rail operations would, in addition to service provided along community streets, take advantage of underutilized urban freight rail corridors to provide service that, in the absence of the existing right of way, would be prohibitively expensive. These potential passenger services generally envision light rail operations during the day and freight operations during the night. Some plans also envision rail transit operations on a right-of-way shared with intercity passenger or commuter operations.

The Federal Railroad Administration (FRA) has long regulated the nation's railroads for safety purposes. FRA's railroad safety jurisdiction extends to all types of railroads, including "commuter or other short-haul railroad passenger service in a metropolitan or suburban area," but does not include "rapid transit operations in an urban area that are not connected to the general railroad system of transportation." 49 U.S.C. § 20102. In this statutory context, "rapid transit operations" refers to rail systems that,

while they may haul many commuters, are devoted in substantial part to moving people from point to point within a city's boundaries. Such systems (e.g., the Washington Metro and San Francisco's BART) may use heavy subway, elevated, or light rail equipment and will be covered in this statement by the general terms "local rail transit" or "light rail transit." "Commuter" service, by contrast, refers to systems that have as their primary purpose transporting commuters to and from work within a metropolitan area, but do not devote a substantial portion of their service to moving passengers between stations within an urban area. Examples include Metra in Chicago and the Long Island Railroad in New York. FRA's jurisdiction covers all commuter railroad operations without regard to their general system connections or the type of equipment they use. This statement of policy does not apply to commuter railroad operations.

Until recently, there was no Federal program for addressing the safety of local rail transit systems that are not subject to FRA's safety jurisdiction (i.e., those not connected to the general railroad system). However, faced with the growing movement to develop new rail transit systems, Congress addressed the safety of such systems in the Intermodal Surface Transportation Efficiency Act of 1991, requiring that the Federal Transit Administration (FTA) issue regulations requiring that states having rail fixed guideway mass transportation systems "not subject to regulation by the Federal Railroad Administration" establish a state safety oversight program. 49 U.S.C. § 5330. Those regulations, which appear at 49 CFR Part 659, provide that they apply where FRA does not regulate. Thus, with no overlap in jurisdiction, Congress has now provided for the oversight of both railroads subject to FRA's safety jurisdiction and rail transit systems that are not connected to the general railroad system.

The primary issue addressed by this policy statement is the means by which FRA and FTA propose to coordinate their safety programs with regard to rail transit systems that share tracks with freight railroads. Although compatible in terms of track gage, these two forms of rail service are incompatible in terms of equipment. A collision between a light rail transit vehicle with passengers aboard and heavy-duty freight or passenger equipment would likely result in catastrophe. This statement will also address how the two agencies will coordinate their programs with regard to rail transit systems that operate within the same right-of-way as conventional equipment but without actually sharing trackage.

FRA will soon separately issue a proposed statement of agency policy concerning its safety jurisdiction over railroad passenger operations. In that statement, the reader will find a thorough discussion of the extent and exercise of FRA's jurisdiction and guidance on which of FRA's safety rules are likely to apply in particular operational situations. In general, FRA provides safety oversight of all railroad operations except rapid transit operations that have no significant connection to the general railroad system, such as the Chicago Transit Authority (CTA) in Chicago, the Washington Metro, and the subway systems in New York, Boston, and Philadelphia. As noted, the safety rules of FRA and FTA are mutually exclusive. If FRA regulates a rail system, FTA's rules on state safety oversight do not apply. Conversely, if FRA does not regulate a system, FTA's rules do apply, assuming that the system otherwise meets the definition of a "rail fixed guideway system" under 49 CFR 659.5. FRA's policy statement reviewing in detail its jurisdiction will more clearly define where FTA's rules apply.

This joint statement is intended to: (1) explain the nature of the most important safety issues related to shared use of the general railroad system by conventional and rail transit equipment; (2) summarize the application of FRA safety rules to such shared-use operations; and (3) help transit authorities, railroads, and other interested parties understand how the respective safety programs of the two agencies will be coordinated.

1. Safety Issues Related to Shared Use of the General System.

The expansion of rail passenger transportation promises significant benefits to America's communities in terms of reduced highway congestion, reduced pollution, lower commuting times, and increased economic opportunities. However, the expansion of rail transit systems operating over portions of conventional railroad trackage poses major safety issues that must be addressed if such service is to be provided within a suitably safe transportation environment.

Potential for a Collision

The most important safety issue related to shared use of the general railroad system is the potential for a catastrophic collision between conventional rail equipment and rail transit equipment of lighter weight. Because of the significantly greater mass and structural strength of conventional equipment, the two types of equipment are simply not designed to be operated in a setting where there is any appreciable risk of their colliding.

Shared Use of Highway-Rail Grade Crossings

For decades, the greatest cause of death associated with railroading in America has been collisions between railroad vehicles and highway vehicles at grade crossings.

Existing and contemplated shared-use light rail operations on the general system will typically involve train movements over highway grade crossings. To the extent train movements over grade crossings increase, the collision exposure to the highway user, rail employees, and rail passengers increases. We want to ensure that local rail transit operations that are conducted on the general system are designed and operated to address these serious risks and to prevent grade crossing collisions involving light rail equipment.

A related issue is the prevalence of death and serious injury to trespassers on railroad property. Trespasser fatalities have recently outpaced grade crossing accidents as the leading cause of death on the nation's railroads. To the extent that shared use of the general system results in a substantial increase in the number of pedestrians crossing by foot in the path of trains, the potential for additional deaths to trespassers is very real and must be addressed in planning these operations.

Shared Infrastructure

Light rail operations on or over the general railroad system will affect and be affected by the track, bridges, signals, and other structures on the line. The light rail and conventional systems may also share a communications system. The responsibility for operating and maintaining this shared infrastructure may vary. However, even if the light rail operator has no direct responsibility for maintenance, there will need to be sufficient coordination to alert the light rail operator to related safety problems and to ensure the light rail operator conveys relevant information (e.g., readily apparent track defects or signal failures) to the party responsible for operation and maintenance.

Employee Safety

The safety of employees who operate trains on the general system, control movements over that system, or maintain its infrastructure is protected in certain ways by the Federal railroad safety laws. Light rail employees will be entitled to appropriate protections during shared-use operations. In addition, the light rail operators will need to observe rules designed to protect employees of other organizations who may be working along the right-of-way.

2. Approaches to Various Forms of Shared Use.

Operations On the General System

Local rail transit operations conducted over the lines of the general system become part of that system and necessitate FRA safety oversight of rail transit operations to the extent of such shared use. The only two existing examples are the San Diego Trolley and the Central Light Rail Line in Baltimore. This does not mean that all of FRA's regulations will be applied to all aspects of these operations. First, FRA has no intention of overseeing rail transit operations conducted separate and apart from the general system. (As noted above, FRA regulates commuter operations without regard to their general system connections.) Second, FRA anticipates granting appropriate waivers of its rules to permit shared use of general system lines by light rail and conventional equipment where the applicant transit systems and railroads commit to alternative measures and FRA finds that those measures will ensure safety.

Where complete temporal separation between light rail and conventional operations is achieved, the risk of collision between the two types of equipment can be minimized or eliminated. Temporal separation involves operating conventional and light

rail equipment at completely distinct periods of the day (e.g., where the light rail line operates only between 6 a.m. and 10 p.m., and freight or other conventional rail movements occur only between 11 p.m. and 5 a.m., and where procedures and/or technologies are in place to ensure strict observation of these limits). Under these circumstances, FRA anticipates granting necessary waivers concerning rules related to design of the passenger equipment, although waivers in other safety areas not addressed by temporal separation may not be appropriate.

Operations Outside of the Shared-Use Area

Where local rail transit operations consist of segments that involve shared use with conventional equipment adjoined with segments that do not involve shared use (e.g., street railway segments), FRA does not currently intend to exercise its jurisdiction over operations outside of the shared-use area (which, because of their connection to the general system, are within FRA's jurisdiction). Instead, FRA, with FTA's assistance, will coordinate with the state oversight agency to ensure effective and non-duplicative monitoring of the safety of the different segments of the operation. FRA, again with FTA's assistance, will make every effort in its waiver process to give due weight to elements of the operation's system safety plan that carry over into the shared-use portion of the system.

Operations Within a Shared Right-of-Way

A light rail transit operation may share a right-of-way but no trackage with a conventional railroad. An example is a light rail system whose tracks run parallel to but between the tracks of a freight line. Where such systems share highway-rail grade

crossings with conventional railroads, FRA expects both systems to observe its rules on grade crossing signals that, for example, require prompt reports of warning system malfunctions. In addition, FRA and FTA will coordinate with rapid transit agencies and railroads wherever there are concerns about sufficient intrusion detection and related safety measures designed to avoid a collision between rapid transit trains and conventional equipment.

Operations Over a Rail Crossing at Grade and Other Limited Connections

Where a rail transit system crosses a conventional railroad at grade, but has no other connection to the general system, FRA's safety rules cover the point of connection, and FTA will coordinate with the transit system and railroad to ensure safety at the crossing. FRA does not consider a switch that merely permits the transit system to receive shipments for its own use a connection significant enough to warrant application of FRA's rules.

3. FTA and FRA Safety Partnership.

FTA and FRA have been working closely together for several years to ensure proper coordination of their safety programs. In October 1998, FRA and FTA entered into an agreement designed to enhance their efforts in identifying and resolving safety issues in rail-related projects funded by FTA. Under the agreement, the agencies agreed to take actions that will ensure that FRA's rail safety expertise is brought to bear on safety issues inherent in rail grant proposals early in the planning and development process.

Coordination on Rail Safety Waiver Requests

Light rail transit operators who intend to share use of the general railroad system with conventional equipment will either have to comply with FRA's safety rules or obtain a waiver of appropriate rules. FRA may grant a waiver "if the waiver is in the public interest and consistent with railroad safety." 49 U.S.C. §20103(d). FRA intends to make its waiver process as smooth and comprehensive as possible. FTA will assist FRA in that effort. As part of that process, FRA asks that the light rail operator and all other affected railroads jointly file a Petition for Approval of Shared Use. In its separate statement of policy to be published in the near future, FRA provides guidance on what factors the petition should address. The factors include:

- A detailed description of both the light rail and the conventional railroad's operations on the shared use trackage.
- Plans for separation of the light rail and conventional operations by time of day, including a description of what protective systems will ensure that simultaneous operation of the two types of equipment will not occur.
- Alternative safety measures to be employed in place of each rule for which waiver is sought.
- Any system safety program plan developed for the operation, including one prepared for a stand-alone rapid transit segment under FTA's State Safety Oversight Program.

Note: FRA and FTA have grave concerns about whether, given their structural incompatibility, light rail and conventional equipment can ever be operated safely on the same trackage at the same time. In the event that petitioners nevertheless seek approval

of simultaneous joint use, the petitioners will face a steep burden of demonstrating that extraordinary safety measures will be taken to adequately reduce the likelihood and/or severity of a collision between conventional and light rail equipment to the point where the safety risks associated with joint use would be acceptable. FRA expects that such a petition will contain a considerable amount of additional information, including:

- Equipment specifications for any equipment that will not meet FRA's passenger equipment safety standards, plus an engineering analysis of the equipment's resistance to damage in various types of collisions.
- A quantitative risk assessment concerning the risk of collision between the light rail and conventional equipment and between the light rail equipment and highway vehicles.

Like all waiver petitions, a Petition for Approval of Shared Use will be reviewed by FRA's Railroad Safety Board. FTA will appoint a non-voting liaison to FRA's board, and that person will participate in the board's consideration of all such petitions. This close cooperation between the two agencies will ensure that FRA benefits from the insights, particularly with regard to operational and financial issues, that FTA can provide about light rail operations, as well as from FTA's knowledge of and contacts with state safety oversight programs. This working relationship will also ensure that FTA has a fuller appreciation of the safety issues involved in each specific shared use operation and a voice in shaping the safety requirements that will apply to such operations.

In general, the greater the safety risks inherent in a proposed operation the greater will be the mitigation measures required. It is the intention of FTA and FRA to maintain

the level of safety typical of conventional rail passenger operations while accommodating the character and needs of light rail transit operations.

FRA and FTA believe that they can give light rail operators a high degree of confidence that FRA will provide the waivers they need to operate on a time-separated basis in shared-use situations. To facilitate the waiver process, FRA will include in its soon-to-be-issued proposed statement of policy a detailed statement of the rules light rail operators should expect to comply with and those rules from which they can expect to receive waivers, provided that the planned light rail operations will be wholly separated in time from conventional rail operations. For discussion purposes only, we have attached a chart summarizing FRA's early thinking on these issues. With this information, light rail operators can plan and design their projects in such a way that they can be confident, absent unusual facts about a particular project presenting some atypical safety hazard, of receiving the waivers needed to operate.

In its petition, the light rail operator would certify that the subject matter addressed by the rule to be waived is addressed by the system safety plan and that the light rail operation will be monitored by the state safety oversight program. That is likely to expedite FRA's processing of the petition. FRA will analyze information submitted by the Petitioner to demonstrate that a safety matter is addressed by the light rail operator's system safety plan. Where FRA grants a waiver, the state agency will oversee the area addressed by the waiver, but FRA will actively participate in partnership with FTA and the state agency to address any safety problems. If the conditions under which the waiver

was granted change substantially, or unanticipated safety issues arise, FRA may modify or withdraw a waiver in order to ensure safety.

Conclusion

Expanded use of existing railroad lines to provide increased transportation opportunities for passengers in metropolitan areas is a development that FTA and FRA strongly wish to encourage. Working together, the two agencies intend to ensure that such development goes forward smoothly and in a way that guarantees that the blending of light rail and conventional rail operations continues their excellent safety records.

Issued in Washington, DC, on May 18, 1999.

Jolene M. Molitoris, Administrator
Federal Railroad Administration

Gordon J. Linton, Administrator
Federal Transit Administration

Summary of FRA Waivers That May be Appropriate for Time-Separated Light Rail Operations

FRA may, after notice and an opportunity for a hearing, grant a waiver of a federal safety rule “if the waiver is in the public interest and consistent with railroad safety.” 49 U.S.C. §20103. This document lists each of FRA’s railroad safety rules and provides FRA’s early thinking on whether the operator of a light rail system that shares trackage with a conventional railroad should expect to comply with the rule on the shared track or may receive a waiver. This chart assumes that the operations of the local rail transit agency on the general railroad system are completely separated in time from conventional railroad operations, in accordance with guidance issued by FRA, and that the light rail operation poses no atypical safety hazards. FRA’s procedural rules on matters such as enforcement (49 CFR Parts 209 and 216), and its statutory authority to take emergency action to address an imminent hazard of death or injury, would apply to these operations in all cases.

Where waivers are granted, a light rail operator would be expected to operate under a system safety plan developed in accordance with the FTA state safety oversight program. The state safety oversight agency would be responsible for the safety oversight of the light rail operation, even on the general system, with regard to aspects of that operation for which a waiver is granted. FRA will actively participate in partnership with the state agency to address any safety problems. If the conditions under which the waiver was granted change substantially, or unanticipated safety issues arise, FRA may modify or withdraw a waiver in order to ensure safety.

Title 49 CFR Part	Subject of Rule	Likely Treatment	Comments
Track, Structures, and Signals			
213	Track Safety Standards	Comply (assuming light rail operator owns track or has been assigned responsibility for it)	<i>If the conventional RR owns the track, light rail will have to observe speed limits for class of track</i>
233, 235, 236	Signal and train control	Comply (assuming light rail operator or its contractor has responsibility for signal maintenance)	<i>If conventional RR maintains signals, light rail will have to abide by operational limitations and report</i>

			signal failures
234	Grade Crossing Signals	Comply (assuming light rail operator or its contractor has responsibility for crossing devices)	<i>If conventional RR maintains devices, light rail will have to comply with sections concerning activation failures and false activations</i>
213, Appendix C	Bridge safety policy	Not a rule. Compliance voluntary.	

Motive Power and Equipment

210	Noise emission	Waive	State safety oversight
215	Freight car safety standards	Waive	State safety oversight
221	Rear end marking devices	Waive	State safety oversight
223	Safety glazing standards	Waive	State safety oversight
229	Locomotive safety standards	Waive, except perhaps for alerting lights, which are important for grade crossing safety	State safety oversight
231*	Safety appliance standards	Waive	State safety oversight; see note below on statutory requirements
238	Passenger equipment standards	Waive	State safety oversight

Operating Practices

214	Bridge Worker	Waive	OSHA standards
214	Roadway Worker Safety	Comply	

217	Operating Rules	Waive	State safety oversight
218	Operating Practices	Waive, except for prohibition on tampering with safety devices related to signal system	State safety oversight
219	Alcohol and Drug	Waive if FTA rule otherwise applies	FTA rule may apply
220	Radio communications	Waive, except to extent communications with freight trains and roadway workers are necessary	State safety oversight
225	Accident reporting and investigation	Comply with regard to train accidents and crossing accidents; waive as to injuries	Employee injuries would be reported under FTA or OSHA rules
228**	Hours of service recordkeeping	Waive (in concert with waiver of statute); waiver not likely for personnel who dispatch conventional RR or maintain signal system on shared use track	See note below on possible waiver of statutory requirements
239	Passenger train emergency preparedness	Waive	State safety oversight
240	Engineer certification	Waive	State safety oversight

* Certain safety appliance requirements (e.g., automatic couplers) are statutory and can only be waived under the conditions set forth in 49 U.S.C. 20306, which permits exemptions if application of the requirements would “preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations.” If consistent with employee

safety, FRA could probably rely on this provision to address most light rail equipment that could not meet the standards.

- ** Currently, 49 U.S.C. 21108 permits FRA to waive substantive provisions of the hours of service laws based upon a joint petition by the railroad and affected labor organizations, after notice and an opportunity for a hearing. This is a “pilot project” provision, so waivers are limited to two years but may be extended for additional two-year periods after notice and an opportunity for comment. FRA’s proposed railroad safety reauthorization bill would eliminate the need to renew waivers at two-year intervals.