DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Chapter II and Part 209

[FRA Docket No. FRA–1999–5685, Notice No. 4]

RIN 2130–AB33

Proposed Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Operations

AGENCY: Federal Railroad Administration (FRA), Transportation (DOT).

ACTION: Proposed rule and policy statement.

SUMMARY: The Federal Railroad Administration (FRA) and the Federal Transit Administration are jointly developing a policy concerning safety issues related to light rail transit operations taking place on the general railroad system. That policy will describe how the two agencies will coordinate use of their respective safety authorities over shared use operations. FRA is issuing this proposed policy statement to describe the extent of its statutory jurisdiction over railroad passenger operations (which covers all railroads except urban rapid transit operations not connected to the general railroad system) and explain how it will exercise that jurisdiction. The proposal also explains FRA's waiver process and discusses factors that should be addressed in any petition submitted by light rail operators and other railroads seeking approval of shared use of the general railroad system.

FRA is 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 agency concluded that it could benefit from receiving comments before drafting its policy in final. FRA does not plan to hold a hearing, but will discuss the proposed statement with interested groups.

DATES: Submit written comments on this document on or before January 14, 2000.

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 notation of the date on which the comments were received.

FOR FURTHER INFORMATION CONTACT: 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) or David H. Kasminoff, Trial Attorney, FRA, RCC'12, 1120 Vermont Avenue, N.W., Mail Stop 10, Washington, D.C. 20590 (telephone: 202–493–6043).

Proposed Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations

Introduction

In many areas of the United States, local communities are planning or developing passenger operations that will operate over the lines of new or existing railroads. Many of the new operations will use rail equipment commonly referred to as ''light rail'' due to its generally lighter construction than equipment ordinarily used by freight and most passenger railroads. Some of these light rail operations will operate over lines also used by conventional freight and passenger railroads.

The Department of Transportation (DOT) fully supports the development of railroad passenger operations as an important means of expanding transportation services in this country as we enter the new millennium, without adding additional congestion to the nation's crowded highways and airports. DOT's Federal Transit Administration (FTA) will play a critical role in financing many of these new and expanded rail systems.

DOT's most important mission is ensuring safe transportation. DOT's Federal Railroad Administration (FRA) has primary responsibility for the safety of railroad passenger operations. Consistent with FRA's safety role, in a final rule published in the **Federal Register** on December 27, 1995, FTA announced that it would begin requiring states to oversee the safety of rail fixed guideways systems not regulated by FRA. 60 FR 67034; see 49 U.S.C. 5530, 49 CFR part 659. Under its statutory scheme, FTA does not directly enforce safety statutes or regulations against rail fixed guideway systems, nor does FTA have safety inspectors who enter upon the regulated properties to perform inspections.

On May 25, 1999, FRA and FTA published a ''Proposed Joint Statement of Agency Policy Concerning Shared Use of the General Railroad System by Conventional Railroads and Light Rail Transit Systems'' (Proposed Joint Policy Statement), in which the two agencies explained how they intend to coordinate use of their respective safety authorities with regard to shared use operations. 64 FR 28238. The document also summarized 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. As discussed in the Proposed Joint Policy Statement, FRA is now issuing this proposed statement of agency policy concerning its safety jurisdiction over railroad passenger operations in order to provide ''a thorough discussion of the extent and exercise of [its] jurisdiction and guidance on which of FRA's safety rules are likely to apply in particular operational situations.'' 64 FR at 28239. Because the proposed joint FRA/FTA statement provided some guidance on FRA's waiver process and this proposed statement amplifies that guidance, the two statements overlap somewhat and to some degree are repetitious. However, when final statements are issued, the guidance on the FRA waiver process will be found in FRA's statement, and the joint statement will focus only on the two agencies' plans for coordination of their respective authorities. The joint policy statement and FRA's separate statement are being handled under the same docket number, and the same comment deadline (January 14, 2000) applies to both, so there is no need for commenters to file duplicative comments. Comments can focus on both proposed statements. (The comment period on the joint policy statement was extended further to January 14, 2000 in Notice No. 3 so that the comment periods for both notices would coincide.)

Purpose of FRA's Separate Statement

The current proliferation of railroad passenger operations, especially those involving shared use of trackage by a conventional railroad and a light rail operator, creates a need for FRA to clarify the extent to which it will exercise its jurisdiction over those operations. As explained below, FRA's safety jurisdiction is very broad and extends to all entities that can be construed as railroads by virtue of their providing non-highway ground transportation over rails or

electromagnetic guideways (and will extend to future railroads using other technologies not yet in use), but excludes urban rapid transit operations not connected to the general railroad system. While FRA believes its safety jurisdiction extends to nearly the entire universe of railroads, for reasons of policy it sometimes chooses not to exercise its authority over certain types of operations. For example, because of the limitations on its inspection resources and its assessment of the practical limitations of its role, FRA does not currently exercise its jurisdiction over railroads whose operations are confined to the boundaries of an industrial plant or over insular tourist operations.

FRA's issuance of final rules on passenger train emergency preparedness (63 FR 24630, May 4, 1998) and passenger equipment safety standards (64 FR 25540, May 12, 1999) makes it all the more timely for FRA to provide clarification on how it exercises its jurisdiction. This clarification will help the developers and operators of passenger systems plan their activities accordingly. As set forth in the text of the applicability sections to FRA's regulations (e.g., 49 CFR 239.3), all of FRA's regulations already apply under their own terms to passenger operations on the general railroad system of transportation; this proposed policy statement does not alter any of those requirements, but rather explains the ramifications of FRA's regulations for the various kinds of railroad passenger operations. Also, this proposed statement offers further explanation of FRA's waiver process and how FRA is likely to respond to waiver petitions under certain circumstances.

While passenger railroads offer the traveling public one of the safest forms of transportation available, passenger trains are exposed to a variety of safety hazards. Some of these hazards are endemic to the nation's rail passenger operating environment, involving the operation of passenger trains commingled with freight trains, often over track with frequent grade crossings used by heavy highway equipment. Collisions with a wide range of objects may occur at various speeds under a number of different circumstances. In addition to freight trains and highway vehicles, these objects include maintenance-of-way equipment and other passenger trains. Although most of these collisions occur at the front or rear of the train, impact into the side of the train can occur, especially at the junction of rail lines and at highway-rail grade crossings. The possibility of a passenger train collision with another train or a highway vehicle greatly concerns FRA because of the potential for significant harm, as demonstrated by actual accidents.

For example, on February 9, 1996, a near head-on collision occurred between two New Jersey Transit Rail Operations, Inc. trains on the borderline of Secaucus and Jersey City, New Jersey. Two crewmembers and one passenger were fatally injured, and 35 other individuals sustained injuries. The passenger fatality and most of the nonfatal injuries to passengers occurred on a train that was operating with the cab car (a car which provides passenger seating, as well as a location from which the train is operated) at the front of the train, followed by four passenger coaches and a locomotive pushing the train consist. (FRA Accident Investigation Report B–2–96.)

One week later, on February 16, 1996, a near-head-on collision occurred between a Maryland Rail Commuter Service (MARC) train and an Amtrak train on track owned by CSX Transportation, Inc. (CSXT) at Silver Spring, Maryland. The MARC train was operating with a cab car as the lead car in the train, followed by two passenger coaches and a locomotive pushing the consist. The collision separated the left front corner of the cab car from the roof to its sill plate, and tore off much of the forward left side of the car body. Three crewmembers and eight passengers were fatally injured, and 13 occupants of the MARC train sustained injuries. (FRA Accident Investigation Report B–3–96.)

On March 15, 1999, a southbound Amtrak train traveling 79 miles per hour and operating from Chicago, Illinois, to New Orleans, Louisiana, struck a flatbed semi-tractor trailer in Bourbonnais, Illinois, while the truck was occupying a highway-rail grade crossing. Due to the impact, two locomotives and 11 of the 14 cars in the train derailed. The train had continued upright until reaching a switch leading into a siding, where it struck two freight cars parked on the adjacent siding west of the main track. The nearest car was a gondola car loaded with steel bars and angle iron, and the second car was a covered hopper loaded with smoke stack emission fly ash. These cars were also derailed, destroying the gondola. The first six passenger cars of the Amtrak train piled up along with the tenth car, a coach. Of those cars, only the second car (a transition sleeper) was not destroyed. Fire from ruptured locomotive fuel tanks broke out, gutting the interior of the third car, a sleeping car. All but the last three cars derailed. The derailment and fire resulted in the deaths of 11 passengers, all of whom were located in the sleeping car, and injuries to 122 other passengers. (FRA Accident Investigation Report B–02–99.)

While none of these accidents involved light rail equipment, the accidents all illustrate the risks to passengers and crew presented by operations on the general railroad system. Those risks are at least as great where light rail equipment is used, especially if any potential exists for a collision with substantially heavier and structurally stronger conventional trains.

FRA's Legal Authority Over Railroad Safety

The Statutory Definition of ''Railroad''

By delegation from the Secretary of Transportation, FRA administers the Federal railroad safety statutes that are codified at 49 U.S.C. 20101 through 21311 (chapters 201 through 213 of Title 49 of the United States Code) and also exercises enforcement authority in the rail mode under the hazardous materials transportation laws (49 U.S.C. Chapter 51). Under the railroad safety statutes, ''railroad'' is defined as follows:

> In this part—
>
> (1) ''railroad''—
>
> (A) means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including—
>
> (i) commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and
>
> (ii) high speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but
>
> (B) does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.
>
> (2) ''railroad carrier'' means a person providing railroad transportation.
>
> 49 U.S.C. 20102.

This definition, added by the Rail Safety Improvement Act of 1988 (''1988 Safety Act'') Pub. L. No. 100–342, makes certain elements of FRA's safety jurisdiction quite clear:

- FRA, with one exception, has jurisdiction over any type of railroad regardless of the kind of equipment it uses, its connection to the general railroad system of transportation, or its status as a common carrier engaged in interstate commerce.
- Commuter and other short-haul railroad passenger operations in a metropolitan or suburban area (except for one type of short-haul operation, i.e., urban rapid transit) are railroads within FRA's jurisdiction whether or not they

are connected to the general railroad system.

- Rapid transit operations in an urban area that are not connected to the general railroad system are not within FRA's jurisdiction. This is the sole exception to FRA's jurisdiction over railroads. There is no exception for ''light rail,'' a term not found in the statute.
- Rapid transit operations in an urban area that are connected to the general railroad system of transportation are within FRA's jurisdiction.

The statutory definition, however, also leaves some important questions unanswered. The statute does not provide a definition of either ''commuter or other short-haul railroad passenger service'' or ''rapid transit operations in an urban area.'' The statute does not state clearly whether urban rapid transit is a sub-category of ''other short-haul'' service or is a completely separate category. The statute distinguishes commuter from rapid transit service, but does not provide the characteristics of each or indicate whether the two types of service share some characteristics. The statute does not define ''connected to'' but makes connection the critical issue in determining whether rapid transit operations are within FRA's jurisdiction. Nor does the statute define ''the general railroad system of transportation,'' another critical element in determining whether urban rapid transit operations are covered.

These unanswered questions are not academic. For example, if ''commuter'' and ''rapid transit'' were defined in the statute, distinguishing between the two types of service would be easier, and FRA would merely have to determine if there is a connection to the general railroad system in order to know if it had jurisdiction. However, it is possible for a railroad system in a metropolitan area to have characteristics of both commuter rail and rapid transit. In those cases, assuming there is no clear connection to the general system, what criteria should FRA use to determine whether it has jurisdiction and, if it does, whether to assert it? A brief review of the legislative history of the definition of the term ''railroad'' helps to provide some answers.

Legislative History of Definition of ''Railroad'

Prior to 1970, FRA administered a variety of railroad safety statutes that applied only to common carriers engaged in interstate or foreign commerce by rail. For example, FRA administered the Safety Appliance Acts, formerly 45 U.S.C. 1–16 (1982), now 49 U.S.C. 20301-20306. However, in 1970, Congress determined that there was a need for more comprehensive and uniform safety regulations in all areas of railroad operations and concluded that FRA needed to reach beyond common carriers to other types of railroads. Congress enacted the Federal Railroad Safety Act of 1970 (''FRSA''), Pub. L. No. 91–458, which (at § 202(a)) gave FRA authority to regulate ''all areas of railroad safety,'' and conferred all powers necessary to detect and penalize violations of any rail safety law. Although that statute did not define the word ''railroad,'' its legislative history made clear the breadth that Congress intended the word to convey. For example, the House Committee on Interstate and Foreign Commerce stated:

> The Secretary's authority to regulate extends to all areas of railroad safety. This legislation is intended to encompass all those means of rail transportation as are commonly included within the term. Thus ''railroad'' is not limited to the confines of ''common carrier by railroad'' as that language is used in the Interstate Commerce Act.

H.R. Rep. No. 91–1194, 91st Cong., 2d Sess. at 16 (1970). Congress clearly expected that this expanded jurisdiction would reach commuter and other short-haul passenger operations. The House Committee report stated: ''the Secretary's jurisdiction would extend to rail operations in areas presently governed by compacts and other municipal authorities such as the Metropolitan Transit Authority in New York.'' *Id.*

FRA attempted to administer this broad mandate literally until the Chicago Transit Authority (CTA) successfully challenged FRA's assertion of jurisdiction over its rapid transit operations in 1977. In *Chicago Transit Authority* v. *Flohr* (''*CTA*''), 570 F.2d 1305 (7th Cir. 1977), the Seventh Circuit held that Congress did not intend the word ''railroad'' to apply to ''urban rapid transit'' such as CTA's. The court noted, in pertinent part, that:

> The CTA's rapid transit equipment consists of electrically self-powered units, substantially smaller and lighter than railroad cars; CTA rapid transit cars do not use the rails of any [conventional] railroad nor conversely, can [conventional] railroads use the CTA rails.

Id. at 1307.

The *CTA* decision did not address FRA's jurisdiction over commuter operations, and left FRA with little guidance about precisely what systems were outside of its jurisdiction. In 1982, FRA expressed to Congress a degree of doubt about the extent of its safety jurisdiction, particularly over a commuter line (Fox Chase-Newtown) operated by the Southeastern Pennsylvania Transportation Authority (SEPTA). Congress responded by including in the Rail Safety and Service Improvement Act of 1982 (''1982 Safety Act''), Pub. L. No. 97–468, a provision that made very clear its intention that FRA assert jurisdiction over commuter operations. Section 702(c) of that act stated that ''all areas of railroad safety'' in the FRSA includes ''the safety of commuter or other short-haul rail passenger service in a metropolitan or suburban area, including any commuter rail service which was operated by the Consolidated Rail Corporation as of January 1, 1979.'' The House Committee explained its intention as follows:

> This amendment is merely designed to clarify that commuter rail operations, such as the Fox Chase-Newtown line, are indeed subject to the FRSA. This clarification of FRA's jurisdiction specifically includes service operated by a common carrier by railroad or a successor operator (such as a commuter agency), but excludes rail service operated by street railways or rapid transit systems unless they are operated as a part of, or over the lines of, the general system of rail transportation.

H.R. Rep. No. 97–571, 97th Cong., 2d Sess. at 41–42 (1982). The report went on to note that ''this amendment does not extend FRSA jurisdiction to rail rapid transit operations such as subways or trolley lines.'' *Id.*

After enactment of the 1982 Safety Act, therefore, it was clear that Congress expected FRA to assert jurisdiction over commuter operations but not over rapid transit operations unless they were connected to the general railroad system, i.e., operated as a part of, or over the lines of, that system. Rather than overturn *CTA* and direct FRA to assert authority over stand-alone rapid transit lines, Congress incorporated the basic holding of that court decision by excluding rapid transit operations that, like CTA's, did not share any trackage with the general railroad system. Although the commuter/rapid transit line was not clearly drawn, FRA knew from the legislative history that street railways, subways, and trolley lines were the kinds of operations Congress considered to be rail rapid transit. However, Congress did not incorporate the *CTA* court's distinctions about the jurisdictional relevance of types of equipment; rather, Congress clearly conferred jurisdiction even over trolleys and street railways if they were connected to the general system by virtue of operating as a part of, or over the lines of, that system.

In 1986, FRA became concerned that there could be confusion about whether

its jurisdiction would extend to certain high speed transportation systems that were being contemplated. Some would-be stand-alone systems having only incidental connections with other railroads for the delivery of cars and equipment, and others would use technologies (*e.g.*, magnetic levitation) not among those traditionally used by a railroad. Jurisdictional confusion could impede the development of such systems. FRA drafted proposed legislation to eliminate any potential confusion.

In February 1987, the Secretary of Transportation submitted to Congress the proposed rail safety reauthorization legislation that FRA had recommended and drafted. That bill included a provision that would define ''railroad'' in the FRSA to include all forms of nonhighway ground transportation except urban rapid transit operations not connected to the general railroad system. Commuter and other short-haul passenger operations in a metropolitan or suburban area would continue to be included. High speed systems would be included even if they used technologies (such as magnetic levitation) not traditionally associated with railroads. This provision, which provided the first definition in the railroad safety statutes of the term ''railroad,'' incorporated the 1982 Safety Act text on commuter and other short-haul systems and the 1982 legislative history on urban rapid transit. With regard to rapid transit, the bill used the phrase ''connected to'' the general system as an abbreviated substitute for the 1982 legislative history's direction to exclude rapid transit systems unless ''operated as a part of, or over the lines of, the general system of rail transportation.'' H.R. Rep. No. 97–571, 97th Cong., 2d Sess. at 41–42 (1982). The provision made clear that a connection to the general system was relevant only in determining whether an urban rapid transit operation was within FRA's jurisdiction. The bill also made clear that, in the safety statutes, ''railroad'' was not confined to any traditional definition of the term that limited it to certain types of technology and equipment.

With only immaterial changes, Congress enacted the provision drafted and recommended by FRA in the1988 Safety Act. This is the current definition of ''railroad'' codified at 49 U.S.C. 20102, set forth above. The Conference Report accompanying the 1988 Safety Act stated that the definition of ''railroad'' was intended to clarify the Secretary's jurisdiction in the rail safety area. *See* H.R. Rep. No. 100–637, 100th Cong., 2d Sess. at 24 (1988). The Senate Report noted that, in addition to ensuring FRA's jurisdiction over high speed rail systems and emerging technologies, the provision incorporates the 1982 language concerning commuter and other short-haul passenger service. Sen. Rep. No. 100–153, 100th Cong., 2d Sess. at 13 (1988). Shortly after passage of the 1988 Safety Act, FRA issued a statement of agency policy and interpretation, found at 49 C.F.R. Part 209, Appendix A. That statement of policy included a brief explanation of the extent and exercise of FRA's safety jurisdiction in light of the statutory amendments, noting that the only exception to that jurisdiction was for ''self-contained urban rapid-transit systems.'' *Id.*

FRA's Policy on the Exercise of Its Safety Jurisdiction

FRA distinguishes between the extent of its statutory jurisdiction (*i.e.*, the furthest reach of its authority under the safety laws, which cover all railroads except urban rapid transit operations not connected to the general system) and its exercise of that jurisdiction (the degree to which it asserts its jurisdiction). *See* 49 CFR part 209, Appendix A. FRA believes that, based on its resource limitations and the relative degree of safety risk posed by certain operations, it makes sense in some situations to limit the exercise of its jurisdiction to something less than the entire universe of railroads that could be regulated. Thus, many of its regulations exclude operations not connected to the general railroad system, and its policies exclude certain other operations (such as insular tourist operations). However, nothing precludes FRA from subsequently expanding the reach of a regulation or policy to the maximum extent permitted by statute, or from using its emergency authority under 49 U.S.C. 20104 at any time to address imminent hazards involving death or personal injury arising in operations otherwise excluded from its exercise of jurisdiction.

FRA currently exercises jurisdiction over all railroad passenger operations in the nation except: (1) Urban rapid transit operations not operated on or over the general railroad system; and (2) tourist, scenic, or excursion operations that are not operated on or over the general system and are insular. Thus, in addition to intercity passenger service, FRA exercises jurisdiction over all commuter operations (whether or not connected to other railroads in the general system), all tourist operations operated on or over the general system and those off the general system that are not insular, and all other passenger operations that are operated on or over the general system. FRA will assert jurisdiction over high speed intercity rail service even if completely separated from the general railroad system that now exists and magnetic levitation systems that are not urban rapid transit.

Some current and planned passenger operations in metropolitan areas are often referred to as ''light rail.'' In the transit industry, this term usually refers to lightweight passenger cars operating on rails in a right-of-way that is not separated from other traffic, such as street railways and trolleys. ''Heavy rail'' generally refers to cars operating on rails that are in separate rights-of-way from which all other vehicular traffic is excluded. In transit terms, heavy rail is also known as ''rapid rail,'' ''subway,'' or ''elevated railway.'' Conventional rail equipment such as that used by freight railroads, Amtrak, and many commuter railroads is different from, and considerably heavier and structurally stronger than, either light or heavy rail equipment, as those terms are used in the transit industry. Although this equipment is sometimes referred to as ''heavy'' rail, we will use the term ''conventional'' to avoid confusion between the different ways ''heavy'' is used in the transit and general railroad communities. The greatest risk inherent in the shared use of the trackage is a collision between the light rail equipment and conventional equipment. The light rail vehicles are not designed to withstand such a collision with far heavier equipment. Were such a crash to occur with either or both trains operating at high speeds, the results for passengers in the light rail vehicle could be catastrophic. (Mixing of heavy rail transit and conventional railroad operations is not likely, but would present most of the same concerns associated with light rail. Those concerns could be more or less acute, depending on operating speeds and other factors. Although heavy rail transit is not directly addressed in this notice, FRA would expect to apply similar principles to such a shared use situation.)

Rapid transit operations may involve use of either light or heavy transit equipment. However, it is the nature and location of the operation, not the nature of the equipment, that determines whether FRA has jurisdiction under the safety statutes. The sole statutory exception is for ''rapid transit operations in an urban area that are not connected to the general railroad system of transportation.'' 49 U.S.C. 20102. The first jurisdictional question is whether the operations are in the nature of rapid

transit. If the operation is a commuter railroad, FRA has jurisdiction regardless of its connection to other railroads, and in fact considers the operation itself to be part of the general railroad system. To assist in making these determinations, FRA has devised definitions of ''commuter'' and ''rapid transit'' operations, which are set forth below in the proposed revision to its statement of policy in 49 CFR part 209, appendix A. If the operation is rapid transit, the next question is whether it is connected to the general railroad system. If so, FRA has jurisdiction despite the rapid transit nature of the system. As explained fully below, however, in the revisions to its published statement of policy, FRA considers some connections to the general system to be insufficient to warrant exercise of its jurisdiction over a transit operation. Moreover, FRA intends to exercise jurisdiction over a transit operation that does have significant connections to the general system only to the extent it is connected, not over the entire transit system.

Only two light rail operations (in San Diego and Baltimore) currently share trackage with conventional equipment. In exercising jurisdiction over these lines jointly used by light rail and a freight railroad, FRA has made specific accommodations for the differences in equipment and operations that distinguish these systems from more conventional intercity or commuter operations. We have generally addressed these joint use arrangements by exercising jurisdiction over just those elements of the system also used by the freight line, such as the track, signals, grade crossing warning devices, and dispatching. The leading example is the San Diego Trolley line. FRA has not actively exercised jurisdiction over the time-separated passenger operations on the freight line or over any aspects of the trolley's operation on its separate street trackage. There, the fact that the passenger operations are completely separated in time from the limited period during which freight operations occur was very persuasive in FRA's policy determination not to exercise its jurisdiction more aggressively.

Of course, most of FRA's regulations apply on their face to all railroads that operate on the general railroad system (as do the light rail lines in San Diego and Baltimore). In the absence of a waiver, these rules technically apply. As a policy matter, FRA has decided, up to this point, not to insist on the filing of waiver applications for the time-separated light rail operations. However, various factors call for a more clearly defined policy with regard to light rail operations on the general system. First, the number of such operations being planned is increasing quickly across the nation. The informal arrangements currently in place for the two current operations will not suffice for a wide variety of light rail operations in many locations.

Second, FRA's recent issuance of two rules (passenger train emergency preparedness and passenger equipment) dealing directly with passenger operations makes it imperative that all current or planned passenger operations to which those rules would apply have a plan for either complying with the rules or seeking a waiver from them. For example, in issuing its passenger equipment rules (49 CFR part 238) in May 1999, FRA made clear that they will apply to light rail operations on the general system, encouraged the filing of waiver applications as early as possible, and noted that the two light rail shared use operations currently in existence were covered by the rule, subject to an appropriate period of consultation and adjustment. 64 FR 25543–25544. It is clear that light rail equipment will not meet many of the passenger equipment standards, such as the 800,000 pound buff strength requirement. In that regard, FRA stated: ''Light rail operators will have to seek a waiver of the requirement and will have to plan their operations in such a way as to maximize the likelihood of obtaining such a waiver.'' *Id.* at 25545.

Finally, from the point of view of regulatory compliance at the Federal and State levels, rail transit operators can presumably benefit from a comprehensive summary of what standards and procedures apply. This will assist in governing current conduct as well as aiding planners of such operations.

FRA's existing published statement of agency policy (49 CFR part 209, Appendix A) does not address light rail operations on the general system. Revising that published statement will provide timely guidance, especially in light of the number of joint use passenger/freight operations currently under development or being contemplated. The proposed changes to Appendix A are shown at the end of this document.

Waiver Petitions Concerning Shared Use of the General System by Light Rail and Other Railroads

Light rail 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. By statute, FRA may grant a waiver of any rule or order if the waiver ''is in the public interest and consistent with railroad safety.'' 49 U.S.C. 20103(d). Waiver petitions are reviewed by FRA's Railroad Safety Board (the ''Safety Board'') under the provisions of 49 CFR Part 211. Waiver petitions must contain the information required by 49 CFR 211.9. The Safety Board can, in granting a waiver, impose any conditions it concludes are necessary to assure safety or are in the public interest. 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.

FRA asks that the light rail operator and all other affected railroads jointly file a Petition for Approval of Shared Use. Like all waiver petitions, a Petition for Approval of Shared Use will be reviewed by the Safety Board. FTA will appoint a non-voting liaison to the Safety Board, and that person will participate in the Safety 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.

General Factors To Address in a Petition for Approval of Shared Use

FRA resolves each waiver request on its own merits based on the information presented and the agency's own investigation of the issues. While FRA cannot state in advance what kinds of waivers will be granted or denied, we can provide guidance to those who may likely be requesting waivers to help ensure that their petitions address factors that FRA will no doubt consider important.

FRA's procedural rules give a general description of what any waiver petition should contain, including an explanation of the nature and extent of

the relief sought; a description of the persons, equipment, installations, and locations to be covered by the waiver; an evaluation of expected costs and benefits; and relevant safety data. 49 CFR 211.9. The procedural rules, of course, are not specifically tailored to situations involving light rail operations over the general system, where waiver petitions are likely to involve many of FRA's regulatory areas. In such situations, FRA suggests that a Petition for Approval of Shared Use address the following general factors.

Description of operations. Explain the frequency and speeds of all operations on the line and the nature of the different operations. Explain the nature of any connections between the light rail and conventional operations.

- If the light rail line will operate on any segments that are not part of the general railroad system (*e.g.*, a street railway portion), describe those segments and their connection with the general system segments. In such situations, explain, using the criteria of this statement of policy, whether the light rail operation is, in the petitioner's view, a commuter operation or urban rapid transit. The petition need not address the commuter/rapid transit issue if the light rail operations will be conducted entirely as part of or over the lines of the general system.
- If the light rail and conventional operations will share any trackage, describe precisely what the respective hours of operation will be for each type of equipment. If light rail and conventional operations will occur only at different times of day, describe what means of protection will ensure that the different types of equipment are not operated simultaneously on the same track, and how protection will be provided to ensure that, where one set of operations begins and the other ends, there can be no overlap that would possibly result in a collision.
- If the light rail and conventional operations will share trackage during the same time periods, 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. Explain the nature of such simultaneous joint use. Describe the system of train control, the frequency and proximity of both types of operations, and all methods that would be used to prevent collisions. Include a quantitative risk assessment concerning the risk of collision between the light rail and conventional equipment under the proposed operating scenario.

Description of Equipment. Describe all equipment that will be used by the light rail and conventional operations. Where the light rail equipment does not meet the standards of 49 CFR part 238, provide specifics on the crash survivability of the light rail equipment, such as static end strength, sill height, strength of corner posts and collision posts, side strength, etc.

Given the structural incompatibility of light rail and conventional equipment, FRA has grave concerns about the prospect of operating these two types of equipment simultaneously on the same track. If the light rail and conventional operations will share trackage during the same time periods, provide an engineering analysis of the light rail equipment's resistance to damage in various types of collisions, including a worst case scenario involving a failure of the collision avoidance systems resulting in a collision between light rail and conventional equipment at track speeds.

Alternative safety measures to be employed in place of each rule for which waiver is sought. The petition should specify exactly which rules the petitioner desires to be waived. For each rule, the petition should explain exactly how a level of safety at least equal to that afforded by the FRA rule will be provided by the alternative measures the petitioner proposes.

Most light rail operations that entail some shared use of the general system will also have segments that are not on the general system. FTA's rules on rail fixed guideway systems will probably apply to those other segments. If so, the petition for waiver of FRA's rules should explain how the system safety program plan adopted under FTA's rules may affect safety on the portions of the system where FRA's rules apply. Under certain circumstances, effective implementation of such a plan may provide FRA sufficient assurance that adequate measures are in place to warrant waiver of certain FRA rules. In its petition, the light rail operator may want to 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. Alternately, conditional approval may be requested at an early stage in the project, and FRA would thereafter review the system safety program plan's status to determine readiness to commence operations. 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.

Factors to Address Related To Specific Regulations and Statutes

Operators of light rail systems are likely to apply for waivers of many FRA rules. FRA offers the following suggestions on factors petitioners may want to address concerning specific areas of regulation. (All ''part'' references are to title 49 CFR.) Parts 209 (Railroad Safety Enforcement Procedures), 211 (Rules of Practice), 212 (State Safety Participation), and 216 (Special Notice and Emergency Order Procedures) are largely procedural rules that are unlikely to be the subject of waivers, so those parts are not discussed further.

Track, Structures, and Signals

Track Safety Standards (Part 213)

For segments of a light rail line not involving operations over the general system, assuming the light rail operation meets the definition of ''rapid transit,'' the track safety standards do not apply. However, for general system track used by both the conventional and light rail lines, the standards apply and a waiver is very unlikely. A light rail operation that owns track over which the conventional railroad operates may wish to consider assigning responsibility for that track to the other railroad. If so, the track owner must follow the procedure set forth in 49 CFR 213.5(c). Where such an assignment occurs, the owner and assignee are responsible for compliance.

Signal Systems Reporting Requirements (Part 233)

This part contains reporting requirements with respect to methods of train operation, block signal systems, interlockings, traffic control systems, automatic train stop, train control, and cab signal systems, or other similar appliances, methods, and systems. In the case of the separate street railway segments of a light rail line, assuming that the system meets the definition of ''rapid transit,'' the reporting requirements of this part do not apply. However, if a signal system failure occurs on general system track which is used by both conventional and light rail lines, and triggers the reporting requirements of this part, the light rail

operator must file, or cooperate fully in the filing of, a signal system report. The petition should explain whether the light rail operator or conventional railroad is responsible for maintaining the signal system. Assuming that the light rail operator (or a contractor hired by this operator) has responsibility for maintaining the signal system, that entity is the logical choice to file each signal failure report, and a waiver is very unlikely. Moreover, since a signal failure first observed by a light rail operator can later have catastrophic consequences for a conventional railroad using the same track, a waiver would jeopardize rail safety on that general system trackage. Even if the conventional railroad is responsible for maintaining the signal systems, the light rail operator must still assist the railroad in reporting all signal failures by notifying the conventional railroad of such failures.

Grade Crossing Signal System Safety (Part 234)

This part contains minimum standards for the maintenance, inspection, and testing of highway-rail grade crossing warning systems, and also prescribes standards for the reporting of system failures and minimum actions that railroads must take when such warning systems malfunction. In the case of the separate street railway segments of a light rail line, assuming that the system meets the definition of ''rapid transit,'' the reporting requirements of this part do not apply. However, if a grade crossing accident or warning activation failure occurs on general system track which is used by both conventional and light rail lines, and triggers the reporting requirements of this part, the light rail operator must file, or cooperate to ensure the filing of, a report to FRA within 24 hours of such an accident or a grade crossing signal system failure report concerning any failure that occurs during its operations. The petition should explain whether the light rail operator or conventional railroad is responsible for maintaining the grade crossing devices. Assuming that the light rail operator (or a contractor hired by this operator) has responsibility for maintaining the grade crossing devices, that entity is the logical choice to file each grade crossing signal failure report, and a waiver is very unlikely. Moreover, since a grade crossing warning device failure first observed by a light rail operator can later have catastrophic consequences for a conventional railroad using the same track, a waiver would jeopardize rail safety on that general system trackage. However, if the conventional railroad is responsible for maintaining the grade crossing devices, the light rail operator will still have to assist the railroad in reporting all grade crossing signal failures. Moreover, regardless of which railroad is responsible for maintenance of the grade crossing signals, any railroad (including a light rail operation) operating over a crossing that has experienced an activation failure, partial activation, or false activation must take the steps required by this rule to ensure safety at those locations. While the maintaining railroad will retain all of its responsibilities in such situations (such as contacting train crews and notifying law enforcement agencies), the operating railroad must observe requirements concerning flagging, train speed, and use of the locomotive's audible warning device.

Approval of Signal System Modifications (Part 235)

This part contains instructions governing applications for approval of a discontinuance or material modification of a signal system or relief from the regulatory requirements of part 236. In the case of the separate street railway segments of a light rail line, assuming that the system meets the definition of ''rapid transit,'' the application requirements of this part do not apply, and no waiver would be necessary. In the case of a signal system located on general system track which is used by both conventional and light rail lines, a light rail operation is subject to this part only if it (or a contractor hired by the operator) owns or has responsibility for maintaining the signal system. If the conventional railroad does the maintenance, then that railroad would file any application submitted under this part; the light rail operation would have the right to protest the application under § 235.20. The petition should discuss whether the light rail operator or conventional railroad is responsible for maintaining the signal system.

Standards for Signal and Train Control Systems (Part 236)

This part contains rules, standards, and instructions governing the installation, inspection, maintenance, and repair of signal and train control systems, devices, and appliances. In the case of the separate street railway segments of a light rail line, assuming that the system meets the definition of ''rapid transit,'' the requirements of this part do not apply, and no waiver would be necessary. In the case of a signal system located on general system track which is used by both conventional and light rail lines, a light rail operation is subject to this part only if it (or a contractor hired by the operation) owns or has responsibility for installing, inspecting, maintaining, and repairing the signal system. If the light rail operation has these responsibilities, a waiver would be unlikely because a signal failure would jeopardize the safety of both the light rail operation and the conventional railroad. If the conventional railroad assumes all of the responsibilities under this part, the light rail operation would not need a waiver, but it would have to abide by all operational limitations imposed on this part and by the conventional railroad. The petition should discuss whether the light rail operator or conventional railroad has responsibility for installing, inspecting, maintaining, and repairing the signal system.

Motive Power and Equipment

Railroad Noise Emission Compliance Regulations (Part 210)

If the light rail equipment would normally meet the standards in this rule, there would be little reason to seek a waiver of it. This part has an exception for ''street, suburban, or interurban electric railways unless operated as a part of the general railroad system of transportation.'' 49 CFR 210.3(b)(2). The petition should address whether this exception may apply to the light rail operation. The greater the integration of the light rail and conventional operations, the less likely this exception would apply. If it appears that the light rail system would neither meet the standards nor fit within the exception, the petition should address noise mitigation measures used on the system, especially as part of a system safety program.

Railroad Freight Car Safety Standards (Part 215)

A light rail operator is likely to move freight cars only in connection with maintenance-of-way work. As long as such cars are properly stenciled in accordance with section 215.305, this part does not otherwise apply, and a waiver would seem unnecessary.

Rear End Marking Devices (Part 221)

This part requires that each train occupying or operating on main line track be equipped with a display on the trailing end of the rear car of that train, and continuously illuminate or flash a marking device. The device, which must be approved by FRA, must have specific intensity, beam arc width, color, and flash rate characteristics. A light rail operation seeking a waiver of this part will need to explain how other marking

devices with which it equips its vehicles, or other means such as train control, will provide the same assurances as this part of a reduced likelihood of collisions attributable to the inconspicuity of the rear end of a leading train. The petition should describe the light rail vehicle's existing marking devices (*e.g.*, headlights, brakelights, taillights, turn signal lights), and indicate whether the vehicle contains reflectors. If the light rail system will operate in both a conventional railroad environment and in streets mixed with motor vehicles, the petition should discuss whether adapting the design of the vehicle's lighting characteristics to conform to FRA's regulations would adversely affect the safety of its operations in the street environment. A light rail system that has a system safety program developed under FTA's rules may choose to discuss how that program addresses the need for equivalent levels of safety when its vehicles operate on conventional railroad corridors.

Safety Glazing Standards (Part 223)

This part provides that passenger car windows be equipped with FRA-certified glazing materials in order to reduce the likelihood of injury to railroad employees and passengers from the breakage and shattering of windows and avoid ejection of passengers from the vehicle in a collision. This part, in addition to requiring the existence of at least four emergency windows, also requires window markings and operating instructions for each emergency window, as well as for each window intended for emergency access, so as to provide the necessary information for evacuation of a passenger car. FRA will not permit operations to occur on the general system in the absence of effective alternatives to the requirements of this part that provide an equivalent level of safety. The petition should explain what equivalent safeguards are in place to provide the same assurance as part 223 that passengers and crewmembers are safe from the effects of objects striking a light rail vehicle's windows. The petition should also discuss the design characteristics of its equipment when it explains how the safety of its employees and passengers will be assured during an evacuation in the absence of windows meeting the specific requirements of this part. A light rail system that has a system safety program plan developed under FTA's rule may be able to demonstrate that the plan satisfies the safety goals of this part.

Locomotive Safety Standards (Part 229)

This part contains minimum safety standards for all locomotives, except those propelled by steam power. FRA recognizes that due to the unique characteristics of light rail equipment, some of these provisions may be irrelevant to light rail equipment, and that others may not fit properly in the context of light rail operations. To the extent that the light rail operation encompasses the safety risks addressed by the provisions of this part, a waiver petition should explain precisely how the light rail system's practices will provide for the safe condition and operation of its locomotive equipment. In order to reduce the risk of grade crossing accidents, it is important that all locomotives used by both conventional railroads and light rail systems present the same distinctive profile to motor vehicle operators approaching grade crossings. If uniformity is sacrificed by permitting light rail systems to operate locomotives with varying levels of illumination, or with lights placed in different locations on the equipment, safety could be compromised. Accordingly, although light rail headlights are likely to be of lower candela, the vehicle design should maintain the triangular pattern required of other locomotives and cab cars to the extent practicable.

Safety Appliance Laws (49 U.S.C. 20301–20305)

Since certain safety appliance requirements (*e.g.*, automatic couplers) are statutory, they can only be ''waived'' by FRA under the exemption conditions set forth in 49 U.S.C. 20306. Because exemptions requested under this statutory provision do not involve a waiver of a safety rule, regulation, or standard (see 49 CFR 211.41), FRA is not required to follow the rules of practice for waivers contained in part 211. However, whenever appropriate, FRA will combine its consideration of any request for an exemption under § 20306 with its review under part 211 of a light rail operation's petition for waivers of FRA's regulations.

FRA may grant exemptions from the statutory safety appliance requirements in 49 U.S.C. 20301–20305 only if application of such requirements would ''preclude the development or implementation of more efficient railroad transportation equipment or other transportation innovations.'' 49 U.S.C. 20306. The exemption for technological improvements was originally enacted to further the implementation of a specific type of freight car, but the legislative history shows that Congress intended the exemption to be used elsewhere so that ''other types of railroad equipment might similarly benefit.'' S. Rep. 96–614 at 8 (1980), reprinted in 1980 U.S.C.C.A.N. 1156,1164.

FRA recognizes the potential public benefits of allowing light rail systems to 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. Any petitioner requesting an exemption for technological improvements should carefully explain how being forced to comply with the existing statutory safety appliance requirements would conflict with the exemption exceptions set forth at 49 U.S.C. 20306. The petition should also show that granting the exemption is in the public interest and is consistent with assuring the safety of the light rail operator's employees and passengers.

Safety Appliance Standards (Part 231)

The regulations in this part specify the requisite location, number, dimensions, and manner of application of a variety of railroad car safety appliances (*e.g.*, handbrakes, ladders, handholds, steps), and directly implement a number of the statutory requirements found in 49 U.S.C. 20301–20305. These very detailed regulations are intended to ensure that sufficient safety appliances are available and able to function safely and securely as intended.

FRA recognizes that due to the unique characteristics of light rail equipment, some of these provisions may be irrelevant to light rail operation, and that others may not fit properly in the context of light rail operations (*e.g.*, crewmembers typically do not perform yard duties from positions outside and adjacent to the light rail vehicle or near the vehicle's doors). However, to the extent that the light rail operation encompasses the safety risks addressed by the regulatory provisions of this part, a waiver petition should explain precisely how the light rail system's practices will provide for the safe operation of its passenger equipment. The petition should focus on the design specifications of the equipment, and explain how the light rail system's operating practices, and its intended use of the equipment, will satisfy the safety purpose of the regulations while providing at least an equivalent level of safety.

Passenger Equipment Safety Standards (Part 238)

This part prescribes minimum Federal safety standards for railroad passenger

equipment. Since a collision on the general railroad system between light rail equipment and conventional rail equipment could prove catastrophic, because of the significantly greater mass and structural strength of the conventional equipment, a waiver petition should describe the light rail operation's system safety program that is in place to minimize the risk of such a collision. The petition should discuss the light rail operation's operating rules and procedures, train control technology, and signal system. If the light rail operator and conventional railroad will operate simultaneously on the same track, the petition should include a quantitative risk assessment that incorporates design information and provide an engineering analysis of the light rail equipment and its likely performance in derailment and collision scenarios. The petitioner should also demonstrate that risk mitigation measures to avoid the possibility of collisions, or to limit the speed at which a collision might occur might occur, will be employed in connection with the use of the equipment on a specified shared-use rail line. This part also contains requirements concerning power brakes on passenger trains, and a petitioner seeking a waiver in this area should refer to these requirements, not those found in 49 CFR part 232.

Operating Practices

Railroad Workplace Safety (Part 214)

This part contains standards for protecting bridge workers and roadway workers. The petition should explain whether the light rail operator or conventional railroad is responsible for bridge work on shared general system trackage. If the light rail operator does the work and does similar work on segments outside of the general system, it may wish to seek a waiver permitting it to observe OSHA standards throughout its system.

There are no comparable OSHA standards protecting roadway workers. The petition should explain which operator is responsible for track and signal work on the shared segments. If the light rail operator does this work, the petition should explain how the light rail operator protects these workers. However, to the extent that protection varies significantly from FRA's rules, a waiver permitting use of the light rail system's standards could be very confusing to train crews of the conventional railroad who follow FRA's rules elsewhere. A waiver of this rule is unlikely. A petition should address how such confusion would be avoided and safety of roadway workers would be ensured.

Railroad Operating Rules (part 217)

This part requires filing of a railroad's operating rules and that employees be instructed and tested on compliance with them. A light rail operation would not likely have difficulty complying with this part. However, if a waiver is desired, the light rail system will need to explain how other safeguards it has in place provide the same assurance that operating employees are trained and periodically tested on the rules that govern train operation. A light rail system that has a system safety program plan developed under FTA's rules may be in a good position to give such an assurance.

Railroad Operating Practices (Part 218)

This part requires railroads to follow certain practices in various aspects of their operations (protection of employees working on equipment, protection of trains and locomotives from collisions in certain situations, prohibition against tampering with safety devices, protection of occupied camp cars). Some of these provisions (*e.g.*, camp cars) may be irrelevant to light rail operations. Others may not fit well in the context of light rail operations. To the extent the light rail operation presents the risks addressed by the various provisions of this part, a waiver provision should explain precisely how the light rail system's practices will address those risks. FRA is not likely to waive the prohibition against tampering with safety devices, which would seem to present no particular burden to light rail operations. Moreover, blue signal regulations, which protect employees working on or near equipment, are not likely to be waived to the extent that such work is performed on track shared by a light rail operation and a conventional railroad, where safety may best be served by uniformity.

Control of Alcohol and Drug Use (Part 219)

FRA will not permit operations to occur on the general system in the absence of effective rules governing alcohol and drug use by operating employees. FTA's own rules may provide a suitable alternative for a light rail system that is otherwise governed by those rules. However, to the extent that light rail and conventional operations occur simultaneously on the same track, FRA is not likely to apply different rules to the two operations, particularly with respect to post-accident testing, for which FRA requirements are more extensive.

Railroad Communications (Part 220)

A light rail operation is likely to have an effective system of radio communication that may provide a suitable alternative to FRA's rules. However, the greater the need for radio communication between light rail personnel (*e.g.*, train crews or dispatchers) and personnel of the conventional railroad (*e.g.*, train crews, roadway workers), the greater will be the need for standardized communication rules and, accordingly, the less likely will be a waiver.

Railroad Accident/Incident Reporting (Part 225)

FRA's accident/incident information is very important in the agency's decisionmaking on regulatory issues and strategic planning. A waiver petition should indicate precisely what types of accidents and incidents it would report, and to whom, under any alternative it proposes. FRA is not likely to waive its reporting requirements concerning train accidents or highway-rail grade crossing collisions that occur on the general railroad system. Reporting of accidents under FTA's rules is quite different and would not provide an effective substitute. However, with regard to employee injuries, the light rail operation may, absent FRA's rules, otherwise be subject to reporting requirements of FTA and OSHA and may have an interest in uniform reporting of those injuries wherever they occur on the system. Therefore, it is more likely that FRA would grant a waiver with regard to reporting of employee injuries.

Hours of Service Laws (49 U.S.C. 21101–21108)

The hours of service laws apply to all railroads subject to FRA's jurisdiction, and govern the maximum work hours and minimum off-duty periods of employees engaged in one or more of the three categories of covered service described in 49 U.S.C. 21101. If an individual performs more than one kind of covered service during a tour of duty, then the most restrictive of the applicable limitations control. Under current law, a light rail operation could request a waiver of the substantive provisions of the hours of service laws only under the ''pilot project'' provision described in 49 U.S.C. 21108, provided that the request is based upon a joint petition submitted by the railroad and its affected labor organizations. Because waivers requested under this statutory provision do not involve a waiver of a

safety rule, regulation, or standard (see 49 CFR 211.41), FRA is not required to follow the rules of practice for waivers contained in part 211. However, whenever appropriate, FRA will combine its consideration of any request for a waiver under § 21108 with its review under part 211 of a light rail operation's petition for waivers of FRA's regulations.

If such a statutory waiver is desired, the light rail system will need to assure FRA that the waiver of compliance is in the public interest and consistent with railroad safety. The waiver petition should include a discussion of what fatigue management strategies will be in place for each category of covered employees in order to minimize the effects of fatigue on their job performance. However, FRA is unlikely to grant a statutory waiver covering employees of a light rail operation who dispatch the trains of a conventional railroad or maintain a signal system affecting shared use trackage.

Hours of Service Recordkeeping (Part 228)

This part prescribes reporting and recordkeeping requirements with respect to the hours of service of employees who perform the job functions set forth in 49 U.S.C. 21101. As a general rule, FRA anticipates that any waivers granted under this part will only exempt the same groups of employees for whom a light rail system has obtained a waiver of the substantive provisions of the hours of service laws under 49 U.S.C. 21108. Since it is important that FRA be able to verify that a light rail operation is complying with the on- and off-duty restrictions of the hour of service laws for all employees not covered by a waiver of the laws' substantive provisions, it is unlikely that any waiver granted of the reporting and recordkeeping requirements would exclude those employees. However, in a system with fixed work schedules that do not approach 12 hours on duty in the aggregate, it may be possible to utilize existing payroll records to verify compliance.

Passenger Train Emergency Preparedness (Part 239)

This part prescribes minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains. FRA's expectation is that by requiring affected railroads to provide sufficient emergency egress capability and information to passengers, along with mandating that these railroads coordinate with local emergency response officials, the risk of death or injury from accidents and incidents will be lessened. A waiver petition should state whether the light rail system has an emergency preparedness plan in place under a state system safety program developed under FTA's rules for the light rail operator's separate street railway segments. Under a system safety program, a light rail operation is likely to have an effective plan for dealing with emergency situations that may provide an equivalent alternative to FRA's rules. To the extent that the light rail operation's plan relates to the various provisions of this part, a waiver petition should explain precisely how each of the requirements of this part is being addressed. The petition should especially focus on the issues of communication, employee training, passenger information, liaison relationships with emergency responders, and marking of emergency exits.

Qualification and Certification of Locomotive Engineers (Part 240)

This part contains minimum Federal safety requirements for the eligibility, training, testing, certification, and monitoring of locomotive engineers. Those who operate light rail trains may have significant effects on the safety of light rail passengers, motorists at grade crossings, and, to the extent trackage is shared with conventional railroads, the employees and passengers of those railroads. The petition should describe whether a light rail system has a system safety plan developed under FTA's rules that is likely to have an effective means of assuring that the operators, or ''engineers,'' of its equipment receive the necessary training and have proper skills to operate a light rail vehicle in shared use on the general railroad system. The petition should explain what safeguards are in place to ensure that light rail engineers receive at least an equivalent level of training, testing, and monitoring on the rules governing train operations to that received by locomotive engineers employed by conventional railroads.

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

The foregoing discussion of factors to address in a petition for approval of shared use concerns all such petitions and, accordingly, is quite general. FRA is willing to provide more specific guidance on where waivers may be likely with regard to light rail operations that are time-separated from conventional operations. FRA's greatest concern with regard to shared use of the general system is a collision between light rail and conventional trains on the same track. Because the results could well be catastrophic, FRA places great emphasis on avoiding such collisions. The surest way to guarantee that such collisions will not occur is to strictly segregate light rail and conventional operations by time of day so that the two types of equipment never share the same track at the same time. This is not to say that FRA will not entertain waiver petitions that rely on other methods of collision avoidance such as sophisticated train control systems. However, petitioners who do not intend to separate light rail from conventional operations by time of day will face a very steep burden of demonstrating an acceptable level of safety. FRA does not insist that all risk of collision be eliminated. However, given the enormous severity of the likely consequences of a collision, the demonstrated risk of such an event must be extremely remote.

There are various ways of providing such strict separation by time. For example, freight operations could be limited to the hours of midnight to 5 a.m. when light rail operations are prohibited. Or, there might be both a nighttime and a mid-day window for freight operation. The important thing is that the arrangement not permit simultaneous operation on the same track by clearly defining specific segments of the day when only one type of operation may occur. Mere spacing of train movements by a train control system does not constitute this temporal separation.

FRA is very likely to grant waivers of many of its rules where complete temporal separation between light rail and conventional operations is demonstrated in the waiver request. The chart below, which differs only slightly from the one published in the joint FRA/FTA policy statement issued in May 1999, 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, 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.

TIME-SEPARATED LIGHT RAIL OPERATIONS: POSSIBLE WAIVERS

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).	If the conventional RR owns the track, light rail will have to observe speed limits for class of track.
233, 235, 236.	Signal and train control	Comply (assuming light rail operator or its contractor has responsibility for signal maintenance).	If conventional RR maintains signals, light rail will have to abide by operational limitations and report signal failures.
234	Grade Crossing Signals	Comply (assuming light rail operator or its contractor has responsibility for crossing devices).	If conventional RR maintains devices, light rail will have to comply with sections concerning activation failures and false activations.
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, and blue signal rules on shared track.	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.

In light of the foregoing, FRA proposes to amend its published statement of agency policy in the manner explained below.

List of Subjects in 49 CFR Part 209

Railroad safety, Reporting and recordkeeping requirements.

The Proposed Policy Statement

In consideration of the foregoing, 49 CFR part 209 is amended as follows:

PART 209—[AMENDED]

1. The authority citation for part 209 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20114, and 49 CFR 1.49.

2. Appendix A to 49 CFR part 209 is amended as follows.

A. Under the heading ''The Extent and Exercise of FRA's Safety Jurisdiction,'' the seventh paragraph (which begins, ''For example, all of FRA's regulations'') is removed, and the following paragraphs are added in its place:

Appendix A to Part 209—Interim Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws

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For example, all of FRA's regulations exclude from their reach railroads whose entire operations are confined to an industrial installation (*i.e.*, ''plant railroads''), such as those in steel mills that do not go beyond the plant's boundaries. *E.g.*, 49 CFR 225.3(a)(1) (accident reporting regulations). Other regulations exclude not only plant railroads but all other railroads that are not operated as a part of, or over the lines of, the general railroad system of transportation. *E.g.*, 49 CFR 214.3 (railroad workplace safety). By ''general railroad system of transportation,'' FRA refers to the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas. Much of this network is interconnected, so that a rail vehicle can travel across the nation without leaving the system. However, mere physical connection to the system does not bring trackage within it. For example, trackage within an industrial installation that is connected to the network only by a switch for the receipt of shipments over the system is not a part of the system.

Moreover, portions of the network may lack a physical connection but still be part of the system by virtue of the nature of operations that take place there. For example, the Alaska Railroad is not physically connected to the rest of the general system but is part of it. The Alaska Railroad exchanges freight cars with other railroads by car float and exchanges passengers with interstate carriers as part of the general flow of interstate commerce. Similarly, an intercity high speed rail system with its own right of way would be part of the general system although not physically connected to it. The presence on a rail line of any of these types of railroad operations is a sure indication that such trackage is part of the general system: the movement of freight cars in trains outside the confines of an industrial installation, the movement of intercity passenger trains, or the movement of commuter trains within a metropolitan or suburban area. Urban rapid transit operations are ordinarily not part of the general system, but may have sufficient connections to that system to warrant exercise of FRA's jurisdiction (*see* discussion of passenger operations, below). Tourist railroad operations are not inherently part of the general system and, unless operated over the lines of that system, are subject to few of FRA's regulations.

The boundaries of the general system are not static. For example, a portion of the system may be purchased for the exclusive use of a single private entity and all connections, save perhaps a switch for receiving shipments, severed. Depending on the nature of the operations, this could remove that portion from the general system. The system may also grow, as with the establishment of intercity service on a brand new line. However, the same trackage cannot be both inside and outside of the general system depending upon the time of day. If trackage is part of the general system, restricting a certain type of traffic over that trackage to a particular portion of the day does not change the nature of the line—it remains the general system.

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B. Appendix A to 49 CFR part 209 is further amended by adding the following paragraphs immediately before the section called ''Extraordinary Remedies:''

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FRA'S Policy on Jurisdiction Over Passenger Operations

Under the Federal railroad safety laws, FRA has jurisdiction over all railroads except urban rapid transit operations not connected to the general railroad system of transportation. 49 U.S.C. 20102. Within the limits imposed by this authority, FRA exercises jurisdiction over all railroad passenger operations, regardless of the equipment they use, unless FRA has specifically stated below an exception to its exercise of jurisdiction for a particular type of operation. This policy is stated in general terms and does not change the reach of any particular regulation under its applicability section. That is, while FRA may generally assert jurisdiction over a type of operation here, a particular regulation may exclude that kind of operation from its reach. Therefore, this statement should be read in conjunction with the applicability sections of all of FRA's regulations.

Intercity Passenger Operations

FRA exercises jurisdiction over all intercity passenger operations. Because of the nature of the service they provide, they are all considered part of the general railroad system, even if not physically connected to other portions of the system.

Commuter Operations

FRA exercises jurisdiction over all commuter operations. Congress apparently intended that FRA do so when it enacted the Federal Railroad Safety Act of 1970, and made that intention very clear in the 1982 and 1988 amendments to that act. FRA has attempted to follow that mandate consistently. A commuter system's connection to other railroads is not relevant under the rail safety statutes. In fact, FRA considers commuter railroads to be part of the general railroad system regardless of such connections.

In general, FRA considers an operation to be a commuter railroad if its primary purpose is transporting commuters to and from work within a metropolitan area and no substantial portion of its operations is devoted to moving people within a city's boundaries. Examples of commuter railroads include Metra and the Northern Indiana Commuter Transportation District in the Chicago area; Virginia Railway Express and MARC in the Washington area; and Metro-North, the Long Island Railroad, New Jersey Transit, and the Port Authority Trans Hudson (PATH) in the New York area. Incidental service from point to point within a an urban area does not make an operation something other than a commuter railroad if the primary purpose is serving commuters within the broader metropolitan and suburban area.

Other Short Haul Passenger Service

The federal railroad safety statutes give FRA authority over ''commuter or other short-haul railroad passenger service in a metropolitan or suburban area.'' 49 U.S.C. 20902. This means that, in addition to commuter service, there are other short-haul types of service that Congress intended that FRA reach. For example, a passenger system designed primarily to move intercity travelers from a downtown area to an airport, or from an airport to a resort area, would be one that does not have the transportation of commuters within a metropolitan area as its primary purpose. FRA would ordinarily exercise jurisdiction over such a system as ''other short-haul service'' unless it meets the definition of urban rapid transit and is not connected in a significant way to the general system.

Urban Rapid Transit Operations

One type of short-haul passenger service requires special treatment under the safety statutes: rapid transit operations in an urban area. Only these operations are excluded from FRA's jurisdiction, and only if they are not connected to the general system. FRA considers an operation to be urban rapid transit if one of its major purposes is, and a substantial portion of its operations is devoted to, moving people from point to point within an urban area where there are multiple stops within the city for that purpose. Such an operation could still have the transportation of commuters within the larger metropolitan area as one of its major purposes without being considered a commuter railroad. For example, the Washington Metro system carries large numbers of people to and from the suburbs daily, but one of its primary functions is to provide transportation within the city, where a large proportion of its station stops are located. Other examples of urban rapid transit systems include the CTA in Chicago and the subway systems in New York, Boston, and Philadelphia. The type of equipment used by such a system is not determinative of its status. However, the kinds of vehicles ordinarily associated with street railways, trolleys, subways, and elevated railways are the types of vehicles

most often used for urban rapid transit operations.

FRA can exercise jurisdiction over a rapid transit operation only if it is connected to the general railroad system, but need not exercise jurisdiction over every such operation that is so connected. FRA is aware of several different ways that rapid transit operations can be connected to the general system. Our policy on the exercise of jurisdiction will depend upon the nature of the connection(s). In general, a connection that involves operation of transit equipment as a part of, or over the lines of, the general system will trigger FRA's exercise of jurisdiction. Below, we review some of the more common types of connections and their effect on the agency's exercise of jurisdiction. This is not meant to be an exhaustive list of connections.

Rapid Transit Connections Sufficient To Trigger FRA's Exercise of Jurisdiction

Certain types of connections to the general railroad system will cause FRA to exercise jurisdiction over the rapid transit line to the extent it is connected. FRA will exercise jurisdiction over the portion of a rapid transit operation that is conducted as a part of or over the lines of the general system. For example, rapid transit operations are conducted on the lines of the general system where the rapid transit operation and other railroad use the same track, and where the rapid transit operation and other railroad have a railroad crossing at grade. In the first example, FRA will exercise its jurisdiction over the operations conducted on the general system. In the second example, FRA will exercise its jurisdiction sufficiently to assure safe operations over the at-grade railroad crossing. FRA will also exercise jurisdiction to a limited extent over a rapid transit operation that, while not operated on the same tracks as the conventional railroad, is connected to the general system by virtue of operating in a shared right of way involving joint control of trains. For example, if a rapid transit line and freight railroad were to operate over a movable bridge and were subject to the same authority concerning its use (*e.g.,* the same tower operator controls trains of both operations), FRA will exercise jurisdiction in a manner sufficient to ensure safety at this point of connection. FRA believes these connections present sufficient intermingling of the rapid transit and general system operations to pose significant hazards to one or both operations.

In situations involving joint use of the same track, it does not matter that the rapid transit operation occupies the track only at times when the freight, commuter, or intercity passenger railroad that shares the track is not operating. While such time separation could provide the basis for waiver of certain of FRA's rules, it does not mean that FRA will not exercise jurisdiction. However, FRA will exercise jurisdiction over only the portions of the rapid transit operation that are conducted on the general system. For example, a rapid transit line that operates over the general system for a portion of its length but has significant portions of street railway that are not used by conventional railroads would be subject to FRA's rules only with respect to the general system portion. The remaining portions would not be subject to FRA's rules. If the non-general system portions of the rapid transit line are considered a ''rail fixed guideway system'' under 49 CFR part 659, those rules, issued by the Federal Transit Administration, would apply to them. Similarly, geographically isolated connections such as rail-rail crossings and common control of bridges will warrant exercise of jurisdiction only with regard to the safety of operations at those locations. However, FRA will apply its equipment, track, signal, and other regulatory requirements at this location as benchmark levels against which safety conditions in waiver applications can be tested.

Rapid Transit Connections Not Sufficient To Trigger FRA's Exercise of Jurisdiction

Although FRA could exercise jurisdiction over a rapid transit operation based on any connection it has to the general railroad system, FRA believes there are certain connections that are too minimal to warrant the exercise of its jurisdiction. For example, a rapid transit system that has a switch for receiving shipments from the general system railroad is not one over which FRA would assert jurisdiction. This assumes that the switch is used only for that purpose. In that case, any entry onto the rapid transit line by the freight railroad would be for a very short distance and solely for the purpose of dropping off or picking up cars. In this situation, the rapid transit line is in the same situation as any shipper or consignee; without this sort of connection, it cannot receive goods by rail.

Mere use of a common right of way in which the conventional railroad and rapid transit operation do not share any means of train control would not trigger FRA's exercise of jurisdiction. In this context, the presence of intrusion detection devices to alert one or both carriers to incursions by the other one would not be considered a means of common train control. These common rights of way are often designed so that the two systems function completely independently of each other. However, where transit operations 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. *See* 49 CFR part 234. 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.

Where these very minimal connections exist, and except with regard to shared highway-rail grade crossings, FRA will not exercise jurisdiction unless and until an emergency situation arises involving such a connection, which is a very unlikely event. However, if such a system is properly considered a rail fixed guideway system, FTA's rules (49 CFR part 659) will apply to it.

Coordination of the FRA and FTA Programs

FTA's rules on rail fixed guideway systems (49 CFR part 659) apply to any such systems or portions thereof not subject to FRA's rules. On rapid transit systems that are not sufficiently connected to the general railroad system to warrant FRA's exercise of jurisdiction (as explained above), FTA's rules will apply exclusively. On those rapid transit systems that are connected to the general system in such a way as warrant exercise of FRA's jurisdiction, only those portions of the rapid transit system that entail operations over the lines of the general system will be subject to FRA's rules.

A rapid transit railroad may apply to FRA for a waiver of any FRA regulations. See 49 CFR part 211. FRA will seek FTA's views whenever a rapid transit operation petitions FRA for a waiver of its safety rules. In granting or denying any such waiver, FRA will make clear whether its rules do not apply to any segments of the operation so that it is clear where FTA's rules do apply.

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Jolene M. Molitoris,

Federal Railroad Administrator.

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