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Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems; Notice and Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Federal Transit Administration

[FRA Docket No. FRA–1999–5685, Notice No. 6]

RIN 2130–AB33

Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems

AGENCIES: Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Policy statement.

SUMMARY: On May 25, 1999, FRA and FTA published a proposed joint statement of agency policy concerning safety issues related to light rail transit operations that take place, or are planned to take place, on the tracks of the general railroad system. 64 FR 59046. In the same docket, on November 1, 1999, FRA published a separate proposed statement of policy providing details on its railroad safety jurisdiction and a detailed explanation of issues that will be addressed in its waiver process related to shared use of the general system. FRA also addressed the process of obtaining waivers of its safety regulations. After consideration of the nearly 50 written comments received and discussions of these issues in a variety of public forums, the agencies now issue this final joint statement of agency policy that explains generally how the two agencies intend to coordinate use of their respective safety authorities with regard to such shared-track operations. FRA is separately publishing today its final Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Operations, which includes a discussion of the comments received in this docket.

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

Joint Statement of Agency Policy Concerning Shared Use of the Tracks of the General Railroad System by Conventional Railroads and Light Rail Transit Systems

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

Some of these existing light rail systems, such as those in San Diego, Baltimore, and Salt Lake City, like some of those now contemplated for the future, would in addition to service provided along community streets, take advantage of underutilized urban freight trackage to provide service that, in the absence of the existing right of way, would be prohibitively expensive. These potential passenger services usually envision light rail operations during the day and freight operations during the night.

FRA has long regulated the nation's railroads for safety purposes. FRA's railroad safety jurisdiction extends to all types of railroads except for ''rapid transit operations in an urban area that are not connected to the general railroad system of transportation.'' 49 U.S.C. 20102. A complete discussion of FRA's safety jurisdiction can be found at 49 CFR part 209, Appendix A. In this context, ''rapid transit operations'' refers to rail systems that are devoted in substantial part to moving people from point to point within a city's boundaries. Such systems may use heavy subway and elevated, or light rail, equipment and will be covered in this statement by the general terms ''local rail transit'' or ''light rail transit.'' FRA's safety jurisdiction covers all commuter railroad operations (even if they use equipment that might be considered light rail or transit equipment) without regard to their general system connections. This statement of policy does not apply to commuter railroad operations.

Until the 1990's, there was no Federal program for addressing the safety of local rail transit systems that are not subject to FRA's safety jurisdiction (i.e., those not connected to the general railroad system). However, faced with the growing movement to develop new rail transit systems, Congress addressed the safety of such systems in the Intermodal Surface Transportation Efficiency Act of 1991, requiring that FTA issue regulations requiring that states having rail fixed guideway mass transportation systems ''not subject to regulation by the Federal Railroad Administration'' establish a state safety oversight program. 49 U.S.C. 5330. Those regulations, which appear at 49 CFR part 659, provide that they apply where FRA does not regulate. Thus, Congress has now defined the Federal role with respect to the oversight of both railroads subject to FRA's safety jurisdiction and rail transit systems not connected to the general railroad system.

The primary issue addressed by this policy statement is the means by which FRA and FTA propose to coordinate their safety programs with regard to rail transit systems that share tracks with freight railroads. Although compatible in terms of track gage, these two forms of rail service are incompatible in terms of equipment. A collision between a light rail transit vehicle with passengers aboard and heavy-duty freight or passenger equipment would likely result in catastrophe.

In general, FRA provides safety oversight of all railroad operations except rapid transit operations that have no significant connection to the general railroad system, such as the Chicago Transit Authority (CTA) in Chicago, the Washington Metro, and the subway systems in New York, Boston, and Philadelphia. As noted, the safety rules of FRA and FTA are mutually exclusive. If FRA regulates a rail system, FTA's rules on state safety oversight do not apply. Conversely, if FRA does not regulate a system, FTA's rules do apply, assuming that the system otherwise meets the definition of a ''rail fixed guideway system'' under 49 CFR 659.5.

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

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

The expansion of rail passenger transportation promises significant benefits to America's communities in

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

Potential for a Collision

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

Shared Use of Highway-Rail Grade Crossings

For decades, the greatest cause of death associated with railroading in America has been collisions between railroad vehicles and highway vehicles at grade crossings. Unlike traditional rapid transit operations, existing and contemplated shared-trackage light rail operations on the general system will typically involve train movements through highway grade crossings. To the extent train movements through grade crossings increase, the collision exposure to the highway user increases. We want to ensure that local rail transit operations are designed and operated to address these serious risks and to prevent grade crossing collisions involving light rail equipment.

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

Shared Infrastructure

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

Employee Safety

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

2. Approaches to Various Forms of Shared Use

Operations on the General System

Local rail transit operations conducted over the track of the general system become part of that system and necessitate FRA safety oversight of rail transit operations to the extent of such shared use. This does not mean that all of FRA's regulations will be applied to all aspects of these operations. First, FRA has no intention of overseeing rail transit operations conducted separate and apart from general system tracks, *i.e.,* the street portion of that service. (As noted above, FRA regulates commuter operations without regard to their general system connections.) Second, FRA anticipates granting appropriate waivers of its rules to permit shared use of general system track by light rail and conventional equipment where the applicant transit systems and railroads commit to alternative safety measures and FRA finds that those measures will ensure safety. FRA has now granted two such waivers: Utah Transit Authority on December 2, 1999 and the New Jersey Transit Corporation on December 3, 1999, and is currently evaluating a waiver request filed by the Santa Clara Valley Transportation Authority.

Where complete temporal separation between light rail and conventional operations is achieved, the risk of collision between the two types of equipment can be minimized or eliminated. Temporal separation involves operating conventional and light rail equipment at completely distinct periods of the day (in San Diego, for example, conventional rail movements occur only between 1:30 a.m. and 4 a.m.) and establishing procedures to ensure strict observation of the defined operating windows. Under these circumstances, FRA will grant necessary waivers concerning rules related to design of the passenger equipment, although other safety concerns (*e.g.*, highway grade crossings) not addressed by temporal separation may not permit waivers. As FRA's separate statement of policy makes clear, FRA may permit simultaneous joint use of track by conventional and light rail equipment where the petitioner meets the steep burden of demonstrating that alternative safety measures will reduce the risk of a collision between these types of equipment to an acceptable level.

Operations Outside the Shared-Track Area

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

Operations Within a Shared Right-of-Way

Although this policy statement addresses shared-track operations, it is important to also acknowledge the situations in which light rail transit operations share a right-of-way, but no trackage with conventional railroads. An example is a light rail system whose tracks run parallel to but between the tracks of a freight line. Where such systems share highway-rail grade crossings with conventional railroads, FRA expects both systems to observe its rules on grade crossing signals that, for example, require prompt reports of warning system malfunctions. In addition, and apart from their safety regulatory programs, FRA and FTA are eager to coordinate with rapid transit agencies and railroads wherever there are concerns about sufficient intrusion detection and related safety measures designed to avoid a collision between rapid transit trains and conventional equipment.

Operations Through a Rail-Rail Crossing at Grade and Other Limited Connections

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

3. FTA and FRA Safety Partnership

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

Coordination on Rail Safety Waiver Requests

Light rail transit operators who intend to share track of the general railroad system with conventional equipment will either have to comply with FRA's safety rules or obtain a waiver of appropriate rules. FRA may grant a waiver ''if the waiver is in the public interest and consistent with railroad safety.'' 49 U.S.C. 20103(d). FRA intends to make its waiver process as smooth and comprehensive as possible. FTA will assist FRA in that effort. In its separate final statement of policy issued today, FRA provides detailed guidance on what factors the petition should address.

Note: FRA and FTA have grave concerns about whether, given their structural incompatibility, light rail and conventional equipment can ever be operated safely on the same trackage at the same time. In the event that petitioners nevertheless seek approval of simultaneous joint use, the petitioners will face a steep burden of demonstrating that extraordinary safety measures will be taken to adequately reduce the likelihood and/or severity of a collision between conventional and light rail equipment to the point where the safety risks associated with joint use would be acceptable.

Like all waiver petitions, a Petition for Approval of Shared Track is reviewed by FRA's Railroad Safety Board. FTA has a non-voting liaison to that board who participates in the board's consideration of all such petitions. This close cooperation between the two agencies ensures that FRA benefits from the insights, particularly with regard to technological, 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 agencies. This working relationship also ensures 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 apply to such operations.

In general, the greater the safety risks inherent in a proposed operation the greater will be the mitigation measures required. It is the intention of FTA and FRA to maintain the level of safety typical of conventional rail passenger operations while accommodating the character and needs of light rail transit operations.

FRA and FTA believe that they can give light rail operators a high degree of confidence that FRA will provide the waivers they need to operate on a time-separated basis in shared-use situations, as already demonstrated in the three cases cited above. To facilitate the waiver process, FRA includes in its final statement of policy issued today a detailed statement of the rules light rail operators should expect to comply with and those rules from which they can expect to receive waivers, provided that the planned light rail operations will be wholly separated in time from conventional rail operations. With this information, light rail operators can plan and design their projects in such a way that they can be confident, absent unusual facts about a particular project presenting some atypical safety hazard, of receiving the waivers needed to operate.

In its petition, the light rail operator 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. Where FRA grants a waiver, the state agency will oversee the area addressed by the waiver, but FRA will actively participate in partnership with FTA and the state agency to address any safety problems. If the conditions under which the waiver was granted change substantially, or unanticipated safety issues arise, FRA may modify or withdraw a waiver in order to ensure safety.

Conclusion

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

Issued in Washington, DC, on June 30, 2000.

Jolene M. Molitoris,

Federal Railroad Administrator.

Nuria I. Fernandez,

Acting Federal Transit Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 209 and 211

[FRA Docket No. FRA–1999–5685, Notice No. 7]

RIN 2130–AB33

Statement of Agency Policy Concerning Jurisdiction Over the Safety of Railroad Passenger Operations and Waivers Related to Shared Use of the Tracks of the General Railroad System by Light Rail and Conventional Equipment

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

ACTION: Final rule and policy statement.

SUMMARY: FRA and the Federal Transit Administration (FTA) have jointly developed a policy concerning safety issues related to light rail transit operations that share use of the general railroad system track with conventional trains. That policy, published elsewhere in today's **Federal Register**, describes how the two agencies will coordinate use of their respective safety authorities over shared track operations. FRA is issuing its own separate 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 statement 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 general railroad system track.

DATES: This statement of policy is effective July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Daniel C. Smith, Assistant Chief Counsel for Safety, FRA, RCC–10, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6029) or David H. Kasminoff, Trial Attorney, FRA, RCC–12, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6043).

Introduction

DOT strongly encourages increased use of railroads to serve the nation's passenger transportation needs. Many communities are using or planning to use railroad lines on which conventional freight and passenger trains operate to move commuters and other passengers in ''light rail'' vehicles. This development holds great promise for enhancing transportation alternatives in metropolitan and suburban areas. However, this shared use of conventional rail lines, which are within FRA's broad safety jurisdiction, also poses some significant safety issues. FTA provides a substantial share of the funding for many of these passenger operations, some of which straddle the jurisdictional line between FRA's and FTA's statutory safety authority. Therefore, FRA and FTA have decided to explain jointly, in a notice published elsewhere in today's **Federal Register**, how they will work to ensure that they exercise jurisdiction in a complementary way over these shared use operations. In this notice, FRA explains in greater detail the extent of its safety jurisdiction and how it will exercise that authority in the shared use context. FRA also explains how those light rail operations that may desire waivers of certain of FRA's rules may go about seeking such waivers.

This notice does not amend any of FRA's substantive safety rules or impose any regulatory burdens not already imposed by those rules. Those rules cover a wide range of safety issues such as equipment, track, signals, grade crossings, and operating practices. By their own terms, they already apply to at least those rail operations, like those addressed here, that occur on lines where conventional trains operate. Nothing in this statement expands the applicability provisions of those rules. The only rules that FRA is amending are its statement of policy on safety jurisdiction, found in appendix A to 49 CFR part 209, and 49 CFR part 211, to which FRA is adding a new appendix containing its statement of policy concerning waivers related to shared use of the general system. FRA believes it is important to ensure that the agency's current thinking on these subjects can be readily located in the CFR.

Although agencies are not required to provide notice and an opportunity to comment on interpretive rules and statements of policy, FRA did so here to ensure that it had the benefit of the views of interested parties in developing its policy. Because of the substantial overlap in subject matter between FRA's proposed statement of policy (published November 1, 1999, at 64 FR 59046) and the joint FRA/FTA statement (published May 25, 1999, at 64 FR 28238), we concluded it made sense to have the comment periods on both statements run concurrently. Therefore, we extended the original comment period on the joint statement to coincide with the comment period on this statement (64 FR 58124). Then, based on a request from the major organization representing rail commuter and transit operations, we extended the comment deadline again, to February 14, 2000. We think this public process gave all concerned ample opportunity to develop and convey their views, and we have spent a great deal of time reviewing the many comments we received.

I. Discussion of Comments

FRA received nearly 50 responses concerning its proposed statement of agency policy, including comments from: state and local governments and transportation authorities; transit agencies; transportation planners and consultants; citizen groups; a railroad labor union; the association representing the interests of conventional railroads; and the association representing the interests of the rail transit industry. Discussions follow with respect to the primary issues raised by the commenters. In light of the comments received, FRA has reconsidered some aspects of its proposed policy and has elected to adopt certain portions of the policy without substantive change from what FRA proposed.

The commenters addressed many of the important topics discussed in FRA's proposal, including the extent and exercise of FRA's jurisdiction, shared use of the general railroad system of transportation by light rail and conventional rail equipment, shared use of railroad rights of way by light rail and conventional rail equipment, and the nature of the waiver process involving shared-use operations. Several commenters applauded the agencies' efforts to clarify how FRA and FTA will exercise their respective authorities and provide guidance on how to use FRA's waiver process in this context. Many commenters had suggestions on how FRA could improve its expression of its policy, and a few simply opposed FRA's exercise of its jurisdiction, whether generally over light rail operations on the general system or specifically over their own operation. The major themes that emerged from FRA's review of the comments are as follows:

- FRA's proposed definitional distinction between ''commuter railroad'' and ''rapid transit,'' which involves determining the primary purpose of the operation and whether a substantial portion of the operation is devoted to moving people within a city's boundaries, is viewed by some commenters as improperly based in FRA's statutory authority or too vague.

• FRA should establish an administrative process to resolve jurisdictional questions, especially those involving light rail projects still in the planning stages.

• The ''proposed restrictions'' (apparently some commenters did not realize that FRA's rules already apply to these operations) on shared use of the same trackage by light rail and conventional rail equipment are unjustified because of added compliance costs and the possible discouraging effect on the development and expansion of light rail transit service. Certain commenters asked FRA to emulate what they understand as the European approach and permit simultaneous joint use of the same trackage by light rail and freight trains.

• The shared-use waiver petition process is too burdensome to transit system operators.

• FRA needs to explain its regulatory role in cases of a light rail transit operation sharing a right-of-way but no trackage with a conventional railroad.

FRA Jurisdiction

General Issues

Several commenters, including the Maryland Transit Administration (MTA) and the New Starts Working Group (NSWG),[1] question the way in which FRA stated the extent of its jurisdiction over light rail operations in the proposed policy statement. MTA concludes that, under 49 U.S.C. 20101, FRA's jurisdictional authority must be based upon the nature of the operational connection between two systems, and that FRA's jurisdictional authority does not derive from a mere connection of a rapid transit operation to the general system. In response, FRA notes that the statute excludes only rapid transit systems ''not connected to'' the general system and does not elaborate on the characteristics of a sufficient connection, which could reasonably lead to the conclusion that any connection (even a ''mere'' one) will suffice. Nevertheless, as its proposed policy makes clear, FRA takes into account the nature of the connection in determining where to exercise its jurisdiction, and generally construes ''connected to'' as meaning that a rapid transit system is operated as a part of, or over the lines of, the general system. Of course, the general system may include tracks owned by the rapid transit system over which conventional passenger or freight trains operate.

The NSWG notes that its suggested changes to the policy statement do not ''offer a different view of FRA's jurisdiction than the one FRA itself offers.'' Instead, NSWG takes issue with particular aspects of how FRA has expressed its jurisdictional reach. NSWG contests FRA's suggestion that ''urban rapid transit'' is an exception to or special category of ''commuter and other short-haul railroad passenger operations'' instead of a completely separate category over which FRA lacks jurisdiction. The commenter does not wish to see the final policy statement imply a presumption that a rail operation is automatically a commuter or short-haul operation under FRA's jurisdiction unless it is an exceptional and special type of short-haul operation. FRA appreciates NSWG's close reading of 49 U.S.C. 20102, but believes that reading would not produce jurisdictional conclusions different from those rendered under FRA's reading. Whether ''rapid transit operations in an urban area'' are a type of ''short-haul railroad passenger service'' or a separate subset of the larger group of ''railroads,'' the statute excludes only one category of rapid transit operations, i.e., those that are ''in an urban area'' and not connected to the general system. Under either reading, a rail operation is presumptively covered by the statute unless the conditions of the exception apply.

The NSWG also requests that FRA correct some statements in the policy statement that NSWG believes blur the distinction between questions of jurisdiction and questions of the agency's discretionary enforcement. For example, under the section describing FRA's policy on the exercise of its safety jurisdiction, FRA states on page 59049 that it ''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; . . . .'' The NSWG requests deletion of this statement from a discussion of the *exercise* of FRA's jurisdiction because FRA does not have statutory jurisdiction to regulate urban rapid transit operations not operated on or over the general railroad system. In addition, the NSWG objects to FRA's statement on page 59050 that ''it considers some connections to the general system to be insufficient to warrant *exercise* of its jurisdiction over a transit operation.'' (Emphasis added.) The NSWG finds this statement to be misleading, arguing that some rapid transit connections to the general system are so incidental and insufficient that FRA legally does not even ''have'' the jurisdiction over the rapid transit system that FRA says it is choosing not to ''exercise.''

In response, FRA notes that its final statement of agency policy concerning jurisdiction included in Appendix A to part 209 of the CFR, as amended by this notice, is perfectly clear as to where FRA believes it lacks jurisdiction. Nothing FRA has said suggests that FRA could exercise jurisdiction it does not have. Moreover, it is correct in literal terms to say that FRA does not exercise jurisdiction where it either lacks jurisdiction or chooses not to exercise it, and it is sometimes useful in certain contexts to combine those two categories to give the reader a clear picture of what FRA believes is outside of both the extent and exercise of its jurisdiction. For example, most of FRA's rules contain an applicability section that, among other things, excludes urban rapid transit systems not connected to the general system, but also contain the statutory definition of ''railroad'' that removes such operations from its jurisdiction. *See, e.g.,* 49 CFR 240.3 and 240.7. Based on NSWG's comment, however, we have taken pains in this document to distinguish the existence of jurisdiction from its exercise.

Definitions of Commuter Railroad and Rapid Transit

As FRA acknowledged in its proposal, the statutory definition of ''railroad'' uses the terms ''commuter or other short-haul railroad passenger service'' and ''rapid transit operations in an urban area'' without providing a definition of either type of service. For a transit system planning to build a new operation that will *not* be connected to the general railroad system, resolution of the question of whether the service will be labeled as commuter or rapid transit service is crucial.[2] Several commenters objected to FRA's definitions of commuter service and rapid transit in an urban area, and some suggested that FRA's definitions did not include certain factors they considered vital. However, except for one commenter that offered a definition of ''rapid transit,'' none of the commenters actually recommended specific alternative definitions.

The Southeastern Pennsylvania Transportation Authority (SEPTA) contends that FRA's definition of ''commuter railroad'' is arbitrary and

[1] NSWG indicates in its comments that it is a coalition of nearly 40 transit properties, cities, and private sector companies committed to the continued growth of rail transit in the United States.

[2] If the operation is a commuter railroad, FRA has jurisdiction even if there is no connection to any other railroad, and in fact considers the operation itself to be part of the general railroad system.

generic, and bears little or no relation to the underlying safety and policy concerns embodied in the statute. SEPTA expressed concern that under what it considers FRA's sweeping and somewhat vague definition of commuter service, the overwhelming majority of transit operations of all types operated by SEPTA (bus, trolley, streetcar, and rapid transit) could be viewed as possessing commuter characteristics. SEPTA stressed that discerning jurisdiction from whether a transit system's primary purpose is transporting commuters to and from work within a metropolitan area ignores not only various unrelated characteristics of the service, such as type of equipment and frequency of service, but also historical and widely held notions regarding the limited scope of Federal regulation of transit operations. In response, FRA notes that its proposed definitions were designed to give life to the sparse statutory language with a very keen sense of Congress' concerns. As explained at length in the proposed statement and as is clear from the statutory language, Congress specifically intended that FRA not make jurisdictional determinations based on the type of rail equipment being used but rather on the nature of the operation.

The Port Authority of New York & New Jersey (PATH) commented that FRA is ignoring the plain meaning of words when it states on page 59049 of the proposal that ''it is the nature and location of the [rapid transit] operation, not the nature of the equipment, that determines whether FRA has jurisdiction under the safety statutes.'' In this regard, PATH argues that FRA is creating an arbitrary distinction between ''commuter railroads'' and ''rapid transit operations'' by looking to the primary purpose of each type of service. PATH believes that since commuter railroads and rapid transit operations both transport people, the distinction between a ''commuter railroad'' transporting commuters to and from work within a metropolitan area and a ''rapid transit operation'' moving people from point to point within an urban area has no relevance to the determination of jurisdiction under the Federal railroad safety laws. Even assuming that the basis for the distinction is legally correct, PATH is concerned that FRA's decision as to what constitutes a ''substantial portion'' of an operation will be made in an arbitrary manner.

In response, FRA again notes that it believes that Congress intended that the type of equipment used in a rail operation not be a jurisdictional factor, and that the word ''railroad'' be read to include ''any form of nonhighway ground transportation that runs on rails or electromagnetic guideways.'' 49 U.S.C. 20102. That statute speaks of commuter ''service'' and rapid transit ''operations,'' not the equipment used in either service. Given the vast range of rail passenger equipment already in use in this country and available from suppliers around the world, basing jurisdictional decisions on the type of equipment is an impossible task. There is simply no rational basis for drawing clear jurisdictional lines between types of equipment or for thinking that Congress intended FRA to do so. More important, if equipment were the deciding factor, the equipment outside of FRA's jurisdiction could run anywhere at any time, including mixed in with conventional freight and passenger operations without regard to the attendant safety risks of collisions between equipment of vastly different structural strengths, and yet avoid FRA's regulatory program. There is no evidence of such an intent in the statute.

PATH also cites in its comments to the Transportation Research Board's (TRB) definition of rapid transit. TRB defines a rapid transit system as:

> A transit system that generally serves one urban area, using high speed, electrically powered passenger rail cars operating in trains in exclusive rights-of-way without grade crossings (Chicago is an exception) and with high platforms. The tracks may be in underground tunnels, on elevated structures, in open cuts, at surface level, or any combination thereof. Some local terms use for rail rapid transit are the elevated, the metro, the metropolitan railway, the rapid, the subway, the underground.

PATH did not provide a citation to the TRB document in which this definition appears. FRA notes that the definition begins in a circular fashion by defining rapid transit as a ''transit system'' without explaining what makes a system ''transit.'' Arguably, then, this definition merely describes the typical physical characteristics of a rail transit system without addressing what operational characteristics make it transit. The definition states that such systems generally operate in an urban area in ''exclusive rights-of-way without grade crossings.'' That is certainly true with regard to most systems FRA considers to be urban rapid transit. However, if FRA adopted this definition, the vast majority of the light rail systems (including those in operation in San Diego, Baltimore, and Salt Lake City) would be outside the definition of urban rapid transit (and, therefore, outside the sole statutory exception) so that even their street railway portions outside of the area of shared use would not be considered ''rapid transit.'' None of these light rail systems operates in an exclusive right-of-way, and they all have grade crossings. FRA's rationale for not exercising jurisdiction over their non-shared-use segments is that these are, at least in some cases, rapid transit systems that would be outside of FRA's jurisdiction but for their operation over the general system, and that the portions where use is not shared can be effectively regulated under FTA's program. Adoption of PATH's preferred definition would point in the direction of FRA's assertion of jurisdiction over those entire systems rather than just their shared use portions. Moreover, the TRB definition provides no help with reading the phrase ''commuter or other short-haul railroad passenger service'' in the statute. Under TRB's definition, a system would be considered rapid transit based on its physical characteristics even if its exclusive business was hauling commuters. Of course, FRA believes that Congress has clearly directed the agency to assert jurisdiction over commuter operations.

While we appreciate PATH's being the only commenter to offer an alternative to FRA's definitions, we find PATH's suggestion inappropriate for use in this context. FRA has struggled to develop definitions of these terms that embody what we believe was the intent of Congress. We think that Congress flatly wanted FRA to have and exercise jurisdiction over all commuter operations and to not have or exercise jurisdiction over urban railroad transit operations that stand apart from the general rail system. We doubt that Congress considered how difficult it may be to draw the line where systems have characteristics of both types of operations. We have based our definitions, as best we could, on the plain meaning and legislative history of the statutory terms as used in the railroad safety statutes. Also, in a non-safety context, Congress has listed certain specific rail systems as commuter authorities in the Northeast Rail Service Act of 1981 (''NERSA''), Pub. L. No. 97–35, 45 U.S.C. 1104(3).[3] In subsequently defining ''railroad'' in the safety statutes, Congress clearly intended to include ''commuter service.'' 49 U.S.C. 20102. We think the

[3] The statute provides that ''commuter authority'' includes the Metropolitan Transportation Authority, the Connecticut Department of Transportation, the Maryland Department of Transportation, the Southeastern Pennsylvania Transportation Authority, the New Jersey Transit Corporation, the Massachusetts Bay Transportation Authority, and the Port Authority Trans-Hudson Corporation.

1981 statute is a useful guide as to Congress' concept of commuter service, at least with regard to the listed systems. The same committees of the same Congress produced both NERSA in 1981 and the 1982 safety legislation and used very similar terminology to refer to commuter operations, and the legislative history of the 1982 safety amendments expressly acknowledges what was then the recent transition of some commuter service to new commuter authorities, which NERSA had authorized. We see no reason to conclude that Congress intended that the particular systems it identified as commuter operations in 1981 be considered anything but commuter operations under the safety statutes. Therefore, we have amended our definition of commuter operations to include, at a minimum, the systems Congress listed in 1981. Of course, we recognize that the listed authorities could undertake new operations that differ substantially from those existing at the time of NERSA, and that the statute would not provide guidance with respect to such new and different operations.

We are also revising the definitions of ''commuter railroad'' and ''urban rapid transit'' to remove as a consideration whether ''a substantial portion'' of a system's operations is devoted to moving people from station to station within a city, and to focus instead on whether such service is a ''primary function'' of the system or ''an incidental function'' of its service. The ''substantial portion'' language suggested that there could be some numerical threshold of intra-urban service that could provide a bright line. Unfortunately, FRA is not aware of any such quantitative bright line, and must instead focus in a more qualitative way on how a system functions and whether such intra-urban service is truly a primary or incidental function of a system.

Although none of the commenters offered an effective alternative to the definitions we had proposed, they did give us several factors to consider and articulated a strong desire for greater clarity on the commuter/rapid transit distinctions. Toward that end, we have refined the definitions of those terms by noting which types of service are presumptively commuter or rapid transit and what criteria to apply in determining the proper characterization of a system that falls outside of the presumptions. Under the final policy, FRA's jurisdictional determinations will begin with two basic presumptions. First, if there is a statutory determination (such as NERSA) that Congress considers a particular service to be commuter rail, FRA will respect that determination and consider the service to be a commuter railroad. Second, a system to which the first presumption does not apply will be presumed to be an urban rapid transit system if it is a subway or elevated operation with its own track system on which no other railroad may operate, has no highway-rail crossings at grade, operates within an urban area, and moves passengers within the urban area as one of its major functions.

Where neither of the two presumptions applies, FRA will look at each system on a case-by-case basis and apply the following criteria:

Indicators of urban rapid transit:

- Serves an urban area and may also serve its suburbs.
- Moving passengers from station to station within the urban boundaries is a major function of the system and there are multiple station stops within the city for that purpose.
- The system provides frequent train service even outside the morning and evening peak periods.

Indicators of a commuter railroad:

- Serves an urban area, its suburbs, and more distant outlying communities in the greater metropolitan area.
- The system's primary function is moving passengers back and forth between their places of employment in the city and their homes within the greater metropolitan area, and moving passengers from station to station within the immediate urban area is, at most, an incidental function.
- The vast bulk of the system's trains are operated in the morning and evening peak periods with few trains at other hours.

As several commenters recommended, this more refined analysis looks at factors such as the system's geographical reach within a metropolitan area and the frequency of service. The presumptions also resolve many issues without the need for further analysis.

Process for Resolving Jurisdictional Questions

Several commenters suggested that, in addition to setting forth meaningful criteria for determining the scope of its jurisdiction over light rail in shared corridors, the policy statement should also describe what administrative options are available within FRA for resolving jurisdictional questions. The American Public Transportation Association (APTA) urged FRA to adopt a pre-waiver review process to discuss FRA's jurisdiction. Consistent with APTA, the NSWG suggested that FRA establish an informal process for transit systems to secure jurisdictional determinations without submitting to FRA jurisdiction. The NSWG stated that FRA could offer transit systems the option to use a bifurcated approach for the submission of waiver petitions. In part one, the transit system could offer facts and legal arguments sufficient to permit FRA to render a threshold jurisdictional determination, and in part two (assuming that FRA has jurisdiction) the transit system would submit its comprehensive waiver petition.

In response to these comments, FRA stresses that it is always willing to meet with transit agency officials at the earliest stages of a project to determine if the proposed operation would be subject to FRA jurisdiction, and welcomes the opportunity to periodically consult with these individuals throughout the entire planning and implementation of a project under our jurisdiction. FRA recognizes that the equipment choices and right-of-way alignment options are complex issues, the resolution of which may be aided if a transit agency receives early guidance from the agency concerning FRA jurisdiction. Accordingly, FRA has amended its policy to include an informal method for obtaining jurisdictional determinations from FRA early in the process before preparation of a waiver application. The mere submission of a request for FRA's views on whether it has jurisdiction over an entity would not constitute submission to FRA's jurisdiction or acquiescence in FRA's eventual determination. Of course, FRA would have to base such determinations on the facts presented to it, and any significant changes in the system after its determination could require revisiting that ruling.

Jurisdiction Over Particular Operations

Four commenters directed their comments to the issue of whether FRA has statutory jurisdiction over their particular rail operations.

MTA considers the proposal to be an unwarranted and improper exercise of FRA's jurisdiction as it relates to MTA's light rail system. MTA states that it will use every available safety measure to ensure the safety of its system, and will proceed with its dialogue with FRA, but continues to believe that FRA's attempt to exercise jurisdiction over its light rail system is inappropriate under existing law. MTA argues that it is not the mere connection to the general system through which FRA's jurisdictional

authority flows, but rather the nature of the operational connection between two systems. In this regard, MTA believes that the minimal intrusion caused by the operation of one freight train every other night on its central light rail line does not abrogate the statutory exclusion for rail rapid transit systems set forth in 49 U.S.C. 20101.

PATH indicates in its comments that it is concerned with only the issue of jurisdiction, and not with the policy statement's discussion of shared facilities, since the PATH system does not share track with any other operator. PATH stresses that since, in its view, it shares virtually no common characteristics with the Long Island Railroad, MARC, or VRE, it should not be included by FRA as an example of a ''commuter railroad.'' PATH concludes that, when applied to its operation, FRA's proposed definition of a transit system as an operation that devotes a substantial portion of its operations to moving people from point to point within an urban area would clearly result in the classification of PATH as a rapid transit system. At the same time, PATH argues that FRA has no reasonable basis for looking at the characteristics of the passengers who ride PATH rather than the characteristics of the equipment to determine if it has jurisdiction. PATH's comments do not mention that a federal appellate court ruled that FRA had not abused its discretion when, in 1996, it determined that PATH is a railroad within its jurisdiction. *Port Authority Trans-Hudson Corp.* v. *Federal Railroad Administration.,* No. 97–1103 (D.C. Cir., Dec. 15, 1997), *cert. denied,* 525 U.S. 818 (1998).

The Port Authority Transit Corporation (PATCO) in Philadelphia, Pennsylvania states that because it is an intra-urban mass transit system not connected to the general railroad system, it is subject only to FTA's authority. Since PATCO is regulated by FTA, and the respective jurisdictions of FTA and FRA are mutually exclusive, PATCO requests that the final joint policy statement make clear that it is not subject to FRA's regulations.

SEPTA devotes much of its comments to arguing that its planned passenger operation between Philadelphia and Reading, Pennsylvania, a distance of 62 miles, should not be subject to FRA's jurisdiction. One alternative being considered for that line is a light rail operation sharing a corridor with a freight line. SEPTA contends that, despite being primarily a commuter line, this operation would be outside of FRA's jurisdiction because it would serve other transit needs, have separate trackage in the freight corridor, and use light rail equipment.

While FRA is including a summary in this document of each operation's assertions for public informational purposes, this policy statement is not the appropriate vehicle for resolving the jurisdictional issues involving the peculiar facts of particular operations. Instead, FRA has addressed or will address each operation's concerns in the course of separate meetings and/or written correspondence.

Effect of FRA Jurisdiction on the Applicability of Other Railroad Laws

Two commenters, APTA and the NSWG, requested that FRA add language to the policy statement to clarify that if a rail operation is subject to FRA jurisdiction for rail safety purposes, it does not necessarily mean that the operation is also covered by other Federal railroad statutes such as the Federal Employers' Liability Act, the Railway Labor Act, and the Railroad Retirement Act. Likewise, the commenters argue that being within the scope of those other railroad laws should have no relevance to FRA in determining whether a railroad system is deemed a railroad for rail safety purposes. FRA agrees with the points made. These other Federal statutes have their own definitions, purposes, and legislative histories. FRA does not consult them in making jurisdictional determinations under the safety statutes. Moreover, FRA does not intend that its jurisdictional determinations have any bearing on whether a rail operation is a ''railroad'' for purposes of those other statutes. While there are some specific links in the safety statutes to some of those other laws (e.g., the rail safety statutes incorporate the dispute resolution process of the Railway Labor Act for handling certain disputes related to safety-based discrimination against employees, 49 U.S.C 20109(c), and the Federal Employers' Liability Act contains a provision precluding a finding of contributory negligence against any employee where the railroad's violation of any safety statute contributed to the employee's injury or death, 45 U.S.C. 53, we do not believe that those links indicate a Congressional intent that FRA's safety jurisdiction would be affected by the reach of those statutes.

Shared Use and Temporal Separation.

Simultaneous Joint Use Of Track by Light Rail and Conventional Equipment

In the discussion of ''Waiver Petitions Concerning Shared Use of the General System by Light Rail and Other Railroads,'' in which FRA explained the general factors that should be addressed in a Petition for Approval of Shared Use, FRA indicated that light rail operators intending to share trackage on the general railroad system with conventional rail equipment must either comply with FRA's safety rules or obtain a waiver of appropriate rules. 64 FR at 59050. FRA explained that a collision between an occupied light rail transit vehicle and conventional freight or passenger equipment would have catastrophic consequences because the light rail vehicles are not designed to withstand such a collision. 64 FR 59049. FRA stated that the surest way to ensure that such collisions do not occur is to strictly segregate light rail and conventional operations by time of day, and that the agency is likely to grant waivers of many of its rules where complete temporal separation between the incompatible equipment is demonstrated. 64 FR 59055. Some commenters welcomed FRA's preference for temporal separation, while others saw it as too restrictive and not sufficiently open to the possibility that light rail and conventional equipment can operate safely and simultaneously on the same track.

Among the comments received, APTA stressed that the final policy statement should reflect the principles of promoting more livable communities and taking advantage of underutilized freight corridors to provide service that would otherwise be too expensive, and noted that the expansion of rail passenger transportation would benefit America's communities in terms of reduced highway congestion, reduced pollution, short commuting times, and increased economic opportunities. APTA requested that the shared-use waiver process be flexible, expeditious, and recognize already existing state safety oversight procedures in order to permit local authorities the maximum flexibility in designing, building, and operating new light rail systems.

APTA believes that a broad approach examining relative risk is vital to developing an appropriate long-term policy promoting light rail. In addition to assessing the safety impact of diverting traffic to highways, FRA and FTA should explore European system safety techniques which permit operation of differing equipment designs on the same track based on crash avoidance philosophies (e.g., advanced train control systems). FRA should be open to new approaches for shared-use operations, e.g., fail safe separation, train orders and track warrants, positive train control, and operating practices and technological

improvements that may warrant waivers from certain rules after sufficient risk analysis.

Various members of the Committee for Better Transit, Inc. (CBTI) commented that FRA did not justify the need to restrict shared use of the same track by freight and light rail service, and concluded that added compliance costs will prevent the expansion of rail transit systems. The commenters urged adoption of more flexible European-style requirements involving positive train separation between light rail/rapid transit and conventional freight/passenger trains operating on the same trackage. CBTI also urged FRA and FTA to consider operational factors such as speed and traffic volume. With the exception of traffic on the Northeast Corridor, a full mixing of conventional railroad and light rail traffic should occur with the use of proper train control methods (e.g., positive train stop and speed control). CBTI also contended that FRA is proposing to adopt a double standard, since automobiles, taxicabs, and school buses currently share the road with heavy trucks that may be transporting hazardous materials.

The City of Santa Clarita, California requested that FRA permit shared use of rail lines by freight and passenger vehicles during the same time of day, noting that to do otherwise would hinder the potential development of electric and diesel light rail lines in urban and rural areas. The commenter also noted that although light rail vehicles in European countries simultaneously share trackage with heavy trains, no injuries or deaths have occurred.

The Joint Policy Advisory Committee on Transportation (JPACT) stated that the imposition of total temporal separation as a condition for granting a waiver is too restrictive and costly, and recommended considering factors such as positive train separation, safety standards, signal system quality, dispatch procedures and coordination, train speeds, and overall line usage. JPACT also recommended that FRA work with FTA and APTA to study transit systems in Europe that operate on the same trackage as freight without absolute temporal separation.

The State of Delaware Department of Transportation (Delaware) expressed concern in its comments about the policy statement's de facto effect of discouraging increased shared use of tracks for light rail transit systems and stressed the need to avoid hampering implementation of light rail projects. Although waivers are an option, Delaware contends that FRA provides no insight into what types of alternative measures would be acceptable in lieu of complete temporal separation of light rail service from freight traffic. In this regard, the commenter stated that advances in train car designs can increase the crashworthiness of light rail vehicles, and that positive train stop technology can help avoid collisions. Delaware also noted concern about the steep evidentiary burden facing a petitioner that seeks a waiver.

Mr. Gordon J. Thompson, an urban transportation planner and consultant, believes that issuance of the policy as proposed would be an insult to the American transit industry and to state transportation regulatory agencies. He contends that the proposal could stymie electric rail transit development at a time when the need to encourage the use of public transportation is a growing concern. The policy could make capital and operating costs higher than necessary to implement and operate new rail transit systems, at a time when transit improvement funds remain scarce.

In its comments, SEPTA stressed that a shared-use option with freight railroad carriers is fundamental to developing a cost effective and environmentally sound solution to mobility challenges. The commenter states that temporal separation should not be viewed as the only option, and FRA should allow separation that employs a combination of track switches, interlocking signals, advanced control technology, and other technical safeguards. In this regard, SEPTA notes that the proposed policy statement discusses physical safety standards for different vehicle types and safety considerations with respect to different operating strategies, yet cites no standards for measuring the safe execution of various operating strategies in delivering transportation services. The phrase ''the safety typical of conventional rail passenger operations'' lacks a definition of what it means or how it should be measured.

The North Central Texas Council of Governments expressed support and approval of the shared use policy for light rail transit operating on conventional railroad tracks. The commenter believes that the proposed policies concerning passenger and rail employee safety, coordinated operations of track infrastructure, and temporal separation are well reasoned and will allow for the development of new transit opportunities in abandoned or lesser used rail corridors.

The North (San Diego) County Transit District (NCTD) believes that temporal separation provides a level of safety for train crews and the public that can permit optimal use of the infrastructure, but acknowledges that this approach must be supported by a detailed operating plan with appropriate procedures to ensure that no concurrent track usage occurs. NCTD strongly endorses the concept of guidance for the shared use of the general railroad system by conventional and light rail operations, and agrees with FRA and FTA that the primary purpose of the guidance should be the coordination of safety programs.

New Jersey Transit (NJT) urged FRA to exercise its jurisdiction over those elements of shared trackage used by conventional rail operations (e.g., track, signals, grade crossing warning devices, dispatching), but not over light rail operating practices or light rail car design standards. In this regard, NJT believes that time separation, operating practices (including the unambiguous transition from one service to another), and safety technologies should provide FRA with adequate assurances of the safety of light rail operations on the general system. NJT requests that the final policy statement state that there would be no requirement to file a waiver petition when light rail cars operate on the general system provided that the transit agency can demonstrate that adequate safety measures are in place to eliminate the risks presented by shared use. Moreover, the commenter recommended that the final policy statement specifically provide that once a transit agency demonstrates that there will be temporal separation through a safe operating plan and appropriate technology, and indicates that the light rail operations will be subject to an FTA-approved State Safety Oversight Program, FRA would not exercise jurisdiction.

In support of its contention that FRA should not require the filing of waivers for light rail equipment used in a temporally-separated operation, NJT indicates that it would be burdensome and inappropriate to expect the transit agency to explain how it will provide for an equivalent level of safety. Completion of a detailed waiver application would be particularly burdensome to a small project, especially if the interaction between heavy and light rail is minimal or nonexistent.

Finally, NJT urges FRA to study whether shared use operations can be permitted without temporal separation. In this regard, the commenter states that the proposed policy statement is concerned with crashworthiness, but fails to give equal consideration to crash avoidance technology (e.g., derails, signaling systems, and dispatching).

FRA has carefully considered all of the comments. However, many of them are based on what FRA believes are two critical misunderstandings, i.e., the view that FRA's policy will somehow impose new compliance burdens, and the notion that FRA has ruled out simultaneous use of track by light rail and conventional equipment under all circumstances.

Several commenters seem not to understand that FRA's policy statement imposes no new burdens, but rather suggests how relief from existing regulatory burdens might be obtained by waiver. Wholly independent of this policy, FRA's rules apply to these systems today and would continue to apply whether or not FRA issued a statement of policy on shared use. If waivers are not obtained, those rules apply as they are written. For example, FRA's passenger safety standards (49 CFR part 238) alone would preclude all light rail operations on the general system, since light rail vehicles do not meet the structural and other standards found in that rule. (Of course, the rule has a grandfathering provision that, under certain conditions, makes one basic structural requirement inapplicable to certain equipment already in use in 1999.) Therefore, it is very much in the commenters' interest for FRA to provide guidance on how its waiver process will work in this context and how best to address the issues of concern to FRA. Although the waiver process will entail some cost to the light rail operation, that cost is occasioned by FRA's existing waiver rules (49 CFR part 211) rather than this statement, and the alternative is the full cost of compliance with existing substantive rules.

Various commenters who oppose the concept of temporal separation contend that FRA fails to recognize the sophisticated operational and technological safeguards that can eliminate the risks associated with shared use of the general railroad system, particularly for operations involving simultaneous joint use. These commenters generally maintain that FRA is preoccupied with crashworthiness of the vehicles and not sufficiently focused on crash avoidance.

In response, FRA points out that temporal separation is actually a crash avoidance measure, and the one most likely to prove fully successful. FRA's discussion of the disparate crashworthiness features of light rail and conventional equipment was intended to highlight the likely severity of a collision between those types of vehicles. Because safety risk is a function of the likely severity of an accident and the likelihood of its occurrence, the greater the predictable severity the more interested FRA is in reducing the likelihood of the occurrence. FRA has made clear that it has not ruled out the possibility that methods of collision avoidance such as sophisticated train control systems may provide an acceptable level of safety. 64 FR 59055. However, FRA has stated that a petitioner seeking to use these types of equipment on the same track at the same time will face a steep burden in demonstrating that the likelihood of such a catastrophic accident is remote.

FRA would expect the waiver applicant to demonstrate that the risk of such an event is extremely remote by discussing the types of extraordinary safety measures that would be taken to adequately reduce the likelihood of a catastrophic collision between the two types of equipment to an acceptable level. The waiver application would also need to include a quantitative risk assessment concerning the risk of a collision under the applicant's proposed operating scenario and an engineering analysis of the light rail equipment's resistance to damage in various collision scenarios. 64 FR 59051. FRA recognizes that a 100 percent risk reduction cannot be assigned to any individual risk countermeasure, and that there are risks associated with the adoption of any new technology.[4] However, because simultaneous joint use of trackage by structurally incompatible equipment inherently involves significant risk of severe consequences, FRA believes it is simply being reasonable to insist that the proponent of such an operation meet a steep burden of demonstrating a corresponding risk reduction through the use of highly competent methods of collision avoidance.

European Experience With Simultaneous Joint Use of the Same Trackage

As discussed above, many of the commenters urge FRA to study the success of mixed operations in parts of Europe, where passenger and freight vehicles of different strengths operate on the same track at the same time. The commenters stress that joint use of tracks by transit and standard railroad vehicles has proved to be an important innovation in Europe that should be permitted here.

In response, FRA observes that the agency is very familiar with the European systems. FRA has studied European high speed passenger systems in detail for many years, and more recently has directly observed the mixed use operations in places such as Karlsruhe, Germany. If some of those systems were replicated in the United States in every detail, FRA would very likely approve them by rule or waiver. However, FRA is not aware of any current or proposed light rail system in the United States that is fully comparable to the European systems the commenters offer as a model.

The successful European experience with mixed light rail and freight traffic is best exemplified by the system in Karlsruhe, Germany. FRA and FTA officials (including FRA safety experts) have personally observed that operation twice in the last several months, most recently as part of a joint visit in April 2000. In Karlsruhe, the light rail system shares some trackage with freight and intercity passenger trains, and the different operations are not segregated by time of day. However, unlike many candidate lines for new light rail starts in the United States, the predominant traffic in Karlsruhe is scheduled passenger trains, rather than a mix of local and through freight trains. More important, the Karlsruhe system involves certain features critical to its safety: all trains that operate in the shared use portions must be equipped with automatic train control; the light rail vehicles have very high braking capacities (as compared to light rail vehicles used in the United States); all trains use a common communications system that permits radio communication with the control center and all types of other trains; all trains operate under the same operating rules; train crews are part of an integrated work force that is trained to operate all types of vehicles in use on the line and in fact operates different vehicles during the average work week; all dispatching is done centrally for all trains; all train crews are limited to less than 40 hours of work per week; the different types of rail equipment that operate in the shared use area differ less in mass and structural strength than do conventional and light rail vehicles in the United States; and grade crossings, which are not as common as in the United States, are protected by four-quadrant gates.

The combination of all of these features has produced what appears to be a very safe, integrated system in Karlsruhe. The commenters who advocate that system as a model for shared, simultaneous use of track in this country imply that FRA is unwilling to permit such innovation here. That is not correct. Instead, FRA is unwilling to permit simultaneous use of track that

[4] These points are made in a report to FRA from its Railroad Safety Advisory Committee. *See* page 47 of ''Report of the Railroad Safety Advisory Committee to the Federal Railroad Administrator—Implementation of Positive Train Control Systems,'' dated September 8, 1999.

does not entail the full complement of Karlsruhe's most important safety features or comparable protections. Automatic train control, for example, entails a significant investment in infrastructure, both in the right-of-way and on board each train. While many light rail systems may have comparable train control technology, FRA has not seen a proposal to equip all trains (freight, passenger, and light rail) with this technology in the shared use area. Yet there is no reason to believe that the Karlsruhe system would exist without it. Nor is FRA aware of any proposal that involves an integrated workforce operating all the trains, with all crews working less than 40 hours per week. The idea of a freight railroad and a light rail operation using exactly the same operating rules has not commonly been a feature of proposed shared use operations in this country.

FRA admires the integrated rail system in Karlsruhe, which has begun to be replicated elsewhere in Europe. However, we ask that anyone who invokes that system as a model be fully cognizant of its traffic mix and basic safety features and what it would take to replicate them on America's freight lines. Corporate structures, labor agreements, and differing railroad and transit cultures make some of these features extremely hard to replicate in this country. We think that the future of simultaneous joint use in this country will likely depend on safety innovations specifically crafted for the rail network we have, such as positive train control systems that are being tested in various locations, and the development of light rail vehicles that are compliant with FRA's passenger equipment standards. However, we are open to consideration of any reasonable proposal.

Minor Connections to the General Railroad System

The AAR expressed concern about FRA's exercise of jurisdiction in cases where the only connection between the rail transit system and the conventional railroad is an at-grade crossing. The AAR believes that FRA should impose no restrictions on these operations, and that both should be permitted to operate during the same time of day. In addition, the commenter contends that complying with restrictions would be prohibitively expensive and compromise service to freight customers.

As FRA stated in its proposal on page 59058, when a rapid transit operation and a general system railroad have a railroad crossing at grade, ''FRA will exercise its jurisdiction sufficiently to assure safe operations over the at-grade crossing.'' Since the existence of a crossing represents a sufficient commingling of the rapid transit and general system operations to pose potentially significant safety hazards to one or both operations, FRA must reject the AAR's request that FRA decline to exercise its safety jurisdiction over this type of connection. In fact, because all of FRA's rules apply to all portions of the general system railroad, they apply to particular locations where the conventional railroad has a crossing with a light rail line. For example, the track and any signal devices at those locations must be maintained in accordance with FRA's rules. However, FRA notes that its rules apply only with respect to the general system portion of the rapid transit system's operation; if the non-general system portion of the rapid transit line is considered a ''rail fixed guideway system'' under 49 CFR part 659, FTA's rules apply to that portion.

AAR's comment points out the need for FRA to clarify when and how it will exercise jurisdiction over these railroad crossings at grade. In brief, FRA will work to ensure proper coordination of movements at these locations. FRA expects the general system railroad to comply with all applicable safety rules at that location, such as 49 CFR part 236 where the crossing is protected by a signal system. If FRA detects a safety problem at such a point that strict adherence to FRA rules on the part of the conventional railroad will not address, FRA will work with the conventional railroad and rapid transit line to develop a solution. As explained more fully in the statement of policy below, FRA does not expect to receive comprehensive Petitions for Approval of Shared Use concerning isolated conventional/light rail crossings that constitute the only connection a rapid transit system has to the general system. FRA does not consider those isolated connections to the general system as constituting shared use of general system trackage. However, given the fact that the crossing does constitute a connection to the general system that poses some risk to safety, FRA does expect to receive a brief waiver petition from the rail transit operator seeking relief from all of FRA's rules based on the safety protections in place at the crossing. On the other hand, where a light rail line crosses one or more conventional lines at grade and also shares trackage with one or more of those railroads, FRA will expect the Petition for Approval of Shared Use to explain how the light rail operation's systems safety plan addresses safety at the railroad crossings. In those situations, FRA will continue to look primarily to the conventional railroad for compliance with all applicable rules, but may use the waiver process to address any additional safety issues presented by the crossings.

Definitions

The Central Puget Sound Regional Transit Authority (Sound Transit) recommends that FRA clarify its definitions of the terms ''shared use'' and ''shared track.'' Sound Transit urges FRA to define ''shared track'' to mean cases where rail modes of differing vehicle strengths do, or intend to, operate on the same track, and would require strict temporal separation to receive FRA waivers. Sound Transit suggests that FRA define ''shared use'' to mean facilities that rail modes of differing vehicle strengths may use or share during the same operating hours, but whose nature precludes the simultaneous use or occupancy of those facilities; an example would be a crossing for freight and light rail. In cases of ''shared use,'' Sound Transit contends that temporal separation would not be needed, provided that there is compliance with existing FRA regulations.

In response to Sound Transit's comments, we don't believe that ''shared use'' and ''shared track'' are sufficiently distinguishable to provide added clarity. However, in an attempt to enhance clarity, FRA is revising the final policy statement to explain that ''shared use of track'' refers to situations where light rail transit operators conduct their operations over the lines of the general system, and includes light rail operations that are wholly separated in time (temporally separated) from conventional rail operations as well as light rail operations operating on the same trackage at the same time as conventional rail equipment (simultaneous joint use). As discussed above, in instances where a rail transit system crosses a conventional railroad at grade, FRA's safety rules will cover this point of connection to the general system, but FRA will not categorize this crossing, in itself, as a case of two operations sharing use of the general system. Accordingly, when these two rail operations cross at grade, the same set of rules apply regardless of whether the light rail operation and the conventional rail operation operate during the same times of day.

Coordination Between FTA and FRA Concerning Their Respective Regulatory Roles

Several commenters expressed concern that if FRA requires transit agencies to actively work in partnership with FRA and the state regulatory agency to address safety problems, a transit agency could be required to coordinate various aspects of its operation with up to three different Federal and state agencies. In this regard, San Diego Trolley stated that imposing such a requirement would lead to unnecessary duplication of effort and varying interpretations of rules, regulations and procedures. The California Transit Association (California Transit) commented that since FRA's jurisdiction is interpreted very broadly, it is unclear how the potential overlap of FRA, FTA, and state safety oversight jurisdiction will be coordinated to avoid confusion and duplicative efforts. California Transit also stressed that since the state safety oversight program is already in place in California, it would be premature to consider expanding FRA's role in transit operations.

FRA recognizes that light rail systems that meet the definition of rapid transit and are planning to operate on the general system, particularly those with segments off the general system, will be required to interact with FRA, FTA, and state agencies. Were FRA to somehow choose not to exercise its jurisdiction even over the shared use portion of these operations (which would eventually require amendments to all of its rules that apply to the general system), these operators would still have to deal with FTA and the states. FRA has no intention of doing that, of course. On the other hand, were FRA to exercise jurisdiction over the non-shared-use portions of these rapid transit lines under theory that they are connected to the general system, there would be no need to deal with FTA and the states. FRA has no intention of doing that, either, as it has made clear in its proposed statement and the proposed FRA/FTA joint statement.

Accordingly, the light rail operator's need to deal with three governments is both a byproduct of FRA's decision not to exercise jurisdiction as far as it may possibly reach (i.e., to the non-shared-use portions of rapid transit lines connected to the general system) and a major reason for the issuance of the joint FRA/FTA policy statement. That is, one of the purposes of that statement is to explain how FRA and FTA intend to coordinate their respective authorities, and the state safety oversight agency's authority is a derivative of FTA's program.

As set forth in detail in this final policy statement, light rail operators intending to share use of the general railroad system with conventional rail equipment will either have to comply with FRA's safety rules or obtain a waiver of appropriate rules. As FRA noted on page 59058 of its proposed policy statement, whenever FRA grants or denies a petition for a waiver of its safety rules, it will indicate whether its rules do not apply to any segments of the petitioning transit system's operation so that it is clear where FTA's rules on rail fixed guideway systems (49 CFR part 659) apply.

During the course of the waiver process, FRA will explain the transit system operator's compliance responsibilities for all segments of its operation and resolve ambiguities as to which agency's rules must be followed. With regard to FRA rules where no waiver is issued, there will be no potential for confusion: FRA will enforce and interpret its own rules. In the case of many of the regulations that FRA will likely waive, during its review of the waiver petition FRA will analyze information submitted by the petitioner to demonstrate that a particular safety matter is addressed in a state system safety plan and will be monitored by the state safety oversight program. Assuming FRA is satisfied that effective implementation of such a plan has occurred, FRA may conclude that adequate safety measures are in place to warrant waiver of certain FRA rules. The transit system operator would then be subject to the state safety oversight program in lieu of complying with these waived rules.

The prospect of FRA's continuing role even in those areas where it has granted a waiver seems to be the greatest concern of some commenters who fear duplicative regulation. However, all involved need to understand that FRA's issuance of a waiver does not constitute a relinquishment of its statutory jurisdiction. Whenever FRA grants a waiver to a railroad, FRA continues to regulate that railroad and merely applies the standard embodied in the waiver in place of the waived rule. A waiver may be withdrawn or modified if its conditions are violated. In the situations where FRA grants a waiver on the condition that the state safety oversight program will address the safety issue, FRA will defer to the state agency to the greatest degree possible, but will retain its jurisdiction. As to the regulations waived, this deference means that FRA's involvement will not entail regular inspection for adherence to the waiver conditions but will instead consist of periodic coordination with the state agency (perhaps including joint inspection) to ensure FRA is aware of any significant safety issues. FRA's involvement will vary with the degree of interface between the conventional and transit operations. Should any serious safety issues arise, especially issues likely to impact conventional operations, FRA would become more actively involved, working closely with the state oversight agency and FTA. The nature of this coordination with the state agency will vary somewhat depending on the working relationship FRA develops with each state agency. FTA will lend its good offices to promote that relationship. The greater FRA's confidence in the will and ability of the state agency to monitor the light rail operation with regard to the safety areas covered by waivers and keep FRA informed, the less FRA will need to become involved with those areas.

The FRA Waiver Process

FRA may grant a waiver of any rule or order only ''if the waiver is in the public interest and consistent with railroad safety.'' 49 U.S.C. 20103(d). The waiver petitions are reviewed by FRA's Railroad Safety Board (Safety Board) under the regulatory provisions of 49 CFR part 211.

Each waiver petition is considered on its own merits, and the applicant is not limited as to format or content, provided that the minimum procedural requirements of 49 CFR part 211 are satisfied. The waiver process provides the applicant with wide latitude in discussing each of the specific safety issues involved in the specific shared use operation, and the opportunity to help shape the conditions that FRA will deem necessary to assure the safety of the operation. Since FRA's procedural rules only give a general description of what any waiver petition should contain (*see* 49 CFR 211.9), and are not specifically tailored to situations involving light rail operations over the general system, the proposed policy statement provided detailed suggestions and guidance as to what general factors each petition should seek to address (these factors also appear in the final policy statement).

Use of the Term ''Waiver'' and Alternatives to Waivers

APTA commented that its member organizations are concerned about the negative perception that the term ''waiver'' creates at the local level, and requests that FRA instead describe the waiver process as ''authorized use'' subject to FRA review and approval.

APTA stresses that the term ''waiver'' implies the violation of a rule, and carries an unnecessarily pejorative connotation.

While FRA is sensitive to problems of perception, the agency urges all concerned to help correct any misperceptions about the nature of a waiver. As noted above, FRA may grant a waiver only if doing so ''is in the public interest and consistent with railroad safety.'' There is simply no reasonable basis on which to construe a waiver petition as a request from the petitioner for formal permission to flagrantly violate the requirements of a regulation, or to conclude that a transit system receiving a waiver will be less safe than a conventional railroad that operates in full compliance with FRA regulations. The publication of this policy statement and well constructed announcements by the petitioners of the granting of any waivers should help dispel any negative connotations that surround the use of the word ''waiver'' in some localities. FRA will continue to use the statutory term ''waiver'' to avoid any confusion as to the authority it is exercising. Of course, FRA has offered the suggestion that, where shared use of track is contemplated, the petition be called a ''Petition for Approval of Shared Use.'' FRA devised this term to make these sorts of waiver petitions readily identifiable and to address the concerns of those who dislike the term ''waiver.''

Moreover, APTA hopes that eventually FRA will classify certain categories of equipment and operating practices as ''accepted,'' rather than as ''waivers'' of its regulations, thereby eliminating the need for the filing of most individual waiver requests. APTA recommends that FRA then merely verify compliance with such accepted practices through review and inspection. In the alternative, APTA asks FRA to consider ''class waivers'' or a ''presumptive waiver,'' or perhaps permit self certification.

In a similar vein, NJT requests that, rather than issuing a waiver, FRA decline to exercise jurisdiction over a temporally separated operation if the transit agency implements a safe operating plan, involving the use of appropriate technology, and indicates that the operation is subject to an FTA-approved state safety oversight program. NJT also recommends that FRA exempt transit agencies from even being required to file waiver petitions if they can demonstrate that adequate safety measures are in place to eliminate the safety risks posed by shared use operations.

Given FRA's statutory authority, which includes providing the public notice of, and opportunity to comment on, the requested waiver before it is granted, FRA cannot agree to eliminate the formal review of waiver petitions by the Safety Board and, instead, simply grant presumptive waivers to entire classes of light rail equipment and operations without the benefit of full proceedings. FRA's analysis of a waiver petition provides it with a detailed understanding of the overall level of safety of a proposed operation, including consideration of the unique operating conditions concerning each operation (e.g., frequency and speeds of all operations on the shared use trackage, equipment specifications that relate to the crash survivability of the light rail equipment). FRA does not believe that an informal self-certification by the light rail operator, subject only to FRA review *after* the fact, would comport with FRA's responsibilities under the law.

Similarly, NJT's suggestion that FRA simply not assert jurisdiction over whole categories of general system operations does not fit with FRA's concept of its safety role with regard to the general system operations or the text of FRA's existing rules. Consistent with the statutory definition of ''railroad'' at 49 U.S.C. 20102, FRA will exercise jurisdiction over any rapid transit system that operates as a part of, or over the lines of, the general railroad system of transportation, but only to the extent that it is connected to the general system, not over the entire transit system. Even where complete temporal separation exists, there are still safety issues (e.g., grade crossing safety and accident reporting) concerning the light rail operation that FRA can address only by exercising its jurisdiction. Moreover, since all of FRA's rules apply to operations on the general system, any categorical exemption of types of operations would require amendments to those rules.

Of course, petitioners interested in alternatives to the waiver process should be aware of two possibilities. First, to the extent that extremely similar light rail systems are developed, the waiver petition for one can provide a very helpful model for the later system. As patterns like this emerge, the waiver process can become much less burdensome than it may be when each new system is the first of its kind. Second, FRA could eventually amend its various rules to permit light rail operations on the general railroad system under certain specified general conditions (e.g., temporal separation as ensured by meeting particular standards, or even particular forms of simultaneous joint use that satisfy the need to all but eliminate the risk of a catastrophic collision) and to conform certain of its rules to standards more appropriate to the rapid transit environment. Such regulatory revision can take very long, and FRA's experience with these systems to date has not revealed patterns of similarities among active or proposed systems that would warrant new rules of general applicability. However, the day will likely arrive when such rule revisions are in order. When completed, the new rules would obviate the need for waiver petitions on the part of any operation that could comply with their terms.

Submission, Review, and Processing of the Waiver Petition

Some commenters expressed concern with the length of time required by FRA to review and resolve each waiver petition, and indicated that financial decisions involving the planning of a light rail project often cannot be made until FRA determines the types of conditions that would be necessary to permit granting of a waiver. FRA believes that encouraging applicants to submit petitions that comprehensively address each of the general factors set forth in the policy statement will lessen the likelihood that FRA will require supplemental information during its review of the petition. If a petitioner submits a petition that specifies exactly which rules are requested to be waived and explains precisely how a level of safety at least equal to that afforded by the FRA rule will be provided by alternative measures, FRA will be able to expedite the waiver process. FRA is also willing to meet with transit agency officials at an early stage in a project, and may grant conditional approval of waivers subject to future review of the system safety plan to determine readiness to commence operations.

As an additional means of streamlining the waiver process, FRA's policy statement includes a rule-by-rule discussion of factors of great interest to FRA in considering waiver requests concerning each rule. FRA is also including a detailed chart in the final policy statement that will assist operators of rail transit operations on the general system that are completely separated in time from conventional railroad operations, and that pose no atypical safety hazards. The chart lists each of FRA's railroad safety rules and states the likelihood of such light rail systems receiving waivers from compliance.

As FRA noted in the proposed policy statement (as well as elsewhere in this

final policy statement), most light rail operations planning to operate on the general railroad system will also have segments off the general system which will be subject to FTA's rules for rail fixed guideway systems (49 CFR part 659). See 64 FR at 59051. To the extent that a waiver applicant can demonstrate that compliance with a state safety oversight program will satisfy FRA's safety concerns, this will likely expedite FRA's processing of the petition.

Whether All Affected Railroads Must Jointly File the Waiver Petition

Several commenters objected to FRA's suggestion that the light rail operator ''and all other affected railroads jointly file'' a petition for approval of shared use. 64 FR 59050. In particular, APTA argues that while the freight operator should be made aware of the waiver application, with agreements reached to ensure a safe operating environment, it is unnecessary to explicitly require the freight operator in all cases to approve the transit agency's application. Moreover, APTA is concerned that such a requirement may give the freight operator unfair leverage in negotiations with the transit agency over shared-use operations on the general system. The NSWG recommended adopting a procedure whereby the waiver applicant would have the burden to demonstrate that all users had a clear understanding of how operations will be conducted and how temporal separation would be strictly maintained.

Based upon careful consideration of the comments, FRA is revising the final policy statement to indicate that, while the conventional railroad(s) operating on a line will always be an interested party concerning a light rail operator's waiver petition for shared use of the general system, the conventional operator need not be a joint filer. FRA's rules on waiver petitions (49 CFR 211.7 and 211.9) do not require joint filing, and FRA's suggestion of joint filing was not intended to alter the rules. However, while FRA will not require joint filing as a prerequisite for evaluating the light rail operator's application, since FRA expects the transit applicant to thoroughly describe the alternative safety measures to be employed in lieu of each rule for which a waiver is sought, the input of the freight (or other conventional) operator is imperative. Accordingly, FRA anticipates that before a light rail operator submits a shared-use petition, the transit agency will effectively communicate with the affected freight or other railroad to coordinate interaction of the two operations on the same trackage, including what the respective hours of operation will be for each type of equipment. If the light rail and conventional operations will occur only under time-separated conditions, FRA will expect all of the affected railroads to jointly determine what means of protection will ensure that the different types of equipment will not operate 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 will be no overlap that could result in a collision. Unless a petition thoroughly explains how the light rail operation will interact with conventional operations on the line and documents the agreement of those other railroads to any necessary safety arrangements to coordinate their operations with the light rail operation, FRA is likely to conclude that the petition does not contain ''sufficient information to support the action sought.'' 49 CFR 211.9. As a condition of any waiver, the conventional railroad must subscribe to these responsibilities that are relevant to its operations in connection with the shared use arrangement. Accordingly, FRA's policy statement suggests that the petition contain documentation of the precise terms of the agreement between the light rail operator and the conventional railroad concerning any actions that the conventional railroad must take to ensure effective implementation of alternative safety measures. Of course, FRA will not grant a waiver to a light rail operator that is based on conditions concerning another railroad's operations without providing notice and an opportunity for a hearing, which will permit that other railroad to fully explain its views.

However, where the ''other affected railroads'' are legally responsible for compliance with the regulation sought to be waived by the light rail operator, these other railroads must also petition for relief, whether jointly with the light rail operator or separately. For example, if a light rail operator is seeking a waiver of the Signal System Reporting Requirements of 49 CFR part 233 but the conventional railroad is currently responsible for maintaining some of the signal systems, both parties have compliance obligations concerning the light rail operation. In some areas, the freight operator will essentially be relieved of certain of its obligations if the light rail operator receives a waiver. For example, FRA's rule on passenger equipment generally makes a railroad liable for permitting the use or haul on its line of non-complying equipment. 49 CFR 238.9. If the light rail operator obtains a waiver for its equipment, that equipment will no longer be considered not in compliance. However, the freight operator may want to participate in the waiver process from the beginning.

Duration of the Waiver

The NSWG urged FRA to grant waivers for shared-use operations in perpetuity, subject to FRA's authority to modify or withdraw a waiver if the conditions imposed are not met or if unanticipated safety issues arise that merit such action. In this regard, the NSWG stated that transit systems likely to seek temporal separation waivers will seek them in connection with rail projects funded in part with Federal funds administered by FTA. Since FTA will require these transit systems to demonstrate that they will have control of, and the ability to use, all of the assets (e.g., the rail right-of-way and passenger vehicles) acquired with the Federal funds for the 20 to 40 year useful life of the assets, a five year limitation on the duration of a waiver is, in NSWG's view, inadequate.

FRA is mindful of the transit agency's need for a degree of long-term certainty about the safety-related conditions that may apply to its operation, and recognizes that a rail project represents a long term commitment of a transit agency's resources. However, FRA cannot accept NSWG's recommendation that the Safety Board issue waivers for indefinite periods of time, since this would hinder FRA's opportunity to determine if circumstances have changed or if issues have arisen that were not contemplated when the relief was last granted or renewed. FRA notes that the agency typically issues waivers of limited duration and has not adopted a unique policy here. FRA intends to grant waivers for periods of sufficient length (e.g., five years) to permit long-term planning. Moreover, FTA is well aware of the reasons for FRA's reluctance to grant permanent waivers, and will not consider the need to renew a safety waiver an indication that the transit system lacks control of, and the ability to use, its assets for their useful life.

While FRA retains the authority to modify or withdraw a waiver in the interest of rail safety, such action is generally limited to instances when FRA uncovers a substantial change in the conditions under which the waiver was granted or determines that a significant unforeseen safety issue exists. FRA will ordinarily become aware of such developments during the term of the waiver through its coordination with the state safety agency that oversees the subjects on which FRA has granted waivers, and

will work with the waiver recipient to sufficiently address our safety concerns. However, the renewal process will provide a periodic opportunity to determine if such important changes in circumstances have occurred. FRA does not view a waiver as a temporary measure that will jeopardize a rail project's continued operation once the waiver expires. Rather, FRA expects to routinely renew waivers where the conditions underlying the waiver have not changed substantially and no major unforeseen safety issues have arisen, and where FTA and the state safety oversight agency affirm that the operation is in compliance with FTA requirements.

The Role of FTA in the Waiver Process

Four of the five commenters on this issue objected to the fact that FRA will not permit FTA's liaison to FRA's Safety Board to vote. The consensus of the commenters was that the proposed approach will not effectively ensure that FTA's knowledge and insights with respect to transit operations, financial issues, and state safety oversight are adequately considered by the Safety Board. The commenters believe that the two DOT agencies have different perspectives on non-safety related topics, and the best decisionmaking between two parties with diverse interests occurs with shared equal authority. However, the fifth commenter, San Diego Trolley, stated that while it would be inappropriate to allow FTA to participate in voting on waiver applications, FTA's representative should have more direct authority in the decisionmaking process.

Under delegation from the Secretary of Transportation, see 49 CFR 1.49, FRA administers the Federal railroad safety statutes, and all waivers requested from FRA's Safety Board involve exclusively FRA's regulations. FTA is not charged with administering the Federal railroad safety laws. Rather, FTA is responsible for: developing comprehensive and coordinated mass transportation systems to serve metropolitan and other urban areas; administering urban mass transportation programs, including its rule on the safety of rail fixed guideway systems; and assuring appropriate liaison and coordination with other governmental organizations with respect to the foregoing. Since FTA's statutory authority does not include administration of the Federal railroad safety laws, it would be inappropriate and outside the scope of FTA's legal authority if the FTA liaison to the Safety Board can veto the waiver conditions that FRA elects to impose on an applicant. Similarly, while FRA provides its rail safety expertise to FTA on safety issues inherent in FTA's review of rail grant proposals, FRA cannot vote on FTA's funding decisions, and it would not be appropriate for FRA to do so. FRA may have contributed to some confusion on this issue by using the description ''non-voting'' without explaining how the Safety Board works. FRA's Safety Board is not a collegial body like an independent agency; the chairperson of the board is the sole deciding official and acts by delegation from the Administrator. Other board members, all of whom are FRA staff, participate in the deliberations and offer advice and counsel, but do not vote. Under FRA's arrangement with FTA, the FTA representative will have a voice in deliberations equal to that of FRA staff.

In response to concerns from the commenters that without an official vote FTA's role with the Safety Board be ineffective, FRA stresses that the reason it is including an FTA official as an invited participant in the consideration of Petitions for Approval of Shared Use is to receive FTA's, and through it, the transit industry's perspective on the many unique and complex issues involving light rail operations. Since FRA recognizes that its expertise is in matters related to railroad safety, the agency wants FTA's expert advice on the facts presented in the petition concerning the project's special characteristics and operating considerations prior to selecting appropriate waiver conditions. Under FRA's safety partnership with FTA, not only will FTA have the opportunity to shape the safety requirements that will apply to light rail operations on the general system, but FTA will gain a fuller appreciation of the rail safety issues involved in each shared-use operation considered by the Safety Board.

Examples of Two Petitions for Approval of Shared Use Already Granted by FRA

Before FRA's proposed policy statement was published in the **Federal Register** last November, the agency received two petitions for approval of shared use, both seeking waivers of compliance with certain requirements of the Federal railroad safety regulations and exemption of certain statutory provisions in connection with planned light rail systems. Transit agencies planning to request similar waivers and/or exemptions are encouraged to review the electronic dockets for these petitions as helpful examples in preparing their own submissions. The first petition was submitted by NJT on July 13, 1999, and was docketed as FRA Waiver Petition No. FRA–1999–6135. *See* 64 FR 45996 (August 23, 1999). The second petition was submitted by the Utah Transit Authority (UTA) on August 19, 1999, and was docketed as FRA Waiver Petition No. FRA–1999–6253. *See* 64 FR 53435 (October 1, 1999). Each docket includes a copy of the petition itself, the letter granting the petition, and a discussion of the waiver conditions. While these petitions may serve as useful examples for future waiver applicants to follow, FRA also expects transit agencies to review the guidance included in this final policy statement in conjunction with the regulatory requirements contained in 49 CFR part 211. FRA granted each waiver for a period of five years, and conditioned each waiver on the operator's submission for FRA approval of procedures for ensuring temporal separation. The NJT waiver was an example of FRA's willingness to grant a waiver early in the planning process, subject to conditions such as subsequent submission of evidence concerning state approval of the system safety plan.

Operations Within Shared Rights-of-Way

FRA received 11 comments on the issue of FRA's jurisdiction over a light rail transit operation sharing a right-of-way but no trackage with a conventional railroad. In general, the commenters request clarification in the final policy statements as to how FRA and FTA intend to coordinate their programs with respect to a rail transit system that operates within the same right-of-way as conventional equipment, without shared trackage. Many of the commenters stress that any standards adopted by FRA for sharing the right-of-way need to be as clear and explicit as possible to assist the transit systems in evaluating potential light rail projects and planning those deemed desirable.

SEPTA believes that it is unnecessary for FRA to assert jurisdiction over light rail operations running parallel to freight service because transit agency systems are covered under existing state safety oversight program plans. SEPTA states that the proposed joint policy statement is unclear as to the limits of FRA's jurisdiction, other than to indicate that FRA's safety rules cover points of connection where a light rail operation crosses the tracks of a freight railroad at grade. In this regard, SEPTA seeks guidance as to what safety issues FRA believes will exist where light rail operations are conducted on separate tracks within a shared right-of-way. The commenter also notes that the policy statement doesn't address the issue of

physical barrier or distance separation between shared use trackage.

Similarly, APTA stated that instead of covering shared corridors, the final policy statements should be limited to scenarios where transit vehicles operate on or over the actual tracks of the general system. However, APTA agrees that the final policy statements should cover areas where there is no shared use of general system track if the operations include public highway/rail grade crossings or rail crossings at grade (diamond interlockings).

The AAR requests that FRA include a definition of the term ''shared right-of-way'' in the final policy statement, and also recommends that FRA address shared right-of-way operations on a case-by-case basis. In addition, the commenter states that intrusion detectors are often appropriate in shared rights of way, and notes that relevant factors to be considered include configuration of the right-of-way, elevation changes, and track separation distances.

The NSWG urges FRA to issue further guidance as to the likelihood of waiver being granted in a shared right-of-way situation where FRA has jurisdiction, including a chart setting forth which regulations could presumptively be waived. Also, the NSWG recommends that FRA and FTA develop guidelines with respect to track center lines. For example, the joint policy statement could state that transit trackage located 20 feet or more from the closest general system trackage, measured from center lines, normally would not require intrusion detection or extraordinary safety measures designed to avoid collisions.

San Diego Trolley contends that the proposal is unclear as to what intrusion detection steps will be required. The commenter notes that while there is the potential for derailments and other accidents to occur within a common corridor, this condition exists at many other locations where commuter rail, intercity passenger services, or freight services operate within a common corridor.

The California Transit Association commented that the proposal is unclear as to the issue of FRA jurisdiction over shared rights-of-way. The commenter stated that the potential hazard of intrusion in a shared corridor situation is better addressed by existing state safety oversight regulation and appropriate safety analysis covered in transit agency system safety program plans.

FRA appreciates the need for greater clarity with regard to shared rights-of-way. Several basic principles deserve emphasis. FRA exercises jurisdiction over all commuter operations, even if they use equipment considered light rail. All of FRA's regulations apply to such operations, absent a waiver. Therefore, how FRA exercises its jurisdiction in a corridor shared by light rail and conventional equipment is an issue only if the light rail operation meets the definition of urban rapid transit. The operation of rapid transit on track parallel to the tracks of a conventional railroad (i.e., parallel to track traversed by freight, intercity passenger, or commuter service) will not, in and of itself, trigger FRA jurisdiction. Where a rapid transit line merely shares a right-of-way with a conventional line but the two share no track, FRA does not consider that situation to involve shared use of the general system by the rapid transit line, and would not expect to receive a Petition for Approval of Shared Use. Nevertheless, even when a rapid transit operation and a conventional railroad share only a right-of-way, without sharing trackage, certain limited connections to the general system may still exist, and FRA will then have a regulatory role by ensuring safety at these points of connection. Three types of connections are of greatest concern: highway/rail grade crossings, railroad crossings at grade, and shared systems of train control at specific points.

For example, if the same tower operator authorizes and controls the movement of the trains of both a transit line and a freight railroad operating over a movable bridge, FRA will exercise jurisdiction at this point of connection, but only to the extent necessary to ensure safety. We have discussed our exercise of jurisdiction over rail crossings at grade above, under the heading of ''Minor connections to the general railroad system'' in the discussion of comments on ''Shared Use and Temporal Separation.'' Further, in the case of a rapid transit system and a conventional railroad sharing a highway-rail grade crossing, FRA will expect both systems to observe its rules on grade crossing signals that, for example, require prompt reports of warning system malfunctions, and, with the exception for brightness of the lights discussed below, will expect both operations to observe its rules concerning locomotive conspicuity (ditch lights). If a rapid transit system desires a waiver of the very few FRA rules that will apply at these points of connection, it should file a waiver request tailored to the specific rule(s) in question rather than the much more comprehensive Petition for Approval of Shared Use that FRA has recommended for situations involving shared trackage.

FRA sees no need to define ''shared rights-of-way.'' If the types of connections FRA has identified as triggering a limited exercise of its jurisdiction exist with regard to adjacent rapid transit and conventional lines, there is obviously a shared right-of-way. Where such operations take place on parallel tracks but lack any such connections, there may still be a shared right-of-way, but it has no regulatory significance.

Although FRA will limit its direct exercise of jurisdiction over transit systems operating in shared rights-of-way in the manner described above, FRA will, under the provisions of the partnership agreement entered into with FTA in October 1998, use its rail safety expertise in an advisory capacity to identify and make recommendations for the resolution of safety issues inherent in grant proposals seeking Federal funds from FTA. This working relationship will ensure that FTA has a fuller understanding of the safety risks involved in each shared right-of-way operation, and relevant information to shape the contents of the system safety plan that will be monitored by the state safety oversight program. With respect to the specific comments received concerning the use of intrusion detectors and recommendations to FRA about appropriate distances to require between transit trackage and the closest general system trackage, it would be beyond the scope of this policy statement to adopt regulations concerning track centers (the distance between the center lines of adjacent tracks) or intrusion detection. FRA has no rules on these subjects now. Should FRA deem it necessary to regulate intrusion detectors and/or track separation distances between transit and conventional equipment within a common right-of-way, FRA will initiate a notice-and-comment rulemaking aimed at setting standards. In the meantime, FRA and FTA will coordinate with rapid transit agencies and conventional railroads wherever there are concerns about sufficient intrusion detection and related safety measures designed to avoid a collision between rapid transit and conventional equipment.

Miscellaneous Comments

Employee Qualifications

The BLE, the only commenter to address this issue, limited its comments to waivers of 49 CFR part 240, because of an overriding concern for the manner in which light rail vehicle operators are

to be trained and certified. The BLE contends that the proposed joint policy statement leaves a gaping regulatory hole by contemplating a mixture of Federal and state oversight of those who will operate the light rail vehicles. The commenter notes that the standardization fostered by part 240 has enhanced safety in the railroad industry, and believes that the proposal retreats from the progress of the last decade with respect to operators of light rail equipment. In this regard, the BLE argues that a blanket waiver for light rail vehicle operators from industry qualification and certification requirements would fly in the face of the standard articulated by FRA and FTA. The operating environment in which light rail vehicle operators find themselves, rather than the type of equipment they operate, must dictate the appropriate degree of FRA oversight. Safety and consistency demand continued Federal preemption in the area of training, qualification, and certification of all transportation employees who operate on the general system.

FRA recognizes the safety implications of permitting light rail vehicle operators to operate on the general system without receiving proper training and qualification. Waivers of the engineer certification requirements would be most likely in the case of temporally-separated operations on the general system that are part of a unified transit system with segments outside the shared use area. There, the basic reason for a waiver would be to ensure that the light rail operators are trained with the entire light rail system in mind, including its non-shared-use portions. In those situations, however, FRA is particularly concerned about what means of protection the waiver applicant would use to ensure that operator error does not result in different types of equipment being operated on the same track, and how the light rail system would ensure that when one set of operations begins, and the other one ends, there can be no overlap that would cause a collision. In response to the comment, FRA stresses that before a transit system could receive a waiver, it must satisfy FRA that the system safety plan developed under FTA's rules will provide for operators of light rail equipment to receive the necessary training and skills to safely operate on the general system. The transit system would have the burden to show that the light rail operators would receive a level of training, testing, and monitoring on the rules governing train operations appropriate for light rail operations on the general system. Any light rail system unable to meet this burden would have to fully comply with the requirements of part 240. Moreover, where a transit system intends to operate simultaneously on the same track with conventional equipment, FRA will not be inclined to waive the part 240 requirements. In that situation, FRA's paramount concern would be uniformity of training and qualifications of all those operating trains on the general system, regardless of the type of equipment.

Ditch Lights

The Delaware Valley Association of Rail Passengers supports most of the proposals in the policy statement, particularly the waiver concept. However, the commenter believes that waivers should not be granted under 49 CFR part 229, pertaining to ditch lights (also known as auxiliary lights; see 49 CFR 229.125, 133). Joint railroad-transit operations are often found in urban areas with many grade crossings, and these lights have been proven to reduce collisions between trains and highway traffic. Moreover, installation of such lights on light rail vehicles is not burdensome.

FRA shares the commenter's safety concerns. As noted in the chart contained in each proposed policy statement (explaining the likely treatment of waivers sought under part 229), and in FRA's discussion of likely waivers under part 229, FRA is unlikely to completely waive the requirement for auxiliary lights due to their importance for grade crossing safety. See 64 FR at 28241, 59053, and 59056. In this regard, FRA believes that the risk of accidents at grade crossings decreases if the equipment used by both conventional and light rail trains present the same distinctive profile to motor vehicle operators approaching grade crossings (i.e., a triangular arrangement of lights). Safety could be compromised if FRA permitted light rail systems to operate through the same grade crossings as conventional equipment with light arrangements that do not provide highway users with the same warning that a rail vehicle is approaching. However, as discussed in the section below concerning factors to address when seeking a waiver of part 229, waiver of the intensity requirement, so as to permit lights of a lesser candela, seems appropriate.

Whistle Bans

The City of Boca Raton, Florida commented that FRA should develop rules to allow and promote the installation of four-quadrant gate systems at all railroad grade crossings, and provide for funding mechanisms. The commenter states that if the gates have been installed, FRA's rules should allow whistle bans, at least at night, at these four-quadrant gate system locations.

FRA recently initiated a rulemaking concerning the use of locomotive horns at highway-rail grade crossings. On January 13, 2000, FRA published in the **Federal Register** a notice of proposed rulemaking to add a new part 222, entitled ''Use of Locomotive Horns at Public Highway-Rail Grade Crossings,'' to require that a locomotive horn be sounded while a train is approaching and entering a public highway-rail crossing. 65 FR 2230. The proposed rules provide for an exception to the general requirement in circumstances in which there is not a significant risk of loss of life or serious personal injury, use of the locomotive horn is impractical, or supplementary safety measures fully compensate for the absence of the warning provided by the horn. Among the proposed options available to state and local governments seeking to provide a substitute for the locomotive horn in the prevention of collisions and casualties at public highway-rail grade crossings, is the four-quadrant gate system. See proposed 49 CFR 222.41, 222.43, and Appendix A. Under this system, gates are installed at a crossing which are sufficient to fully block highway traffic from entering the crossing when the gates are lowered, including at least one gate for each direction of traffic on each approach. This policy statement has no relationship to that rulemaking.

Definition of ''Heavy Rail''

One commenter contends that FRA improperly defines the terms ''heavy rail'' and ''light rail'' in the proposed policy statement. The commenter states that the term ''heavy'' has nothing to do with crashworthiness or car weight, but rather applies to the construction of the right-of-way, and suggests that it would be clearer to use the terms ''rail rapid transit'' for what is incorrectly called heavy rail, and ''urban electric transit'' for light rail.

Contrary to the commenter's statements, FRA's proposal properly distinguished between the terms ''heavy rail'' and ''light rail.'' After observing that some current and planned passenger operations in metropolitan areas are often referred to as ''light rail,'' FRA indicated that the 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. 64 FR at 59049. FRA also stated that ''heavy rail'' generally refers to trains operating on rails that are in separate rights-of-way from which all other vehicular traffic is excluded, and observed that in transit terms, heavy rail is also known as ''rapid rail,'' ''subway,'' or ''elevated railway.'' FRA noted that 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. FRA advised that although this equipment is sometimes referred to as ''heavy'' rail, it would use the term ''conventional'' to avoid confusion between the different ways ''heavy'' is used in the transit and general railroad communities.

II. Changes From the Proposed Statement of Policy Concerning the Extent and Exercise of FRA'S Safety Jurisdiction Over Passenger Operations

To ensure that the regulated community is fully aware of how FRA views the extent of its jurisdiction over passenger operations and how it intends to exercise that jurisdiction, FRA is amending the discussion of its jurisdiction in its Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws, which is found in at appendix A of 49 CFR part 209. In its proposed policy, FRA included an extensive discussion of its legal authority over railroad safety, including the extensive legislative history of the term ''railroad'' as used in the Federal railroad safety statutes. 64 FR 59047–59049. FRA does not repeat that discussion here, but incorporates it by reference as the basis for its policy on the extent and exercise of its jurisdiction over passenger operations.

Based on comments received, FRA is making some changes to its proposed policy. The definition of ''commuter railroad'' is being amended to make clear that certain specific operations named as commuter authorities by statute are considered commuter railroads under the safety laws regardless of how the criteria that distinguish other railroads as ''commuter'' in nature may apply to them. FRA believes this change is necessary in order to ensure that railroads that Congress considers commuter railroads are within FRA's exercise of its jurisdiction without the need for extensive debate about the nature of their operations.

For reasons explained in the discussion of comments, we are also revising the definitions of ''commuter railroad'' and ''urban rapid transit'' to remove as a consideration whether ''a substantial portion'' of a system's operations is devoted to moving people from station to station within a city, and to focus instead on whether such service is a ''primary function'' of the system or ''an incidental function'' of its service.

We are further revising the jurisdictional statement to facilitate determinations about whether a system is a commuter railroad or urban rapid transit system. We have included two presumptions, one that adopts statutory determinations of a system's characterization, and the other that presumes a system is rapid transit if it meets a certain description. Where neither presumption applies, we have provided a list of criteria that need to be considered in making the commuter/rapid transit determination.

FRA is also revising its statement of policy to make clear that highway-rail grade crossings used by both a conventional railroad and a light rail operation provide a sufficient connection to warrant a limited exercise of FRA's jurisdiction over the light rail operator. In the proposal, that point was made, but under a heading concerning connections not sufficient to trigger the exercise of jurisdiction. The final policy statement places the discussion more appropriately and slightly expands it.

III. Changes to Proposed Policy Concerning Petitions for Approval of Shared Use of the General System by Light Rail and Other Railroads

Much of FRA's proposed statement of policy concerned how the agency intended to address waiver requests concerning shared use of the general system by light rail and conventional operations. FRA provided guidance on how interested parties could file such waiver requests, what they should address, and what waivers are likely under particular circumstances. FRA has amended its policy to reflect various comments received on the proposal. Moreover, FRA has concluded that this policy, like its policy on the extent and exercise of its safety jurisdiction, should reside in the CFR for easy future reference. Therefore, we are adding a new appendix to 49 CFR part 211, which contains FRA's rules of practice, including those concerning waivers.

Several commenters requested that FRA provide a means by which those developing light rail systems could obtain a jurisdictional determination from FRA without first preparing an entire waiver petition. This makes good sense, because an early jurisdictional determination could affect planning for a system in significant ways. Of course, anyone is always free to request such determinations from FRA. The revised policy statement merely reiterates this point, recommends where such requests should be submitted, and suggests that requesting such determinations may be a useful step to take well before filing a waiver petition.

Another subject of great interest to commenters was whether the light rail operator must always get the general system railroad to join in any petition for waiver or approval of shared use. Our proposed statement included a request that the light rail operator and ''all other affected railroads'' file the petition jointly. In the discussion of comments, above, we explained why this would be very useful but is not required, and pointed out that other affected railroads may need to file their own petitions if the planned operations somehow preclude their compliance with FRA's rules. Even if they do not need to file a petition, of course, all affected railroads will have an opportunity to comment and appear at any hearing that is requested on the light rail operator's petition. Our final policy statement explains these points.

Many commenters indicated the need for greater clarity in FRA's policy concerning situations where the light rail operator and conventional railroad do not share trackage but have operations that are otherwise sufficiently connected to warrant a limited exercise of FRA's jurisdiction. FRA has included a more thorough discussion of this subject to the final policy statement. The statement makes clear that, where minimal connections exist in a common right-of-way (even where the two operations use their respective tracks simultaneously), the light rail operator will be subject to only those safety rules pertinent to the connection that exists, and that any waiver request should be limited to just those rules.

The new Appendix A to part 211, therefore, will include a discussion of which railroads need to file waiver petitions in shared use or shared right-of-way situations, the general factors that should be addressed in a Petition for Approval of Shared Use, general considerations concerning petitions for waiver where the right-of-way is shared but the connections are limited, factors to address in any petition concerning specific rules, and the areas where waivers are likely in shared use situations (including a chart).

List of Subjects

49 CFR Part 209

Railroad safety, Enforcement Procedures.

49 CFR Part 211

Railroad safety, Rules of Practice.

The Policy Statement

In consideration of the foregoing, chapter II, subtitle B of title 49, Code of Federal Regulations 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.

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

Appendix A—Statement of Agency Policy Concerning Enforcement of the Federal Railroad Safety Laws

2. The title of Appendix A is revised to read, as set forth above.

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

The Extent and Exercise of FRA's Safety Jurisdiction

* * * * *

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). Some rules exclude passenger operations that are not part of the general railroad system (such as some tourist railroads) only if they meet the definition of ''insular.'' E.g., 49 CFR 225.3(a)(3) (accident reporting) and 234.3(c) (grade crossing signal safety). 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.

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

FRA's Policy on Jurisdiction Over Passenger Operations

Under the Federal railroad safety laws, FRA has jurisdiction over all railroads except ''rapid transit operations in an urban area that are 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, standard gage intercity operations are all considered part of the general railroad system, even if not physically connected to other portions of the system. Other intercity passenger operations that are not standard gage (such as a magnetic levitation system) are within FRA's jurisdiction even though not part of the general 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.

FRA will presume that an operation is a commuter railroad if there is a statutory determination that Congress considers a particular service to be commuter rail. For example, in the Northeast Rail Service Act of 1981, 45 U.S.C. 1104(3), Congress listed specific commuter authorities. If that presumption does not apply, and the operation does not meet the description of a system that is presumptively urban rapid transit (see below), FRA will determine whether a system is commuter or urban rapid transit by analyzing all of the system's pertinent facts. FRA is likely to consider an operation to be a commuter railroad if:

- The system serves an urban area, its suburbs, and more distant outlying communities in the greater metropolitan area,
- The system's primary function is moving passengers back and forth between their places of employment in the city and their homes within the greater metropolitan area, and moving passengers from station to station within the immediate urban area is, at most, an incidental function, and

• The vast bulk of the system's trains are operated in the morning and evening peak periods with few trains at other hours.

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.

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. 20102. 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 railroad system.'' FRA will presume that an operation is an urban rapid transit operation if the system is not presumptively a commuter railroad (see discussion above) the operation is a subway or elevated operation with its own track system on which no other railroad may operate, has no highway-rail crossings at grade, operates within an urban area, and moves passengers from station to station within the urban area as one of its major functions.

Where neither the commuter railroad nor urban rapid transit presumptions applies, FRA will look at all of the facts pertinent to a particular operation to determine its proper characterization. FRA is likely to consider an operation to be urban rapid transit if:

• The operation serves an urban area (and may also serve its suburbs),

• Moving passengers from station to station within the urban boundaries is a major function of the system and there are multiple station stops within the city for that purpose (such an operation could still have the transportation of commuters as one of its major functions without being considered a commuter railroad), and

• The system provides frequent train service even outside the morning and evening peak periods.

Examples of urban rapid transit systems include the Metro in the Washington, D.C. area, 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. FRA will exercise its jurisdiction over the operations conducted on the general system. 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 (see 49 CFR part 211), 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 (FTA), would apply to them.

Another connection to the general system sufficient to warrant FRA's exercise of jurisdiction is a railroad crossing at grade where the rapid transit operation and other railroad cross each other's tracks. In this situation, 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. Also, where transit operations share highway-rail grade crossings with conventional railroads, FRA expects both systems to observe its signal rules. For example, FRA expects both railroads to observe the provision of its rule on grade crossing signals that requires prompt reports of warning system malfunctions. *See* 49 CFR part 234. FRA believes these connections present sufficient intermingling of the rapid transit and general system operations to pose significant hazards to one or both operations and, in the case of highway-rail grade crossings, to the motoring public. The safety of highway users of highway-rail grade crossings can best be protected if they get the same signals concerning the presence of any rail vehicles at the crossing and if they can react the same way to all rail vehicles.

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 or offer goods by rail.

Mere use of a common right-of-way or corridor in which the conventional railroad and rapid transit operation do not share any means of train control, have a rail crossing at grade, or operate over the same highway-rail grade crossings 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. 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, 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 rapid transit 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 are connected to the general system will generally 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.

5. The authority citation for part 211 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20114, 20306, 20502–20504, and 49 CFR 1.49.

Appendix A

6. A new Appendix A is added to part 211 to read as follows.

Appendix A to Part 211—Statement of Agency Policy Concerning Waivers Related to Shared Use of Trackage or Rights-of-Way by Light Rail and Conventional Operations

1. By statute, the Federal Railroad Administration (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.

2. Light rail equipment, commonly referred to as trolleys or street railways, is not designed to be used in situations where there is a reasonable likelihood of a collision with much heavier and stronger conventional rail equipment. However, existing conventional railroad tracks and rights-of-way provide attractive opportunities for expansion of light rail service.

3. Light rail operators who intend to share use of the general railroad system trackage with conventional equipment and/or whose operations constitute commuter service (*see* Appendix A of 49 CFR part 209 for relevant definitions) will either have to comply with FRA's safety rules or obtain a waiver of appropriate rules. Light rail operators whose operations meet the definition of urban rapid transit and who will share a right-of-way or corridor with a conventional railroad but will not share trackage with that railroad will be subject to only those rules that pertain to any significant point of connection to the general system, such as a rail crossing at grade, a shared method of train control, or shared highway-rail grade crossings.

4. Shared use of track refers to situations where light rail transit operators conduct their operations over the lines of the general system, and includes light rail operations that are wholly separated in time (temporally separated) from conventional operations as well as light rail operations operating on the same trackage at the same time as conventional rail equipment (simultaneous joint use). Where shared use of general system trackage is contemplated, FRA believes a comprehensive waiver request covering all rules for which a waiver is sought makes the most sense. FRA suggests that a petitioner caption such a waiver petition as a Petition for Approval of Shared Use so as to distinguish it from other types of waiver petitions. The light rail operator should file the petition. All other affected railroads will be able to participate in the waiver proceedings by commenting on the petition and providing testimony at a hearing on the petition if anyone requests such a hearing. If any other railroad will be affected by the proposed operation in such a way as to necessitate a waiver of any FRA rule, that railroad may either join with the light rail operator in filing the comprehensive petition or file its own petition.

5. In situations where the light rail operator is an urban rapid transit system that will share a right-of-way or corridor with the conventional railroad but not share trackage, any waiver petition should cover only the rules that may apply at any significant points of connection between the rapid transit line and the other railroad. A Petition for Approval of Shared Use would not be appropriate in such a case.

I. Preliminary Jurisdictional Determinations

Where a light rail operator is uncertain whether the planned operation will be subject to FRA's safety jurisdiction and, if so, to what extent, the operator may wish to obtain FRA's views on the jurisdictional issues before filing a waiver petition. In that case, the light rail operator (here including a transit authority that may not plan to actually operate the system itself) should write to FRA requesting such a determination. The letter should be addressed to Chief Counsel, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 10, Washington, DC 20590, with a copy to the Associate Administrator for Safety at the same address at Mail Stop 25. The letter should address the criteria (found in 49 CFR part 209, appendix A) FRA uses to determine whether it has jurisdiction over a rail operation and to distinguish commuter from urban rapid transit service. A complete description of the nature of the contemplated operation is essential to an accurate determination. FRA will attempt to respond promptly to such a request. Of course, FRA's response will be based only on the facts as presented by the light rail operator. If FRA subsequently learns that the facts are different from those presented or have changed substantially, FRA may revise its initial determination.

II. General Factors to Address in a Petition for Approval of Shared Use

1. Like all waiver petitions, a Petition for Approval of Shared Use will be reviewed by the Safety Board. A non-voting FTA liaison to the Safety Board will participate in an

advisory capacity 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.

2. FRA resolves each waiver request on its own merits based on the information presented and the agency's own investigation of the issues. In general, the greater the safety risks inherent in a proposed operation the greater will be the mitigation measures required. 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.

3. 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.

A. *Description of operations.* You should explain the frequency and speeds of all operations on the line and the nature of the different operations. You should explain the nature of any connections between the light rail and conventional operations.

- If the light rail line will operate on any segments (*e.g.,* a street railway portion) that will not be shared by a conventional railroad, describe those segments and their connection with the shared use segments. If the petitioner has not previously sought and received a determination from FRA concerning jurisdictional issues, explain, using the criteria set out in 49 CFR part 209, Appendix A, whether the light rail operation is, in the petitioner's view, a commuter operation or urban rapid transit.
- You should describe precisely what the respective hours of operation will be for each type of equipment on the shared use segments. 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 of a collision between conventional and light rail equipment to the point where the safety risks associated with joint use would be acceptable. You should explain the nature of such simultaneous joint use, the system of train control, the frequency and proximity of both types of operations, the training and qualifications of all operating personnel in both types of operations, and all methods that would be used to prevent collisions. You should also include a quantitative risk assessment concerning the risk of collision between the light rail and conventional equipment under the proposed operating scenario.

B. *Description of equipment.* (1) You should 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, you should 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.

(2) 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, you should 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.

C. *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.

(1) 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.

(2) 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.

D. *Documentation of agreement with affected railroads.* Conventional railroads that will share track with the light rail operation need not join as a co-petitioner in the light rail operator's petition. However, the petition should contain documentation of the precise terms of the agreement between the light rail operator and the conventional railroad concerning any actions that the conventional railroad must take to ensure effective implementation of alternative safety measures. For example, if temporal separation is planned, FRA expects to see the conventional railroad's written acceptance of its obligations to ensure that the separation is achieved. Moreover, if the arrangements for the light rail service will require the conventional railroad to employ any alternative safety measures rather than strictly comply with FRA's rules, that railroad will have to seek its own waiver (or join in the light rail operator's petition).

III. Waiver Petitions Involving No Shared Use of Track and Limited Connections Between Light Rail and Conventional Operations

Even where there is no shared use of track, light rail operators may be subject to certain FRA rules based on limited, but significant connections to the general system.

1. *Rail crossings at grade.* Where a light rail operation and a conventional railroad have a crossing at grade, several FRA rules may apply to the light rail operation at the point of connection. If movements at the crossing are governed by a signal system, FRA's signal rules (49 CFR parts 233, 235, and 236) apply, as do the signal provisions of the hours of service statute, 49 U.S.C. 21104. To the extent radio communication is used to direct the movements, the radio rules (part 220) apply. The track rules (part 213) cover any portion of the crossing that may affect the movement of the conventional railroad. Of course, if the conventional railroad has responsibility for compliance with certain of the rules that apply at that point (for example, where the conventional railroad maintains the track and signals and dispatches all trains), the light rail operator will not have compliance responsibility for those rules and would not need a waiver.

2. *Shared train control systems.* Where a light rail operation is governed by the same train control system as a conventional railroad (e.g., at a moveable bridge that they both traverse), the light rail operator will be subject to applicable FRA rules (primarily the signal rules in parts 233, 235, and 236) if it has maintenance or operating responsibility for the system.

3. *Highway-Rail Grade Crossings.* Light rail operations over highway-rail grade crossings

also used by conventional trains will be subject to FRA's rules on grade crossing signal system safety (part 234) and the requirement to have auxiliary lights on locomotives (49 CFR 229.125). Even if the conventional railroad maintains the crossing, the light rail operation will still be responsible for reporting and taking appropriate actions in response to warning system malfunctions.

In any of these shared right-of-way situations involving significant connections, the light rail operator may petition for a waiver of any rules that apply to its activities.

IV. 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. 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,'' FRA's standards do not apply and the petition need not address those segments with regard to each specific rule from which waivers are sought with regard to shared use trackage.

1. Track, structures, and signals.

A. *Track safety standards (part 213).* For general system track used by both the conventional and light rail lines, the track 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.

B. *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. 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.

C. *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. If a grade crossing accident or warning activation failure occurs during light rail operations on general system track that is used by both conventional and light rail lines, the light rail operator must submit, or cooperate with the other railroad to ensure the submission of, a report to FRA within the required time frame (24 hours for an accident report, or 15 days for a grade crossing signal system activation failure report). 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.

D. *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 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.

E. *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 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 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. 2.

2. Motive power and equipment.

A. *Railroad noise emission compliance regulations (part 210).* FRA issued this rule under the Noise Control Act of 1972, 42 U.S.C. 4916, rather than under its railroad safety authority. Because that statute included a definition of ''railroad'' borrowed from one of the older railroad safety laws, 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. Note that this exception is broader than the sole exception to the railroad safety statutes (i.e., urban rapid transit not connected to the general system). The greater the integration of the light rail and conventional operations, the less likely this exception would apply.

If the light rail equipment would normally meet the standards in this rule, there would be no reason to seek a waiver of it. 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. Note, however, that FRA lacks the authority to waive certain Environmental Protection Agency standards (40 CFR part 201) that underlie this rule. See 49 CFR 210.11(a).

B. *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.

C. *Rear end marking devices (part 221).* This part requires that each train occupying

or operating on main line track be equipped with, display, and continuously illuminate or flash a marking device on the trailing end of the rear car during periods of darkness or other reduced visibility. 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 failure of an approaching train to see the rear end of a leading train in time to stop short of it during periods of reduced visibility. 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 bears 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.

D. *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.

E. *Locomotive safety standards (part 229).* (1) 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. 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.

(2) FRA is not likely to waive completely the provision (section 229.125) of this rule concerning auxiliary lights designed to warn highway motorists of an approaching train. 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 on the general railroad system. If uniformity is sacrificed by permitting light rail systems to operate locomotives through the same grade crossings traversed by conventional trains with light arrangements placed in different locations on the equipment, safety could be compromised. Accordingly, the vehicle design should maintain the triangular pattern required of other locomotives and cab cars to the extent practicable.

(3) FRA is aware that light rail headlights are likely to produce less than 200,000 candela. While some light rail operators may choose to satisfy the requirements of section 229.125 by including lights on their equipment of different candlepower controlled by dimmer switches, the headlights on the majority of light rail vehicles will likely not meet FRA's minimum requirement. However, based on the nature of the operations of light rail transit, FRA recognizes that waivers of the minimum candela requirement for transit vehicle headlights seems appropriate.

F. *Safety appliance laws (49 U.S.C. 20301–20305).* (1) 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.

(2) 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.

(3) 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.

G. *Safety appliance standards (part 231).* (1) 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.

(2) 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.

H. *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 , 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.

3. Operating practices.

A. *Railroad workplace safety (part 214).* (1) 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.

(2) 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.

B. *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 should 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.

C. *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.

D. *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 (e.g., section 219.11(f) addresses the removal, under certain circumstances, of body fluid and/or tissue samples taken from the remains of any railroad employee who performs service for a railroad). (FRA recognizes that in the event of a fatal train accident involving a transit vehicle, whether involving temporal separation or simultaneous use of the same track, the National Transportation Safety Board will likely investigate and obtain its own toxicology test results.)

E. *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.

F. *Railroad accident/incident reporting (part 225).* (1) 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.

(2) Any waiver FRA may grant in the accident/incident reporting area would have no effect on FRA's authority to investigate such incidents or on the duties of light rail operators and any other affected railroads to cooperate with those investigations. See sections 225.31 and 225.35 and 49 U.S.C. 20107 and 20902. Light rail operators should anticipate that FRA will investigate any serious accident or injury that occurs on the shared use portion of their lines, even if it occurs during hours when only the light rail trains are operating. Moreover, there may be instances when FRA will work jointly with FTA and the state agency to investigate the cause of a transit accident that occurs off the general system under circumstances that raise concerns about the safety of operations on the shared use portions. For example, if a transit operator using the same light rail equipment on the shared and non-shared-use portions of its operation has a serious accident on the non-shared-use portion, FRA may want to determine whether the cause of the accident pointed to a systemic problem with the equipment that might impact the transit system's operations on the general system. Similarly, where human error might be a factor, FRA may want to determine whether the employee potentially at fault also has safety responsibilities on the general system and, if so, take appropriate action to ensure that corrective action is taken. FRA believes its statutory investigatory authority extends as far as necessary to address any condition that might reasonably be expected to create a hazard to railroad operations within its jurisdiction.

G. *Hours of service laws (49 U.S.C. 21101–21108).* (1) 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.

(2) 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.

H. *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.

I. *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.

J. *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 and certified under part 240. Any light rail system unable to meet this burden would have to fully comply with the requirements of part 240. Moreover, where a transit system intends to operate simultaneously on the same track with conventional equipment, FRA will not be inclined to waive the part 240 requirements. In that situation, FRA's paramount concern would be uniformity of training and qualifications of all those operating trains on the general system, regardless of the type of equipment.

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

1. 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 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.

2. 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.

3. 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 lists each of FRA's railroad safety rules and provides FRA's view on whether it is likely to grant a waiver in a particular area where temporal separation is assured. Where the ''Likely Treatment'' column says ''comply'' a waiver is not likely, and where it says ''waive'' a waiver is likely. Of course, FRA will consider each petition on its own merits and one should not presume, based on the chart, that FRA will grant or deny any particular request in a petition. This chart is offered as general guidance as part of a statement of policy, and as such does not alter any safety rules or obligate FRA to follow it in every case. 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 investigate accidents and injuries and take emergency action to address an imminent hazard of death or injury, would apply to these operations in all cases.

4. 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. (The ''Comments'' column of the chart shows ''State Safety Oversight'' where waivers conditioned on such state oversight are likely.) FRA will coordinate with FTA and the state agency to address any serious 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. On certain subjects where waivers are not likely, the ''Comments'' column of the chart makes special note of some important regulatory requirements that the light rail system will have to observe even if it is not primarily responsible for compliance with that particular rule.

POSSIBLE WAIVERS FOR LIGHT RAIL OPERATIONS ON THE GENERAL RAILROAD SYSTEM BASED ON SEPARATION IN TIME FROM CONVENTIONAL OPERATIONS

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 crossing accidents, 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 for arrangement of auxiliary lights, which is 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; FRA accident investigation authority not subject to waiver.	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.

* *Safety Appliance Statute.* 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.

** *Hours of Service Statute.* 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.

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Jolene M. Molitoris,

Federal Railroad Administrator.

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