

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.

[FR Doc. 00-17209 Filed 7-5-00; 10:43 am]

BILLING CODE 4910-06-P