

**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.

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**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.