

proposed regulations to make phenethyl bromide a list I chemical under the CSA would have on industry.

### Handling of Confidential or Proprietary Information

Confidential or proprietary information may be submitted as part of a comment regarding this advanced notice of proposed rulemaking. Please see the “POSTING OF PUBLIC COMMENTS” section above for a discussion of the identification and redaction of confidential business information and personally identifying information.

### Regulatory Analyses

This ANPRM was developed in accordance with the principles of Executive Order (E.O.) 12866, “Regulatory Planning and Review,” E.O. 13563, “Improving Regulation and Regulatory Review,” and E.O. 14094, “Modernizing Regulatory Review.” Because this action is an ANPRM, the requirement of E.O. 12866 to assess the costs and benefits of this action does not apply.

Furthermore, the requirements of the Regulatory Flexibility Act do not apply to this action because, at this stage, it is an ANPRM and not a “rule” as defined in 5 U.S.C. 601. Following review of the comments received in response to this ANPRM, if DEA proceeds with a notice of proposed rulemaking regarding this matter, DEA will conduct all relevant analyses as required by statute or E.O.

### Signing Authority

This document of the Drug Enforcement Administration was signed on October 10, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

**Heather Achbach,**

*Federal Register Liaison Officer, Drug Enforcement Administration.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 236

[Docket No. FRA–2023–0064]

RIN 2130–AC95

#### Positive Train Control Systems

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** FRA is proposing to amend certain regulations governing positive train control (PTC) systems. Since December 31, 2020, by law, PTC systems have generally governed rail operations on PTC-mandated main lines, which encompass nearly 59,000 route miles today. Through FRA’s oversight and continued engagement with the industry, FRA has found that its existing PTC regulations do not adequately address temporary situations during which PTC technology is not enabled, including after certain initialization failures or in cases where a PTC system needs to be temporarily disabled to facilitate repair, maintenance, infrastructure upgrades, or capital projects. FRA expects PTC systems to be reliable and robust, further reducing the occurrence of initialization failures and outages. This NPRM proposes to establish strict parameters and operating restrictions under which railroads may continue to operate safely in certain necessary scenarios when PTC technology is temporarily not governing rail operations. The purpose of this NPRM is to enable continued, safe operations and improve rail safety by facilitating prompt repairs, upgrades, and restoration of PTC system service.

**DATES:** Written comments must be received by December 27, 2024. FRA believes a 60-day comment period is appropriate to allow the public to comment on this proposed rule. FRA will consider comments received after that date to the extent practicable.

#### ADDRESSES:

*Comments:* Comments related to Docket No. FRA–2023–0064 may be submitted by going to <https://www.regulations.gov> and following the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name, docket number (FRA–2023–0064), and Regulation Identifier Number (RIN) for this rulemaking (2130–AC95). All

comments received will be posted without change to <https://www.regulations.gov>; this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

*Docket:* For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> and follow the online instructions for accessing the docket.

#### FOR FURTHER INFORMATION CONTACT:

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#### I. Executive Summary

Section 20157 of title 49 of the United States Code (U.S.C.) mandates each Class I railroad, and each entity providing regularly scheduled intercity or commuter rail passenger transportation, to implement an FRA-certified PTC system on: (1) its main lines over which poison- or toxic-by-inhalation hazardous materials are transported, if the line carries five million or more gross tons of any annual traffic; (2) its main lines over which intercity or commuter rail passenger transportation is regularly provided; and (3) any other tracks the Secretary of Transportation (Secretary) prescribes by

regulation or order.<sup>1</sup> By law, PTC systems must be designed to prevent certain accidents or incidents, including train-to-train collisions, over-speed derailments, incursions into established work zones, and movements of trains through switches left in the wrong position.<sup>2</sup>

Currently, 37 host railroads<sup>3</sup>—including 7 Class I railroads,<sup>4</sup> 24 entities that provide regularly scheduled intercity or commuter rail passenger transportation (hereinafter referred to as “intercity passenger railroads or commuter railroads,” respectively), and 6 Class II or III, short line, or terminal railroads—are directly subject to the statutory mandate. On December 29, 2020, FRA announced that railroads had fully implemented FRA-certified and interoperable PTC systems on all PTC-mandated main lines.<sup>5</sup> 49 U.S.C. 20157(a); 49 CFR 236.1005(b)(7).

Today, PTC technology is governing rail operations on nearly 59,000 route miles. Based on FRA’s oversight of PTC technology since FRA last amended its PTC regulations in 2021, FRA identified three aspects of its existing PTC regulations that warrant revision to address ongoing challenges. Overall, the proposed amendments would benefit the railroad industry, the public, and FRA by facilitating repairs, maintenance, upgrades, and capital improvements; expanding certain railroad informational requirements; reducing costs; and enabling the safe,

reliable, and resilient movement of people and goods, while preserving rail safety.

This NPRM proposes to establish strict parameters and operating restrictions under which railroads may continue to operate safely in three specific scenarios when PTC technology is temporarily not governing rail operations:

1. When non-revenue passenger equipment needs to operate to a maintenance facility or yard, for the sole purpose of repairing or exchanging PTC technology;

2. When a PTC system needs to be temporarily disabled to facilitate repair, maintenance, an infrastructure upgrade, or a capital project; and

3. When a system-level or widescale problem occurs resulting in multiple trains’ PTC systems failing to initialize.

FRA’s objective in this rulemaking is to establish clear, uniform processes, rather than addressing issues that arise in a reactive and piecemeal manner. FRA expects that establishing predictable, prescriptive processes will both enable continued operations and improve railroad safety by facilitating prompt repairs, upgrades, and restoration of PTC system service and eliminating uncertainty and inconsistent application of FRA’s regulations. FRA’s proposed parameters and operating restrictions in this NPRM are intended to be sufficiently strict to ensure that railroads and PTC system suppliers and vendors proactively identify and remedy problems before they arise and immediately correct any problems that may surface despite proactive measures.

First, FRA is proposing to establish an exception, under 49 CFR 236.1006(b)(6), to permit, under certain conditions, non-revenue passenger equipment to operate to maintenance facilities or yards, without being governed by PTC technology. This NPRM proposes to extend the exception currently afforded to certain freight movements to movements of non-revenue passenger equipment, including equipment that is owned or controlled by an intercity passenger railroad or commuter railroad.

This proposed exception would enable non-revenue passenger equipment, including a locomotive, locomotive consist, or train without passengers onboard, to operate to a maintenance facility or yard for the sole purpose of repairing or exchanging<sup>6</sup> a

PTC system or component. Commuter railroads have informed FRA this proposed exception would be beneficial and necessary, as it would enable them, for example, to operate a PTC-equipped locomotive, where the onboard PTC technology is not functioning and requires repair, to a maintenance facility or yard to repair or exchange the PTC system. To ensure rail safety, FRA is proposing to impose six conditions on each movement of non-revenue passenger equipment subject to this exception, including speed and distance restrictions, the requirement to establish an absolute block (meaning no other traffic may be present in the area), and other protections of the route.

Second, FRA proposes to improve the existing process, under 49 CFR 236.1021(m), that railroads currently utilize to request and obtain FRA’s approval to disable their PTC systems temporarily when necessary to facilitate repair, maintenance, infrastructure upgrades, and capital projects. This NPRM proposes to add paragraph (m)(4) to existing § 236.1021 to focus on this specific type of request for amendment (RFA) to PTC systems (*i.e.*, where a temporary PTC system outage is proposed), as it is different from the other types of RFAs that railroads submit under § 236.1021 and requires additional FRA oversight.

FRA proposes to require railroads to provide additional, essential information in an RFA that seeks to temporarily disable a PTC system to enable FRA to evaluate more fully the scope, circumstances, and necessity of a proposed temporary outage and properly determine whether granting the request is in the public interest and consistent with railroad safety. For example, this NPRM proposes to impose nine additional content requirements for this specific type of RFA, including certain justifications, safety analyses, mitigations, and other documentation to demonstrate the proposed outage is as narrow in scope, impact, and duration, as possible.

Third, FRA proposes to reintroduce as a permanent provision a version of a temporary provision regarding PTC system initialization failures, which expired on December 31, 2022.<sup>7</sup> The expired regulatory provision previously permitted any train, including an individual train, to keep operating subject to certain restrictions, if the train failed to initialize for any reason prior to the train’s departure from its initial terminal. In FRA’s 2014 final rule, FRA

<sup>1</sup> See Rail Safety Improvement Act of 2008, Public Law 110–432, section 104, 122 Stat. 4848 (Oct. 16, 2008), as amended by the Positive Train Control Enforcement and Implementation Act of 2015, Public Law 114–73, 129 Stat. 568 (Oct. 29, 2015); the Fixing America’s Surface Transportation Act, Public Law 114–94, section 11315(d), 129 Stat. 1312 (Dec. 4, 2015); and the Passenger Rail Expansion and Rail Safety Act of 2021, Public Law 117–58, section 22414, 135 Stat. 429 (Nov. 15, 2021), codified as amended at 49 U.S.C. 20157. See also 49 CFR part 236, subpart I.

<sup>2</sup> See, e.g., 49 U.S.C. 20157(g)(1), (i)(5); 49 CFR 236.1005 (setting forth the technical specifications).

<sup>3</sup> As this proposed rule primarily focuses on host railroads, FRA references the current number of PTC-mandated *host* railroads (37). A host railroad is “a railroad that has effective operating control over a segment of track,” and a tenant railroad is “a railroad, other than a host railroad, operating on track upon which a PTC system is required.” See 49 CFR 236.1003(b).

<sup>4</sup> FRA acknowledges that one Class I railroad (Canadian Pacific Railway) recently acquired a second Class I railroad (Kansas City Southern Railway). However, for purposes of FRA’s PTC regulations and related oversight, FRA is currently counting these railroads separately, as they presently submit separate PTC filings and have indicated they will do so unless and until they fully integrate their PTC systems.

<sup>5</sup> Federal Railroad Administration, FRA Announces Landmark Achievement with Full Implementation of Positive Train Control (Dec. 29, 2020), available at <https://railroads.dot.gov/sites/fra.dot.gov/files/2020-12/fra1920.pdf>.

<sup>6</sup> FRA’s existing regulations, including 49 CFR 236.1029(b)(6), refer to repairing or exchanging a PTC system or component. To clarify, FRA notes that “exchange” is intended to refer to the

industry’s practice of, for example, swapping out a defective component for a functioning component.

<sup>7</sup> See 49 CFR 236.1029(g)(2).

authorized this provision temporarily, recognizing that “there may be issues that could be identified and resolved in the early days following PTC system implementation and revenue service operation.”<sup>8</sup> In 2014, FRA also observed that “[e]xperience over these intervening years will provide more empirical data on PTC system reliability, and may be a basis for FRA to revisit this issue at a later date should circumstances warrant.”<sup>9</sup>

FRA’s intention in this NPRM, by proposing to reintroduce an updated version of this provision, is to address only system-level outages or failures that result in multiple trains’ PTC systems failing to initialize, impacting the trains of the host railroad and often most, if not all, of its tenant railroads. Currently, if a PTC system fails to initialize, trains are generally prohibited from operating, which has resulted in situations where passengers could be stranded, and vital freight shipments halted.

Although PTC technology is generally reliable and robust, it is a complex technology, composed of many subsystems and dependent on external networks, and it continues to experience

unplanned outages. For example, railroads’ Quarterly Reports of PTC System Performance<sup>10</sup> show that PTC technology failed to initialize on approximately 236 intercity passenger or commuter trains and 894 freight trains in 2023.<sup>11</sup> Additionally, based on voluntary reporting by railroads, FRA is aware of eight (8) system-level outages that occurred in 2023 that caused multiple trains to fail to initialize.

FRA is proposing to impose two tiers of operating restrictions that would become increasingly restrictive as time passes, to ensure both that railroads utilize any operating flexibility only when necessary and that railroads and their vendors and suppliers identify and resolve issues promptly. FRA expects this will help strike the appropriate balance between enabling continued operations subject to speed restrictions, pending resolution of a PTC failure, and restoring PTC systems as quickly as possible. In short, if a PTC system fails to initialize, impacting multiple trains, FRA proposes to permit railroads to continue operating for 24 hours, subject to the operating restrictions, including speed limits, that previously applied to initialization failures and that currently

apply to *en route* failures.<sup>12</sup> After the first 24 hours, FRA proposes to impose a significant speed limit of restricted speed, among other restrictions, both to help ensure rail safety and to propel the industry to act quickly to restore PTC system service.

FRA analyzed the economic impact of this proposed rule over a 10-year period and estimated its benefits and costs, which are shown in the table below. The total estimated 10-year net benefits would be \$81.8 million (discounted at 2 percent), and the annualized net benefits would be \$9.1 million (discounted at 2 percent). The industry benefits associated with FRA’s proposal to amend three provisions—*i.e.*, to introduce a new exception for certain non-revenue passenger equipment movements, improve the RFA process regarding temporary PTC system outages, and permit continued operations following certain initialization failures, subject to operating restrictions—would outweigh the industry costs and government administrative costs associated with FRA’s proposal to expand the content requirements for RFAs related to temporary outages.

TABLE A—TOTAL 10-YEAR DISCOUNTED BENEFITS, COSTS, AND NET BENEFITS  
[2023 Dollars]<sup>1</sup>

Category	Present value 2% (\$)	Present value 3% (\$)	Present value 7% (\$)	Annualized 2% (\$)	Annualized 3% (\$)	Annualized 7% (\$)
Industry Benefits .....	83,534,444	80,105,191	68,518,285	9,299,600	9,390,772	9,755,462
Total Costs .....	1,760,775	1,688,492	1,444,258	196,021	197,943	205,630
Industry Costs .....	1,514,075	1,451,919	1,241,905	168,557	170,209	176,819
Government Administrative Costs .....	246,700	236,573	202,353	27,464	27,734	28,811
Net Benefits <sup>2</sup> .....	81,773,669	78,416,699	67,074,027	9,103,579	9,192,829	9,549,832

<sup>1</sup> Numbers in this table and subsequent tables may not sum due to rounding. The present value of costs and benefits are calculated in this analysis. Present value provides a way of converting future benefits into equivalent dollars today. The formula used to calculate the present value at the particular discount rate is:  $1/(1+r)^t$ , where “r” is the discount rate, and “t” is the year. Discount rates of 2%, 3%, and 7% are used in this analysis.

<sup>2</sup> Net Benefits = Industry Benefits – (Industry Costs + Government Administrative Costs). FRA notes that the net industry benefits of this proposed rule may help reduce the overall industry costs for implementing and operating PTC systems.

**II. Background**

*A. Legal Authority To Prescribe PTC Regulations*

Section 104(a) of the Rail Safety Improvement Act of 2008 required the Secretary to prescribe PTC regulations

necessary to implement the statutory mandate, including regulations specifying the essential technical functionalities of PTC systems and how FRA certifies PTC systems.<sup>13</sup> The Secretary delegated to the Administrator of the Federal Railroad Administration

the authority to carry out the functions and exercise the authority vested in the Secretary by the Rail Safety Improvement Act of 2008. 49 CFR 1.89(b).

In accordance with its authority under 49 U.S.C. 20157(g) and 49 CFR 1.89(b),

<sup>8</sup> 79 FR 49693, 49706 (Aug. 22, 2014).

<sup>9</sup> *Id.*

<sup>10</sup> Form FRA F 6180.152, Office of Management and Budget (OMB) Control No. 2130–0553; 49 U.S.C. 20157(m) (as amended by the Passenger Rail Expansion and Rail Safety Act of 2021, Public Law 117–58, section 22414, 135 Stat. 429 (Nov. 15, 2021)).

<sup>11</sup> The referenced initialization failures exclude any initialization failures where the source or cause was the onboard subsystem, as proposed

§ 236.1029(g)(3) excludes such initialization failures from receiving the flexibility afforded under proposed § 236.1029(g), as they typically impact one train. FRA is citing to the relevant initialization failures where the source or cause was, for example, the back office, wayside, or communications subsystems because those types of issues would generally impact more than one train and would be within the scope of this proposed provision.

<sup>12</sup> An *en route* failure is a situation where a controlling locomotive experiences a “PTC system

failure or the PTC system is otherwise cut out while *en route* (*i.e.*, after the train has departed its initial terminal).” 49 CFR 236.1029(b) (emphasis added). FRA’s current regulations provide that when an *en route* failure occurs, a train may continue operating in accordance with certain restrictions, including speed limits that are based on the underlying signal or train control system still in effect, outlined under 49 CFR 236.1029(b)(1) through (6).

<sup>13</sup> Public Law 110–432, 122 Stat. 4848 (Oct. 16, 2008), codified as amended at 49 U.S.C. 20157(g).

FRA published its first final PTC rule on January 15, 2010, which is set forth, as amended, under 49 CFR part 236, subpart I.<sup>14</sup> FRA's PTC regulations under 49 CFR part 236, subpart I, prescribe "minimum, performance-based safety standards for PTC systems . . . including requirements to ensure that the development, functionality, architecture, installation, implementation, inspection, testing, operation, maintenance, repair, and modification of those PTC systems will achieve and maintain an acceptable level of safety." 49 CFR 236.1001(a). FRA subsequently amended its PTC regulations via final rules published in 2010, 2012, 2014, 2016, and 2021.<sup>15</sup>

Most recently, on July 27, 2021, FRA amended its PTC regulations to improve the process by which railroads submit, and FRA reviews, RFAs to railroads' FRA-certified PTC systems and their associated PTC Safety Plans (PTCSPs), and to establish more robust reporting requirements to enable FRA to oversee the reliability and performance of railroads' PTC systems effectively. Also, in January 2023, FRA announced that it issued a guidance document addressing requirements related to the submission of requests for waivers, applications to modify or discontinue a signal system, and other special approval requests to FRA, and FRA underscored the importance of ensuring that railroads' filings contain sufficient, non-confidential information for the public to review and on which to comment.<sup>16</sup>

In this proposed rule, FRA proposes to revise three sections, 49 CFR 236.1006, 236.1021, and 236.1029, of FRA's existing PTC regulations pursuant to its specific authority under 49 CFR 1.89 and 49 U.S.C. 20157(g), and its general authority under 49 U.S.C. 20103 to prescribe regulations and issue orders for every area of railroad safety.

### *B. Public Participation Prior to the Issuance of the NPRM*

FRA regularly engages with host railroads, tenant railroads, PTC system vendors and suppliers, industry associations, and labor organizations, as part of FRA's oversight of railroads'

operation of PTC systems on the mandated main lines under 49 U.S.C. 20157 and the other lines where railroads are voluntarily implementing PTC technology. The purpose of this section is to summarize FRA's pertinent meetings prior to the issuance of this NPRM, pursuant to 49 CFR 5.5.

From November 2023 to February 2024, FRA met with the following four industry associations and their member railroads to discuss the objectives of this NPRM and solicit their feedback: the American Public Transportation Association (APTA), the American Short Line and Regional Railroad Association (ASLRRA), the Association of American Railroads (AAR), and the Commuter Rail Coalition (CRC).

Representatives from the following 35 Class I railroads, commuter and passenger railroads, and short line and regional railroads, listed alphabetically, attended one or more of the AAR, APTA,<sup>17</sup> ASLRRA, and CRC meetings referenced immediately above: Alaska Railroad; Altamont Corridor Express; BNSF Railway (BNSF); Canadian National Railway (CN); Canadian Pacific Kansas City Limited (CPKC); Capital Metropolitan Transportation Authority (CMTY); Central Florida Rail Corridor (CFRC); CSX Transportation, Inc. (CSX); Denton County Transportation Authority; Genesee & Wyoming Inc. (G&W); Long Island Rail Road (LIRR); Maryland Area Rail Commuter (MARC); Massachusetts Bay Transportation Authority (MBTA); Metro-North Railroad (Metro-North); National Railroad Passenger Corporation (Amtrak); New Jersey Transit (NJT); New Mexico Rail Runner Express; Norfolk Southern Railway (NS); North County Transit District (NCTD); Northeast Illinois Regional Commuter Railroad Corporation (Metra); Northern Indiana Commuter Transportation District (NICD); Northstar Commuter Rail; Peninsula Corridor Joint Powers Board (Caltrain); Regional Transportation District (Denver RTDC); Sonoma-Marin Area Rail Transit (SMART); Sound Transit; South Florida Regional Transportation Authority (SFRTA); Southeastern Pennsylvania Transportation Authority (SEPTA); Southern California Regional Rail Authority (Metrolink); TEXRail; Tri-County Metropolitan Transportation District of Oregon (TriMet); Trinity Railway Express (TRE); Union Pacific Railroad (UP); Utah Transit Authority

(UTA FrontRunner); and Virginia Railway Express (VRE).

In addition, for the same purpose, FRA met with the following 10 labor organizations in February 2024: the American Train Dispatchers Association (ATDA); the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference of the International Brotherhood of Teamsters (BLET); the Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Teamsters (BMWED); the Brotherhood of Railroad Signalmen (BRS); the Brotherhood of Railway Carmen Division, Transportation Communications International Union (BRC); the International Association of Machinists and Aerospace Workers (IAM); the International Association of Sheet Metal, Air, Rail, and Transportation Workers—Transportation Division (SMART-TD); the International Brotherhood of Electrical Workers (IBEW); the Transport Workers Union of America (TWU); and the Transportation Trades Department, AFL-CIO (TTD).

In general, the four industry associations and 35 railroads strongly supported the three objectives of this NPRM. The labor organizations FRA met with supported FRA's objective of enabling operations while maintaining rail safety, but they expressed concern that regulatory flexibility might have the unintended consequence of degrading safety or delaying repairs to PTC technology. Accordingly, with all feedback in mind, FRA drafted its proposed requirements and restrictions in 49 CFR 236.1006(b)(6), 236.1021(m)(4), and 236.1029(g) to prioritize rail safety, address limited circumstances for facilitating repairs, maintenance, and infrastructure upgrades, and enable the safe, reliable, and resilient movement of passengers, commuters, and freight.

As the detailed feedback the associations, railroads, and labor organizations provided during the meetings was directed at a specific proposal in this NPRM, FRA discusses the feedback in the appropriate portions of Section III (*Section-by-Section Analysis*) of this NPRM.

The proposals in this NPRM are based on FRA's own review and analysis and, in part, on the feedback provided during the meetings in 2023 and 2024, specified above. FRA seeks comments on all proposals made in this NPRM.

<sup>14</sup> 75 FR 2598 (Jan. 15, 2010).

<sup>15</sup> See 75 FR 59108 (Sept. 27, 2010); 77 FR 28285 (May 14, 2012); 79 FR 49693 (Aug. 22, 2014); 81 FR 10126 (Feb. 29, 2016); and 86 FR 40154 (July 27, 2021).

<sup>16</sup> 88 FR 1448 (Jan. 10, 2023); Federal Railroad Administration, Guidance on Submitting Requests for Waivers, Block Signal Applications, and Other Approval Requests to FRA (Dec. 2022), available at <https://railroads.dot.gov/sites/fra.dot.gov/files/2022-12/Guidance%20on%20Submitting%20Waiver%20Special%20Approval%20Other%20Requests%20for%20Approval%20to%20FRA%20%28Dec%202022%29%20final.pdf>.

<sup>17</sup> In addition to FRA's meeting with APTA, FRA met with the following two user groups in February 2024, as coordinated through APTA: the Enhanced Automatic Train Control (E-ATC) User Group and the Interoperable Electronic Train Management System (I-ETMS) User Group.

### III. Section-by-Section Analysis

#### *Section 236.1006 Equipping Locomotives Operating in PTC Territory*

Existing paragraph (b) in § 236.1006 contains a list of exceptions to the general requirement under paragraph (a) that each locomotive, locomotive consist, or train that operates on any PTC-governed track segment “be controlled by a locomotive equipped with an onboard PTC apparatus that is fully operative and functioning in accordance with the applicable PTCSP approved under this subpart.” 49 CFR 236.1006(a), (b)(1) through (5).

FRA proposes to add a new exception, under proposed paragraph (b)(6), to permit non-revenue passenger equipment to operate to maintenance facilities or yards, without being governed by PTC technology, under certain conditions. Currently, a similar exception is available only to freight railroads under existing paragraph (b)(5) of this section. The purpose of new proposed paragraph (b)(6) is to extend that type of exception to movements of certain non-revenue passenger equipment, which would include equipment owned or controlled by an intercity passenger railroad or commuter railroad.

The sole purpose of new proposed paragraph (b)(6) is to enable non-revenue passenger equipment, including a locomotive, locomotive consist, or train, to operate to a maintenance facility or yard for the purpose of repairing or exchanging a PTC system. During FRA’s APTA and CRC meetings in February 2024, several commuter railroads, including CMTY, MARC, Metro-North, NICD, and NJT, commented that this proposed exception would be beneficial and necessary, as it would enable them, for example, to operate a PTC-equipped locomotive, where the onboard PTC technology is not functioning and requires repair, to a maintenance facility or yard to repair or exchange the PTC system or component. Without this proposed provision, intercity passenger railroads and commuter railroads would need to utilize rescue trains or, in other words, use an operative, PTC-equipped locomotive, locomotive consist, or train to move the non-operative, PTC-equipped equipment to a maintenance facility or yard. This proposed provision will enable a railroad to repair the equipment more efficiently, thus helping improve rail safety.

During FRA’s meetings in February 2024, commuter railroads cited often experiencing issues with transporting equipment requiring repair to their maintenance facilities, including

unavailability of equipment and cascading schedule delays, and they supported this proposed exception, even though it would potentially constrain some operations. For example, the introductory text of proposed paragraph (b)(6) makes it clear that this proposed exception would apply only to non-revenue movements, meaning no intercity passenger or commuter rail service could be provided while moving this equipment not governed by a PTC system.

Proposed paragraphs (b)(6)(i) through (v) and (vii) outline the six additional conditions FRA proposes an intercity passenger railroad or commuter railroad must satisfy while utilizing this proposed exception. First, proposed paragraph (b)(6)(i) would limit the speed of the locomotive, locomotive consist, or train to a maximum of 49 miles per hour (mph), which is significantly slower than the normal maximum authorized speed for passenger equipment, which generally ranges between 79 mph and 150 mph.

Second, proposed paragraph (b)(6)(ii) would require an absolute block<sup>18</sup> to be established in front of the locomotive, locomotive consist, or train. This would help ensure safety by essentially eliminating the possibility of a train-to-train collision. During FRA’s February 2024 meetings, CMTY, SMART, and UTA FrontRunner commented that they currently use absolute blocks in similar circumstances and supported the proposal of this condition.

Third, proposed paragraph (b)(6)(iii) specifies that there cannot be any working limits established under part 214 of this chapter on any part of the route. FRA proposes to eliminate the risk of an incursion into an established work zone by not permitting work zones or any roadway workers at all on the route the non-revenue passenger equipment uses to reach the maintenance facility or yard to repair or exchange its PTC technology. To be clear, roadway workers may not perform any work on the route where the non-revenue passenger equipment operates subject to this proposed exception, until after the equipment arrives at its destination, the maintenance facility or yard.

Fourth, proposed paragraph (b)(6)(iv) specifies that the locomotive, locomotive consist, or train could operate in non-revenue service no farther than the next forward location designated in the railroad’s PTCSP for

the repair or exchange<sup>19</sup> of PTC technology. During FRA’s meeting with labor organizations in February 2024, BLET and BRS commented that they were concerned a railroad might utilize this proposed exception to avoid repairing the PTC system or to delay repairing the PTC system by operating the equipment to a more distant repair location than available.

Relatedly, during a meeting in February 2024, NICD observed that the structure of commuter rail operations would inherently prevent railroads from overusing any exception or provision that involves speed restrictions because of the negative impact that has on their operations. For example, even a single train operating at a slower speed can create scheduling issues and cascading delays for commuter trains. In addition, FRA expects that its proposed conditions, including the imposition of a speed restriction, the prohibition against work zones, and an absolute block requirement, would prevent overuse of this exception. Also, FRA crafted proposed paragraph (b)(6)(iv) with BLET and BRS’s comments in mind, and this proposed condition would explicitly prohibit the non-revenue passenger equipment from operating farther than the next forward designated location in the railroad’s FRA-approved PTCSP.

Fifth, similar to a condition in the existing freight version of this exception in paragraph (b)(5) of this section, proposed (b)(6)(v) would require the railroad to protect the route against conflicting operations and establish and comply with sufficient operating rules to protect against a train-to-train collision and the movement of a train through a switch left in the wrong or improper position. This condition would further reduce the possibility of a train-to-train collision as it would address traffic on intersecting tracks. Furthermore, to protect against the movement of a train through a switch left in the wrong or improper position, a railroad’s operating rules could, for example, explain that the railroad utilizes a system or technology capable of monitoring switches. If a railroad does not have such a system or technology, a switch’s position must be manually verified before any movement over the switch points. To accomplish this, a switch tender must check the switch, or the train crew must stop and then confirm the switch position before operating over the switch.

<sup>18</sup> Under 49 CFR 236.709, an absolute block is defined as a “block in which no train is permitted to enter while it is occupied by another train.”

<sup>19</sup> To clarify, FRA notes that “exchange” is intended to refer to the industry’s practice of, for example, swapping out a defective component for a functioning component.

During an FRA meeting in February 2024, SFRTA inquired whether FRA intends to limit the distance of the movement of non-revenue passenger equipment in this proposed exception, as it does in the freight railroad exception in existing paragraph (b)(5). FRA notes that the purpose of the two exceptions is different: the purpose of the freight exception in paragraph (b)(5) is to facilitate freight switching and freight transfer train service, including in revenue service, in or near yards, whereas the purpose of the proposed paragraph (b)(6) exception would be to enable non-revenue passenger equipment to reach maintenance facilities or yards, without being governed by PTC technology, for the specific purpose of repairing or exchanging a PTC system. The commuter railroad SMART commented that it would not be possible to identify a specific distance that applies to all cases because the distance to each intercity passenger or commuter railroad's maintenance facilities and yards, based on the starting point, is unique. FRA agrees, as the applicable distance varies greatly based on case-by-case circumstances. Accordingly, rather than imposing an exact distance limit, FRA expects that the five conditions in proposed paragraphs (b)(6)(i) through (v) would sufficiently define the scope of this exception.

Proposed paragraph (b)(6)(vi) provides that FRA may, in its discretion, approve alternative criteria and conditions, in a PTCSP or an RFA to a PTCSP, if the railroad demonstrates that the alternative criteria and conditions would provide an equivalent or greater level of safety than the default criteria and conditions. FRA is proposing to add this paragraph to mirror that discretionary element of the freight yard movements exception in existing paragraph (b)(5)(vii). Proposed paragraph (b)(6)(vi) provides the opportunity for railroads to propose alternative applications of this exception to FRA for review and approval. An intercity passenger railroad or commuter railroad must obtain FRA's approval only if it seeks to use alternative exception criteria or conditions under proposed paragraph (b)(6)(vi), whereas the standard exception for non-revenue passenger equipment movements would be immediately available for use for any movement that meets all default criteria and conditions in proposed paragraphs (b)(6)(i) through (v).<sup>20</sup>

<sup>20</sup> FRA notes that railroads would report any use of the proposed exception under 49 CFR 236.1006(b)(6) in their Quarterly Reports of PTC

Finally, proposed paragraph (b)(6)(vii) imposes a notification requirement that a railroad must satisfy before moving non-revenue passenger equipment pursuant to this exception. Specifically, this paragraph proposes that before utilizing the default exception under paragraphs (b)(6)(i) through (v) or the discretionary exception under paragraph (b)(6)(vi), the railroad must notify each person involved with the movement of the non-revenue passenger equipment, including any dispatchers and train crews, in addition to any roadway workers who may no longer work on that segment during the movement subject to this exception.

#### *Section 236.1021 Discontinuances, Material Modifications, and Amendments*

On December 31, 2022, the regulatory provision under 49 CFR 236.1029(g)(3) expired, which previously permitted a railroad to temporarily disable its PTC system when necessary to perform PTC system repair or maintenance, after notifying an FRA regional office. As § 236.1029(g)(3) has expired, a simple notification to FRA no longer suffices, and a railroad must obtain FRA's approval through an RFA pursuant to 49 CFR 236.1021(m) before a railroad temporarily disables its PTC system and continues rail operations.

The purpose of existing § 236.1021, in relevant part, is to prohibit a railroad from making certain changes to its PTC system or disabling or discontinuing its PTC system, unless the railroad first submits an RFA to its PTC system with certain information and obtains FRA's approval.

This NPRM proposes to add a new paragraph (m)(4) to § 236.1021 to clarify that the RFA process under existing paragraph (m) applies to a case where a railroad seeks to temporarily disable its PTC system, and to continue operations during that time, to facilitate repair, maintenance, infrastructure upgrades, or capital projects. During FRA's meetings with AAR, APTA, ASLRRRA, CRC, and their member railroads in November 2023 and February 2024 to discuss this NPRM, these four associations and several railroads, including all Class I railroads, Alaska Railroad, Amtrak, G&W, Metra, Metro-North, Metrolink, and SFRTA, expressed general support for FRA's proposal to revise existing paragraph (m) to acknowledge explicitly that it covers RFAs to PTC systems involving temporary outages.

System Performance (Form FRA F 6180.152, OMB Control No. 2130-0553), as either a "cut out" or "initialization failure" depending on the circumstances and based on the definitions under 49 CFR 236.1003.

Specifically, proposed paragraph (m)(4) clarifies that a host railroad must utilize the RFA process under paragraph (m) to request and obtain FRA's approval of a temporary PTC system outage, during which train movements may continue, including a short-term outage related to repair, maintenance, an infrastructure upgrade, or a capital project.<sup>21</sup> To provide non-exhaustive examples of what a temporary PTC system outage includes, proposed paragraph (m)(4) clarifies that the term includes, but is not limited to, any scenario when the onboard PTC apparatus or subsystem, wayside subsystem, communications subsystem, or back office subsystem would be disabled. FRA interprets the term "disabled" broadly and acknowledges the industry also uses the verb "disengage" interchangeably in this context.

Consistent with the current process under existing paragraph (m), proposed paragraph (m)(4)(i) provides that a railroad may temporarily disable PTC technology pursuant to this paragraph only after it obtains approval from the Director of FRA's Office of Railroad Systems and Technology.

Based on FRA's experience reviewing RFAs involving temporary outages throughout 2023 and 2024 to date, FRA found that the current content requirements for RFAs to PTC systems under existing paragraph (m)(2) do not yield sufficient information for FRA to assess the full scope and circumstances of each proposed temporary outage. Accordingly, proposed paragraphs (m)(4)(ii)(A) through (I) identify nine additional content elements this type of RFA must include, in addition to the standard content requirements under paragraph (m)(2), which apply to a broader cross-section of RFAs to PTC systems and PTCSPs.

Proposed paragraph (m)(4)(ii)(A) would require this specific type of RFA to describe the necessity for the proposed temporary outage. For example, in 2023 and 2024, railroads have filed RFAs seeking to temporarily disable a PTC system to facilitate the installation of automatic train control or a new interlocking, or to execute an upgrade of a computer-aided dispatch system, a back office server migration or replacement, or an electrical infrastructure upgrade. This section of the RFA would explain why temporarily

<sup>21</sup> Several railroads have expressed that their chief concern is a path forward for undertaking non-PTC-related capital projects that necessitate temporarily disabling the PTC system, and FRA is using the general term "capital projects" in this NPRM to avoid any ambiguity and clarify that this process applies to such projects.

disabling a PTC system is technically necessary to perform that type of repair, maintenance, infrastructure upgrade, or capital project.

Proposed paragraph (m)(4)(ii)(B) would require the RFA to describe the physical limits and PTC system functions that would be affected by the proposed temporary outage. This section of the RFA would require an analysis that demonstrates the affected physical limits and affected functions pose the least risk to railroad safety, compared to other options. To assess the RFA, FRA needs to understand the exact location(s) that will be impacted, including milepost limits and other descriptors. Identifying the precise PTC system functions that would be impacted is also essential for FRA to understand the scope of the temporary outage, as an outage might impact only a narrow set of PTC system capabilities.

Proposed paragraph (m)(4)(ii)(C) would require the RFA to include an explanation about how the proposed temporary outage is in the public interest and consistent with railroad safety. Existing § 236.1021(f) requires FRA to determine whether granting a request is in the public interest and consistent with railroad safety, and it is important for an RFA to provide such information.

Proposed paragraph (m)(4)(ii)(D) would require the railroad to provide the proposed timeframe of the temporary outage and an analysis that demonstrates the proposed period poses the least risk to railroad safety, compared to other times. This proposal mirrors a similar requirement under former § 236.1029(g)(3)(ii), which expired in December 2022. FRA has seen railroads prudently identify the timeslot of a specific day of the week with the least traffic, which is what FRA expects this content requirement will help ensure in future RFAs.

As a note, FRA has also seen cases where a railroad avoids needing to submit and obtain FRA's approval of an RFA involving a temporary outage, as the railroad either ceases all operations until it finishes the relevant work, or the railroad selects a time when no trains will operate. FRA commends railroads for structuring their projects that way and expects railroads to submit an RFA, seeking to disable its PTC system temporarily with continued rail service, under proposed paragraph (m)(4) only when ceasing operations would not be feasible.

Relatedly, proposed paragraph (m)(4)(ii)(E) would require the RFA to include both a justification and an analysis that show how the proposed duration of the temporary outage is the

minimum time necessary to complete the pertinent work, test the PTC system, and place the PTC system back into service without undue delay. FRA highlights that proposed paragraph (m)(4) is intended to address short-term outages only, and FRA will deny an RFA that seeks to disable a PTC system for an unreasonable, extensive period. In general, PTC-mandated main lines must be governed by PTC technology, given the presence of intercity passenger rail, commuter rail, or certain freight transportation. *See, e.g.*, 49 U.S.C. 20157(a); 49 CFR 236.1005(b), 236.1006(a). Railroads must show how the length of the proposed temporary outage is the minimum amount of time needed based on the circumstances, which could include outlining a precise schedule and the number of hours involved in each phase and justifications for each timeframe.

Proposed paragraph (m)(4)(ii)(F) would require the RFA to outline the type and frequency of rail operations that would continue during the proposed temporary outage, including those of the host railroad and each tenant railroad.

Proposed paragraph (m)(4)(ii)(G) would require the RFA to identify the applicable speed limit of any train that would operate during the proposed temporary outage, and any other operating restrictions in place to ensure rail safety. For example, a properly drafted RFA will outline the railroad's proposed reduced speed for each type of freight train, based on the commodity transported, and each intercity passenger or commuter train, compared to the normal authorized speeds.

Proposed paragraph (m)(4)(ii)(H) would require the railroad to specify in its RFA the additional safety measures that the host railroad and each tenant railroad must comply with during the proposed temporary outage, to ensure each type of PTC-preventable accident or incident does not occur. Specifically, such safety measures must be designed to prevent a train-to-train collision, an over-speed derailment, an incursion into an established work zone, and a movement of a train through a switch left in the wrong position. It is integral that FRA understands exactly how the railroad will mitigate and eliminate the risk of each type of PTC-preventable accident and incident during the short-term PTC system outage. For example, a railroad might propose to utilize an absolute block to mitigate and eliminate the risk of a train-to-train collision, enforce speed limits through the use of other technology, suspend the establishment of work zones, and

protect switches through other specific means.

Finally, proposed paragraph (m)(4)(ii)(I) would require the railroad to confirm in its RFA that each impacted railroad (including the host railroad and any applicable tenant railroads) will notify all applicable dispatchers, train crews, and roadway workers about the temporary PTC system outage (if FRA authorizes it), including the specific location and duration of the temporary outage, the additional safety measures with which the railroad must comply, and any actions the individual must take during the temporary outage. FRA expects that the proposed specific information an RFA must contain under proposed paragraphs (m)(4)(ii)(A) through (H) would aid the railroad in these notifications. The railroad may make these notifications in accordance with the railroad's operating rules and practices, which may require, for example, such information to be provided via track bulletins, dispatcher bulletins, or special instructions.

Also, FRA notes that its 45-day review-and-decision period under existing paragraph (m) begins when a railroad properly files a complete RFA with all information required under paragraph (m). To be clear, the 45-day clock will not begin on that initial filing date, if an RFA to a PTC system, involving a temporary outage, fails to include any of the contents explicitly required under existing paragraphs (m)(2)(i) through (iv) or the additional content requirements FRA is proposing in paragraphs (m)(4)(ii)(A) through (I).<sup>22</sup> Instead, consistent with the current § 236.1021(m) process, the 45-day clock begins on the date the railroad or railroads properly submit any remaining information required under existing paragraph (m)(2)(i) through (iv) and proposed paragraphs (m)(4)(ii)(A) through (I). FRA expects this will help ensure a railroad submits a complete RFA, with all required information, in its initial filing.

In addition, FRA acknowledges that it currently publishes a notice in the **Federal Register** when a railroad submits an RFA to its PTC system under existing § 236.1021(m) and invites public comment on the RFA. *See* 49 CFR 236.1021(e). During FRA's meeting with labor organizations in February 2024, TTD requested confirmation that FRA will not eliminate the opportunity for the public to comment on these RFAs. FRA confirmed during that

<sup>22</sup> Consistent with FRA's current practice, if an RFA is missing required information, an FRA PTC specialist will contact the railroad via email to inform the railroad of the missing, required content(s).

meeting that RFAs submitted pursuant to proposed paragraph (m)(4), like all RFAs submitted pursuant to paragraph (m), will be announced in the **Federal Register**, and the public will be afforded an opportunity to review and comment on such RFAs. That notice and comment requirement under § 236.1021(e) is outside the scope of this NPRM and will remain part of FRA's regulations. As a reminder, FRA's December 2022 guidance document underscores the importance of ensuring that railroads' filings contain sufficient, non-confidential information for the public to review and on which to comment.<sup>23</sup>

#### Section 236.1029 PTC System Use and Failures

Currently, paragraphs (g)(1) through (3), entitled "Temporary exceptions," of this section set forth expired regulations. Specifically, existing paragraph (g) indicates that paragraphs (g)(1) through (3) were in effect from October 21, 2014, through December 31, 2022. FRA proposes to replace existing paragraphs (g)(1) through (3) with new provisions that deal directly with initialization failures. FRA's existing regulations, at 49 CFR 236.1003, define "initialization failure" as "any instance when a PTC system fails to activate on a locomotive or train, unless the PTC system successfully activates during a subsequent attempt in the same location or before entering PTC-governed territory."<sup>24</sup> In relevant part, now-expired paragraph (g)(2) previously permitted any train to continue operating subject to certain speed limits, potentially indefinitely, if a PTC system failed to initialize for any reason.

FRA recognizes that unplanned outages and other technical issues continue to occur, causing PTC systems to fail to initialize, based on FRA's oversight and railroads' Quarterly Reports of PTC System Performance.<sup>25</sup> Railroads' Quarterly Reports of PTC

System Performance show, for example, that PTC technology failed to initialize on approximately 236 intercity passenger or commuter trains and 894 freight trains in 2023.<sup>26</sup> Additionally, FRA, based on voluntary reporting by railroads, is aware of eight (8) system-level outages that occurred in 2023 that caused trains to fail to initialize.

During FRA's meetings in November 2023 and February 2024, AAR, APTA, ASLRRRA, CRC, and many railroads<sup>27</sup> conveyed strong support for FRA's proposal to reintroduce requirements analogous to the provision that expired in 2022. Consistent with FRA's own observations, AAR, APTA, ASLRRRA, CRC, and their member railroads underscored the need for FRA to establish a process to enable railroads to continue operating safely, following certain initialization failures, because otherwise freight, intercity passenger, and commuter trains will be unable to depart from their initial terminals or other locations and provide necessary transportation.

Specifically, FRA's intention in this NPRM is to address only system-level outages or failures that result in multiple trains' PTC systems failing to initialize, like when a back office server goes down, impacting the trains of the host railroad and most, if not all, of its tenant railroads. Accordingly, FRA proposes to provide a caveat in proposed paragraph (g)(4), which would specify that the relief under paragraph (g)(1), discussed below, does not apply to a single train that experiences an onboard PTC system failure when attempting to initialize. The purpose of proposed paragraph (g) is to address issues affecting multiple trains.

During FRA's meeting with labor organizations in February 2024, BLET, BRS, and TTD acknowledged that FRA's objective in proposed paragraph (g) is to enable operations while maintaining rail safety, but they expressed concern for the potential unintended consequence of degrading safety or delaying repairs to PTC technology. FRA agrees that it is important to structure proposed

paragraph (g) to ensure railroads, vendors, and suppliers identify and fix any issues causing initialization failures immediately.

To ensure this provision is utilized only when necessary and railroads and their vendors and suppliers identify and promptly resolve the root cause of initialization failures, FRA is proposing to impose two tiers of operating requirements that would become increasingly restrictive over time. FRA expects this will help strike the appropriate balance between enabling continued operations, subject to restrictions, and restoring PTC systems as quickly as possible.

First, proposed paragraph (g)(1)(i) provides that when a PTC system fails to initialize as defined in § 236.1003, a train may proceed, during the first 24 hours, only as prescribed under existing paragraphs (b)(1) through (6) of § 236.1029. FRA is proposing to require railroads to utilize the current operating restrictions set forth in existing paragraphs (b)(1) through (6) because railroads, including train crews, are accustomed to complying with those speed limits and other restrictions when they experience *en route* failures, and those restrictions are based on the underlying signal or train control system still in effect. During FRA's meetings, the following railroads explicitly recommended this approach, based on industry's longstanding use of these operating restrictions when PTC technology fails or is otherwise cut out *en route*: Alaska Railroad, Amtrak, BNSF, CN, CPKC, CSX, G&W, MARC, Metra, Metrolink, NICD, NS, and UP.

Second, proposed paragraph (g)(1)(ii) states that after the first 24 hours, the train may proceed only as prescribed under paragraphs (b)(4) through (6) of this section and must not exceed restricted speed as defined in § 236.1003. FRA proposes to require compliance with existing paragraphs (b)(4) through (6) as they contain other applicable restrictions and communication requirements.<sup>28</sup> However, instead of the standard speed restrictions under existing paragraph (b), this stricter tier of operating restrictions would limit any train that utilizes this provision beyond 24 hours to restricted speed, which is defined as a "speed that will permit stopping

<sup>23</sup> 88 FR 1448 (Jan. 10, 2023); Federal Railroad Administration, Guidance on Submitting Requests for Waivers, Block Signal Applications, and Other Approval Requests to FRA (Dec. 2022), available at <https://railroads.dot.gov/sites/fra.dot.gov/files/2022-12/Guidance%20on%20Submitting%20Waiver%20Special%20Approval%20Other%20Requests%20for%20Approval%20to%20FRA%20%28Dec%202022%29%20final.pdf>.

<sup>24</sup> The definition under 49 CFR 236.1003 also clarifies, "For the types of PTC systems that do not initialize by design, a failed departure test is considered an initialization failure for purposes of the reporting requirement under § 236.1029(h), unless the PTC system successfully passes the departure test during a subsequent attempt in the same location or before entering PTC-governed territory."

<sup>25</sup> Form FRA F 6180.152, OMB Control No. 2130-0553; 49 U.S.C. 20157(m).

<sup>26</sup> The referenced initialization failures exclude any initialization failures where the source or cause was the onboard subsystem, as proposed paragraph (g)(3) excludes such initialization failures from receiving the flexibility afforded under proposed paragraph (g). FRA is citing to the relevant initialization failures where the source or cause was, for example, the back office, wayside, or communications subsystems because those types of issues would generally impact more than one train and would be within the scope of this proposed provision.

<sup>27</sup> Including, for example, Alaska Railroad, Amtrak, BNSF, Caltrain, CN, CPKC, CSX, Denver RTDC, G&W, MARC, MBTA, Metra, Metrolink, NICD, NJT, NS, OmniTRAX, TExRail, TRE, UP, UTA FrontRunner, VRE, and Watco.

<sup>28</sup> Specifically, 49 CFR 236.1029(b)(4) through (6) require notifying the designated railroad officer of the failure or cut out as soon as safe and practicable, impose further operating restrictions if the PTC system is the exclusive method of delivering mandatory directives, and prohibit operating farther than the next forward designated location for the repair or exchange of onboard PTC apparatuses, if the failure or cut out was the result of a defective onboard PTC apparatus.



within one-half the range of vision, but not exceeding 20 miles per hour.”<sup>29</sup>

During FRA’s meetings with APTA, CRC, and their member railroads in February 2024, several commuter railroads, including Denver RTD, MARC, Metra, NICD, NJT, TEXRail, TRE, and UTA FrontRunner supported FRA’s intention to propose a two-tiered framework. For example, MARC and NICD noted that the unplanned outages they recently experienced were resolved in approximately two hours, which means those trains, in a similar scenario under this proposed framework, would be subject to the standard operating restrictions under existing paragraph (b). Furthermore, these commuter railroads expressed appreciation that this proposed framework—with more flexibility on day one—would enable them to transport commuters to their destination if PTC technology fails midday and trains are unable to initialize the PTC system for the remainder of the day. Without this proposed provision, if a train’s PTC system fails midday and is not restored by the evening rush hour, commuters attempting to return home would be forced to rely on alternative modes of transportation, with little to no notice.

These eight commuter railroads also recognized that a clear, tiered approach—which introduces additional restrictions, including restricted speed, 24 hours after the onset of the technical issue—would enable railroads to communicate effectively with their customers if the railroad finds that an issue cannot be remedied within the first 24 hours. Commuter railroads emphasized the importance of being able to provide advance notice to their customers about the speed restrictions that would apply the following day, as that could result in service reductions.

Several stakeholders, including ASLRA, ATD, NJT, and UTA FrontRunner, stressed that the operating restrictions FRA proposes in paragraph (g) should be as simple, straightforward, and objective as possible given the complexity of other PTC regulations. Furthermore, FRA recognizes that predictability and transparency are vital when it comes to a process that will govern whether and how intercity passenger, commuter, and freight rail transportation may continue.

Proposed paragraph (g)(2) imposes a notification requirement that a railroad must, as early as is possible, ensure workers are aware of PTC system-level outages and corresponding operating restrictions. Specifically, proposed

paragraph (g)(2) requires each railroad operating in accordance with (g)(1) to notify, as early as is possible, all dispatchers, train crews, and roadway workers about PTC system-level outages or failures that result in multiple trains’ PTC systems failing to initialize, which result in trains proceeding in accordance with operating restrictions. Railroads must ensure job safety briefings reflect such operations.

Proposed paragraph (g)(3) proposes to require railroads to attempt to initialize the PTC system again, when the reason it is not initializing is loss of communications or lack of navigational information, like temporary lack of access to the Global Positioning System (GPS)<sup>TM</sup>. FRA is aware of multiple PTC systems that rely on GPS, like I-ETMS and the Incremental Train Control System. Specifically, proposed paragraph (g)(3) would require, notwithstanding the relief under paragraph (g)(1), that when a PTC system fails to initialize due to loss of communications or lack of navigational information, the train must attempt to initialize the PTC system again at the next forward, available location. The next forward, available location, depending on the circumstances, could be a segment of a main line, a siding, a yard, or a station, whichever is closest.

In addition, FRA acknowledges that PTC systems are comprised of many subsystems and are often interfaced with other technology. For example, at an AAR meeting in November 2023, CN emphasized that the nature of a system of subsystems, like PTC technology, means there is always the possibility of an outage, as a PTC system relies or depends on the proper functioning of many subsystems. Similarly, FRA is also aware that PTC systems have failed to initialize due to a failure of an interfaced system, like a dispatching system or an electronic storage system. Accordingly, FRA wants to clarify that proposed paragraphs (g)(1) through (5) of this section likewise apply to cases in which a PTC system fails to initialize due to an issue or failure arising from a subsystem or an interfaced system.

In addition, FRA wants to offer a clarification about the application of proposed paragraphs (g)(1) to (5) to the Advanced Civil Speed Enforcement System II (ACSES II). An initialization failure is defined in existing § 236.1003 as “any instance when a PTC system fails to activate on a locomotive or train, unless the PTC system successfully activates during a subsequent attempt in the same location or before entering PTC-governed territory.” Section 236.1003 specifies that for the types of PTC systems that do not initialize by

design, like ACSES II, a failed departure test is considered an initialization failure, unless the PTC system successfully passes the departure test during a subsequent attempt in the same location or before entering PTC-governed territory. ACSES II typically encompasses automatic train control (ATC), and FRA wants to emphasize that the FRA-certified PTC system, however, is ACSES II.<sup>30</sup> If ACSES II fails to initialize (*i.e.*, fails its departure test), an ACSES II-equipped train may utilize the relief outlined in proposed paragraph (g) of § 236.1029. By contrast, however, if ATC fails its departure test, a railroad must comply with all applicable signal and train control prohibitions and restrictions in other subparts of part 236. FRA wants to address this nuance to clarify that proposed paragraph (g) does not supersede other existing signal and train control regulations that directly govern ATC.

Finally, proposed paragraph (g)(5) recognizes that FRA may impose additional operating restrictions and other conditions to address recurring issues that result in multiple trains’ PTC systems failing to initialize. For example, under proposed paragraph (g)(5), FRA could require the applicable railroads and PTC system vendors and suppliers to take certain actions or satisfy additional reporting requirements, as they resolve the recurring issues. In addition, proposed paragraph (g)(4) would clarify that FRA reserves the right to deny the relief under proposed paragraph (g)(1) for recurring issues that result in multiple trains’ PTC systems failing to initialize. Although the relief under proposed paragraph (g)(1) is generally self-executing, FRA may choose to intervene under proposed paragraph (g)(5) and deny such relief if, for example, a railroad and/or its applicable PTC system vendor and supplier are not sufficiently correcting a recurrent problem.

#### IV. Regulatory Impact and Notices

##### A. Executive Order 12866 as Amended by Executive Order 14094

This proposed rule is a nonsignificant regulatory action under Executive Order 12866, as amended by Executive Order 14094, Modernizing Regulatory Review,<sup>31</sup> and DOT Order 2100.6A (“Rulemaking and Guidance Procedures”). FRA made this

<sup>30</sup> Or in NJT’s case, the Advanced Speed Enforcement System II (ASES II).

<sup>31</sup> 88 FR 21879 (Apr. 11, 2023), available at <https://www.federalregister.gov/documents/2023/04/11/2023-07760/modernizing-regulatory-review>.

<sup>29</sup> 49 CFR 236.1003 (citing to the definition in subpart G, at 49 CFR 236.812).

determination by finding that the economic effects of this proposed regulatory action would not exceed the \$100 million annual threshold defined by Executive Order 12866.

FRA complied with OMB Circular A-4 when accounting for benefits, costs, and cost savings relative to a baseline condition. Typically, a baseline represents a best judgement about what the world would be like in the absence of the regulatory interventions.<sup>32</sup>

In this analysis, discount rates are used to account for differences in the timing of the estimated benefits and costs. Benefits and costs that accrue further in the future are more heavily discounted than those impacts that occur today. Discounting reflects individuals' general preference to receive benefits sooner rather than later (and defer costs) and recognizes that costs incurred today are more expensive

than future costs because businesses must forgo an expected rate of return on investment of that capital.<sup>33</sup> OMB recommends using a discount rate of 2 percent.<sup>34</sup> This represents the real (inflation-adjusted) rate of return on long-term Federal Government debt over the last 30 years, calculated between 1993 and 2022, and is considered a reasonable approximation of the social rate of time preference.

FRA analyzed the economic impact of this proposed rule over a 10-year period and estimated its costs and benefits, as shown in the table below. The total estimated 10-year net benefits of this proposed rule would be \$81.8 million (discounted at 2 percent), and the annualized net benefits would be \$9.1 million (discounted at 2 percent). The industry benefits associated with FRA's proposal to amend three provisions—*i.e.*, to introduce a new exception for

certain non-revenue passenger equipment movements, improve the RFA process regarding temporary PTC system outages, and permit continued operations following certain initialization failures, subject to operating restrictions—would outweigh the industry costs and government administrative costs associated with FRA's proposal to expand the content requirements for RFAs related to temporary outages.

The following table shows the estimated 10-year benefits, net benefits, and costs of the proposed rule. The total 10-year estimated benefits would be \$83.5 million (discounted at 2 percent), with annualized benefits at \$9.3 million (discounted at 2 percent). The total 10-year estimated costs would be \$1.8 million (discounted at 2 percent), with annualized costs at \$0.2 million (discounted at 2 percent).

TABLE B—TOTAL 10-YEAR DISCOUNTED BENEFITS, COSTS, AND NET BENEFITS

[2023 Dollars]<sup>1</sup>

Category	Present value 2% (\$)	Present value 3% (\$)	Present value 7% (\$)	Annualized 2% (\$)	Annualized 3% (\$)	Annualized 7% (\$)
Industry Benefits .....	83,534,444	80,105,191	68,518,285	9,299,600	9,390,772	9,755,462
Total Costs <sup>2</sup> .....	1,760,775	1,688,492	1,444,258	196,021	197,943	205,630
Industry Costs .....	1,514,075	1,451,919	1,241,905	168,557	170,209	176,819
Government Administrative Costs .....	246,700	236,573	202,353	27,464	27,734	28,811
Net Benefits <sup>3</sup> .....	81,773,669	78,416,699	67,074,027	9,103,579	9,192,829	9,549,832

<sup>1</sup> Numbers in this table and subsequent tables may not sum due to rounding. The present value of costs and benefits are calculated in this analysis. Present value provides a way of converting future benefits into equivalent dollars today. The formula used to calculate the present value at the particular discount rate is:  $1/(1+r)^t$ , where "r" is the discount rate, and "t" is the year. Discount rates of 2%, 3%, and 7% are used in this analysis.

<sup>2</sup> Total Costs = Industry Costs + Government Administrative Costs.

<sup>3</sup> Net Benefits = Industry Benefits—(Industry Costs + Government Administrative Costs). FRA notes that the net industry benefits of this proposed rule may help reduce the overall industry costs for implementing and operating PTC systems.

1. Ten-Year Benefits

Proposed 49 CFR 236.1006(b)(6)

FRA analyzed the potential industry benefits of the three proposed amendments. Overall, the three proposed amendments would benefit the railroad industry, the public, and FRA by facilitating repairs, maintenance, upgrades, and capital improvements; expanding certain railroad informational requirements; reducing costs; and enabling the safe, reliable, and resilient movement of people and goods, while preserving rail safety.

The proposed exception under § 236.1006(b)(6) would enable non-revenue passenger equipment, including a locomotive, locomotive consist, or train without passengers onboard, to operate to a maintenance facility or yard for the sole purpose of repairing or exchanging a PTC system. To ensure rail safety, FRA is proposing to impose five conditions on each movement of non-revenue passenger equipment subject to this exception, including speed and distance restrictions, the requirement to establish an absolute block, and other protections of the route.

In assessing the potential benefits of the proposed provision, FRA focused on

the impact on train operations in the absence of this proposed rule. The methodology employed involved estimating the transportation costs associated with relocating non-operative, PTC-equipped passenger equipment to a maintenance facility or yard to repair or exchange the PTC technology. For example, without this proposed provision, intercity passenger railroads and commuter railroads would need to use an operative, PTC-equipped locomotive, locomotive consist, or train to move the non-operative, PTC-equipped equipment to a maintenance facility or yard.

<sup>32</sup> U.S. Office of Management and Budget, Circular A-4 (Nov. 9, 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/11/>

*CircularA-4.pdf*. See Section 4, Developing an Analytic Baseline, pages 11–14.

<sup>33</sup> U.S. Office of Management and Budget, Circular A-4 (Nov. 9, 2023). See Section 12, Discount Rates, pages 75–82.

<sup>34</sup> *Id.*

Based on consultation with FRA subject matter experts, FRA calculated the potential benefits for train operations, under proposed § 236.1006(b)(6), by multiplying the expected number of impacted passenger equipment by the transportation cost of moving that equipment to a maintenance facility or yard. FRA estimated a range of \$3,000 to \$4,000 to transport this type of equipment, or an average cost of \$3,500 per piece of equipment, similar to the amount utilized in another FRA NPRM<sup>35</sup> to

estimate the transportation cost of moving an empty car. FRA estimates that the transportation cost savings of moving this equipment is the estimated number of non-revenue passenger equipment that may use this proposed exception (*i.e.*, 30 per year or 1 per intercity passenger or commuter railroad<sup>36</sup>), multiplied by the expected transportation cost of \$3,500, resulting in an overall transportation cost savings of \$105,000 annually. Given the uncertainty about the amount of affected equipment and the five safety

conditions or restrictions that FRA is proposing a railroad must comply with while utilizing this exception, FRA is seeking input from the public on whether the cost of these five safety conditions, which FRA did not calculate due to insufficient data, might reduce the calculated net benefits.

Over a 10-year period, FRA estimates that this proposed provision would result in potential benefits of \$1 million, at the 2-percent discount, or on an annual basis, \$107,100, at the 2 percent discount.

TABLE C—POTENTIAL BENEFITS FROM PERMITTING NON-REVENUE PASSENGER EQUIPMENT TO OPERATE TO MAINTENANCE FACILITIES OR YARDS WITHOUT PTC—10-YEAR BENEFIT

Year	Undiscounted benefit (\$)	Present value 2% (\$)	Present value 3% (\$)	Present value 7% (\$)
1	105,000	105,000	105,000	105,000
2	105,000	102,941	101,942	98,131
3	105,000	100,923	98,973	91,711
4	105,000	98,944	96,090	85,711
5	105,000	97,004	93,291	80,104
6	105,000	95,102	90,574	74,864
7	105,000	93,237	87,936	69,966
8	105,000	91,409	85,375	65,389
9	105,000	89,616	82,888	61,111
10	105,000	87,859	80,474	57,113
Total	1,050,000	962,035	922,541	789,099
Annualized		107,100	108,150	112,350

Proposed 49 CFR 236.1021(m)(4)

Under proposed § 236.1021(m)(4), a railroad seeking to temporarily disable its PTC system, for certain purposes, can request FRA’s approval through the standard RFA process under existing § 236.1021(m). There have been no accidents or incidents associated with railroads’ RFAs for temporary PTC system outages from 2022 to early 2024, the relevant period during which FRA began approving such outages by regulation.

Based on past RFA filings from 2022 to early 2024 involving temporary PTC system outages, FRA estimates that railroads will file approximately 15 RFAs, on average on an annual basis, under proposed § 236.1021(m)(4) in the future. FRA estimates that two-thirds of railroads’ RFAs would involve a PTC system outage lasting for a few hours, while one-third would seek to disable PTC technology for a period of days, given the different nature of underlying capital improvement or maintenance projects. FRA used the Bureau of

Transportation Statistics’ (BTS) 2021 fare rates for intercity passenger and commuter rail transportation—*i.e.*, a \$72.10 average rate for Amtrak and a \$6.30 average rate for commuter railroads. FRA estimated weighted fare rates by using those average 2021 BTS fare rates and analyzing past, pertinent RFAs to estimate that the average fare rate would be approximately \$11 for each intercity passenger railroad or commuter railroad that submits an RFA pursuant to § 236.1021(m)(4) in the future.<sup>37</sup>

Similarly, FRA analyzed the average number of passengers or commuters per train movement<sup>38</sup> during a temporary PTC system outage by analyzing past RFAs and found that each train carries, on average, approximately 200 passengers or commuters. Likewise, FRA analyzed the average number of train movements during a temporary PTC system outage by analyzing past RFAs and estimating the expected number of filings by type of railroad. Based on past RFAs, FRA estimates that

on average, 5 trains operate during a freight railroad’s temporary PTC system outage; 12 trains operate during an intercity passenger or commuter railroad’s PTC system outage that lasts 24 hours or less; and 1,700 trains operate during an intercity passenger or commuter railroad’s PTC system outage that lasts longer (days). For freight railroads, the average cost per train movement is \$250, based on previous FRA estimates.

Then, the expected annual number of RFAs, involving temporary PTC system outages, is multiplied by: (1) the average number of train movements during the temporary outage; (2) the average cost per fare or train movement; and (3) the average number of passengers or commuters per train (for intercity passenger or commuter railroads), and is then adjusted for reduced speed.<sup>39</sup> As shown in the tables below, the 15 relevant RFAs that FRA expects to receive annually would result in \$8,578,734 in total benefits, undiscounted, per year. FRA notes this

<sup>35</sup> 87 FR 43467 (July 21, 2022).

<sup>36</sup> Here, FRA is counting any intercity passenger railroad or commuter railroad, including tenant railroads that provide such service, as the proposed exception is not limited to host railroads.

<sup>37</sup> U.S. Department of Transportation, Bureau of Transportation Statistics, Transportation Economic Trends (2022), available at <https://data.bts.gov/stories/s/5h3f-jnbe#transportation-fares>.

<sup>38</sup> By “train movement,” FRA is referring to the movement or operation of a train.

<sup>39</sup> In its decision letters approving such RFAs, FRA typically requires railroads to comply with the operating restrictions under 49 CFR 236.1029(b), which limit the speed of trains depending on the underlying signal or train control system.

calculation did not include variable operating costs such as fuel expenses and other operational costs. Determining these costs is challenging when assessing benefits. Therefore, the

estimated benefits could be reduced by these variable operating costs, although the exact amount is unclear.<sup>40</sup> Additionally, FRA is seeking comments on this economic analysis, its

underlying assumptions, and any additional benefits that could be quantified, like the potential impact to ridership from avoiding related train delays or cancellations.

TABLE D—RFA FILINGS INVOLVING TEMPORARY PTC SYSTEM OUTAGES—BENEFITS

	Estimated number of RFAs per year	Average number of train movements during outage	Average cost per fare or train movement (\$)	Average number of passengers per train	RFA average benefit (adjusted for reduced speed) (\$)
PTC System Outages (Hours)—Freight Railroads .....	2	5	250	N/A	2,076
PTC System Outages (Hours)—Passenger or Commuter Railroads .....	10	12	11	200	197,165
PTC System Outages (Days)—Passenger or Commuter Railroads .....	3	1,700	11	200	8,379,494
Total .....	15	.....	.....	.....	8,578,734

Over a 10-year period, FRA estimates railroads will submit approximately 150 RFAs under proposed § 236.1021(m)(4)

with potential benefits of \$78.6 million, at the 2-percent discount, or \$8.8

million, at the 2-percent discount, on an annual basis.

TABLE E—POTENTIAL BENEFITS FROM CONTINUOUS TRAIN OPERATIONS ASSOCIATED WITH RFAs FOR TEMPORARY PTC SYSTEM OUTAGES—10-YEAR BENEFIT

Year	Undiscounted (\$)	Present value 2% (\$)	Present value 3% (\$)	Present value 7% (\$)
1 .....	8,578,734	8,578,734	8,578,734	8,578,734
2 .....	8,578,734	8,410,524	8,328,868	8,017,509
3 .....	8,578,734	8,245,612	8,086,280	7,492,999
4 .....	8,578,734	8,083,933	7,850,757	7,002,803
5 .....	8,578,734	7,925,425	7,622,094	6,544,675
6 .....	8,578,734	7,770,024	7,400,092	6,116,519
7 .....	8,578,734	7,617,671	7,184,555	5,716,373
8 .....	8,578,734	7,468,305	6,975,296	5,342,405
9 .....	8,578,734	7,321,867	6,772,132	4,992,902
10 .....	8,578,734	7,178,301	6,574,886	4,666,263
Total .....	85,787,345	78,600,396	75,373,696	64,471,182
Annualized .....	.....	8,750,309	8,836,097	9,179,246

Proposed 49 CFR 236.1029(g)

The proposed exception under § 236.1029(g) would reintroduce a revised version of a provision regarding PTC system initialization failures that expired on December 31, 2022. This proposed exception would be beneficial even with the conditions and restrictions outlined under this proposed provision.

In assessing the potential benefits of this proposed provision, FRA focused on the impact on train operations in the

absence of this proposed rule. Currently, if a PTC system fails to initialize, trains are generally prohibited from operating, which could result in situations where passengers are stranded and vital freight shipments halted, as the prior regulatory process expired on December 31, 2022. Based on consultation with FRA subject matter experts, FRA estimates the number of future PTC system initialization failures by analyzing railroads' initialization failures in calendar year 2023, as reported to FRA

in railroads' Quarterly Reports of PTC System Performance<sup>41</sup> and projecting to the future. In total, based on past data, FRA expects freight railroads to experience approximately 900 initialization failures per year and intercity passenger or commuter railroads to experience approximately 200 initialization failures per year in the future.<sup>42</sup> Then, the expected annual number of initialization failures is multiplied by: (1) the average cost of \$11 per fare for intercity passenger or

<sup>40</sup> Another method for assessing the benefits regarding this proposed provision is to calculate the revenue per ton-mile, provided that information regarding the number of miles that would be utilized is available for the affected railroads. Since FRA does not currently possess that level of information, the methodology described above was employed.

<sup>41</sup> Form FRA F 6180.152 (OMB Control No. 2130-0553), under 49 U.S.C. 20157(m) and 49 CFR 236.1029(h). These reports include information about railroads' initialization failures.

<sup>42</sup> The estimated 1,100 initialization failures exclude any initialization failures where the source or cause is the onboard subsystem, as proposed § 236.1029(g)(3) excludes such initialization failures from receiving the flexibility afforded under

proposed § 236.1029(g), as they typically impact one train. FRA's estimate refers to the number of initialization failures where the source or cause is, for example, the back office, wayside, or communications subsystems because those types of issues would generally impact more than one train and would be within the scope of this proposed provision.

commuter railroads and \$250 per train movement for freight railroads; and (2) the average number of passengers or commuters per train of 200 (for intercity passenger or commuter railroads), and is then adjusted for the reduced speed, based on the proposed speed restrictions under 49 CFR 236.1029(g).

As shown in the table below, FRA’s proposal to permit the operation of

approximately 1,100 trains that FRA expects might experience PTC system initialization failures would result in \$433,520 in total benefits, undiscounted, per year. FRA notes this calculation did not include variable operating costs such as fuel expenses and other operational costs. Therefore, the estimated benefit could be reduced

by these variable operating costs, although the exact amount is unclear. Additionally, FRA is seeking comments on this economic analysis, its underlying assumptions, and any additional benefits that could be quantified, like the potential impact on ridership from avoiding related train delays or cancellations.

TABLE F—ENABLING THE OPERATION OF TRAINS IMPACTED BY INITIALIZATION FAILURES—BENEFITS

Railroad type	Estimated trains impacted annually	Average cost per fare or train movement	Average number of passengers per train	Average benefit (adjusted for reduced speed) (\$)
Freight .....	900	250	N/A	\$159,220
Intercity Passenger or Commuter .....	200	11	200	274,300
Total .....	1,100	.....	.....	433,520

Over a 10-year period, FRA estimates that proposed § 236.1029(g) would result in potential benefits of \$4.0

million, or on an annualized basis, \$442,190, discounted at 2 percent.

TABLE G—POTENTIAL BENEFITS FROM CONTINUOUS TRAIN OPERATIONS DUE TO PROCESS REGARDING CERTAIN INITIALIZATION FAILURES—10-YEAR BENEFIT

Year	Freight railroads (\$)	Passenger railroads (\$)	Undiscounted benefit (\$)	Present value 2% (\$)	Present value 3% (\$)	Present value 7% (\$)
	a	b	c = a + b			
1 .....	159,220	274,300	433,520	433,520	433,520	433,520
2 .....	159,220	274,300	433,520	425,020	420,893	405,159
3 .....	159,220	274,300	433,520	416,686	408,634	378,653
4 .....	159,220	274,300	433,520	408,516	396,732	353,881
5 .....	159,220	274,300	433,520	400,505	385,177	330,730
6 .....	159,220	274,300	433,520	392,652	373,958	309,094
7 .....	159,220	274,300	433,520	384,953	363,066	288,873
8 .....	159,220	274,300	433,520	377,405	352,491	269,974
9 .....	159,220	274,300	433,520	370,005	342,225	252,313
10 .....	159,220	274,300	433,520	362,750	332,257	235,806
Total .....	1,592,200	2,743,000	4,335,200	3,972,013	3,808,954	3,258,003
Annualized .....	.....	.....	.....	442,190	446,526	463,866

In addition to these direct benefits, there are potential societal benefits to the proposals in the NPRM. For example, there are possible fuel and emission savings from people not using alternative transportation modes like traditional buses or cars that use fuel or non-carbon technologies like batteries, which would be necessary if the proposals in this NPRM did not exist, and railroads were not allowed to operate trains in certain circumstances. Freight trains are generally known for their fuel efficiency compared to fuel-powered trucks, and intercity passenger or commuter trains are more efficient than driving fuel-powered vehicles, potentially resulting in lower carbon

emissions. Specifically, a single freight train can be up to 75% more fuel-efficient than a fuel-powered truck.<sup>43</sup> Similarly, passenger trains are up to 46% more efficient than driving fuel-powered vehicles.<sup>44</sup> However, policies promoting electric vehicle use may lead to increased adoption of electric vehicles, which could reduce the anticipated emission benefits.

<sup>43</sup> Federal Railroad Administration, FRA Announces Climate Challenge to Meet Net-Zero Greenhouse Gas Emissions by 2050 (Apr. 22, 2022), available at <https://railroads.dot.gov/newsroom/press-releases/federal-railroad-administration-announces-climate-challenge-meet-net-zero-0>.

<sup>44</sup> *Id.*

2. Ten-Year Costs

FRA analyzed the potential industry costs of the proposed amendments, which would: (1) permit non-revenue passenger equipment to operate to maintenance facilities or yards, without being governed by PTC technology and with no passengers onboard, for the sole purpose of repairing or exchanging a PTC system, under certain conditions; (2) improve the existing process railroads utilize to request and obtain FRA’s approval to disable their PTC systems temporarily—when necessary to facilitate repair, maintenance, infrastructure upgrades, and capital projects—by requiring railroads to provide additional, essential

information in their requests to amend their PTC systems; and (3) reintroduce a limited version of a provision regarding PTC system initialization failures, which expired on December 31, 2022, under certain conditions.

Of the three proposed amendments, FRA analyzed the cost of railroads filing RFAs regarding temporary PTC system outages under proposed § 236.1021(m)(4), which contains additional content requirements to enable FRA to assess the full scope and circumstances of each proposed temporary outage. Since the other two proposed provisions, under §§ 236.1006(b)(6) and 236.1029(g), would establish an exception or process with certain conditions, there may be

minimal potential costs tied to these proposed provisions. However, FRA expects the potential benefits of these proposed provisions to outweigh any potential costs they might present. FRA welcomes comments on the potential impact.

Also, FRA acknowledges that a proposal to establish a new exception for non-revenue passenger equipment and reintroduce a limited version of an expired process might appear to present safety risks, if not properly addressed. Accordingly, FRA’s proposed rule contains multiple operating restrictions and other protections to help mitigate or eliminate any associated risks and help preserve or improve rail safety.

Based on consultation with FRA subject matter experts, FRA calculated the total cost for filing an RFA by multiplying the number of submissions by its associated hourly burden. The hourly burden is then multiplied by the wage rate of an Executive, Official, & Staff Assistant employee. For this analysis, FRA used the fully burdened wage rate of \$118.46 to calculate both costs (*i.e.*, the cost of submitting a new RFA and the cost of submitting a revised RFA).<sup>45</sup> This wage rate includes factors such as salary, benefits, and overhead costs associated with employing staff members involved in the RFA filing process.

TABLE H—COSTS OF RFAS TO PTC SYSTEMS INVOLVING TEMPORARY OUTAGES

	Hourly wage rate (\$)	Number of RFAs per year	Number of hours per RFA	Total cost of RFAs per year (\$)
	a	b	c	d = a * b * c
New RFAs .....	118.46	15	90	159,921
Revised RFAs .....	118.46	1	45	5,331
Total .....				165,252

The following table provides the 10-year cost to the railroad industry associated with the filing of an RFA

involving a temporary PTC system outage under proposed § 236.1021(m)(4). FRA estimates that the

total cost to the railroad industry would be \$1.5 million, or \$168,557 annualized, discounted at 2 percent.

TABLE I—TOTAL COSTS OF RFAS ABOUT TEMPORARY PTC SYSTEM OUTAGES

Year	Cost of new RFAs per year	Cost of revised RFAs per year (\$)	Undiscounted cost of RFAs (\$)	Present value 2% (\$)	Present value 3% (\$)	Present value 7% (\$)
1 .....	159,921	5,331	165,252	165,252	165,252	165,252
2 .....	159,921	5,331	165,252	162,011	160,439	154,441
3 .....	159,921	5,331	165,252	158,835	155,766	144,337
4 .....	159,921	5,331	165,252	155,720	151,229	134,895
5 .....	159,921	5,331	165,252	152,667	146,824	126,070
6 .....	159,921	5,331	165,252	149,674	142,548	117,822
7 .....	159,921	5,331	165,252	146,739	138,396	110,114
8 .....	159,921	5,331	165,252	143,862	134,365	102,910
9 .....	159,921	5,331	165,252	141,041	130,451	96,178
10 .....	159,921	5,331	165,252	138,275	126,652	89,886
Total .....	159,921	5,331	1,652,517	1,514,075	1,451,919	1,241,905
Annualized .....				168,557	170,209	176,819

Additionally, alongside the railroad industry’s cost of filing RFAs under proposed § 236.1021(m)(4), there are governmental costs associated with the

filing of these RFAs. The following table shows the annual estimated government costs for reviewing railroads’ RFAs pertaining to temporary PTC system

outages and issuing related decision letters.

<sup>45</sup> Throughout this document, the dollar equivalent cost or benefit for the industry is derived from the Surface Transportation Board’s 2023 Full

Year Wage A&B data series using the appropriate employee group hourly wage rate, which includes an additional 75 percent for fringe benefits and

overhead. For instance, the 2023 hourly wage rate of \$67.69 is burdened by 75 percent ( $\$67.69 \times 1.75 = \$118.46$ ).

TABLE J—GOVERNMENT ADMINISTRATIVE COSTS FROM RFA REVIEW AND APPROVAL—ANNUAL COSTS

	Average number of employees	Hourly wage rate (\$) <sup>46</sup>	Number of hours per RFA	Estimated RFAs per year	Total cost (\$)
		a	b	c	d = a * b * c
Railroad Safety Specialist (GS-13)—All locations .....	1	98.77	6	15	8,889
Railroad Safety Specialist (GS-14)—All locations .....	1	116.71	3	15	5,252
Railroad Safety Specialist (GS-14)—All locations .....	1	116.71	2	15	3,501
Railroad Safety Specialist Supervisor (GS-15)—DC Metro .....	1	147.96	1	15	2,219
Railroad Safety Specialist Senior Executive—DC Metro ....	1	175.00	1	15	2,625
Attorney (GS-15)—DC Metro .....	1	147.96	2	15	4,439
Annual Total Cost .....			15	15	26,926

The following table shows the 10-year estimated government costs for reviewing RFAs pertaining to temporary PTC system outages and issuing related

decision letters. FRA expects it would cost approximately \$246,700 over the 10-year period, or \$27,464 annualized, discounted at 2 percent, to review and

approve or deny these RFAs, as shown in the following table.

TABLE K—GOVERNMENT ADMINISTRATIVE COSTS FROM RFA REVIEW AND APPROVAL—10-YEAR COSTS

Year	Undiscounted government administrative cost (\$)	Present value 2% (\$)	Present value 3% (\$)	Present value 7% (\$)
1 .....	26,926	26,926	26,926	26,926
2 .....	26,926	26,398	26,142	25,164
3 .....	26,926	25,880	25,380	23,518
4 .....	26,926	25,373	24,641	21,979
5 .....	26,926	24,875	23,923	20,542
6 .....	26,926	24,387	23,226	19,198
7 .....	26,926	23,909	22,550	17,942
8 .....	26,926	23,440	21,893	16,768
9 .....	26,926	22,981	21,255	15,671
10 .....	26,926	22,530	20,636	14,646
Total .....	269,258	246,700	236,573	202,353
Annualized .....		27,464	27,734	28,811

3. Results

The industry benefits associated with FRA’s proposal to amend three provisions—*i.e.*, to introduce a new exception for certain non-revenue passenger equipment movements, improve the RFA process regarding temporary PTC system outages, and

permit continued operations following certain initialization failures, subject to operating restrictions—would outweigh the industry costs and government administrative costs associated with FRA’s proposal to expand the content requirements for RFAs related to temporary outages.

The following table shows the estimated 10-year costs, benefits, and net benefits of the proposed rule. The total estimated 10-year net benefits would be \$81.8 million (discounted at 2 percent) and annualized net benefits would be \$9.1 million (discounted at 2 percent).

TABLE L—TOTAL 10-YEAR DISCOUNTED BENEFITS, COSTS, AND NET BENEFITS [2023 Dollars]

Category	Present value 2% (\$)	Present value 3% (\$)	Present value 7% (\$)	Annualized 2% (\$)	Annualized 3% (\$)	Annualized 7% (\$)
Industry Benefits .....	83,534,444	80,105,191	68,518,285	9,299,600	9,390,772	9,755,462
Total Costs .....	1,760,775	1,688,492	1,444,258	196,021	197,943	205,630
Industry Costs .....	1,514,075	1,451,919	1,241,905	168,557	170,209	176,819
Government Administrative Costs .....	246,700	236,573	202,353	27,464	27,734	28,811
Net Benefits .....	81,773,669	78,416,699	67,074,027	9,103,579	9,192,829	9,549,832

<sup>46</sup> U.S. Office of Personnel Management, “2023 General Schedule (GS) Locality Pay Tables,” available at [https://www.opm.gov/policy-data-](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2023/general-schedule/)

[oversight/pay-leave/salaries-wages/2023/general-schedule/](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2023/general-schedule/). The base salary is burdened with an

additional 75 percent to account for fringe benefits and overhead.

*B. Regulatory Flexibility Act and Executive Order 13272*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) and Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” (67 FR 53461 (Aug. 16, 2002)) require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. FRA has not determined whether this proposed rule would have a significant economic impact on a substantial number of small entities.

FRA invites all interested parties to submit comments, data, and information demonstrating the potential economic impact on small entities that will result from the adoption of this proposed rule. FRA particularly encourages small entities potentially impacted by the proposed amendments to participate in the public comment process. FRA will consider all comments received during the public comment period for this NPRM when making a final determination of the rule’s economic impact on small entities. FRA prepared an IRFA, which is included below, to aid the public in commenting on the potential small business impacts of the proposed requirements in this NPRM.

1. Reasons for Considering Agency Action

Through FRA’s oversight and continued engagement with the industry, FRA has found that its existing PTC regulations do not adequately address temporary situations during which PTC technology is not enabled, including after certain initialization failures or in cases where a PTC system needs to be temporarily disabled to facilitate repair, maintenance, infrastructure upgrades, or capital projects. This NPRM proposes to establish parameters and operating restrictions under which railroads may continue to operate safely in certain scenarios when PTC technology is temporarily not governing rail operations. Overall, the proposed amendments would benefit the railroad industry, the public, and FRA by facilitating repairs, maintenance, upgrades, and capital improvements; expanding certain railroad informational requirements; reducing costs; and enabling the safe, reliable, and efficient movement of people and goods, while preserving rail safety.

2. A Succinct Statement of the Objectives of, and the Legal Basis for, the Proposed Rule

FRA is proposing to revise three PTC regulations based on the statutory general authority of the Secretary. The Secretary has broad statutory authority to “prescribe regulations and issue orders for every area of railroad safety” under 49 U.S.C. 20103 and regarding PTC technology under 49 U.S.C. 20157(g). The Secretary delegated this authority to the Federal Railroad Administrator. 49 CFR 1.89(b).

This proposed rule would provide flexibility to certain train movements and improve existing processes, which would result in net benefits to railroads. The industry benefits associated with FRA’s proposal to amend §§ 236.1006(b), 236.1021(m) and 236.1029(g)—*i.e.*, to introduce a new exception for certain non-revenue passenger equipment movements, improve the RFA process regarding temporary PTC system outages, and permit continued operations following certain initialization failures, subject to operating restrictions—would outweigh the industry costs and government administrative costs associated with FRA’s proposal to expand the content requirements for RFAs related to temporary outages under § 236.1021(m), while also maintaining rail safety.

FRA’s objective in this rulemaking is to establish clear, uniform processes, rather than addressing issues that arise in a reactive and piecemeal manner. FRA expects that establishing predictable, prescriptive processes will both enable continued operations and improve railroad safety by eliminating uncertainty and inconsistent application of FRA’s regulations and facilitating prompt repairs, upgrades, and restoration of PTC system service. FRA’s proposed parameters and operating restrictions in this NPRM are intended to be sufficiently strict to ensure that railroads and PTC system suppliers and vendors proactively identify and remedy problems before they arise and immediately correct any problems that may surface despite proactive measures.

3. A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

The Regulatory Flexibility Act of 1980 requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. “Small entity” is defined in 5 U.S.C.

601 as a small business concern that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a “small entity” in the railroad industry is a for-profit “line-haul railroad” that has fewer than 1,500 employees, a “short line railroad” with fewer than 500 employees, or a “commuter rail system” with annual receipts of less than seven million dollars. See “Size Eligibility Provisions and Standards,” 13 CFR part 121, subpart A.

The proposed rule would directly apply to all 37 host railroads subject to 49 U.S.C. 20157—including 7 Class I railroads, 24 intercity passenger railroads or commuter railroads, and 6 Class II or III, short line, or terminal railroads. Only 5 of the current PTC-mandated host railroads are small entities.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Class of Small Entities That Will be Subject to the Requirements and the Type of Professional Skill Necessary for Preparation of the Report or Record

The proposed amendments would improve the process railroads use to file an RFA involving a temporary PTC system outage. Those entities would be subject to the requirements of this proposed rule and would also benefit from the additional flexibility associated with this proposed rule.

FRA expects that a railroad’s RFA pursuant to proposed § 236.1021(m)(4) would be completed by an executive or senior manager and require analytical and writing skills.

To calculate the individual costs for small entities, FRA divided the total annualized cost by the number of estimated host railroads. FRA assumes that the hourly burden to submit an RFA is independent of an entity’s size because the RFA depends upon the PTC system and not the individual railroad making the submission. The total annualized cost for all host railroads would be \$168,557, discounted at 2 percent. FRA estimates that the annualized cost to each host railroad would be approximately \$4,556, discounted at 2 percent. Although the proposed rule would impose costs on those host railroads that are small entities, benefits would also accrue.

To calculate the individual benefit for small entities, FRA divided the total annualized benefits by the number of estimated host railroads. The total



annualized benefits for all host railroads would be \$9.3 million, discounted at 2 percent. FRA estimates that the annualized benefit for each host railroad would be \$251,341, discounted at 2 percent. FRA requests comments on the economic impact that small entities would face under this proposed rule.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

FRA is not aware of any relevant Federal rule that duplicates, overlaps with, or conflicts with the proposed rule. This proposed rule intends to improve the process associated with RFAs for temporary PTC system outages, establish a new exception for certain non-revenue passenger equipment, and reintroduce a limited

version of a provision that previously expired.

6. A Description of Significant Alternatives to the Rule

The proposed amendments in this rulemaking would benefit the railroad industry, the public, and FRA by facilitating repairs, maintenance, upgrades, and capital improvements; expanding certain railroad informational requirements; reducing costs; and enabling the safe, reliable, and resilient movement of people and goods, while preserving rail safety.

The main alternative to this rulemaking would be to maintain the status quo. The alternative of not issuing the proposed rule would forgo improving the process under § 236.1021(m) that host railroads use to submit RFAs for temporary PTC system outages. In the absence of this proposed rule, non-revenue passenger equipment

would not be afforded the same type of exception currently available to freight railroads under § 236.1006(b). In addition, without this rule, railroads would not be able to operate in certain scenarios when PTC technology is temporarily not governing rail operations under proposed § 236.1029(g).

C. Paperwork Reduction Act

FRA is submitting the information collection requirements in this proposed rule to OMB<sup>47</sup> under the Paperwork Reduction Act of 1995.<sup>48</sup> Please note that any new or revised requirements, as proposed in this NPRM, are marked by asterisks (\*) in the table below. The sections that contain the proposed and current information collection requirements under OMB Control No. 2130-0553 and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Total cost equivalent in USD (D = C * wage rates)
235.6(c)—Expedited application for approval of certain changes described in this section.	42 railroads .....	10 expedited applications.	5.00 hours .....	50.00 hours .....	\$4,456.50
—Copy of expedited application to labor union.	42 railroads .....	10 copies .....	30.00 minutes .....	5.00 hours .....	445.65
—Railroad letter rescinding its request for expedited application of certain signal system changes.	42 railroads .....	1 letter .....	6.00 hours .....	6.00 hours .....	534.78
—Revised application for certain signal system changes.	42 railroads .....	1 application .....	5.00 hours .....	5.00 hours .....	445.65
—Copy of railroad revised application to labor union.	42 railroads .....	1 copy .....	30.00 minutes .....	0.50 hours .....	44.57
236.1—Railroad maintained signal plans at all interlockings, automatic signal locations, and controlled points, and updates to ensure accuracy.	700 railroads .....	25 plan changes ...	15.00 minutes .....	6.25 hours .....	557.06
236.15—Designation of automatic block, traffic control, train stop, train control, cab signal, and PTC territory in timetable instructions.	700 railroads .....	10 timetable instructions.	30.00 minutes .....	5.00 hours .....	445.65
236.18—Software management control plan—New railroads.	2 railroads .....	2 plans .....	160.00 hours .....	320.00 hours .....	28,521.60
236.23(e)—The names, indications, and aspects of roadway and cab signals shall be defined in the carrier’s Operating Rule Book or Special Instructions. Modifications shall be filed with FRA within 30 days after such modifications become effective.	700 railroads .....	2 modifications .....	1.00 hour .....	2.00 hours .....	178.26
236.587(d)—Certification and departure test results.	742 railroads .....	4,562,500 train departures.	5.00 seconds .....	6,336.81 hours .....	564,799.88
236.905(a)—Railroad Safety Program Plan (RSPP)—New railroads.	2 railroads .....	2 RSPPs .....	40.00 hours .....	80.00 hours .....	7,130.40
236.913(a)—Filing and approval of a joint Product Safety Plan (PSP).	742 railroads .....	1 joint plan .....	2,000.00 hours .....	2,000.00 hours .....	236,920.00
—(c)(1) Informational filing/petition for special approval.	742 railroads .....	0.5 filings/approval petitions.	50.00 hours .....	25.00 hours .....	2,228.25

<sup>47</sup> FRA will be using the OMB control number 2130-0553 for this information collection.

<sup>48</sup> 44 U.S.C. 3501, *et seq.*

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Total cost equivalent in USD (D = C * wage rates)
—(c)(2) Response to FRA’s request for further data after informational filing.	742 railroads .....	0.25 data calls/doc- uments.	5.00 hours .....	1.25 hour .....	111.41
—(d)(1)(ii) Response to FRA’s request for further information within 15 days after receipt of the Notice of Product Development (NOPD).	742 railroads .....	0.25 data calls/doc- uments.	1.00 hour .....	0.25 hours .....	22.28
—(d)(1)(iii) Technical consultation by FRA with the railroad on the design and planned development of the product.	742 railroads .....	0.25 technical con- sultations.	5.00 hours .....	1.25 hour .....	111.41
—(d)(1)(v) Railroad petition to FRA for final approval of NOPD.	742 railroads .....	0.25 petitions .....	1.00 hour .....	0.25 hours .....	22.28
—(d)(2)(ii) Response to FRA’s request for additional information associated with a petition for approval of PSP or PSP amendment.	742 railroads .....	1 request .....	50.00 hours .....	50.00 hours .....	4,456.50
—(e) Comments to FRA on railroad in- formational filing or special approval petition.	742 railroads .....	0.5 comments/let- ters.	10.00 hours .....	5.00 hours .....	445.65
—(h)(3)(i) Railroad amendment to PSP	742 railroads .....	2 amendments .....	20.00 hours .....	40.00 hours .....	3,565.20
—(j) Railroad field testing/information filing document.	742 railroads .....	1 field test/docu- ment.	100.00 hours .....	100.00 hours .....	8,913.00
236.917(a)—Railroad retention of records: results of tests and inspec- tions specified in the PSP.	13 railroads with PSP.	13 PSP safety re- sults.	160.00 hours .....	2,080.00 hours .....	185,390.40
—(b) Railroad report that frequency of safety-relevant hazards exceeds threshold set forth in PSP.	13 railroads .....	1 report .....	40.00 hours .....	40.00 hours .....	3,565.20
—(b)(3) Railroad final report to FRA on the results of the analysis and coun- termeasures taken to reduce the fre- quency of safety-relevant hazards.	13 railroads .....	1 report .....	10.00 hours .....	10.00 hours .....	891.30
236.919(a)—Railroad Operations and Maintenance Manual (OMM).	13 railroads .....	1 OMM update .....	40.00 hours .....	40.00 hours .....	3,565.20
—(b) Plans for proper maintenance, re- pair, inspection, and testing of safety- critical products.	13 railroads .....	1 plan update .....	40.00 hours .....	40.00 hours .....	3,565.20
—(c) Documented hardware, software, and firmware revisions in OMM.	13 railroads .....	1 revision .....	40.00 hours .....	40.00 hours .....	3,565.20
236.921 and 923(a)—Railroad Training and Qualification Program.	13 railroads .....	1 program .....	40.00 hours .....	40.00 hours .....	3,565.20
236.923(b)—Training records retained in a designated location and available to FRA upon request.	13 railroads .....	350 records .....	10.00 minutes .....	58.33 hours .....	5,198.95
236.1001(b)—A railroad’s additional or more stringent rules than prescribed under 49 CFR part 236, subpart I.	38 railroads .....	1 rule or instruction	40.00 hours .....	40.00 hours .....	4,738.40
236.1005(b)(4)(i)–(ii)—A railroad’s sub- mission of estimated traffic projec- tions for the next 5 years, to support a request, in a PTCIP or an RFA, not to implement a PTC system based on reductions in rail traffic.	The burden for this requirement is included under §§ 236.1009(a) and 236.1021.				
236.1005(b)(4)(iii)—A railroad’s request for a de minimis exception, in a PTCIP or an RFA, based on a mini- mal quantity of PIH materials traffic.	7 Class I railroads	1 exception re- quest.	40.00 hours .....	40.00 hours .....	3,565.20
—(b)(5) A railroad’s request to remove a line from its PTCIP based on the sale of the line to another railroad and any related request for FRA re- view from the acquiring railroad.	The burden for this requirement is included under §§ 236.1009(a) and 236.1021.				

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Total cost equivalent in USD (D = C * wage rates)
—(g)(1)(i) A railroad’s request to temporarily reroute trains not equipped with a PTC system onto PTC-equipped tracks and vice versa during certain emergencies.	38 railroads .....	45 routing extension requests.	8.00 hours .....	360.00 hours .....	32,086.80
—(g)(1)(ii) A railroad’s written or telephonic notice to FRA of the conditions necessitating emergency rerouting and other required information under 236.1005(i).	38 railroads .....	45 written or telephonic notices.	2.00 hours .....	90.00 hours .....	8,021.70
—(g)(2) A railroad’s temporary rerouting request due to planned maintenance not exceeding 30 days.	38 railroads .....	720 requests .....	8.00 hours .....	5,760.00 hours .....	513,388.80
—(h)(1) A response to any request for additional information from FRA, prior to commencing rerouting due to planned maintenance.	38 railroads .....	10 responses .....	2.00 hours .....	20.00 hours .....	1,782.60
—(h)(2) A railroad’s request to temporarily reroute trains due to planned maintenance exceeding 30 days.	38 railroads .....	160 requests .....	8.00 hours .....	1,280.00 hours .....	114,086.40
236.1006(b)(4)(iii)(B)—A progress report due by December 31, 2020, and by December 31, 2022, from any Class II or III railroad utilizing a temporary exception under this section.	The paperwork requirement is no longer applicable.				
—(b)(5)(vii) A railroad’s request to utilize different yard movement procedures, as part of a freight yard movements exception—.	The burden for this requirement is included under §§ 236.1015 and 236.1021.				
—(b)(6) Establishing a new exception to permit non-revenue passenger equipment to operate to maintenance facilities or yards, without being governed by PTC technology, under certain conditions (*New proposed provision*).	There is no paperwork requirement associated with this proposed provision.				
236.1007(b)(1)—For any high-speed service over 90 miles per hour (mph), a railroad’s PTC Safety Plan (PTCSP) must additionally establish that the PTC system was designed and will be operated to meet the fail-safe operation criteria in appendix C.	The burden for this requirement is included under §§ 236.1015 and 236.1021.				
—(c) An HSR–125 document accompanying a host railroad’s PTCSP, for operations over 125 mph.	38 railroads .....	1 HSR–125 document.	3,200.00 hours .....	3,200.00 hours .....	379,072.00
—(c)(1) A railroad’s request for approval to use foreign service data, prior to submission of a PTCSP.	38 railroads .....	0.33 requests .....	8,000.00 hours .....	2,640.00 hours .....	235,303.20
—(d) A railroad’s request in a PTCSP that FRA excuse compliance with one or more of this section’s requirements.	38 railroads .....	1 request .....	1,000.00 hours .....	1,000.00 hours .....	118,460.00
236.1009(a)(2)—A PTCIP if a railroad becomes a host railroad of a main line requiring the implementation of a PTC system, including the information under 49 U.S.C. 20157(a)(2) and 49 CFR 236.1011.	264 railroads .....	1 PTCIP .....	535.00 hours .....	535.00 hours .....	63,376.10
—(a)(3) Any new PTCIPs jointly filed by a host railroad and a tenant railroad.	264 railroads .....	1 joint PTCIP .....	267.00 hours .....	267.00 hours .....	31,628.82
—(b)(1) A host railroad’s submission, individually or jointly with a tenant railroad or PTC system supplier, of an unmodified Type Approval.	264 railroads .....	1 document .....	8.00 hours .....	8.00 hours .....	713.04

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Total cost equivalent in USD (D = C * wage rates)
—(b)(2) A host railroad’s submission of a PTCDP with the information required under 49 CFR 236.1013, requesting a Type Approval for a PTC system that either does not have a Type Approval or has a Type Approval that requires one or more variances.	264 railroads .....	1 PTCDP .....	2,000.00 hours .....	2,000.00 hours .....	178,260.00
—(d) A host railroad’s submission of a PTCSP.	The burden for this requirement is included under § 236.1015.				
—(e)(3) Any request for full or partial confidentiality of a PTCIP, Notice of Product Intent (NPI), PTCDP, or PTCSP.	38 railroads .....	10 confidentiality requests.	8.00 hours .....	80.00 hours .....	7,130.40
—(h) Any responses or documents submitted in connection with FRA’s use of its authority to monitor, test, and inspect processes, procedures, facilities, documents, records, design and testing materials, artifacts, training materials and programs, and any other information used in the design, development, manufacture, test, implementation, and operation of the PTC system, including interviews with railroad personnel.	38 railroads .....	36 interviews and documents.	4.00 hours .....	144.00 hours .....	12,834.72
—(j)(2)(iii) Any additional information provided in response to FRA’s consultations or inquiries about a PTCDP or PTCSP.	38 railroads .....	1 set of additional information.	400.00 hours .....	400.00 hours .....	35,652.00
236.1011(a) through (b)—PTCIP content requirements.	The burden for this requirement is included under §§ 236.1009(a) and (e) and 236.1021.				
—(e) Any public comment on PTCIPs, NPIs, PTCDPs, and PTCSPs.	38 railroads .....	2 public comments	8.00 hours .....	16.00 hours .....	1,426.08
236.1013—PTCDP and NPI content requirements.	The burden for this requirement is included under §§ 236.1009(b), (c), and (e) and 236.1021.				
236.1015—Any new host railroad’s PTCSP meeting all content requirements under 49 CFR 236.1015.	264 railroads .....	1 PTCSP .....	8,000.00 hours .....	8,000.00 hours .....	713,040
—(g) A PTCSP for a PTC system replacing an existing certified PTC system.	38 railroads .....	0.33 PTCSPs .....	3,200.00 hours .....	1,056.00 hours .....	94,121.28
—(h) A quantitative risk assessment, if FRA requires one to be submitted.	38 railroads .....	0.33 assessments	800.00 hours .....	264.00 hours .....	23,530.32
236.1017(a)—An independent third-party assessment, if FRA requires one to be conducted and submitted.	38 railroads .....	0.33 assessments	1,600.00 hours .....	528.00 hours .....	62,546.88
—(b) A railroad’s written request to confirm whether a specific entity qualifies as an independent third party.	38 railroads .....	0.33 written requests.	8.00 hours .....	2.64 hours .....	235.30
—Further information provided to FRA upon request.	38 railroads .....	0.33 sets of additional information.	20.00 hours .....	6.60 hours .....	588.26
—(d) A request not to provide certain documents otherwise required under appendix F for an independent, third-party assessment.	38 railroads .....	0.33 requests .....	20.00 hours .....	6.60 hours .....	588.26
—(e) A request for FRA to accept information certified by a foreign regulatory entity for purposes of 49 CFR 236.1017 and/or 236.1009(i).	38 railroads .....	0.33 requests .....	32.00 hours .....	10.56 hours .....	941.21
236.1019(b)—A request for a passenger terminal main line track exception (MTEA).	38 railroads .....	1 MTEA .....	160.00 hours .....	160.00 hours .....	14,260.80

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Total cost equivalent in USD (D = C * wage rates)
—(c)(1) A request for a limited operations exception (based on restricted speed, temporal separation, or a risk mitigation plan).	38 railroads .....	1 request and/or plan.	160.00 hours .....	160.00 hours .....	14,260.80
—(c)(2) A request for a limited operations exception for a non-Class I, freight railroad's track.	10 railroads .....	1 request .....	160.00 hours .....	160.00 hours .....	14,260.80
—(c)(3) A request for a limited operations exception for a Class I railroad's track.	7 railroads .....	1 request .....	160.00 hours .....	160.00 hours .....	14,260.80
—(d) A railroad's collision hazard analysis in support of an MTEA, if FRA requires one to be conducted and submitted.	38 railroads .....	0.33 collision hazard analyses.	50.00 hours .....	16.50 hours .....	1,470.65
—(e) Any temporal separation procedures utilized under the 49 CFR 236.1019(c)(1)(ii) exception.	The burden for this requirement is included under § 236.1019(c)(1).				
236.1021(a) through (d)—An RFA to a railroad's PTCIP or PTCDP.	38 railroads .....	10 RFAs .....	160.00 hours .....	1,600.00 hours .....	142,608.00
—(e) Any public comments, if an RFA includes a request for approval of a discontinuance or material modification of a signal or train control system and a <b>Federal Register</b> notice is published.	5 Interested parties	10 RFA public comments.	16.00 hours .....	160.00 hours .....	14,260.80
—(l) Any jointly filed RFA to a PTCDP or PTCSP.	The burden for this requirement is included under § 236.1021(a) through (d) and (m).				
—(m) Any RFA to a railroad's PTCSP ..	38 railroads .....	15 RFAs .....	80.00 hours .....	1,200.0 hours .....	106,956.00
—(m)(4) Any RFA to a railroad's PTC system that involves a proposed temporary PTC system outage (*New proposed provision*).	38 railroads .....	15 RFAs .....	90.00 hours .....	1,350.0 hours .....	159,921.00
—(m) A railroad's revised RFA, if needed.	38 railroads .....	1 revised RFA .....	45.00 hours .....	45.00 hours .....	5,330.70
236.1023(a)—A railroad's PTC Product Vendor List, which must be continually updated.	38 railroads .....	2 updated lists .....	8.00 hours .....	16.00 hours .....	1,426.08
—(b)(1) The railroad shall specify within its PTCSP all contractual arrangements between a railroad and its hardware and software suppliers or vendors for certain immediate notifications.	The burden for this requirement is included under §§ 236.1015 and 236.1021.				
—(b)(2) through (3) A vendor's or supplier's notification, upon receipt of a report of any safety-critical failure of its product, to any railroads using the product.	10 vendors or suppliers.	10 notifications .....	8.00 hours .....	80.00 hours .....	7,130.40
—(c)(1) through (2) A railroad's process and procedures for taking action upon being notified of a safety-critical failure or a safety-critical upgrade, patch, revision, repair, replacement, or modification, and a railroad's configuration/revision control measures, set forth in its PTCSP.	The burden for this requirement is included under §§ 236.1015 and 236.1021.				

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Total cost equivalent in USD (D = C * wage rates)
—(d) A railroad’s submission, to the applicable vendor or supplier, of the railroad’s procedures for action upon notification of a safety-critical failure, upgrade, patch, or revision to the PTC system and actions to be taken until it is adjusted, repaired, or replaced.	38 railroads .....	2.50 notifications ...	16.00 hours .....	40.00 hours .....	3,565.20
—(e) A railroad’s database of all safety-relevant hazards, which must be maintained after the PTC system is placed in service.	38 railroads .....	38 database updates.	16.00 hours .....	608.00 hours .....	54,191.04
—(e)(1) A railroad’s notification to the vendor or supplier and FRA if the frequency of a safety-relevant hazard exceeds the threshold set forth in the PTCDP and PTCSP, and about the failure, malfunction, or defective condition that decreased or eliminated the safety functionality—Form FRA F 6180.179—Errors and Malfunctions Notification.	38 railroads .....	8 notifications .....	7.50 hours .....	60.00 hours .....	5,347.80
—(e)(2) Continual updates about any and all subsequent failures.	38 railroads .....	1 update .....	8.00 hours .....	8.00 hours .....	713.04
—(f) Any notifications that must be submitted to FRA under 49 CFR 236.1023.	The burden for this requirement is included under § 236.1023(e)(1), (g), and (h)(1)(2).				
—(g) A railroad’s and vendor’s or supplier’s report, upon FRA request, about an investigation of an accident or service difficulty due to a manufacturing or design defect and their corrective actions.	38 railroads .....	0.50 reports .....	40.00 hours .....	20.00 hours .....	1,782.60
—(h) A PTC system vendor’s or supplier’s reports of any safety-relevant failures, defective conditions, previously unidentified hazards, recommended mitigation actions, and any affected railroads—Form FRA F 6180.179—Errors and Malfunctions Notification.	10 vendors .....	20 reports .....	7.50 hours .....	150.00 hours .....	13,370
—(k) A report of a failure of a PTC system resulting in a more favorable aspect than intended or other condition hazardous to the movement of a train, including the reports required under part 233.	The burden for this requirement is included under § 236.1023(e)(1), (g), and (h)(1)(2) and 49 CFR 233.7.				
—236.1029(b)(4)—A report of an en route failure, other failure, or cut out to a designated railroad officer of the host railroad.	150 host and tenant railroads.	1,000 reports .....	30.00 minutes .....	500.00 hours .....	44,565
—(g) Reintroducing a provision regarding initialization failures that previously expired in December 2022, and establishing operating restrictions under which railroads may continue to operate safely when a PTC system fails to initialize (*New proposed requirement*).	In this proposed provision, there is no paperwork requirement. However, under an existing regulation, FRA requires host railroads operating FRA-certified PTC systems to submit Quarterly Reports of PTC System Performance, using Form FRA F 6180.152, under 49 U.S.C. 20157(m) and 49 CFR 236.1029(h). These reports include information about railroads’ initialization failures.				
—(h) Form FRA F 6180.152—Report of PTC System Performance.	38 railroads .....	148 reports .....	32.00 hours .....	4,736.00 hours .....	422,119.68

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C = A * B)	Total cost equivalent in USD (D = C * wage rates)
236.1031(a)–(d)—A railroad’s Request for Expedited Certification.	FRA anticipates that there will be zero requests for expedited certification during this 3-year ICR.				
236.1033—Communications and security requirements.	The burden for this requirement is included under §§ 236.1009 and 236.1015.				
236.1035(a) through (b)—A railroad’s request for authorization to field test an uncertified PTC system and any responses to FRA’s testing conditions.	38 railroads .....	10 requests .....	40.00 hours .....	400.00 hours .....	35,652.00
236.1037(a)(1) through (2)—Records retention.	The burden for this requirement is included under §§ 236.1009 and 236.1015.				
—(a)(3) through (4) Records retention ..	The burden for this requirement is included under §§ 236.1039 and 236.1043(b).				
—(b) Results of inspections and tests specified in a railroad’s PTCS and PTCDP.	38 railroads .....	800 records .....	1.00 hour .....	800.00 hours .....	71,304.00
—(c) A contractor’s records related to the testing, maintenance, or operation of a PTC system maintained at a designated office.	20 contractors .....	1,600 records .....	10.00 minutes .....	266.67 hours .....	23,768.30
—(d)(3) A railroad’s final report of the results of the analysis and countermeasures taken to reduce the frequency of safety-related hazards below the threshold set forth in the PTCS.	38 railroads .....	8 final reports .....	160.00 hours .....	1,280 hours .....	114,086.40
236.1039(a) through (c), (e)—A railroad’s PTC Operations and Maintenance Manual (OMM), which must be maintained and available to FRA upon request.	38 railroads .....	2 OMM updates .....	10.00 hours .....	20.00 hours .....	1,782.60
—(d) A railroad’s identification of a PTC system’s safety-critical components, including spare equipment.	38 railroads .....	1 identified new component.	1.00 hour .....	1.00 hour .....	89.13
236.1041(a) through (b) and 236.1043(a)—A railroad’s PTC Training and Qualification Program (i.e., a written plan).	38 railroads .....	2 programs .....	10.00 hours .....	20.00 hours .....	1,782.60
236.1043(b)—Training records retained in a designated location and available to FRA upon request.	150 host and tenant railroads.	150 PTC training records.	1.00 hour .....	150.00 hours .....	13,369.50
Total .....	742 railroads and 10 vendors.	4,567,839 responses.	N/A .....	53,309 hours .....	5,014,416

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA’s estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who

are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. Organizations and individuals desiring to submit comments on the collection of information requirements or to request a copy of the paperwork package submitted to OMB should contact Ms. Arlette Mussington, Information Collection Clearance Officer, at email: [arlette.mussington@dot.gov](mailto:arlette.mussington@dot.gov) or telephone: (571) 609–1285, or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: [joanne.swafford@dot.gov](mailto:joanne.swafford@dot.gov) or telephone: (757) 897–9908.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal. FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required.

#### D. Federalism Implications

Executive Order 13132, “Federalism,” requires FRA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” See 64 FR 43255 (Aug. 10, 1999). “Policies that have federalism implications” are defined in Executive Order 13132 to include regulations having “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” *Id.* Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this proposed rule under the principles and criteria contained in Executive Order 13132. FRA has determined this proposed rule would not have a substantial direct effect on the States or their political subdivisions; on the relationship between the Federal Government and the States or their political subdivisions; or on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined this proposed rule does not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

This proposed rule could have preemptive effect by the operation of law under a provision of the former Federal Railroad Safety Act of 1970, repealed and recodified at 49 U.S.C. 20106. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation,

or order qualifies under the “essentially local safety or security hazard” exception to section 20106.

FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws under Federal railroad safety statutes, specifically 49 U.S.C. 20106. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this proposed rule is not required.

#### E. International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This proposed rule is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

#### F. Environmental Impact

FRA has evaluated this proposed rule consistent with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321, *et seq.*), the Council of Environmental Quality’s NEPA implementing regulations at 40 CFR parts 1500 through 1508, and FRA’s NEPA implementing regulations at 23 CFR part 771, and determined that it is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency’s NEPA implementing regulations that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS. See 40 CFR 1508.4. Specifically, FRA has determined that this proposed rule is categorically excluded from detailed environmental review pursuant to 23 CFR 771.116(c)(15), “Promulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise.”

This proposed rule does not directly or indirectly impact any environmental resources and would not result in significantly increased emissions of air or water pollutants or noise. Instead, the proposed rule is likely to result in safety benefits. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review. See 23 CFR 771.116(b). FRA has concluded that no such unusual circumstances exist with respect to this proposed rule and the proposal meets the requirements for categorical exclusion under 23 CFR 771.116(c)(15).

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties. See 16 U.S.C. 470. FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by section 4(f). See Department of Transportation Act of 1966, as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

#### G. Environmental Justice

Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” requires DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. DOT Order 5610.2C (“U.S. Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”) instructs DOT agencies to address compliance with Executive Order 12898 and requirements within DOT Order 5610.2C in rulemaking activities, as appropriate, and also requires consideration of the benefits of transportation programs, policies, and other activities where minority populations and low-income populations benefit, at a minimum, to the same level as the general population as a whole when determining impacts on minority and low-income populations.<sup>49</sup> FRA has evaluated this

<sup>49</sup> Executive Order 14096 “Revitalizing Our Nation’s Commitment to Environmental Justice,” issued on April 26, 2023, supplements Executive Order 12898, but is not currently referenced in DOT Order 5610.2C.



proposed rule under Executive Orders 12898 and 14096 and DOT Order 5610.2C and has determined it would not cause disproportionate and adverse human health and environmental effects on communities with environmental justice concerns.

#### H. Unfunded Mandates Reform Act of 1995

Under section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Section 202 of the Act (2 U.S.C. 1532) further requires that “before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement” detailing the effect on State, local, and Tribal governments and the private sector. This proposed rule would not result in the expenditure, in the aggregate, of \$100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

#### I. Energy Impact

Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.” 66 FR 28355 (May 22, 2001). As FRA acknowledged in section IV, there are societal benefits to the proposals in this NPRM. For example, there are possible fuel savings and carbon emission savings<sup>50</sup> from people not using alternative transportation modes like buses or cars, which would be necessary if the proposed flexibilities in this NPRM did not exist and railroads were not allowed to operate trains in certain circumstances. FRA evaluated this proposed rule under Executive Order 13211 and determined that this

<sup>50</sup> As noted above, passenger trains are up to 46% more efficient than driving and 34% more efficient than flying. Also, a single freight train can be up to 75% more fuel-efficient than a truck.

proposed rule is not a “significant energy action” within the meaning of Executive Order 13211, based on currently available information. However, FRA welcomes comments on the extent to which this proposed rule would result in fuel and emission savings.

#### J. Privacy Act Statement

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL–14 FDMS, accessible through <https://www.transportation.gov/privacy>. To facilitate comment tracking and response, DOT encourages commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

#### K. Tribal Consultation

FRA has evaluated this NPRM in accordance with the principles and criteria contained in Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.”<sup>51</sup> The proposed rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian Tribal governments, and would not preempt Tribal laws. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply, and a Tribal summary impact statement is not required.

#### L. Rulemaking Summary, 5 U.S.C. 553(b)(4)

As required by 5 U.S.C. 553(b)(4), a summary of this rulemaking can be found in the Abstract section of the Department’s Unified Agenda entry for this rulemaking at: <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=2130-AC95>.

#### List of Subjects in 49 CFR Part 236

Penalties, Positive train control, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FRA proposes to amend 49 CFR part 236 as follows:

<sup>51</sup> 65 FR 67249 (Nov. 9, 2000).

### PART 236—RULES, STANDARDS, AND INSTRUCTIONS GOVERNING THE INSTALLATION, INSPECTION, MAINTENANCE, AND REPAIR OF SIGNAL AND TRAIN CONTROL SYSTEMS, DEVICES, AND APPLIANCES

■ 1. The authority citation for part 236 continues to read as follows:

**Authority:** 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20157, 20301–20303, 20306, 20501–20505, 20701–20703, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 2. Amend § 236.1006 by adding paragraph (b)(6) to read as follows:

#### § 236.1006 Equipping locomotives operating in PTC territory.

\* \* \* \* \*

(b) \* \* \*

(6) *Exception for certain non-revenue passenger equipment movements.* This exception is available to enable only non-revenue passenger equipment, including a locomotive, locomotive consist, or train without passengers, to operate to a maintenance facility or yard for the purpose of repairing or exchanging a PTC system. Such non-revenue equipment may operate to a maintenance facility or yard without being governed by PTC technology, as otherwise required under this part, only if it meets the criteria in this paragraph (b)(6) and the following conditions:

(i) The speed of the locomotive, locomotive consist, or train must not exceed 49 miles per hour;

(ii) An absolute block must be established in front of the locomotive, locomotive consist, or train;

(iii) There cannot be any working limits established under part 214 of this chapter or any roadway workers on any part of the route;

(iv) The locomotive, locomotive consist, or train must operate no farther than the next forward location designated in the railroad’s PTCSP for the repair or exchange of PTC technology; and

(v) The railroad must protect the route of the locomotive, locomotive consist, or train against conflicting operations and establish and comply with sufficient operating rules to protect against a train-to-train collision and the movement of a train through a switch left in the improper position.

(vi) FRA may, in its discretion, approve exception criteria and conditions other than those outlined in paragraphs (b)(6) and (b)(6)(i) through (v) of this section, in a PTCSP or an RFA, if the proposed criteria and conditions provide an equivalent or

greater level of safety than these default criteria and conditions.

(vii) Before utilizing the default exception under paragraphs (b)(6)(i) through (v) of this section or the discretionary exception under paragraph (b)(6)(vi) of this section, the railroad must notify each person involved with the movement of the non-revenue passenger equipment, including any dispatchers and train crews, and any roadway workers who may no longer work on that segment during the movement subject to this exception.

\* \* \* \* \*  
■ 3. Amend § 236.1021 by adding paragraph (m)(4) to read as follows:

**§ 236.1021 Discontinuances, material modifications, and amendments.**

\* \* \* \* \*  
(m) \* \* \*

(4) A host railroad must utilize the RFA process under this paragraph (m) to request and obtain FRA's approval of a temporary PTC system outage, during which train movements may continue, including a short-term outage related to repair, maintenance, an infrastructure upgrade, or a capital project. A temporary PTC system outage includes, but is not limited to, any scenario when the onboard PTC apparatus or subsystem, wayside subsystem, communications subsystem, or back office subsystem would be disabled to perform a repair, maintenance, an infrastructure upgrade, or a capital project.

(i) A railroad may temporarily disable PTC technology pursuant to paragraph (m)(4) of this section only after it obtains approval from the Director of FRA's Office of Railroad Systems and Technology.

(ii) In addition to the content requirements outlined in paragraph (m)(2) of this section, an RFA that seeks to disable a PTC system temporarily must also contain the following information:

(A) The technical necessity for the proposed temporary outage to perform the repair, maintenance, infrastructure upgrade, or capital project;

(B) The physical limits and PTC system functions that would be affected by the proposed temporary outage, and an analysis that demonstrates the

affected physical limits and affected functions pose the least risk to railroad safety, compared to other options;

(C) An explanation about how the proposed temporary outage is in the public interest and consistent with railroad safety;

(D) The proposed timeframe of the temporary outage, and an analysis that demonstrates the proposed period of time poses the least risk to railroad safety, compared to other times;

(E) A justification and an analysis that show how the proposed duration of the temporary outage is the minimum time necessary to complete the pertinent work, test the PTC system, and place the PTC system back into service without undue delay;

(F) The type and frequency of rail operations that would continue during the proposed temporary outage, including those of the host railroad and each tenant railroad;

(G) The applicable speed limit of any train that would operate during the proposed temporary outage and the speed limit prior to any proposed temporary outage, and any other operating restrictions;

(H) The additional safety measures the host railroad and each tenant railroad must comply with during the proposed temporary outage, to ensure each type of PTC-preventable accident or incident does not occur. Specifically, such safety measures must be designed to prevent a train-to-train collision, an over-speed derailment, an incursion into an established work zone, and a movement of a train through a switch left in the wrong position; and

(I) A confirmation that before initiating the proposed temporary outage (if FRA authorizes it), each impacted railroad will notify all applicable dispatchers, train crews, and roadway workers about the temporary PTC system outage, including the specific location and duration of the temporary outage, the additional safety measures with which the railroad must comply, and any actions the individual must take during the temporary outage.

■ 4. Amend § 236.1029 by revising paragraph (g) to read as follows:

**§ 236.1029 PTC system use and failures.**

\* \* \* \* \*

(g) *Initialization failures.* (1) Except as stated under paragraph (g)(3) or (4) of this section, when a PTC system fails to initialize as defined in § 236.1003, a train may proceed only according to the following operating restrictions:

(i) For the first 24 hours, the train may proceed only as prescribed under paragraphs (b)(1) through (6) of this section; and

(ii) After the first 24 hours, the train may proceed only as prescribed under paragraphs (b)(4) through (6) of this section, and must not exceed restricted speed as defined in § 236.1003.

(2) Each railroad operating in accordance with paragraph (g)(1) of this section will notify, as early as is possible, all dispatchers, train crews, and roadway workers about PTC system-level outages or failures that result in multiple trains' PTC systems failing to initialize, thus resulting in trains proceeding in accordance with operating restrictions. Railroads must ensure that job safety briefings reflect such operations.

(3) Notwithstanding the relief under paragraph (g)(1) of this section, when a PTC system fails to initialize due to loss of communications or lack of navigational information, the train must attempt to initialize the PTC system at the next forward, available location, including a main line, siding, yard, or station, whichever is closest.

(4) The relief under paragraph (g)(1) of this section does not apply to a single train that experiences an onboard PTC system failure at the initial terminal. The purpose of this paragraph (g) is to address issues affecting multiple trains.

(5) FRA reserves the right to impose additional operating restrictions and other conditions to address recurring issues that result in multiple trains' PTC systems failing to initialize and to deny the relief under paragraph (g)(1) of this section for recurring issues that result in multiple trains' PTC systems failing to initialize.

\* \* \* \* \*

Issued in Washington, DC.

**Amitabha Bose,**  
*Administrator.*

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