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(ii) Temporal separation of passenger and other trains is maintained as provided in paragraph (e) of this section; or

(iii) Passenger service is operated under a risk mitigation plan submitted by all railroads involved in the joint operation and approved by FRA. The risk mitigation plan must be supported by a risk assessment establishing that the proposed mitigations will achieve a level of safety not less than the level of safety that would obtain if the operations were conducted under paragraph (c)(1) or (c)(2) of this section.

(2) Passenger service is operated on a segment of track of a freight railroad that is not a Class I railroad on which less than 15 million gross tons of freight traffic is transported annually and on which one of the following conditions applies:

(i) If the segment is unsignaled and no more than four regularly scheduled passenger trains are operated during a calendar day, or

(ii) If the segment is signaled (e.g., equipped with a traffic control system, automatic block signal system, or cab signal system) and no more than 12 regularly scheduled passenger trains are operated during a calendar day.

(3) Not more than four passenger trains per day are operated on a segment of track of a Class I freight railroad on which less than 15 million gross tons of freight traffic is transported annually.

(d) A limited operations exception under paragraph (c) is subject to FRA review and approval. FRA may require a collision hazard analysis to identify hazards and may require that specific mitigations be undertaken. Operations under any such exception shall be conducted subject to the terms and conditions of the approval. Any main line track exclusion is subject to periodic review.

(e) *Temporal separation.* As used in this section, temporal separation means that limited passenger and freight operations do not operate on any segment of shared track during the same period and also refers to the processes or physical arrangements, or both, in place to ensure that temporal separation is established and maintained at all times. The use of exclu-

sive authorities under mandatory directives is not, by itself, sufficient to establish that temporal separation is achieved. Procedures to ensure temporal separation shall include verification checks between passenger and freight operations and effective physical means to positively ensure segregation of passenger and freight operations in accordance with this paragraph.

(f) *PTCSP requirement.* No PTCSP—filed after the approval of a PTCIP with an MTEA—shall be approved by FRA unless it attests that no changes, except for those included in an FRA approved RFA, have been made to the information in the PTCIP and MTEA required by paragraph (b) or (c) of this section.

(g) *Designation modifications.* If subsequent to approval of its PTCIP or PTCSP the railroad seeks to modify which track or tracks should be designated as main line or not main line, it shall request modification of its PTCIP or PTCSP, as applicable, in accordance with § 236.1021.

EFFECTIVE DATE NOTE: At 75 FR 59117, Sept. 27, 2010, § 236.1019 was amended by revising the introductory text to paragraph (c), effective November 26, 2010. For the convenience of the user, the revised text is set forth as follows:

§ 236.1019 Main line track exceptions.

\* \* \* \* \*

(c) *Limited operations exception.* FRA will consider an exception in the case of a track segment used for limited operations (operating in accordance with § 236.0 of this part) under one of the following sets of conditions:

\* \* \* \* \*

§ 236.1020 Exclusion of track segments for implementation due to cessation of PIH materials service or rerouting.

(a) *Purpose and scope.* This section sets forth the conditions under which track segments identified in the 2008 baseline described in § 236.1005(b)(2) may be removed from the PTCIP. A track segment qualified for removal under this section may be removed after FRA approves a request contained in the PTCIP or an RFA filed prior to the required and scheduled

PTC installation date for the subject track segment.

(b) *Cessation of PIH materials service.* Except as provided in paragraph (c) of this section, the following three conditions must all be satisfied in order to justify removal of a track segment from the PTCIP:

(1) *Local service.* The railroad must affirm that there is no remaining local PIH materials traffic expected on the track segment, or that service is expected to cease as of a date certain prior to December 31, 2015. In the case of future cessation of local service, the expectation may be documented by statements from all current PIH materials shippers and/or consignees. The railroad is not required to anticipate future requests for service not in keeping with prior service patterns. (See § 236.1005(b)(3)).

(2) *Overhead traffic.* (i) To the extent that the track segment carried PIH materials traffic other than local traffic in 2008, the railroad must establish that current or prospective rerouting to one or more alternate track segments is justified. In making this showing, the railroad must assume, for purposes of analysis only, that both the subject track segment and the alternative route(s) will be equipped and operated with PTC. Rerouting will be justified if the analysis is conducted in accordance with the same procedures and using the same methodology as required for safety and security route analysis under 49 CFR 172.820, with appropriate quantitative weight given to risk reduction effected by installation of a PTC system. If the track segment in question is not clearly the route posing the least overall safety and security risks, then removal of the line from the PTCIP may be granted.

(ii) However, unlike analysis under part 172, FRA will consider the case for rerouting and removal of the line from the PTCIP to be made if the alternative(s) to the track segment sought to be removed has substantially the same overall safety and security risks as the subject routes under the stipulated conditions for analysis. In determining whether risk is substantially the same, FRA will consider the volume of traffic diverted, and such other factors as safety may require.

(3) *Residual risk.* In the case of a track segment for which cessation of local service is established under paragraph (b)(1) of this section and for which analysis shows any overhead PIH materials traffic could properly be rerouted under paragraph (b)(2) of this section, the railroad shall also establish that the remaining risk arising from rail operations on the track segment—pertaining to events that can be prevented or mitigated in severity by a PTC system—is less than the average equivalent risk per route mile on track segments required to be equipped with PTC because of annual gross tonnage and the presence of PIH materials traffic (excluding track segments also carrying passenger traffic). Such average equivalent risk shall be determined as of a time prior to installation of PTC on the line segments. This provision of the rule requires a future rulemaking to finalize and implement a risk evaluation methodology. Lines identified for removal subject to this provision will not be required to be equipped with PTC prior to the issuance of a final rule detailing the methodology.

(i) FRA will develop a risk evaluation methodology for the purpose of conducting the analysis required pursuant to paragraph (b)(3) of this section. The risk evaluation methodology will be finalized through a separate rulemaking proceeding that will permit all interested parties to provide input on the specific methodology and, whether that methodology should be employed. If in the rulemaking proceeding FRA determines that a risk methodology should not be employed, then FRA will amend this final rule to eliminate the residual risk provisions.

(ii) Any track segment qualifying for consideration under paragraph (b)(3) of this section and identified by the railroad for requested removal from the PTCIP shall be considered to be “pending for decision” until such time as FRA has published the risk evaluation methodology identified in paragraph (b)(3)(i) of this section. If a final risk evaluation methodology is employed, the railroad may be requested to provide supplemental information related to its request for removal of specific lines. The railroad is not required to commence installation of PTC on any

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track segment “pending for decision” under this paragraph, until a final FRA determination is made.

(c) If a track segment qualifies for removal from the PTCIP under paragraphs (b)(1) and (b)(2) of this section but does not meet the test of paragraph (b)(3) of this section, the railroad may nevertheless request that the PTCIP be amended to remove the track segment based upon compensating reductions in the risk related to PTC-preventable accidents based on installation of PTC technology on one or more track segments not otherwise required to be equipped. Upon a proper showing that the increment of risk reduction is at least as great on the substitute line as it would be on the line sought to be excluded from the PTCIP, FRA may approve the substitution.

[75 FR 59117, Sept. 27, 2010]

EFFECTIVE DATE NOTE: At 75 FR 59117, Sept. 27, 2010, §236.1020 was added, effective November 26, 2010.

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

(a) No changes, as defined by this section, to a PTC system, PTCIP, PTCDP, or PTCSP, shall be made unless:

(1) The railroad files a request for amendment (“RFA”) to the applicable PTCIP, PTCDP, or PTCSP with the Associate Administrator; and

(2) The Associate Administrator approves the RFA.

(b) After approval of an RFA in accordance with paragraph (a) of this section, the railroad shall immediately adopt and comply with the amendment.

(c) In lieu of a separate filing under part 235 of this chapter, a railroad may request approval of a discontinuance or material modification of a signal or train control system by filing an RFA to its PTCIP, PTCDP, or PTCSP with the Associate Administrator.

(d) An RFA made in accordance with this section will not be approved by FRA unless the request includes:

(1) The information listed in §235.10 of this chapter and the railroad provides FRA upon request any additional information necessary to evaluate the RFA (see §235.12), including:

(2) The proposed modifications;

(3) The reasons for each modification;

(4) The changes to the PTCIP, PTCDP, or PTCSP, as applicable;

(5) Each modification’s effect on PTC system safety;

(6) An approximate timetable for filing of the PTCDP, PTCSP, or both, if the amendment pertains to a PTCIP; and

(7) An explanation of whether each change to the PTCSP is planned or unplanned.

(i) Unplanned changes that affect the Type Approval’s PTCDP require submission and approval in accordance with §236.1013 of a new PTCDP, followed by submission and approval in accordance with §236.1015 of a new PTCSP for the PTC system.

(ii) Unplanned changes that do not affect the Type Approval’s PTCDP require submission and approval of a new PTCSP.

(iii) Unplanned changes are changes affecting system safety that have not been documented in the PTCSP. The impact of unplanned changes on PTC system safety has not yet been determined.

(iv) Planned changes may be implemented after they have undergone suitable regression testing to demonstrate, to the satisfaction of the Associate Administrator, they have been correctly implemented and their implementation does not degrade safety.

(v) Planned changes are changes affecting system safety in the PTCSP and have been included in all required analysis under §236.1015. The impact of these changes on the PTC system’s safety has been incorporated as an integral part of the approved PTCSP safety analysis.

(e) If the RFA includes a request for approval of a discontinuance or material modification of a signal or train control system, FRA will publish a notice in the FEDERAL REGISTER of the application and will invite public comment in accordance with part 211 of this chapter.

(f) When considering the RFA, FRA will review the issue of the discontinuance or material modification and determine whether granting the request is in the public interest and consistent with railroad safety, taking into consideration all changes in the method of operation and system functionalities,