

are encouraged to examine the record on ECFS and the Virtual Workshop. Although Virtual Workshop commenters may choose to provide identifying information or may comment anonymously, anonymous comments will not be part of the record in this proceeding and accordingly will not be relied on by the Commission in reaching its conclusions in this rulemaking. The Commission will not rely on anonymous postings in reaching conclusions in this matter because of the difficulty in verifying the accuracy of information in anonymous postings. Should posters provide identifying information, they should be aware that although such information will not be posted on the blog, it will be publicly available for inspection upon request.

14. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

15. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY-A257 at FCC Headquarters, 445 12th Street SW., Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

Federal Communications Commission.

Trent B. Harkrader,

Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.
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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 234, 235, and 236

[Docket No. FRA-2011-0061, Notice No. 2]

RIN 2130-AC32

Positive Train Control Systems (RRR)

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

ACTION: Clarification of NPRM and extension of comment period.

SUMMARY: In response to a petition for rulemaking, FRA proposed, in a notice of proposed rulemaking (NPRM) dated December 11, 2012, amendments to regulations implementing a requirement of the Rail Safety Improvement Act of 2008 that certain passenger and freight railroads install positive train control (PTC) systems. The present document clarifies FRA's responses to several elements of the Association of American Railroads' (AAR) petition for rulemaking and which elements of the petition for rulemaking FRA is considering, and asks specific questions concerning those elements. This document does not alter FRA's proposal as issued December 11, 2012, but it does extend the comment period in this proceeding to March 11, 2013.

DATES: Written comments must be received by March 11, 2013. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

ADDRESSES: Comments: Comments related to Docket No. FRA-2011-0061 may be submitted by any of the following methods:

- *Web Site:* Comments should be filed at the Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12-140, Washington, DC 20590.

- *Hand Delivery:* Room W12-140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to <http://www.regulations.gov> including 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 <http://www.regulations.gov> at any time or to Room W12-140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ronald Hynes, Director, Office of Safety Assurance and Compliance, Federal Railroad Administration, Mail Stop 25, West Building 3rd Floor West, Room W35-302, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202-493-6404); or Matthew T. Prince, Trial Attorney, Office of Chief Counsel, RCC-10, Mail Stop 10, West Building 7th Floor, Room W75-208, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202-493-6146).

SUPPLEMENTARY INFORMATION:

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I. Purpose and Background

FRA is issuing this document to clarify and seek additional information related to its proposed rule published at 77 FR 73589 on December 11, 2012, which was intended to provide additional regulatory guidance and flexibility related to the implementation of PTC systems by railroads as mandated by the Rail Safety Improvement Act of 2008, Sec. 104, Div. A, Public Law 110-432, 122 Stat. 4854 (Oct. 16, 2008) (codified at 49 U.S.C. 20157) (hereinafter "RSIA"). This document also extends the comment period in this proceeding to March 11, 2013, in order to provide interested parties sufficient time in which to develop responses.

RSIA was signed into law on October 16, 2008, mandating PTC system implementation by December 31, 2015. To effectuate this goal, RSIA required the railroads to submit for FRA approval a PTC Implementation Plan (PTCIP) within 18 months (i.e., by April 16, 2010). On July 27, 2009, FRA published an NPRM regarding the mandatory implementation and operation of PTC systems in accordance with RSIA. During the comment period for that proceeding, CSX Transportation, Inc. (CSX) suggested that FRA create a *de minimis* exception to the requirement that lines carrying materials poisonous by inhalation (PIH materials) traffic be equipped with PTC systems.

The final rule, published on January 15, 2010, included a *de minimis* exception, because FRA believed that the exception had significant merit and that it fell within the scope of the issues set forth in the proposed rule. However, because none of the parties had had an

opportunity to comment on this specific exception as provided in the final rule, FRA sought further comments on the extent of the *de minimis* exception. The further comments responsive to this issue were largely favorable, although the AAR sought some additional expansion and clarification. In publishing its second PTC final rule on September 27, 2010, based on the comments submitted, FRA decided not to further amend the *de minimis* exception.

In a petition for rulemaking dated April 22, 2011 (Petition), AAR requested that FRA initiate a rulemaking to propose expanding the *de minimis* exception and otherwise amend the rules concerning the “limited operations” exception, en route failures of trains operating with PTC systems, and the discontinuance of signal systems once PTC systems are installed. AAR also requested that FRA develop a new exception for allowing unequipped trains to operate on PTC lines during certain yard operations, create a new “limited operations” exception for freight movements, modify the default procedures for handling the en route failure of PTC systems, and allow automatic approval of the discontinuance of signal systems where PTC systems are implemented. In response to the Petition, FRA’s December 11, 2012 NPRM proposed to make many of the amendments requested in the Petition and requested additional comment on the others.

II. Questions Concerning Proposals in the Petition Not Adopted in the December 11, 2012 NPRM

To fully develop the record, FRA seeks additional information from all parties on the issues raised in the Petition. FRA also continues to seek comment on all of the proposals in the NPRM, even those not addressed in this document. This document further serves to clarify the input FRA requests on specific items in the Petition and other matters. FRA views all elements of the Petition as within the scope of this rulemaking and seeks comment on each of the elements contained in the Petition. The Petition can be found in the public docket related to this proceeding, FRA–2011–0061, which can be accessed by following the directions contained in the ADDRESSES section of this document. Nothing in the NPRM has foreclosed FRA’s further consideration of any issues or approaches related to this rulemaking that may be submitted in public comments.

As a general note, when commenters are addressing specific provisions of the

NPRM, and when suggesting specific changes, FRA seeks information, to the extent feasible and practicable, on the number of additional miles and/or locomotives that would or would not require PTC component installation (e.g., wayside components, onboard components). For example, if a commenter suggests a change to a *de minimis* exception alternative by recommending the use of a speed restriction instead of track class criteria, FRA is interested in the number of track miles that would no longer require PTC installation. FRA also seeks any information on the potential costs associated with any increased accident risk from not installing PTC. This type of information would help FRA evaluate the benefits and costs for each potential change to the PTC rule as well as the NPRM as a whole. Pursuant to Executive Order 13563 and to the extent permitted by law, FRA seeks information sufficient to make a reasoned determination that benefits justify costs and therefore requests comment on the magnitude of specific proposed rule changes.

A. De Minimis Exception

FRA seeks comment on several aspects of the categorical *de minimis* exception. The Petition proposed modifying the categorical exception to apply only to 100 loaded PIH cars, and not to residue cars. AAR notes that the Transportation Security Administration does not deem it necessary to regulate residue cars for security purposes since consequences of the release of a residue quantity of PIH materials would be significantly less than the consequences of an incident involving a loaded PIH car. In the NPRM, FRA proposes limiting the categorical *de minimis* exception to lines with fewer than 200 cars containing PIH materials (including both loaded and residue cars) per year. For the reasons stated in the NPRM, FRA did not propose a wholesale elimination of the applicability of the yearly cap on number of cars to residue cars. Nonetheless, FRA seeks comments on that decision and whether the car cap should apply only to loaded PIH cars and at what level.

FRA also seeks comment on the proposal to modify the *de minimis* exception to include a two-trains-per-day limitation on trains carrying PIH materials. Specifically, FRA seeks comment on the constraints proposed on the two-train limitation in the NPRM (e.g., annual carload limit, inclusion of residue cars) and whether different, or any, constraints on a train-per-day limitation would be appropriate. FRA seeks comment on the relationship

between daily train limitations and safety and the relationship between a daily train limitation and the annual car limitation particularly with respect to different PIH materials. For example, if the transit time for a tank car carrying anhydrous hydrogen chloride is too long, there is a risk that the car will become over-pressurized and that locations where such tank cars are held need to have the capability to vent the cars. FRA also seeks comment on the types of track segments that might not qualify for the categorical *de minimis* exception solely due to the trains-per-day limitation as well as operational changes that might be necessary to comply with the daily train limitation on track segments that would otherwise qualify for the *de minimis* exception (i.e., track segments carrying less than 200 PIH material cars per year, but more than two trains daily carrying PIH materials).

The categorical *de minimis* exception also includes two criteria meant to establish that a line qualifies as a “low density track segment,” as discussed in 49 CFR 236.1005(b)(iii): (1) That the line segment is Class 1 or Class 2 track; and (2) that the line density is less than 15 million gross tons (MGT) per year. With respect to the track class criterion, FRA seeks comment on the impact of the track class criterion on track maintenance standards; specifically, on whether the track class criterion creates a disincentive to setting higher maintenance standards for excluded track segments. FRA also seeks comment on whether the categorical *de minimis* exception should be extended to include Class 3 track segments. Alternatively, FRA seeks comment on the concept of eliminating the track class criteria and using a speed restriction on trains carrying PIH materials, and, if so, what that speed limit should be. FRA notes that in 2009, the Pipeline and Hazardous Materials Safety Administration (PHMSA) of DOT issued enhanced tank car design standards for new construction of railroad tank cars designed to transport PIH materials. The new design standards are intended to enhance the accident survivability of tank cars transporting PIH materials. 74 FR 1770 (January 13, 2009). Commenters should address the impact on the speed limit issue of the replacement of the historical tank car fleet with newer, more robust tank cars meeting the enhanced standards of PHMSA’s rule. Commenters should address both the probability and severity of a potential accident when accounting for the costs of a potential change in track class

criteria or use of a speed restriction. With respect to the tonnage limitation, FRA seeks comment on whether 15 MGT is the appropriate threshold, taking into account both derailment rates and the severity of derailments by traffic density, for the categorical *de minimis* exemption. FRA also seeks comment on AAR's suggestion that the 15 MGT limit be eliminated from the categorical *de minimis* exemption and potential alternative standards for the categorical *de minimis* exemption.

The categorical *de minimis* exemption also contains a 1-percent grade restriction. The Petition suggests that the exception be restricted to grades that are not "heavy grade" as defined in 49 CFR part 232. Section 232.407 of title 49 CFR defines "heavy grade" as an average grade of at least 2 percent over two continuous miles in the case of a train operating with no more than 4,000 trailing tons, and as an average grade of at least 1 percent over three continuous miles in the case of a train operating with more than 4,000 trailing tons. After noting the difficulty of applying these criteria to track segments independent of specific train movements, FRA proposed in the NPRM a grade restriction of 1 percent for three continuous miles. FRA indicated that a railroad may seek relief under the general *de minimis* exception for train operations with 4,000 trailing tons or less over track with an average grade of two percent or less over a distance of two miles. FRA seeks information on operational impacts associated with grade limitations proposed in the NPRM and the Petition, and seeks information on both the probability of a potential accident and the severity of a potential accident associated with both grade limitations. FRA also seeks specific information regarding the track miles that would be excluded from the exception should either grade limitation be adopted.

In the existing regulations, the categorical *de minimis* exception also requires that PIH materials be transported in trains that are temporally separated from other trains, as the term is discussed in 49 CFR part 211, appendix A. In the Petition, AAR suggested that FRA replace this requirement with a requirement that trains carrying PIH materials be operated with an absolute block ahead of and behind the train. FRA indicated in the NPRM that it is considering this block-separation proposal, though it would not be accurate to refer to it as "temporal separation." FRA requests comment on whether the block-separation proposal would be an adequate alternative to temporal

separation in providing adequate protection for the remaining PIH materials trains on a PTC-excluded track segment. FRA also seeks comment on any other techniques (implementation of technology, methods of operation, etc.) that could be used in place of temporal separation to establish separation between trains and ensure the safety of trains carrying PIH materials on PTC-excluded track segments.

Under the proposal and the existing rule, track segments that do not meet the specific requirements of the categorical *de minimis* exception are still potentially excludable under the general *de minimis* exception, so long as it can be demonstrated that the track segment has only "negligible risk" of events occurring that PTC systems are designed to prevent. FRA seeks comment generally on methods for determining negligible risk and whether there should be an established rule for what constitutes negligible risk. In the NPRM, FRA noted the difficulty the agency encountered when seeking to quantify risk in the development of the residual risk qualifying test with respect to the initial PTC final rule issued on January 15, 2010, and that it could be difficult to quantify risk in this circumstance as well. To establish a quantified risk assessment as AAR requested in the Petition, such a calculation would presumably be necessary, and FRA requests discussion of how to quantify the risk of any particular track segment and what might be an appropriate threshold using that quantification. Additionally, FRA requests that commenters specifically address what elements (e.g., traffic type, train speed, geography, grade, or proximity to populated areas, or other relevant factors), should be considered when calculating negligible risk, as well as the potential utility of the hazardous material routing analysis to determining the characteristics of a track segment with negligible risk. See 49 CFR 172.820.

FRA notes that AAR's Petition also sought a new "limited operations" exception in instances where there are limited freight operations on a line segment (fewer than 2 trains carrying PIH per day and less than 15 MGT of traffic annually), and where additional restrictions are imposed (i.e., 40-mph speed restriction, exclusions of any track segments with heavy grades, special notification requirements prior to entering work zones, and temporal separation or an alternative achieving at least as much risk reduction). As noted in the NPRM, FRA was not willing to propose such an exception since FRA

was provided limited flexibility in the statute to modify the definition of "main line" for freight operations, and the exception is already covered by the general *de minimis* exception. FRA seeks comment from all interested parties regarding these issues and any additional information related to AAR's limited operations suggestion contained in its Petition.

B. Yard Movement Exceptions

While yard tracks fall outside the statutory PTC mandate, movements associated with yard operations frequently require some movement along main track adjacent to or within a yard. As FRA recognized in the NPRM, PTC system implementation and operation for such movements poses significant burdens. As a result, FRA proposes an exception from PTC equipage requirements for locomotives performing movements associated with yard operations as long as appropriate safeguards are implemented to ensure that the risk of PTC-preventable accidents and release of PIH materials is negligible. In particular, FRA proposes a new *de minimis* exception for movements associated with yard operations and seeks comments on how to tailor such operations to provide adequate safety mitigation. Consistent with the 20-mile distance limitation for transfer train movements in 49 CFR part 232 and the limitation for Class II and Class III railroads operating PTC-unequipped locomotives, FRA proposes that movements under the new yard movements *de minimis* exception be limited to 10 miles from entry onto PTC-equipped main line track. This limitation allowed for 20-mile round-trip train movements while limiting the track segment exposed to unequipped movements to only 20 miles. In the NPRM, FRA requests comment on the proposed 10-mile limitation and seeks information as to whether 10 miles is the appropriate limit. Specifically, FRA is seeking discussion of the impact of the 10-mile limit on current switching operations. FRA also estimates that 500 locomotives would not have to be equipped with PTC onboard apparatuses if a 10-mile limit were established. FRA requests comment on this estimate as well as estimates of the number of locomotives affected if instead FRA were to adopt a 20-mile limit from entry on to PTC-equipped main line track. FRA also requests comments regarding other operational benefits or hazards that might result from extending the limit to 20 miles. FRA further recognizes that there may be unusual switching operations that pose only a negligible risk of a PTC-

preventable accident or PIH material release but nonetheless would not qualify for the *de minimis* exception as defined here. FRA requests examples of such operations, if any exist, and seeks comment on the practicability of the waiver process as an acceptable method of handling such operations.

In the Petition, AAR suggested a concept that it refers to as “absolute protection” to address the issue of yard movements. The AAR’s proposal would require that the dispatcher withhold movement authority between two points of control by signal indication or mandatory directive; that the movement of non-PTC equipped locomotives and non-initialized locomotives would be limited to 30 mph; and that the distance the locomotives would be permitted to travel from a yard or terminal would be limited to 20 miles. FRA solicited comment on AAR’s proposal in the NPRM and continues to seek comments on whether the AAR’s proposal regarding dispatcher control of train movements provides a sufficiently low risk of an accident and PIH release to support approval of such an operating restriction.

C. Provision on En Route Failures

In the NPRM, FRA seeks comment on the issue of en route failures and suggestions for other alternative default provisions, in addition to the existing authority for railroads to provide alternative methods of resolving en

route failures in their PTC Safety Plans. Although the NPRM notes that FRA rejected AAR’s request in the Petition to amend the existing rule with regard to en route failures, that statement was intended to mean that based on the information currently available to FRA, it was not willing to propose a specific change to the existing rule in the NPRM. FRA remains open to consideration of viable suggestions and ideas for handling en route failures in a manner different than that contained in the existing rule and encourages all interested parties to provide such comments on this issue. As discussed below, FRA seeks specific comment on the potential frequency of en route failures, any potential safety measures or operational restrictions that could be utilized in the event of an en route failure, as well as any information or data regarding the severity of the effects on the rail network that might arise due to compliance with the existing en route failure requirements. FRA also seeks comment on the degree of flexibility proposed 49 CFR 236.1029 allows FRA to address en route failures.

As stated in the NPRM, FRA recognizes that there may be issues with PTC system reliability during the early periods of use, and seeks to balance the statutory mandate for increased safety with the realities of implementing new and previously undeveloped systems, the failures of which pose significant risks to overall network capacity.

Accordingly, FRA further seeks comment on the appropriate balance of the safety risk and risk to network capacity both during the initial rollout of PTC systems and once PTC systems are fully developed with system failures mostly resolved. As part of that discussion, FRA requests information on the experiences to date with PTC system failures and system reliability. FRA also requests information on the actual consequences experienced and the potential consequences of maintaining the current en route failure provisions, including potential modal diversion due to diminished capacity. FRA also seeks comment on replacing the existing “en route failure” provisions with limitations that pose less risk of diminishing network capacity. One method of mitigating potential reductions in network capacity could be a process to phase in the more stringent “en route failure” requirements as PTC systems mature and become more reliable. FRA seeks comment on this potential method generally and on the specifics of potential timeframes and phase-in procedures for the “en route failure” requirements.

Issued in Washington, DC, on January 22, 2013.

Joseph C. Szabo,
Administrator.

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