

DEPARTMENT OF TRANSPORTATION
FEDERAL RAILROAD ADMINISTRATION

DOCKET NO. FRA-2019-0075
POSITIVE TRAIN CONTROL SYSTEMS

COMMENTS OF
THE ASSOCIATION OF AMERICAN RAILROADS
AND THE
AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION

The Association of American Railroads (“AAR”) and the American Short Line and Regional Railroad Association (“ASLRRA”), on behalf of themselves and their member railroads, submit the following comments in response to the Federal Railroad Administration’s December 18, 2020, notice of proposed rulemaking to revise 49 C.F.R. Part 236.¹ AAR and ASLRRA (jointly, “the Railroads”) generally support FRA’s effort to streamline the existing provisions in 49 C.F.R. § 236.1021 governing the Request for Amendment process when material modifications are made to Positive Train Control systems, and to improve the existing annual reporting requirements at § 236.1029(h). The railroads’ comments on specific aspects of the NPRM follow below.

¹ AAR is a trade association whose membership includes freight railroads that operate approximately 83% of the line-haul mileage, employ 95% of the workers, and account for 97% of the freight revenues of all railroads in the United States; and passenger railroads that operate intercity passenger trains and provide commuter rail service. ASLRRA is a non-profit trade association representing the interests of approximately 500 short line and regional railroad members and railroad supply company members in legislative and regulatory matters. Short lines operate 50,000 miles of track in 49 states, touching in origination or termination one out of every four cars moving on the national railroad system, serving customers who otherwise would be cut off from the national railroad network. 85 Fed. Reg. 82,400 (Dec. 18, 2020).

I. RFA Process Proposals

A. 45-day FRA Approval Timeframe

FRA proposes that upon receiving an RFA submission, the agency will approve, approve with conditions, or deny the RFA within 45 days of its filing. However, if FRA does not act on an RFA within 45 days, there is no remedy specified in the NPRM. If in some cases FRA is not able to prepare a full approval decision, with appropriate rationale, within 45 days, a railroad may be delayed for an undefined amount of time in implementing changes required to ensure the continued safe functioning of its PTC system. In the final rule, FRA should allow itself a fourth option at the end of 45 days: a summary approval of an RFA, with more detailed rationale to follow in a subsequent written decision.² This approach would ensure that safety improvements are not unnecessarily delayed in those unusual situations where FRA is unable to produce a complete written approval decision within 45 days.

B. Chief Engineer/Chief Operating Officer Statement

FRA proposes that an RFA request be accompanied by a statement from the host railroad's Chief Engineer *and* Chief Operating Officer ("COO") (or an executive officer of similar qualifications) verifying that the modified PTC system would meet all technical requirements, provide an equivalent or greater level of safety than the existing PTC system, and not adversely impact interoperability with any tenant railroads. The railroads oppose this unnecessary statement.

² In *Alpharma, Inc. v. Leavitt*, 460 F.3d 1, 5–6 (D.C. Cir. 2006), the court held that an agency may provide an "amplified articulation" of a prior "conclusory" observation. See also *Camp v. Pitts*, 411 U.S. 138, 143 (1973).

First, no such requirement was imposed with respect to the much more complex process of actually developing and implementing a PTC system. Indeed, there is no requirement for a railroad to provide a verification statement from its Chief Engineer or COO for submission and approval of PTC Implementation Plans, PTC Development Plans, or PTC Safety Plans. RFAs are generally minor changes necessary to keep a PTC system functioning optimally or to improve the safety of the system. They are proposed well after a PTC system has reached a reliable and mature state of operation -- and after a railroad will have already had a PTC system certified under 49 U.S.C. § 20157(h), approved by FRA and in successful operation. Requiring verified statements from senior railroad executives as to changes in operational PTC systems seems illogical.

Second, even if a railroad's Chief Engineer and COO (or equivalent level of executives) do have PTC oversight, those person(s) are not likely to be PTC subject matter experts, and the highly technical changes described in an RFA will not be within their purview.³ They will be forced to simply refer to and rely upon the representations of their more directly knowledgeable staff as to the impact of proposed amendments, and there is no safety purpose served by that exercise. The actual contents of a railroad's RFA submission, along with FRA's thorough review of an RFA, constitute the due diligence required to ensure continued operational safety. Instead of requiring hollow paperwork, the railroads instead propose that RFA submissions identify a designated and knowledgeable railroad contact who will be

³ Which railroad manager(s) or executive(s) have oversight over a railroad's PTC system varies significantly between railroads and may not at all involve either the Chief Engineer or the COO.

responsible for responding to FRA questions or requests for additional information, if any, and who will be able to do so quickly, completely, and authoritatively.

C. “Any Other Information” FRA Requests

FRA proposes that in addition to the specific list of information required to be included in an RFA, that a railroad would have to provide “any other information that FRA requests.” This requirement is unnecessary. Existing § 236.1021(d) already specifies that FRA can request information “necessary to evaluate” an RFA in appropriate circumstances. More importantly, RFAs generally are requests for small changes to PTC systems that have already been certified under 49 U.S.C. § 20157 by FRA, and that are in successful operation. FRA has identified in the proposed rule the categories of information that it requires to be able to thoroughly review and approve such an RFA submission. A catch-all requiring railroads to provide “any other information” FRA requests is overbroad given the nature of the railroad request, and creates the possibility of an open-ended process unlikely to be completed within the specified 45-day decision timeline.⁴

II. Biannual Report Proposal

A. Intended Enforcements/Accident Prevention

FRA proposes that the new biannual failure report would include the number of intended enforcements by the PTC system, and any other instances in which the PTC system prevented an accident or incident. First, it is often not possible to determine if an intended PTC enforcement prevented an accident or not. For example, the PTC enforcement may only have

⁴ This catch-all provision also renders FRA estimates of this rule’s paperwork collection and personnel costs burden speculative.

prevented a close call, or in the absence of PTC the train crew may have taken later action that would have prevented an accident. An attempt to categorize enforcements as having prevented accidents or not is speculative, and creates an unreliable data point potentially subject to misuse or misunderstanding.

Further, whether a PTC enforcement is intended or unintended may not always be clear, and is not indicative of system reliability or safety in any event. PTC enforcements, whether intended or not, indicate the system is *working*. Collecting PTC *failure* information was the purpose behind existing § 236.1029(h). To the extent enforcements are relevant to reliability, the number of *all* PTC enforcements, whether intended or not, would be far less subjective and result in a more easily normalized metric to compare with other metrics such as PTC failures. Requiring reporting of all enforcements also would avoid the cost and resource burdens on railroads that would be required to try to analyze individual enforcements to determine whether to classify them as “intended”.

In addition, FRA’s annual report proposal presents a significant problem for railroads operating Advanced Civil Speed Enforcement Systems (ACSES). Most railroads operating ACSES systems report a lack of current technical capability to collect enforcement data stored in a locomotive’s on-board computer and to transmit that data to a centralized collection and analysis location. To meet the requirements proposed in the NPRM, ACSES hosts and tenants would have to send an employee out to each locomotive in their respective fleets approximately every 48 hours to connect via laptop and perform a data download (an approximately 20-minute process for each locomotive). The collected data from each locomotive would then have to be processed and analyzed by a railroad employee, an

approximately additional 30-minute process. The analyzed data from each locomotive would then need to be aggregated. Some ACSES railroads have several hundred locomotives for which this task would need to be completed. This would represent an enormous burden, and FRA has not accounted for these costs. FRA should consider amending this proposal in the final rule after further consultation with ACSES railroads regarding a more feasible manner in which those railroads can compile desired enforcement metrics.

B. Number of PTC “Trains”

In addition to the proposal that railroads biannually provide the number of PTC train miles, FRA also proposes that the number of “trains” governed by PTC also be provided (like the metric regarding number of trains operated on a host railroad in form FRA F 6180.177). However, this requirement will not result in objective data. Different railroads use different metrics to identify and define “trains” (*e.g.*, crew starts, brake tests, addition/subtraction of portions of a train, interchange between railroads with re-crew, *etc.*). As a result, the number of “trains” involved in a particular geographic movement may vary considerably by railroad. In contrast, the number of PTC train miles is not subject to such variations across railroads, and there is little potential for inconsistency. PTC train miles provides the clearest and most easily understood method for statistical normalization when calculating PTC system reliability.

C. Summary of PTC System Improvements

FRA proposes that in the biannual report railroads include a summary of any actions the host railroad and its tenant railroads are taking to improve the performance and reliability of the PTC system. Section 236.1029(h) has, since its inception, governed the compilation of PTC failure occurrences. Information regarding PTC system improvements is not related to biannual

failure statistics. Actions being taken to improve PTC systems are more appropriately required in other FRA submissions and forums, including in the RFA submissions discussed above. As FRA's stated intent to was only "provide railroads an opportunity to explain briefly the steps they are taking to improve their PTC system's performance, which could also help put the biannual statistics into perspective," submitting information on PTC improvements in the biannual report should be optional.⁵

D. Host/Tenant Coordination on PTC Failures

FRA proposes tenant railroads submit PTC failure information to host railroads on a biannual basis. FRA specifically proposes that each tenant railroad must provide the host railroad relevant PTC failure information by July 15 (for the host railroad's July 31 report) and by January 15 (for the January 31 report). Such requirement is unnecessary.

The railroads now have experience with the quarterly (or monthly) PTC failure reporting process. That experience suggests that FRA should leave to the host/tenant railroads' discretion the most effective way to coordinate regarding tenant railroad PTC failures.⁶ The deadlines specified in the proposal may not work from the host railroad perspective, as in some instances they would not allow adequate time to investigate and include tenant failure information in a host railroad's biannual report. In practice, communications between host and tenant railroads will need to occur much earlier, and may need to occur on a continuous basis throughout a reporting period. In sum, the railroads have already established an efficient

⁵ 85 Fed. Reg. at 82,410.

⁶ See the Statutory Notification of PTC System Failures (Form FRA F 6180.177) that are currently submitted by host railroads on a quarterly (or monthly) basis until December 31, 2021 (85 Fed. Reg. 15,022 (March 16, 2020)).

process to collect tenant data and believe FRA should delete this unnecessary proposal in the final rule.

E. 2021 Annual Report

Existing § 236.1029(h) requires railroads to submit an annual report to FRA by April 16 of each year describing the PTC failures that occurred during the prior calendar year. The annual report requirement was promulgated in 2010, over a decade before FRA adopted the current quarterly PTC failure report process. The annual report requirement is limited, requiring railroads to identify PTC failures “by category, including but not limited to locomotive, wayside, communications, and back office system failures”.

It is unlikely a final rule in this proceeding will be issued prior to April 16, 2021, which for most host railroads is the due date for their first annual failure report submission to FRA. Rather than require railroads to develop a new format to submit the April 2021 report on a one-time basis, and because the quarterly (or monthly) PTC failure information FRA already receives is more comprehensive, the railroads request that FRA accept a compilation of the quarterly PTC failure data (from April 1, 2020 to March 31, 2021) to satisfy the annual reporting requirement for 2021. The railroads believe this a logical bridge to compliance with the annual report requirement until FRA publishes a final rule in this proceeding. Once a biannual failure report is required by FRA in a final rule in this proceeding, that report should replace the temporary quarterly failure reporting process FRA adopted in 2020.



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