



U.S. Department
of Transportation

**Federal Railroad
Administration**

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August 26, 2024

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Re: Five Railroads' Joint Request to Amend Their Positive Train Control Safety Plans – Denial Without Prejudice (*Docket Numbers FRA-2010-0039, FRA-2010-0045, FRA-2010-0051, FRA-2010-0056, and FRA-2010-0060*)

Dear Messrs. Braswell, DeWitt, Gonzales, Matthews, and Parets:

On July 11, 2024, five host railroads¹ jointly submitted a request for amendment (RFA), Revision 1.0, dated July 11, 2024, to their respective, FRA-approved Positive Train Control Safety Plans (PTCSPs) for their Interoperable Electronic Train Management Systems (I-ETMS). BNSF, Caltrain, NMRX, NS, and SFRTA jointly submitted this RFA to the Federal Railroad

¹ BNSF Railway (BNSF), Caltrain, New Mexico Rail Runner Express (NMRX), Norfolk Southern Railway (NS), and South Florida Regional Transportation Authority (SFRTA).

Administration (FRA) under Title 49 Code of Federal Regulations (CFR) Section 236.1021(l) and (m), *Discontinuances, material modifications, and amendments*.

As you are aware, Title 49 United States Code (U.S.C.) Section 20157 required each Class I railroad and each entity providing regularly scheduled intercity or commuter rail passenger transportation to implement, by December 31, 2020, an FRA-certified positive train control (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 prescribes by regulation or order.

Accordingly, the PTC-mandated main lines of the five host railroads that submitted this joint RFA (*i.e.*, BNSF, Caltrain, NMRX, NS, and SFRTA) are currently governed by an FRA-certified PTC system (specifically I-ETMS), as the statutory mandate and FRA’s PTC regulations require.²

In general, since January 1, 2023, railroads have been prohibited from operating on PTC-mandated main lines if a PTC system fails to initialize, unless a regulatory exception or provision so authorizes.³ This is because the temporary regulatory flexibility, under 49 CFR § 236.1029(g)(2), that previously authorized continued operations following initialization failures expired on December 31, 2022.⁴ Under 49 CFR § 236.1003, FRA defines the term “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.”⁵

BNSF, Caltrain, NMRX, NS, and SFRTA assert in their joint RFA, dated July 11, 2024, that this “RFA is necessary because of the regulatory gaps created by the expiration of” 49 CFR § 236.1029(g)(2). That expired regulatory provision, § 236.1029(g)(2), previously permitted any train to continue operating subject to certain speed limits and other restrictions, under 49 CFR §§ 236.567 or 236.1029(b), if a PTC system failed to initialize for any reason prior to the train’s departure from the initial terminal.

As its justification, the joint RFA cites, for example, four unplanned outages of PTC technology that occurred between March 2023 and November 2023 and contends that “railroads do not have suitable provisions in the regulation or PTC Safety Plans to overcome situations where a PTC system failure impacts a significant number of trains.” The RFA also acknowledges that FRA

² See, *e.g.*, 49 U.S.C. § 20157; 49 CFR § 236.1006(a).

³ See, *e.g.*, 49 CFR §§ 236.1006(a), 236.1029(g)(2).

⁴ 49 CFR § 236.1029(g)(2). As background, FRA promulgated this regulatory flexibility in 2014, and this provision expired 24 months after the deadline for full implementation of PTC systems, which was generally December 31, 2020, under 49 U.S.C. § 20157. See 79 Fed. Reg. 49693 (Aug 22, 2014).

⁵ 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.”

has publicly indicated it is pursuing a rulemaking to address these concerns, but notes that these five host railroads are seeking more immediate action through an amendment to their PTCSPs. In essence, BNSF, Caltrain, NMRX, NS, and SFRTA are requesting FRA's approval to operate on PTC-mandated main lines even when their trains' PTC systems fail to initialize, subject to the type of operating restrictions that currently apply to *en route* failures under 49 CFR § 236.1029(b), for a period not exceeding three consecutive days, potentially each time initialization failures occur.

As background, under 49 CFR § 236.1021(f), when reviewing an RFA, FRA must determine whether granting the RFA is in the public interest and consistent with railroad safety, taking into consideration all changes in the method of operation and system functionalities. After careful consideration of the applicability and sufficiency of the joint RFA, FRA hereby denies without prejudice the joint RFA, Revision 1.0, dated July 11, 2024, to BNSF, Caltrain, NMRX, NS, and SFRTA's respective PTCSPs, for multiple reasons. *See* 49 CFR § 236.1021(f), (m).

First, the joint RFA is overly broad and indefinite. To date, FRA has approved RFAs that seek to temporarily disable or discontinue a PTC system, during which train movements may continue, pursuant to 49 CFR § 236.1021(m) on a case-by-case basis only, where the relevant facts and circumstances, including the scope of the outage and impacted locations, are outlined in the RFA. For example, the joint RFA points to a previous, fact-specific RFA from a Class I railroad that is not a signatory to the joint RFA, and FRA conditionally approved that individual RFA subject to conditions to ensure railroad safety. That Class I railroad sought FRA's approval to temporarily disable its PTC system for a particular period only (*i.e.*, four periods not exceeding four hours) to facilitate a specific electrical infrastructure upgrade, which involved a temporary loss of communications.

In addition, BNSF, Caltrain, NMRX, NS, and SFRTA's joint RFA points to an instance of an unplanned PTC system outage, in which FRA was prepared to issue a decision letter within two days of receiving NS's request to operate without PTC technology. A two-day review-and-decision period, including the requisite *Federal Register* notice under 49 CFR § 236.1021(e), demonstrates FRA's ability and willingness to expedite RFAs to PTC systems under 49 CFR § 236.1021(m) despite the standard 45-day regulatory deadline, when the specific facts and circumstances necessitate it. As the joint RFA states, the relevant railroad, NS, in that case withdrew its RFA as it quickly restored PTC system service. FRA remains available to expedite any future RFAs to PTC systems, in which a temporary PTC system outage is fully described and shown to be necessary, under 49 CFR § 236.1021(m).

Furthermore, other ways in which the joint RFA, dated July 11, 2024, is overly broad and indefinite include, for example, the statement on page 10 that BNSF, Caltrain, NMRX, NS, and SFRTA "may modify existing operating rules, processes, and procedures or develop new operating rules, processes, and procedures to enforce compliance with this change." Such a proposal is too open-ended and indeterminate for FRA to evaluate and to determine, as required for an RFA, that it is in the public interest and consistent with railroad safety. *See* 49 CFR § 236.1021(f).

Second, the proposal in the joint RFA is not necessary in several of the cases it identifies. For example, the joint RFA often points to the possibility of emergencies or catastrophic occurrences where the PTC system would be disabled or discontinued, including natural disasters. FRA's existing regulations, under 49 CFR § 236.1021(i)(4), state that a railroad does not need to submit an RFA or obtain FRA's approval to disable or discontinue its PTC system for a period not to exceed six months if that is necessitated by catastrophic occurrence, such as derailment, flood, fire, hurricane, or earthquake. In addition, 49 CFR § 236.1005(g)(1) authorizes railroads to temporarily reroute trains onto track not equipped with a PTC system, in the event an emergency—such as a derailment, flood, fire, tornado, hurricane, earthquake, or other similar circumstance outside of the railroad's control—prevents usage of the regularly used track.

Third, the joint RFA acknowledges that FRA is in the process of initiating a rulemaking that would address the joint RFA's stated concerns about the expiration of 49 CFR § 236.1029(g)(2). A summary of FRA's related rulemaking can be found in the Abstract section of the U.S. Department of Transportation's Unified Agenda.⁶ The joint RFA, dated July 11, 2024, is not seeking to amend the contents of a PTCSP required under 49 CFR § 236.1015(d), as the framing of the joint RFA would suggest, but rather the joint RFA is seeking broad, open-ended relief and the reintroduction of a regulatory provision that expired on December 31, 2022. That type of proposed regulatory change should and is being handled via the rulemaking process, during which FRA will continue soliciting input from the public, the railroad industry, labor organizations, and other impacted stakeholders, for example, to ensure uniformity, objective parameters, railroad safety, continued operations, and prompt restoration of PTC system service. In the interim, railroads may continue submitting fact-specific, case-by-case RFAs seeking to temporarily disable their PTC systems, when necessary, under 49 CFR § 236.1021(m), or utilize other available exceptions under FRA's PTC regulations under 49 CFR part 236, subpart I.

The comment period for the *Federal Register* notice announcing BNSF, Caltrain, NMRX, NS, and SFRTA's joint request to amend their PTCSPs closed on August 19, 2024. 89 Fed. Reg. 61229 (July 30, 2024). FRA received four sets of written comments in response to this notice, all dated August 19, 2024, from the Brotherhood of Locomotive Engineers and Trainmen (BLET); the Brotherhood of Railroad Signalmen (BRS); the International Association of Sheet Metal, Air, Rail, and Transportation Workers - Transportation Division (SMART-TD); and the Transportation Trades Department, AFL-CIO (TTD).

FRA thanks BLET, BRS, SMART-TD, and TTD for their comments, which are available in full on <https://www.regulations.gov> under, for example, Docket No. FRA-2010-0056. BLET, BRS, SMART-TD, and TTD oppose the joint RFA and recommend that FRA deny the RFA for various reasons. FRA highlights that one common reason BLET, BRS, SMART-TD, and TTD each cite for their recommendations that FRA deny the joint RFA is that the large-scale policy change proposed in the joint RFA warrants a rulemaking, during which FRA could thoroughly consider all relevant factors and stakeholder input, and set specific, consistent parameters that are designed to ensure the safety of railroad operations. FRA agrees, as discussed above.

⁶ <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=2130-AC95>.

Furthermore, BRS commented that the RFA presents an incomplete solution that does not sufficiently safeguard the lives of train crews and the public, in part, because it does not address the full scope of safety risks that arise during a PTC system outage. Also, BLET commented that one of its major concerns with the joint RFA is that it does not address alternative procedures when multisystem failures occur, and the joint RFA incorrectly suggests that train operations are prohibited in emergencies. TTD commented that the RFA misrepresents the level of urgency of most unplanned PTC system outages and expressed concern that these five railroads are avoiding complying with the current regulatory framework, which allows filing RFAs as needed. SMART-TD commented that railroads generally fix an underlying problem quickly if the problem prevents them from operating trains, and that if FRA were to approve this RFA, it will result in deferred maintenance and prolonged outages and increase the risk of a rail accident.

Please note that BNSF, Caltrain, NMRX, NS, and SFRTA must continue to comply with the general conditions FRA previously imposed in its letter(s) certifying each railroad's respective PTC system. FRA will consider noncompliance with any condition of FRA's PTC System Certifications as a violation of the underlying requirement under 49 CFR part 236, subpart I, and 49 CFR § 236.1009(g)(1). In addition, any tenant railroad that operates I-ETMS on these railroads' PTC-governed main lines must comply with all applicable provisions of the host railroad's PTCSP, any applicable FRA-approved RFA to the host railroad's PTCSP, and the applicable conditions FRA placed on its certification of the host railroad's I-ETMS.⁷

If you have questions regarding this letter, please contact Mr. Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, at (816) 516-7168 or gabe.neal@dot.gov.

Sincerely,



Carolyn Hayward-Williams
Director, Office of Railroad Systems and Technology

⁷ Unless a tenant railroad's operations are subject to an exception under 49 CFR § 236.1006(b).