



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 236

[Docket No. FRA-2016-0012, Notice No. 1]

RIN 2130-AC56

Positive Train Control Systems

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

ACTION: Final rule.

SUMMARY: FRA is amending its regulations to address changes in deadlines for positive train control (PTC) system implementation required by the Positive Train Control Enforcement and Implementation Act of 2015. FRA is also making conforming amendments and removing portions of its PTC regulations that are no longer applicable.

DATES: This final rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Petitions for reconsideration must be received on or before [INSERT DATE 50 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Petitions for reconsideration will be posted in the docket for this proceeding. Comments on any submitted petition for reconsideration must be received on or before [INSERT DATE 95 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Petitions for reconsideration and comments on petitions for reconsideration: Any petitions for reconsideration or comments on petitions for reconsideration related to Docket No. FRA-2016-0012, may be submitted by any of the following methods:

- Website: The Federal eRulemaking Portal, www.regulations.gov. Follow the website's 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 petitions received will be posted without change to 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 petitions, comments, or materials.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov 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: David Blackmore, Office of Technical Oversight, Railroad Safety Program Manager for Advanced Technology, Federal Railroad Administration, Mail Stop 25, West Building 3rd Floor, Room W35-332, 1200 New Jersey Avenue, SE, Washington, DC 20590 (telephone: 202-493-1332); or Jason Schlosberg, Trial Attorney, Office of Chief Counsel, RCC-10, Mail Stop 10, West Building 3rd Floor, Room W31-207, 1200 New Jersey Avenue, SE, Washington, DC 20590 (telephone: 202-493-6032).

SUPPLEMENTARY INFORMATION: FRA is issuing this final rule to amend certain PTC system implementation deadlines in 49 CFR part 236, subpart I, to conform with statutory changes made by the Positive Train Control Enforcement and Implementation Act of 2015, Public Law No. 114-73, 129 Stat. 576, 582 (Oct. 29, 2015). FRA is also making conforming amendments and removing portions of its PTC regulations that are no longer applicable.

I. Background

Under the Railroad Safety Improvement Act of 2008 (RSIA), Public Law 110-432, 122 Stat. 4854 (Oct. 16, 2008) (codified at 49 U.S.C. 20157), much of the railroad industry had been implementing PTC to meet a statutory deadline of December 31, 2015. Under defined circumstances, certain small railroads could also delay PTC system implementation on locomotives until after December 31, 2015. See 49 U.S.C. 20157(i)(4) (2008); 49 CFR 236.1006(b)(4).

On October 29, 2015, the Positive Train Control Enforcement and Implementation Act of 2015 (PTCEI Act), amended RSIA to extend the PTC implementation deadline to December 31, 2018, or, alternatively December 31, 2020, and

provide qualifying small railroads with an additional three years to comply from the dates in FRA’s regulation at 49 CFR 236.1006(b)(4)(iii)(B). See Public Law No. 114-73, 129 Stat. 568, 576–82 (Oct. 29, 2015); 49 U.S.C. 20157(a)(1), (a)(2)(B), (k). Congress made further amendments in the Fixing America’s Surface Transportation (FAST) Act, which clarified FRA’s authority under the PTCEI Act. See Public Law No. 114-94, sec. 11315(d), 129 Stat. 1312, 1675 (Dec. 4, 2015) (codified at 49 U.S.C. 20157(g)).

By statute, and delegation from the Secretary of Transportation, FRA is required to remove or revise the date-specific deadlines in the regulations or orders implementing 49 U.S.C. 20157 necessary to conform with the amendments the PTCEI and FAST Acts made. See 49 U.S.C. 20157(g)(2); 49 CFR 1.89. FRA is not required to make any changes to its regulations other than changing the dates. 49 U.S.C. 20157(g)(3) (“Nothing in the Positive Train Control Enforcement and Implementation Act of 2015, or the amendments made by such Act, shall be construed to require the Secretary to issue regulations to implement such Act or amendments”). Accordingly, the only amendments made in this final rule are the date changes and any necessary conforming amendments.

II. Justification for Final Rule

FRA is issuing this final rule without providing an opportunity for prior public notice and comment as the Administrative Procedure Act (APA) normally requires. See 5 U.S.C. 553. The APA authorizes agencies to dispense with certain notice and comment procedures if the agency finds for good cause that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. See 5 U.S.C. 553(b)(3)(B). For example, an “impracticable” good cause situation might be where the federal railroad safety rules should be amended without delay if FRA determines that the

safety of the traveling public is at stake. Public notice is unnecessary when the public does not need or benefit from the notice and comment, such as with a minor or technical amendment.

In this case, FRA finds, for good cause, that notice and public comment is unnecessary, because the public would not benefit from such notice. The scope of this regulatory change is very limited; FRA is merely replacing old statutory deadlines with the new statutory deadlines and is otherwise making no substantive changes to the regulations; making conforming amendments; and removing portions of its PTC regulations that are no longer applicable.

III. Section-by-Section Analysis

Unless otherwise noted, all section references below refer to sections in title 49 of the Code of Federal Regulations (CFR).

Proposed Amendments to 49 CFR Part 236

Section 236.1005 Requirements for Positive Train Control systems

Originally, Congress mandated PTC implementation by December 31, 2015. However, the PTCEI Act extended that deadline. In the PTCEI Act, rather than choosing a single future date, Congress elected to provide an implementation deadline of December 31, 2018, with an opportunity to extend the deadline up to December 31, 2020, for those railroads that qualify. To be eligible for such an extension, a railroad must fulfill certain statutory conditions and prerequisites and receive FRA approval.

Because each railroad's implementation deadline may be based on a variety of currently unfulfilled conditions or prerequisites, modification of the deadlines in this rule is not merely a simple replacement of dates in the applicable regulations. To address

these variables, and place the statutory requirements in a regulatory context, some regulatory explanation and conforming amendments are required. This rule text includes some of the more explicit requirements necessary to receive FRA approval for an extension beyond 2018; some of the less definitive prerequisites (i.e., training and revenue service demonstration requirements under 49 U.S.C. 20157(a)(3)(B)) remain applicable as stated in the legislative text. FRA intends that all linguistic changes to be conforming, to merely incorporate the new statutory deadlines, and not to include any additional requirements. Therefore, FRA is issuing a final rule in this proceeding. Even if FRA had issued a proposed rule, and received comments, FRA could not make any changes without violating the statute.

To this end, FRA is striking the deadline referenced in § 236.1005(b)(1) and is adding a paragraph (b)(7) to address the new deadlines the recent legislation mandates.

Paragraph (b)(6) currently states that no new intercity or commuter rail passenger service shall commence after December 31, 2015, until a PTC system certified under this subpart has been installed and made operative. FRA continues to believe this is a clearly necessary requirement to satisfy the statute and to ensure PTC operations for railroads commencing new operations after the statutory implementation deadline. However, per the PTCEI Act, FRA recognizes the need to change the deadline. Accordingly, FRA is amending paragraph (b)(6) by striking “2015” and replacing it with “2020.” Since that paragraph only concerns new rail passenger service commencing after the full implementation deadline, it is consistent with the PTCEI Act to change the date to 2020. However, all rail passenger operations commencing before December 31, 2020, must comply with the implementation deadlines in the PTCEI Act.

Section 236.1006 Equipping locomotives operating in PTC territory

For the same reasons stated in the analysis of § 236.1005 above, FRA is striking the deadline in § 236.1006(b)(1) and (b)(3). For purposes of clarity and context, we are replacing the latter change with a cross-reference to new paragraph § 236.1005(b)(7).

Paragraph (b)(2) references a number of reports that were due in prior years. Given that this regulation is now stale, it is being removed.

Paragraph (b)(3) refers to the original deadline that has passed. Accordingly, FRA is striking the introductory phrase. Since the remaining text applies at all times, and is no longer limited to the implementation deadline, FRA does not believe it is necessary to cross-reference to § 236.1005(b)(7) or otherwise reference a deadline.

In addition to changing the implementation deadline, the PTCEI Act also provides some flexibility for railroads that may achieve PTC System Certification earlier than others. The PTCEI Act, codified at 49 U.S.C. 20157(j)(1), provides that until 1 year after the last Class I railroad achieves PTC System Certification and full PTC system implementation, each railroad shall comply with the operational restrictions in 49 U.S.C. 20157(j)(2)-(j)(4) in lieu of those required under 49 CFR 236.567 and 236.1029. While these statutory provisions are substantively outside the scope of this rulemaking, FRA recognizes that paragraph (b)(3) also references § 236.1029. To reduce confusion, and without making any interpretation or determination about the effect of the PTCEI Act, FRA is also referencing 49 U.S.C. 20157(j). The actual applicability at any given time of either 49 U.S.C. 20157(j) or 49 CFR 236.1029 would be determined at a later date in a different forum.

As previously noted, since the rule was first issued in 2010, FRA has provided Class II and Class III railroads a limited opportunity to delay or avoid PTC implementation on certain locomotives in prescribed circumstances. The PTCEI Act requires this rule to extend those permissible delays another 3 years from the dates in FRA's regulation at 49 CFR 236.1006(b)(4)(iii)(B). Accordingly, FRA is merely adding three years to each date referenced in paragraph (b)(4)(iii)(B).

Section 236.1009 Procedural requirements

Under the existing regulations, each railroad is required to submit an annual progress report on each anniversary of its initial PTCIP filing. Since the statute was amended to require annual submission of such progress reports by March 31 of each year (see 49 U.S.C. 20157(c)(1)), FRA is amending paragraph (a)(5) to reference that new progress report deadline and to avoid confusion and potential redundant submissions. FRA notes, however, that it retains under the existing and amended statutes and regulations the authority to require more frequent reporting.

Section 236.1011 PTC Implementation Plan content requirements

For the same reasons explained above regarding the amendments to § 236.1005, FRA is amending the deadline in § 236.1011. Given that a different deadline, albeit within the statutory limits, may apply to each railroad, FRA believes a single date in the regulation is no longer appropriate. Accordingly, the amendments to this section merely cross-reference to the applicable deadline determined under § 236.1005(b)(7).

Appendix A to Part 236—Civil Penalties

For the same reasons as previously explained regarding the amendments to § 236.1005, FRA is amending the deadline dates referenced in Appendix A. In addition, in

the new legislation, Congress reaffirmed FRA’s authority to enforce the requirements of subpart I. Therefore, FRA has reviewed its related civil penalties guidance found in Appendix A. Although FRA is currently not suggesting any substantive changes to the regulations, the agency believes that some clarity is warranted. And, of course, FRA retains the authority to enforce any violations of the new legislation or regulations whether or not explicitly mentioned in Appendix A.

List of Subjects in 49 CFR Part 236

Penalties, Positive Train Control, Railroad safety, Reporting and recordkeeping requirements.

The Rule

In consideration of the foregoing, FRA hereby amends 49 CFR part 236 as follows:

PART 236 – [AMENDED]

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. In § 236.1005, revise paragraphs (b)(1) introductory text and (b)(6) and add paragraph (b)(7) to read as follows:

§ 236.1005 Requirements for Positive Train Control systems.

* * * * *

(b) PTC system installation—(1) Lines required to be equipped. Except as otherwise provided in this subpart, each Class I railroad and each railroad providing or

hosting intercity or commuter passenger service shall progressively equip its lines as provided in its approved PTCIP such that a PTC system certified under § 236.1015 is installed and operated by the host railroad on each:

* * * * *

(6) New rail passenger service. No new intercity or commuter rail passenger service shall commence after December 31, 2020, until a PTC system certified under this subpart has been installed and made operative.

(7) Implementation deadlines. (i) Each railroad must complete full implementation of its PTC system by December 31, 2018.

(ii) A railroad is excepted from paragraph (b)(7)(i) of this section and must complete full implementation of its PTC system by December 31, 2020, or the date specified in its approved alternative schedule and sequence, whichever is earlier, only if the railroad:

(A) Installs all PTC hardware and acquires all spectrum necessary to implement its PTC system by December 31, 2018;

(B) Submits an alternative schedule and sequence providing for implementation of positive train control system as soon as practicable, but not later than December 31, 2020;

(C) Notifies the Associate Administrator in writing that it is prepared for review of its alternative schedule and sequence under 49 U.S.C. 20157(a)(3)(B); and

(D) Receives FRA approval of its alternative schedule and sequence.

(iii) If a railroad meets the criteria in paragraph (b)(7)(ii) of this section, the railroad must adhere to its approved alternative schedule and sequence and any of its subsequently approved amendments or required modifications.

* * * * *

3. In § 236.1006, revise paragraphs (b)(1) and (3) and (b)(4)(iii)(B) to read as follows:

§ 236.1006 Equipping locomotives operating in PTC territory.

* * * * *

(b) Exceptions. (1) Each railroad required to install PTC shall include in its PTCIP specific goals for progressive implementation of onboard systems and deployment of PTC-equipped locomotives such that the safety benefits of PTC are achieved through incremental growth in the percentage of controlling locomotives operating on PTC lines that are equipped with operative PTC onboard equipment. The PTCIP shall include a brief but sufficient explanation of how those goals will be achieved, including assignment of responsibilities within the organization. The goals shall be expressed as the percentage of trains operating on PTC-equipped lines that are equipped with operative onboard PTC apparatus responsive to the wayside, expressed as an annualized (calendar year) percentage for the railroad as a whole.

* * * * *

(3) A train controlled by a locomotive with an onboard PTC apparatus that has failed en route is permitted to operate in accordance with 49 U.S.C. 20157(j) or § 236.1029, as applicable.

(4) * * *

(iii) * * *

(B) To the extent any movement exceeds 20 miles in length, such movement is not permitted without the controlling locomotive being equipped with an onboard PTC system after December 31, 2023, and each applicable Class II or III railroad shall report to FRA its progress in equipping each necessary locomotive with an onboard PTC apparatus to facilitate continuation of the movement. The progress reports shall be filed not later than December 31, 2020 and, if all necessary locomotives are not yet equipped, on December 31, 2022.

* * * * *

4. In § 236.1009, revise paragraph (a)(5) to read as follows:

§ 236.1009 Procedural Requirements.

(a) * * *

(5) Each railroad filing a PTCIP shall report annually, by March 31 of each year, and until its PTC system implementation is complete, its progress towards fulfilling the goals outlined in its PTCIP under this part, including progress towards PTC system installation pursuant to § 236.1005 and onboard PTC apparatus installation and use in PTC-equipped track segments pursuant to § 236.1006, as well as impediments to completion of each of the goals.

* * * * *

5. In § 236.1011, revise paragraphs (a)(6)(ii), (a)(7), and (b)(3) to read as follows:

§ 236.1011 PTC Implementation Plan content requirements.

(a) * * *

(6) * * *

(ii) The schedule to equip that rolling stock by the applicable deadline under § 236.1005(b)(7);

* * * * *

(7) The number of wayside devices required for each track segment and the installation schedule to complete wayside equipment installation by the applicable deadline under § 236.1005(b)(7);

* * * * *

(b) * * *

(3) Nothing in this paragraph shall be construed to create an expectation or requirement that additional rail lines beyond those required to be equipped by this subpart must be equipped or that such lines will be equipped during the period of primary implementation ending on the applicable deadline under § 236.1005(b)(7).

* * * * *

5. In Appendix A to part 236:

a. Revise footnote 1;

b. Add footnote 2; and

a. Under Subpart I – Positive Train Control Systems, revise the entries for §§ 236.1005, 236.1006, 236.1007, 236.1009, 236.1011, 236.1019, 236.1029, 236.1035, and 236.1039.

The revisions and addition read as follows:

Appendix A to Part 236 – Civil Penalties^{1,2}

Section	Violation	Willful Violation
* * * * *		
Subpart I – Positive Train Control Systems		
<p>236.1005 Positive Train Control System Requirements:</p> <p>Failure to timely complete PTC system installation on track segment where PTC is required. 16,000 25,000</p> <p>Commencement of revenue service prior to obtaining PTC System Certification..... 16,000 25,000</p> <p>Failure of the PTC system to perform a safety-critical function required by this section..... 5,000 7,500</p> <p>Operating outside the limits of an approved <u>de minimis</u> exception..... 15,000 25,000</p> <p>Failure to integrate a hazard detector..... 15,000 25,000</p> <p>Non-compliant event recorder..... 2,500 5,000</p> <p>Failure of event recorder.....</p> <p>Failure to provide notice, obtain approval, or follow a condition for temporary rerouting when required..... 2,500 5,000</p> <p>Exceeding the allowed percentage of controlling locomotives operating out of an initial terminal after receiving a failed initialization..... 5,000 7,500</p> <p>5,000 7,500</p>		
<p>236.1006 Equipping locomotives operating in PTC territory:</p> <p>Failure to adhere to a PTCIP. (?) (?)</p> <p>Operating in PTC territory a controlling locomotive without a required and operative PTC onboard apparatus..... 15,000 25,000</p> <p>Operating with a PTC onboard apparatus that is not functioning in accordance with the applicable PTCSP.. 15,000 25,000</p> <p>Failure to report as prescribed by this section..... 5,000 7,500</p> <p>Non-compliant operation of unequipped trains in PTC territory..... 15,000 25,000</p> <p>Failure to equip locomotives in accordance with the applicable PTCIP..... 15,000 25,000</p> <p>Failure to comply with conditions of a yard movement exception..... (?) (?)</p> <p>Improper arrangement of the PTC system onboard</p>		

apparatus.....	2,500	5,000
Engineer performing prohibited duties.....	5,000	7,500
236.1007 Additional requirements for high-speed service:		
Installing or operating a PTC system without the required safety-critical functional attributes of a block signal system.....	15,000	25,000
Operation of passenger trains at speed equal to or greater than 60 mph on non-PTC-equipped territory where required.....	15,000	25,000
Operation of freight trains at speed equal to or greater than 50 mph on non-PTC-equipped territory where required.....	15,000	25,000
Failure to fully implement incursion protection where required.....	5,000	7,500
236.1009 Procedural requirements:		
Failure to file PTCIP when required.....	5,000	7,500
Failure to amend PTCIP when required.....	5,000	7,500
Failure to obtain Type Approval when required...	5,000	7,500
Failure to update NPI.....	5,000	7,500
Operation of PTC system without system certification.....	16,000	25,000
Failure to comply with FRA condition or modification.....	(²)	(²)
Failure to report as required.....	5,000	7,500
Failure to provide FRA access.....	10,000	16,000
236.1011 PTCIP content requirements:		
Failure to install a PTC system as required.....	11,000	16,000
Failure to maintain a PTCIP as required.....	(²)	(²)
* * * * *		
236.1019 Main line track exceptions:		
Operations conducted in non-compliance with the passenger terminal exception.....	16,000	25,000
Operations conducted in non-compliance with the limited operations exception.....	16,000	25,000
Failure to request modification of the PTCIP or PTCSP when required.....	11,000	16,000
Operations conducted in violation of (c)(2).....	16,000	25,000

Operations conducted in violation of (c)(3).....	25,000	25,000
* * * * *		
236.1029 PTC system use and en route failures: Failure to determine cause of PTC system component failure without undue delay.....	5,000	7,500
Failure to adjust, repair, or replace faulty PTC system component without undue delay.....	5,000	7,500
Failure to take appropriate action pending adjustment, repair, or replacement of faulty PTC system component.....	15,000	25,000
PTC territory operation with an inoperative PTC onboard apparatus.....	5,000	7,500
Interference with the normal functioning of safety-critical PTC system.....	15,000	25,000
* * * * *		
236.1035 Field testing requirements: Field testing without authorization or approval.....	10,000	20,000
Failure to comply with FRA condition.....	(²)	(²)
* * * * *		
236.1039 Operations and Maintenance Manual: Failure to implement and maintain Operations and Maintenance Manual as required.....	3,000	6,000
Failure to make Operations and Maintenance Manual available to FRA when required.....	10,000	16,000
Failure to make Operations and Maintenance Manual available to persons required to performed the required tasks	15,000	25,000
Amends Operations and Maintenance Manual without FRA approval	5,000	10,000

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¹ A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a civil penalty of up to \$105,000 per day for any violation where circumstances warrant. See 49 CFR part 209, Appendix A.

² Each plan has numerous conditions and requirements with varying degrees of importance or impact. Thus, a single recommended civil penalty amount for a violation for failure to adhere to each plan or condition is not advisable or warranted. When a violation of a plan or condition is found, FRA may consider a variety of factors to determine the appropriate civil penalty to assess, including any underlying or related violation.

Issued in Washington, DC, on February 23, 2016.

Sarah Feinberg,
Administrator.

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