



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

VIA E-MAIL ONLY

January 21, 2021

Ms. Kathryn Kirmayer
Mr. Joseph St. Peter
Counsel
Association of American Railroads
425 3rd Street SW, Suite 1000
Washington, DC 20024
kkirmayer@aar.org and jstpeter@aar.org

Ms. Sarah Grimmer Yurasko
General Counsel
American Short Line and Regional Railroad Association
50 F Street NW, Suite 500
Washington, DC 20001
syurasko@aslrro.org

Re: Docket Number FRA-2020-0068

Dear Meses. Kirmayer and Yurasko and Mr. St. Peter:

This letter is in response to the August 14, 2020, request from the Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) to the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained in Title 49 Code of Federal Regulations Section 236.1021, *Discontinuances, material modifications, and amendments*. Specifically, AAR and ASLRRA's petition requests authorization for certain railroads to comply with an alternative request for amendment (RFA) process, instead of the existing 49 CFR § 236.1021 process, before making certain material modifications to an FRA-certified Interoperable Train Control (ITC) positive train control (PTC) system or its accompanying PTC Safety Plan (PTCSP).

AAR and ASLRRA's joint petition applies to any of their member railroads that operate an ITC PTC system that FRA has certified, or certifies, as a mixed PTC system under 49 CFR § 236.1015(e)(4). The appendix to this decision letter includes a list of host railroads whose ITC PTC systems FRA has certified as a mixed PTC system as of December 31, 2020. Please note, however, that this waiver would likewise apply to any host railroads that obtain FRA's certification of their ITC PTC systems as mixed PTC systems in the future.

AAR and ASLRRRA, on behalf of themselves and their member railroads, request relief from certain requirements governing the RFA process under 49 CFR § 236.1021, specifically as it relates to making certain modifications (often referred to as “material modifications”) to a mixed-certification ITC PTC system or an accompanying PTCSP. Section 236.1021 currently requires that any time certain modifications¹ are made to an FRA-certified PTC system and its corresponding FRA-approved PTCSP, a railroad must first submit, and obtain FRA’s approval of, an RFA—with the content requirements under 49 CFR § 236.1021(d)(1) to (7).

Instead of complying with the existing RFA process, the petition requests that the applicable railroads be permitted to jointly file an RFA with a streamlined list of content requirements. In addition, the petition requests that such RFAs generally be considered self-executing within 30 days of the filing date.

FRA’s Railroad Safety Board (Board) reviewed the petition and FRA’s technical staff findings. The Board determined that granting the request is in the public interest and consistent with railroad safety. Accordingly, the Board grants the waiver, subject to the following conditions:

1. Any RFA filed pursuant to the waiver must also contain certain content requirements as described in condition #4 below.
2. Any RFA filed pursuant to the waiver is subject to a 45-day FRA review-and-decision deadline.
3. The waiver is in effect for five years or until FRA issues a final rule amending, in relevant part, 49 CFR § 236.1021, whichever occurs first.
4. For purposes of this waiver and the RFA process for FRA-certified PTC systems and FRA-approved PTCSPs, 49 CFR § 236.1021 is modified to read as follows:²
 - (l) Any RFA to a PTCSP pursuant to this section may be submitted jointly with other host railroads utilizing the same type of PTC system. However, only host railroads with the same PTC System Certification classification under § 236.1015(e) may jointly file an RFA to their PTCSPs. Any joint RFA to multiple host railroads’ PTCSPs must include the information required under paragraph (m) of this section. The joint RFA must also include the written confirmation and statement specified under paragraphs (m)(2)(iii) and (iv) of this section from each host railroad jointly filing the RFA.

¹ That is, proposed changes to safety-critical elements of PTC systems or proposed changes to a PTC system that affect the safety-critical functionality of any other PTC system with which it interoperates. 49 CFR § 236.1021(h)(3)–(4).

² To help ensure long-term consistency, the text in condition #4 aligns with the proposed regulatory text under 49 CFR § 236.1021(l) and (m) in the pertinent Notice of Proposed Rulemaking. *See* Positive Train Control Systems, 85 Fed. Reg. 82400 (Proposed Dec. 18, 2020). Please note that any references to “this section” in condition #4 refer to 49 CFR § 236.1021, and any references to “this subpart” refer to subpart I of 49 CFR part 236.

- (m) No changes, as specified under paragraph (h)(3) or (4) of this section,³ may be made to an FRA-certified PTC system or an FRA-approved PTCSP unless the host railroad first complies with the following process:
- (1) The host railroad revises its PTCSP to account for each proposed change to its PTC system and summarizes such changes in a chronological table of revisions at the beginning of its PTCSP;
 - (2) The host railroad electronically submits the following information in an RFA to the Director of FRA's Office of Railroad Systems, Technology, and Innovation:
 - (i) A summary of the proposed changes to any safety-critical elements of a PTC system, including a summary of how the changes to the PTC system would affect its safety-critical functionality, how any new hazards have been addressed and mitigated, whether each change is a planned change that was previously included in all required analysis under § 236.1015 or an unplanned change, and the reason for the proposed changes, including whether the changes are necessary to address or resolve an emergency or urgent issue;
 - (ii) Any associated software release notes;
 - (iii) A confirmation that the host railroad has notified any applicable tenant railroads of the proposed changes, any associated effect on the tenant railroads' operations, and any actions the tenant railroads must take in accordance with the configuration control measures set forth in the host railroad's PTCSP;
 - (iv) A statement from the host railroad's Chief Engineer and Chief Operating Officer, or executive officers of similar qualifications, verifying that the modified PTC system would meet all technical requirements under this subpart, provide an equivalent or greater level of safety than the existing PTC system, and not adversely impact interoperability with any tenant railroads; and
 - (v) Any other information that FRA requests; and
 - (3) A host railroad shall not make any changes, as specified under paragraph (h)(3) or (4) of this section, to its PTC system until the Director of FRA's Office of Railroad Systems, Technology, and Automation approves the RFA.
 - (i) FRA will approve, approve with conditions, or deny the RFA within 45 days of the date on which the RFA was filed under paragraph (m)(2) of this section.

³ That is, proposed changes to safety-critical elements of PTC systems or proposed changes to a PTC system that affect the safety-critical functionality of any other PTC system with which it interoperates.

- (ii) FRA reserves the right to notify a railroad that changes may proceed prior to the 45-day mark, including in an emergency or under other circumstances necessitating a railroad's immediate implementation of the proposed changes to its PTC system.
- (iii) FRA may require a railroad to modify its RFA or its PTC system to the extent necessary to ensure safety or compliance with the requirements of this part.
- (iv) Following any FRA denial of an RFA, each applicable railroad is prohibited from making the proposed changes to its PTC system until the railroad both sufficiently addresses FRA's questions, comments, and concerns and obtains FRA's approval. Consistent with paragraph (l) of this section, any host railroads utilizing the same type of PTC system, including the same certification classification under § 236.1015(e), may jointly submit information to address FRA's questions, comments, and concerns following any denial of an RFA under this section.

FRA reserves the right to modify or rescind this waiver upon receipt of information pertaining to the safety of railroad operations or in the event of noncompliance with any condition of this waiver. Further, FRA reserves the right to take enforcement action under 49 U.S.C. 20111 for noncompliance with any condition of this waiver or applicable Federal regulations.

In any future correspondence regarding this waiver, please refer to Docket Number FRA-2020-0068. If you have any questions regarding this letter, please contact Mr. Gabe Neal, Deputy Staff Director, Signal, Train Control, and Crossings Division, at 816-516-7168 or gabe.neal@dot.gov.

Sincerely,

Karl Alexy
Associate Administrator for Railroad Safety
Chief Safety Officer

Appendix

This appendix lists the host railroads whose ITC PTC systems FRA has certified as a mixed PTC system, as of December 31, 2020. Please note, however, that this waiver would likewise apply to any host railroads that obtain FRA's certification of their ITC PTC systems as mixed PTC systems in the future.

1. Alaska Railroad Corporation
2. The Belt Railway Company of Chicago
3. BNSF Railway Company
4. Canadian National Railway
5. Consolidated Rail Corporation
6. Kansas City Terminal Railway Company
7. National Railroad Passenger Corporation (Amtrak)
8. New Jersey Transit
9. New Mexico Rail Runner Express
10. Northeast Illinois Regional Commuter Railroad Corporation (Metra)
11. Northern Indiana Commuter Transportation District
12. Peninsula Corridor Joint Powers Board (Caltrain)
13. South Florida Regional Transportation Authority
14. Southeastern Pennsylvania Transportation Authority
15. Terminal Railroad Association of St. Louis