FRA 19-11
Tuesday, August 23, 2011

Secretary LaHood Announces Proposed Amendments to Federal Regulations for Positive Train Control Systems

Amendments Highlight Obama Administration's Commitment to Regulatory Streamlining

U.S. Transportation Secretary Ray LaHood today announced proposed changes to the Federal Railroad Administration's (FRA) regulations governing the installation of positive train control (PTC) systems. The amendments will provide greater flexibility to railroads and FRA in assessing the need for PTC without adversely affecting the safety of America's rail lines.

"Ensuring the safety of our railroads is a top priority," said U.S. Transportation Secretary Ray LaHood. "Thanks to President Obama's leadership in reducing regulatory barriers, these proposed amendments will provide regulatory relief while maintaining our commitment to safety."

Positive train control is currently required on routes carrying poison inhalation hazard (PIH) materials, and on routes that provide intercity and commuter passenger service. If a railroad opts to reroute the shipment of PIH hazardous materials off such a rail line and chooses to not install PTC there, the company must currently request FRA approval and conduct a complex set of analyses. The amendments proposed today would eliminate the need to perform those analyses, but do not impact the existing requirements to install PTC on lines used to provide passenger rail service.

"We believe that the proposal provides a balance of safety regulation and cost to the industry," said FRA Administrator Joseph C. Szabo. "We look forward to working together with the railroads as they concentrate on areas where positive train control is much-needed."

Affected railroads are expected to realize an estimated cost savings of $340 million in the first several years, with total savings of up to $1 billion over 20 years, by not installing PTC systems on as much as 14,000 miles of track. The lines impacted by this proposal have significantly less accident exposure because they do not carry passenger trains or PIH hazardous materials.

The Rail Safety Improvement Act of 2008 requires certain passenger and freight railroads to install PTC systems on lines meeting certain thresholds. Nationwide deployment of PTC is expected to eventually yield substantial benefits from the use of advanced train control technology for safety and business purposes.

The Notice of Proposed Rulemaking (NPRM) will be published in the *Federal Register* on Wednesday, August 24. The FRA invites comments on all aspects of the proposal. Interested parties are invited to submit comments by October 24. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays. Click here to view the NPRM.

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LaHood proposes changes to FRA regs

Posted By Tina Barbaccia On August 24, 2011 @ 9:16 am In News & Analysis | No Comments

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Comments received after that date "will be considered to the extent possible without incurring additional expenses or delays," according to U.S. DOT.

Click here to view the NPRM.

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4910-06-P

DEPARTMENT OF TRANSPORTATION
Federal Railroad Administration
49 CFR Part 236
[Docket No. FRA-2011-0028, Notice No. 1]
RIN 2130-AC27
Positive Train Control Systems
AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).
ACTION: Notice of Proposed Rulemaking.

SUMMARY: FRA proposes amendments to the regulations implementing a provision of the Rail Safety Improvement Act of 2008 that requires certain passenger and freight railroads to install positive train control (PTC) systems. This notice proposes the removal of various regulatory requirements that require railroads to either conduct further analyses or meet certain risk-based criteria in order to avoid PTC system implementation on track segments that do not transport poison- or toxic-by-inhalation (PIH) hazardous materials traffic and are not used for intercity or commuter rail passenger transportation as of December 31, 2015.

DATES:

(1) Written comments must be received by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION]. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

(2) FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION], one will be scheduled, and FRA will publish a supplemental notice in the Federal Register to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES:

Comments: Comments related to Docket No. FRA-2011-0028, 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:

Thomas McFarlin, Office of Safety Assurance and Compliance, Staff Director, Signal & Train Control Division, Federal Railroad Administration, Mail Stop 25, West Building 3rd Floor West, Room W35-332, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202-493-6203); 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 proposed rule to amend the regulatory requirements contained in 49 CFR part 236, subpart I, related to a railroad's ability to remove track segments from the necessity of implementing PTC as mandated by the Railroad Safety Improvement Act of 2008 § 104, Pub. L. 110-432, 122 Stat. 4854, (Oct. 16, 2008) (codified at 9 U.S.C. § 20157) (hereinafter "RSIA") based on the track segments not carrying PIH traffic as of December 31, 2015.

Table of Contents for Supplementary Information:

I. Executive Summary

For years, FRA has supported the nationwide proliferation and implementation of positive train control (PTC) systems, forecasting substantial benefits of advanced train control technology in supporting a variety of business and safety purposes. However, FRA repetitively noted that an immediate regulatory mandate for PTC system implementation could not be justified based upon normal cost-benefit principals relying on direct safety benefits. In 2005, FRA promulgated regulations providing for the voluntary implementation of processor-based train control systems. See 70 FR 11,052 (Mar. 7, 2005) (codified at 49 CFR part 236, subpart H).

As a consequence of the number and severity of certain very public accidents, coupled with a series of other less publicized accidents, Congress passed RSIA mandating the implementation of PTC systems on lines meeting certain thresholds. RSIA requires PTC system implementation on all Class I railroad lines that carry PIH materials and 5 million gross tons or more of annual traffic, and on any railroad's main line tracks over which intercity or commuter rail passenger train service is regularly provided. In addition, RSIA provided FRA with the authority to require PTC system implementation on any other line.

In accordance with its statutory authority, FRA's subsequent final rule, issued January 15, 2010, and amended on September 27, 2010, potentially required PTC system implementation on certain track segments that carried PIH traffic and 5 million gross tons or more of annual traffic in 2008 but that will not carry PIH traffic, and will not be used for intercity or commuter rail passenger transportation, as of December 31, 2015. Per the regulation, the determination would be based upon whether the subject track segment would pass what has been called the alternative route analysis and the residual risk analysis (the "two qualifying tests").

Upon issuance of the PTC final rule, the Association of American Railroads (AAR) filed suit in the U.S. Court of Appeals for the District of Columbia Circuit challenging the two qualifying tests provisions of the final rule. After the parties filed their briefs, they executed a settlement agreement (Settlement Agreement). In the Settlement Agreement, FRA agreed to issue an NPRM proposing to amend the PTC rule to eliminate the two qualifying tests; this NPRM fulfills this requirement. The Settlement Agreement further provided that FRA would consider public comments on the NPRM in determining whether to amend the PTC rule.

For the first 20-years of the proposed rule, the estimated quantified benefits to the industry due to the proposed regulatory relief total approximately $620 million discounted at 7 percent and $818 million discounted at 3 percent. Substantial cost savings would accrue largely from not installing PTC system wayside components along approximately 10,000 miles of track. Although these rail lines would forego some risk reduction, the reductions would likely be small since these lines pose a much lower risk of accidents because they generally do not carry passenger trains or PIH materials and generally have lower accident exposure. The analysis shows that if the assumptions are correct, the savings of the proposed action far outweigh the cost. The following table presents the quantified benefits:

Benefits (20-year, discounted)		
Costs Avoided:	7% Discount	3% Discount
Reduced Mitigation Costs, Including Maintenance	$91,793,822	$121,119,324
Reduced Wayside Costs, Including Maintenance	$515,695,631	$680,445,643

Reduced Locomotive Costs, Including Maintenance	$12,479,834	$16,466,785
Total Benefits	$619,969,287	$818,031,752

For the same 20-year period, the estimated quantified cost totals $26.7 million discounted at 7 percent and $39.3 million discounted at 3 percent. The costs associated with the proposed regulatory relief result from the reduction of safety benefits in the form of accident reduction due to the affected track segments not being equipped with a PTC system. A substantial part of the accident reduction that FRA expects from PTC systems currently required comes from reducing high-consequence accidents involving passenger trains or the release of PIH materials. FRA believes that the lines impacted by this proposal pose significantly less risk because they generally do not carry passenger trains or PIH materials and generally have lower accident exposure. The following tables present the total costs of the proposed rule as well as the breakdown of the costs by element:

Costs (20-year, discounted)		
Foregone Reductions in:	**7% Discount**	**3% Discount**
Fatality Prevention	$11,453,106	$16,860,327
Injury Prevention	$4,254,484	$6,263,104
Train Delay	$117,793	$173,406
Property Damage	$10,163,835	$14,962,367
Equipment Cleanup	$143,273	$210,915
Environmental Cleanup	$430,995	$634,475
Evacuations	$138,780	$204,301
Total Costs	**$26,702,267**	**$39,308,896**

FRA has also performed a sensitivity analysis for a high case (14,000 miles), expected case (10,000 miles), and low case (7,000 miles).

The net amounts for each case, subtracting the costs from the benefits, provide the following results:

Net Societal Benefits	**7% Discount**	**3% Discount**
Expected Case (10,000 miles)	$593,267,020	$778,722,856
High Case (14,000 miles)	$793,856,299	$1,041,764,269
Low Case (7,000 miles)	$442,825,061	$581,441,797

Further, the benefit-cost ratios under the scenarios analyzed range between 20:1 and 25:1.

Benefit-Cost Ratio	**7% Discount**	**3% Discount**
Expected Case	23.22	20.81

High Case	22.24	19.93
Low Case	24.69	22.13

II. Background

A. Regulatory History

As a consequence of the number and severity of certain widely publicized accidents, coupled with a series of other accidents receiving less media attention, Congress passed RSIA, mandating implementation of PTC systems by December 31, 2015. 75 FR 2598 (Jan. 15, 2010). Under RSIA, such PTC implementation must be completed by each Class I railroad carrier and each entity providing regularly scheduled intercity or commuter rail passenger transportation on:

> (A) its main line over which intercity rail passenger transportation or commuter rail passenger transportation, as defined in section 24102, is regularly provided;
>
> (B) its main line over which PIH or TIH hazardous materials, as defined in parts 171.8, 173.115, and 173.132 of title 49, Code of Federal Regulations, are transported; and
>
> (C) such other tracks as the Secretary may prescribe by regulation or order.

49 U.S.C. § 20157(a)(1). The statute further defined "main line" to mean:

> a segment or route of railroad tracks over which 5,000,000 or more gross tons of railroad traffic is transported annually, except that—
>
> (A) the Secretary may, through regulations under subsection (g), designate additional tracks as main line as appropriate for this section; and
>
> (B) for intercity rail passenger transportation or commuter rail passenger transportation routes or segments over which limited or no freight railroad operations occur, the Secretary shall define the term "main line" by regulation.

49 U.S.C. § 20157(i)(2). 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).

Consistent with this statutory mandate, FRA published a final rule with a request for further comments on January 15, 2010, which established new regulations codified primarily in subpart I to 49 CFR part 236 (the "PTC rule"). Subsequently, FRA received a number of petitions for reconsideration to the final rule and a number of comments responding to the request for further comments. In a letter dated July 8, 2010, FRA denied all of the petitions for reconsideration. On September 27, 2010, FRA issued a new final rule with clarifying amendments to the PTC rule.

Under the current regulations applicable to the existing railroads, each PTCIP must have included the sequence and schedule in which track segments required to be equipped with PTC will be so equipped and the basis for those decisions. See 49 CFR § 236.1011. This list of track segments must have included all track segments that fit the statutory criteria in calendar year 2008. See 49 CFR § 236.1005(b)(1) and (b)(2).

While the statutory PTC implementation deadline is December 31, 2015, FRA recognized a need for a starting point in time to determine where such implementation must occur. The final rule indicates that such a starting baseline should be based on the facts and data known in calendar year (CY) 2008 (the "2008 baseline"). FRA determined that using CY 2009 data would have been difficult given the proximity to the PTCIP submission deadline and the notably atypical traffic levels caused by the down turn in the economy. Although each railroad's initial PTCIP includes a future PTC implementation route map reflecting 2008 data, FRA recognized that traffic levels and PIH routings could change in the period between the end of 2008 and the start of 2016. Accordingly, in the event of changed circumstances, the PTC rule

provides railroads with the option to file a request for amendment (RFA) of its PTCIP to not equip a track segment that the railroad was initially, but may no longer be, required to implement a PTC system. If a particular track segment included in a PTCIP will no longer carry PIH traffic by the statutory implementation deadline, and its PTC system implementation is scheduled, but not yet effectuated, then the host railroad might avoid actual PTC system implementation by filing a supported RFA for FRA approval. Each such RFA must be supported with the data defined under §§ 236.1005(b)(2) and (b)(4)(i), and satisfy the two qualifying tests that were promulgated under FRA's statutory authority to require PTC to be installed on lines in addition to those required to be equipped by RSIA. If a track segment fails either of these tests, FRA would deny the request, thus requiring PTC system implementation on the track segment.

The first test, proverbially known as the "alternative route analysis test," was initially codified at § 236.1005(b)(4)(i)(A) and subsequently moved to a new § 236.1020. Under this test, the railroad must establish that current or prospective rerouting of PIH materials traffic to one or more alternative track segments is justified. If a railroad reroutes all PIH materials off of a track segment requiring PTC system implementation under the 2008 baseline, and onto a new line, PTC system implementation on the initial line may not be required if the new line would have substantially the same overall safety and security risk as the initial line, assuming PTC implementation on both lines. If the initial track segment, despite the elimination of all PIH materials traffic, is determined to pose higher overall safety and security risks under this analysis, then a PTC system must still be installed on that initial track segment. PTC system implementation may also be required on the new line if it meets the 5 million gross ton of annual traffic threshold and does not qualify under the de minimis exception of the rule.

The second test that the railroad must satisfy in order to avoid having to install a PTC system on a track segment requiring implementation under the 2008 baseline is the so-called "residual risk test." Under this test, the railroad must show that, without a PTC system, the remaining risk on the track segment—pertaining to events that can be prevented or mitigated in severity by a PTC system—is less than the national average equivalent risk per route mile on track segments required to be equipped with PTC systems due to statutory reasons other than passenger traffic presence. When FRA issued its PTC rule amendments on September 27, 2010, FRA indicated that it was delaying the effective date of 49 CFR § 236.1005(b)(4)(i)(A)(2)(iii), as revised under § 236.1020, pending the completion of a separate rulemaking to establish how residual risk is to be determined.

B. Litigation, Executive Order 13563, and Congressional Hearings

After FRA issued its PTC final rule on January 15, 2010, and denied reconsideration on July 8, 2010, the AAR filed a petition for review of the rule with the U.S. Court of Appeals for the District of Columbia. Once FRA issued its PTC final rule amendments, AAR filed another petition for review of those amendments on October 5, 2010. The court consolidated those two petitions on October 22, 2010 (collectively, "Petition for Review").

In its brief, AAR challenged FRA's determination to use 2008 as the baseline year, arguing that it rests on a fundamental legal error and was arbitrary and capricious. After the parties fully briefed the issues, President Obama issued Executive Order 13563 on January 18, 2011 (76 FR 3821 (Jan. 21, 2011)), which outlined a plan to improve regulations and regulatory review. According to the Order, it is intended to reaffirm and build upon governing principles of contemporary regulatory review, including Executive Order 12866 (Sept. 30, 1993), by requiring federal agencies when issuing safety regulations to design the regulations so that they are cost-effective, evidence-based, and compatible with economic growth, job creation, and

competitiveness. The President's plan recognizes that these principles apply to both new and existing regulations. To that end, Executive Order 13563 requires agencies to review existing significant regulations to determine if they are outmoded, ineffective, insufficient, or excessively burdensome. FRA recognizes that the costs associated with PTC rule compliance outweigh the safety benefits by 20-to-1 and, therefore, it is appropriate to reexamine whether FRA should be requiring the installation of PTC on lines that will not be carrying PIH traffic or regularly scheduled passenger service as of December 31, 2015.

FRA and AAR entered into the Settlement Agreement on March 2, 2011. The terms and conditions of the Settlement Agreement included the joint filing of a motion to hold the Petition for Review in abeyance pending the completion of this rulemaking. That motion was filed on March 2, 2011, and was granted by the court on March 3, 2011.

The Settlement Agreement provides that FRA will issue two notices of proposed rulemaking (NPRMs). The first NPRM is to address whether the PTC rule should be amended by eliminating the two aforementioned tests that would potentially require PTC to be installed on track segments not specifically required to be equipped by Congress. This NPRM meets that requirement. The Settlement Agreement provides that upon the completion of this rulemaking proceeding, the parties will determine whether to file a joint motion to dismiss the lawsuit in its entirety. The Settlement Agreement also states that FRA is to issue a separate NPRM that will address the issues of how to handle en-route failures of PTC equipped trains, circumstances under which a signal system may be removed after PTC installation, and whether yard movements and certain other train movements should qualify for a de minimis risk exception to the PTC rule. The second NPRM will also address any other issues that might be raised by interested parties in a properly filed petition for rulemaking under 49 CFR part 211. The Settlement Agreement notes that FRA will consider all comments submitted during the rulemaking comment periods on each of those NPRMs in determining whether to issue amendments to the PTC rule and, if so, the contents of those amendments. Although this NPRM and its associated regulatory impact analysis seek comments relating to the two qualifying tests, it does not seek comments on the issues that will be reserved for the other forthcoming NPRM.

On March 17, 2011, FRA and AAR testified before the Subcommittee on Railroads, Pipelines, and Hazardous Materials, Committee on Transportation and Infrastructure, U.S. House of Representatives. In addition to reporting on the Settlement Agreement, FRA's testimony discussed PTC system implementation planning and progress made thus far and highlighted the various ways that FRA has assisted the industry in meeting the statutory and regulatory goals. In particular, FRA has supported PTC implementation by developing and approving certain implementation exceptions, providing technical assistance, and granting financial assistance.

During its testimony, made jointly with Norfolk Southern Railway (NS), AAR asserted that, "If unchanged, the 2008 base-year provision means railroads would have to spend more than $500 million in the next few years to deploy PTC on more than 10,000 miles of rail lines on which neither passenger nor TIH materials will be moving in 2015."[1] FRA understands AAR to

[1] Hearing Before the Subcommittee on Railroads, Pipelines, and Hazardous Materials of the Transportation and Infrastructure Committee, U.S. House of Representatives, 112th Cong. (2011) (Joint statement of Edward R. Hamberger, President and Chief Executive Officer of the AAR, and Mark D. Manion, Executive Vice President and Chief Operating Officer of the Norfolk Southern Railway, on behalf of the AAR's member railroads) [hereinafter AAR CONGRESSIONAL TESTIMONY].

assume that these 10,000 miles would still require PTC implementation because they would not be able to pass the alternative route analysis and residual risk analysis tests. If this is not correct, FRA seeks AAR's clarification. However, upon its own analysis, FRA assumes that 50 percent of the 10,000 miles would be able to pass both tests with the implementation of mitigation measures. FRA seeks comment on this assumption.

Under the regulatory impact analysis (RIA) that accompanied the PTC final rule, FRA estimated that the railroads would need to implement PTC systems on approximately 70,000 miles of track. However, PTC system implementation could be avoided on 3,204 miles of those 70,000 miles of track because PIH materials traffic will have ceased by 2015 and the subject track segments would pass the residual risk analysis and alternative route analysis tests. During the earlier rulemakings, no entity, including AAR and NS, challenged or otherwise commented on these conclusions.

FRA also estimated that PTC system implementation could be avoided on 304 miles of track because gross tonnage will fall below 5 million gross tons per year, or passenger service would end so that neither of the two tests above would apply. Between the two categories, FRA estimated that railroads could exclude more than 3,500 miles. Assuming that the 3,500 miles represents about 50% of those tracks where PIH materials traffic will have ceased, FRA was implicitly estimating that there would be about 7,000 miles of track where PIH materials traffic will have ceased. The AAR and its members appear to have been more effective in the future reduction of PIH materials traffic than FRA had initially estimated based on AAR's congressional testimony and subsequent submissions to FRA. In its analysis of this NPRM, FRA estimates that PIH traffic will cease on 10,000 miles of track on which PTC systems would have been required had the traffic not ceased. FRA considers cases where 7,000 miles, 10,000 miles and, for sensitivity, 14,000 miles of track might be excluded from PTC requirements because of changes in PIH traffic. As FRA was completing its analysis of this proposal, AAR submitted data that indicates its member railroads believe that they can cease PIH traffic on 11,128 miles of track, of which 9,566 miles have no passenger traffic. Some of the passenger traffic miles may later qualify for exclusion from the system on which PTC is required. For more discussion of those miles from which PIH traffic is removed, but on which passenger traffic remains, see FRA's Regulatory Impact Assessment, in this rulemaking docket. FRA seeks comments and information on the accuracy and likelihood of estimated changes in PIH traffic.

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). FRA seeks comments on all proposals made in this NPRM.

Proposed Amendments to 49 CFR Part 236

Section 236.1003 Definitions

FRA currently defines PIH materials within the rule text at § 236.1005(b)(1)(i), which some may find difficult to locate. Accordingly, for the purposes of clarity, FRA proposes to add the definition for PIH materials to the definitions section of subpart I. The inclusion of this definition in § 236.1003 would not change the meaning of the term as understood under § 236.1005(b)(1)(i) or its cross-referenced §§ 171.8, 173.115, and 173.132.

Section 236.1005 Requirements for Positive Train Control systems

In this NPRM, FRA is proposing the elimination of the alternative route analysis and the residual risk analysis tests. When initially published in the PTC rule on January 15, 2010, these provisions were included in § 236.1005(b). On September 27, 2010, FRA issued amendments to the PTC rule, moving the text to a new § 236.1020 and providing more clarifying language. To ensure continuity and understanding, however, § 236.1005 contained various cross-references to § 236.1020. As indicated below, FRA is proposing to eliminate § 236.1020. Accordingly, FRA also proposes rule text changes to § 236.1005 by removing those cross-references.

Section 236.1020 Exclusion of track segments for implementation due to cessation of PIH materials traffic

As previously noted, the current PTC rule requires that, for each RFA seeking to exclude a track segment from PTC system implementation due to the cessation of PIH materials traffic, a railroad must satisfy both an alternative route analysis, and eventually a residual risk analysis test, in order to secure FRA's approval. FRA's cost benefit analysis of the PTC rule indicates that the railroads will incur approximately $20 in PTC costs for each $1 in PTC safety benefits. In its congressional testimony, AAR testified that 2010 was the safest year for America's railroads, that railroads have lower employee injury rates than most other major industries, that only around 4 percent of all train accidents on Class I main lines are likely to be prevented by PTC systems, and that there are many far less costly ways to provide greater improvements in rail safety than through the implementation of PTC systems on lines not required by Congress to be equipped.[2] According to the testimony, if the PTC rule remains unchanged, railroads may be required to spend more than $500 million in the next few years to deploy PTC systems on more than 10,000 miles of rail lines on which neither passenger nor PIH materials will be transported as of December 31, 2015.

While FRA believes that the alternative route analysis and residual risk tests are legally sustainable, it recognizes that these tests could potentially require the installation of PTC systems at a great cost to the railroads. FRA also recognizes that the railroads have much work to do to have interoperable PTC systems installed in accordance with the congressional mandate. FRA is, therefore, proposing to eliminate the tests that would potentially require the installation of PTC systems on lines not specifically mandated by Congress.

FRA seeks comments from interested parties on the proposed removal of the alternative route analysis from the PTC rule. FRA also seeks comments on the proposed removal of the residual risk analysis. If FRA were to remove these requirements, it proposes doing so by eliminating § 236.1020 as it currently exists. While FRA is proposing the removal of these analyses from the PTC rule, FRA reserves its statutory and regulatory authority to require PTC system implementation on additional track segments in the future based on risk levels or other rational bases.

IV. Regulatory Impact and Notices

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures, and determined to be significant under Executive Order 12866, Executive Order 13563 and DOT policies and procedures. 44 FR 11,034 (Feb. 26, 1979). We have prepared and placed in the docket a regulatory impact analysis (RIA) addressing the economic impact of this NPRM. FRA is proposing the removal of various regulatory requirements that require railroads to meet two

[2] See AAR CONGRESSIONAL TESTIMONY, at 8-9.

tests in order to avoid PTC system implementation on track segments that were used to transport PIH traffic and carried five million gross tons of annual traffic in 2008, but that will not transport PIH materials traffic and the applicable passenger traffic as of December 31, 2015. Substantial cost savings would accrue largely from not installing PTC system wayside components or other mitigations along approximately 10,000 miles of track. Although these rail lines would forego some risk reduction, the reductions would likely be small since these lines pose a much lower risk of accidents because they generally do not carry passenger trains or PIH materials and generally have lower accident frequency and severity, because the lines have relatively lower traffic volumes than the average segment on which PTC systems will be required, based on FRA's review of the data submitted by AAR. The analysis shows that if the assumptions are correct, the savings to the industry in the form of regulatory relief as proposed far outweigh the cost associated with increased accident exposure.

The largest part of the cost savings benefit comes from reducing the extent of wayside that must be equipped with PTC. Some of these lines would have qualified for exemption by passing the two tests contained in the 2010 PTC final rule, while others may not have. In addition, benefits would come from reducing the number of locomotives belonging to Class II and Class III (small) railroads that must be equipped with PTC systems, because they run on Class I railroads' track that will no longer need to be equipped with PTC systems. Although these benefits would be small relative to the wayside equipment savings, they would be large relative to the size of the railroads being impacted. The tables below present the total estimated cost savings benefits of the proposed rule, assuming installation or additional mitigation measures would no longer be required along 10,000 miles of track. The analysis assumes that 5,000 miles of track would have passed both tests with some mitigation measures being taken, and the remaining 5,000 miles would not have passed both tests and would have required PTC system implementation under the current rules.

Benefits (20-year, discounted)		
Costs Avoided:	7% Discount	3% Discount
Reduced Mitigation Costs, Including Maintenance	$91,793,822	$121,119,324
Reduced Wayside Costs, Including Maintenance	$515,695,631	$680,445,643
Reduced Locomotive Costs, Including Maintenance	$12,479,834	$16,466,785
Total Benefits	$619,969,287	$818,031,752

Total costs may also be broken down into initial investment and maintenance costs. Although railroads may already have spent money to install and maintain PTC systems, FRA assumes here that those funds have not been spent on the lines considered here, as they tend to be lower volume, lower priority lines, and FRA assumes that the railroads would not install PTC systems on those lines until 2014, at the earliest, in the absence of this rulemaking. FRA seeks comment on this assumption. FRA estimates that avoiding installation on 10,000 miles would let railroads avoid $300.5 million in initial installation costs (not discounted). Maintenance cost savings would total $366.0 million (discounted at 7%) or $538.9 million (discounted at 3%). Maintenance includes all of the activities and subsequent purchases needed to operate the PTC

system over its life-cycle, and to maintain its proper functioning, reliability, and availability. Maintenance includes training, system inspection, testing, adjustments, repair, and replacement of components. Replacement components can be very expensive in processor-based systems with relatively small installed bases, such as PTC. PTC systems are not installed in great enough numbers to justify a processor manufacturer making a processor just for PTC. PTC systems developers must use standard processors, and over time those processors usually become obsolete and are no longer supported or manufactured. Then the PTC system developer must redesign and re-test the PTC system to ensure it will continue to operate safely and reliably with the new processor.

Costs associated with the proposed regulatory relief will come from reducing the potential for accident reduction. A substantial part of the accident reduction that FRA expects from PTC systems currently required comes from reducing high-consequence accidents involving passenger trains or the release of PIH materials. FRA believes that the track segments impacted by this proposal pose significantly less risk because they generally do not carry passenger trains or PIH materials and generally have lower accident frequency and severity, as discussed above, because the lines have relatively lower traffic volumes and track speeds than the average segment on which PTC systems will be required, based on FRA's review of the data submitted by AAR. The following tables present the total costs of the proposed rule as well as the breakdown of the costs by element.

Costs (20-year, discounted)		
Foregone Reductions in:	7% Discount	3% Discount
Fatality Prevention	$11,453,106	$16,860,327
Injury Prevention	$4,254,484	$6,263,104
Train Delay	$117,793	$173,406
Property Damage	$10,163,835	$14,962,367
Equipment Cleanup	$143,273	$210,915
Environmental Cleanup	$430,995	$634,475
Evacuations	$138,780	$204,301
Total Costs	$26,702,267	$39,308,896

The 20-year discounted net benefits (subtracting the costs from the benefits) are expected to be $590 million over 20 years, discounted at 7 percent per year; and $780 million over 20 years, discounted at 3 percent per year. The timing of benefits and costs are such that a large benefit in terms of capital investment is avoided in early years, while the benefit of avoided maintenance and the disbenefit (costs) of accidents not avoided would be realized annually in later years. FRA also assessed the sensitivity of the analysis with respect to scenarios in which railroads may only be able to get relief for 7,000 miles of track and in which railroads may get relief on as many as 14,000 miles of track. Each of these assumes that 50% of the track miles would have passed both tests with some mitigation measures being taken, and that the remaining 50% of the track miles would not have passed both tests and would have required PTC system implementation under the current rules. Such scenarios also show net benefits.

Net Societal Benefits	7% Discount	3% Discount
Expected Case (10,000 miles)	$593,267,020	$778,722,856
High Case (14,000 miles)	$793,856,299	$1,041,764,269
Low Case (7,000 miles)	$442,825,061	$581,441,797

Further, the benefit-cost ratios under the scenarios analyzed range between 20:1 and 25:1.

Benefit-Cost Ratio	7% Discount	3% Discount
Expected Case	23.22	20.81
High Case	22.24	19.93
Low Case	24.69	22.13

The FRA invites comments on all aspects of this analysis , including any costs and benefits regarding this NPRM that may not have been considered in this analysis, and particularly seeks comments on the time frame for installation, maintenance, and realization of costs and benefits..

B. Regulatory Flexibility Act and Executive Order 13272

To ensure that the potential impact of this rulemaking on small entities is properly considered, FRA developed this proposed rule in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's policies and procedures to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant economic impact on a substantial number of small entities.

As discussed in earlier sections of this preamble, FRA is proposing to amend the regulations implementing a provision of RSIA that requires certain passenger and freight railroads to install PTC systems. Specifically, FRA is proposing the removal of various regulatory requirements that require railroads to either conduct further analyses or meet certain risk-based criteria in order to avoid PTC system implementation on track segments that carried PIH traffic and 5 million or more gross tons of traffic in 2008 but that will not carry PIH hazardous materials traffic as of December 31, 2015.

FRA is certifying that this proposed rule will result in "no significant economic impact on a substantial number of small entities." The following section explains the reasons for this certification.

1. Description of Regulated Entities and Impacts

The "universe" of the entities under consideration includes only those small entities that can reasonably be expected to be directly affected by the provisions of this rule. In this case, the "universe" would be Class III freight railroads that operate on rail lines that are currently required to have PTC systems installed. Such lines are owned by railroads not considered to be small.

The U.S. Small Business Administration (SBA) stipulates in its "Size Standards" that the largest a railroad business firm that is "for-profit" may be, and still be classified as a "small entity," is 1,500 employees for "Line Haul Operating Railroads" and 500 employees for

"Switching and Terminal Establishments." "Small entity" is defined in the Act as a small business that is independently owned and operated, and is not dominant in its field of operation. Additionally, section 601(5) defines "small entities" as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final policy that formally establishes "small entities" as railroads which meet the line haulage revenue requirements of a Class III railroad.[3] The revenue requirements are currently $20 million or less in annual operating revenue. The $20 million limit (which is adjusted by applying the railroad revenue deflator adjustment)[4] is based on the Surface Transportation Board's (STB) threshold for a Class III railroad carrier. FRA is using the STB's threshold in its definition of "small entities" for this rule.

The proposed regulation would impact Class III railroads that operate on lines of other railroads currently required to have PTC systems installed. To the extent that such host railroads receive relief from such requirement along certain lines as proposed in this NPRM, Class III railroads that operate over those lines would not have to equip their locomotives with PTC system components. FRA believes that elimination of the two tests for relief from the requirement to install PTC systems as proposed would in effect result in PTC systems not being installed on track segments totaling over 10,000 miles in length. Approximately five small railroads operate locomotives on lines currently required to be equipped with PTC systems, but that would receive relief under the proposed rule. In addition, two Class III railroads operate over railroad crossings (diamonds) that intersect tracks required to be equipped with PTC systems in the absence of changes proposed in this notice. The total of seven affected Class III railroads is not a substantial number of small entities, given that there are 674 small railroads. If this FRA proposal becomes effective, Class III railroads would avoid equipping 28 locomotives with PTC onboard apparatuses at a cost savings of $55,000 per locomotive initially plus maintenance of the PTC equipment. In addition, a Class III railroad would avoid paying for PTC system installation at one railroad-to-railroad crossing, at an initial cost of $80,000 plus annual maintenance. Finally, Class III railroads would avoid operational costs associated with having to reduce operating speeds to cross over two railroad-to-railroad crossings at an annual cost of $43,800. The unit costs presented above for installing PTC systems on locomotives, and at railroad-to-railroad crossings, and the operational costs of operating over a crossing at reduced speed are the values used in the Regulatory Flexibility Analysis of the PTC final rule issued January 15, 2010, and can be found in the docket for that rulemaking. The changes FRA is proposing would benefit the small entities impacted. FRA requests comment on whether the impacts on them would be significant and whether the number of small railroads affected is substantial. The seven railroads affected do not represent a substantial number of railroads out of more than approximately 600 Class III railroads.

2. Certification

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FRA Administrator certifies that this proposed rule would not have a significant economic impact on a substantial

[3] See 68 FR 24891 (May 9, 2003); 49 CFR part 209, app. C.

[4] For further information on the calculation of the specific dollar limit, please see 49 CFR part 1201.

number of small entities. FRA requests comment on both this analysis and this certification, and its estimates of the impacts on small railroads.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq. The sections that contain the current information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent Universe	Total Annual Responses	Average Time per Response	Total Annual Burden Hours
234.275 - Processor-Based Systems - Deviations from Product Safety Plan (PSP) - Letters	20 Railroads	25 letters	4 hours	100 hours
236.18 - Software Mgmt Control Plan - Updates to Software Mgmt. Control Plan	184 Railroads 90 Railroads	184 plans 20 updates	2,150 hours 1.50 hours	395,600 hours 30 hours
236.905 - Updates to RSPP - Response to Request For Additional Info. - Request for FRA Approval of RSPP Modification	78 Railroads 78 Railroads 78 Railroads	6 plans 1 updated doc. 1 request/ modified RSPP	135 hours 400 hours 400 hours	810 hours 400 hours 400 hours
236.907 - Product Safety Plan (PSP) – Dev.	5 Railroads	5 plans	6,400 hours	32,000 hours
236.909 - Minimum Performance Standard - Petitions For Review and Approval - Supporting Sensitivity Analysis	5 Railroads 5 Railroads	2 petitions/PSP 5 analyses	19,200 hours 160 hours	38,400 hours 800 hours
236.913 - Notification/Submission to FRA of Joint Product Safety Plan (PSP)	6 Railroads	1 joint plan	25,600 hours	25,600 hours
- Petitions For Approval/Informational Filings	6 Railroads	6 petitions	1,928 hours	11,568 hours
- Responses to FRA Request For Further Info. After Informational Filing	6 Railroads	2 documents	800 hours	1,600 hours
- Responses to FRA Request For Further Info. After Agency Receipt of Notice of Product Development	6 Railroads	6 documents	16 hours	96 hours
- Consultations	6 Railroads	6 consults	120 hours	720 hours
- Petitions for Final Approval	6 Railroads	6 petitions	16 hours	96 hours
- Comments to FRA by Interested Parties	Public/RRs	7 comments	240 hours	1,680 hours
- Third Party Assessments of PSP	6 Railroads	1 assessment	104,000 hours	104,000 hours
- Amendments to PSP	6 Railroads	15 amendments	160 hours	2,400 hours
- Field Testing of Product – Info. Filings	6 Railroads	6 documents	3,200 hours	19,200 hours
236.917 - Retention of Records - Results of tests/inspections specified in PSP	6 Railroads	3 documents/ records	160,000 hrs.; 160,000 hrs.; 40,000 hrs.	360,000 hours
- Report to FRA of Inconsistencies with frequency of safety-relevant hazards in PSP	6 Railroads	1 report	104 hours	104 hours
236.919 - Operations & Maintenance Man. - Updates to O & M Manual	6 Railroads	6 updated docs.	.40 hours	240 hours
- Plans For Proper Maintenance, Repair, Inspection of Safety-Critical Products	6 Railroads	6 plans	53,335 hours	320,010 hours
- Hardware/Software/Firmware Revisions	6 Railroads	6 revisions	6,440 hours	38,640 hours

236.921 -Training Programs: Development - Training of Signalmen & Dispatchers	6 Railroads 6 Railroads	6 Tr. Programs 300 signalmen; 20 dispatchers	400 hours 40 hours; 20 hours	2,400 hours 12,400 hours
236.923 - Task Analysis/Basic Requirements: Necessary Documents - Records	6 railroads 6 railroads	6 documents 350 records	720 hours 10 minutes	4,320 hours 58 hours
SUBPART I – NEW REQUIREMENTS -236.1001 – RR Development of More Stringent Rules Re: PTC Performance Stds.	46 railroads	3 rules	80 hours	240 hours
- 236.1005 - Requirements for PTC Systems - Temporary Rerouting: Emergency Requests - Written/Telephonic Notification to FRA Regional Administrator - Temporary Rerouting Requests Due to Track Maintenance - Temporary Rerouting Requests That Exceed 30 Days	 46 railroads 46 railroads 46 railroads 46 railroads	 50 requests 50 notifications 760 requests 380 requests	 8 hours 2 hours 8 hours 8 hours	 400 hours 100 hours 6,080 hours 3,040 hours
- 236.1006 - Requirements for Equipping Locomotives Operating in PTC Territory - Reports of Movements in Excess of 20 Miles/RR Progress on PTC Locomotives -- PTC Progress Reports	 46 railroads 46 railroads	 45 reports + 45 reports 35 reports	 8 hours + 170 16 hours	 8,010 hours 560 hours
- 236.1007 - Additional Requirements for High Speed Service - Required HSR-125 Documents with approved PTCSP - Requests to Use Foreign Service Data - PTC Railroads Conducting Operations at More than 150 MPH with HSR-125 Documents - Requests for PTC Waiver	 46 railroads 46 railroads 46 railroads 46 railroads	 3 documents 2 requests 3 documents 1 request	 3,200 hours 8,000 hours 3,200 hours 1,000 hours	 9,600 hours 16,000 hours 9,600 hours 1,000 hours
236.1009-Procedural Requirements - Host Railroads Filing PTCIP or Request for Amendment (RFAs) - Jointly Submitted PTCIPs - Notification of Failure to File Joint PTCIP - Comprehensive List of Issues Causing Non-Agreement - Conferences to Develop Mutually Acceptable PCTIP - Type Approval - PTC Development Plans Requesting Type Approval - Notice of Product Intent w/PTCIPs (IPs) -PTCDPs with PTCIPs (DPs + IPs) - Updated PTCIPs w/PTCDPs (IPs + DPs) - Disapproved/Resubmitted PTCIPs/NPIs - Revoked Approvals – Provisional IPs/DP - PTC IPs/PTCDPs Still Needing Rework - PTCIP/PTCDP/PTCSP Plan Contents – Documents Translated into English - Requests for Confidentiality - Field Test Plans/Independent Assessments - Req. by FRA - FRA Access: Interviews with PTC Wrkrs. - FRA Requests for Further Information	 46 Railroads 46 Railroads 46 Railroads 46 Railroads 46 Railroads 46 Railroads 46 Railroads 46 Railroads 46 Railroads 46 Railroads 46 Railroads 46 Railroads 46 Railroads 46 Railroads 46 Railroads 46 Railroads	 1 PCTIP; 20 RFAs 5 PTCIPs 1 notification 1 list 1 conf. calls 2 Type Appr. 20 Ltr. + 20 App; 2 Plans 3 NPI; 1 IP 1 DP 1 IP; 1 DP 1 IP + 1 NPI IP + 1 DP 1 IP + 1 DP 1 document 46 ltrs; 46 docs 230 field tests; 2 assessments 92 interviews 8 documents	 535 hours; 320 hours 267 hours 32 hours 80 hours 60 minutes 8 hours 8 hrs/1600 hrs.; 6,400 hours 1,070 + 535 hrs 2,135 hours 535 + 2,135 hrs 135 + 270 hrs. 135 + 535 hrs. 135 + 535 hrs. 8,000 hours 8 hrs.; 800 hrs. 800 hours 30 minutes 400 hours	 6,935 hours 1,335 hours 32 hours 80 hours 1 hour 16 hours 44,960 hours 3,745 hours 2,135 hours 2,670 hours 405 hours 670 hours 670 hours 8,000 hours 37,168 hours 185,600 hours 46 hours 3,200 hours
236.1011-PTCIP Requirements – Comment	7 Interested Groups	1 rev.; 40 com	143 + 8 hrs.	463 hours

236.1015 - PTCSP Content Requirements & PTC System Certification				
- Non-Vital Overlay	46 Railroads	3 PTCSPs	16,000 hours	48,000 hours
- Vital Overlay	46 Railroads	28 PTCSPs	22,400 hours	627,200 hours
- Stand Alone	46 Railroads	14 PTCSPs	32,000 hours	448,000 hours
- Mixed Systems – Conference with FRA regarding Case/Analysis	46 Railroads	3 conferences	32 hours	96 hours
- Mixed Sys. PTCSPs (incl. safety case)	46 Railroads	1 PTCSP	28,800 hours	28,800 hours
- FRA Request for Additional PTCSP Data	46 Railroads	23 documents	3,200 hours	73,600 hours
- PTCSPs Applying to Replace Existing Certified PTC Systems	46 Railroads	23 PTCSPs	3,200 hours	73,600 hours
- Non-Quantitative Risk Assessments Supplied to FRA	46 Railroads	23 assessments	3,200 hours	73,600 hours
236.1017 – PTCSP Supported by Independent Third Party Assessment	46 Railroads	1 assessment	8,000 hours	8,000 hours
- Written Requests to FRA to Confirm Entity Independence	46 Railroads	1 request	8 hours	8 hours
- Provision of Additional Information After FRA Request	46 Railroads	1 document	160 hours	160 hours
- Independent Third Party Assessment: Waiver Requests	46 Railroads	1 request	160 hours	160 hours
- RR Request for FRA to Accept Foreign Railroad Regulator Certified Info.	46 Railroads	1 request	32 hours	32 hours
236.1019 - Main Line Track Exceptions				
- Submission of Main Line Track Exclusion Addendums (MTEAs)	46 Railroads	46 MTEAs	160 hours	7,360 hours
- Passenger Terminal Exception – MTEAs	46 Railroads	23 MTEAs	160 hours	3,680 hours
- Limited Operation Exception – Risk Mit.	46 Railroads	23 plans	160 hours	3,680 hours
- Ltd. Exception – Collision Hazard Anal.	46 Railroads	12 analyses	1,600 hours	19,200 hours
- Temporal Separation Procedures	46 Railroads	11 procedures	160 hours	1,760 hours
236.1021 - Discontinuances, Material Modifications, Amendments - Requests to Amend (RFA) PTCIP, PTCDP or PTCSP	46 Railroads	23 RFAs	160 hours	3,680 hours
- Review and Public Comment on RFA	7 Interested Groups	7 reviews + 20 comments	3 hours; 16 hours	341 hours
236.1023 - PTC Product Vendor Lists	46 Railroads	46 lists	8 hours	368 hours
- RR Procedures Upon Notification of PTC System Safety-Critical Upgrades, Rev., Etc	46 Railroads	46 procedures	16 hours	736 hours
-- RR Notifications of PTC Safety Hazards	46 Railroads	150 notification	16 hours	2,400 hours
-- RR Notification Updates	46 Railroads	150 updates	16 hours	2,400 hours
- Manufacturer's Report of Investigation of PTC Defect	5 System Suppliers	5 reports	400 hours	2,000 hours
- PTC Supplier Reports of Safety Relevant Failures or Defective Conditions	5 System Suppliers	150 reports + 150 rpt. copies	16 hours + 8 hours	3,600 hours
236.1029 – Report of On-Board Lead Locomotive PTC Device Failure	46 Railroads	1,012 reports	96 hours	97,152 hours
236.1031- Previously Approved PTC Systems				
- Request for Expedited Certification (REC) for PTC System	46 Railroads	3 REC Letters	160 hours	480 hours
- Requests for Grandfathering on PTCSPs	46 Railroads	3 requests	1,600 hours	4,800 hours
236.1035- Field Testing Requirements	46 railroads	230 field test plans	800 hours	184,000 hours
- Relief Requests from Regulations Necessary to Support Field Testing	46 Railroads	46 requests	320 hours	14,720 hours

236.1037 - Records Retention - Results of Tests in PTCSP and PTCDP - PTC Service Contractors Training Records - Reports of Safety Relevant Hazards Exceeding Those in PTCSP and PTCDP - Final Report of Resolution of Inconsistency	46 railroads 46 Railroads 46 Railroads 46 Railroads	1,012 records 22,080 records 4 reports 4 final reports	4 hours 30 minutes 8 hours 160 hours	4,048 hours 11,040 hours 32 hours 640 hours
- 236.1039 - Operations & Maintenance Manual (OMM): Development - Positive Identification of Safety-critical components - Designated RR Officers in OMM. regarding PTC issues	46 railroads 46 railroads 46 railroads	46 manuals 120,000 i.d. components 92 designations	250 hours 1 hour 2 hours	11,500 hours 120,000 hours 184 hours
-236.1041 – PTC Training Programs	46 Railroads	46 programs	400 hours	18,400 hours
- 236.1043 - Task Analysis/Basic Requirements: Training Evaluations - Training Records	46 railroads 46 railroads	46 evaluations 560 records	720 hours 10 minutes	33,120 hours 93 hours
- 236.1045 - Training Specific to Office Control Personnel	46 railroads	32 trained employees	20 hours	640 hours
- 236.1047 - Training Specific to Loc. Engineers & Other Operating Personnel - PTC Conductor Training	30 railroads	8,000 trained conductors	3 hours	24,000 hours

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202-493-6292, or Ms. Nakia Jackson at 202-493-6073.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue, S.E., 3rd Floor, Washington, D.C. 20590. Comments may also be submitted via e-mail to Mr. Brogan or Ms. Toone at the following address: Robert.Brogan@dot.gov; Kimberly.Toone@dot.gov.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after its publication in the Federal Register. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting

from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

D. Federalism Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, "Federalism." See 64 FR 43,255 (Aug. 4, 1999). As discussed earlier in the preamble, this final rule would provide regulatory relief from the mandated implementation of PTC systems.

Executive Order 13132 requires FRA to develop a process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." Policies that have "federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts state law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has determined that this proposed rule would not have substantial direct effects on the States, on the relationship between the national government and the States, nor on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this proposed rule would not impose any direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this proposed rule will have preemptive effect. Section 20106 of Title 49 of the United States Code provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the local safety or security exception to § 20106. Furthermore, the Locomotive Boiler Inspection Act (49 U.S.C. 20701-20703) has been held by the U.S. Supreme Court to preempt the entire field of locomotive safety.

In sum, FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this proposed rule is not required.

E. Environmental Impact

FRA has evaluated this proposed rule in accordance with its "Procedures for Considering Environmental Impacts" ("FRA's Procedures") (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. In accordance with section 4(c) and

(e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Public Law 104-4, 2 U.S.C. 1531) (UMRA) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a federal mandate likely to result in the expenditures by state, local or tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation with base year of 1995) or more in any one year. The value equivalent of $100 million in CY 1995, adjusted annual for inflation to CY 2008 levels by the Consumer Price Index for All Urban Consumers (CPI-U) is $141.3 million. The assessment may be included in conjunction with other assessments, as it is in this rulemaking.

FRA is publishing this NPRM to provide additional flexibility in standards for the development, testing, implementation, and use of PTC systems for railroads mandated by RSIA to implement PTC systems. The RIA provides a detailed analysis of the costs and benefits of the NPRM. This analysis is the basis for determining that, this rule will not result in total expenditures by State, local or tribal governments, in the aggregate, or by the private sector of $141.3 million or more in any one year. The costs associated with this NPRM are reduced accident reduction from an existing rule. The aforementioned costs borne by all parties will not exceed $3.3 million in any one year.

G. Energy Impact

Executive Order 13211 requires federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this proposed rule in accordance with Executive Order 13211. FRA has determined that this proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant regulatory action" within the meaning of Executive Order 13211.

H. Privacy Act

FRA wishes to inform all interested parties that anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document), if submitted on behalf of an association, business, labor union, etc.). Interested parties may also review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477) or visit www.regulations.gov.

List of Subjects

49 CFR Part 236

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

V. The Rule

In consideration of the foregoing, FRA amends chapter II, subtitle B of title 49, Code of Federal Regulations 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, 21301-21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

* * * * *

2. Amend § 236.1003 to revise paragraph (b) by adding the following definition:

PIH Materials means materials poisonous by inhalation, as defined in §§ 171.8, 173.115, and 173.132.

3. Amend § 236.1005 to revise paragraph (b)(4)(i) to read as follows:

§ 236.1005 Requirements for Positive Train Control systems.

(b) * * * * *

(4) * * * * *

(i) Routing changes. In a PTCIP or an RFA, a railroad may request review of the requirement to install PTC on a track segment where a PTC system is otherwise required by this section, but has not yet been installed, based upon changes in rail traffic such as reductions in total traffic volume to a level below 5 million gross tons annually or cessation of passenger service or PIH materials traffic. Any such request shall be accompanied by estimated traffic projections for the next 5 years (e.g., as a result of planned rerouting, coordinations, or location of new business on the line).

4. Redesignate paragraph (b)(4)(ii) of § 236.1005 as paragraph (b)(4)(iii) of § 236.1005.

5. Add new paragraph (b)(4)(ii) to § 236.1005 to read as follows:

(ii) FRA will approve the exclusion requested pursuant to paragraph (b)(4)(i) if the railroad establishes the following:

(A) The cessation of passenger service on the involved track segment prior to January 1, 2016;

(B) A decline in gross tonnage below 5 million gross tons annually as computed over a 2-year period on the involved track segment; or

(C) The cessation or expected cessation of PIH traffic over the involved track segment prior to January 1, 2016.

6. Remove § 236.1020.

* * * * *

Issued in Washington, DC, on

Joseph C. Szabo
Administrator