

ATTACHMENT

213.236 Alternative Track Inspection Methods

(a) Frequency of Inspections - Track owners may elect to use one of the following combinations of track inspection methods in lieu of the visual track inspection requirements under 49 CFR 213.233(b)(3) and (c). In each of these combinations the defect metric for the previous month must be at or below four defects per 100 miles of Track Geometry Measurement System (TGMS) testing and the multiclass drop defect metric must be at or below 0.2 defects per 100 miles of TGMS testing:

1. When a track owner performs at least one monthly TGMS inspection on a segment of track, the track owner may decrease the visual inspection frequency and track traversal requirement in 49 CFR 213.233(b)(3) and (c) by one-half.
2. When a track owner implements a track inspection risk management system to designate the frequency or multiple frequencies of the TGMS inspections and visual inspections on a segment of track, the track owner may decrease the visual inspection and track traversal requirement in 49 CFR 213.233 (c) to twice monthly, and in 49 CFR 213.233(b)(3) to once monthly.
3. When a track owner requests and is granted FRA approval for a comprehensive track inspection and maintenance risk management plan, those approved segments of track are not subject to 49 CFR 213.233(b)(3) and (c). (Similar to a special approval provision)

(b) Missed Inspections and Remedial Period

1. If a track owner is unable to meet the required TGMS inspection frequency on a segment of track under paragraph (a) of this section, the track owner must comply with § 213.233 for that segment starting the subsequent inspection week and until the next TGMS inspection is performed.
2. If a track owner has been conducting TGMS testing on a track segment for a period of six or more consecutive months, but then

fails to attain the required defect levels specified in paragraph (a) for two consecutive months, it must revert to the visual inspection frequencies in § 213.233.

(c) Notification Prior to Implementation of Alternative Track Inspection -

Upon electing to use one of the alternative track inspection methods in § 213.236(a), a track owner must notify FRA in writing which segments are being inspected at such alternate frequencies. Track owners requesting to use 49 CFR 213.236(a)(3) must also include the following information with their official request:

1. Comprehensive Track Inspection and Maintenance Risk Management Plan (This option is intended for flexibility in the future, at this time there is no system that would fulfill the requirements of a comprehensive risk management system that quantifies all track inspection and maintenance risks)

(d) Record Keeping Requirements and Reports – For any track segments identified by the track owner in paragraph (c) and inspected via TGMS testing under this section, the track owner will maintain for two years and make available to FRA upon request records evidencing compliance with paragraphs (a) and (b) of this section and:

1. A record of the inspection data and the exception record for the track inspected. The exception reports must include:

- (i) Date and location of limits of the inspection; and,
- (ii) Type and location of each exception.

(e) Performance Standard for TGMS –TGMS vehicles meeting the requirements outlined in 49 CFR § 213.333(b), (c) & (e) are deemed approved to conduct the TGMS inspections under paragraph (a) of this section. For any other automated or technologybased inspection used under a track inspection risk management system or a comprehensive track inspection and maintenance risk management plan, the track owner will create and retain written documentation demonstrating such technology detects deviations from the applicable requirements of this part.

Comments:

Paragraph (d) - Potentially burdensome administrative requirements that may be appropriate during a test program or waiver period, when FRA is collecting information to allow it to evaluate a new technology to ensure safety, should longer necessary or relevant once FRA has determined the technology is safe and is authorizing its use. AAR encourages FRA to generally eliminate unnecessary administrative and recordkeeping requirements once its been determined a safety-improving technology should be codified into federal regulations. Overly prescriptive and burdensome recordkeeping requirements can act as a disincentive to improve track safety.

Paragraph (e) - 213.333 was developed for TGMS equipment for regulations addressing class 6-9 track. This RSAC is not aimed at Class 6-9 track. Not all provisions in those paragraphs may be pertinent to class 1-5 track and are duplicative of other requirements. AAR proposes additional language pertinent to (a)(2)-(3) of FRA's proposal, such that future safety technology developments are not foreclosed, and safety innovation is encouraged.

Training Proposal - Employees charged with conducting railroad track inspection, repair, and maintenance duties are considered safety-related employees under RSIA 2008. Section 20162(a)(1) of RSIA 2008 specifically requires that railroads and contractors "qualify or otherwise document the proficiency of such employees in each class and craft regarding their knowledge of, and ability to comply with, Federal railroad safety laws and regulations and railroad carrier rules and procedures promulgated to implement those Federal railroad safety laws and regulations." This requirement obviously includes the railroad track inspection standards in part 213. Part 243 (codifying RISA 2008 training provision) also contains extensive training and qualification standards and refresher training and qualification for railroad engineering employees. RSIA, and FRA's subsequent development of part 243, generally made obsolete the previous need to codify training provisions throughout every FRA regulation.

Revocation Proposal - FRA is seemingly proposing to treat what will be a codified federal regulation as a waiver. Under 49 C.F.R. Part 211, FRA might revoke waivers if relevant safety issues arise. However, this ultimately would be a rulemaking proceeding to codify a substantive safety regulation via APA processes. From a due process perspective, FRA's proposal includes no appeal procedure for a railroad or an individual to defend against any allegations and actions to revoke the operation of a regulation. Instead, FRA proposes to revoke an entire manner of safety operations that a regulation would codify, and which railroads will expend significant capital in the form of implementation of technological and recordkeeping systems to comply with. FRA rationale is presumably so that the agency can act expeditiously to remedy any specific unsafe condition that may arise under the rule. The railroads disagree with this approach. Congress has already given FRA that authority at § 20104 to remedy unsafe conditions via the issuance of emergency orders. Congress has also spelled out an exclusive list of enforcement authorities available to FRA when a railroad violates a regulation or order issued by the agency (e.g., civil penalties, compliance orders, individual liability, etc.). But that list of statutory authorities does not include a provision allowing FRA to summarily revoke a substantive safety regulation of general applicability that has been implemented via the APA.