Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. The EPA defines EJ as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

The Olympic Region Clean Air Agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898 of achieving environmental justice for communities with EJ concerns.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 18, 2024.

**Casey Sixkiller,**

*Regional Administrator, Region 10.*

[FR Doc. 2024–24714 Filed 10–23–24; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

## 49 CFR Part 213

**[Docket No. FRA–2024–0032]**

**RIN 2130–AC96**

# Track Geometry Measurement System (TGMS) Inspections

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** FRA is proposing to revise its regulations governing the minimum safety requirements for railroad track. The proposed changes would require all Class I and II railroads, as well as intercity passenger railroads and commuter railroads, to operate a qualifying Track Geometry Measurement System (TGMS), a type of automated track inspection (ATI) technology, at specified frequencies on all Class 1 through 5 mainline and controlled siding track that transports: annual tonnage greater than 10 million gross tons (MGT); regularly scheduled passenger rail service; or trains containing hazardous materials. FRA also proposes increasing the required frequency of TGMS inspections on Class 6 track.

**DATES:** Written comments must be received by December 23, 2024. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

**ADDRESSES:**

*Comments:* Comments related to Docket No. FRA–2024–0032 may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

*Instructions:* All submissions must include the agency name, docket number (FRA–2024–0032), and Regulatory Identification Number (RIN) for this rulemaking (2130–AC96). All comments received will be posted without change to *http://www.regulations.gov*; this includes 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* and follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** Yu-Jiang Zhang, Staff Director, Track and Structures Division, Office of Railroad Safety, Federal Railroad Administration, 1200 New Jersey Avenue SE, W33–302, Washington, DC 20590, telephone: 202–493–6460; or Aaron Moore, Senior Attorney, Office of the Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue SE, W31–216, Washington, DC 20590, telephone: 202–853–4784.

**SUPPLEMENTARY INFORMATION:**

## Table of Contents for Supplementary Information

I. Executive Summary
II. Legal Authority
III. Background
IV. Section-by-Section Analysis
V. Regulatory Impact and Notices
A. Executive Order 12866 as Amended by Executive Order 14094
B. Regulatory Flexibility Act and Executive Order 13272
C. Paperwork Reduction Act
D. Federalism Implications
E. International Trade Impact Assessment
F. Environmental Impact
G. Executive Order 12898 (Environmental Justice)
H. Unfunded Mandates Reform Act of 1995
I. Energy Impact
J. Privacy Act Statement
K. Executive Order 13175 (Tribal Consultation)
L. Rulemaking Summary, 5 U.S.C. 553(b)(4)

## I. Executive Summary

### *Purpose of the Regulatory Action*

ATI technologies have been evolving since the 1970s and FRA has been researching ATI technology, including TGMS, for many years. This effort has included multiple FRA-authored or sponsored technical reports,[1] as well as

[1] *See e.g.,* Autonomous Track Geometry Measurement Technology Design, Development, and Testing (2018), *available at https://downloads.regulations.gov/FRA-2020-0013-0003/attachment_5.pdf;* Evaluation of the Federal Railroad Administration's Autonomous Track Geometry Measurement System Research and Development Program (2016), *available at https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/17086/ATGMS%20final%20report_final.pdf;* FRA Autonomous Track Geometry Measurement System Technology Development—Past, Present, and Future (2014), *available at https://downloads.regulations.gov/FRA-2020-0013-0003/attachment_1.pdf;* Development and Use of FRA Autonomous Track Geometry Measurement System Technology (2014), *available at https://downloads.regulations.gov/FRA-2020-0013-0003/attachment_3.pdf;* Development of Autonomous Track Geometry Measurement Systems for Overall Track Assessment (2011), *available at https://downloads.regulations.gov/FRA-2020-0013-0003/attachment_4.pdf;* Autonomous Track Inspection Systems—Today and Tomorrow (2009), *available at https://*

Continued

FRA-approved Test Programs (49 CFR 211.51) with nearly every Class I railroad,[2] to evaluate the effectiveness of this technology. Based on its years of research into TGMS, as well as its own Automated Track Inspection Program (ATIP) and the Class I Test Programs, FRA acknowledges the safety benefits of this technology, specifically its ability to quickly and accurately detect small changes in track geometry. FRA notes that TGMS is not a substitute for visual track inspections, which inspect for numerous conditions aside from track geometry and remain essential to ensuring railroad safety.

Today, every Class I and II railroad uses some form of TGMS to measure track geometry. FRA regulation already requires TGMS inspections for high-speed track (Class 6 and above) as well as lower-speed track with cant deficiency of higher than 5 inches.[3] While these existing requirements are applicable to a relatively small subset of railroads in the United States, FRA's research indicates that all railroads covered by this proposed rulemaking are already performing TGMS inspections on their networks at or above the frequencies FRA is proposing in this rule. Therefore, the purpose of this rulemaking is to codify this industry practice while also setting baseline requirements for areas such as TGMS calibration, recordkeeping, defect remediation timeframes, and training.

*Summary of Major Provisions*

FRA is proposing regulations to amend 49 CFR part 213, Track Safety Standards (TSS), which prescribe the minimum safety requirements for railroad track. The proposed changes would require all Class I and II railroads, as well as intercity passenger railroads and commuter railroads, to operate a qualifying TGMS, at specified frequencies on all Class 1 through 5 mainline and controlled siding track that transports: (1) annual tonnage greater than 10 MGT; (2) regularly scheduled passenger rail service; or (3) trains containing hazardous materials, as defined in 49 CFR 171.8. FRA also proposes increasing the required frequency of TGMS inspections on Class 6 track.

Currently, the TSS require TGMS inspections for high-speed track (Class 6 through 9), and lower speed track (Class 1 through 5) where the cant deficiency is more than 5 inches. As noted above, FRA's research indicates that all the railroads that would be subject to this proposed rule are already performing all visual inspections required by the TSS in addition to voluntarily performing TGMS inspections at or above the frequency that would be required by this NPRM. Thus, this NPRM would codify this industry practice as well as set forth requirements that include remedial action of detected track geometry defects within a specified timeframe, training, and recordkeeping.

The NPRM proposes adding 49 CFR 213.236 to 49 CFR part 213, subpart F, and making conforming changes to § 213.333 to require TGMS inspections at least three times within a 365-day period on Class 1 through 5 mainline and controlled siding tracks that meets one of three stated requirements, and all of Class 6 track. There would be no change to the current frequency requirement for Class 7 and above track. The TGMS must be capable of transmitting data in a manner that permits the track owner to take proper remedial action within one hour of detection of a defect. This one-hour timeframe would represent the maximum permitted time between when a TGMS detects a geometry defect and when a track owner must take remedial action.

The NPRM also proposes certain recordkeeping and training requirements for TGMS inspections, as well as minimum requirements for what must be included in TGMS reports.

The NPRM also proposes certain changes to § 213.241 and identical changes to § 213.339. FRA proposes updating the list of types of inspections that are required to produce reports that conform with the requirements of §§ 213.241(b) and 213.339(b), most significantly adding special inspections (§§ 213.239 and 213.367) to this list. These special visual inspections are required after a specific occurrence, such as a fire or flood or storm, that may have damaged the track structure. Under current FRA enforcement practices, these inspections have historically not been required to be documented. Documenting the data, as proposed will help railroads to reduce risk of track damage from these events by ensuring the inspections are performed, if possible, prior to train traffic. Also, these inspections improve FRA oversight since without them, it can be difficult to confirm that a required inspection was performed. Further, FRA proposes revising the requirement for electronic recordkeeping to add additional safeguards such as requiring training on the proper use of the system, access controls, and an information technology security program to ensure adequate integrity of the system.

*Benefits and Costs*

FRA analyzed the economic impact of this proposed rule over a 10-year period and estimated its benefits and costs. FRA expects the proposed rule to enhance safety and promote innovation. According to FRA's Railroad Equipment Accident Incident Database,[4] Class I and Class II railroads reported over $191.6 million in total damages from track geometry caused accidents over the past 10 years from 2014 to 2023. FRA expects the reduction in track-related accidents due to the proposed rule's one-hour remediation requirement to partially offset the cost of the proposed rule. Section V.A of this document describes more fully the benefits and costs that would result from issuing this rule.

The proposed rule would require track owners to take proper remedial action no later than one hour following the identification of any track geometry exception to the class of track identified by the TGMS system. FRA expects the affected track owners would be required to hire a total of 94 new maintenance-of-way (MOW) employees to accomplish this proposed requirement.

The proposed rule would also require additional recordkeeping of all track geometry exceptions detected by the TGMS vehicle. The report and any revisions must be documented, signed, certified by a § 213.7(b) qualified employee, and made available to FRA upon request. The track owner would be responsible for training MOW employees, recordkeeping requirements, and record storage and maintenance. FRA estimates all affected track owners would be required to provide one hour of training to each of their approximately 10,000 MOW employees during the first year after the proposed rule goes into effect. FRA estimates additional training would be required starting in the second year after the proposed rule goes into effect as newly hired maintenance workers replace the anticipated 2 percent of maintenance workers expected to depart due to attrition. Overall, FRA estimates the proposed rule would cost the affected track owners $123.4 million discounted at a 2 percent rate over the 10-year period, as shown in Table ES–1.

*downloads.regulations.gov/FRA-2020-0013-0003/attachment_2.pdf.*

[2] *See* Docket Numbers FRA–2018–0091 (BNSF); FRA–2019–0099 (NS); FRA–2020–0013 (CSX); FRA–2020–0014 (CN); FRA–2020–0031 (UP); FRA–2020–0056 (CP) (available on *www.regulations.gov*).

[3] *See* 49 CFR 213.57(i), 213.333. These TGMS inspections are in addition to the visual inspections required by other sections of part 213.

[4] *See* Railroad Equipment Accident Database (Form 54) at *https://data.transportation.gov/Railroads/Railroad-Equipment-Accident-Incident-Source-Data-F/aqxq-n5hy/about_data.*

TABLE ES–1—SUMMARY OF TOTAL NPRM COSTS OVER THE 10-YEAR PERIOD

| Impact | Undiscounted | Present value 7% ($) | Present value 3% ($) | Present value 2% ($) |
|---|---|---|---|---|
| Employment | $122,808,067 | 95,839,164 | 116,397,525 | 122,570,434 |
| Training | 837,480 | 750,278 | 796,637 | 809,594 |
| Total cost | 123,645,547 | 96,589,442 | 117,194,162 | 123,380,028 |
| | Impact | Annualized 7% ($) | Annualized 3% ($) | Annualized 2% ($) |
| | Employment | 13,645,341 | 13,645,341 | 13,645,341 |
| | Training | 106,822 | 93,390 | 90,129 |
| | Total cost | 13,752,163 | 13,738,731 | 13,735,470 |

## II. Legal Authority

Section 20103 of title 49 of the United States Code (U.S.C.) explicitly grants FRA comprehensive authority over all areas of railroad safety and provides that, ''[t]he Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety.'' This statutory section codifies the authority granted to the Secretary of Transportation under the Federal Railroad Safety Act of 1970. The Secretary delegated this authority to act under sec. 20103 to the Federal Railroad Administrator.[5]

Pursuant to this authority, FRA published the first TSS on October 20, 1971. It was meant to be an evolving set of safety requirements subject to continuous revision, thus allowing the regulations to keep pace with industry innovations and agency research and development. The TSS covers numerous areas such as drainage, vegetation, track geometry, and track structure. Additionally, the TSS includes specific requirements for different types of inspections, at specific frequencies, meant to ensure the defective conditions covered under other sections of the TSS are found and remediated prior to them posing a safety risk. These inspection requirements are vitally important to ensuring that the safety requirements in the TSS accomplish their purpose of ensuring railroad safety by requiring railroad to actually look for the defective conditions covered by the TSS and, if found, repair them.

As explained in more detail below, many years of research, development, and real-world use has proven the effectiveness of TGMS inspections at detecting geometry conditions. These inspections, when used as a supplement to the currently required visual inspections, have been proven to increase railroad safety by detecting more geometry conditions and, in many instances, due to the sensitivity of the systems, detecting these conditions earlier in their degradation process. Thus, TGMS inspections fall squarely within FRA's authority to regulate areas of railroad safety.

## III. Background

ATI technologies have been evolving since the 1970s and, with advances in rail safety, the number of track-caused derailments in the United States has steadily decreased since that time. In recent years, however, the rate of the decrease has slowed. New and alternative track inspection methodologies and associated technologies are being developed to help continue to drive down the number of track-caused derailments. Technological advancements, including ATI and other emerging technologies, have become a key element of track asset management and safety assurance practices. TGMS, ground penetrating radar, track imaging systems, ultrasonic rail flaw detection systems, machine learning-based track component (visual) inspection systems, vertical track deflection systems, and Lidar 3–D scanning systems are all now used to measure various aspects of track health.

Today, every Class I railroad uses some form of TGMS to measure track geometry. Track geometry[6] is a critically important parameter for assessing the condition of railroad track and maintaining safety. Class II railroads, and even some smaller railroads, also utilize this technology. FRA, itself, runs a fleet of track inspection cars under its ATIP, conducting compliance surveys on over 150,000 miles of track annually.

TGMS provides an objective method to evaluate track conditions and to identify defective conditions in the track or conditions that could lead to defects in the track. In addition to these safety benefits, TGMS technologies have operational benefits. As a supplement to visual inspections by track inspectors, automated inspections can take key measurements continuously and at track speed, allowing the inspection of more track in any given time period, as compared to track inspectors solely performing manual, visual inspections. Onboard computers process an enormous amount of raw data in real time and produce concise track condition reports, noting indications of track defects or deviations so that track owners can take remedial actions promptly.

TGMS systems may also be autonomous, otherwise known as Autonomous Track Geometry Measurement Systems (ATGMS), meaning the highly specialized, automated inspection equipment is mounted to on-track equipment (in some cases revenue trains) and the inspections are conducted with minimal direct human involvement (*e.g.,* uncrewed operations). Autonomous technologies have been developed utilizing revenue service trains equipped with data collection equipment that employ wireless communications to provide inspection data with increased frequency and reduced cost. By making inspection systems autonomous, the data can be collected more frequently without consuming track time. Autonomous inspection technologies provide earlier detection of track defects and changing maintenance practices from reactive to preventative, ultimately reducing the number of track-caused derailments throughout the railroad industry.

[5] 49 CFR 1.89.

[6] Track geometry generally refers to the parameters listed in 49 CFR part 213, subpart C, as well as 49 CFR 213.323 through 213.332. This includes gage (the distance between the two rails), alinement (how straight the rails are), crosslevel (the difference in the height of the two rails), and profile (how level the two rails are).

FRA has conducted extensive research on ATGMS and drafted technical documents and summaries on the subject. In 2008, FRA installed an ATGMS on Amtrak's Auto Train route operating between Virginia and Florida. The system detects, locates, and reports potential track geometry defects in near real-time to a web-based inspection data management system for review and remedial action. Since that test, industry adoption of ATGMS has grown each year.[7]

Starting in 2018, FRA approved Test Programs under 49 CFR 211.51 for nearly every Class I railroad [8] to evaluate the effectiveness of ATGMS in combination with different frequencies of visual inspections. Additionally, in 2019, FRA tasked the Railroad Safety Advisory Committee (RSAC) to enhance rail safety by improving track inspection methods, frequency, and documentation. The RSAC provides a forum for developing consensus recommendations and providing information to the Administrator of FRA on rulemakings and other safety program issues, and includes representatives from all the agency's major stakeholders. The RSAC assigned the task [9] to the Track Safety Standards Working Group (Working Group), which met approximately 11 times over a span of five years. For this task, the Working Group's main goal was to recommend how to incorporate ATI technology into FRA's existing track inspection requirements by leveraging the results of each Test Program.

In 2021, BNSF concluded its Test Program, and FRA approved a waiver allowing BNSF to continue utilizing the methodologies from the Test Program on a designated area of track, with additional metrics in place to ensure safety.[10] The Working Group continued to meet regularly to discuss the task, and by November 2022, every Test Program had concluded.

In October 2023, the Working Group determined it would not be able to reach a consensus or provide FRA with a recommendation. However, the Working Group agreed that railroad use of ATI technology, such as TGMS and ATGMS, benefits track safety. In March 2024, the task was officially closed without a recommendation.

This NPRM is based, in part, on FRA's research, ATIP operational experience, the results of the Test Programs and BNSF's waiver, and Working Group member involvement through the RSAC process. As proposed in this NPRM and discussed in more detail below, this rulemaking would revise the TSS to require all Class I and II railroads, as well as intercity passenger railroads and commuter railroads, to operate a qualifying TGMS at specified frequencies on all Class 1 through 5 mainline and controlled siding track that transports: (1) annual tonnage greater than 10 MGT; (2) regularly scheduled passenger rail service; or (3) trains containing hazardous materials as defined in 49 CFR 171.8. FRA also proposes increasing the required frequency of TGMS inspections on Class 6 track. FRA's research indicates that all the track owners affected by this rulemaking are already performing TGMS inspections at or above the frequency that would be required by this NPRM. Thus, this NPRM would codify this industry practice as well as set forth requirements that include remedial action of detected defects within a specified timeframe, training, and recordkeeping.

## IV. Section-by-Section Analysis

FRA seeks comments on all proposals made in this NPRM.

### *Section 213.236 Automated Vehicle-Based Inspection System*

FRA proposes to add this new section to require all Class I and II railroads, as well as intercity passenger and commuter railroads, to operate a qualifying TGMS on all class 1 through 5 mainline and controlled siding track on which: (1) annual tonnage exceeds 10 MGT; (2) there is regularly scheduled passenger service; or (3) there is the transportation of hazardous material as defined in 49 CFR 171.8. The terms ''exception'' and ''defect'' are used interchangeably throughout this NPRM.

While there are meaningful differences, FRA generally based this new section on existing § 213.333, which requires TGMS inspections on Class 6 through 9 track, as well as Class 1 through 5 track where there are operations at a cant deficiency of greater than 5 inches. Similarities and differences from § 213.333 are discussed further below.

Proposed paragraph (a) would require all Class I and II railroads, as well as intercity passenger railroads and commuter railroads, to operate a qualifying TGMS on all Class 1 through 5 mainline and controlled siding track, where any of the following occur: annual tonnage of greater than 10 MGT; regularly scheduled passenger service; or transportation of hazardous materials as defined in 49 CFR 171.8. The qualifying TGMS inspection must be conducted at least three times within any 365-day period, with not less than 90 days between inspections. FRA invites comment on ''transportation of hazardous materials,'' specifically the timeframe and frequency that should be required before this element is met.

Proposed paragraph (b) mirrors, with one minor grammatical change that does not alter its requirements, the current requirements of § 213.333(b). It would require that a qualifying TGMS meet or exceed specific design requirements. First, proposed paragraph (b)(1) would require geometry measurements to be taken no more than 3 feet away from the contact of wheels carrying the vertical load of no less than 10 kips per wheel, unless otherwise approved by FRA. Second, proposed paragraph (b)(2) would require geometry measurements to be taken and recorded on a distance-based sampling interval not exceeding 2 feet and preferably at 1 foot. Finally, proposed paragraph (b)(3) would require calibration procedures and parameters that ensure that values measured and recorded by the TGMS accurately represent the actual track conditions. Procedures and parameters that do not result in measured and recorded values that accurately represent the track conditions, or a TGMS system that does not accurately measure or record the values, would not comply with this proposed provision. Proposed paragraph (b)(3) would further require that measurements recorded by the system not differ more than ⅛ inch on repeated runs at the same site and same speed.

Proposed paragraph (c) would, like existing § 213.333(c), require that the qualifying TGMS be capable of measuring and processing the geometry measurements to determine compliance with the applicable regulatory geometry limits. For purposes of proposed paragraph (c), those sections would be § 213.53, track gage; § 213.55, track alinement; § 213.57, curves, elevation, and speed limitations; and § 213.63, track surface. Additionally, for operations at a qualified cant deficiency of more than 5 inches, the TGMS must be capable of measuring and processing the geometry measurements to determine compliance with § 213.65, combined track alinement and surface deviations.

Proposed paragraph (d) would impose certain requirements on the data from a TGMS. Proposed paragraph (d)(1) would require that a TGMS transmit the data in a manner that enables the track

[7] Railroad use of TGMS and ATGMS is generally not required for Class 1 through 5 track, and supplements FRA-required visual inspections and other automated inspections required under 49 CFR part 213.

[8] *See* FRA–2018–0091 (BNSF); FRA–2019–0099 (NS); FRA–2020–0013 (CSX); FRA–2020–0014 (CN); FRA–2020–0031 (UP); FRA–2020–0056 (CP).

[9] Track Inspection Task 2019–05.

[10] *See https://www.regulations.gov/docket/FRA-2020-0064.*

owner to take proper remedial action within one hour of identification of any exception to the class of track the TGMS inspects. This one-hour time period would commence at the time the TGMS passes over the section of track containing the geometry defect. This means that track owners will need to have the resources and the procedures to ensure that within one hour of the TGMS passing over that section of track, the measurements from the TGMS are processed and proper remedial action is put in place.

FRA invites comment on this one-hour remediation requirement, including potential issues involving areas of track where limitations, such as lack of cell coverage, may impair data transmission and possible solutions for these problems and estimated costs. If a commenter believes that a one-hour remediation requirement is not feasible, FRA requests that alternative timeframes be proposed and that the comment include a discussion about the potential risks of leaving a geometry defect in the track for a longer period of time and possible ways to mitigate such a risk.

Proposed paragraph (d)(2) would require, just as currently required by § 213.333(d)(1), that the TGMS provide a continuous plot, on a constant-distance axis, of all measured track geometry parameters required in proposed paragraph (c). Proposed paragraph (d)(3) would require the TGMS to provide a report containing a comprehensive listing of all exceptions to track geometry requirements detected by the TGMS vehicle. Further, this proposed paragraph requires that any revisions to the information in the report, as well as any revisions to the raw data from the TGMS, be documented, signed, and certified by a § 213.7(b) qualified employee in accordance with proposed paragraph (f), discussed below, and in a manner that correctly identifies the person who made the revision, the original information along with the revision(s), and the basis for the revision. This paragraph is meant to ensure accuracy of the data. It recognizes that the reports and/or the data may need to be modified as they are processed, but aims to ensure that any such modification is tracked so that both the source and the content of the modification is stored. This is important so that both the track owner and, if necessary, FRA can determine who made modification, what modifications were made, and the basis for such modification. This may also help track potential errors in the data from the TGMS.

Proposed paragraph (e) would essentially mirror existing section § 213.333(e) and would require that the reports required under proposed paragraph (d) contain sufficient location identification information to enable field forces to easily locate indicated exceptions. Whatever manner the track owner chooses to identify this information must allow both FRA and railroad employees to accurately locate the exception with repeatable accuracy.

Proposed paragraph (f) would require track owners to initiate proper remedial action for defects detected by the TGMS immediately upon analysis by a § 213.7(b) qualified person, or within 1 hour of detection (*i.e.,* the moment the TGMS passes over the defect), whichever is sooner. As discussed above for proposed paragraph (d), FRA invites comment on this requirement. This one-hour requirement would thus start at different times for each defect. If, before the expiration of that one-hour time period, a § 213.7(b) qualified person reviews the TGMS data, they must immediately initiate proper remedial action. There is an inherent danger whenever a train passes over a defective condition, and the remediation requirements proposed in this paragraph are intended to minimize that danger. FRA also notes that in the event a § 213.7 qualified person determines that a defect detected by the TGMS is a false positive, or not actually a defective condition in the field, further remedial action would not be required. However, that determination must be noted and explained on the report required under proposed paragraph (d)(3), and the revision must be documented as required by proposed paragraph (d)(3).

Proposed paragraph (f) would further require that exceptions detected on a crewed TGMS vehicle be remediated immediately. This follows from the first part of the paragraph since on a crewed vehicle, the data is being reviewed and analyzed in real time by an individual on the vehicle. Thus, when a defect is detected by the system, the track owner must immediately initiate proper remedial action.

Proposed paragraph (g) would require that the reports, required by proposed paragraph (d), be interpreted and electronically signed or otherwise certified by a § 213.7(b) qualified employee. This is meant to ensure that TGMS reports are reviewed by a properly trained individual who can interpret the reports, determine the required remedial action, and put such remedial action in place. By requiring that the report be electronically signed or otherwise certified, the person who reviews the report must attest that they properly interpreted the report. This can be accomplished through any means, such as an electronic signature, so long as it achieves the required purpose and properly identifies the person making the certification.

Proposed paragraph (h) would cover situations where a track owner wants to conduct a TGMS inspection as well as a visual inspection from the same vehicle. A visual inspection meant to satisfy the frequency requirements of § 213.233(c) may not be performed by any individual involved in the TGMS inspection. This includes any individual reviewing or interpreting any results from the TGMS vehicle as well as any operator of the TGMS vehicle. A visual inspection may be performed so long as it is by a dedicated track inspector whose sole responsibility is conducting a visual inspection and all requirements of § 213.233 are met.

Proposed paragraph (i) would require specific training related to TGMS inspections. This would be in addition to any existing training requirements in 49 CFR parts 213 and 243,[11] and would require that all § 213.7 qualified persons who review or interpret TGMS reports be properly trained on, at minimum, interpreting TGMS data and reports, prioritizing and conducting site inspections to verify defects, and recordkeeping requirements. The training must be done in a manner and at a frequency to ensure the qualified individuals responsible for reviewing and/or interpreting TGMS reports have sufficient knowledge of at least the three listed subjects to accomplish their responsibilities. The track owners must make available to FRA sufficient records to show compliance with the requirements of proposed paragraph (i).

*Section 213.241 Inspection Records*

Currently, § 213.241 provides that track owners must keep a record of each inspection required to be performed under part 213, subpart F. Paragraph (b) of this section requires that each record of inspection, under certain sections, include specific information, be prepared on the day the inspection is made, and be signed by the person making the inspection. FRA proposes revising paragraph (b) by adding §§ 213.234 and 213.239 to the list of sections that require inspections for which records must comply with the requirements of paragraph (b). Section 213.234 covers automated inspection of track constructed with concrete crossties. While § 213.234(f) already

[11] Training, Qualification, and Oversight for Safety-Related Railroad Employees.

lists recordkeeping requirements specific for these types of inspections, it is important that those records also comply with the requirements of § 213.241(b). Among other things, this would require that the record be signed or otherwise certified by the person(s) making the inspection. Section 213.239 covers special inspections. These special inspections are conducted after fire, flood, severe storms, or other events that might have damaged track, and a record of them is vitally important both to document findings following such events as well as to provide oversight to ensure track owners are completing such inspections when required. However, under current FRA enforcement practices, track owners have historically not been required to keep records of special inspections. FRA is not aware of any justification for this omission and proposes to require § 213.239 records to comply with § 213.241(b).

FRA proposes redesignating current paragraphs (c) through (j) as paragraphs (d) through (k), respectively, and revising some of them. FRA further proposes adding a new paragraph (c). Proposed paragraph (c) would list recordkeeping requirements for TGMS inspections performed under proposed § 213.236. It would require that track owners maintain a copy of the report, required by proposed § 213.236(d), for a period of two years following the TGMS inspection. Proposed paragraph (c)(1) would also require records specifying the date the inspection was made and the track segment involved. Proposed paragraph (c)(2) would require records to specify the date of any follow-up inspection, the type of inspection, location of any defects, the type and size of each defect, and the type and date of any remedial action taken. This is meant to cover any follow-up inspection done to field-verify the TGMS data. It is essential to keep this information in order to identify potential issues with a TGMS system that might be causing errors in the geometry measurements.

FRA proposes redesignating existing paragraph (c) as paragraph (d), existing paragraph (d) as paragraph (e), existing paragraph (e) as paragraph (f), existing paragraph (f) as paragraph (g), and existing paragraph (g) as paragraph (h). FRA proposes redesignating existing paragraph (h) as paragraph (i) and revising it by adding a sentence at the end requiring the most recent TGMS inspection report to be provided to the persons performing subsequent inspections of the track segment. The existing paragraph requires that track inspection records be made available to persons performing subsequent inspections, and requiring that they also have a copy of the past TGMS inspection report will ensure they continue to have access to the most up-to-date information on the condition of the track to better complete their inspections.

FRA proposes redesignating existing paragraph (i) as paragraph (j), and existing paragraph (j) as paragraph (k). Redesignated paragraph (k) would address electronic recordkeeping systems and list requirements for such systems. FRA proposes adding a proposed paragraph (k)(3), which would require track owners to train their employees, who use the electronic recordkeeping system, on the proper use of the system. An employee who uses the system should know how to properly use the system to ensure they do not inadvertently compromise the system or the records it contains. FRA proposes redesignating existing paragraph (j)(3) as paragraph (k)(4), and adding proposed paragraph (k)(5), which would require the track owner to control accessibility to the electronic records and identify the individuals who have access. This is meant to ensure only the appropriate individuals have access to the system. FRA proposes redesignating existing paragraph (j)(4) as paragraph (k)(6), existing paragraph (j)(5) as paragraph (k)(7), and adding proposed paragraph (k)(8). This proposed paragraph would require track owners to maintain an information technology security program adequate to ensure the integrity of the electronic system. This would include preventing unauthorized access to the records. Finally, FRA proposes redesignating existing paragraph (k)(6) as paragraph (k)(9).

*Section 213.333 Automated Vehicle-Based Inspection Systems*

FRA proposes to revise existing § 213.333 to make it consistent with the requirements of proposed § 213.236. Section 213.333 addresses the requirements for TGMS inspections, currently required for high-speed track Classes 6 through 9 (paragraphs (a)(2) though (a)(4)), and for track Classes 1 through 5 where operations are at a qualified cant deficiency of more than 5 inches (paragraph (a)(1)). FRA proposes removing existing paragraph (a)(1) since proposed § 213.236 will now cover required TGMS inspections on track Classes 1 through 5. FRA proposes redesignating existing paragraph (a)(2) as paragraph (a)(1) and revising it to increase the number of required TGMS inspections on track Class 6 from once per calendar year to three times within any 365-day period, with not less than 90 days between inspections. This is the same inspection frequency in proposed section § 213.236 that would apply to track Classes 1 through 5. FRA further proposes redesignating existing paragraph (a)(3) as paragraph (a)(2), and existing paragraph (a)(4) as paragraph (a)(3).

FRA proposes to revise paragraph (c) to remove reference to track Classes 1 through 5, since those types of TGMS inspections will be covered by proposed § 213.236. FRA proposes removing paragraph (c)(1) and combining the content of paragraph (c)(2) with the content of paragraph (c) so that it is a single paragraph with no sub-paragraphs.

FRA proposes to revise paragraph (d) to make it consistent with the requirements of proposed § 213.236(d) by removing reference to the current requirement that the TGMS produce an output report within 24 hours of the inspection. Further, FRA proposes to redesignate paragraph (d)(1) as paragraph (d)(2), and add proposed paragraph (d)(1), which would require that a TGMS transmit the data in a manner that enables the track owner to take proper remedial action within one hour of identification of any exception to the class of track the TGMS inspects. This one-hour time period would commence at the time the TGMS passes over the section of track containing the geometry defect. This means that track owners will need to have in place the resources and the procedures to ensure that, within one hour of the TGMS passing over that section of track, the measurements from the TGMS are processed and proper remedial action is put in place.

As stated above for proposed § 213.236(d), FRA invites comment on this one-hour remediation requirement, including potential issues involving areas of track where limitations, such as lack of cell coverage, may impair data transmission and possible solutions for these problems and estimated costs. If a commenter is of the opinion that a one-hour remediation requirement is not feasible, FRA requests that alternative timeframes be proposed and that the comment include a discussion about the potential risks of leaving a geometry defect in the track for a longer period of time and possible ways to mitigate such a risk.

FRA proposes removing existing paragraph (d)(2), which discusses the requirements for an exception report, and replacing it with proposed paragraph (d)(3), which would require the TGMS provide a report containing a comprehensive listing of all exceptions to track geometry requirements detected

by the TGMS vehicle. Further, this proposed paragraph would require that any revisions to the information in the report, as well as any revisions to the raw data from the TGMS, be documented, signed and certified by a § 213.305(b) qualified employee in accordance with proposed paragraph (f), discussed below, and in a manner that correctly identifies the person who made the revision, the original information along with the revision(s), and the basis for the revision. This paragraph is meant to ensure accuracy of the data. It recognizes that the reports and/or the data may need to be modified as they are processed, but aims to ensure that any such modification is tracked so that both the source and the content of the modification is stored. This is important so that the track owner and, if necessary, FRA can determine who made the modification, what modifications were made, and the basis for such modification. This may be especially useful for tracking potential errors in the data from the TGMS, as well as preventing malfeasance.

FRA proposes slight revisions to existing paragraph (e), removing the word ''output'' from ''output report,'' so that it simply reads ''report.'' This is meant to make the paragraph consistent with the terminology used in proposed paragraph (d)(3). FRA also proposes to correct the erroneous citation to paragraph (c) and change it to a reference to paragraph (d) since that is the paragraph that discusses the report generated by the TGMS.

FRA proposes replacing existing paragraph (f), which gives track owners two days following a TGMS inspection to field-verify and initiate remedial action. FRA proposes replacing existing paragraph (f) with a new paragraph (f), which would require track owners to initiate proper remedial action for defects detected by the TGMS immediately upon analysis by a § 213.305(b) qualified person, or within 1 hour of detection (*i.e.* the moment the TGMS passes over the defect), whichever is sooner. As discussed above for proposed paragraph (d), FRA invites comment on this requirement. This one-hour requirement would thus start at different times for each defect. If, before the expiration of that one-hour time period, a § 213.305(b) qualified person reviews the TGMS data, they must immediately initiate proper remedial action. There is an inherent danger whenever a train passes over a defective condition, and the remediation requirements proposed in this paragraph are intended to minimize that danger. FRA also notes that, in the event a § 213.305 qualified person determines that a defect detected by the TGMS is a false positive, or not actually a defective condition in the field, further remedial action would not be required, but that determination must be noted and explained on the report required under proposed paragraph (d)(3), and the revision must be documented as required by proposed paragraph (d)(3).

Proposed paragraph (f) would further require that exceptions detected on a crewed TGMS vehicle be remediated immediately. This follows from the first part of the paragraph since, on a crewed vehicle, the data is being reviewed and analyzed in real time by an individual on the vehicle. Thus, when a defect is detected by the system, the track owner must immediately initiate proper remedial action.

FRA proposes removing existing paragraph (g), which, among other things, requires that track owners maintain inspection records for one year. Since this paragraph deals specifically with inspection records, it is better suited to be included in existing § 213.369. Thus, FRA proposes moving its requirements, with some revisions, to proposed § 213.369(c), discussed below.

FRA proposes replacing existing paragraph (g) with a new paragraph (g), which would require that the reports required by paragraph (d) be interpreted and electronically signed or otherwise certified by a § 213.305(b) qualified employee. This is meant to ensure that TGMS reports are reviewed by a properly trained individual who can interpret the reports, determine the required remedial action, and put such remedial action in place. By requiring that the report be electronically signed or otherwise certified, the person who reviews the report must attest that they properly interpreted the report. This can be accomplished through an electronic signature or another alternative means so long as it accomplishes the required purpose and properly identifies the person making the certification.

FRA proposes adding paragraph (h), which would cover situations where a track owner wants to conduct a TGMS inspection as well as a visual inspection from the same vehicle. A visual inspection meant to satisfy the frequency requirements of § 213.365(c) may not be performed by any individual involved in the TGMS inspection. This includes any individual reviewing or interpreting any results from the TGMS vehicle as well as any operator of the TGMS vehicle. A visual inspection may be performed so long as it is by a dedicated track inspector whose sole responsibility is conducting a visual inspection and all requirements of § 213.365 are met.

FRA proposes adding paragraph (i), which would require specific training related to TGMS inspections. This would be in addition to any existing part 213 and part 243 training requirements and would require that all § 213.305 qualified persons who review or interpret TGMS reports be properly trained on, at a minimum, interpreting TGMS data and reports, prioritizing and conducting site inspections to verify defects, and recordkeeping requirements. The training must be done in such a way and at such a frequency that the qualified individuals responsible for reviewing and/or interpreting TGMS reports have sufficient knowledge of at least the three listed subjects to accomplish their responsibilities. Track owners must make available to FRA sufficient records to show compliance with the requirements of proposed paragraph (i).

*Section 213.369 Inspection Records*

Proposed revisions to this section are intended to mirror the relevant proposed revisions to § 213.241, discussed above. FRA proposes removing the part of paragraph (b), which states, ''Except as provided in paragraph (e) of this section.'' Since there is no exception stated in paragraph (e), or elsewhere in § 213.369, it is unclear what this statement originally referred to and the language appears to be unnecessary. FRA also proposes adding § 213.367 to the list of sections that require inspections for which records must comply with the requirements of paragraph (b). Section 213.367 covers special inspections. These special inspections are conducted after fire, flood, severe storms, or other events that might have damaged track, and a record of them is vitally important both to document their findings as well as oversight to ensure track owners are completing such inspections when required. However, under current FRA enforcement practices, track owners have historically not been required to keep records of special inspections. FRA is not aware of any justification for this omission and proposes requiring § 213.367 records comply with § 213.369(b). Further, FRA proposes slight revisions to the second sentence of paragraph (b) to make it mirror § 213.214. Aside from one purely grammatical change, the proposed revision would change ''nature of any deviation'' to ''location and nature of any deviation.'' FRA is confident inspection records already include this information and that this change will have no burden upon the industry.

FRA proposes redesignating current paragraphs (c) through (i) as paragraphs (d) through (j), respectively, revising some of them, and adding a new paragraph (c). Proposed paragraph (c), which mirrors, with some revisions, existing § 213.333(g), would list recordkeeping requirements for TGMS inspections performed under proposed § 213.333. It would require track owners to maintain a copy of the report, required by proposed § 213.333(d), for a period of two years following the TGMS inspection. Currently, § 213.333(g) requires that these records be retained for one year. FRA is proposing to increase the retention period to two years. Proposed paragraph (c)(1) would also require records to specify the date the inspection was made and the track segment involved. Proposed paragraph (c)(2) would require records specify the date of any follow-up inspection, the type of inspection, location of any defects, the type and size of each defect, and the type and date of any remedial action taken. This is meant to cover any follow-up inspection done to field-verify the TGMS data. It is essential to keep this information in order to identify potential issues with a TGMS systems that might be causing errors in the geometry measurements.

FRA proposes redesignating existing paragraph (c) as paragraph (d), existing paragraph (d) as paragraph (e), and existing paragraph (e) as paragraph (f). FRA also proposes redesignating existing paragraph (f) as paragraph (g) and revising it by adding a sentence at the end requiring that the most recent TGMS inspection report be provided to the persons performing subsequent inspections of the track segment. The existing paragraph requires that track inspection records be made available to persons performing subsequent inspections, and requiring that they also have a copy of the past TGMS inspection report will ensure they continue to have access to the most up-to-date information on the condition of the track to better complete their inspections.

FRA proposes redesignating existing paragraph (g) as paragraph (h), and existing paragraph (h) as paragraph (i). Redesignated paragraph (i) would address electronic recordkeeping systems and lists specific requirements for such systems. FRA proposes to add a paragraph (i)(3), which would require track owners to train their employees who use the electronic recordkeeping system on the proper use of the system. An employee who uses the system should know how to properly use it to ensure they do not inadvertently compromise the system or the records it contains. FRA proposes redesignating existing paragraph (h)(3) as paragraph (i)(4), and adding proposed paragraph (i)(5), which would require the track owner to control accessibility to the electronic records and identify the individuals who have access. This is meant to ensure only the proper individuals have access to the system. FRA proposes redesignating existing paragraph (h)(4) as paragraph (i)(6), and existing paragraph (h)(5) as paragraph (i)(7), and adding proposed paragraph (i)(8). This proposed paragraph would require track owners to maintain an information technology security program adequate to ensure the integrity of the electronic system. This would include preventing unauthorized access to the records. Finally, FRA proposes redesignating existing paragraph (h)(6) as paragraph (i)(9), and existing paragraph (i) as paragraph (j).

## V. Regulatory Impact and Notices

### *A. Executive Order 12866 as Amended by Executive Order 14094*

The proposed rule is a nonsignificant regulatory action within the meaning of Executive Order 12866, as amended by Executive Order 14094, ''Modernizing Regulatory Review,'' [12] and DOT Order 2100.6A (''Rulemaking and Guidance Procedures''). FRA made this determination by finding that the economic effects of the proposed rulemaking will not exceed the $200 million annual threshold defined by Executive Order 12866, as amended by Executive Order 14094. FRA expects this proposed rule will improve railroad safety by codifying existing industry practices and requiring track owners to take proper remedial action within one hour of the TGMS identifying an exception. FRA also expects the proposed rule will encourage future improvements to ATI technologies.

FRA complied with OMB Circular A–4 when accounting for the NPRM costs relative to a baseline condition. [13] Typically, a baseline represents a best judgement about what the world would look like in the absence of the regulatory intervention. FRA accounts for the NPRM costs as any change from current industry practice. FRA's research indicates that all 64 railroads covered by this proposed rulemaking are already voluntarily performing TGMS inspections at or above the frequency that would be required by the NPRM. Therefore, the affected railroads would not incur any additional costs related to conducting the inspections.

However, proposed §§ 213.236(d)(1) and 213.333(d)(1) would require qualifying TGMS vehicles to transmit inspection data in a manner that allows the track owner to take proper remedial action no later than one hour following the identification of any exception identified by the TGMS system. The one-hour timeframe differs from current industry practice, where railroads remediate track defects based on their operating rules or practices and can vary from immediately—on crewed TGMS vehicles—to 24 hours or more on uncrewed ATGMS. Because this proposed rule would not change the inspection frequency from current industry practice, the only slow order cost relevant to this proposal is the time between the one-hour timeframe for remediation and the timeframe each railroad currently follows by practice. FRA requests comments regarding the potential increased number, duration, and cost of TGMS track exception-related slow orders on freight and passenger rail service.

To quantify the one-hour remediation cost, FRA estimates the 64 affected railroads would need to hire a total of 94 new full-time MOW employees to ensure proper remediation within the required timeframe. For FRA's estimate, remediation refers to a § 213.7(b) qualified employee reviewing the data, determining the exception is not a false positive, and contacting the dispatcher to place an appropriate speed restriction. FRA estimated that railroads would need to hire between one and six employees depending on the railroad's operations and number of required inspections. The additional employee costs would be approximately $13.6 million annually and $122.5 million over 10 years at the 2-percent discount rate as shown in Table 1.

The proposed rule would also require additional reporting of all track geometry exceptions detected by the TGMS vehicle. The report, and any revisions, must be documented, signed, and certified by a § 213.7(b) qualified employee, and made available to FRA upon request. The track owner is also responsible for the cost of training maintenance employees, reporting requirements, and report storage and maintenance.

FRA estimates the new training requirement in §§ 213.236(i) and 213.333(i) affects 10,000 railroad MOW employees (Group No 300).[14] Each

[12] 88 FR 21879 (Apr. 6, 2023).

[13] Railroad use of TGMS and ATGMS is generally not required for Class 1 through 5 track, and supplements FRA-required visual inspections and other automated inspections required under 49 CFR part 213.

[14] The dollar equivalent cost is derived from the 2023 Surface Transportation Board Full Year Wage

worker will require one hour of training in the first year after the rule is published. FRA also assumed a 2 percent annual attrition rate among railroad employees. The estimated replacement employees will need to be trained. MOW workers' hourly salary is $39.88, hours were considered at the burdened wage rate by multiplying the actual rate by 175 percent. This would result in a 10-year total training cost of approximately $837,000 or approximately $810,000 discounted at a present value of 2 percent. The total costs of the proposed rule would be approximately $124 million over 10 years discounted at a present value of 2 percent. These costs are shown in Table 1.

TABLE 1—TEN YEAR COSTS IN 2023 DOLLARS

| Impact | Undiscounted | Present value 7% ($) | Present value 3% ($) | Present value 2% ($) |
|---|---|---|---|---|
| Employment | $122,808,067 | $95,839,164 | $116,397,525 | $122,570,434 |
| Training | 837,480 | 750,278 | 796,637 | 809,594 |
| Total cost | 123,645,547 | 96,589,442 | 117,194,162 | 123,380,028 |

| Impact | Annualized 7% ($) | Annualized 3% ($) | Annualized 2% ($) |
|---|---|---|---|
| Employment | 13,645,341 | 13,645,341 | 13,645,341 |
| Training | 106,822 | 93,390 | 90,129 |
| Total cost | 13,752,163 | 13,738,731 | 13,735,470 |

*B. Regulatory Flexibility Act and Executive Order 13272*

The Regulatory Flexibility Act of 1980 [15] and Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' [16] require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. FRA has not determined whether this proposed rule would have a significant economic impact on a substantial number of small entities and has therefore prepared this IRFA. FRA seeks public comment from small entities on the economic impacts of this proposed rule.

1. Reasons for Considering Agency Action

FRA seeks to revise its regulations governing the minimum safety requirements for railroad track. The proposed changes would require all Class I and Class II railroads, intercity passenger railroads, and commuter railroads to operate qualifying TGMS vehicles over mainline and controlled siding track at specific frequencies.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

This rulemaking seeks to improve compliance with the TSS by requiring all Class I railroads, Class II railroads, intercity passenger railroads, and commuter railroads to operate a qualifying TGMS three times within a 365-day period over all Class 1 through 5 mainline and controlled siding track that transports: (1) annual tonnage greater than 10 MGT; (2) regularly scheduled passenger rail service; or (3) hazardous materials. Qualified TGMS inspections are already required for Class 6 through 9 track at varying frequencies, as well as Class 1 through 5 track for operations at a qualified cant deficiency of more than 5 inches. The proposed rule would also increase the required frequency of TGMS inspections on Class 6 track from once per calendar year to three times within a 365-day period.

FRA's research indicates that all the railroads affected by this rulemaking are already performing TGMS inspections at or above the frequency that would be required by this NPRM. Thus, this proposed rulemaking would codify this industry practice as well as set forth requirements that include remedial action of detected defects within a specified time limit. FRA expects the NPRM to improve compliance with the TSS and potentially reduce derailments.

3. A Description of and, Where Feasible, an Estimate of, the Number of Small Entities to Which the Proposed Rule Would Apply

The Regulatory Flexibility Act of 1980 requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. ''Small entity'' is defined in 5 U.S.C. 601 as a small business that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses and stipulates in its size standards that a ''small entity'' in the railroad industry includes a for-profit ''line-haul railroad'' that has fewer than 1,500 employees and a ''short line railroad'' with fewer than 1,500 employees.[17]

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Under that authority, FRA has published a final statement of agency policy that formally establishes ''small

A&B data series using the employee group 300 hourly wage rate that includes 75-percent overhead charges.

[15] 5 U.S.C. 601 *et seq.*

[16] 67 FR 53461 (Aug. 16, 2002).

[17] ''Size Eligibility Provisions and Standards,'' 13 CFR part 121, subpart A. NAIC Code 482111 and 482112 indicate ''Line Haul'' and ''Short Line'' railroads respectively. Per SBA, any firm under NAICS code 48112 that employs more than 1,500 employees cannot qualify as a small business. *See* U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification Codes, effective March 3, 2024, *available at https://www.ecfr.gov/current/title-13/chapter-I/part-121#121.201.*

entities'' or ''small businesses'' as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $46.4 [18] million or less in inflation-adjusted annual revenues; and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less.[19] The $46.4 million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1.[20]

Therefore, FRA assumes that the proposed rule, if issued, would not negatively impact any small entities as set forth in 49 CFR 1201.1–1. FRA invites comment, particularly from members of the public who believe there will be a significant negative impact on a substantial number of small communities or Class III railroads.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Class of Small Entities That Will be Subject to the Requirements and the Type of Professional Skill Necessary for Preparation of the Report or Record

FRA does not expect projected reporting, recordkeeping, and other costs of compliance with this NPRM to affect small entities.

Small entities that fall below the FRA size standards, including Class III railroads, commuter rail passenger rail services, and small government jurisdictions serving populations of 50,000 or less, would not bear any short- or long-term costs.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

FRA is not aware of any relevant Federal rule that duplicates, overlaps with, or conflicts with the proposed rule.

6. A Description of Significant Alternatives to the Rule

FRA is proposing this rulemaking to codify industry best practice and ensure the TGMS inspections are conducted at least 3 times per year, detected defects are remediated within one hour of detection, railroad employees have sufficient training to implement these requirements, and that TGMS inspection data and records are maintained in a secure and accurate manner.

FRA considered several regulatory alternatives before deciding to impose the one-hour time limit to remediate TGMS-identified defects. FRA considered requiring track owners to immediately remediate a detected defect. FRA rejected this alternative as it would essentially prohibit the use of ATGMS. ATGMS is uncrewed and relies on the transmission of the data for analysis at a different location, meaning there is no practical way to immediately remediate identified defects. FRA also considered requiring remediation of a defect within 48 hours of detection as this is the current requirement for TGMS inspections for high-speed track. FRA's research concluded that railroads are not utilizing the allowed 48 hours and are remediating defects as soon as possible. Further, FRA determined that 48 hours was too long to allow a detected geometry defect to remain in the track and could increase the risk of a derailment. FRA instead chose to impose a one-hour time limit to remediate any TGMS identified defect.

*C. Paperwork Reduction Act*

FRA is submitting the information collection requirements in this proposed rule to the Office of Management and Budget (OMB) [21] for review and approval in accordance with the Paperwork Reduction Act of 1995.[22] Please note that any new or revised requirements, as proposed in this NPRM, are marked by asterisks (*) in the table below. The sections that contain the proposed and current information collection requirements under OMB Control No. 2130–0010 and the estimated time to fulfill each requirement are as follows:

| CFR section | Respondent universe | Total annual responses (A) | Average time per response (B) | Total annual burden hours (C = A * B) | Wage rate | Total cost equivalent in U.S. dollar (D = C * wage rates) [23] |
|---|---|---|---|---|---|---|
| 213.4(f)—Excepted track ... —Notification to FRA about removal of excepted track | 784 railroads | 15 notices | 10 minutes | 2.50 | 89.13 | $222.83 |
| 213.5(c)—Responsibility for compliance. —Notification of assignment to FRA | 784 railroads | 15 notices | 1 hour | 15.00 | 89.13 | 1,336.95 |
| 213.7(a)(b)—Designations: Names on list with written authorizations. | 784 railroads | 2,500 names | 10 minutes | 416.67 | 89.13 | 37,137.80 |
| 213.17(a)—Waivers | 784 railroads | 10 petitions | 2 hours | 20.00 | 89.13 | 1,782.60 |
| 213.57(e)—Curves; elevation and speed limitations. —Request to FRA for vehicle type approval | 784 railroads | 4 requests | 8 hours | 32.00 | 89.13 | 2,852.16 |
| —(f) Written notification to FRA prior to implementation of higher curving speeds. | 784 railroads | 4 notifications | 2 hours | 8.00 | 89.13 | 713.04 |

[18] The Class III railroad revenue threshold is $46,352,455 or less, for 2022. (The Class II railroad threshold is between $46,352,455 and $1,032,002,719; and the Class I railroad threshold is $1,023,002,719 or more.) *See* Surface Transportation Board Regulatory Deflators at *https://www.stb.gov/reports-data/economic-data/*.

[19] Codified at appendix C to 49 CFR part 209 as of 11/27/2023, available at *https://www.ecfr.gov/current/title-49/subtitle-B/chapter-II/*.

[20] *See* Surface Transportation Board Decision, Docket No. EP 748, Indexing the Annual Operating Revenues of Railroads, Decided June 4, 2020, available at *https://prod.stb.gov/reports-data/economic-data/railroad-revenue-deflator-factors/*.

[21] FRA will be using the OMB control number (OMB No. 2130–0010) for this information collection.

[22] 44 U.S.C. 3501 *et seq.*

| CFR section | Respondent universe | Total annual responses (A) | Average time per response (B) | Total annual burden hours (C = A * B) | Wage rate | Total cost equivalent in U.S. dollar (D = C * wage rates) [23] |
|---|---|---|---|---|---|---|
| —(g) Written consent of track owners obtained by railroad providing service over that track. | 784 railroads | 4 written consents | 45 minutes | 3.00 | 89.13 | 267.39 |
| 213.110(a)—Gage restraint measurement systems (GRMS). | 784 railroad | 1 notification | 45 minutes | 0.75 | 89.13 | 66.85 |
| —Implementing GRMS | | | | | | |
| —Notices & reports | | | | | | |
| —(g) GRMS vehicle output reports. | 784 railroad | 1 report | 5 minutes | 0.08 | 89.13 | 7.13 |
| —(h) GRMS vehicle exception reports. | 784 railroad | 1 report | 5 minutes | 0.08 | 89.13 | 7.13 |
| —(j) GRMS/PTLF—procedures for data integrity. | 784 railroad | 1 documented procedure | 1 hour | 1.00 | 89.13 | 89.13 |
| —(n) GRMS inspection records. | 784 railroad | 2 records | 30 minutes | 1.00 | 89.13 | 89.13 |
| 213.118(a)–(c)—Continuous welded rail (CWR). | 438 railroads | 10 plans | 4 hours | 40.00 | 89.13 | 3,565.20 |
| —Revised plans w/procedures for CWR | | | | | | |
| —(d) Notification to FRA and RR employees of CWR plan effective date. | 438 railroads | 750 notices | 15 seconds | 3.13 | 89.13 | 278.98 |
| —(e) Written submissions after plan disapproval. | 438 railroads | 5 written submissions | 2 hours | 10.00 | 89.13 | 891.30 |
| —(e) Final FRA disapproval and plan amendment. | 438 railroads | 5 amended plans | 1 hour | 5.00 | 89.13 | 445.65 |
| 213.234(e)—Automated inspection of track constructed with concrete crossties. | 30 railroads | 125 reports | 15 minutes | 31.25 | 69.60 | 2,175.00 |
| —Exception reports listing all exception to § 213.109(d)(4) Added requirement and burden hours from 2130–0592 | | | | | | |
| —(f) Automated inspection of track constructed with concrete crossties. | 30 railroads | 2,000 records | 30 minutes | 1,000.00 | 89.13 | 89,130.00 |
| —Recordkeeping requirements | | | | | | |
| —(g) Procedure for integrity of data —Track owners to institute procedures for maintaining the integrity of the data collected by the measurement system Added requirement and burden hours from 2130–0592. | 30 railroads | 30 revised procedures | 2 hours | 60.00 | 118.46 | 7,107.60 |
| —(h)(3) Training Track owners to provide annual training in handling rail seat deterioration exceptions to all persons designated as fully qualified under § 213.7 and whose territories are subject to the requirements of § 213.234—Recordkeeping. Added requirement and burden hours from 2130–0592. | 30 railroads | 2,250 records of trained employees. | 5 minutes | 187.50 | $69.60 | 13,050.00 |
| *213.236(d)(3)—Automated vehicle-based inspection systems. TGMS Track classes 1 through 5 report records (New proposed requirement). | 64 railroads | 7,500 report records | 10 minutes | 1,275 | 89.13 | 113,640.75 |
| *—(i) training records (New proposed requirement). | 9,500 employees | 3,167 training records | 5 minutes | 250.96 | 89.13 | 22,368.06 |
| 213.237(b)(2)—Inspection of Rail. | 65 railroads | 4 requests | 15 minutes | 1.00 | 89.13 | 89.13 |

| CFR section | Respondent universe | Total annual responses (A) | Average time per response (B) | Total annual burden hours (C = A * B) | Wage rate | Total cost equivalent in U.S. dollar (D = C * wage rates) [23] |
|---|---|---|---|---|---|---|
| —Detailed request to FRA to change designation of a rail inspection segment or establish a new segment | | | | | | |
| —(b)(3) Notification to FRA and all affected employees of designation's effective date after FRA's approval/conditional approval. | 65 railroads | 1 notice to FRA + 15 bulletins. | 15 minutes | 4.00 | 89.13 | 356.52 |
| —(d) Notice to FRA that service failure rate target in paragraph (a) of this section is not achieved. | 65 railroads | 4 notices | 15 minutes | 1.00 | 89.13 | 89.13 |
| —(d)—Explanation to FRA as to why performance target was not achieved and provision to FRA of remedial action plan. | 65 railroads | 4 letters of explanation/plans. | 15 minutes | 1.00 | 89.13 | 89.13 |
| 213.238—Qualified operators. | 3 railroads + 5 testing entities | 250 records | 5 minutes | 20.83 | 89.13 | 1,856.58 |
| —Written or electronic of qualification | | | | | | |
| 213.240(b)—Continuous Rail Testing. | 12 railroads | 4 procedures | 8 hours | 32.00 | 89.13 | 2,852.16 |
| —Procedures for conducting continuous testing | | | | | | |
| ——(c) Type of rail test (continuous or stop-and-verify). | 12 railroads | 25,000 documents/records | 2 seconds | 13.89 | 89.13 | 1,238.02 |
| —Record | | | | | | |
| ——(c)—Type of rail test (continuous or stop-and-verify). | 12 railroads | 100 documents | 1 minute | 1.67 | 89.13 | 148.85 |
| —Documented changes | | | | | | |
| —(g) Annual reports to FRA. | 12 railroads | 12 reports | 4 hours | 48.00 | 89.13 | 4,278.24 |
| *213.241—Inspection records Class I through 5. (Revised requirement). | 784 railroads | 1,400,000 records | 10 minutes | 238,000.00 | 89.13 | 21,212,940.00 |
| 213.303(b)—Responsibility for compliance. | 2 railroad | 5 notices | 30 minutes | 2.50 | 89.13 | 222.83 |
| —Notification of assignment to FRA | | | | | | |
| 213.305(c)(4)—Designation of qualified individuals; general qualifications. | 2 railroads | 20 written documents | 30 minutes | 10.00 | 89.13 | 891.30 |
| —Written authorization for remedial actions | | | | | | |
| —(e) Railroads produced designation record upon FRA request. | 2 railroads | 200 records | 10 minutes | 33.33 | 89.13 | 2,970.70 |
| 213.317(a) through (b)—Waivers. | 2 railroads | 2 petitions | 8 hours | 16.00 | 89.13 | 1,426.08 |
| 213.329(e)—Curves, elevation, and speed limitations—FRA approval of qualified vehicle types based on results of testing. | 2 railroads | 2.00 cover letters + 2.00 technical reports + 2.00 diagrams. | 30.00 minutes + 16.00 hours + 15.00 minutes. | 33.50 | 89.13 | 2,985.86 |
| —(f) Written notification to FRA 30 days prior to implementation of higher curving speeds. | 2 railroads | 2 notices | 2 hours | 4.00 | 89.13 | 356.52 |
| —(g) Written consent of other affected track owners by railroad. | 2 railroads | 2 written consents | 45 minutes | 1.50 | 89.13 | 133.70 |
| *213.333(d)—Automated vehicle-based inspection systems. TGMS track classes 6–9 report records. (Revised requirement). | 5 railroads | 150 reports | 10 minutes | 25.50 | 89.13 | 2,272.82 |
| *—(i) training records (New proposed requirement). | 500 employees | 167 training records | 5 mins | 13.36 | 89.13 | 1,190.78 |

| CFR section | Respondent universe | Total annual responses (A) | Average time per response (B) | Total annual burden hours (C = A * B) | Wage rate | Total cost equivalent in U.S. dollar (D = C * wage rates) [23] |
|---|---|---|---|---|---|---|
| 213.341(b)–(d)—Initial inspection of new rail & welds. —Inspection records | 2 railroads | 800 records | 2 minutes | 26.67 | 89.13 | 2,377.10 |
| 213.343(a)–(e)—CWR —Procedures for installations and adjustments of CWR. | 2 railroads | 2 plans | 4 hours | 8.00 | 89.13 | 713.04 |
| —(h) Recordkeeping requirements. | 2 railroads | 8,000 records | 2 minutes | 266.67 | 89.13 | 23,768.30 |
| 213.345(a)–(c)—Vehicle qualification testing. —Vehicle qualification program for all vehicle types operating at track Class 6 speeds or above. | 2 railroads | 2 program plans | 120 hours | 240.00 | 89.13 | 21,391.20 |
| —(d) Previously qualified vehicle types of qualification programs. | 2 railroads | 2 program plans | 8 hours | 16.00 | 89.13 | 1,426.08 |
| —(h) Written consent of other affected track owners by railroad. | 2 railroads | 4 written consents | 30 minutes | 2.00 | 118.46 | 236.92 |
| 213.369—Visual track inspection records (Revised requirement). | 5 railroads | 15,273 records | 10 minutes | 2,596.41 | 89.13 | 231,418.02 |
| Total [24] | 784 railroads | 1,468,401 responses | N/A | 244,781 | | 21,814,944 |

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. Organizations and individuals desiring to submit comments on the collection of information requirements or to request a copy of the paperwork package submitted to OMB should contact Ms. Arlette Mussington, Information Collection Clearance Officer, at email: *arlette.mussington@dot.gov* or telephone: (571) 609–1285 or Ms. Joanne Swafford, Information Collection Clearance Officer, at email: *joanne.swafford@dot.gov* or telephone: (757) 897–9908.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document 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 that do not display a current OMB control number, if required.

*D. Federalism Implications*

Executive Order 13132, Federalism,[25] requires FRA to develop an accountable 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 Executive Order 13132 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, the agency consults with 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 analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws under 49 U.S.C. 20106. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply, and preparation of a federalism summary impact statement for the proposed rule is not required.

*E. International Trade Impact Assessment*

The Trade Agreements Act of 1979 [26] prohibits Federal agencies from

[23] The dollar equivalent cost is derived from the 2023 Surface Transportation Board Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes 75-percent overhead charges.

[24] Totals may not add up due to rounding.

[25] 64 FR 43255 (Aug. 10, 1999).

[26] 19 U.S.C. ch. 13.

engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This proposed rule is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

*F. Environmental Impact*

FRA has evaluated this proposed rule consistent with the National Environmental Policy Act [27] (NEPA), the Council on Environmental Quality's NEPA implementing regulations,[28] and FRA's NEPA implementing regulations [29] and determined that it is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing regulations that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS.[30] Specifically, FRA has determined that this proposed rule is categorically excluded from detailed environmental review.[31]

The main purpose of this rulemaking is to require the use of TGMS technology at specific frequencies. This rule would not directly or indirectly impact any environmental resources and would not result in significantly increased emissions of air or water pollutants or noise. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review.[32] FRA has concluded that no such unusual circumstances exist with respect to this proposed rule, and it meets the requirements for categorical exclusion.[33]

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties.[34] FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by Section 4(f).[35] Further, FRA reviewed this proposed rulemaking and found it consistent with Executive Order 14008, ''Tackling the Climate Crisis at Home and Abroad.''

*G. Executive Order 12898 (Environmental Justice)*

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' and DOT Order 5610.2C [36] require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate, and also requires consideration of the benefits of transportation programs, policies, and other activities where minority populations and low-income populations benefit, at a minimum, to the same level as the general population as a whole when determining impacts on minority and low-income populations. FRA has evaluated this proposed rule under Executive Order 12898 and the DOT Order and has determined it would not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

*H. Unfunded Mandates Reform Act of 1995*

Under section 201 of the Unfunded Mandates Reform Act of 1995,[37] each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act [38] further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and Tribal governments and the private sector. This proposed rule would not result in the expenditure, in the aggregate, of $100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

*I. Energy Impact*

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' [39] FRA evaluated this proposed rule under Executive Order 13211 and determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

*J. Privacy Act Statement*

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

*K. Executive Order 13175 (Tribal Consultation)*

FRA has evaluated this proposed rule in accordance with the principles and criteria contained in Executive Order

[27] 42 U.S.C. 4321 *et seq.*

[28] 40 CFR parts 1500 through 1508.

[29] 23 CFR part 771.

[30] 40 CFR 1508.4.

[31] *See* 23 CFR 771.116(c)(15) (categorically excluding ''[p]romulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise'').

[32] 23 CFR 771.116(b).

[33] 23 CFR 771.116(c)(15).

[34] *See* 16 U.S.C. 470.

[35] *See* Department of Transportation Act of 1966, as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

[36] *Available at https://www.transportation.gov/sites/dot.gov/files/Final-for-OST-C-210312-003-signed.pdf.*

[37] Public Law 104–4; 2 U.S.C. 1531.

[38] 2 U.S.C. 1532.

[39] 66 FR 28355 (May 22, 2001).

13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. The proposed rule would not have a substantial direct effect on one or more Indian Tribes, would not impose substantial direct compliance costs on Indian Tribal governments, and would not preempt Tribal laws. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply, and a Tribal summary impact statement is not required.

*L. Rulemaking Summary, 5 U.S.C. 553(b)(4)*

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found in the Abstract section of the Department's Unified Agenda entry for this rulemaking at: *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=2130-AC96.*

**List of Subjects in 49 CFR Part 213**

Penalties, Railroad safety, Reporting and recordkeeping requirements.

**The Proposed Rule**

For the reasons discussed in the preamble, FRA proposes to amend part 213 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

## PART 213—TRACK SAFETY STANDARDS

■ 1. The authority citation for part 213 continues to read as follows:

**Authority:** 49 U.S.C. 20102–20114 and 20142; 28 U.S.C. 2461 note; and 49 CFR 1.89.

### Subpart F—Inspection

■ 2. Add § 213.236 to read as follows:

**§ 213.236 Automated vehicle-based inspection systems.**

(a) A qualifying Track Geometry Measurement System (TGMS) shall be operated by all Class I railroads, Class II railroads, intercity passenger railroads, and commuter railroads on all mainline and controlled sidings for track Classes 1 through 5 on which any of the following occur: annual tonnage of greater than 10 MGT, regularly scheduled passenger service, or transportation of hazardous materials as defined in 49 CFR 171.8. A TGMS inspection shall be conducted at least three times within any 365-day period with not less than 90 days between inspections.

(b) A qualifying TGMS shall meet or exceed minimum design requirements which specify that—

(1) Track geometry measurements shall be taken no more than 3 feet away from the contact point of wheels carrying a vertical load of no less than 10 kips per wheel, unless otherwise approved by FRA;

(2) Track geometry measurements shall be taken and recorded on a distance-based sampling interval preferably at 1 foot not exceeding 2 feet; and

(3) Calibration procedures and parameters assigned to the system ensure that measured and recorded values accurately represent track conditions. Track geometry measurements recorded by the system shall not differ more than 1/8 inch on repeated runs at the same site at the same speed.

(c) A qualifying TGMS shall be capable of measuring and processing the necessary track geometry parameters to determine compliance with: § 213.53, Track gage; § 213.55, Track alinement; § 213.57, Curves; elevation and speed limitations; and § 213.63 Track surface; and, for operations at a qualified cant deficiency, $E_u$, of more than 5 inches, § 213.65, Combined track alinement and surface deviations.

(d) A qualifying TGMS shall—

(1) Transmit data in a manner that enables the track owner to take proper remedial action not later than one hour following identification of any exception to the class of track by the TGMS system;

(2) Provide a continuous plot, on a constant-distance axis, of all measured track geometry parameters required in paragraph (c) of this section;

(3) Provide a report containing a comprehensive listing of all track geometry exceptions detected by the TGMS vehicle. Any revision to this information and/or the raw data from the vehicle must be documented, signed, and certified by a § 213.7(b) qualified employee in accordance with paragraph (f) of this section in a manner that correctly identifies the person who made the revision(s), and must show the original information along with the subsequent revision(s) and the basis or reason for the revision(s).

(e) The reports required under paragraph (d) of this section shall contain sufficient location identification information to enable field forces to easily locate indicated exceptions.

(f) Upon analysis of the TGMS data by a § 213.7(b) qualified person, or within one hour of detection (*i.e.,* the moment the TGMS passes over the defect) of an exception to the class of track by the TGMS system, whichever is sooner, the track owner must initiate proper remedial action. Analysis of the TGMS data may occur concurrently with the TGMS inspection. For any exception to the class of track observed from a crewed TGMS vehicle, the track owner shall immediately initiate proper remedial action.

(g) The reports required under paragraph (d) of this section shall be interpreted and electronically signed or otherwise certified by a § 213.7(b) qualified employee.

(h) A visual inspection intended to satisfy the frequency requirement of § 213.233(c) may not be conducted from a vehicle that is also conducting a TGMS inspection, unless there is a dedicated track inspector whose sole responsibility is conducting a visual inspection and all requirements of § 213.233 are met.

(i) In addition to any applicable training requirement of this part and 49 CFR part 243, the track owner shall ensure § 213.7 qualified persons who review and/or interpret reports under this section are properly trained on, at a minimum, the following:

(1) Interpreting TGMS data and reports;

(2) Prioritizing and conducting site inspections to verify defects; and

(3) Recordkeeping requirements.

■ 3. Amend § 213.241 by revising paragraphs (b) through (j), and adding paragraph (k) to read as follows:

**§ 213.241 Inspection records.**

* * * * *

(b) Each record of an inspection under §§ 213.4, 213.119, 213.137, 213.233, 213.234, 213.235, and 213.239 shall be prepared on the day the inspection is made and signed or otherwise certified by the person making the inspection. Records shall specify the author of the record, the type of track inspected, date and location of inspection, location and nature of any deviation from the requirements of this part, and the remedial action taken by the person making the inspection. The track owner shall designate the location(s) where each original record shall be maintained for at least one year after the inspection covered by the record. The track owner shall also designate one location, within 100 miles of each State in which it conducts operations, where copies of records that apply to those operations are maintained or can be viewed following 10 days' notice by the Federal Railroad Administration.

(c) The track owner required to conduct inspections under § 213.236 shall maintain for a period of two years following an inspection performed by a qualifying TGMS, a copy of the report required by § 213.236(d), and additional records which:

(1) Specify the date the inspection was made and the track segment involved; and

(2) Specify the date of any follow-up inspection, the type of inspection, the location of each defect, the type and size of each defect, and the remedial action taken and the date thereof.

(d) Records of internal rail inspections required by § 213.237 shall specify the—

(1) Date of inspection;

(2) Track inspected, including beginning and end points;

(3) Location and type of defects found under § 213.113;

(4) Size of defects found under § 213.113, if not removed prior to the next train movement;

(5) Initial remedial action taken and the date thereof; and

(6) Location of any track not tested pursuant to § 213.237(g).

(e) The track owner shall retain a rail inspection record under paragraph (d) of this section for at least two years after the inspection and for one year after initial remedial action is taken.

(f) The track owner shall maintain records sufficient to demonstrate the means by which it computes the service failure rate on all track segments subject to the requirements of § 213.237(a) for the purpose of determining compliance with the applicable service failure rate target.

(g) Records of continuous rail testing under § 213.240 shall—

(1) Include all information required under § 213.240(e);

(2) State whether the test is being conducted to satisfy the requirements for an internal rail inspection under § 213.237;

(3) List the date(s) and time(s) of the continuous rail test data collection, including the date and time of the start and end of the test run, and the date and time each suspect location was identified and field-verified;

(4) Include the determination made after field verification of each suspect location, including the:

(i) Location and type of defect found;

(ii) Size of defect; and

(iii) Initial remedial action taken, if required, and the date thereof; and

(5) Be retained for at least two years after the inspection and for at least one year after initial remedial action is taken, whichever is later.

(h) Track owners that elect to utilize continuous rail testing under § 213.240 shall maintain records of all continuous rail testing operations sufficient for monitoring and determining compliance with all applicable regulations and shall make those records available to FRA during regular business hours following reasonable notice.

(i) Track inspection records shall be kept available to persons who performed the inspections and to persons performing subsequent inspections of the track segment. The most recent report from a TGMS inspection conducted under § 213.236 shall be provided to persons performing subsequent inspections of the track segment.

(j) Each track owner required to keep inspection records under this section shall make those records available for inspection and copying by FRA upon request during regular business hours following reasonable notice.

(k) For purposes of complying with the requirements of this section, a track owner may create, retain, transmit, store, and retrieve records by electronic means provided that—

(1) The system used to generate the electronic record meets all requirements and contains the information required under this subpart;

(2) The track owner monitors its electronic records database to ensure record accuracy;

(3) The track owner trains its employees who use the system on the proper use of the electronic recordkeeping management system;

(4) The electronic system is designed to uniquely identify the author of the record. No two persons shall have the same electronic identity;

(5) The track owner controls accessibility to such records and identifies individuals who have such access;

(6) The electronic system ensures that each record cannot be modified in any way, or replaced, once the record is completed;

(7) The electronic storage of each record shall be initiated by the person making the inspection within 72 hours following the completion of that inspection;

(8) The track owner maintains an information technology security program adequate to ensure the integrity of the system, including the prevention of unauthorized access to the records; and

(9) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall be uniquely identified as to the person making the amendment.

## Subpart G—Train Operations at Track Classes 6 and Higher

■ 4. Amend § 213.333 by:

■ a. Removing paragraph (a)(1);

■ b. Redesignating paragraphs (a)(2) through (4) as paragraphs (a)(1) through (3);

■ c. Revising newly redesignated paragraph (a)(1), and paragraphs (b)(3), and paragraphs (c) through (g);

■ d. Redesignating paragraphs (h) through (m) as paragraphs (j) through (o); and

■ e. Adding new paragraphs (h) and (i).

The revisions and additions read as follows:

### § 213.333 Automated vehicle-based inspection systems.

(a) * * *

(1) For track Class 6, at least three times within any 365-day period with not less than 90 days between inspections.

* * * * *

(b) * * *

(3) Calibration procedures and parameters are assigned to the system which assure that measured and recorded values accurately represent track conditions. Track geometry measurements recorded by the system shall not differ more than ⅛ inch on repeated runs at the same site at the same speed.

(c) A qualifying TGMS shall be capable of measuring and processing the necessary track geometry parameters to determine compliance with: § 213.323, Track gage; § 213.327, Track alinement; § 213.329, Curves; elevation and speed limitations; § 213.331, Track surface; and for operations at a cant deficiency of more than 5 inches § 213.332, Combined track alinement and surface deviations.

(d) A qualifying TGMS shall—

(1) Transmit data in a manner that enables the track owner to take proper remedial action not later than one hour following identification of any exception to the class of track by the TGMS system;

(2) Provide a continuous plot, on a constant-distance axis, of all measured track geometry parameters required in paragraph (c) of this section; and

(3) Provide a report containing a comprehensive listing of all track geometry exceptions detected by the TGMS vehicle. Any revision to this information and/or the raw data from the vehicle must be documented, signed, and certified by a § 213.305(b) qualified employee in accordance with paragraph (f) of this section in a manner that correctly identifies the person who made the revisions, and must show the original information along with the subsequent revision(s) and the basis or reason for the revision.

(e) The reports required under paragraph (d) of this section shall contain sufficient location identification information which enable field forces to easily locate indicated exceptions.

(f) Upon analysis of the TGMS data by a § 213.305(b) qualified person, or within one hour of detection (*i.e.,* the

moment the TGMS passes over the defect) of an exception to the class of track by the TGMS system, whichever is sooner, the track owner must initiate proper remedial action. Analysis of the TGMS data may occur concurrently with the TGMS inspection. For any exception to the class of track observed from a crewed TGMS vehicle, the track owner shall immediately initiate proper remedial action.

(g) The reports required under paragraph (d) of this section shall be interpreted and electronically signed or otherwise certified by a § 213.305(b) qualified employee.

(h) A visual inspection intended to satisfy the frequency requirement of § 213.365(c) may not be conducted from a vehicle that is also conducting a TGMS inspection, unless there is a dedicated track inspector whose sole responsibility is conducting a visual inspection and all requirements of § 213.365 are met.

(i) In addition to any applicable training requirement of this part and part 243 of this chapter, the track owner shall ensure § 213.305 qualified persons who review and/or interpret reports under this section are properly trained on, at minimum, the following:

(1) Interpreting TGMS data and reports;

(2) Prioritizing and conducting site inspections to verify defects; and

(3) Recordkeeping requirements.

■ 5. Amend § 213.369 by revising paragraphs (b) through (i), and adding paragraph (j) to read as follows:

**§ 213.369 Inspection records.**

* * * * *

(b) Each record of an inspection under §§ 213.365 and 213.367 shall be prepared on the day the inspection is made and signed or otherwise certified by the person making the inspection. Records shall specify the author of record, the type of track inspected, date and location of inspection, location and nature of any deviation from the requirements of this part, and the remedial action taken by the person making the inspection. The track owner shall designate the location(s) where each original record shall be maintained for at least one year after the inspection covered by the record. The track owner shall also designate one location, within 100 miles of each State in which it conducts operations, where copies of records that apply to those operations are maintained or can be viewed following 10 days' notice by the Federal Railroad Administration.

(c) The track owner required to conduct inspections under § 213.333 shall maintain for a period of two years following an inspection performed by a qualifying TGMS, a copy of the report required by § 213.333(d), and additional records which:

(1) Specify the date the inspection was made and the track segment involved; and

(2) Specify the date of any follow-up inspections, the type of inspection, the location of each defect, the type and size of each defect, and the remedial action taken and the date thereof.

(d) Rail inspection records shall specify the date of inspection, the location and nature of any internal defects found, the remedial action taken and the date thereof, and the location of any intervals of track not tested per § 213.339(d). The owner shall retain a rail inspection record for at least two years after the inspection and for one year after remedial action is taken.

(e) Records of continuous rail testing under § 213.240 shall—

(1) Include all information required under § 213.240(e);

(2) State whether the test is being conducted to satisfy the requirements for an internal rail inspection under § 213.339;

(3) List the date(s) and time(s) of the continuous rail test data collection, including the date and time of the start and end of the test run, and the date and time each suspect location was identified and field-verified;

(4) Include the determination made after field verification of each suspect location, including the:

(i) Location and type of defect found;

(ii) Size of defect;

(iii) Initial remedial action taken, if required, and the date thereof; and

(5) Be retained for at least two years after the inspection and for at least one year after initial remedial action is taken, whichever is later.

(f) Track owners that elect to utilize continuous rail testing under § 213.240 shall maintain records of all continuous rail testing operations sufficient for monitoring and determining compliance with all applicable regulations and shall make those records available to FRA during regular business hours following reasonable notice.

(g) Track inspection records shall be kept available to persons who perform the inspections and to persons performing subsequent inspections. The most recent report from a TGMS inspection conducted under § 213.333 shall be provided to persons performing subsequent inspections of the track segment.

(h) Each track owner required to keep inspection records under this section shall make those records available for inspection and copying by the Federal Railroad Administration upon request during regular business hours following reasonable notice.

(i) For purposes of compliance with the requirements of this section, a track owner may create, retain, transmit, store, and retrieve records by electronic means provided that—

(1) The system used to generate the electronic record meets all requirements and contains the information required under this subpart;

(2) The track owner monitors its electronic records database to ensure record accuracy;

(3) The track owner trains its employees who use the system on the proper use of the electronic recordkeeping management system;

(4) The electronic system is designed to uniquely identify the author of the record. No two persons shall have the same electronic identity;

(5) The track owner controls accessibility to such records and identifies individuals who have such access;

(6) The electronic system ensures that each record cannot be modified in any way, or replaced, once the record is completed;

(7) The electronic storage of each record shall be initiated by the person making the inspection within 72 hours following the completion of that inspection;

(8) The track owner maintains an information technology security program adequate to ensure the integrity of the system, including the prevention of unauthorized access to the records; and

(9) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall be uniquely identified as to the person making the amendment.

(j) Each vehicle/track interaction safety record required under § 213.333(g) and (m) shall be made available for inspection and copying by the FRA at the locations specified in paragraph (b) of this section.

Issued in Washington, DC.

**Amitabha Bose,**

*Administrator.*

[FR Doc. 2024–24153 Filed 10–23–24; 8:45 am]

**BILLING CODE 4910–06–P**