



U.S. Department
of Transportation

**Federal Railroad
Administration**

1200 New Jersey Avenue, SE
Washington, DC 20590

VIA E-MAIL ONLY

March 21, 2022

Mr. Thomas E. Zoeller
General Counsel, Law Department
Norfolk Southern Corporation
Thomas.Zoeller@nscorp.com

Re: Docket Number FRA-2021-0044

Dear Mr. Zoeller:

This letter responds to the petition from Norfolk Southern Corporation (NS) dated March 22, 2021 (revised April 30, 2021), for a waiver of compliance from specific provisions of Title 49 Code of Federal Regulations, Section 213.233, to partially replace the required visual track inspections with inspections using autonomous track geometry inspection systems. NS requests system-wide relief from certain aspects of the requirements of paragraphs (b)(3) and (c) of § 213.233. The Federal Railroad Administration (FRA) assigned the request Docket Number FRA-2021-0044. This letter also responds to NS's January 6, 2022, letter reiterating its request for system-wide relief. For the reasons explained below, FRA finds that granting NS's request for relief is not justified at this time.

In 2020, under 49 CFR § 211.51 and subject to certain conditions and limitations, FRA granted NS approval to conduct a Test Program designed to identify the optimal combination frequency of visual and Autonomous Track Geometry Measurement System (ATGMS) inspections. NS completed its Test Program on September 30, 2021.¹

NS's March 22, 2021, petition indicates that its request for relief builds on the findings of and the data collected through the Test Program. NS requests relief from 49 CFR § 213.233(b)(3) and (c) to implement an alternative visual inspection schedule on territories on which it executes its ATGMS. NS proposes the alternative visual inspection frequency based on its Test Program of at least twice monthly visual inspections on main track and sidings, subject to the requested relief.² At the same time, NS proposes an ATGMS inspection schedule similar to the plan tested in Phase 3 of the Test Program, consisting of a

¹ Further background related to the Test Program, and a copy of the FRA-approved Test Program itself, is available for review in Docket Number FRA-2019-0099 (accessible online at www.regulations.gov).

² NS Petition at 2.

minimum of three valid ATGMS tests per month.³ Finally, NS requests that FRA grant the requested relief for five years to allow system-wide implementation of its alternative track inspection schedule wherever its ATGMS is deployed.

FRA published a notice in the *Federal Register* soliciting public comments on NS's waiver petition.⁴ FRA received one comment in response to the published notice from the Brotherhood of Maintenance of Way Employees Division/IBT (BMWED). In its comment, BMWED recommends that FRA deny NS's request for relief, asserting that granting the relief would adversely affect railroad safety. BMWED noted that it "does not feel" that any of the test programs or waivers issued related to railroads' ATGMS programs provide a "level of safety equal to the minimum safety requirements" of FRA's Track Safety Standards (emphasis omitted). Because BMWED submitted similar comments in other proceedings, FRA previously performed a detailed analysis of another railroad's similar Test Program data and responded to BMWED's comments in that proceeding.⁵

In its January 6, 2022, letter NS reiterates its request that FRA approve its petition noting that the underlying Test Program expired. Further, noting that the Railroad Safety Advisory Committee (RSAC) "intends to take up automated track inspection" programs, NS asserts that "RSAC's involvement in the general topic is no reason to delay action" on its petition.

Although FRA recognizes that technological advancements, such as ATGMS, are an essential element of railroads' track asset management and safety assurance programs, FRA finds that at this time, granting NS's request for system-wide implementation of the requested relief is not justified. As FRA has noted previously, NS's Test Program was intended as part of a first step to gather data to test whether the use of ATGMS to supplement visual inspections required under FRA's Track Safety Standards could justify decreasing the frequency of those visual inspections.⁶ Although the Test Program was successful under the specific conditions and metrics tested, reducing visual inspections introduces a certain amount of risk. The Test Program cannot lead to system-wide reductions in the frequency of the required visual inspections without conclusive data demonstrating that those risks are effectively mitigated.

Additionally, FRA notes that the RSAC is already in the process of actively considering Automated Track Inspection (ATI). The ongoing RSAC task related to ATI is designed to examine the feasibility of using a combination of visual inspections and ATI technologies to maximize the effectiveness of railroads' track inspection programs. In other words, the RSAC task is designed to help identify the optimal approach to track inspection, potentially utilizing a combination of track inspection methodologies. FRA notes that in carrying out this task, the RSAC will need to consider data not only from NS's completed Test Program, but data from the relevant ATI Test Programs that are still underway on multiple other

³ *Id.* at 2.

⁴ 86 FR 26127 (May 12, 2021).

⁵ See <https://www.regulations.gov/document/FRA-2020-0064-0011>.

⁶ See <https://www.regulations.gov/document/FRA-2019-0099-0009>.

railroads. FRA finds that short-circuiting this evaluation process on individual railroads is not in the public interest and consistent with railroad safety at this time. Accordingly, FRA dismisses NS's waiver request.

In any future correspondence regarding this waiver, please refer to Docket Number FRA-2021-0044. If you have any questions, please contact Dr. Yu-Jiang Zhang, FRA Staff Director, Track and Structures Division, at (202) 493-6460 or yujiang.zhang@dot.gov.

Sincerely,

Karl Alexy
Associate Administrator for Railroad Safety
Chief Safety Officer