U.S. Department
of Transportation

**Federal Railroad
Administration**

Administrator

1200 New Jersey Avenue, SE.
Washington, D.C. 20590

JUN 21 2013

ACTION MEMORANDUM TO THE SECRETARY

From: Joseph C. Szabo
Administrator, x36014

Through: Polly Trottenberg
Under Secretary for Transportation Policy, x64540

Prepared by: Jo Strang
Associate Administrator for Railroad Safety/Chief Safety Officer, x36300

Subject: 2012 FRA Report to Congress on Actions Taken to Implement Unmet Statutory Mandates and Address Open Recommendations by the NTSB and the DOT Inspector General Regarding Safety

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ACTION REQUIRED

I request that you sign the attached letters to the Chairman and Ranking Member of the Senate Committee on Commerce, Science, and Transportation; and the Chairman and Ranking Member of the House Committee on Transportation and Infrastructure. The letters provide the subject report to Congress as required under Section 106 of the Rail Safety Improvement Act of 2008 (RSIA).

SUMMARY

Section 106 of the RSIA (Pub. L. No. 110-432, Div. A) requires that the Secretary of Transportation submit an annual report to Congress on the specific actions taken to implement unmet statutory mandates regarding railroad safety and open railroad safety recommendations made by the National Transportation Safety Board or the Department's Office of Inspector General. The report identifies 8 such unmet statutory mandates and a total of 45 open safety recommendations as of December 31, 2012, and also specifies actions to implement or address each of them.

BACKGROUND

The RSIA introduced numerous new mandates regarding railroad safety, including the submission of this annual report to Congress. The first annual report was issued in December 2008. Attached is the fifth annual report, which updates the fourth report and specifies those mandates and recommendations either added to or removed from the fourth report.

STATEMENT OF LATENESS

The Federal Railroad Administration finalized this report to be current through December 2012, as in previous years, in compliance with the RSIA requirements. Internal Departmental review, which has strengthened this report, took longer than expected, and the final concur was received on June 18, 2013.

RECOMMENDATION

I recommend that you sign the attached letters transmitting the report to Congress.

Attachments

The Secretary

APPROVED: _____

DISAPPROVED: _____

COMMENTS: _____

DATE: June 24, 2013

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

June 27, 2013

The Honorable John D. Rockefeller IV
Chairman, Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Pursuant to Section 106 of the Rail Safety Improvement Act of 2008, I am submitting to Congress the enclosed report: *2012 FRA Report to Congress on Actions Taken to Implement Unmet Statutory Mandates and Address Open Recommendations by the NTSB and the DOT Inspector General Regarding Safety*.

The report identifies a total of 8 unmet statutory mandates as of December 31, 2012, and specifies actions to implement or address each of them. The report also identifies a total of 45 open recommendations by the National Transportation Safety Board. As of December 31, 2012, all recommendations by the U.S. Department of Transportation's Office of Inspector General have been closed.

The Department recognizes the significance of each unmet statutory mandate and open recommendation, and has focused its efforts on implementing or addressing each of them in an appropriate and timely manner. I would be pleased to update you on the status of any item identified in the report, as well as address any additional questions you may have.

Similar letters have been sent to the Chairman and Ranking Member of the House Committee on Transportation and Infrastructure, and the Ranking Member of the Senate Committee on Commerce, Science, and Transportation.

Sincerely yours,

Ray LaHood

Enclosure

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

June 27, 2013

The Honorable John Thune
Ranking Member, Committee on Commerce,
Science, and Transportation
United States Senate
Washington, DC 20510

Dear Senator Thune:

Pursuant to Section 106 of the Rail Safety Improvement Act of 2008, I am submitting to Congress the enclosed report: *2012 FRA Report to Congress on Actions Taken to Implement Unmet Statutory Mandates and Address Open Recommendations by the NTSB and the DOT Inspector General Regarding Safety.*

The report identifies a total of 8 unmet statutory mandates as of December 31, 2012, and specifies actions to implement or address each of them. The report also identifies a total of 45 open recommendations by the National Transportation Safety Board. As of December 31, 2012, all recommendations by the U.S. Department of Transportation's Office of Inspector General have been closed.

The Department recognizes the significance of each unmet statutory mandate and open recommendation, and has focused its efforts on implementing or addressing each of them in an appropriate and timely manner. I would be pleased to update you on the status of any item identified in the report, as well as address any additional questions you may have.

Similar letters have been sent to the Chairman and Ranking Member of the House Committee on Transportation and Infrastructure, and the Chairman of the Senate Committee on Commerce, Science, and Transportation.

Sincerely yours,

Ray LaHood

Enclosure

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

June 27, 2013

The Honorable Bill Shuster
Chairman, Committee on Transportation
and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Pursuant to Section 106 of the Rail Safety Improvement Act of 2008, I am submitting to Congress the enclosed report: *2012 FRA Report to Congress on Actions Taken to Implement Unmet Statutory Mandates and Address Open Recommendations by the NTSB and the DOT Inspector General Regarding Safety.*

The report identifies a total of 8 unmet statutory mandates as of December 31, 2012, and specifies actions to implement or address each of them. The report also identifies a total of 45 open recommendations by the National Transportation Safety Board. As of December 31, 2012, all recommendations by the U.S. Department of Transportation's Office of Inspector General have been closed.

The Department recognizes the significance of each unmet statutory mandate and open recommendation, and has focused its efforts on implementing or addressing each of them in an appropriate and timely manner. I would be pleased to update you on the status of any item identified in the report, as well as address any additional questions you may have.

Similar letters have been sent to the Ranking Member of the House Committee on Transportation and Infrastructure, and the Chairman and Ranking Member of the Senate Committee on Commerce, Science, and Transportation.

Sincerely yours,

Ray LaHood

Enclosure

THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

June 27, 2013

The Honorable Nick J. Rahall, II
Ranking Member, Committee on Transportation
and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Rahall:

Pursuant to Section 106 of the Rail Safety Improvement Act of 2008, I am submitting to Congress the enclosed report: *2012 FRA Report to Congress on Actions Taken to Implement Unmet Statutory Mandates and Address Open Recommendations by the NTSB and the DOT Inspector General Regarding Safety.*

The report identifies a total of 8 unmet statutory mandates as of December 31, 2012, and specifies actions to implement or address each of them. The report also identifies a total of 45 open recommendations by the National Transportation Safety Board. As of December 31, 2012, all recommendations by the U.S. Department of Transportation's Office of Inspector General have been closed.

The Department recognizes the significance of each unmet statutory mandate and open recommendation, and has focused its efforts on implementing or addressing each of them in an appropriate and timely manner. I would be pleased to update you on the status of any item identified in the report, as well as address any additional questions you may have.

Similar letters have been sent to the Chairman of the House Committee on Transportation and Infrastructure, and the Chairman and Ranking Member of the Senate Committee on Commerce, Science, and Transportation.

Sincerely yours,

Ray LaHood

Enclosure

U.S. Department
of Transportation

**Federal Railroad
Administration**

2012 FRA REPORT TO CONGRESS ON ACTIONS TAKEN TO IMPLEMENT UNMET STATUTORY MANDATES AND ADDRESS OPEN RECOMMENDATIONS BY THE NTSB AND THE DOT INSPECTOR GENERAL REGARDING SAFETY

(June 2013)

Table of Contents

Basis for this Report

This report responds to Section 106 of the Rail Safety Improvement Act of 2008 (RSIA), Pub. L. No. 110-432, Div. A, 122 Stat. 4848 et seq., enacted on October 16, 2008. Section 106 reads as follows:

> **SEC. 106. REPORTS ON STATUTORY MANDATES AND RECOMMENDATIONS.**
>
> Not later than December 31, 2008, and annually thereafter, the Secretary shall transmit a report to the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation on the specific actions taken to implement unmet statutory mandates regarding railroad safety and each open railroad safety recommendation made by the National Transportation Safety Board or the Department's Inspector General.

Reliance on FRA's December 2011 Report

In preparing this report on behalf of the Secretary of Transportation, the Federal Railroad Administration (FRA) has relied upon the report that it prepared as of December 2011 and transmitted to the appropriate Congressional committees to fulfill this annual requirement. Mandates and recommendations, either added to or removed from the December 2011 Report, are noted below.

Treatment of Mandates in the RSIA

The RSIA introduced numerous mandates regarding railroad safety. Some of these mandates require action to be taken after the completion of this report, and FRA has not included in this report those mandates with statutory deadlines after December 31, 2012.

The FRA reiterates its commitment to meet each new statutory deadline to the extent practicable and has a centralized process for tracking and monitoring implementation of all Congressional rail safety mandates. This process uses Microsoft SharePoint, an Intranet-based application accessible to FRA leadership and assigned staff to review and edit information to facilitate the planning and managing of work assignments. This system is called Regulations and Program Development Tracking, or RPDT. In addition, the Office of Policy in the Office of the Secretary of Transportation has a separate, Intranet-based tracking system that uses a different type of software called the Legislative Implementation Plan Data System. The FRA has a parallel legislative implementation plan for the RSIA employing that software.

The Office of the Secretary of Transportation also has other systems for tracking the status of congressionally mandated reports to Congress, and for tracking rulemakings. The FRA would be glad to provide additional information on these tracking systems and its progress in implementing the various mandates.

Discussion of Exhibit A, "Unmet Congressional Rail Safety Mandates"

Exhibit A lists FRA's eight Congressional rail safety mandates that were unmet as of December 31, 2012, and actions to implement them. Congressional rail safety mandates that were previously implemented or not yet due have been excluded from Exhibit A. Item Numbers 1 (SAFE RAIL TRANSPORT OF CERTAIN RADIOACTIVE MATERIALS), 4 (MINIMUM TRAINING STANDARDS AND PLANS), 5 (DEVELOPMENT AND USE OF RAIL SAFETY TECHNOLOGY), 6 (ALCOHOL AND CONTROLLED SUBSTANCE TESTING FOR MAINTENANCE-OF-WAY EMPLOYEES), 7 (EMERGENCY ESCAPE BREATHING APPARATUS), and 8 (NORTHEAST CORRIDOR INFRASTRUCTURE AND OPERATIONS IMPROVEMENTS) are unmet mandates that were listed in the December 2011 Report.

Of the 9 total unmet mandates listed in the December 2011 Report:

- The FRA fulfilled the mandate in Section 201 of the RSIA to "provide guidance to railroads on strategies and methods to prevent pedestrian accidents, incidents, injuries, and fatalities at or near passenger stations." The final guidance, titled "Guidance on Pedestrian Crossing Safety at or Near Passenger Stations," was issued by FRA and posted on FRA's Web site in April 2012.

- The FRA fulfilled the mandate in Section 205 of the RSIA to require all railroads, regardless of size, to establish an emergency notification system whereby the public can advise the railroads of safety issues at grade crossings, public and private, through which they dispatch trains. The FRA published a final rule on June 12, 2012. See 77 Fed. Reg. 35164.

Further, FRA is current in its obligations under Section 102 of the RSIA to develop a long-term strategy for improving railroad safety, assess the progress in achieving its strategic goals, and report that progress to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure at the same time as the President's budget submission. This mandate is therefore not listed in Exhibit A.

In addition, FRA has excluded from Exhibit A the ongoing Congressional rail safety mandates that require FRA to take periodic action with no specific deadline. The FRA has taken action to fulfill these mandates, recognizes the need to take additional periodic action in the future, and has a process in place to meet these mandates. The FRA would be glad to report separately on the status of any Congressional rail safety mandate not included in Exhibit A.

Discussion of Exhibit B, "Open Rail Safety Recommendations by the National Transportation Safety Board to the Federal Railroad Administration"

Exhibit B is a list of the 45 National Transportation Safety Board (NTSB) rail safety recommendations to FRA that were open as of December 31, 2012, and FRA's actions to address them. As previously explained, FRA has improved its processes and procedures to address NTSB recommendations in a more timely manner. In particular, FRA has enhanced its centralized process for tracking each rail safety recommendation through the use of Microsoft

SharePoint by establishing NTSB Recommendation Tracking System, and FRA would be glad to provide additional information on this tracking system. The FRA has also committed to ensuring that NTSB receives an initial response to each recommendation within 90 days of issuance. The FRA's practice is to submit a tentative implementation schedule as part of that initial response for each rail safety recommendation that needs to be implemented, and periodically update the implementation schedule.

Of the 42 recommendations listed in the December 2011 Report, NTSB has closed the following safety recommendation numbers (Rec. Nos.): R-05-14, with the classification "Closed – Superseded"; R-02-01, R-03-12, and R-05-10, with the classification "Closed – Unacceptable Action"; R-05-02, R-06-19, R-06-26, R-07-01, R-09-21, and R-09-22, with the classification "Closed – Acceptable Action"; and R-98-56, with the classification "Closed – Acceptable Alternative Action." These recommendations are therefore not listed in Exhibit B.

The NTSB also closed R-11-06 and R-11-07, with the classification "Closed – Acceptable Action." The NTSB issued these recommendations on January 12, 2012, following the December 2011 Report. The NTSB, in R-11-06 and R-11-07, recommended that FRA notify the rail industry and FRA inspectors of five recent rear-end collisions of freight trains in which crewmembers failed to operate their trains at restricted speed. On April 12, 2012, FRA published Safety Advisory 2012-02, "Restricted Speed," discussing the accidents and emphasizing the importance of compliance with relevant railroad operating rules. 77 Fed. Reg. 24760. In addition, FRA posted the safety advisory on its Web site. Because NTSB closed these recommendations, they are not included in Exhibit B.

Open – Acceptable Response

Item Nos. 1 through 24, in Exhibit B, corresponding to NTSB Rec. Nos. R-00-01 through R-00-04, R-01-02, R-01-17, R-02-24 through R-02-26, R-04-07, R-05-09, R-05-17, R-06-07, R-08-05 through R-08-07, R-08-09 through R-08-11, R-09-01 through R-09-03, and R-10-01 through R-10-02, remain classified as "Open – Acceptable Response," as in the December 2011 Report.

Item Nos. 25 through 31, in Exhibit B, corresponding to NTSB Rec. Nos. R-12-03 and R-12-04, R-12-16 through R-12-19, and R-12-21, are classified as "Open – Acceptable Response" and were issued after the December 2011 Report.

Open – Unacceptable Response

Item Nos. 32 through 38, in Exhibit B, corresponding to NTSB Rec. Nos. R-97-15, R-97-17, R-02-05, R-04-01, R-06-10, R-07-02, and R-08-12, remain classified as "Open – Unacceptable Response," as in December 2011 Report.

Open – Await Response

Item Nos. 39 through 45, in Exhibit B, corresponding to NTSB Rec. Nos. R-12-20, R-12-22, R-12-27 through R-12-29, R-12-37, and R-12-38, are classified as "Open – Await Response" and were issued after the December 2011 Report.

The FRA has an ongoing dialogue with NTSB to further the favorable closure of each open rail safety recommendation.

Discussion of Rail Safety Recommendations by the Office of Inspector General

As of December 31, 2012, all rail safety recommendations from the Department's Office of Inspector General (OIG) have been closed. The OIG favorably closed Item No. 1 in the December 2011 Report, which concerned revising FRA's track safety regulations for internal rail flaw testing to require the railroads to report all track locations covered during internal rail flaw testing.

Conclusion

The U.S. Department of Transportation recognizes the significance of each unmet statutory mandate and open recommendation of NTSB and OIG regarding rail safety. The FRA has focused its efforts on implementing each unmet mandate and addressing each open recommendation in a timely manner to the extent practicable. We would be glad to provide any additional information on FRA's progress in doing so and on the status of any mandate or recommendation.

EXHIBIT A. UNMET CONGRESSIONAL RAIL SAFETY MANDATES (AS OF DECEMBER 31, 2011)

Item No.	Short Title, Public Law Citation, and Enactment Date	Section and U.S. Code Citation, If Any	Unmet Statutory Mandate	Actions Taken by FRA	Actions Needed to Be Taken by FRA
1	Hazardous Materials Transportation Uniform Safety Act of 1990, Pub. L. No. 101-615, November 16, 1990.	Section 15 Amended Section 116(b) of the Hazardous Materials Transportation Act (then Title 49 U.S.C. App. 1813); provision now codified at 49 U.S.C. § 5105(c))	"(b) SAFE RAIL TRANSPORT OF CERTAIN RADIOACTIVE MATERIALS - Within 24 months after the date of enactment of this section taking into consideration the findings of the study conducted pursuant to subsection (a), the Secretary shall amend existing regulations as the Secretary deems appropriate to provide for the safe transportation by rail of high-level radioactive waste and spent nuclear fuel by various methods of rail transportation, including by dedicated train."	The study required by subsection (a) was submitted to Congress on September 22, 2005. Subsequent to completion of the study, the Federal Railroad Administration (FRA) conducted additional needed research on the operational characteristics and configuration of trains transporting spent nuclear fuel (SNF) and high-level radioactive waste (HLRW). Events have drastically lengthened the timeline for anticipated increases in rail transport activity of SNF/HLRW. Very little non-freight containerized SNF/HLRW currently moves by rail with no anticipated increase to occur in the foreseeable future. Nonetheless, FRA will move forward with developing a Notice of Proposed Rulemaking (NPRM) as resources allow.	Prepare an NPRM and final rule, based on results of research and review, as the Secretary deems appropriate.

Item No.	Short Title, Public Law Citation, and Enactment Date	Section and U.S. Code Citation, If Any	Unmet Statutory Mandate	Actions Taken by FRA	Actions Needed to Be Taken by FRA
2	Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, Div. A, October 16, 2008.	Section 103 (RAILROAD SAFETY RISK REDUCTION) Amended 49 U.S.C. by adding new Section 20156	"(a) IN GENERAL.— (1) PROGRAM REQUIREMENT.—Not later than 4 years after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary of Transportation, by regulation, shall require each railroad carrier that is a Class I railroad, a railroad carrier that has inadequate safety performance (as determined by the Secretary), or a railroad carrier that provides intercity rail passenger or commuter rail passenger transportation — (A) to develop a railroad safety risk reduction program under subsection (d) that systematically evaluates railroad safety risks on its system and manages those risks in order to reduce the numbers and rates of railroad accidents, incidents, injuries, and fatalities; (B) to submit its program, including any required plans, to the Secretary for review and approval; and (C) to implement the program and plans approved by the Secretary."	Two rulemakings are being conducted to meet this mandate. The System Safety Program (SSP) rulemaking will satisfy the mandate for passenger railroads and the Risk Reduction Program (RRP) rulemaking will satisfy the mandate for Class I railroads and railroads with inadequate safety records. An advance NPRM, addressing RRP, was published in the *Federal Register* on December 8, 2010. 75 Fed. Reg. 76345. Two public hearings were held in July 2011. The FRA's Railroad Safety Advisory Committee (RSAC) assisted in drafting an NPRM regarding covered freight railroads. The NPRM currently is in clearance within the U.S. Department of Transportation (DOT). An NPRM, addressing SSP, was published on September 7, 2012, with public comments due by November 6, 2012. 77 Fed. Reg. 55372. The FRA reopened the comment period until December 7, 2012. 77 Fed. Reg. 70409. The FRA has received 21 comments from the public regarding the NPRM and has started drafting the final rule.	Issue the final rule for the SSP rulemaking. Issue an NPRM and final rule for the RRP rulemaking.

Item No.	Short Title, Public Law Citation, and Enactment Date	Section and U.S. Code Citation, If Any	Unmet Statutory Mandate	Actions Taken by FRA	Actions Needed to Be Taken by FRA
3	Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, Div. A, October 16, 2008.	Section 108 (HOURS OF SERVICE REGULATORY AUTHORITY) Amended 49 U.S.C. by adding new Section 21109	"(e) PILOT PROJECTS.—(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary shall conduct at least 2 pilot projects of sufficient size and scope to analyze specific practices which may be used to reduce fatigue for train and engine and other railroad employees as follows: (A) A pilot project at a railroad or railroad facility to evaluate the efficacy of communicating to employees notice of their assigned shift time 10 hours prior to the beginning of their assigned shift as a method for reducing employee fatigue. (B) A pilot project at a railroad or railroad facility to evaluate the efficacy of requiring railroads who use employee scheduling practices that subject employees to periods of unscheduled duty calls to assign employees to defined or specific unscheduled call shifts that are followed by shifts not subject to call, as a method for reducing employee fatigue."	In order to successfully fulfill this mandate, FRA must first receive requests from railroads and rail labor organizations to participate in the pilot projects. The FRA has not yet received any request but continues to encourage affected parties to use this option. Because of the lack of interest in developing pilot projects in the rail industry, FRA started the process of developing plans for pilot projects that can be expected to address fatigue issues in the freight railroad industry. The intent is to present pilot projects proposed by FRA to freight railroads and labor unions and to work with them on implementing these pilot projects. If the railroads and labor unions agree to conduct a pilot project, and FRA provides waivers from the requirements of the hours of service laws (HSL) when necessary, an analysis of safety data will be performed to determine the effectiveness of those pilot projects. If FRA determines, using a risk assessment process, that a pilot project has had a positive impact on safety, this information may be used to encourage railroads to incorporate similar arrangements at locations that appear to be at risk for fatigue. The information gained from these pilot projects, if implemented, and relevant waivers from the provisions of the HSL, will also be shared with Congress as appropriate. Should FRA gain participants in a pilot project, several years will be needed to accumulate relevant data. The earliest that FRA could begin the required analysis would be at least 2 years from the initiation of such a pilot project, and the earliest possible date for completion of such analysis would be 2016.	Continue efforts to encourage affected parties to participate in the pilot projects.

Item No.	Short Title, Public Law Citation, and Enactment Date	Section and U.S. Code Citation, If Any	Unmet Statutory Mandate	Actions Taken by FRA	Actions Needed to Be Taken by FRA
4	Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, Div. A, October 16, 2008.	Section 401 (MINIMUM TRAINING STANDARDS AND PLANS) Amended 49 U.S.C. by adding Section 20162	"(a) IN GENERAL.—The Secretary of Transportation shall, not later than 1 year after the date of enactment of the Rail Safety Improvement Act of 2008, establish— (1) minimum training standards for each class and craft of safety-related railroad employee (as defined in Section 20102) and equivalent railroad carrier contractor and subcontractor employees, which shall require railroad carriers, contractors, and subcontractors to qualify or otherwise document the proficiency of such employees in each such class and craft regarding their knowledge of, and ability to comply with, Federal railroad safety laws and regulations and railroad carrier rules and procedures promulgated to implement those Federal railroad safety laws and regulations; (2) a requirement that railroad carriers, contractors, and subcontractors develop and submit training and qualification plans to the Secretary for approval, including training programs and information deemed necessary by the Secretary to ensure that all safety-related railroad employees receive appropriate training in a timely manner; and (3) a minimum training curriculum, and ongoing training criteria, testing, and skills evaluation measures to ensure that safety-related railroad employees, and contractor and subcontractor employees, charged with the inspection of track or railroad equipment are qualified to assess railroad compliance with Federal standards to identify defective conditions and initiate immediate remedial action to correct critical safety defects that are known to contribute to derailments, accidents, incidents, or injuries, and, in implementing the requirements of this paragraph, take into consideration existing training programs of railroad carriers."	The FRA informed Congress by letter on January 16, 2009, that FRA would not meet the statute's 12-month timetable. The FRA noted that it already has in place significant training requirements for a variety of subjects, and it has regularly included training elements in each of the new and revised regulatory programs that FRA has issued in recent years. Nevertheless, given the number of technical disciplines represented on the railroad properties and the breadth of the knowledge, skills, and abilities required to execute the tasks that they are required to accomplish safely, this provision requires an extensive effort. On February 11, 2010, RSAC accepted the task of assisting FRA in developing recommendations for minimum training standards and plans through the Training Standards Working Group. On December 14, 2010, RSAC approved the Working Group's recommendations to draft an NPRM addressing the statutory requirements. An NPRM was published on February 7, 2012, with public comments due by April 9, 2012. 77 Fed. Reg. 6412. On May 8, 2012, FRA held a meeting with the working group to discuss the written comments received. The FRA is currently evaluating the comments received in response to the NPRM and drafting a final rule.	Issue the final rule.

Item No.	Short Title, Public Law Citation, and Enactment Date	Section and U.S. Code Citation, If Any	Unmet Statutory Mandate	Actions Taken by FRA	Actions Needed to Be Taken by FRA
5	Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, Div. A, October 16, 2008.	Section 406 (DEVELOP-MENT AND USE OF RAIL SAFETY TECHNOLOGY) Amended 49 U.S.C. by adding new Section 20164	"(a) IN GENERAL.—Not later than 1 year after enactment of the [Rail] Safety [Improvement] Act of 2008, the Secretary of Transportation shall prescribe standards, guidance, regulations, or orders governing the development, use, and implementation of rail safety technology in dark territory, in arrangements not defined in Section 20501 or otherwise not covered by Federal standards, guidance, regulations, or orders that ensure the safe operation of such technology, such as—(1) switch position monitoring devices or indicators; (2) radio, remote control, or other power-assisted switches; (3) hot box, high water, or earthquake detectors; (4) remote control locomotive zone limiting devices; (5) slide fences; (6) grade crossing video monitors; (7) track integrity warning systems; or (8) other similar rail safety technologies, as determined by the Secretary."	FRA has prioritized the review of railroad plans and product safety submissions under the Positive Train Control (PTC) mandate of Section 104; indeed, many dark-territory lines will be equipped with PTC during that effort (largely mooting the issue of lesser technology for those lines). With the progress made in implementing the PTC mandate, on September 23, 2010, the full RSAC accepted the task to provide advice regarding development of standards, guidance, regulations, or orders governing the development, use, and implementation of rail safety technology in dark territory. The Dark Territory Working Group was formed with the approval of the full RSAC in December 2010. The working group held four meetings between March 2011 and November 2011. As a result of these meetings, the working group developed a document which proposed that railroads create individual plans that would govern the maintenance, inspection, and testing of certain safety devices that are currently in use in dark territory. However, the working group could not reach consensus on whether this document should be used as the basis for developing regulatory requirements or simply serve as guidance for the implementation of such devices. Due to this disagreement, working group activity was suspended and FRA is currently awaiting the finalization of its RRP and SSP rules to determine what further action is necessary to respond to this mandate. FRA intends to use the feedback provided by the working group as the basis for an NPRM that would require railroads to develop, and submit to FRA for approval, plans governing the maintenance, inspection, and testing of certain safety devices that they are using in dark territory. FRA also intends to issue a supplementary guidance document, in conjunction with the issuance of an NPRM, in order to provide assistance with the development of railroad plans that would comply with the proposed requirements.	Issue guidance document and NPRM.

Item No.	Short Title, Public Law Citation, and Enactment Date	Section and U.S. Code Citation, If Any	Unmet Statutory Mandate	Actions Taken by FRA	Actions Needed to Be Taken by FRA
6	Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, Div. A, October 16, 2008.	Section 412 (ALCOHOL AND CONTROLLED SUBSTANCE TESTING FOR MAINTEN-ANCE-OF-WAY EMPLOYEES)	"Not later than 2 years following the date of enactment of this Act, the Secretary of Transportation shall complete a rulemaking proceeding to revise the regulations prescribed under Section 20140 of Title 49, United States Code, to cover all employees of railroad carriers and contractors or subcontractors to railroad carriers who perform maintenance-of-way activities."	FRA is in the final stages of developing an NPRM.	Issue regulations as necessary.

Item No.	Short Title, Public Law Citation, and Enactment Date	Section and U.S. Code Citation, If Any	Unmet Statutory Mandate	Actions Taken by FRA	Actions Needed to Be Taken by FRA
7	Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, Div. A, October 16, 2008.	Section 413 (EMERGENCY ESCAPE BREATHING APPARATUS) Amended 49 U.S.C. by adding new Section 20166	"Not later than 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary of Transportation shall prescribe regulations that require railroad carriers—(1) to provide emergency escape breathing apparatus suitable to provide head and neck coverage with respiratory protection for all crewmembers in locomotive cabs on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of release; (2) to provide convenient storage in each freight train locomotive to enable crewmembers to access such apparatus quickly; (3) to maintain such equipment in proper working condition; and (4) to provide their crewmembers with appropriate training for using the breathing apparatus."	In March 2009, FRA completed a contract study to determine the feasibility of providing appropriate breathing apparatus capable of protecting crewmembers from the chemicals that may pose inhalation hazards. The study reviewed the types of emergency escape breathing apparatus (EEBA) available, how the EEBA should be assigned, what training would be necessary for safe use of the EEBA, and the cost of instituting an EEBA program. The study is available on FRA's Web site at: www.fra.dot.gov/eLib/Details/L02784. The FRA used information contained in the study as well as information gained from consultations with the railroad industry and railroad labor organizations to publish an NPRM on October 5, 2010. 75 Fed. Reg. 61386. FRA received several comments to the NPRM. The FRA is currently reviewing the comments and is developing a final rule.	Issue final rule.

Item No.	Short Title, Public Law Citation, and Enactment Date	Section and U.S. Code Citation, If Any	Unmet Statutory Mandate	Actions Taken by FRA	Actions Needed to Be Taken by FRA
8	Passenger Rail Investment and Improvement Act of 2008, Pub. L. No. 110-432, Div. B, October 16, 2008.	Section 212 (NORTHEAST CORRIDOR INFRASTRUC-TURE AND OPERATIONS IMPROVE-MENTS) (49 U.S.C. 24905)	"(f) NORTHEAST CORRIDOR SAFETY COMMITTEE.—(1) IN GENERAL.—The Secretary shall establish a Northeast Corridor Safety Committee composed of members appointed by the Secretary. The members shall be representatives of—(A) the Department of Transportation, including the Federal Railroad Administration; (B) Amtrak; (C) freight carriers operating more than 150,000 train miles a year on the main line of the Northeast Corridor; (D) commuter rail agencies; (E) rail passengers; (F) rail labor; and (G) other individuals and organizations the Secretary decides have a significant interest in rail safety or security. (2) FUNCTION; MEETINGS.—The Secretary shall consult with the Committee about safety and security improvements on the Northeast Corridor main line. The Committee shall meet at least two times per year to consider safety and security matters on the main line. (3) REPORT.—At the beginning of the first session of each Congress, the Secretary shall submit a report to the [Northeast Corridor Infrastructure and Operations Advisory] Commission and to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the status of efforts to improve safety and security on the Northeast Corridor main line. The report shall include the safety and security recommendations of the Committee and the comments of the Secretary on those recommendations."	To help address operational safety issues in the Northeast Corridor, FRA formed the Northeast Corridor Safety Committee (Committee), comprising FRA, the Transportation Security Administration, Amtrak, freight carriers operating more than 150,000 train miles a year on the main line of the Northeast Corridor, commuter railroads, rail passengers, rail labor, and other individuals and organizations the Secretary decides have a significant interest in rail safety or security. The Committee met on February 22, 2012, and May 24, 2012. The FRA notes that the Northeast Corridor Infrastructure and Operations Advisory Commission (Commission), which was separately mandated by Section 212(a) of the RSIA and, along with Congress, is to receive reports at the beginning of the first session of each Congress conveying the Committee's recommendations, held its inaugural meeting on September 27, 2010.	Continue Committee consultation. At the beginning of the first session of each Congress, submit a report conveying Committee's recommendations to the Commission and the respective Congressional Committees.

EXHIBIT B. OPEN RAIL SAFETY RECOMMENDATIONS BY THE NATIONAL TRANSPORTATION SAFETY BOARD (NTSB) TO THE FEDERAL RAILROAD ADMINISTRATION (FRA)[1] (AS OF DECEMBER 31, 2012)

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
1	01/13/00	R-00-01	The NTSB recommended that FRA establish, with assistance from experts on the effects of pharmacological agents on human performance and alertness, procedures or criteria by which train operating crewmembers who medically require substances not on DOT's list of approved medications may be allowed, when appropriate, to use those medications when performing their duties.	Open – Acceptable Response. In a forthcoming NPRM, FRA is considering revisions to its regulations on alcohol and drug use (49 CFR Part 219). To address recommendations R-00-01, R-00-02, and R-00-03. The FRA also would provide a training module on the hazards of performing regulated service while using drugs with possible sedating or impairing effects.	Complete and publish training module. Issue regulations as necessary.
2	01/13/00	R-00-02	The NTSB recommended that FRA develop, then periodically publish, an easy-to-understand source of information for train operating crewmembers on the hazards of using specific medications when performing their duties.	Open – Acceptable Response. See FRA's response to R-00-01 with regard to providing a training module on the hazards of performing regulated service while using drugs with possible sedating or impairing effects.	Complete and publish training module. Issue regulations as necessary.

[1] NTSB recommendations are listed in the following order by NTSB classification: Item Nos. 1 through 31, "Open – Acceptable Response"; Item Nos. 32 through 38, "Open – Unacceptable Response"; and Item Nos. 39 through 45, "Open – Await Response." Within each NTSB classification, NTSB recommendations are listed in chronological order by the date of issuance of the recommendation, and within the same date of issuance, by the number of the recommendation (Rec. No.).

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
3	01/13/00	R-00-03	The NTSB recommended that FRA establish and implement an educational program targeting train operating crewmembers that, at a minimum, ensures that all crewmembers are aware of the source of information described in NTSB Rec. No. R-00-002 regarding the hazards of using specific medications when performing their duties.	Open – Acceptable Response. See FRA's responses to R-00-01 and R-00-02.	Complete and publish training module. Issue regulations as necessary.
4	01/13/00	R-00-04	The NTSB recommended that FRA establish, in coordination with DOT, the Federal Motor Carrier Safety Administration, the Federal Transit Administration, and the U.S. Coast Guard, comprehensive toxicological testing requirements for an appropriate sample of fatal highway, railroad, transit, and marine accidents to ensure the identification of the role played by common prescription and over-the-counter medications. The FRA is to review and analyze the results of such testing at intervals not to exceed every 5 years.	Open – Acceptable Response. The FRA published an NPRM addressing this recommendation that would add additional drugs of concern, such as synthetic opiates and sedating antihistamines, to the panel of drugs tested for under its post-accident testing program. 77 Fed. Reg. 29307 (May 17, 2012). The FRA has reviewed the comments received on the NPRM in preparing a final rule.	Issue regulations as necessary.
5	03/12/01	R-01-02	The NTSB recommended that FRA evaluate, with the assistance of Research and Special Programs Administration, the Association of American Railroads (AAR), and the Railway Progress Institute, the deterioration of pressure relief devices through normal service and then develop inspection criteria to ensure that the pressure relief devices remain functional between regular inspection intervals. The FRA is to incorporate these inspection criteria into DOT's Hazardous Materials Regulations.	Open – Acceptable Response. In response to this recommendation, FRA has identified the valves to be tested and the facilities at which the testing will occur. The project will begin in 2013.	Evaluate research results and work with Pipeline and Hazardous Materials Safety Administration (PHMSA) to issue regulations as necessary.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
6	09/24/01	R-01-17	The NTSB recommended that FRA modify Title 49 Code of Federal Regulations (CFR) Section 219.201(b), as necessary, to ensure that the exemption from mandatory post-accident drug and alcohol testing for those involved in highway-rail grade crossing accidents does not apply to any railroad signal, maintenance, and other employees whose actions at or near a grade crossing involved in an accident may have contributed to the occurrence or severity of the accident.	Open – Acceptable Response. In the NPRM discussed in R-00-01, FRA is considering narrowing FRA's highway-rail grade crossing exemption by allowing post-accident testing of a railroad signal, maintenance, or other employee who may have contributed to the cause or severity of an accident.	Issue regulations as necessary.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
7	11/27/02	R-02-24	The NTSB recommended that FRA develop a standard medical examination form that includes questions regarding sleep problems and require that the form be used, pursuant to 49 CFR Part 240, to determine the medical fitness of locomotive engineers; the form should also be available for use to determine the medical fitness of other employees in safety-sensitive positions.[2]	Open – Acceptable Response. On September 21, 2006, FRA tasked the RSAC to develop and recommend medical standards and procedures for determining the medical fitness-for-duty of personnel engaged in safety critical functions. The RSAC established a Medical Standards Working Group. The FRA is considering publication of guidance documents developed by the Medical Standards Working Group. On December 8, 2011, FRA tasked the RSAC to develop and recommend Fatigue Management Plans for the rail industry. The Fatigue Management Plans Working Group has assumed some of the responsibilities originally tasked to the Medical Standards Working Group. This includes determining how medical conditions that affect alertness and fatigue will be incorporated into Fatigue Management Plans. A Web site has also been developed: The Railroaders' Guide to Healthy Sleep. The Web site is designed to provide locomotive engineers, conductors, and other safety-critical personnel educational information about sleep disorders; access to a screening questionnaire for obstructive sleep apnea; and information about how the questionnaire can be used to screen for undiagnosed sleep apnea, how to obtain further evaluation and treatment for sleep disorders, how lack of sleep and circadian misalignment affect performance, and how railroad personnel can get the sleep they need. The Web site, a joint initiative of FRA, DOT's Volpe National Transportation Systems Center (Volpe Center), Harvard Medical School Division of Sleep Medicine, and the WGBH Education Foundation, was launched to the public on June 15, 2012, and can be accessed at www.railroadersleep.org.	Issue guidance documents as necessary.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
8	11/27/02	R-02-25	The NTSB recommended that FRA require that any medical condition that could incapacitate, or seriously impair the performance of, an employee in a safety-sensitive position be reported to the railroad in a timely manner.[3]	Open – Acceptable Response. See response to R-02-24. FRA is considering publication of guidance documents developed by the Medical Standards Working Group that railroads may use in their own medical standards programs.	Issue guidance documents as necessary.
9	11/27/02	R-02-26	The NTSB recommended that FRA require that, when a railroad becomes aware that an employee in a safety-sensitive position has a potentially incapacitating or performance-impairing medical condition, the railroad prohibit that employee from performing any safety-sensitive duties until the railroad's designated physician determines that the employee can continue to work safely in a safety-sensitive position.[4]	Open – Acceptable Response. See FRA's responses to R-02-24 and R-02-25.	Issue guidance documents as necessary.

[2] On June 23, 2011, NTSB announced its annual updates to its "Most Wanted List." That year, NTSB also changed the format of the Most Wanted List. Rather than highlight those specific recommendations that, if acted upon, will most improve safety, NTSB prepared a list of the 10 most critical transportation issue areas that need to be addressed to improve safety and save lives. The NTSB selected the following issue areas: general aviation safety, runway safety, bus occupant safety, safety management systems, recorders, teen driver safety, addressing human fatigue, addressing alcohol-impaired driving, motorcycle safety, and pilot and air traffic controller professionalism. The DOT is required by statute (Title 49 U.S.C. 1135(e)) to submit a report to Congress and NTSB each year until final regulatory action is taken, or the Secretary, or an Administration within DOT, determines and reports that no action should be taken. This recommendation is associated with one of the NTSB's issue areas from the 2011 Most Wanted List and is addressed in DOT's 2011 annual report to Congress and the National Transportation Safety Board. On November 14, 2012, NTSB announced the following issue areas as part of its 2013 Most Wanted List: airport surface operation, bus safety, eliminating distraction, fire safety, general aviation safety, infrastructure, pipeline safety, PTC, substance-impaired driving, and collision avoidance.

[3] Id.

[4] Id.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
10	03/15/04	R-04-07	NTSB recommended that FRA develop and implement Tank Car Design-Specific Fracture Toughness Standards, such as a minimum average Charpy value, for steels and other materials of construction for pressure tank cars used for the transportation of the DOT's Class 2 hazardous materials, including those in "low temperature" service. The performance criteria must apply to the material orientation with the minimum impact resistance and take into account the entire range of operating temperatures of the tank car.	Open – Acceptable Response. In an effort to advance the crash protection technology used in the design of tank cars, FRA has introduced the Advanced Tank Car Collaborative Research Project (ATCCRP). The ATCCRP is aimed at determining the material properties for a protective system needed to survive an impact based on specific performance criteria. Once the properties are identified, FRA will reach out to both the rail industry, as well as other industries, to identify materials or composites that possess the required properties. Once identified, the materials will be modeled or simulated under specific testing protocol, and those results will be validated through physical testing.	Continue research. Work with PHMSA to issue regulations as necessary.
11	11/23/05	R-05-09	The NTSB recommended that FRA develop guidelines for locomotive engineer simulator training programs that go beyond developing basic skills and teach strategies for effectively managing multiple concurrent tasks and atypical situations.	Open – Acceptable Response. The FRA is currently conducting joint research with Veolia Transportation in the Cab Technology Integration Laboratory at the Volpe Center to develop training guidelines to address distraction and sustained attention. Results will be shared with the industry.	Develop and issue guidelines. Publish and make findings available.
12	12/12/05	R-05-17	The NTSB recommended that FRA determine the most effective methods of providing emergency escape breathing apparatuses for all crewmembers on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of unintentional release and require railroads to provide these breathing apparatus to their crewmembers along with appropriate training.	Open – Acceptable Response. The NTSB notes that an NPRM addressing this recommendation was published at 75 Fed. Reg. 61386 on October 5, 2010. Pending the publication of a final rule, R-05-17 remains classified "Open – Acceptable Response."	Issue regulations as necessary.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
13	06/07/06	R-06-07	The NTSB recommended that FRA require railroads to implement for all power-assisted switch machines, regardless of location, a formal commissioning procedure and a formal maintenance program that includes records of inspections, tests, maintenance, and repairs.	Open – Acceptable Response. The RSAC Dark Territory Working Group has been formed and has met four times thus far. A draft document addressing proposed "official guidance" regarding the use of safety technologies, including power-assisted switch machines, in non-signaled territory is nearing completion. In addition, FRA intends to issue an NPRM that would require any railroad using certain types of safety technology, including power-assisted switch machines, in non-signaled territory to develop and submit to FRA for approval a plan that contains written procedures for inspection, testing, and maintenance of these devices.	Issue guidance document and NPRM.
14	04/10/08	R-08-05	The NTSB recommended that FRA advise railroads of the need to examine their train dispatching systems and procedures to ensure that appropriate safety redundancies are in place for establishing protection and preventing undesired removal of protection for roadway workers receiving track occupancy authority.	Open – Acceptable Response. The FRA has included a reference to this objective in its Positive Train Control (PTC) final rule issued on December 30, 2009. See 49 CFR § 236.1015(d)(13) at 75 Fed. Reg. 2598, 2709 (Jan. 15, 2010). FRA believes that properly configured PTC systems will effectively address this need. However, at this time, there are no plans for universal PTC deployment on the general railroad system. The FRA brought concerns about roadway worker safety to RSAC's attention in September 2008 and will continue to raise them in industry meetings. The FRA established the Fatality Analysis Maintenance-of-Way Employees and Signalmen Committee to study fatalities involving maintenance-of-way (MOW) roadway workers. The Committee is currently in the process of drafting recommendations involving train dispatching systems and procedures to ensure that the appropriate safety redundancies are in place for establishing protection and preventing undesired removal of protection for roadway workers receiving track occupancy authority.	Collect and analyze data. Advise railroads of needed procedures/ safety redundancies. Review PTC Development and Safety Plans to ensure roadway worker protection.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
15	04/10/08	R-08-06	The NTSB recommended that FRA require redundant signal protection, such as shunting, for MOW work crews who depend on the train dispatcher to provide signal protection.	Open – Acceptable Response. An NPRM addressing this recommendation was published on August 20, 2012. 77 Fed. Reg. 50324. The FRA has specifically invited comment on this issue from the railroad industry and other interested parties, to include potential costs of implementing various redundant measures.	Issue regulations as necessary.
16	04/10/08	R-08-07	The NTSB recommended that FRA revise the definition of "covered employee" under 49 CFR Part 219, for purposes of Congressionally mandated alcohol and controlled substances testing programs to encompass all employees and agents performing safety-sensitive functions as described in 49 CFR §§ 209.301 and 209.303.	Open – Acceptable Response. As required by the RSIA, the NPRM discussed in FRA's response to R-00-01 would also expand 49 CFR Part 219's coverage to include both employees and contractors who perform MOW activities for railroads. The FRA does not intend to add any other categories of employees to the scope of 49 CFR Part 219 at this time and FRA asks that NTSB reconsider the scope of its recommendation and reclassify this recommendation as "Open – Acceptable."	Issue regulations as necessary.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
17	05/22/08	R-08-09	The NTSB recommended that FRA review all railroads' internal rail defect detection procedures and require changes to those procedures as necessary to eliminate exceptions to the requirement for an uninterrupted, continuous search for rail defects.	Open – Acceptable Response. The FRA has established the Rail and Infrastructure Integrity Division to review all railroads' internal rail defect detection procedures and recommend changes, as needed, to ensure that an uninterrupted, continuous search for rail flaws is conducted by the railroad. In addition, FRA has implemented a rail flaw detection vehicle inspection process as part of its National Safety Program Plan. Moreover, the Rail Integrity Task Force, under the RSAC Track Safety Standards Working Group, has been charged with examining internal rail flaw inspection procedures and systems within the regulated community, identifying any deficiencies in the procedures or systems, and making necessary recommendations to address them. The task force believes that new technologies have been developed for improving rail flaw detection associated with rail surface conditions. The task force has reached consensus on a number of changes to FRA's rail inspection requirements, and an NPRM based on these recommendations was issued in October 2012. See 77 Fed. Reg. 64249.	Issue regulations as necessary.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
18	05/22/08	R-08-10	The NTSB recommended that FRA require railroads to develop rail inspection and maintenance programs based on damage-tolerance principles, and approve those programs, and include in the requirement that railroads demonstrate how their programs will identify and remove internal defects before they reach critical size and result in catastrophic rail failures. NTSB also recommended that each program take into account, at a minimum, accumulated tonnage, track support, residual stresses in the rail, rail defect growth rates, and temperature differentials.	Open – Acceptable Response. The RSAC's Rail Integrity Task Force was formed in 2007 to help provide a common understanding of the requirements for internal rail flaw inspections within the regulated community. Through this task force, FRA is gaining a more thorough understanding of rail inspection and maintenance programs. The task force has reached consensus on a Volpe Center-recommended model for performance-based testing intervals using failure and defect rates, annual tonnage, performance targets, and crack growth. The task force has also examined issues concerning submission of internal flaw detection programs for FRA approval, annual updates to the program, and access to defect and failure data. An NPRM was issued in October 2012. See 77 Fed. Reg. 64249. Knowledge gained from FRA's continued involvement in these areas will be used to determine any future recommendations for improvement based on damage-tolerance principles. The FRA also continues to fund research to enhance rail flaw detection technology.	Issue regulations as necessary.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
19	05/22/08	R-08-11	The NTSB recommended that FRA require railroads use methods that accurately measure rail head wear to ensure that deformation of the head does not affect the accuracy of the measurements.	Open – Acceptable Response. Through the RSAC process, FRA is identifying and addressing operational limitations of rail flaw test systems that are attributable to the presence of rail head surface and wear conditions. Through the RSAC Rail Integrity Task Force, FRA initiated a study to determine the magnitude and conditions that can result in a "loss of bottom" signal during the test process. The study was completed in 2008 and the task force determined that it is common to find rail defects when there is a "loss of bottom" present. Nevertheless, the study also found that "loss of bottom" incidence is minimal in comparison to total mileage tested, and, because of the limited magnitude of the problem, the task force did not recommend further action. Although sufficient studies are not available that would provide FRA with sufficient criteria to designate a critical rail head wear maximum for all rail sections used by railroads, the Rail Integrity Task Force has recommended requiring the rail flaw detector car operator to categorize the size of transverse-oriented defects to reflect the amount of rail head loss present in a rail specimen. Rail head wear is a crucial factor in the development of rail defects and rail service failure, and the task force has also reached consensus that it be used in determining performance-based testing intervals. An NPRM addressing these issues was issued in October 2012. See 77 Fed. Reg. 64249. The FRA is continually involved with the current rail flaw detection technology used by the railroads through FRA's Rail and Infrastructure Integrity Group, and is also funding additional research to pursue new development in laser-based ultrasonic and guided waves technologies. Until rail flaw detection technology is developed that will consistently circumvent the influence of rail head surface and wear conditions, FRA believes it is possible that we could continue to see adverse effects on the accuracy of test measurements, and positive identification of all defects below a critical threshold will have detection limitations.	Issue regulations as necessary.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
20	04/02/09	R-09-01	The NTSB recommended that FRA establish uniform signal aspects that railroads must use to authorize a train to enter an occupied block, and prohibit the use of these aspects for any other signal indication.	Open – Acceptable Response. The FRA is addressing this issue on a case-by-case basis wherever it may be found that a railroad is using more than one name and indication for a single aspect on a single line segment where crews would be subject to potential misunderstanding of the action to be taken. The FRA also is addressing this issue on a case-by-case basis due to the potential significant cost associated with railroads bringing their wayside signal systems into compliance with a uniform set of FRA-established signal aspects and indications. This cost arises due to the numerous railroad mergers and acquisitions that have resulted in many former railroads now owned by a single larger railroad. Where PTC is to be implemented, this condition will be relieved by the PTC onboard display indicating the correct action to be taken at each successive wayside signal location.	Continue efforts.
21	04/02/09	R-09-02	The NTSB recommended that FRA study the different signal systems for trains, identify ways to communicate more uniformly the meaning of signal aspects across all railroad territories, and require the railroads to implement as many uniform signal meanings as possible.	Open – Acceptable Response. See FRA's response to R-09-01. The FRA has developed a method for cataloguing occurrences when inconsistent signal aspects and indications are found and identified during regular inspections. Data collection on this issue is commencing and, depending on the extent to which this issue exists in areas where it will not be addressed by other means (such as the implementation of PTC systems), FRA will review the captured information and decide on next steps that may be necessary, on a case-by-case basis.	Continue efforts.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
22	04/02/09	R-09-03	The NTSB recommended that FRA require that emergency exits on new and remanufactured locomotive cabs provide for rapid egress by cab occupants and rapid entry by emergency responders.	Open – Acceptable Response. The FRA shares NTSB's concern that means of rapid egress and rescue access be provided for locomotive cabs. The FRA regulations require that locomotives manufactured on or after January 1, 2009, provide for emergency egress. See 49 CFR § 229.206. The FRA has also funded research into locomotive egress and crew rescue. Moreover, FRA has developed and disseminated a training video titled, "Locomotive Emergency Response Operations," to local emergency responders throughout the country and is exploring additional educational opportunities.	Continue educational efforts.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
23	2/23/2010	R-10-01	The NTSB recommended that FRA require the installation, in all controlling locomotive cabs and cab car operating compartments, of crash- and fire-protected inward- and outward-facing audio and image recorders capable of providing recordings to verify that train crew actions are in accordance with rules and procedures that are essential to safety as well as train operating conditions. The devices should have a minimum 12-hour continuous recording capability with recordings that are easily accessible for review, with appropriate limitations on public release, for the investigation of accidents or for use by management in carrying out efficiency testing and systemwide performance monitoring programs.[5]	Open – Acceptable Response. The FRA recognizes the value of voice and image recording for accident investigation purposes, and believes that the information gathered could also play a constructive role in a concerted risk reduction effort having the support of employee representatives and progressive carrier management. However, FRA is aware of the significant privacy concerns implicated by this recommendation, and believes that the use of voice and image recording for railroad disciplinary purposes would erode morale and offer opportunities for selective enforcement and possible retaliation against employees for reasons not related to safety. The FRA is exploring options that will seek to affirm NTSB's interest in accident investigation and prevention, while avoiding unwarranted publication of private conversations and guarding against further erosion of working relationships among employees and their supervisors and managers. For example, FRA has formed an RSAC working group to develop strategies and programs that prevent unauthorized use of electronic devices (cell phones, pagers, etc.) during safety-critical rail operations. This Electronic Device Distraction Working Group includes representatives from FRA, industry (AAR, the American Short Line and Regional Railroad Association (ASLRRA), and the American Public Transportation Association (APTA)), and labor (Brotherhood of Locomotive Engineers and Trainmen, United Transportation Union, and Brotherhood of Railroad Signalmen).	Identify and pursue appropriate options to promote accident investigation and prevention through the use of audio and image recording devices.

[5] Id.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
24	2/23/2010	R-10-02	The NTSB recommended that FRA require that railroads regularly review and use in-cab audio and image recordings (with appropriate limitations on public release), in conjunction with other performance data, to verify that train crew actions are in accordance with rules and procedures that are essential to safety.[6]	Open – Acceptable Response. See FRA's response to R-10-01.	Identify and pursue appropriate options to promote accident investigation and prevention through the use of audio and image recording devices.
25	3/2/2012	R-12-03	Require that safety management systems and the associated key principles (including top-down ownership and policies, analysis of operational incidents and accidents, hazard identification and risk management, prevention and mitigation programs, and continuous evaluation and improvement programs) be incorporated into railroads' RRPs required by the RSIA.	Open – Acceptable Response. The FRA, in response to the RSIA, is developing two regulations with the assistance of RSAC, one that would require passenger railroads to implement SSP and one that would require certain freight railroads to implement RRP. An NPRM, addressing SSP, was published on September 7, 2012, 77 Fed. Reg. 55372. These regulations would require railroads to establish a program consistent with the key principles of safety management systems that systematically evaluates railroad safety hazards on their systems and manage those risks in order to reduce the numbers and rates of railroad accidents, incidents, injuries, and fatalities.	Issue regulations as necessary.

[6] Id.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
26	3/2/2012	R-12-04	Inform railroads about the circumstances of the accident and advise them of the need to immediately notify pipeline operators of accidents occurring in railroad rights-of-way and ensure that pipeline inspections are accomplished prior to resumption of service.	Open – Acceptable Response. The NTSB notes that, on May 1, 2012, FRA sent a letter to the AAR and ASLRRA for distribution to their members (1) informing them of the circumstances surrounding the June 19, 2009, Canadian National Railway Freight Train U70691-18 derailment and (2) stressing the importance of notifying pipeline operators of accidents occurring in railroad rights-of-way. However, NTSB intended that FRA notify all railroads about the circumstances of the accident, rather than two railroad industry groups (AAR and ASLRRA) whose membership may or may not include all railroads. To ensure that all railroads are informed of this accident, NTSB believes a safety advisory that would apply to all railroads, regardless of their classification (Class I, shortline, intercity railroad, or commuter railroad) should be issued. Accordingly, NTSB requests that FRA either issue a safety advisory or verify that all railroads are indeed members of either the AAR or ASLRRA.	Issue notification document as necessary.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
27	5/10/2012	R-12-16	Require railroads to medically screen employees in safety-sensitive positions for sleep apnea and other sleep disorders.	Open – Acceptable Response. The RSIA requires, under Section 103, that certain railroads develop an RRP. 49 U.S.C. § 20156. Section 103(d)(2) of the RSIA requires these railroads to include a Fatigue Management Plan in their RRPs that meets the requirements of 49 U.S.C. § 20156(f). 49 U.S.C. § 20156(d)(2). As part of the development of Fatigue Management Plans, the RSIA requires these railroads to consider whether to include as an element of their plans opportunities for the identification, diagnosis, and treatment of any medical condition that may affect alertness or fatigue, including sleep disorders. The RSIA also requires these railroads to consider including elements in their plans to provide employee education and training on the physiological and human factors that affect fatigue. Currently, FRA, in conjunction with a working group of members from the RSAC, is developing a fatigue management regulation that will be responsive to the requirements set forth in the RSIA.	Issue regulations as necessary.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
28	5/10/2012	R-12-17	Establish an ongoing program to monitor, evaluate, report on, and continuously improve fatigue management systems implemented by operating railroads to identify, mitigate, and continuously reduce fatigue-related risks for personnel performing safety-critical tasks, with particular emphasis on biomathematical models of fatigue.	Open – Acceptable Response. The RSIA requires, under Section 103(a) [or 49 U.S.C. 20156(c)], that a railroad developing an RRP must conduct a risk analysis, which must "identify and analyze the aspects of its railroad, including operating rules and practices, infrastructure, equipment, employee levels and schedules, safety culture, management structure, employee training, and other matters, including those not covered by railroad safety regulations or other Federal regulations, that impact railroad safety." This broad risk analysis would address issues of fatigue. The RSIA also requires railroads developing an RRP to develop a Fatigue Management Plan that must be reviewed and revised every 2 years. Currently, FRA, in conjunction with the RSAC, is developing regulations responsive to these requirements. Additionally, FRA has developed a Fatigue Risk Management Systems (FRMS) guidance document for the railroads outlining the components of an FRMS, the steps to establish an FRMS, and evaluation requirements. The FRA is also actively seeking railroads to participate in pilot projects that will examine the effects of scheduling pools, advanced call times, and decreased time at the away-from-home terminal on the fatigue experienced by train crews.	Continue research.
29	5/10/2012	R-12-18	Conduct research on new and existing methods that can identify fatigue and mitigate performance decrements associated with fatigue in on-duty train crews.	Open – Acceptable Response. See FRA's response to R-12-17 regarding FRA's anticipated pilot projects.	Continue research.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
30	5/10/2012	R-12-19	Require the implementation of methods that can identify fatigue and mitigate performance decrements associated with fatigue in on-duty train crews that are identified or developed in response to Safety Recommendation R-12-18.	Open – Acceptable Response. The RSIA requires an implementation plan as part of a Fatigue Management Plan. Currently FRA, in conjunction with an RSAC working group, is developing guidance for the creation of an FRMS implementation plan. The RSAC developed potential language that would address issues associated with this recommendation, which includes the following: (1) mapping of existing and future processes, (2) determining any organizational change (e.g., reporting relationships) that may be induced or required by the system, (3) developing a communications plan, (4) creating a fatigue training and education plan, (5) identifying key people whose participation will ensure success, (6) consensus and coalition building, (7) identifying facilitators and inhibitors to successful implementation, (8) monitoring and evaluation of the FRMS, and (9) an evaluation and feedback mechanism.	Issue guidance documents as necessary.
31	5/10/2012	R-12-21	Revise 49 CFR Part 229 to ensure the protection of the occupants of isolated locomotive operating cabs in the event of a collision. Make the revision applicable to all locomotives, including the existing fleet and those newly constructed, rebuilt, refurbished, and overhauled, unless the cab will never be occupied.	Open – Acceptable Response. The locomotive involved in the Red Oak collision was constructed to meet crashworthiness requirements that had been published but were not yet in effect at the time the locomotive was constructed. The anti-climber and the collision posts gave the same protection to the isolated cab as they would to a non-isolated cab, as neither has any crashworthiness requirement that applies above the top of the collision posts. Given the unusual nature of the equipment impacted, this collision scenario was not a focus of the development of the regulations. The FRA is in discussion with the Volpe Center to determine what further areas of crashworthiness research should be pursued to enhance overall locomotive crashworthiness.	Continue research. Issue regulations as necessary.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
32	08/28/97	R-97-15	The NTSB recommended that FRA require all passenger cars have either removable windows, kick panels, or other suitable means for emergency exiting through the interior and exterior passageway doors where the door could impede passengers exiting in an emergency and that FRA take appropriate emergency measures to ensure corrective action until these measures are incorporated into minimum Passenger Car Safety Standards.	Open – Unacceptable Response. On May 12, 1999, FRA published the Passenger Equipment Safety Standards for rail passenger service. 64 Fed. Reg. 25660. These regulations addressed kick-out panels in doors for trains traveling 126 to 150 mph (Tier II passenger equipment), but did not address kick-out panels in doors for trains traveling at or below 125 mph (Tier I passenger equipment). Nonetheless, these regulations did address egress through doors and windows for Tier I passenger equipment, and on February 1, 2008, FRA published a final rule amending the Passenger Equipment Safety Standards to further enhance egress requirements. 73 Fed. Reg. 6412. The FRA researched the viability of integrating removable panels/windows into end-frame doors in cab cars and multiple-unit locomotives, focusing on developing requirements and design concepts. It was found that if removable panels/windows were to be placed in such doors, the panels/windows would have to withstand substantial loading forces to maintain the integrity of the end-frame structure and meet existing FRA regulations. The FRA's RSAC Emergency Preparedness Task Force reviewed this recommendation, together with the results of FRA's research, and, through the Passenger Safety Working Group, reported its own recommendations for removable panels in certain interior doors to the full RSAC on February 20, 2008, which in turn accepted the Task Force's recommendations. The RSAC recommendations apply to new passenger cars and an NPRM based on the RSAC's recommendations was published on January 3, 2012. 77 Fed. Reg. 153. The Task Force considered but did not recommend retrofit requirements for existing equipment, due primarily to limitations posed by the design of existing doors, which have a horizontal structural member that provides rigidity and is located approximately at the vertical center of the door significantly limiting both the size and location of a removable panel or window. Although there are existing windows in the upper half of the doors, these are not sufficiently large for many adults to pass through and would be difficult to access in many situations due to such location. In addition, because the removable windows and panels contemplated by industry for use in compliance with such a requirement would be designed in much the same fashion as emergency window exits with gaskets that could be removed with a handle, the door pockets would require modification to fit the protrusions in the door created by the handle. The NTSB has classified this recommendation as "Open -- Unacceptable Response" pending FRA efforts to implement this recommendation in all passenger cars, both new and existing.	Issue regulations as necessary.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
33	08/28/97	R-97-17	The NTSB recommended that FRA require all passenger cars contain reliable emergency lighting fixtures that are each fitted with a self-contained independent power source and that FRA incorporate the requirements into minimum Passenger Car Safety Standards.	Open – Unacceptable Response. On February 20, 2008, RSAC's Passenger Safety Working Group recommended proposed rule language to the full RSAC body that would incorporate this new APTA standard by reference. The full RSAC accepted the working group's recommendations, and FRA will publish an NPRM in Spring of 2013. On May 12, 1999, FRA published the Passenger Equipment Safety Standards, which required emergency lighting for passenger cars ordered on or after September 8, 2000, or those placed into service for the first time on or after September 9, 2002. Subsequently, FRA worked with APTA to develop industry standards to improve emergency lighting systems in all passenger cars, including the survivability of the systems. See APTA SS-E-013-99, Rev. 1, Standard for Emergency Lighting System Design for Passenger Cars. On February 20, 2008, RSAC's Passenger Safety Working Group recommended proposed rule language to the full RSAC body that would incorporate this new APTA standard by reference. The full RSAC accepted the working group's recommendations, and FRA published an NPRM based on RSAC's recommendations on January 3, 2012. 77 Fed. Reg. 153. The Task Force evaluated the feasibility of equipping fixtures with self-contained power sources that were independent of the main car battery and concluded that maintenance would be very costly due to the high number of power sources. The Task Force examined other methods for addressing the issue of emergency lighting system reliability and assisted APTA in revising APTA SS-E-013-99, Standard for Emergency Lighting System Design for Passenger Cars, to better address those situations in which an emergency lighting system may be most beneficial. APTA added four requirements that address NTSB's recommendation to FRA regarding emergency lighting survivability for new passenger cars. The NTSB has classified this recommendation as "Open -- Unacceptable Response," pending efforts not only to implement emergency lighting in existing passenger cars but also to provide that those systems operate on a power source independent of the main car battery.	Issue regulations as necessary.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
34	03/21/02	R-02-05	The NTSB recommended that FRA require railroads to conduct ultrasonic or other appropriate inspections to ensure that rail used to replace defective segments of existing rail is free from internal defects.	Open – Unacceptable Response. On March 8, 2006, FRA issued Safety Advisory 2006-02 in response to this recommendation. See 71 Fed. Reg. 11700. The purpose of this advisory was to reduce the number of rail defects that occur when second-hand rail is used and to recommend practices for testing, classifying, and reusing second-hand rail. However, NTSB responded that FRA's advisory be revised to recommend that all railroads conduct ultrasonic or other appropriate inspections to ensure that all rail used as replacement rail is tested and determined to be free from internal defects. Subsequently, FRA has worked intensively on this issue through the Rail Integrity Task Force of RSAC's Track Safety Standards Working Group, which is helping to revise the requirements for rail integrity, including replacement rail. The Rail Integrity Task Force reached consensus on an addition to 49 CFR § 213.237 addressing inspection requirements for rail used to replace defective segments. The NPRM was issued in October 2012, 77 Fed. Reg. 64249, and a final rule is expected in 2013. The FRA has also established the Rail and Infrastructure Integrity Division to review all railroads' internal rail defect detection procedures and recommend changes, as needed, to ensure that an uninterrupted, continuous search for rail flaws is conducted by the railroads. The NTSB has advised that it will consider reclassifying the status of this recommendation pending development of proposed regulatory language to address this issue.	Issue regulations as necessary.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
35	03/15/04	R-04-01	The NTSB recommended that FRA require all railroads with continuous welded rail (CWR) track include procedures (in the programs that are filed with FRA) that prescribe on-the-ground visual inspections and non-destructive testing techniques for identifying cracks in rail joint bars before they grow to critical size.	Open – Unacceptable Response. On October 11, 2006, FRA published a regulation that required railroads to establish a program for the periodic visual inspection of joint bars in CWR track by January 1, 2007. See 71 Fed. Reg. 59677. However, the regulation did not require non-destructive testing of joint bars on a periodic basis. The FRA stated that there was insufficient engineering data to establish the effectiveness of non-destructive testing techniques as applied to joint bars in the service environment. The FRA and the AAR (through the Transportation Technology Center) are working on non-destructive testing techniques that may be useful in the future. Meanwhile, FRA has successfully demonstrated optical recognition technology designed to identify very small joint bar cracks on a production basis, and that technology is now being commercialized. In addition, technology has been developed by a non-destructive test company in the United States that has the capability to perform a dynamic ultrasonic inspection of the upper portion of the joint bar structure. However, the effectiveness and accuracy of this technology is limited due to only the top portion of the joint bar being tested. No further technological advancements in non-destructive testing have been identified that will consistently identify cracks associated with joint bars. Until technology is developed to perform a non-destructive inspection of joint bars, FRA must continue to require visual inspection for compliance. On August 25, 2009, FRA published a final rule to enhance requirements for CWR generally. See 74 Fed. Reg. 43002. Nevertheless, NTSB has advised FRA that, to fully meet the intent of the recommendation, the required inspection procedures need to include nondestructive testing techniques for identifying cracks in rail joint bars.	Develop and issue a specific regulation if determined necessary, when suitable technology becomes available.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
36	06/29/06	R-06-10	The NTSB recommended that FRA prohibit the use of after-arrival track warrants for train movements in dark (non-signaled) territory not equipped with a PTC system.	Open – Unacceptable Response. The FRA's RSAC Operating Rules Working Group met with NTSB staff while studying after-arrival track warrants. The FRA prepared a draft rule that would strictly limit use of after-arrival track warrants and discussed it extensively with the working group. The working group was not able to reach a resolution. Nevertheless, FRA's final rule on PTC provides that PTC systems will enforce contingencies in mandatory directives issued in non-signaled territory, eliminating the hazard in PTC territory. See 75 Fed. Reg. 2598, 2701.	Issue regulations as necessary.
37	04/25/07	R-07-02	The NTSB recommended that FRA assist PHMSA in developing regulations to require that railroads immediately provide to emergency responders accurate, real-time information regarding the identity and location of all hazardous materials on a train.	Open – Unacceptable Response. The FRA has met with both the AAR and ASLRRA to discuss this issue. Working with the AAR, FRA has learned the means by which the Class I railroads update their train consists (the complete train without the locomotive) in both local and through-trains, and identified gaps in the processes. The FRA is currently drafting a guidance document explaining the regulatory requirements pertaining to train consists and methods to accomplish compliance based on successful practices in the industry. Consideration will be given to including these successful practices as regulation in future revisions of 49 CFR Part 174. After discussion with ASLRRA, FRA also prepared an article for their newsletter, "View & News." The article, published on October 25, 2012, reviewed in detail the requirements of 49 CFR § 174.26, as well as suggestions for compliance.	Issue regulations as necessary.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
38	05/022/08	R-08-12	The NTSB recommended that FRA assist PHMSA in its evaluation of the risks posed to train crews by unit trains transporting hazardous materials, determination of the optimum separation requirements between occupied locomotives and hazardous materials cars, and any resulting revision to 49 CFR § 174.85.	Open – Unacceptable Response. The FRA has scheduled a meeting for January 2013 in which it will chair a discussion between representatives of the Class I railroads and rail labor organizations. The discussion will be focused on a critical review of the current regulations and determination of any necessary updates to ensure safety and improved operational efficiency. The outcome of the meeting will help guide development of any proposed revision of 49 CFR Part 174.	Conduct outreach. If necessary clarify and/or revise the requirements on buffer car use.
39	5/10/2012	R-12-20	Require the use of PTC technologies that will detect the rear of trains and prevent rear-end collisions.	Open – Await Response. The FRA agrees with the recommendation and has previously noted that the technology associated with currently available PTC systems may not completely eliminate all collisions, including those that may occur involving a train required to be operated according to the limitations of restricted speed. As it relates to all speed enforcements, the PTC systems being developed generally provide a warning at 3 mph above the allowable speed (i.e., target speed) and enforce at 2 additional mph above that. However, for restricted speed conditions, the railroads have modified the system software to assume a maximum allowable speed of 15 mph—instead of 20 mph—on railroads where the upper speed limit is 20 mph, and 11 mph—instead of 15 mph—on those railroads where the upper speed limit is 15 mph. The warning will occur as a train nears the upper limit, and the enforcement will occur at 1 mph above that limit. The PTC systems configured in this manner will therefore further help reduce the likelihood of rear-end collisions.	Issue regulations as necessary.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
40	5/10/2012	R-12-22	Revise 49 CFR Part 229 to require crashworthiness performance validation for all new locomotive designs under conditions expected in a collision.	Open – Await Response. The FRA seeks clarification of what is meant by the phrases "crashworthiness performance validation" and "conditions expected in a collision." The FRA has sponsored various collision tests, the results of which are available for use by locomotive designers; however, none exactly duplicates any new locomotive design. Similarly, various collision scenarios have been used in these tests, but as demonstrated by the way in which the clip car folded nearly in half in the accident from which this recommendation arises, not all possible conditions can be "expected."	Continue research. Issue regulations as necessary.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
41	5/24/2012	R-12-27	Require railroads to install, along main lines in non-signaled territory not equipped with PTC, appropriate technology that warns approaching trains of incorrectly lined main track switches sufficiently in advance to permit stopping.	Open – Await Response. Given the mandate for the widespread implementation of PTC across much of the industry, and the resultant huge resource-intensive burden, the majority of railroads could simply not accomplish any further requirement for additional technologies that would compete with the same or similar resources. Through the subsequent RSAC Dark Territory Working Group, safety technologies associated with switch detection have been a primary topic of consideration. While that working group has not yet completed its work, the outcome is not expected to be any Federal requirement to implement such technology versus collaborative development of appropriate recommended standards for the design, implementation, inspection, test, and repair of such technologies where voluntarily implemented. During RSAC Dark Territory Working Group meetings, safety technology associated with switch position monitoring was a primary topic of consideration. Even though working group activity has been suspended, FRA intends to use the feedback provided by the Dark Territory Working Group to issue a draft guidance document that would address best practices associated with the implementation of certain safety technologies (including switch position monitoring systems) in nonsignaled territory. However, the preliminary cost-benefit analysis that was done in relation to this NTSB recommendation indicates that the benefits associated with a regulation requiring railroads to install technology that provides advance warning of improperly lined switches to approaching trains would not outweigh the costs. The FRA therefore has asked that this recommended be classified as "Closed – Reconsidered."	Issue guidance document that would address best practices associated with the implementation of switch-position monitoring systems in non-signaled territory.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
42	5/24/2012	R-12-28	Revise 49 CFR § 218.105(d)(l) to require that, until the appropriate switch position technology is installed on main track switches in nonsignaled territories that are not equipped with PTC, train crews releasing track authority to the dispatcher must hold job briefings with the dispatcher and clearly convey the position of all main track switches that were used prior to releasing track warrant authority.	Open – Await Response. Existing 49 CFR § 218.105(d) requires that an employee releasing main track authority, where a hand-operated switch was used to clear the main track, must first conduct a job briefing with fellow crewmembers and shall then report to the train dispatcher that the switch used to clear the main track was restored to its normal position and locked. The dispatcher must then repeat that information, and the employee must confirm that the information was repeated correctly. This requirement was promulgated in 2008, when FRA issued a final rule (Part 218, Subpart F), codifying certain provisions of Emergency Order No. 24. 73 Fed. Reg. 8442 (Feb. 13, 2008). Emergency Order No. 24 required railroads to complete a Switch Position Awareness Form (SPAF) anytime an employee operated a hand-operated main track switch. The FRA found in many instances that the SPAF, although properly filled out, did not reflect the actual position of the switch (i.e., it was not restored to its normal position). Conversely, FRA also found that although main track switches were in fact lined and locked properly, there were many instances of failure to properly complete the SPAF. In lieu of the SPAF, FRA substituted a requirement for crew job briefings, that is, to create a contemporaneous communication each and every time an employee operated a hand-operated switch in nonsignaled territory while employees were still at the switch. This requirement serves as a cross-check and reinforces the importance of restoring main track switches to their proper position before the crew leaves the location of the switch. The FRA believes that the above crew briefing requirement, in combination with the train dispatcher briefing requirements in 49 CFR § 218.105(d), achieve the intent of R-12-28. As such, FRA has asked that this recommended be classified as "Closed – Reconsidered."	None additional planned.

Item No.	Issue Date	Rec. No.	Open NTSB Recommendation	NTSB Classification and Actions Taken by FRA	Actions Needed to Be Taken by FRA
43	5/24/2012	R-12-29	Require that until appropriate switch position warning technology is installed on main track switches (in nonsignaled territory not equipped with PTC), when a main track switch has been reported relined for a main track, the next train to pass the location approach the switch location at restricted speed. That train crew should then report to the dispatcher that the switch is correctly lined for the main track before trains are allowed to operate at maximum authorized speed.	Open – Await Response. The FRA discussed a similar requirement when promulgating 49 CFR Part 218, Subpart F. However, as mentioned in the preamble to that final rule, to require subsequent trains to approach main track switches prepared to stop where a previous crew had already restored such switches to their proper (normal) position would introduce safety concerns. 73 Fed. Reg. 8485 (Feb. 13, 2008). Such concerns include a potential increase in train breaks due to the need for additional braking and acceleration, increasing the length of time that highway-rail grade crossings are blocked, and a general concern regarding train brake problems and equipment wear due to the need for additional train braking. Also, FRA stated it had concern that that such a requirement could be unduly burdensome economically (train delay costs, fuel consumption, need for additional train crews under the Hours of Service Act, etc.). The FRA therefore has asked that this recommendation be classified as "Closed – Reconsidered."	None additional planned.
44	11/28/2012	R-12-37	Audit the waiver process to verify it is being managed as required by 49 CFR Part 211.	Open – Await Response. As this recommendation was recently received, FRA is still in the process of preparing its response.	Review recommendation and take appropriate action.
45	11/28/2012	R-12-38	Audit the inspection and enforcement program in all regions for compliance with statutes and regulations related to railroad safety, and correct any deficiencies as required by 49 CFR Part 209.	Open – Await Response. As this recommendation was recently received, FRA is still in the process of preparing its response.	Review recommendation and take appropriate action.

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S-10 Follow-up

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