
Office of Inspector General

Audit Report

FRA IS NEARING COMPLETION OF RULES REQUIRED BY THE RAIL SAFETY IMPROVEMENT ACT, BUT NEEDS TO IMPROVE OVERSIGHT

Federal Railroad Administration

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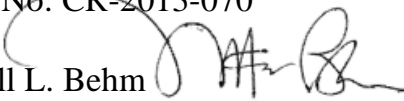
Memorandum

U.S. Department of
Transportation

Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION:** FRA Is Nearing Completion of Rules Required by the Rail Safety Improvement Act, but Needs to Improve Oversight
Federal Railroad Administration
Report No: CR-2013-070

Date: April 17, 2013

From: Mitchell L. Behm 
Assistant Inspector General for Rail, Maritime, and Economic Analysis

Reply to
Attn. of: JA-50

To: Federal Railroad Administrator

In response to several high profile accidents between 2002 and 2008 that resulted in hundreds of casualties and millions of dollars in damages, Congress passed the Rail Safety Improvement Act (RSIA) of 2008.¹ For example, a 2005 collision—between two freight trains in Graniteville, SC—resulted in the release of chlorine gas from a tank car. The accident killed 9 people, required the evacuation of 5,400 others, and caused over \$6.9 million in damages. In September 2008, the collision of a commuter train and a freight train in Chatsworth, CA, resulted in 25 deaths, 125 injuries, and over \$12 million in damages.

RSIA—the first statute in almost 15 years that reauthorizes the Federal Railroad Administration’s (FRA) safety programs—requires FRA to undertake several wide-ranging tasks that broaden its safety-related responsibilities while it continues to meet its pre-existing responsibilities. Among these new responsibilities are requirements that FRA promulgate 17 rules to improve railroad safety. Because of this significant increase in the Agency’s rail safety responsibilities, we reviewed FRA’s implementation and oversight of the new safety rules. Our objectives were to assess FRA’s: (1) progress in completing the RSIA-required rules; and (2) ability to ensure compliance with the new rules.

In conducting this audit, we reviewed RSIA and FRA documents related to regulatory development, promulgation, and enforcement. We interviewed FRA officials responsible for developing, issuing and ensuring industry compliance

¹Pub. L. No. 110-432, Div. A.

with rules. We also interviewed representatives of the railroad industry and railroad labor organizations. We conducted this audit between February 2012 and January 2013, in accordance with generally accepted Government auditing standards. Exhibit A contains further details on our scope and methodology.

RESULTS IN BRIEF

FRA has issued 8 of the 17 RSIA-required rules and has made progress on finalizing the remaining 9. However, the Agency issued seven of the eight after their statutory deadlines, and has missed the deadlines for six of the remaining nine. Weaknesses in FRA's planning for its rulemaking work delayed rule issuance. While FRA focused its early efforts almost entirely on the rule on positive train control (PTC),² Agency officials did not establish priorities for work on the other rules. Furthermore, FRA's policy does not incorporate best practices for Federal Advisory Committees, and the Agency also did not follow its own policy for using its Rail Safety Advisory Committee (RSAC),³ resulting in procedural inefficiencies. For example, FRA staff did not distribute an important document in advance of a working group's meeting, and the Agency's economist did not identify the rule's cost-benefit implications for stakeholders during group discussions. Delayed promulgation of RSIA-required rules delays the mitigation of railroad industry safety hazards that Congress intended the rules to address.

FRA did not provide its oversight staff with the guidance, training, and supervision required to oversee compliance with certain RSIA rules. The Agency did not update its compliance manuals to reflect new rules before beginning oversight of five new rules—PTC, electronic recordkeeping for hours of service, concrete crossties, bridge safety standards, and camp car health and safety. Furthermore, FRA staff reported that they received insufficient training to oversee compliance with the PTC, camp car health and safety standards, and electronic recordkeeping rules. Finally, FRA has not defined what constitutes adequate supervisory review, and does not require documentation of supervisory reviews. As a result, supervisory review of safety oversight work has been limited and inconsistent. The lack of updated compliance manuals, sufficient training, and consistent supervisory review of oversight work impedes FRA's efforts to ensure compliance with RSIA rules.

²PTC is a communication-based system designed to prevent accidents caused by human factors, including train collisions, derailments due to speed, incursions into work zones, and movement of trains through switches left in wrong positions. Human factor accidents are accidents due to causes such as employee physical condition, improper communications, and improper train handling.

³RSAC is a Federal Advisory Committee. These committees provide advice to the President and Executive Branch agencies on a broad range of issues that affect Federal policies and programs—including development of rules—and afford the public an opportunity to provide input to Government decisions.

We are making a series of recommendations to strengthen FRA's rulemaking planning process and subsequent oversight of implementation of new rules by the railroad industry.

BACKGROUND

RSIA requires FRA to complete a number of initiatives to improve rail safety. The 17 new or revised rules will govern a wide variety of safety areas, including PTC, track maintenance, recordkeeping for employees' hours of service, and highway-rail grade crossings.⁴ RSIA also mandated deadlines for 13 of the rules that span more than 4 years.

FRA follows the standard process by which Federal agencies promulgate new or revised rules. After enactment of a Federal statute that requires an agency to promulgate rules, the agency initiates the rulemaking by preparing a proposed rule and publishing a Notice of Proposed Rulemaking (NPRM) in the *Federal Register*. An NPRM provides the public an opportunity to review and comment on the proposed rule. After the public comment period, the agency publishes a final rule that includes a discussion of the comments. The public then has 60 days to file petitions with the agency requesting reconsideration of the rule. After resolution of any petitions to reconsider, the rule is subject to judicial review in Federal court.

In 1996, FRA established RSAC, a Federal Advisory Committee, to assist in its development of rail safety rules. The RSAC process brings together stakeholders to facilitate communication and development of realistic rules that can be more readily and quickly implemented. RSAC members represent 39 entities, including the Federal Government, State governments, railroad industry associations, rail carriers, labor unions, railroad suppliers, and other industry associations. At its discretion, the Agency requests RSAC's assistance, and RSAC forms a working group to address the task. Working groups develop recommendations that they send to the full Committee, which then recommends regulatory language to FRA. Though it is not required to, FRA generally develops its NPRMs based on RSAC's recommendations. FRA staff represent the Agency on the working groups and provide leadership to guide working groups' deliberations. The Agency has produced guidance that outlines goals for the process; defines the roles of each member of FRA's team; and specifies requirements for communications within the team, with FRA management, with RSAC stakeholders, and with the Office of the Secretary of Transportation and the Office of Management and Budget. The guidance also calls for FRA's team to plan for these working groups, and for senior management to approve the team's positions, negotiation strategies, and

⁴In addition to the 17 rules, RSIA requires FRA to develop a long-term safety strategy, issue 2 guidance documents, report to Congress on the results of 17 studies, and develop 2 model State laws.

timetables prior to working group meetings. The purpose of this planning is to allow the Agency to speak with one voice during negotiations, and ensure that working groups focus on realistic alternatives.

FRA executes its inspection and compliance responsibilities through a staff of railroad safety experts. Safety inspectors are assigned to eight regions across the United States and specialize in one of five safety disciplines—operating practices; track; signal and train control; motive power and equipment; and hazardous materials. FRA also employs technical specialists in positive train control, rail and infrastructure integrity, and industrial hygiene. The specialists work throughout the country and report to Division directors in FRA’s headquarters in Washington, DC. Supervisors, also located throughout the country, are responsible for evaluating inspectors’ performance.

FRA IS MAKING PROGRESS TOWARDS ISSUING RSIA-REQUIRED RULES, BUT WEAKNESSES IN ITS PLANNING HAVE DELAYED COMPLETION

FRA issued 8 of the 17 RSIA-required rules, and several others are nearing completion. However, weaknesses in the Agency’s planning for its rulemaking work have delayed rule issuance. FRA focused its early efforts almost entirely on the PTC rule, but Agency officials did not establish clear priorities for work on the other rules. Furthermore, FRA did not follow best practices for Federal Advisory Committees or its own policy for the use of RSAC, resulting in procedural inefficiencies such as no advance distribution of important documents.

FRA Has Made Progress on Issuing Rules but Missed Deadlines

FRA has issued eight rules, but missed statutory deadlines for seven, as shown in Table 1. These eight rules include those on PTC, bridge safety and concrete tie standards, and health and safety standards for camp cars—the camper-like units on rail cars that Norfolk Southern uses to house its track maintenance crews at work sites (see Exhibit C for further details).

Table 1: Final RSIA Rules

RSIA Section and Rule Topic	RSIA Deadline	Final Rule Date	Missed Deadlines
104 - Positive Train Control (PTC)	None ^a	January 15, 2010	
108 - Hours of Service Recordkeeping	April 14, 2009	May 27, 2009	✓
202 - State Action Plans (Crossing Safety)	October 16, 2009	June 28, 2010	✓
205 - Grade Crossing Emergency Reporting Number	April 16, 2010	June 12, 2012	✓
402 - Conductor Certification	April 16, 2010	February 8, 2012	✓
403 - Concrete Ties	April 16, 2010	April 1, 2011	✓
417 - Bridge Safety Standards	October 16, 2009	July 15, 2010	✓
420 - Camp Cars	April 1, 2010	October 31, 2011	✓

Source: OIG Analysis

^aAlthough RSIA does not contain a deadline for the issuance of the PTC rule, it does contain a deadline for implementation of PTC systems by railroads.

As detailed in Table 2, FRA has made progress on the remaining 9 rules. These nine include those on risk reduction programs, minimum training standards and plans for safety-related railroad employees, and revisions of existing rules on drug and alcohol testing to include maintenance of way employees.⁵ Seven of the nine unissued rules also have mandated deadlines, six of which the Agency has missed.

⁵Maintenance of way employees are workers that are responsible for the construction and maintenance of railroad rights of way.

Table 2: RSIA Rules in Progress

RSIA Section and Rule Topic	RSIA Deadline	Most Recent Action	Date of Most Recent Action	Missed Deadlines
103 - Risk Reduction Programs	October 16, 2012	ANPRM	October 8, 2010	✓
103 - System Safety Programs	October 16, 2012	NPRM	September 7, 2012	✓
204 - Grade Crossing Inventory	None	NPRM	October 18, 2012	
401 - Minimum Training Standards and Plans	October 16, 2009	NPRM	February 7, 2012	✓
403 - Rail Integrity	May 2, 2013	NPRM	October 19, 2012	
406 - Dark Territory Signaling	October 16, 2009	NPRM in Development	None Reported	✓
410 - Critical Incident Plans	None	Rulemaking Initiated	November 14, 2008	
412 - Drug and Alcohol Testing	October 16, 2010	NPRM in Development	None Reported	✓
413 - Emergency Escape Breathing Apparatus	April 16, 2010	NPRM	October 5, 2010	✓

Source: OIG Analysis

FRA's delayed promulgation of the rules has deferred mitigation of railroad accidents that Congress intended the rules to address. For example, in the Committee Reports accompanying RSIA's passage,⁶ Congress noted that human factors caused the largest percentage of accidents. However, the Agency's promulgation of the rule setting minimum training standards for safety-related railroad employees—a rule intended to reduce human-factor accidents—remains incomplete even though the deadline was October 16, 2009. Even though this rule's deadline passed over 3 years ago, Agency officials said they made it a high priority. Similarly, the rules that require freight and passenger railroads to implement risk reduction programs and system safety programs are intended to reduce the incidence of human-factor-caused accidents, but are still not finalized. Furthermore, rules on emergency breathing apparatuses, grade crossing inventories, and rail integrity are intended to mitigate risk of injury and death due to hazardous materials releases, highway-rail grade crossings, and track defects, respectively, but they are also all still outstanding.

FRA Focused Early Efforts on the PTC Rule, but Prioritization for the Other Rules Remains Unclear

FRA officials informed us that they conducted comprehensive planning to prioritize RSIA rulemaking projects. However, they could not provide evidence of

⁶S. Report 110-270 and H. Report 110-336

their decision making process, and prioritization of projects beyond the highest priority—the PTC rule—is unclear. According to FRA officials, the Agency focused first on the PTC rule due to the size and scope of its expected impact on the railroad industry.⁷ The Agency also interpreted the statute’s explicit deadlines for industry implementation of PTC as deadlines for its promulgation of a rule. Furthermore, according to FRA officials, the PTC rule was a highly technical one that required significant resources from both the Agency and external stakeholders. FRA issued its initial rule⁸ well in advance of other rules because it had allocated a substantial number of personnel to the rule’s development.

Best practices outlined by the Administrative Conference of the United States⁹ call for senior managers of Federal regulatory agencies to develop strategies for setting rulemaking priorities and tracking initiatives. Other than the PTC rule as its first priority, however, FRA could not provide a record of its decision making on how it prioritized the other RSIA rules, and many of the officials involved in the process have left the Agency. Absent documentation, FRA officials told us that the Agency used a set of ten criteria—including project complexity, safety implications, and statutory deadlines¹⁰—to prioritize its RSIA rulemakings. However, based on our analysis, FRA did not apply these criteria consistently. For example, Agency officials stated that they gave high priority to certain projects—chief among them the PTC rule—because they were complex, and others—such as the rule on State action plans to address highway-rail grade crossing safety—because they were simple. They stated further that they gave high priority to rules with statutory deadlines. They also informed us that some rules with deadlines—such as those on the health and safety standards for camp cars and emergency notification systems for highway-rail grade crossings—were given lower priority due to the Agency’s belief that the related safety issues had been largely resolved without regulatory action.

FRA acknowledges that there is no document that clearly records how it made its decisions on prioritization and related actions. In annual reports to Congress on its RSIA initiatives, FRA summarized the mandates of the law and provided updates on the status and planned steps to complete the requirements. The Agency also cited priorities, but did not include its rationale for the prioritization of certain rules over others or explanations of why priorities changed. Furthermore, in at

⁷In the regulatory impact analysis accompanying the first rulemaking on PTC, FRA estimated the cost to industry of implementing the rule at between \$9.6 billion and \$13.2 billion.

⁸Due to litigation over the rule, FRA is required to issue two additional amendments to the rule on PTC, one of which is not yet final.

⁹The Administrative Conference of the United States is an independent Federal Agency. One of its purposes is to study the efficiency, adequacy, and fairness of the administrative procedures—including rulemaking—used by agencies in carrying out programs and to make recommendations to improve them.

¹⁰Their other criteria were: the number of staff needed to complete a rulemaking; assigned staff’s existing workloads; whether or not RSAC would participate; similar rulemakings already underway; a rulemaking’s impact on the regulated community; policy and political interest associated with a rulemaking; and time needed to complete a rulemaking.

least one report, FRA identified a finalized rule as a high priority. For example, in its February 2011 report, the Agency cited work to finalize the rule on electronic recordkeeping for hours of service as a top priority, even though it had issued the final rule 2 years prior to the report. In the July 2012 report, FRA gave the same rule a lower priority and used language nearly identical to that in its previous report to describe its actions on the rule.

Moreover, managers gave multiple explanations of the Agency's rationale for prioritization. For example, according to one Agency manager, FRA started work on the rule on conductor certification almost immediately after RSIA's enactment because it had an existing rule to use as a model and development would be simple. However, a more senior official later informed us that the Agency gave this rule high priority because it was a high priority for certain labor organizations.

Weaknesses in FRA's Planning for the RSAC Working Group Meetings Resulted in Inefficiencies

FRA used RSAC to develop 11 of the 17 RSIA rules. However, FRA did not follow best practices or its own policy for use of the RSAC process, resulting in procedural inefficiencies. Furthermore, FRA's use of RSAC did not result in significant reductions in the time needed to finalize the rules, despite Agency officials' naming faster rule issuance as one of the process's major benefits. The General Services Administration (GSA), the Agency responsible for oversight of Federal Advisory Committees, has established best practices¹¹ for management of successful committees. These best practices call for agencies to plan meaningful agendas and carefully organize meetings' logistics. The best practices also suggest that agencies distribute agendas and materials in advance of meetings to help committee members prepare, and to make sure that members clearly understand the issues that fall within the committee's scope.

FRA's own policy on RSAC's process incorporates some but not all of these best practices. For example, the policy directs teams to plan for each RSAC working group meeting to ensure that all issues are identified, all team members' concerns over the issues are addressed, and all team goals are met. However, the policy does not require FRA staff to distribute meeting materials in advance to allow committee members to prepare. For example, prior to an RSAC working group meeting that we observed on an RSIA rule, FRA staff had not provided to stakeholders copies of the rule outline that they planned to use as the basis for meeting discussions. As a result, some stakeholders were not prepared to discuss

¹¹The General Services Administration Office of Government-wide Policy, Advisory Committee Engagement Survey (ACES) Best Practices Report, March 2005.

FRA's proposal and some major issues were tabled for a second day of discussions.

Furthermore, FRA staff did not follow the Agency's policy on communicating important information to the working group regarding regulatory impact analyses.¹² The policy requires FRA staff to make stakeholders aware of the costs and benefits of the issues under discussion. At one working group meeting, however, committee members expressed confusion over how FRA staff had arrived at cost and benefit estimates that had been published in the NPRM for the rule. A time-consuming discussion took place about how to correct the assumptions FRA staff had made in the regulatory impact analysis. At a working group meeting we attended for a different RSIA rule, FRA's economist did not identify general cost-benefit implications during discussions of the proposals. Consequently, because they did not have this information, the working group members could not compare FRA's assumptions to their own experience during the group's discussion.

FRA missed deadlines for 8 of the 11 rules it developed using RSAC. According to FRA officials, working groups' consensus prior to issuance of NPRMs allows the Agency to move more quickly from NPRMs to final rules, even though it is not a formal goal of the process. While the complexities of any given rule may make direct comparisons of rulemakings difficult, analysis of the time FRA required to issue final rules after NPRM publication is illustrative. FRA's use of the RSAC process generally did not result in faster rule development, despite the intended benefit of making rule development more efficient. Table 3 compares the days between NPRM and final rule for completed RSIA rules for which FRA used RSAC to those that it did not.

¹²A regulatory impact analysis is an assessment, including the underlying analysis, of benefits and costs anticipated from the regulatory action, together with a quantification of those benefits and costs, to the extent feasible.

Table 3: Time Required to Finalize RSIA Rules

RSIA Section and Regulatory Topic	RSAC	Days Between NPRM and Final Rule
§ 104 – PTC	Yes	162
§ 108 - Hours of Service Recordkeeping	Yes	N/A ^a
§ 402 - Conductor Certification	Yes	383
§ 403 - Concrete Ties	Yes	213
§ 417 - Bridge Safety Standards	Yes	334
§ 202 - State Action Plans	No	229
§ 205 - Grade Crossing Emergency Reporting Number	No	459
§ 420 - Camp Cars	No	305

Source: OIG Analysis

^aFRA took advantage of an RSIA option to use RSAC to develop the rule and then proceed directly to final rulemaking without issuing a NPRM.

Overall, the RSAC members we spoke with believed the RSAC provided value in rule development. They informed us that RSAC can be an effective process for bringing all stakeholders to the table to develop rules. However, several noted ways that FRA could improve the process that would eliminate the procedural inefficiencies that the RSIA working groups experienced. For example, one member informed us that, in general, RSAC members do not receive FRA's assessments of proposed rules' cost and benefit implications until FRA publishes its regulatory impact analyses in NPRMs. The member noted that it would be helpful if economists were to make working group members aware of their analyses during group discussions to allow stakeholders to respond to FRA's estimates.

INSUFFICIENT GUIDANCE, TRAINING, AND SUPERVISORY REVIEW HAVE HINDERED OVERSIGHT OF COMPLIANCE WITH RSIA RULES

FRA did not provide its oversight staff with the guidance, training, and supervision they needed to oversee compliance with certain RSIA rules. FRA began oversight of its new rules on PTC, hours of service recordkeeping, concrete crossties, bridge safety standards, and camp car health and safety before updating its compliance manuals and related training to reflect the new rules. As a result, FRA staff lacked the guidance and training that would have enhanced their abilities to conduct effective oversight. Furthermore, FRA management and staff informed us that some oversight work received little supervisory review.

FRA Did Not Update Compliance Manuals before Starting RSIA Rule Enforcement Activities

FRA began compliance oversight for RSIA rules¹³ before it provided completed compliance manuals to its oversight staff. The Government Accountability Office (GAO), which establishes standards for internal control in the Federal Government,¹⁴ directs Federal managers to clearly document internal controls in management directives, administrative policies, or operating manuals. Additionally, according to GAO, management is responsible for proper maintenance of the documentation and records. FRA produces compliance manuals for each of its safety disciplines. These manuals are the primary materials for inspection staff's classroom and on-the-job training. FRA also publishes these compliance manuals on its Website to set organizational expectations for inspection tasks, establish investigation requirements, and explain FRA's interpretation and application of rules to both the railroads it oversees and the public. In addition to the guidance provided in the manuals, FRA inspectors typically receive annual training on the rules they enforce.

FRA has published two compliance manuals that cover RSIA rules, but three remain outstanding. As shown in Table 4, inspectors that oversee compliance on hours of service recordkeeping and bridge safety have been performing inspections for over a year without current compliance manuals. Additionally, inspectors did not have a compliance manual to guide them for the three inspections of camp cars they conducted.

¹³To analyze FRA's ability to ensure compliance with the new rules, we limited our scope to final rules. See Exhibit A for additional details about our methodology.

¹⁴GAO, *Standards for Internal Control in the Federal Government*, November 1999.

Table 4. Effective Dates of FRA's Compliance Manuals

Rule Topic	Rule's Effective Date	FRA Discipline	Most Recent Update to Manual	Number of Days Without Manual
PTC	March 16, 2010	Signal and Train Control	April, 2012	747
Electronic Hours of Service Recordkeeping	July 16, 2009	Operating practices	No Manual in Effect ^a	1233
Conductor Certification	February 8, 2012	Operating Practices	No Manual in Effect ^a	296
Concrete Ties	November 8, 2011	Track Maintenance	July, 2012	236
Bridge Safety Standards	September 13, 2010	Rail and Infrastructure Integrity	No Manual in Effect	809
Camp Cars	December 30, 2011	Industrial Hygiene	No Manual in Effect	336

Source: OIG analysis of FRA data.

^aFRA published a new Operating Practices Manual in November 2012, but the sections related to electronic recordkeeping of hours of service and conductor certification were not included.

Twelve of the 36 FRA safety staff that we interviewed¹⁵ told us that to enforce new rules without updated compliance manuals, they relied on the rules' text and preambles published in the *Federal Register*. They also said that regulatory language is often open to interpretation, and to clarify aspects of the rules, they discussed their interpretations with colleagues and supervisors. For example, FRA's new bridge safety standards went into effect in September 2010, but over 2 years later, FRA has not yet issued a compliance manual. According to FRA officials, at the time of our review, the manual was still under development and had not been sent to FRA's Office of Chief Counsel for review. One of the Agency's five bridge safety specialists stated that a compliance manual is important for correct interpretation of the new rule.

Similarly, FRA's new camp car health and safety rule went into effect in December 2011. FRA began enforcement activities in January 2012, but has not yet provided its inspectors with a compliance manual. According to both FRA inspectors that had conducted camp car inspections, the lack of a compliance manual makes it difficult to conduct complete oversight. For example, the new camp car rule defines potable water as water that meets the U.S. Environmental

¹⁵We interviewed all staff who have been responsible for oversight of the PTC (seven specialists and two senior test monitors), bridge safety standards (five specialists and the chief engineer), and camp car rules (two inspectors). We also interviewed random samples of ten operating practices and ten track inspectors. FRA employs 67 inspectors in operating practices discipline, which oversees compliance with hours of service rules. FRA employs 73 inspectors in its track discipline, which oversees the concrete cross tie rule. See Exhibit A for additional details on our methodology.

Protection Agency's National Primary Drinking Water Standards. The rule also contains requirements for the storing, testing, and distributing of potable water for camp car inhabitants. However, an FRA inspector responsible for two camp car inspections informed us that because he had no guidance on how to test water quality, he would report that the water was potable if he observed that it looked clear. According to FRA officials responsible for the manual's development, as of July 2012, the manual was still incomplete and would have to be reviewed by FRA's Office of Chief Counsel before issuance to inspectors.

FRA issued compliance manuals on the PTC and concrete crosstie rules after the rules were in effect. According to FRA officials, an internal review of the PTC manual—issued in April 2012, over 2 years after the rule's effective date—contributed to the manual's late issuance. Similarly, FRA issued its track safety standards manual, which includes guidance on concrete crosstie rules, in July 2012—almost 8 months after the concrete crossties rule went into effect. FRA officials attributed this delay to a lengthy review process and the collaboration with the training division on the manual's update. According to FRA, compliance manuals are important for staff's interpretation of the rules and the railroads' education on the rules.

This lack of current compliance manuals leaves FRA inspectors without formal, written guidance on complete oversight of the RSIA-required rules. Consequently, inspectors often develop ad hoc interpretations for enforcing the rules. Similarly, because they do not have access to FRA's interpretation of the rules in these manuals, railroads and other industry stakeholders face difficulties planning for and adhering to new regulatory requirements.

Some Enforcement Staff Have Not Received Training on Compliance Enforcement

We spoke with 21 staff responsible for oversight of three RSIA rules—PTC, camp car health and safety standards, and electronic hours of service recordkeeping—and 13 informed us that they lacked sufficient training to oversee the industry's implementation of the rules. According to GAO's standards, personnel need a level of competence that allows them to accomplish their assigned duties. Additionally, according to GAO, management must identify the needed knowledge and skills for various jobs and provide appropriate training.

While FRA policy requires training assessments for new rules, we found differences between managers' assessments of inspectors' training needs and what the inspectors told us their needs were. For example, Agency officials informed us that they did not have time to develop PTC training due to heavy workloads. FRA therefore provided on-the-job training by sending PTC staff from FRA's regions

where little PTC testing¹⁶ occurs to assist with oversight in regions where testing does occur. Six of the nine PTC oversight staff informed us that they need additional training in order to be confident in their abilities to oversee PTC tests.

Both FRA inspectors that have conducted camp car inspections under the new health and safety standards reported that their oversight has been incomplete because it requires use of equipment with which they have no experience or training. For example, the rule contains requirements for the amount of light inside camp cars. The inspectors, however, informed us that they lacked training on how to measure the lighting and did not have the proper measuring equipment. Consequently, they did not review compliance with this part of the rule. FRA management stated that the final compliance manual will contain clear instructions for complete oversight of the rule, including the use of necessary equipment, and staff will not need additional training.

While all OP inspectors we spoke with indicated that they had received sufficient training about the content of the new hours of service rule, half of them also said they lacked sufficient training on how to access electronic records of employees' hours of service—or hours spent on work shifts. In order to retrieve hours of service records from the railroads' electronic systems, usually in response to an employee complaint or as part of an accident investigation, inspectors had to request assistance from FRA management or railroad employees. This need for assistance made their inspections of the records more time consuming. FRA management explained that there is training on electronic recordkeeping under development, but in general, hours of service enforcement is not a top priority for the OP Division because other rules are more likely to improve safety.

Insufficient training for enforcement staff impedes FRA's efforts to ensure that railroads comply with its rules.

FRA Does Not Consistently Conduct Supervisory Reviews

FRA's supervisory review of oversight work has been inconsistent. Staff and management responsible for enforcement of five regulatory areas—bridge safety standards, hours of service, concrete crossties, camp car health and safety standards, and PTC—informed us that there is a lack of supervisory review of some oversight work. GAO's Standards for Internal Control call for Federal management to provide qualified and continuous supervision to ensure that internal control objectives are achieved. The Standards specify that ongoing monitoring should occur in the course of, and be integrated with, an agency's normal operations. FRA has implemented this standard by requiring that

¹⁶FRA staff oversee the tests that railroads conduct to ensure that PTC technology functions safely.

supervisors review their staff's work. However, the Agency has not defined what constitutes a qualified and continuous review, and does not require that supervisors create and maintain records of their reviews.¹⁷

In the absence of Agency policy for the conduct and documentation of supervisory review, supervisors' reviews of safety oversight work have been inconsistent. For example, most OP and track inspectors we spoke with reported that continuous supervisory review of their oversight work on the hours of service and concrete crosstie rules does occur. Four of the 20 inspectors we interviewed, however, informed us that, to their knowledge, their supervisors conducted few if any reviews of their enforcement work. Managers in both the OP and track divisions reported that direct supervisors are responsible for reviews of inspectors' work. However, they also informed us that FRA does not have policies on the frequency of supervisory review. Furthermore, while supervisors are responsible for documenting annual performance reviews, OP and track division policies do not call for supervisors to document their ongoing reviews of inspectors' oversight work.

Staff who oversee rules on bridge safety standards informed us that they had no knowledge of ongoing review of their inspections. The bridge specialists' supervisor told us that he dedicates his time to reviews of railroads' plans for maintenance of bridge structural integrity—the same work that the specialists do—but he does not review the specialists' work.

Staff and management responsible for oversight of the camp car and PTC rules informed us that there was a lack of qualified supervisory review of some work. Track division staff have been inspecting camp cars to supplement the industrial hygiene division's staff, but there has been little supervisory review of the track division staff's inspections by qualified industrial hygienists. Two of seven PTC specialists informed us that their supervisors did not provide regular feedback on their oversight work. One staff person attributed this lack of review to the supervisor's lack of knowledge of the PTC system he oversees.

This lack of continuous and qualified supervisory review of oversight work compromises FRA's ability to ensure that oversight of RSIA rules is correct and complete.

¹⁷FRA does require supervisors to document reviews of safety violation reports. By issuing a violation report to a railroad, FRA starts the process by which instances of noncompliance with Federal safety rules are ultimately brought to the railroad's attention through the civil penalty process. Supervisors indicate their review and approval of inspectors' violation reports by forwarding them to FRA's Office of Chief Counsel for review and assessment of civil penalties.

CONCLUSION

RSIA gave FRA new regulatory responsibilities that have significant implications for railroad industry safety. Achievement of the safety-related outcomes that Congress intended under RSIA is dependent upon Agency managers' planning and direction of resources and FRA's attention to all of its oversight responsibilities. Deficiencies in FRA's planning and actions to ensure compliance with new rules will hinder the Agency's ability to meet its congressional mandates and improve rail safety.

RECOMMENDATIONS

We recommend that the Federal Railroad Administrator:

1. Develop a plan for completion of outstanding RSIA-required rulemakings. The plan should include milestones for completion and describe the Agency's rationale for prioritization of rulemakings.
2. Conduct an assessment of the way that RSAC is used to identify improvements that could improve efficiency.
3. Require the updating of compliance manuals or other written guidance by rules' effective dates to ensure that FRA inspectors and railroads are aware of the rules' requirements and FRA's interpretations of the rules.
4. Establish a formal process for inspectors to participate in the identification of training needs for new rules.
5. Require inspectors to receive updated training prior to conducting compliance inspections to enforce new or revised rules.
6. Develop a policy that defines what constitutes qualified and continuous supervisory reviews and requires supervisors to create and maintain records of their reviews.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided a draft of this report to FRA on January 18, 2013, and received the Agency's response, which is included in its entirety as an appendix to this report, on March 21, 2013. In addition, FRA provided technical comments on a draft of this report, which we incorporated, as appropriate. FRA concurred or partially

concluded with all of our recommendations. FRA's proposed actions for recommendation 2 are responsive and we consider it resolved but open pending completion of planned actions.

However, in the introductory comments in its response, FRA incorrectly states that our conclusions leading to recommendation 2 are based on our partial attendance at only 3 of 50 RSAC meetings. In fact, our findings regarding the RSAC process derive from numerous meetings with FRA staff and managers and with a wide variety of stakeholder groups. Our observations of the RSAC meetings simply corroborated many of the concerns previously raised in those meetings. We have modified our scope and methodology in Exhibit A to more fully explain our work related to this finding.

FRA's proposed actions for recommendations 1, 3, 4, 5, and 6 do not address the intent of our recommendations and we consider those recommendations open and unresolved. Specifically:

For recommendation 1, FRA partially concurred. The Agency proposes providing us with a document that broadly explains its prioritization and describes its progress on each remaining RSIA rulemaking requirement with associated milestones. However, we do not consider FRA's proposed actions responsive. To consider the recommendation resolved, we will need additional information on FRA's planned actions. Specifically, FRA's document will need to outline a strategy for completing outstanding rulemaking requirements along with associated milestones, the Agency's rationale for prioritization of the requirements, and how that prioritization will be translated into action.

For recommendation 3, FRA partially concurred and indicated that it plans to "continue to ensure that inspectors and regulated entities have guidance documents in advance of the rules' effective dates." However, we found that the guidance provided to inspectors did not equip FRA inspectors to perform effective oversight. In its introductory comments, FRA cited positive replies to two questions from a broad survey of the Office of Railroad Safety workforce. Specifically, 80 percent agreed that the "workforce has the job-relevant knowledge and skills necessary to accomplish organizational goals[.]" and 77 percent of respondents agreed that they had "enough information to do [their jobs] well." We cannot comment on the validity of the survey and do not have specifics on the response rate FRA received. In contrast to a broad based employee satisfaction survey, we spoke with numerous FRA staff responsible for oversight of the PTC rule, the bridge safety standards rule, and conducting inspections of camp cars, and additional staff from FRA's track and operating practices disciplines. Many of these individuals told us that in the absence of additional written guidance, they relied on discussions with their colleagues to clarify aspects of rules that are open

to interpretation. FRA's plan to continue its current practice does not address the concern we identified. Therefore, we request that FRA reconsider its response and detail how it will develop a policy or alternative procedures to ensure that inspectors have sufficient written guidance prior to undertaking enforcement activities for new rules.

For recommendation 4, FRA partially concurred. FRA references its performance management system, which provides for employee involvement in performance plan development and the use of performance appraisals as a basis for determining their training needs. FRA's plan to reemphasize its current approach is a misinterpretation of the intent of our recommendation. We therefore have modified the language of our recommendation to clarify our intent. We recognize that in discussions regarding employees' performance, supervisors likely discuss employees' training needs. However, our concern is that FRA is not addressing specific training needs to meet *newly developed requirements*. Because many of the inspection staff we spoke with identified additional training needs in light of their new responsibilities, FRA's plan to reemphasize its current approach is not sufficient. We agree with FRA that the Agency should not create redundant requirements, especially if those requirements do not address the identified management control weakness. We request that FRA reconsider its response and provide details on how it plans to meet the intent of the recommendation.

For recommendation 5, FRA concurred and stated that its current practice for training inspectors on new rules involves the use of "discipline-specific and multi-region meetings as cost-effective opportunities for rule development teams to discuss implementation with front-line inspectors." However, the supervisors of staff responsible for overseeing three of FRA's new rules informed us that training was not available at the time that enforcement began. Furthermore, many staff responsible for overseeing these rules informed us that they lacked sufficient training to oversee the industry's implementation of the new rules. As a result, FRA's intent to address our recommendation by incorporating current practice into policy is insufficient to ensure that FRA's staff can confidently oversee railroads' compliance with the Agency's rules. Accordingly, FRA's planned actions are not responsive and we consider the recommendation unresolved.

For recommendation 6, FRA concurred and stated that it will review in more detail its supervisory review practices, and within 180 days of issuance of this report, provide us a summary of the review. However, as we noted in our report, the Agency has not defined what constitutes qualified and continuous supervisory review for all inspection activities, and does not require supervisors to maintain records of their reviews. FRA's review of its supervisory practices will need to address these concerns in order for us to consider their actions fully responsive and the recommendation resolved.

ACTIONS REQUIRED

FRA's planned actions and timeline for recommendation 2 is responsive, and we consider that recommendation resolved but open pending completion of the planned actions. FRA's planned actions to address recommendations 1, 3, 4, 5, and 6 are not responsive. We consider these recommendations open and unresolved. In accordance with Department of Transportation Order 8000.1C, we request that FRA provide additional information regarding their planned actions for recommendations 1, 3, 4, 5, and 6, as described above, within 30 days of this report. We appreciate the courtesies and cooperation of FRA representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-9970, or Yana Hudson, Program Director, at (202) 366-2985.

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cc: DOT Audit Liaison, M-1
FRA Audit Liaison, RAD-43

EXHIBIT A. SCOPE AND METHODOLOGY

We conducted our work from February 2012 through January 2013 in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To evaluate FRA's progress developing and issuing RSIA-required rules, we analyzed RSIA to determine which rules it directs FRA to promulgate, and verified the status of the rules as of October 31, 2012, using documents obtained from the *Federal Register*, the Unified Regulatory Agenda, and FRA. To determine how late overdue rules were, we calculated the number of days that had elapsed after the statutory deadlines. We interviewed the Acting Associate Administrator, Staff Directors responsible for appropriate Divisions, and appropriate Specialists from FRA's Office of Safety Assurance and Compliance; several Economists and the Director of the Office of Safety Analysis; and trial attorneys and Deputy Associate Chief Counsels from FRA's Office of Chief Counsel to identify the challenges FRA faced in developing and issuing RSIA rules.

To assess FRA's planning for RSAC working group meetings, we analyzed best practices for the management of Federal Advisory Committees published by the GSA, assessed FRA's policy for the RSAC process, and conducted more than 15 interviews with FRA staff and managers involved in the development of rules using the RSAC process and representatives of RSAC member organizations. We also attended three RSAC meetings to corroborate the information provided in those interviews.

To assess FRA's ability to ensure compliance with RSIA rules, we examined all five final RSIA-required rules for which FRA had oversight responsibilities as of or prior to July 1, 2012 and for which FRA will have ongoing oversight responsibility. These five rules were the PTC, electronic hours of service recordkeeping, concrete crossties, bridge safety standards, and camp car rules. We met with Staff Directors and Specialists in FRA's Office of Safety Assurance and Compliance to determine FRA's progress updating compliance manuals and training to incorporate new rules.

To determine the preparedness of FRA's safety inspectors to enforce the RSIA rules, we conducted structured interviews with 36 inspectors responsible for the oversight of all five rules within the scope of the analysis. We spoke with all FRA staff who have been responsible for overseeing PTC (seven inspectors and two

senior test monitors), bridge safety standards (five specialists), and camp car rules (two inspectors). For electronic hours of service recordkeeping, and concrete crossties, we coordinated with OIG's statistician to select, from the Department of Transportation's Pay and Personnel database, a random sample of 10 out of 73 track and 10 out of 67 OP inspectors. Because our samples were random, they are unbiased, but because of small sample sizes, they may not be representative.

Only one railroad, Norfolk Southern, is affected by the camp car rule because it is the only one that houses employees in camp cars. To determine whether Norfolk Southern had received sufficient guidance from FRA about the new rule and what role FRA officials have played in overseeing Norfolk Southern's continued compliance, we visited the Norfolk Southern railroad to meet with officials and see a set of refurbished camp cars.

EXHIBIT B. ACTIVITIES VISITED OR CONTACTED

- Federal Railroad Administration, Headquarters (DC)
 - Office of Chief Counsel
 - Office of Safety Assurance and Compliance
 - Industrial Hygiene Division
 - Operating Practices Division
 - Rail Infrastructure and Integrity Division
 - Bridge and Structures Safety Staff
 - Signal and Train Control Division
 - PTC Staff
 - Track Division
 - Office of Safety Analysis
 - Railroad Safety Information Management Division
 - Risk Reduction Program Division
 - Highway-Rail Crossing and Trespasser Programs Division
 - Railroad Safety Technical Training and Standards Division
 - Safety Regulatory Analysis Division

- Offices of the Regional Administrators (Inspection staff)
 - Region 1, Cambridge, MA
 - Region 2, Crum Lynne, PA
 - Region 3, Atlanta, GA
 - Region 4, Chicago, IL
 - Region 5, Ft. Worth, TX
 - Region 6, Kansas City, MO
 - Region 7, Sacramento, CA
 - Region 8, Vancouver, WA

- RSAC working group meetings

Labor Organizations

- United Transportation Union (UTU)
- Brotherhood of Maintenance of Way Employees Division (BMWED)

Trade Associations

- Association of American Railroads (AAR)
- National Railroad Construction and Maintenance Association (NRCMA)

- American Short Line & Regional Railroad Association (ASLRRA)
- American Public Transit Association (APTA)

Railroads

- Norfolk Southern (NS)

EXHIBIT C. FRA'S PROGRESS ON RSIA-MANDATED RULES

RSIA Section	Description of Rules Requirements and FRA's Progress to Date	Rule's Status
Rulemaking in Progress: ☉ Rulemaking Complete: ●		
§ 103 Risk Reduction Programs	<p>Requires FRA to issue rules requiring all Class I freight railroads and freight railroads with inadequate safety performance to develop and implement safety risk reduction programs that systematically evaluate railroad safety risks on the railroads' systems and manage those risks in order to reduce the number and rates of railroad accidents, injuries, and fatalities. The deadline for issuance of this rule was October 16, 2012.</p> <p>FRA issued an Advanced Notice of Proposed Rulemaking (ANPRM) on December 2, 2010, and a Notice of Proposed Rulemaking (NPRM) is currently under development.</p>	☉
§ 103 System Safety Programs	<p>Requires FRA to issue rules requiring all intercity passenger and commuter railroads to develop and implement system safety programs that systematically evaluate railroad safety risks on the railroads' systems and manage those risks in order to reduce the number and rates of railroad accidents, injuries, and fatalities. The deadline for issuance of this rule was October 16, 2012.</p> <p>FRA issued an NPRM on August 17, 2012 and a Final Rule is currently under development.</p>	☉
§ 104 Positive Train Control (PTC)	<p>Requires FRA to issue a rule which establishes in appropriate detail the essential functions of PTC systems and the process by which those systems will be qualified by FRA. The rule must require all Class I, intercity passenger, and commuter railroads to submit to FRA a plan for implementation of positive train control by December 31, 2015.</p> <p>FRA issued a final rule on December 30, 2009, with amendments published on September 15, 2010, and May 9, 2012. As a result of a settlement agreement related to pending litigation, FRA is developing amendments to the rule.</p>	●
§ 108 Hours of Service Recordkeeping	<p>Requires FRA to issue a rule that revises hours of service recordkeeping regulations and authorizes electronic recordkeeping for rail employees' hours of service. The deadline for issuance of this rule was April 14, 2009.</p> <p>FRA issued its final rule on May 19, 2009, over a month (35 calendar days) after the deadline established in RSIA.</p>	●

<p>§ 202 State Action Plans for Crossing Safety</p>	<p>Requires FRA to issue a rule to require the 10 States with the highest number of grade crossing collisions over the previous 3 years to submit grade crossing safety plans to FRA for approval. The deadline for issuance of this rule was October 16, 2009</p> <p>FRA issued its final rule on June 22, 2010, almost 8 and a half months (249 calendar days) after the deadline established in RSIA.</p>	●
<p>§ 204 Inventory of Grade Crossings</p>	<p>Requires FRA to issue a rule mandating reporting to the National Highway-Rail Crossing Inventory by all States and railroads.¹</p> <p>FRA has established guidance for the States and railroads and issued a NPRM on October 12, 2012.</p>	◎
<p>§ 205 Grade Crossing Emergency Reporting Systems</p>	<p>Requires FRA to issue a rule calling for all railroads to establish reporting systems for the public to advise them of safety issues at their grade crossings. The deadline for issuance of this rule was April 16, 2010.</p> <p>FRA issued its final rule on June 1, 2012, over 2 years (777 calendar days) after the deadline established in RSIA.</p>	●
<p>§ 401 Minimum Training Standards and Plans</p>	<p>Requires FRA to issue a rule establishing minimum training standards for all safety-related railroad employees and to require the railroads to submit to FRA for approval plans for training programs that meet those standards. The deadline for issuance of this rule was October 16, 2009.</p> <p>FRA issued an NPRM on January 25, 2012. FRA held a meeting with the RSAC Working Group tasked with developing this rule to discuss the comments the Agency received in response to its proposed rule on May 8, 2012. A final rule is under development.</p>	◎
<p>§ 402 Certification of Conductors</p>	<p>Requires FRA to issue a rule requiring the certification of railroad conductors. Railroads' certification programs should meet the minimum training standards established pursuant to §401. The deadline for issuance of this rule was April 16, 2010.</p> <p>FRA issued a final rule on October 26, 2011, over a year and half (558 calendar days) after the deadline established in RSIA. In response to petitions for reconsideration, FRA issued amendments on February 2, 2012.</p>	●

¹The Moving Ahead for Progress in the 21st Century Act of 2012 (Pub. L. No. 112-141) repealed the RSIA mandate that FRA issue a rule requiring states to update the inventory, but the mandate regarding railroad reporting stands.

§ 403 Rail Integrity	Requires FRA to conduct a study of inspection practices and then issue rules based on the study's results within two years of the study's completion.	⊙
	FRA has completed the study and issued a NPRM on October 12, 2012. The study was published on May 2, 2011. As a result, the final rule deadline is May 2, 2013.	
§ 403 Concrete Ties	Requires FRA to issue a rule on the integrity and safety of concrete crossties. The deadline for issuance of this rule was April 16, 2010.	●
	FRA issued its final rule on March 24, 2011, almost a year and a half (342 calendar days) after the deadline established in RSIA. The rule was subsequently amended in response to petitions for reconsideration.	
§ 406 Signaling in Dark Territory	Requires FRA to issue standards, guidance or rules governing railroads' use of signaling technology in "dark territories"— areas that have no signaling or other control systems. The deadline for issuance of this rule was October 16, 2009.	⊙
	FRA initiated the RSAC process for this rulemaking, however the Agency suspended the working group's activities when it became apparent to the Agency that the committee was unlikely to reach consensus. FRA is independently developing a NPRM.	
§ 410 Critical Incident Plans	Requires FRA to issue a rule that defines the term "critical incident" and requires all Class I, intercity passenger and commuter railroads to submit to FRA for approval plans for offering debriefing, counseling, and other support services to employees affected by critical incidents. The deadline to initiate this rulemaking was November 16, 2008.	⊙
	FRA initiated this rulemaking on November 14, 2008, 2 days before the deadline to initiate this rulemaking. FRA spent a year to design and plan a study, followed by another year to solicit and award a grant for the study. FRA initially tasked the RSAC Medical Standards working group with this rulemaking, however the Agency decided to task RSAC with the Critical Incident Plan rule separately when it judged the Medical Standards Working Group to be too contentious. FRA is developing a NPRM based on its study and the discussions of the working group, and anticipates issuing a NPRM in February, 2013.	

<p>§ 412 Drug and Alcohol Testing</p>	<p>Calls for FRA to revise its existing rule on drug and alcohol testing to include maintenance of way workers—workers that are responsible for the construction and maintenance of railroad rights of way. The deadline for issuing this rule was October 16, 2010.</p>	<p>⊙</p>
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A NPRM is currently under development.

§ 413
Emergency
Escape
Breathing
Apparatus

Requires FRA to issue a rule calling for railroads to make emergency breathing equipment available on locomotives for employees' use in case of hazardous materials spills.

FRA issued a NPRM on September 28, 2010, and a final rule is under development. FRA has completed a draft of the final rule; however the anticipated costs far exceed the anticipated benefits. As a result, FRA is considering whether there is an economically efficient method for complying with the statutory mandate.

⊙

§ 417
Bridge Safety
Standards

Requires FRA to issue a rule calling for owners of track carried on one or more railroad bridges to adopt bridge management programs. The deadline for issuance of this rule was October 16, 2009.

FRA issued a final rule on July 7, 2010, almost a year (264 calendar days) after the deadline established in RSIA.

●

§ 420
Camp Car
Standards

Calls for FRA to promulgate new health and safety standards for camp cars that serve as housing for railroad employees. The deadline for issuance of this rule was April 1, 2010.

FRA issued a final rule on October 24, 2011, over a year and a half (571 calendar days) after the deadline established in RSIA.

●

EXHIBIT D. MAJOR CONTRIBUTORS TO THIS REPORT

<u>Name</u>	<u>Title</u>
Yana Hudson	Program Director
Brendan Culley	Project Manager
Matt Williams	Senior Analyst
Aaron Schwarz	Analyst
Olivia Starr	Analyst
Susan Neill	Writer-Editor
Megha Joshipura	Statistician



**U.S. Department
of Transportation**

Federal Railroad
Administration

MEMORANDUM

Subject: INFORMATION: FRA Response to OIG Draft Report:
Rail Safety Improvement Act of 2008

Date: March 21, 2013

From: Joseph C. Szabo
Administrator

To: Mitchell L. Behm
Assistant Inspector General for Rail, Maritime,
and Economic Analysis

Reply to the
Attn of: ROA-03

2012 was the safest year in rail history,¹ continuing the decades-long reductions in accidents and incidents and improvements in departmental and FRA safety performance measures. This achievement is even more noteworthy because Amtrak ridership reached an all-time high; rail was the fastest-growing mode of public transit; and intermodal freight traffic surged toward a new record. As demand for rail services grew, record-setting federal investment—combined with substantial private sector support—continued building the foundation for safer, more reliable, and more efficient rail transportation in the future.

This safety record, although never sufficient, is due primarily to the Federal Railroad Administration's (FRA) comprehensive approach, which melds research and development, establishment of minimum requirements, outreach and stakeholder collaboration, compliance inspections, and enforcement. FRA's multidimensional safety strategy is fostering a safety culture evolution toward non-punitive hazard analysis, accident prevention, and innovation. Positive train control systems will be the technology backbone that ensures continuous safety improvement through elimination of certain human factor related incidents and will compliment FRA's efforts related to crash energy management.

While FRA values the rail industry's tremendous progress, we are not satisfied with current safety outcomes. Congress demonstrated its similar concern by enacting the far-reaching *Rail Safety Improvement Act of 2008* (RSIA). FRA has successfully implemented many of RSIA's numerous mandates, including rulemakings, and is pursuing completion of remaining provisions, consistent with the availability of resources.

Successful Rulemaking

¹ Based on preliminary data from the FRA Safety Database.

Appendix. Agency Comments

OIG's draft report acknowledges some FRA accomplishments on RSIA mandates, but it does not convey the context, complexities, and requirements of FRA's mission and the rulemaking process. FRA measures its mission success in terms of safety progress—lower rates of rail-related accidents and incidents. FRA's regulatory program maximizes safety by developing rules based on facts, incident and accident causation analysis, comparison of alternative mitigation measures, and cost-effective solutions. Successful rules consider current and future industry capabilities, compliance burden and cost, and other economic and social realities. In this context, FRA makes every effort to reach statutory milestones with its available resources.

To maximize safety through its regulatory program, FRA often works with the Railroad Safety Advisory Committee (the Committee), thereby improving the quality and transparency of rule development. As its charter states, in part,

The Committee . . . fully involves our affected entities, makes the best use of resources, and accommodates the rapidly evolving changes in the rail transportation industry. By harnessing the combined wisdom, resources, and experience of railroad industry experts who have the greatest knowledge and interest in promoting rail safety, including security, FRA is able to leverage its resources to produce rules that are more responsive, flexible, and better accepted by those required to implement them.

In 2012, the Committee held approximately 50 working group and other meetings, many of which were multiple days long. OIG's report includes conclusions about the Committee's efficiency based on auditors' partial attendance at 3 of the 50 meetings. Other modal administrations within the U.S. Department of Transportation are modeling their advisory committees on FRA's experience.

Moreover, the federal rulemaking process is designed to ensure analytical rigor, multiple opportunities for public participation, and coordination across agencies. Consequently, a rulemaking might take years to complete. When rules involve particularly complex, contentious, or novel issues, the process takes much longer. For example, "significant regulatory actions"² require departmental and Office of Management and Budget review and clearance, which lengthens the process by up to 4 months at each of the proposed rule and final rule stages. Many RSIA rulemakings fall into the significant regulatory action category, with the associated longer process, further increasing FRA's challenge to meet statutory milestones.

Ensuring Compliance

As OIG recognizes in its draft report, ensuring compliance with new rules is essential to maximizing safety outcomes. To that end, FRA has built a safety oversight workforce that is highly motivated, well trained, and expertly skilled in numerous technical disciplines and

² The criteria for "significance" include any regulatory action that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. (Executive Order 12866, *Regulatory Planning and Review*, September 30, 1993)

Appendix. Agency Comments

specialties. Many inspectors and specialists come to FRA with decades of operational experience, which we build on and refine through continuous, comprehensive, and specialized guidance, classroom and on-the-job training, mentoring, and developmental opportunities. FRA's results on the 2012 government-wide *Employee Viewpoint Survey* confirm this achievement,³ in contrast with OIG's anecdotes from a small number of employees. Almost 80 percent of Office of Railroad Safety respondents agreed or strongly agreed with the statement, "The workforce has the job-relevant knowledge and skills necessary to accomplish organizational goals," compared to the government-wide average of 72 percent. In addition, almost 77 percent of Office of Railroad Safety respondents agreed or strongly agreed with the statement, "I have enough information to do my job well," 5 percentage points higher than the government-wide average.

Because FRA's goal is continuous safety improvement, it devotes substantial resources to supporting and developing our mission-critical workforce. FRA is committed to exploring additional tools and techniques that will further develop our inspectors and specialists, as FRA's responses to the recommendations below explain further.

OIG Recommendations and FRA Responses

OIG Recommendation 1: Develop a plan for completion of outstanding RSIA-required rulemakings. The plan should include milestones for completion and describe the Agency's rationale for prioritization of rulemakings.

FRA Response: Concur in part. FRA has maintained a continuous planning effort, through DOT's regulatory review process and consultations with stakeholders, since RSIA's enactment. DOT's Regulatory Management System contains FRA's milestones for the remaining RSIA rulemaking mandates, reflecting this planning, review, and consultation effort. To fulfill this recommendation explicitly, FRA will provide a document within 90 days of OIG's issuance of its final report that synthesizes FRA's RSIA-related planning materials. The document will broadly explain FRA's prioritization and describe FRA's progress on each remaining RSIA rulemaking requirement with associated milestones.

OIG Recommendation 2: Conduct an assessment of the way that [the Rail Safety Advisory Committee (the Committee)] is used to identify improvements that could improve efficiency.

FRA Response: Concur. Since its inception, the Committee has developed remarkable consensus on numerous complex and challenging regulatory matters. Nevertheless, FRA welcomes ideas to improve the Committee's future efficiency and effectiveness, thereby further leveraging FRA's resources to produce safety solutions that are more responsive,

³ About 77 percent of FRA employees responded to the 2012 survey, compared to the department rate of 62 percent and the government-wide rate of 46 percent.

Appendix. Agency Comments

flexible, and readily implemented. FRA will solicit ideas from the Committee participants

and review relevant federal advisory committee best practices for efficiency opportunities. Moreover, FRA looks forward to learning about the Committee member suggestions OIG heard during its audit. Not later than 12 months after OIG's issuance of its final report, FRA will provide OIG a summary of this effort.

OIG Recommendation 3: Require the updating of compliance manuals or other written guidance by rules' effective dates to ensure that FRA inspectors and railroads are aware of the rules' requirements and FRA's interpretations of the rules.

FRA Response: Concur in part. FRA agrees that its inspectors and regulated parties should be fully aware of FRA requirements and interpretations as regulatory changes become effective. To that end, FRA uses numerous methods to maintain the currency of its inspectors' knowledge base, including the preamble and section-by-section analysis in the rulemaking documents; training sessions, webinars, and video teleconferences; public and internal Web site postings; technical bulletins; and consultations, in addition to compliance manuals.

Moreover, as affected parties and inspectors gain experience with new requirements, FRA refines its interpretations and perfects its guidance to reflect this accumulated knowledge. Issuing compliance manual updates before this learning process unfolds would be premature and not a cost-effective use of resources. Furthermore, FRA compliance manuals by themselves are not the proper instrument—nor are they intended to be used—for providing new guidance, addressing issues of first impression, or training inspectors on new regulations. Compliance manuals are compilations of enforcement and interpretative guidance that is developed and updated over time. FRA recently completed new versions of its compliance manuals. Looking forward 5 to 10 years, advances in technology and communications will likely enable FRA to rely increasingly on flexible, electronic solutions, rather than static compliance manuals.

As FRA completes the remaining RSIA rules, FRA will continue to ensure that inspectors and regulated entities have guidance documents in advance of the rules' effective dates. Accordingly, FRA requests that OIG close this recommendation.

OIG Recommendation 4: Establish a formal process for inspectors to participate in the identification of their training needs.

FRA Response: Concur in part. Identifying training needs and opportunities is necessarily a collaborative effort between employee and supervisor; FRA requires such collaboration (Order FRA 3430.5D, October 2011). FRA's performance management program specifically provides for employee involvement in performance plan development (Section 2, 1.a) and the

Appendix. Agency Comments

use of performance appraisals as a basis for determining training needs (Section 9, 4.a). Supervisors discuss training needs with each employee no less frequently than twice each year—at the beginning and midpoint of each performance period. The supervisor discusses with the employee past performance, areas for improvement, and training needs and opportunities.

In addition, FRA's competency model, *Learning and Development Guide for Employees, Team Leaders, and Supervisors*, identifies 16 core competencies for inspectors. FRA policy requires inspectors and supervisors to use this model and planning tool to help identify employee strengths and weakness non-punitively. The tool, which is available electronically, encourages two-way communication between supervisor and subordinate. As a result, they might agree that the employee will take FRA technical training courses, study independently, or engage in formal practice sessions with coaching and on-the-job training or informal practice with feedback. FRA also conducts a formal needs analysis at the end of each fiscal year to determine technical training needs.

Rather than create a redundant requirement, FRA proposes to close this recommendation by reemphasizing the existing requirements with supervisors and employees and underscoring it in FRA's supervisory training materials. FRA expects to accomplish these measures within 45 days of OIG's issuance of its final report.

OIG Recommendation 5: Require inspectors to receive updated training prior to conducting compliance inspections to enforce new or revised rules.

FRA Response: Concur. This recommendation reflects FRA's current practice for implementing regulatory changes. In addition to the practices described in FRA's response to recommendation 3 above, FRA has used discipline-specific and multi-region meetings as cost-effective opportunities for rule development teams to discuss implementation with front-line inspectors. To close this recommendation, FRA proposes to incorporate existing practices, subject to the availability of funds, into policy. FRA expects to accomplish this action within 180 days of OIG's issuance of its final report.

OIG Recommendation 6: Develop a policy that defines what constitutes qualified and continuous supervisory reviews and requires supervisors to create and maintain records of their reviews.

FRA Response: Concur. FRA organizes its oversight and enforcement workforce geographically, with further distinctions based on technical disciplines and functions. Each discipline and functional group has distinct responsibilities and supervision structures and practices, which also reflect FRA's grade structure. In all cases, FRA takes advantage of technology to ensure employees and supervisors communicate frequently whether or not they are in the same location.

Appendix. Agency Comments

FRA assigns the rail safety inspectors to geographic regions. Within each region, the inspectors report to supervisory specialists by technical discipline (i.e., operating practices, track, hazardous materials, motive power and equipment, and signal and train control). Inspector grades include GS-7 through GS-12; supervisory specialists are GS-13s. FRA's *National Inspection Plan* guides the field inspectors' work plan and activities. Supervisory specialists accompany inspectors on some inspections to verify that they conduct inspections properly and in accordance with the *General Manual*. In addition, FRA's *Inspection Dashboard* helps supervisory specialists monitor the productivity of individual inspectors, including their adherence to the National Inspection Plan and the numbers and types of defects. The Dashboard also includes accident data, which helps supervisory specialists detect emerging safety issues that the frequency or quality of inspections might influence.

FRA strategically locates functional specialists (i.e., positive train control, bridge, rail integrity, and industrial hygiene) throughout the United States. These specialists, regardless of their primary duty stations, report to Washington, D.C.-based staff directors. Commensurate with their grade levels, functional specialists generally work independently. Functional specialist grades are GS-12, GS-13, and GS-14; staff directors are GS-15s. Staff directors review all responses to enforcement findings, which are documented for the record and then subject to FRA senior leadership review. In addition to unscheduled contacts, staff directors typically hold at least six staff meetings each year to provide guidance and discuss issues.

Layering onto these supervisory practices, FRA's performance management program applies to all staff, as referenced in FRA's response to recommendation 4 above. This program includes employee and supervisor agreement on the employee's critical performance objectives and standards, coaching and feedback throughout the year, and mid-year reviews and year-end appraisals to document each employee's individual and team accomplishments.

In response to OIG's recommendation, FRA will review in more detail its supervisory practices, with particular focus on functional specialists and documentation. Within 180 days of OIG's issuance of its final report, FRA will provide OIG a summary of the review, including identification of cost-effective opportunities to strengthen employee-supervisor communication, information sharing, and record keeping.

We appreciate this opportunity to offer additional perspective on the OIG draft report. We also appreciate the courtesies of the OIG staff in conducting this review. Please contact Rosalyn G. Millman, FRA Planning and Performance Officer, at 202.493.1339, with any questions or requests for additional assistance.

Appendix. Agency Comments