

***Recommendation to the RSAC Committee from the Track Standards Working Group
regarding RSAC Task 11-02, Track Inspection Time Study***

On October 16, 2008, the Rail Safety Improvement Act of 2008 (“RSIA”) (Pub. L. 110-432, Division A) was enacted. Section 403(a) of RSIA required the Secretary to conduct a study of track issues, known as the Track Inspection Time Study (Study). The Study was to determine whether track inspection intervals needed to be amended; whether track remedial action requirements needed to be amended; whether different track inspection and repair priorities and methods were required; and whether the speed of track inspection vehicles should be regulated. As part of the study, Section 403(b) instructed the Secretary to consider “the most current rail flaw, rail defect growth, rail fatigue, and other relevant track- or rail-related research and studies,” as well as new inspection technologies, and NTSB and FRA accident information. The study was completed and presented to Congress on May 2, 2011. Under Section 403(c), two years after the completion of the study, FRA was to prescribe regulations based on the results of the Study.

On August 16, 2011, the Railroad Safety Advisory Committee (RSAC) accepted task 11-02, which was generated as a response to RSIA and to address the recommendations of the Study. Specifically the purpose of the task was “[t]o consider specific improvements to the Track Safety Standards or other responsive actions to the Track Inspection Time Study required by section[s] 403 (a)-(c) of the [RSIA] and other relevant studies and resources.” The first meeting of the Track Standards Working Group (Working Group) assigned to the task occurred on October 20, 2011, and a second meeting was held on December 20, 2011. At the third meeting on February 7-8, 2012, the Association of American Railroads (AAR), along with the

Brotherhood of Maintenance of Way Employees Division (BMWED), proposed that FRA had met its obligations under Section 403 of the RSIA through its rulemakings on vehicle/track interaction (VTI), rail integrity, and concrete crossties, and that further action on task 11-02 was unnecessary and it should be closed. FRA took the proposal under advisement after the February meeting and conducted its own analysis as to whether FRA had met the mandates of Section 403. FRA concluded that its obligations under Section 403 had been met and scheduled a conference call for April 13, 2012 to discuss its proposal to conclude RSAC task 11-02. This document illustrates how recent and concurrent FRA rulemakings have fulfilled the mandates of RSIA Section 403 and recommends that RSAC task 11-02 be closed.

As stated above, the purpose of the task was to determine what regulations, if any, FRA should develop based on the Study. The Study described four issues for consideration to improve the track inspection process:

- Expanding the use of automated inspections;
- Developing additional training requirements for track inspectors;
- Considering a maximum inspection speed for track inspection vehicles; and
- Influencing safety culture through a safety reporting system.

The first recommendation was that FRA consider expanding the use of automated inspections to improve inspection effectiveness. Specifically, the Study cited two specific track defects that are more difficult to detect through visual track inspection, and could benefit from the use of automated inspection: rail seat abrasion (RSA) and torch cut bolt holes. Through discussion among the affected parties, it was determined that these areas of concern already had been covered under previous rulemaking and regulations. In the Concrete Crossties final rule published on April 1, 2011, new Section 213.234, Automated Inspection of Track Constructed

with Concrete Cross Ties, specifically employs the use of automated inspection “to measure for rail seat deterioration.” In addition, torch cut bolt holes have been prohibited on track classes 2 and above since 1999, which was codified in Sections 213.121(g) and 213.351(f), and they are easily identifiable through the current rail flaw detection technology in use. Thus, new regulations to find such defects are unnecessary.

Outside of these two specific defects, FRA will also be revising automated inspection standards in other areas. In the upcoming Rail Integrity notice of proposed rulemaking (NPRM), FRA intends to include the RSAC recommendation that ultrasonic testing of rail be changed from a standard based on time and tonnage to one based on self-adapted performance goals.

Thus, the Working Group has concluded that the use of automated inspection has been sufficiently expanded in the areas that are most ideally suited for development at this point. While FRA and the Working Group may wish to make changes to the automatic inspection standards in the future, at this point the Working Group maintains that the changes stated above sufficiently satisfy RSIA’s mandate and the task may be closed.

However, FRA, BMWED and AAR agree that it is important to ensure that any type of report generated from the automated inspection of track, regardless of whether it is mandated by regulation or voluntarily utilized by a railroad, should be made available to track inspectors. Therefore, FRA plans to issue policy guidance to encourage track owners and railroads to provide the information from their automated track inspections in a usable format to those persons designated as fully qualified under 49 CFR Part 213 and assigned to inspect or repair the track over which the automated inspection was made. This guidance is likely to be published as part of the forthcoming Rail Integrity NPRM.

The second recommendation the Study addresses is whether FRA should develop additional training requirements for track inspectors. The Working Group has found that it is unnecessary for the group to generate additional training standards under task 11-02 for two reasons. First, as recommended by the Working Group, the upcoming Rail Integrity NPRM would propose to create new Section 213.238 to address an area of training that requires new standards. Section 213.238 would define a qualified operator of rail flaw detection equipment and require that each provider of rail flaw detection service have a documented training program to ensure that a flaw detection equipment operator is qualified to operate each of the various types of equipment currently utilized in the industry for which he or she is assigned, and that proper training is provided in the use of newly-developed technologies. Second, recently published on February 7, 2012, the Training, Qualification, and Oversight for Safety-Related Railroad Employees NPRM proposes to require that employers develop and submit for FRA review a proposal on how they will train their track inspectors. The NPRM states,

Employees charged with the inspection of track or railroad equipment are considered safety-related railroad employees that each employer must train and qualify. Proposed § 243.5 defines *safety-related railroad employee* to specifically include an individual who is engaged or compensated by an employer to “(3) In the application of parts 213 and 214 of this chapter, inspect . . . track; (4) Inspect . . . locomotives, passenger cars or freight cars; (5) Inspect . . . other railroad on-track equipment when such equipment is in a service that constitutes a train movement under part 232 of this chapter; [and] (6) Determine that an on-track roadway maintenance machine or hi-rail vehicle may be used in accordance with part 214, subpart D of this chapter, without repair of a non-complying condition.”

The proposal would also require that the training program developed by each employer be submitted to FRA for approval. § 243.109. Thus, the proposal places the burden on each employer to address in its program how it will train those employees charged with the inspection of track or railroad equipment 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. Furthermore, FRA would reject a program that fails to adequately address training for those employees charged with the inspection of track or railroad equipment.

The proposed formal training for employees responsible for inspecting track and railroad equipment is expected to cover all aspects of their duties related to complying with the Federal standards. FRA would expect that the training programs and courses for such employees would include techniques for identifying defective conditions and would address what sort of immediate remedial actions need to be initiated to correct critical safety defects that are known to contribute to derailments, accidents, incidents, or injuries. FRA would also expect that the proposed required refresher training address these issues and satisfactorily address Congress's concern for "ongoing training." Because this is a specific statutory requirement, FRA would expect that each employer would pay particular attention to address this issue in its training program.

The Working Group concludes that the training of track inspectors is adequately addressed by the recent Training NPRM, and thus, no further action is currently necessary in this area.

The third recommendation of the Study addresses whether track hi-rail inspection speed should be specified. It concludes that specifying limits to hi-rail inspection speeds could be "counterproductive." At this point, with the currently available data in this area, the Working Group concurs with the Study's recommendation, and therefore, no further action needs to be taken by the Working Group in this area at this time. The Working Group notes that the existing reliance on the "inspector's discretion" as noted in 49 CFR 213.233 should govern track inspection speed; therefore the Working Group recommends to FRA that this section be emphasized in the next publication of FRA's Track Safety Standards Compliance Manual.

Finally, the last recommendation of the Study addresses ways to enhance the track safety culture of railroads through programs such as a safety reporting system, like the Confidential Close Call Reporting System currently piloted by FRA. The Working Group is aware that the RSAC Risk Reduction Working Group, which is currently developing requirements for railroads to develop risk reduction programs, should incorporate many track safety concerns in this area. The Working Group believes that additional, overlapping discussion in this area is currently unnecessary given the specific concurrent focus of the RSAC Risk Reduction Working Group.

In addition to addressing the Study's recommendations, task 11-02 also incorporates goals Congress had for the study, which are described in Section 403(a), such as reviewing track inspection intervals and remedial action requirements, as well as track inspection and repair priorities. The Working Group suggests that the RSAC's and FRA's recent and ongoing rulemakings are sufficiently addressing these areas and no further work is currently necessary. Specifically, the Rail Integrity rulemaking is intended to amend inspection intervals to reflect a new performance-based inspection program, revise the remedial action table for rail, and alter inspection and repair priorities involving internal rail testing and defects such as a crushed head and defective weld. The Concrete Crossties final rule also established new inspection methods and intervals requiring automated inspection, as well as new remedial actions for exceptions that can be field-verified within 48 hours. Finally, in addition to other requirements, the VTI rulemaking is addressing track geometry, inspection, and VTI safety requirements for high speed operations and operations at high cant deficiency over any track class.

Therefore, the Working Group has concluded that further work on any of these areas, as included in task 11-02, would be unnecessary at this time, give the recent and ongoing work of the RSAC and FRA. Thus, the Working Group recommends that the full RSAC body vote to close task 11-02.