

# **RAILROAD SAFETY ADVISORY COMMITTEE (RSAC)**

## **Minutes of Meeting July 24-25, 1996**

The meeting of the RSAC was convened at 8:35 a.m., in Ballroom C the Lowe's L'Enfant Plaza Hotel, 480 L'Enfant Plaza, S.W., Washington, D.C. 20024, by the RSAC Chairperson, FRA's Acting Associate Administrator for Safety, Phil Olekszyk.

As RSAC members, or their alternates, checked-in, attendance was recorded. Two of the forty-eight voting RSAC members were absent: The National Conference of Firemen & Oilers (1 seat) and The Hotel Employees & Restaurant Employees International Union (1 seat).

CHAIRPERSON PHIL OLEKSZYK INTRODUCED THE NATIONAL TRANSPORTATION SAFETY BOARD'S (NTSB) CHIEF OF THE RAILROAD DIVISION, ROBERT LAUBY, WHO WAS UNABLE TO ATTEND THE FIRST RSAC MEETING. ALL RSAC MEMBERS RE-INTRODUCED THEMSELVES AND THE ORGANIZATIONS THEY REPRESENT TO THE FULL COMMITTEE.

CHAIRPERSON PHIL OLEKSZYK INTRODUCED FRA DEPUTY ADMINISTRATOR DONALD M. ITZKOFF.

Deputy Administrator Itzkoff made introductory remarks, explaining that FRA Administrator Molitoris could not be present as she was attending an Amtrak Board of Directors Meeting on the West Coast. He stated that four tasks were adopted by RSAC at the first meeting in April. He assured the committee that FRA wanted the present tasks resolved before other tasks would be assigned. He stressed that FRA is committed to making RSAC work but that RSAC represents a different way of making decisions. He explained that FRA employees underwent training so that RSAC would work, and stressed that working group participants need to be able to make decisions that bind their organizations. He assured those skeptics about the RSAC process that FRA has made an absolute commitment to making this process work because nothing is more important than safety. Working together, he concluded, we will have a successful outcome for ourselves and the American people.

CHAIRPERSON OLEKSZYK DISCUSSED AGENDA FOR THE DAY.

EDWARD R. ENGLISH PRESENTED THE TRACK WORKING GROUP PROGRESS REPORT (a summary of which is found at Tab 6 of the Meeting Materials).

The track working group met May 7-9, at which time they formulated and approved a "mission statement," "team contract," and "ground rule protocols." They agreed to deal with Congressional mandates and outstanding National Transportation Safety Board recommendations first. Subsequent meetings were held June 19-21, and July 8-15. Future meetings were scheduled for August 13-15, and September 10-12. Through the first three meetings, the Working Group had approved the formation of the following Task Groups to address these specific issues: (1) High Speed Rail Standards; (2) Continuous Welded Rail (CWR) Standards; (3) Excepted Track; (4) Internal Rail Flaws; and (5) Track Geometry.

High Speed Rail Standards Task Group: Mr. English reported that the task group met on a regular basis to develop standards for passenger train speeds up to 200 mph, which would be included in a new Subpart G. He also reported that they have decided that the present standards for Class 6 operation should also fall within the domain of the High Speed Rail Task Group. He stated that Amtrak's geometry car will be equipped with instrumented wheelsets in August of this year. This will allow technical experts to correlate track geometry conditions with wheel/rail forces and vehicle accelerations. Computer modeling programs can also be verified with the aid of instrumented wheelset testing.

CWR Standards Task Group: Mr. English reported that the task group presented a draft proposal for the addition of a new Section 213.119 to the Working Group. This Section would require each track owner with track constructed of CWR to have, in effect, written procedures which address the installation, adjustment, maintenance and inspection of CWR, and a training program for the application of those procedures.

Excepted Track Task Group: Mr. English reported that the Task Group has met several times with various issues being discussed. Industry has suggested a notification requirement to help curb alleged abuses of the regulation. He stated that other issues are being discussed, but that no consensus has been reached by the Task Group.

Internal Rail Flaw Task Group: Mr. English reported that the task group presented a consensus draft proposal to the Working Group, which addresses the following aspects of internal rail inspection requirements: (1) Applicability to all Class 3 trackage; (2) Tonnage based test frequency requirements; and (3) Requirements for when a non-test is reported due to rail surface conditions. He stated that the Task Group is presently working on revisions to the "Remedial Action Table" for rail defects.

Track Geometry Task Group: Mr. English reported that the task group was formed in July to consider minor changes to certain Sections of 49 C.F.R Subpart C - Track Geometry.

Other Issues Within Part 213: Mr. English reported that the remainder of the existing standards were being reviewed for possible changes within the Working Group itself.

He reported that Accident/Incident data has been produced to focus attention on those areas where revisions may be in order. He reported that consensus has been reached on some minor revisions, while other sections will remain unchanged. Conversely, many other issues have been raised, and suggested changes discussed, during Working Group meetings. These issues will be re-visited at each successive meeting in order to promote a consensus agreement.

He concluded by explaining that the Working Group will provide a status report on each separate rule, when it next meets in August, to identify the issues that need to be resolved in order for the group to meet the October deadline.

Ray Linewebber (UTU) asked what excepted track status means, and about non-test requirements.

Mr. English replied that changes in excepted track status would mean additional record keeping requirements and that the new rules will define what a “non-test” is.

Joe Mattingly (BRS) asked whether vegetation along track should be addressed, particularly around grade crossings (Vegetation Rule, 49 C.F.R. 213.37) in track, or grade crossing, tasks?

Mr. English explained that the AAR had said that [the vegetation] issue would be brought before RSAC.

William Loftus (ASLRA) provided further clarification to Mr. Mattingly’s question.

Chairperson Olekszyk indicated that the vegetation issue will be presented to RSAC tomorrow, after FRA determines how it should be presented.

Mr. Itzkoff then requested an evaluation of the Track Working Group Task. Mr. Mattingly said he feels the RSAC process is a very productive way of doing business.

Mr. Loftus compared the RSAC process to the Roadway Worker Protection safety process, noting that data should hit the floor first. He said that it was problematic when data wasn’t present at the beginning of the process because it slows down the whole process.

Robert Lauby (NTSB) asked if the Track Working group was looking at the collapsed rail phenomena observed in the Octivia, New York accident?

Mr. English said it had not been addressed up to this point because the Board [NTSB] recommendations were not known. He asserted that it would be brought up at the next Working Group meeting.

Mr. Itzkoff asked if the Track Working Group would meet the October deadline?

Mr. English replied that the group had made great progress, but that it would be a struggle to meet the October deadline. He explained that the data for High-Speed issues would take time to develop.

William Clifford (BLE) indicated that meeting deadlines should not be the focal point because FRA has missed deadlines for years. Rather, the focal point should be the production of good rules.

Mr. English commented that the Track Working Group is working towards creating the best set of rules by the October deadline.

Mr. Itzkoff reminded the Track Working Group of the vital importance of the group's work, and that they must resolve as many issues as possible by October. He explained that the group should be able, by October, to report how far they've come, how much of the task remains, and how long they need to complete the task.

Chairperson Olekszyk replied that he does not want to miss deadlines. He suggested that if High-Speed rail be carved out of the track task if it cannot be addressed in time due to a lack of data, with the group submitting a timely report on the remainder of the rule.

Mr. English replied that the Track Working Group was working with the October deadline in mind and would strive to achieve it.

FRA REGIONAL ADMINISTRATOR RICHARD MCCORD MADE THE RADIO COMMUNICATION WORKING GROUP PROGRESS REPORT (a summary of which can be found in Tab 7 of the Meeting Materials).

Mr. McCord reported that the working group met, initially, on June 26-28, and July 22-23. He explained that the Radio working group was working with a shorter deadline than the other RSAC working groups, that of September 1st. He reported that meetings were scheduled to be held twice in July and August to meet the September deadline. He reported that emergency communications in passenger accidents were a major consideration for the group, but that existing regulations had served as the starting point for their deliberations. He stated that, as of July 24, the group had examined 70% of Part 220. He indicated that current rule text and proposed changes would be sent to the working group soon. He indicated that the group was determining when, and under what circumstances, communications (not just "voice" communications) are necessary? He said the group divided radio/voice communications into three general categories: (1) emergencies; (2) routine railroad operations; and (3) employee inquiries about the operating environment. He said that the Working Group will develop an operational definition of problems in each of the three communications categories. He said that

four committees have been established to consider specific tasks that need to be accomplished: (1) Rule Drafting Committee; (2) Technology Committee; (3) Accident Data Committee; and (4) Equipment and Practice Survey Committee.

He said that much of their work is data driven. He indicated that the group is gathering data from FRA's accident databases to uncover all accidents that are "radio-" or "communication-" related. In addition, he said that the group is examining current technology (to prevent FRA from mandating the use of less sophisticated technology, when rail carriers may already be using more advanced communication technology). Mr. McCord also said that a presentation of "state of the art" communications technology will be made to the full RSAC discussing what is currently being done, what can be done, and different types of data transmission. In addition, Mr. McCord said that the group was surveying the AAR, ASLRA, and APTA to gather information about the nature of problems experienced with radio communications. Mr. McCord also indicated that although the survey information will not be back until August 15, 1996, the Radio Communications Working Group was still operating under a September deadline.

Mr. Lauby (NTSB) asked Mr. McCord whether the Technology Task Force is looking into the auctioning of frequencies by the FCC. Can anything be done by FRA about refarming radio frequencies?

Mr. McCord said that this issue keeps coming up. The AAR's Wayne Edder made a presentation on what refarming is. **(To the radio rules group? Or to RSAC during the meeting?)** Mr. McCord stated that the Technology Task Force felt that this issue was beyond the Working Group's control and fell within the FCC's realm.

William Loftus (ASLRA) asked what kind of rules are being drafted?

Mr. McCord replied that the great issue facing the Working Group is compliance with current regulations. He said that no one has a problem with the rule, but that no one is complying with the rule. In addition, he said that the Working Group was struggling with the level of detail that should be specified in the regulations. For example, should FRA specify the use of "over and out" at the end of a conversation, [or other acceptable radio jargon]? Finally, should FRA accommodate current practices, for example if a railroad is using cell phones, should FRA require radios? He stated that these were some of the issues with which the working group was struggling.

M O R N I N G   B R E A K   (9:45 - 10:15 A.M.)

CHAIRPERSON OLEKSZYK INTRODUCES FRA'S MIKE HUNTLEY  
FOR POWER BRAKE PROGRESS REPORT (a summary of which can  
be found at Tab 5).

Mr. Huntley gave a history of the Power Brake working group and task force meetings:

*Intital Working Group Meeting:* Held on May 15-17, with two outside facilitators helping to mediate the group. Working group decided to utilize, after considering other starting points, a summary of issues that FRA developed following its review of comments received for the Notice of Proposed Rulemaking published in September 1994.

*Second Working Group Meeting:* Held on June 11-13, with an FRA Special Projects Coordinator as the facilitator due to restrictive time commitments of the initial facilitators. Task force groups formed to address the specific issues of dry air, dynamic brakes, and periodic maintenance and testing/single car testing. Adoption of an existing task force responsible for reviewing issues concerning electronically controlled braking systems to address the same as it relates to this effort. Task force groups reported that they had met during the first week of June, and provided summary reports on progress made. Working group addressed many of the less contentious issues first but soon tackled the acknowledged major and/or contentious issues, including inspection and testing requirements, operational requirements, and personnel qualifications. Inspection and Testing Task Group formed at this time.

*Dynamic Brake Task Group:* Met on June 26-27, 1996. Discussed many issues, including initial terminal, intermediate, and inbound inspection requirements and procedures, classification of train types and associated testing requirements, and the definition and designation of repair points.

*Inspection and Testing Task Group:* Met in lieu of the full Power Brake Working Group on July 8-9. Discussed the presentation of existing data relating to power brake testing and inspection, considered the accuracy of the data presented, and discussed the need for additional data collection to validate results. Management representatives presented their recommendations for revision of the freight power brake regulations based on their data and presentation. Brief discussion of recommendations, and agreement that members need time to consider the recommendations and respond. Met in place of the full working group on the first day of the July 30 scheduled meeting.

*Dry Air Task Group:* Met on June 19, and subsequently performed field testing to gather data to present to the working group.

*Periodic Maintenance and Testing/Single Car Testing Task Group:* Met on July 15-16 to develop data issues.

*Electronically Controlled Braking Task Group:* Met on July 1-2.

Inspection and Testing task force and Dynamic Brake task force are scheduled to meet on July 30. The full Power Brake Working Group is scheduled to meet on the following dates: July 31-August 1, August 21-23, and September 18-20.

Mr. Huntley reported that large contentious issues are being addressed, rather than small issues, in 3 categories: (1) operating requirements; (2) personnel testing and qualifications; and (3) inspection testing. He said the group is working hard towards meeting the October 1 deadline but that he thought meeting the deadline would be optimistic. He said that the decision-making process needs to be accelerated.

Al Reinschmidt (AAR) asked if the Working Group is dealing with electronically controlled locomotive braking, and Mr. Huntley said that it was. Mr. Henry B. Lewin (BRC/TCU) asked who was heading the Task Group, and Mr. Huntley said that FRA's Harold Rugh (Pittsburgh, Pa. Field Office) was.

Thomas P. McDermott (BRC/TCU) said that he believes FRA needs to step up to the plate and identify their position. He asked where FRA stands on various issues.

Chairperson Olekszyk responded that, in his experience, it was not productive to let FRA's position, to the extent that they have one, be known too early. He said that FRA has positions on rule implementation but does not have a position on what the regulation should look like. He said that FRA is looking for consensus.

Grady Cothen (FRA) responded that FRA tries to avoid "re-deciding" issues. He explained that FRA has interests--enforcement, for example--but to the specification of outcomes can create polarization. He said that FRA is trying to listen to the parties but, if the parties cannot agree, FRA will make the necessary decision.

Mr. Lewin said he appreciated FRA's comments--that the agency is a mediator in this process. But, he reiterated, because time is of essence, FRA needs to step up to the plate.

Chairperson Olekszyk responded that FRA would make it's positions known in September to push the process towards the October conclusion.

CHAIRPERSON OLEKSZYK INTRODUCED FRA'S DEPUTY ASSOCIATE ADMINISTRATOR FOR SAFETY STANDARDS PROGRAM DEVELOPMENT GRADY C. COTHEN, JR. AND THE ASSOCIATION OF RAILWAY MUSEUMS' JAMES D. JOHNSON FOR THE TOURIST, EXCURSION, SCENIC AND HISTORIC SERVICE WORKING GROUP PROGRESS REPORT (a summary of which is found at Tab 8 of the meeting materials).

Mr. Cothen reported that the Working Group, which also includes Class I and shortline railroads initially met on June 17-18. He said that they would conduct a follow-up meeting in September. In the interim, he said, task groups will address issues. Mr. Cothen described the principal tasks to be undertaken as: (1) defining "trolley," and determining whether all trolley operations should be subject to inspection; (2) revising FRA standards for steam-powered locomotives; (3) exploring the limitation of FRA jurisdiction to operations that operate on the "general rail system;" and (4) forging consistency in FRA inspections across different regions and inspector training in steam-powered operations. Mr. Cothen explained that much work has been accomplished by third parties on revising standards for steam-powered locomotives, of which there are only about 150 steam-powered locomotives in operation. He explained that the Steam task force is considering better ways of identifying low boiler water problems, possibly with the use of alarms, because the National Transportation Safety Board cited low boiler water as the principal cause of a recent steam locomotive accident in Tourist and Historic service.

Mr. Johnson introduced himself as a "volunteer" to the Tourist and Museum Working Group. He said that these carriers represent 4/100,000 of the railroad industry, with approximately 200 miles of track. He said that the group is considering a number of topics, for example, whether roadway worker safety rules that apply to "general" system railroads should also apply to "museums". He explained that safeguarding the historic integrity of equipment and operations requires extensive alterations to equipment in order to conform with FRA safety standards. He said that the working group is concerned with safety, obviously but that they are also concerned about reliability issues and administrative issues.

Mr. Cothen stated that in some areas of active rulemaking, there will be a time lag for tourist, museum, scenic & historic railroads before that rule applies to them.

He said that in the area of steam locomotives, which is growing (there are about 150 now in service), FRA was approached by the Museum and Tourist Railroad Associations to discuss revising the existing steam locomotive regulations. He explained that an industry created proposal of changes to steam locomotive regulations is now in circulation within FRA. Consequentially, FRA would like to refer to the Tourist & Historical Working Group, Task No. 96-5, requiring the group to make recommendations to the RSAC, in the form of an NPRM, about revisions to the Steam Locomotive Regulations (49 CFR Part 230) by December 1 [1996].

Mr. Lauby (NTSB) pointed out that that the NTSB's draft report on the Gettysburg [Pa] explosion makes recommendations for boiler requirements to address low water problems. He said that this report will be presented to the full NTSB in September, and that the use of low water alarms, or indicators, would be recommended.



Charles Dettman (AAR) asked if the Tourist and Historic Working Group wanted to accept this task, and Mr. Cothen replied that they did.

**CHAIRMAN OLEKSZYK ASKED FOR A MOTION TO ACCEPT TASK NO.: 96-5. BY MAJORITY HAND VOTE, TASK NO.: 96-5, REVISION OF STEAM-POWERED LOCOMOTIVE INSPECTION STANDARDS, WAS REFERRED TO THE RSAC.**

George McDonald (TWU) requested 15 minutes to caucus members.

Chairperson Olekszyk agreed to allow extra time at lunch for the caucus.

Franklin Pursley (CSXT) asked about FRA's role in this process, asking whether FRA would explain their position in this process.

Chairperson Olekszyk replied that if a consensus cannot be reached on any given issue, that FRA would give their position.

Mr. Pursley stated that if FRA has facts, they should be presented to the Working Groups as soon as possible.

Chairperson Olekszyk replied absolutely, that that is FRA's role.

Edward R. English (FRA) replied that FRA is not telling people how the rule should read. He said that FRA personnel will make sure that all relevant issues get addressed, but will not dictate the language.

**FRA'S DIRECTOR OF SAFETY ASSURANCE AND COMPLIANCE, EDWARD R. ENGLISH, DISCUSSED THE STATUS OF PASSENGER EQUIPMENT AND EMERGENCY PREPAREDNESS ISSUES, INCLUDING EMERGENCY ORDER NO. 20 (E.O. 20)**

William Clifford (BLE) asked about an interpretation of Item 219.13, "...an Emergency Plan control shall notify outside ...". He said that the Train Dispatchers believe that control centers should have contact with parallel commuter or Metro systems operating on adjacent track.

Mr. English informed RSAC that Revisions to E.O. 20 are in review and may be sent to the AAR this week. He stated that FRA explained the provisions of E.O. 20 at the last RSAC meeting [April 1-2, 1996]. The interim safety plan of the initial order, Mr. English explained, will be expanded to a full safety plan. He further explained that a permanent testing requirement for passenger windows was being imposed, and that two other major parts of the initial E.O. 20 have become permanent: (1) delayed block

rule; and (2) calling out signals by a crew member. Finally, he explained that split night shifts on commuter railroads would be eliminated.

Mr. Lauby (NTSB) asked how FRA would evaluate each commuter railroad's safety plans. Mr. English responded that there are 7 specific evaluation items.

Mr. Lauby asked if final plans would be approved. Mr. English responded that FRA would make sure that each plan is comprehensive and addresses the safety issues.

Mr. Johnson (RR Museums) asked whether FRA expects to expand commuter railroad safety plans to include transit and museum railroads? Mr. Cothen responded that FRA would specifically exclude Museum and Tourist railroads for now.

Mr. English stated that every passenger car today is marked. However, he explained, these may not be the final markings, as some railroads are still in the process of obtaining "reflective" signs. In addition, he said, some door latch retrofits may also need to be re-located.

#### LUNCH BREAK (11:45 A.M.- 1:20 P.M.)

Mr. Cothen corrected information from the morning session. He said that one passenger railroad had not supplied an Action Plan for Passenger Equipment under E.O. 20 but that it would do so shortly. He further indicated that FRA had considered asking RSAC to accept the Passenger Equipment Safety Standards Task but, because of commitments already assigned to RSAC, the agency decided not to at this time. Instead, he continued, the RSAC will be kept abreast of what is happening in this area.

He explained that an ANPRM [Advance Notice of Proposed Rulemaking] had been released already and that an NPRM would be issued in the Fall (1996). He explained that the Volpe National Transportation Systems Center is working under contract to FRA on survivability issues, and that the Arthur D. Little Consulting Group is working under contract to FRA on car strength issues. He said that FRA will address NTSB recommendations on cornerpost strength and other issues. He assured the RSAC that a very comprehensive approach is being taken for car standards, inspection and testing. He said that APTA had been active in supporting voluntary safety standards, aiding the adoption of usable standards that are also enforceable.

Donald Nelson (Metro North) (APTA commuter rail committee) stated that he is comfortable with the progress and the point where this issue stands now.

Mr. Lewin replied that he is cautiously optimistic that in the next few days some issues will be resolved that will allow everything else to fall into place.

CHAIRPERSON OLEKSZYK ANNOUNCED THAT INFORMATION WOULD BE PRESENTED ON RECENT RULEMAKING ACTIVITIES COVERING 49 C.F.R. PARTS 233, 234, 235, AND HAZARDOUS MATERIALS (HM) -175A, HM-216. FEDERAL REGISTER NOTICES COVERING THESE RULEMAKINGS WERE HANDED-OUT TO RSAC MEMBERS AND ARE PART OF THE RSAC DOCKET.

FRA'S GRADY COTHEN PRESENTED A BRIEFING ON RECENT RULEMAKING ACTIVITIES INVOLVING 49 C.F.R. PARTS 233, 234 AND 235.

Mr. Cothen explained that a significant issue was resolved from the first grade crossing/signal crossing safety session: a partial signal malfunction will be treated the same as a false activation. Further, FRA proposed that report requirements be less frequently filed, but that they better reflect what is wrong. He said that Part 236 covers inconsistent block clearing intervals. He explained that all of the above regulatory efforts are attempts to resolve issues that have been brought to FRA's attention in the outreach program. He said that railroads have an obligation to clear vegetation from the line of sight on their right-of-way(49 C.F.R. 213.37). He said that FRA's options in dealing with the vegetation issue is to (1) get RSAC to resolve the vegetation issue; and (2) Add resolution of the vegetation issue to a NPRM without the benefit of a working group.

Mr. Dettman replied that grade-crossing issues are significant and that vegetation at grade-crossings cannot be divided from other obstructions at grade crossings. He pointed out that both the Federal Highway Administration and State Public Service Agencies say that vegetation is their issue.

Mr. Clifford asked about the appropriate venue to handle this issue, to which Mr. Dettman responded that RSAC was not an appropriate venue.

Joseph Mattingly (BRS) said that vegetation is an issue because of [49 C.F.R.] 213.37 and should not be removed from the Code of Federal Regulations.

Leroy Jones (BLE) said he had concerns about this issue because he does not want 50 states to get involved. He said he didn't understand why 1 regulation would not be better than 50.

Mr. Loftus said he believed that only half the problem is being examined. He explained that there are public safety, as well as railroad employee safety, concerns here. He said that if RSAC deals with vegetation at highway crossings, the Federal Highway Administration needs to be involved. He concluded that RSAC should create a Grade Crossing Task force, which could consider vegetation and whistle ban issues.

Mr. Lewin suggested that railroads had the ability to solve half the problem. He said that railroads could take care of the vegetation on their property, which is one half the equation, thus enabling the Federal Highway Administration and States to solve the other half of the problem.

Chairperson Olekszyk said that he is inclined to remand the vegetation issue back to the Track Working Group and see what the group can do.

**A MOTION IS MADE, AND CARRIED, TO REMAND THE VEGETATION ISSUE [49 C.F.R. 213.39] BACK TO THE TRACK WORKING GROUP**

FRA'S SYSTEMS SUPPORT DIVISION CHIEF ROBERT FINKELSTEIN BRIEFED RSAC MEMBERS ON CHANGES TO ACCIDENT/INCIDENT REPORTING REQUIREMENTS, 49 CFR Part 225, AS OF JANUARY 1, 1997.

Mr. Finkelstein announced that the Final Rule on Changes to Railroad Accident/Incident Reporting had been issued. He said it encourages railroads to electronically submit records, with FRA providing a Microsoft Windows-based computer software program for the electronic submission of accident/incident reporting. He said that the Final Rule also provides a uniform way of calculating damage to determine whether an accident is reportable to FRA. He indicated that a formal meeting to help decide "codes" for accident/incident report had been announced.

Daniel Foth (APTA) asked when and where the meeting would be held, and Mr. Finkelstein told him it would be held on July 30-31 at 400 North Capital Street, N.W., Washington, D.C. 20001.

Mr. Loftus asks when the meeting was scheduled to begin, and was informed it would begin at 8:30 a.m.

Mr. Dettman asked if there was time to deal with the collaborative issues--the substance of the rulemaking and the way to get there?

Chairperson Olekszyk declared that since a Final Rule had been issued, a Petition of Reconsideration would be required in order to change a Final Rule.

Daniel C. Smith (FRA) added that in the period following the Final Rule, a Petition of Reconsideration would have to be timely filed to modify the rule.

Mr. Dettman asked if RSAC could handle the change?

Mr. Smith responded that FRA only needed to resolve "codes," which was the purpose of Mr. Finkelstein's meeting.

Mr. Clifford asked how FRA intended to follow-up on employee confidential reports involving human factor accidents?

Chairperson Olekszyk asserted that this was an operating practice issue.

Mr. Jones said that there was a harassment factor present when these forms were filled-out. He indicated his belief that something should be done.

Chairperson Olekszyk promised that FRA would investigate these allegations. He added that while no form was confidential, complaints were, however, and would remain so.

Mr. Loftus asked what records FRA was keeping for 5 years if the basic record was the electronic record. Mr. Finkelstein responded that he believes FRA that, if the carrier keeps the record electronically, such are the records that FRA keeps. However, he explained, there are instances where the electronic record is not equivalent to the paper record. Therefore, he said, for the first 3 months of an electronic change-over, paper and electronic records must be identical.

Mr. Mattingly asked if the railroad had to file a batch control form after the electronic switch-over occurred, to which Mr. Finkelstein replied in the affirmative.

Mr. Mattingly stated that this process began before RSAC was created.

Mr. Loftus asked how serious FRA was in terms of collaborative rulemaking, complaining that this was an instance in which he received a Final Rule with no collaboration from FRA.

Mr. Cothen replied that House and Senate Conference Committees ordered FRA to issue a Final Rule by June 1. He said that he hopes that parties dissatisfied with the outcome will appreciate the circumstances under which FRA is operating.

Mr. Lewin questioned FRA's meeting the June 1 date. He alleged that FRA was 17 days late.

Larry I. Wagner (FRA) showed documentation that FRA issued the Final Rule on May 30, even though it wasn't published until after that time.

A F T E R N O O N   B R E A K   2:45 P.M. - 3:10 P.M.

FRA'S HAZARDOUS MATERIAL SPECIALIST JAMES H. RADER PRESENTED  
A BRIEFING ON MISCELLANEOUS HAZARDOUS MATERIALS RAIL RULES

AND THEIR CONSEQUENCES: HM-175A (AS RELATED TO HEAD SHIELD PROTECTION, THERMO PROTECTION AND BOTTOM PROTECTION), HM-201 (DETECTION OF CRACKS, PITS, CORROSION, THERMO PROTECTION FLAWS, AND OTHER FLAWS IN TANK CARS) AND HM 216 (CONSOLIDATION OF PLACARD REQUIREMENTS).

Mr. Pursley asked what percentage of tank cars would experience a ruptured disk filter, and was told by Mr. Rader that after October 1, 1998 there would be very few.

Mr. Lewin asked how residue cars would be treated--whether they'd be treated as if they were full. Mr. Rader responded that they would be treated as residue, not full, cars. He further stated, however, that there was an outstanding issue with the placement of residue cars in train consists.

Mr. Lewin asked how workers will know if there is hazmat residue in cars, and was told by Mr. Rader that cars would be placarded. Mr. Rader said that the U.S. is the only country in the world requiring placards for residue cars.

Mr. Lewin asked if car inspection requirements had been revised, and was told that the requirement for inspection remains.

Mr. Lewin said he has a problem with language that leaves open the question of whether the person performing an inspection has to be qualified.

Mr. Rader indicated his agreement but stated that there currently was no regulation under the Hazmat rules regarding inspector qualifications.

Mr. Lewin asked if inspection by train crews constituted a valid inspection under this rule, and was told yes by Mr. Rader.

Mr. Lewin asked, again, if there is a requirement that an inspection be done by qualified people, and, again, was told (by Mr. Cothen) that there weren't any requirements regarding inspector qualifications--just the basic requirement to conduct an inspection.

Mike Darby (CP) asked if hazmat regulations parallel NAFTA [North American Free Trade Agreement]. Mr. Rader said that while FRA tries to parallel rules with Transport Canada, it's more difficult with Mexico, since Mexico is still working on its own regulations.

Robert Matthews (RPI) asked if this whole subject [hazmat] was a subset of NAFTA negotiations. Mr. Rader said yes, that these regulations were the subject of a "North American Code."

Fred Yocum (ASLRA) asked if regulations regarding placarding were similar for trucks versus rail. Mr. Rader said yes, except that residue placards for rail were required.

Mr. Loftus asked if there were international standards, and was told, by Mr. Rader, that FRA adopts international standards.

Mr. Clifford asked what areas these standards would affect. Mr. Rader responded that some work was being done on rolling stock standards.

Mr. Clifford asked about Engineer Certification standards, and was told, by Mr. English that work was being done presently on Hazmat Equipment Standards, not Engineer Certification Standards.

Mr Lewin asked if differences between rail and highway requirements could be reconciled by modal differences?

Mr. Rader responded that RSPA [DOT's Research and Special Programs Administration] attempts to eliminate hazmat modal difference by adopting North American Standards.

WITH NO FURTHER QUESTIONS, CHAIRPERSON OLEKSZYK REQUESTED RSAC MEMBERS TO SCHEDULE A TENTATIVE MEETING DATE IN OCTOBER.

Mr. Itzkoff made closing remarks, thanking members for attending and participating in the RSAC process.

M E E T I N G   A D J O U R N E D   4:10 P.M.

The RSAC meeting was reconvened at 8:35 a.m. on July 25, 1996, in Ballroom C the Lowe's L'Enfant Plaza Hotel, 480 L'Enfant Plaza, S.W., Washington, D.C. 20024, by RSAC Chairperson Phil Olekszyk.

CHAIRPERSON OLEKSZYK INTRODUCED MEXICO'S MINISTER OF TRANSPORT SEÑOR ANTONIO LOZADA-BAUTISTA.

Mr. Bautista (through an interpreter) stated that Mexico is very interested in what is going on in the U.S, and in our "standards." He said that Mexico hopes to adopt US standards to form the basis for Mexican track standards. He indicated that much of Mexico's future standards will be based on the U.S. standards. He said that Mexico is creating groups involving industry, government, and operators, just like in the U.S. He added that Mexico has had a close relationship with the U.S. for the past 5 or 6 years,

especially now with the passage of NAFTA. He said that Mexico is following closely US rail activities, particularly in the area of interchange between the U.S. and Mexico. Mr. Bautista said that Mexico was grateful to be invited to this meeting, and that it was a pleasure to be there.

CHAIRPERSON OLEKSZYK ANNOUNCED THAT FRA WOULD PRESENT A PREVIEW OF FUTURE TASKS WHICH FRA WOULD LIKE THE RSAC TO CONSIDER ACCEPTING IN THE FUTURE (EVENT RECORDERS, LOCOMOTIVE ENGINEER CERTIFICATION, AND BLUE SIGNAL STANDARDS)

MIKE HUNTLEY (FRA) PRESENTED AN OVERVIEW OF THE EVENT RECORDER (CRASHWORTHINESS) PROPOSAL.

Mr. Huntley said that a Final Rule addressing locomotive event recorders was issued in July 1993, to become effective by May 1995. He said that the issue of crashworthiness of event recorders was not part of the Final Rule and, subsequent to that time, the NTSB had raised this as an issue. He said that a pre-existing working group [consisting of rail management, rail labor, NTSB, FRA, and manufacturers] was formed in December 1995 to consider this issue.

Chairperson Olekszyk asked when the next event recorder working group meeting was scheduled, and Mr. Huntley told him no meeting was scheduled at that time.

Chairperson Olekszyk asked if this task could be presented to RSAC during the October meeting.

Mr. Huntley replied that a "scoping" meeting should probably be held by the existing working group first.

MARK H. MCKEON (FRA) PRESENTED AN OVERVIEW OF THE FUTURE PROPOSED TASK INVOLVING REVISIONS TO LOCOMOTIVE ENGINEER CERTIFICATION STANDARDS.

A draft Issue Paper, for discussion purposes only, was distributed and discussed by RSAC members. The Issue Paper is a permanent part of RSAC Docket and is not excerpted in detail here.

Leroy Jones (BLE) asked about the next step in the process. Chairperson Olekszyk explained that FRA was merely previewing items at this RSAC meeting-- and that if the RSAC agreed, FRA would refer these tasks to them for their consideration.



Mr. Loftus asked what would happen if RSAC chose not to take on the task, and queried what the next step would be. Chairperson Olekszyk responded that FRA would initiate a rulemaking and utilize the traditional rulemaking process.

Mr. Loftus outlined the options for addressing this issue as: (1) RSAC; (2) an open hearing; and (3) traditional rulemaking.

Mr. Cothen responded that Congressional approval would have to be obtained for the agency to hold an open hearing.

Mr. Dettman stated that he was eager to see the efforts already underway brought to light. He said he felt that some of these new proposals wouldn't require resources currently being utilized and that RSAC, therefore, easily could accept new proposals now.

Chairperson Olekszyk responded that FRA has received at least 4 letters complaining that RSAC is spread too thin. He said that these letters would be attached to the Official Docket of RSAC proceedings.

Mr. Jones responded that his organization has added a new division, which could begin working on the Locomotive Engineer Certification issue. He further indicated that he is agreeable to adding the Locomotive Engineer Certification issue to the RSAC agenda now.

Henry Wise (BMW) said that his organization is spread too thin to take this issue on at this time, asking if this task could wait until the October meeting.

Mr. Lewin also said that his resources are spread too thin for him to be effective. He explained that he does not object to taking on new items--he just doesn't want to at this time. He stated that, unless it is a significant safety issue, he prefers RSAC to take care of what is on its plate now.

Mr. Cothen suggested that FRA give the parties some time, between now and October, to review the Locomotive Engineer Certification package. This way, he said, by the time of the next meeting, members will already have reviewed and commented on the issue paper and the Working Group charged with addressing this task will have a head start. He told the RSAC that Mark McKeon would have the lead on this issue.

Mr. Dettman said that he was willing to begin the process with Mr. McKeon to get the preliminary work done up front.

Mr. Clifford concurred that getting started now was a good idea.

Chairperson Olekszyk announced that FRA would have a tasking statement at the October meeting for locomotive engineer certification standards.

Mr. Cothen returned to the issue of event recorder crashworthiness. He explained that there is no industry or manufacturer sponsor for an event recorder crashworthiness standard. Therefore, he said, FRA and the NTSB are moving forward to propose a standard. He explained that FRA would like the standard to be a voluntary one, however, which RSAC members could propose at the October RSAC meeting.

MR. COTHEN PRESENTED AN OVERVIEW OF THE FUTURE  
PROPOSED TASK INVOLVING REVISIONS TO BLUE SIGNAL  
STANDARDS.

Mr. Cothen prepared the RSAC to see this task referred as as early as October. He said that FRA wants RSAC to develop a timetable for the issuance of any revisions to these standards.

Mr. Lewin asked whether railroad employee protection was the only issue to be reviewed, and Mr. Cothen stated that there was also the issue of “contractors,” particularly contractors performing air brake tests on railroad property.

MR. COTHEN PRESENTED AN OVERVIEW OF THE FUTURE  
PROPOSED TASK INVOLVING REVISIONS TO FREIGHT CAR SAFETY  
STANDARDS.

Mr. Cothen again prepared the RSAC to expect a referral of this task in October.

Mr. Lewin asked if FRA was talking about putting this item on the Agenda on October 1, and Mr. Cothen explained that it was up to RSAC. Mr. Lewin replied, at that point, that he felt he could not give this issue the attention it deserves until after the Power Brake Task was completed.

Mr. Dettman said he believed a “position paper” on Blue Signal and on Freight Car Safety Standards, similar to the paper prepared for Locomotive Engineer Certification standards, would be appropriate on these issues. With such a paper, he would be able to determine the technical resource requirements, when they would be available, and what topics were to be covered by the task.

Mr. Cothen offered to provide scoping papers on these issues. He asked whether, in labor’s view, this issue could be accepted in October and was told, by Mr. Lewin, that labor could accept the new tasks if other tasks were settled.

Mr. Cothen summarized that FRA will provide scoping papers on Freight Car Safety Standards and Blue Signal Protection with the idea that sufficient progress will have been made on the four current RSAC tasks, so that new tasks can be assigned.

Mr. Cothen stated that another future task may be PTC/PTS [positive train control/positive train separation]. He said that PTC/PTS would not be on the calendar in October, but might be presented to RSAC early next year. He explained that he was talking about an evaluation of existing technologies and how they can be used, not talking about “mandated systems.”

Mr. Dettman said he understood why PTC was of interest to Congress and FRA. He explained that the BN-UP project was underway, with the first locomotives becoming equipped for PTC service in August. He said that there was a lot of work currently underway, but that issues needed to be developed first. He said that he believed that it was too early, and the issue too highly technical, for RSAC to tackle PTC/PTS at this time.

FRA Administrator Molitoris addressed RSAC. She apologized for her absence the previous day, and discussed the tension between RSAC members who have indicated that they are becoming resource-poor and Congressional pressure for the RSAC to do more. She also acknowledged and welcomed Mexican Minister Señor Antonio Lozada-Bautista.

Mr. Cothen continued the PTC/PTS discussion, citing FRA’s desire to start developing performance standards for PTC systems. He said that this is on FRA’s platter but explained that FRA needs RSAC’s expertise on the issue.

Robert Lauby (NTSB) replied that the NTSB is “pro”-PTC. He said that FRA seems to have many deadlines and commitments. He asked if there is a “master” plan for what FRA needs to address by when. Mr. Cothen replied that Congressional deadlines need to be met and that FRA tried to give priority to safety issues deemed critical by the NTSB, our customers, etc. He stated that it is difficult to describe a “master” plan but, for this issue at least, we have an urgent recommendation by the NTSB and this item is on our agenda. Mr. Cothen offered to provide a list of projects and priorities for RSAC at the next meeting.

Mr. Lauby replied that the NTSB had a priority list, but that it differs from FRA’s, or labor’s. He asked if all of FRA’s projects were of equal priority. He said that the NTSB understood that FRA’s priorities were not the same as the NTSB’s priorities.

Mr. Lewin responded that there might be some overlap among the various working groups and that these working groups could accept similar tasks that have Congressional mandates.

Mr. Olekszyk responded that RSAC was formed to help prioritize the items on our agenda.

Mr. Dettman stated that the AAR would provide a PTC update for RSAC whenever it wants it. He said that software-based systems were a significant issues--the question was whether it would work and whether it was safe. He said he believed that RSAC should consider this issue.

Mr. Cothen replied that FRA's Railroad Development Office is examining this issue. He indicated that they might give RSAC a briefing in the future.

#### M O R N I N G   B R E A K   10:20 A.M. - 10:45 A.M.

Mr. Olekszyk asked if there were any new questions or tasks?

Mr. Dettman announced that the AAR would work on an Event Recorder "paper" for release to RSAC in October. He indicated that this was a very technical issue.

Mr. Lauby asked if this was just an AAR effort, or whether it was an RSAC effort?

Mr. Dettman replied that the AAR would set a meeting date and invite FRA, NTSB, and others to participate. He said they would dovetail with RSAC.

Daniel Foth (APTA) asked how the Locomotive Crashworthiness Task might affect the Passenger Equipment standards working group. Mr. Cothen replied that there was some overlap.

Mr. Dettman asked for guidance on what to do when he is ready to issue a report. He asked what the Working Group should do.

Chairperson Olekszyk explained that the working group would evaluate and determine what tasks were necessary to implement the report. Mr. Itzkoff said that after RSAC receives the report, it will create an "informal working group" to review it and announce what issues should be undertaken as part of the regulatory process.

Leroy Jones (BLE) replied this was a big issue for him. He said he was responsible for getting the report requirement into the legislation. He requested an explanation of what would happen when the report was issued. He asked what would happen if an informal working group disagreed.

Mr. Itzkoff replied that FRA would work with him.

Mr. Jones said that the Locomotive Cab Committee has been in existence for years.

Mr. Foth asked what the anticipated release date was.

Mr. Itzkoff said that he does not want to comment on anything he does not have control over, i.e., the release date of report. He indicated that he wanted to have the RSAC determine, given the report, how best to deal with this issue.

Mr. Loftus replied that everyone had a problem flying blind. He said that RSAC is a formal group with rules, and it troubled him to utilize "informal work groups" which have no real responsibility other than to report back to the RSAC.

Chairperson Olekszyk suggested that RSAC review the report and submit comments individually, rather than through an informal working group.

Mr Smith explained that there was no provision provision for "informal working groups" in the RSAC process. But, he explained, FRA could accept comments returned by RSAC members.

Mr. Lewin asked when the 4 existing working groups would have their work completed?

Mr. Dettman replied that he needs a 2 week period to review Working Group materials.

E.R. (Gene) Plourd (UTU) said that reports should have been read and decisions made before members come to the next RSAC meeting.

Chairperson Olekszyk asked about the Working Group product, and Mr. Cothen gave a general description of it. He said that the task statement requires an NPRM preamble and rule text, to allow economic analysis and regulatory Flexibility review. He cautioned that stylistic and editorial changes were always necessary by OST's General Counsel. He said that the Office of the Secretary and Office of Management and Budget may also review. He indicated that we are obligated to get back to the Working Group on any changes made.

Mr. Dettman said that with Roadway Worker Safety, they wrote the rule in "railroad" language, which took a year to change into "legalese." He said that he believes the process is going to take longer.

Mr. Loftus replied that the process is going to take longer than the "September or October" deadline. He said he supports the October 30-31-November 1 date for the next RSAC meeting.

N E X T R S A C M E E T I N G O C T O B E R 30 - 31 - N O V E M B E R 1, 1996  
8:30 A.M. -- 5:00 P.M.

Chairperson Olekszyk concluded by announcing that the Working Group Reports would be distributed to RSAC members by October 16, at the latest. He added that the Working Group deadline for submitting reports to FRA personnel for internal review is October 1.

Chairperson Olekszyk requested that the Minutes of the First RSAC Meeting, held April 1-2, 1996 be approved. The Minutes were approved, as amended by written changes submitted to the Chairperson.

Mr. Dettman requested that FRA provide what is expected on Blue Signal and Locomotive issues.

Chairperson Olekszyk replied that Grady Cothen would provide this information.

M E E T I N G   A D J O U R N E D   11:30 A.M.

Respectively submitted by John F. Sneed, Secretary.