

RAILROAD SAFETY ADVISORY COMMITTEE (RSAC)

Minutes of Meeting April 1-2, 1996

These minutes are not a transcript of the proceedings. While a verbatim transcript of the proceedings is possible, FRA believes that this is undesirable and unnecessary. Because a recorder would need to identify specific speakers, and to require that only one person speak at a time, the spontaneity and interaction among the 50-member group would be undesiredly disrupted. However, if RSAC members prefer a formal transcript, this accommodation can be made. Presentations by Department of Transportation (DOT)/Federal Railroad Administration (FRA) employees are outlined in the tabulated reference materials given to each RSAC member during this meeting. These materials are part of the official record of these proceedings and are not excerpted in detail in the minutes.

The meeting of the RSAC was convened at 9:12 a.m., in Room 2230 of the Nassif Building, 400 7th Street, S.W., Washington, D.C. 20590, by the RSAC Chairperson, FRA's Associate Administrator for Safety, Bruce M. Fine.

As RSAC members, or their alternates, checked-in, attendance was recorded. Two of the forty-eight voting RSAC members were absent and one of the two associate, non-voting members was absent. The Voting Members absent were: The National Conference of Firemen & Oilers (1 seat) and The Hotel Employees & Restaurant Employees International Union (1 seat). The Non-Voting Member absent was the representative for The Secretaría de Comunicaciones y Transporte (Mexico)(1 seat).

BRUCE FINE INTRODUCED FRA ADMINISTRATOR MOLITORIS.

The Administrator said that the purpose of the RSAC is to work together as a committee, and in working groups, on rulemaking efforts. She said the RSAC will operate by consensus, which may not be 100% of what you want but is something with which you can live. Finally, she emphasized that respect is paramount to the success of the RSAC.

ADMINISTRATOR MOLITORIS REQUESTED THAT THE RSAC MEMBERS INTRODUCE THEMSELVES AND BRIEFLY STATE THEIR EXPECTATIONS FOR THE PROCESS.

The typical expectations for the RSAC expressed were:

- ÷! Resolve Crises.
- ÷! Avoid conflicts.
- ÷! Peaceably resolve issues.

- ÷! Help worker safety.
- ÷! Improve safety.
- ÷! Use fact-based decision making.

CHAIRPERSON BRUCE FINE OUTLINED THE ROLE AND FUNCTION OF RSAC.

The Chairperson explained that the breadth of RSAC's membership will bring a broad range of experience to the table. He stated that he expects task statements from the working groups by October 1996, and an NPRM for each task to be issued by the end of the calendar year.

CHAIRPERSON BRUCE FINE THEN WENT OVER "HOUSE KEEPING" ISSUES.

He told the RSAC they had 1 week to express their preferences for working group participation, preferably by April 9. He also explained that he will determine the composition of the four working groups to be created (Power Brake, Radio Standards, Track Standards, and Tourist, Excursion and Historic Railroads), in consultation with Administrator Molitoris. He cautioned that he wants to keep the working groups small, to be no larger than 20 members, and to have all the working groups constituted by April 20.

Chairperson Fine stated that each working group would be composed of 5 or 6 railroad management representatives, 5 or 6 railroad labor representatives, and 3 or 4 FRA representatives (attorney, economist, program analyst). He stated that the first meeting of each of the 4 working groups should be held during the first and second weeks of May 1996. He also acknowledged that it would be a challenge to coordinate all working group efforts effectively.

THE OFFICE OF SAFETY'S PHIL OLEKSZYK SPOKE BRIEFLY ABOUT HIS EXPERIENCE WITH THE ROADWAY WORKER PROTECTION NEGOTIATED RULEMAKING.

Mr. Olekszyk told the RSAC that they were being given an opportunity to write regulations. He advised working group members to attend all working group sessions. He expressed his opinion that working group success would depend on the group's emphasis of "facts," not innuendo. He said that FRA will provide training and facilitators, if necessary, to assist in the process.

DEPUTY FRA ADMINISTRATOR DON ITZKOFF SPOKE BRIEFLY ABOUT RSAC AND THE IMPORTANT ROLE THAT THIS PROCESS WILL PLAY IN FUTURE AGENCY RULEMAKINGS.

M O R N I N G B R E A K (10:35 - 10:55 A.M.)

DEPUTY DOT SECRETARY MORTIMER DOWNEY WAS INTRODUCED

Mr. Downey expressed the Department's support of the RSAC. He encouraged the working Groups to focus on issues, to differentiate between large and small rulemakings, and to separate out minor issues where possible. Finally, he expressed his support for the negotiated rulemaking process, noting that it is capable of producing amazing results.

FRA OFFICE OF CHIEF COUNSEL'S DAN SMITH WAS INTRODUCED

Mr. Smith explained the legal basics for the RSAC and described the steps of the traditional rulemaking process. (See Tab 4 for important rules that will guide this process.) He cautioned the RSAC that the agency has not delegated its rulemaking authority to the committee entirely. He explained that, instead, the Committee has the opportunity to participate in this process and to be "lawmakers." He encouraged members of the RSAC to put themselves in lawmakers shoes and take into consideration all legal constraints by which the agency is bound when it, itself, regulates. He explained that each working group would have help understanding relevant legal constraints. Working groups will have one or more FRA attorneys assigned to them to ensure that all legal requirements are followed.

L U N C H B R E A K (NOON - 1:25 P.M.)

CHIEF COUNSEL'S DAN SMITH CONTINUED WITH BRIEFING ON
REGULATORY PROCESS AND COMMITTEE PROCEDURES.
QUESTIONS AND ANSWERS FOLLOWED.

Rick Inclima (BMWE) inquired how numerical parity would be achieved in working groups, and was informed by Dan Smith (FRA) that strict numerical parity wouldn't be essential at the working group level because unanimity is required at that level. Rick expressed his hope that working groups be kept small and that parity not be an issue.

Larry Parsons(SP) observed that the Chairperson had set time restraints and wondered why that was necessary. He inquired whether there would be instances in which no time restraints would be set. The Administrator and the Chairperson explained that time restraints are necessary right now because many of these rules are overdue. They encouraged the Committee to beat the deadlines established.

Joe Mattingly (BRS) questioned whether the Administrator would resolve issues where the working group does not and was told that she would.

Rick Inclima asked whether the Administrator should set interim time tables, whether Federal Register Notice would be necessary for working group output, and where working group facilities would be established. Administrator Molitoris informed him that working groups are free to set their own interim time tables, that Federal Register notice is only required for meetings of the full committee and that facilities would be set up on the basis of convenience.

Jim Johnson(ARM) asked whether working group participation would be required where members have only a limited interest in the issues being addressed. The Chairperson said no, explaining that some working groups, such as the working group on Tourist and Historic Railroads, will allow their members to address issues in which they have a limited interest without requiring their full participation in addressing those issues.

OFFICE OF SAFETY'S GRADY COTHEN GAVE AN OVERVIEW OF FRA'S REGULATORY AGENDA.

Mr. Cothen went over FRA'S regulatory agenda, which was the last item in "Tab 1" of the materials given to RSAC members. He explained that four of the regulatory agenda items, power brake rules, radio standards, track standards, and tourist, excursion and historic railroads issues, are being recommended for RSAC consideration at this April 1-2 Meeting. He also explained that some of the agenda items-- those in italics-- might be referred to the RSAC in subsequent meetings but that other items, those not amenable for advisory committee deliberations, will be handled separately by FRA.

Dan Pickett inquired about FRA's efforts involving Nuclear Materials Handling and the protection of railroad workers handling Nuclear Material train consists, suggesting that these issues be added to FRA's agenda. Henry Lewin(BRC) added that there currently is no emergency "800" number to allow reporting of accidents involving nuclear materials. Rick Inclima then asked why there aren't more railroad employee training requirements, instructing employees of proper procedures for addressing hazmat and nuclear material releases. In response to all three, the Administrator concurred that this topic should be addressed in a Roundtable Discussion.

THE OFFICE OF SAFETY'S TOM PEACOCK OUTLINED THE FIRST TASK TO BE REFERRED TO RSAC--POWER BRAKE RULES.

The RSAC was referred to "Tab 5" of the briefing materials, which contains a detailed description of Task No.: 96-1.

Richard Johnson(BRC)expressed his concern that by "starting over" with this issue, by going back to the beginning, 3 years of work will be wasted. He questioned the ability

of the group to reach consensus by October when consensus has been elusive for the past 3 years.

Henry Lewin expressed his concern that the body of work they've invested in power brake rules should not fall off the table.

Charles Dettman(AAR) stated his organization's support for proceeding with a fact-based process. He then recommended, on behalf of the AAR, that "professional facilitation" be a part of this process.

Grady Cothen, Administrator Molitoris, and Chairperson Fine assured the commenters that all of the information filed in Docket PB-9 would remain a part of the record. They also promised to explore obtaining "professional facilitation," cautioning that budget restraints are tight.

CHAIRPERSON BRUCE FINE ASKED THAT A COMMITTEE MEMBER NOMINATE AND SECOND TASK NO.: 96-1 FOR REFERRAL TO RSAC. BY MAJORITY VOICE VOTE, WITH SEVERAL VOICE VOTE OPPOSITIONS, TASK NO.: 96-1, REVISION OF FREIGHT POWER BRAKE REGULATIONS, WAS REFERRED TO THE RSAC.

THE OFFICE OF SAFETY'S ED ENGLISH OUTLINED THE SECOND TASK TO BE REFERRED TO RSAC--RAILROAD COMMUNICATIONS STANDARDS.

The RSAC was referred to "Tab 7" of the briefing materials, which contains a detailed description of Task No.: 96-3.

Bennett Levin(AAPRCO) sought clarification, which was provided, of the respective purposes of the "Emergency Preparedness" working group and this working group, the Railroad Communications working group. Charles Dettman then expressed the AAR's reticence about duplicating communication efforts for freight service with those for passenger service.

CHAIRPERSON BRUCE FINE ASKED THAT A COMMITTEE MEMBER NOMINATE AND SECOND TASK NO.: 96-3 FOR REFERRAL TO RSAC. BY UNANIMOUS VOICE VOTE, TASK NO.: 96-3, RAILROAD COMMUNICATIONS STANDARDS, WAS REFERRED TO THE RSAC.

THE OFFICE OF SAFETY'S GRADY COTHEN OUTLINED THE THIRD TASK TO BE REFERRED TO RSAC--REGULATIONS TO BE APPLIED TO TOURIST, EXCURSION, SCENIC AND HISTORIC RAILROADS.

The RSAC was referred to "Tab 7" of the briefing materials, which contains a detailed description of Task No.: 96-4.

The RSAC was told that a report to Congress on this industry is undergoing internal DOT review and that it will provide a starting point for RSAC review and recommendations.

James Johnson(ARM) asked if FRA regulation of the tourist and historic industry was the issue to be resolved. He was told no by Mr. Cothen. The task statement, however, permits the group to make recommendations regarding the extent to which FRA exercises jurisdiction.

William Loftus(ASLRA) asked whether small freight operations that run an occasional "dinner train" would be covered by the working group. He was told yes by Mr. Cothen.

Mr. Cothen then told Mr. Lewin, in response to his question about the relative importance of Task No. 96-4, that it is an issue that must be addressed on FRA's regulatory agenda.

CHAIRPERSON BRUCE FINE ASKED THAT A COMMITTEE MEMBER NOMINATE AND SECOND TASK NO.: 96-4 FOR REFERRAL TO RSAC. BY UNANIMOUS VOICE VOTE, TASK NO.: 96-4, TOURIST, EXCURSION, SCENIC AND HISTORIC SERVICE REGULATIONS WAS REFERRED TO THE RSAC.

M E E T I N G A D J O U R N E D 4:30 P.M.

The RSAC meeting was reconvened at 9:10 a.m. on April 2, 1996 in Room 2230, Nassif Building, 400 7th Street, S.W., Washington, D.C. 20590 by FRA's Bruce M. Fine, Chairperson.

THE OFFICE OF SAFETY'S AL MCDOWELL AND GENERAL COUNSEL'S NANCY LEWIS GAVE AN OVERVIEW THE PROPOSED RSAC TASK NO.: 96-2, REVISION OF TRACK SAFETY STANDARDS.

The RSAC was referred to "Tab 6" of the briefing materials, which contains a detailed description of Task No.: 96-2. Major issues for this task include CWR standards, excepted track standards, highway-rail crossing vegetation control requirements, liability standards, and standards for Class 7 and Class 8 high speed track.

RSAC MEMBERS ASKED QUESTIONS AND ENGAGED IN GENERAL DISCUSSION OF THE TASK

Henry Lewin asked for clarification of the liability requirements for track. Henry Wise(BMWE) asked whether the tonnage requirement for inspection frequency will also apply to high-speed rail traffic. Raul Bravo(HS Rail/Maglev) asked what inspection frequency applies when both freight and passenger traffic travel over the same track.

The RSAC then engaged in a discussion concerning train speeds through communities and whether this working group should tackle this issue.

William Loftus asked whether the track standards working group should spin off the grade crossing issues into a separate group. Charles Dettman pointed out that there are 15 separate topics outlined under track. He asked whether the RSAC was permitted to restrict what is given to the working group, or whether the working group was permitted to restrict the tasks it accepts.

Grady Cothen said that the working group was authorized to establish task forces to address sub-issues. For example, the track standards working group could have a high-speed task force, or task forces for train speeds and vegetation.

William Loftus said it was a bad idea to try to mix public policy areas with research areas.

Rick Inclima clarified that the proposed task was the “general revision” of the track standards.

A BRIEF COFFEE BREAK WAS TAKEN TO GIVE MEMBERS AN OPPORTUNITY TO CAUCUS. FOLLOWING THE BREAK DISCUSSIONS RESUMED.

Charles Dettman said that the initial focus of the working group are the Section 213 “core” track standards and that all other issues could be separated out.

Rick Inclima agreed that the working group could focus on Section 213 “core issues” first and make recommendations on how other issues should be addressed. All Part 213 related issues are subject to review.

Grady Cothen clarified that the Task no. 96-2 was understood to be accepted as presented, except for the issue of train speed through local communities, but that the track standards working group could assist with the identification of other issues if it desired.

CHAIRPERSON BRUCE FINE ASKED THAT A COMMITTEE MEMBER NOMINATE AND SECOND TASK NO.: 96-2 FOR REFERRAL TO

RSAC. BY UNANIMOUS VOICE VOTE, TASK NO.: 96-2, REVISION OF THE TRACK SAFETY STANDARDS, WAS REFERRED TO THE RSAC

CONCLUDING ITEMS WERE DISCUSSED

Chairperson Fine asked that the following items be considered for referral to the RSAC during the next RSAC meeting.

- ÷! Passenger Safety Standards (including power brakes)(adopt/augment existing working group).
- ÷! Steam Locomotives.
- ÷! Event Recorder Next-Generation Performance Standards (adopt/augment existing working group).

Chairperson Fine asked that the RSAC determine the urgency and time frame for undertaking the following rulemaking items:

- ÷! Freight Car Safety Standards; Maintenance-of-Way cars
- ÷! Locomotive Engineer Certification; Miscellaneous Revisions.
- ÷! Railroad Operating Practices (Blue Signal Protection)/

THE RSAC DISCUSSED ISSUES THEY WOULD LIKE TO SEE ADDRESSED

Byron Boyd(UTU) asked why stress and fatigue aren't on the FRA agenda and was informed by Deputy Administrator Itzkoff that the status of stress and fatigue issues would be discussed during the Administrator's Roundtable on April 4.

William Clifford(BLE) said that the issues of train make-up, train profile should be on the agenda.

Raul Bravo said that the issue of Positive Train Separation should be on the agenda.

Byron Boyd said that the issue of employee training programs should be on the agenda.

William Clifford said that the issue of dispatcher workload should be on the agenda.

Charles Dettman said that FRA should begin to develop “data” that will address the **safety issues** rather than the “perceived issues” in each of the RSAC-adopted tasks.

ADMINISTRATOR MOLITORIS REQUESTED FEEDBACK ON THE
INITIAL RSAC MEETING

The RSAC requested that meeting agendas be prepared ahead of time and distributed to members in advance of the meeting. In addition, meetings should not commence before 10:00 a.m. to accommodate members flights. Likewise, the designated quitting time on the final meeting day must be respected so that airline connections can be made. At Chairperson Fine’s request, the RSAC discussed dates for the next scheduled RSAC meeting. The meeting was finally scheduled for Wednesday, July 24, 1996, and Thursday, July 25, 1996.

M E E T I N G A D J O U R N E D 11:33 A.M.

Respectively submitted by John F. Sneed, Secretary.