

RAILROAD SAFETY ADVISORY COMMITTEE (RSAC)

Minutes of Meeting June 25, 2009 Washington, D.C.

The thirty-ninth meeting of the RSAC was convened at 9:30 a.m., in the Wilson Salon A, B, and C rooms of the Marriott Washington Wardman Park Hotel, 2660 Woodley Road, N.W., Washington, D.C. 20008, by the RSAC Chairperson, the Federal Railroad Administration's (FRA) Deputy Associate Administrator for Safety Standards and Program Development, Grady C. Cothen, Jr.

As RSAC members, or their alternates, assembled, attendance was recorded by sign-in log. Sign-in logs for each Committee meeting are part of the permanent RSAC Docket. The records, reports, transcripts, minutes, and other documents that are made available to, or prepared for or by, the Committee are available for public inspection at the U. S. Department of Transportation docket management system Internet Web Site under FRA Docket #2000-7257 (<http://www.regulations.gov>). Meeting documents are also available on FRA's RSAC Internet Web Site (<http://rsac.fra.dot.gov>).

For the June 25, 2009, meeting, fifteen of the fifty-four voting RSAC members were absent: The American Association of Private Railroad Car Owners (1 seat), The Association of Railway Museums (1 seat), The Association of State Rail Safety Managers (1 seat), The Brotherhood of Locomotive Engineers and Trainmen (1 of 3 seats), The Brotherhood of Maintenance of Way Employees Division (1 of 2 seats), The Chlorine Institute (1 seat), The Fertilizer Institute (1 seat), The International Association of Machinists and Aerospace Workers (1 seat), The International Brotherhood of Electrical Workers (1 seat), The Railway Supply Institute (1 seat), Safe Travel America (1 seat), The Transport Workers Union of America (TWU) (2 seats), The Transportation Communications International Union/Brotherhood of Railway Carmen (1 of 3 seats), and The United Transportation Union (1 of 3 seats). Six of seven non-voting/advisory RSAC members were absent: The Federal Transit Administration, The Labor Council for Latin American Advancement, The League of Railway Industry Women, The National Association of Railway Business Women, Secretaria de Comunicaciones y Transporte (Mexico), and Transport Canada. Total meeting attendance, including presenters and support staff, was approximately 75.

Chairperson Cothen welcomes RSAC (the Committee) Members and attendees. He asks Larry Woolverton (FRA–Office of Safety) for a meeting room safety briefing.

Larry Woolverton (FRA) identifies the meeting room's fire and emergency exits. He asks for volunteers with cardiopulmonary resuscitation (CPR) qualification to identify themselves. A large number of attendees acknowledge having completed this training. No volunteers are designated to perform CPR. The Marriott Washington Wardman Park Hotel does not have an automated external defibrillator (AED).

Chairperson Cothen asks FRA Administrator Joseph Szabo (FRA Administrator) for opening remarks.

Joseph Szabo (FRA Administrator) greets RSAC members and attendees. He is pleased to be in attendance in his new capacity as sponsor of this Committee. He says there has never been any doubt that FRA's most important mission is safety, and the Rail Safety Improvement Act of 2008 [Public Law No.: 110-432, effective October 16, 2008] underscored that fact. Administrator Szabo says as an agency, FRA tries to advance safety in a variety of ways, and the work of this Committee is one of the most important elements of that strategy. He wants the Committee to know that he is committed to working with members through the RSAC. As before, he adds, FRA wants to find win-win approaches to preventing accidents and injuries. He says FRA wants to find cost effective means of implementing statutory mandates. He says FRA wants the railroad industry to be very safe and to serve the Nation's transportation needs.

Administrator Szabo says when it comes to safety, FRA's commitment is to the public, including innocent citizens who happen to be near the railroad when an ethanol car starts burning or a chlorine car releases product. He says FRA's commitment is to rail passengers, who expect safety as the basic deliverable for the price of their ticket. He says FRA's commitment is, as it always has been, to the worker, agreement or exempt, and to Class I, II, or III, freight or passenger.

Administrator Szabo says further reductions in accidents and injuries will not come easily. He says the degree of difficulty for improvement continues to rise. Therefore, he adds, FRA will need to follow through with a very broad and flexible strategy. He says the strategy will include good rules and good training, supporting good performance by personnel who are well-rested and up to the job. He says the strategy will emphasize well-maintained infrastructure and rolling stock and innovative technology. He says the strategy will emphasize new approaches to risk reduction that build a sound safety culture from the bottom up, as well as the top down.

Administrator Szabo says inevitably, FRA will need to write some new rules and revise some others, and this Committee has become adept at working these issues to positive conclusions. He says as evidenced by the fact that the present Administration has already been in office for six months and this is his first chance to meet with you as Administrator, the time we have will be exhausted rapidly, whether the President serves one or two terms. Therefore, Administrator Szabo says FRA will emphasize timeliness

in all of our work, including the work of this Committee. Administrator Szabo says as before, if the Committee cannot deliver recommendations in the time available, FRA will offer its best proposal.

Administrator Szabo acknowledges required work for FRA and RSAC is a huge challenge, noting that all involved have limited resources. Yet, he says, public expectations have never been higher. He adds, if the Rail Safety Improvement Act of 2008 was not enough, the American Recovery and Reinvestment Act of 2009 [Public Law No.: 111-5, effective February 17, 2009], added a whole new level of complexity to accompany great opportunities for the industry and the Nation.

Administrator Szabo says Committee comes to this day with evidence that the RSAC can make a difference. He thanks those who participated in the Hours of Service Record Keeping Working Group for good recommendations that RSAC embraced and FRA has published as a final rule. He adds that the Hours of Service Record Keeping Working Group also discussed interpretive issues under the new law. He says FRA released those interpretations earlier this week [74 *Federal Register* (FR) 30665, dated June 26, 2009].

Administrator Szabo says the Railroad Bridge Working Group once again rose to the challenge by reporting a proposed rule in record time.

Administrator Szabo says the Positive Train Control (PTC) Working Group also delivered, in less than 4 months, the core of a proposed rule draft that FRA completed and placed into clearance. He says FRA is anticipating a quick turn-around from the U.S. Office of Management and Budget, which was pre-briefed on the package. He says railroads will likely be seeing a pretty tight comment period, and FRA will be doing that so that we save some time for review of the comments by the PTC Working Group.

Administrator Szabo thanks RSAC members for accepting the short notice for the first meeting of the Passenger Hours of Service Working Group, which met yesterday at this hotel. He says when FRA has gathered the necessary additional fatigue-related information, the Agency will be asking that group to meet as often as needed to prepare a proposed rule.

Administrator Szabo says the Conductor Certification Working Group will be next out of the blocks, with an aggressive meeting schedule beginning next month.

Administrator Szabo says FRA is examining other requirements of the Rail Safety Improvement Act of 2008, to determine how to proceed, including areas covering critical incident response and filling training gaps. As FRA resources become available, he says the Agency may ask for further assistance from this Committee.

Administrator Szabo says as the nation approaches a new era for passenger rail, the Passenger Safety Working Group will continue to be a very busy forum. He thanks the Passenger Safety Working Group for its work on emergency systems and emergency preparedness. He says from the issuance of initial regulations in 1998 to the present day, the steady progress continues. He says having moved adeptly to address platform gap hazard management and collision hazard analysis through guidance, the General Passenger Safety Task Force is now poised to address the safety of passengers boarding and alighting, with a sharp focus on passenger car door operations, and “second train” fatalities to pedestrians in or near stations. He adds, the General Passenger Safety Task Force is also producing a set of proposed regulations for system safety programs that are needed as soon as possible.

Administrator Szabo says FRA is presently completing the “cab end strength” final rule as well as the proposed rule on vehicle-track interaction, based on RSAC’s Passenger Safety Working Group’s recommendations. He says the availability of additional funding for intercity passenger service, and the President’s announcement of a Vision for High-Speed Rail, make this work all the more important.

Administrator Szabo says the re-established Track Safety Working Group is also building a record of accomplishment, having completed the joint bar inspection final rule and continuous welded rail proposed rule and providing recommendations for inspection of concrete cross ties that we have incorporated into a proposed rule which will be issued very shortly. He encourages RSAC stakeholders to continue their attention to all of the issues surrounding rail integrity, an area that will be critical to the safety and viability of rail service as we enter a period of economic recovery.

Administrator Szabo thanks to the Locomotive Safety Working Group, which has finished its work, for now, on proposed revisions to Part 229 rules. He says FRA is preparing a Notice of Proposed Rulemaking (NPRM), which will include attention to remote control locomotives as an element of locomotive safety.

Administrator Szabo says he is told that the Medical Standards Working Group’s Physicians’ Task Force is getting close to concluding work on criteria and protocols for Medical Fitness for Duty. He says that will coincide with completion of FRA staff work on a proposed rule framework for medical standards. He believes that the Medical Standards Working Group will come together within the next few months to review this work. He says FRA needs to move forward on this initiative and properly respond to National Transportation Safety Board recommendations on identification and management of sleep disorders as well as oversight of therapeutic drug use. He says the railroad industry continues to stand alone among the major commercial modes of transportation in lacking medical standards, and the time has come to close that gap.

Administrator Szabo says this Committee has previously reported recommendations on Roadway Worker Safety, and FRA is preparing a comprehensive proposal to more sharply focus on-track safety.

Administrator Szabo offers thanks to the stakeholders for working with FRA to address rules compliance and awareness over the recent months. He says FRA will take any lessons from the ongoing roadway worker fatality review as we move forward, i.e., the Fatality Analysis of Maintenance-of-Way Employees and Signalmen (FAMES).

Administrator Szabo says FRA is very concerned, as well, with recent switching fatalities. Although he is recused from addressing the recent emergency order filing, he notes that FRA has been working with the railroad regarding the circumstances of the most recent fatality, as we have in prior instances. He says FRA Associate Administrator for Railroad Safety/Chief Safety Officer Jo Strang has called the Switching Operations Fatality Analysis (SOFA) Working Group back together, and FRA will keep open all necessary options for addressing this tragic loss of life.

Administrator Szabo says there is no way we can be satisfied with our safety record while employee fatalities continue to occur. He asks all concerned – employees as well as managers – to elevate safety over the easy path. He says sometimes it may take a little longer, or we may have to walk a little farther, but at the end of day we can have the satisfaction that comes from doing the job well.

He thanks members again for their participation in this Committee, and the many other things that members do to promote safety. He looks forward to receiving member's wise counsel and in sharing pride in the collective RSAC accomplishments.

Chairperson Cothen thanks Administrator Szabo for the opening remarks. He asks Charles Bielitz (FRA–Office of Safety) for a report on Passenger Safety Working Group activities.

Rick Inclima (Brotherhood of Maintenance of Way Employees Division (BMWED)) asks for unanimous consent of RSAC to observe a moment of silence for the victims of this week's accidents in Rockville, Illinois, and Fort Totten, Maryland.

There is a moment of silence.

Chairperson Cothen appreciates Rick Inclima's calling for that observance.

Charles Bielitz (FRA) uses a series of Microsoft PowerPoint Presentation slides, projected onto a screen for "Passenger Safety Working Group–Update to the Railroad Safety Advisory Committee." Photocopies of the Microsoft PowerPoint Presentation were distributed to meeting attendees. In addition, photocopies of "Draft proposed amendments to FRA's passenger train emergency preparedness regulations (49 Code

of Federal Regulations (CFR) Part 239), dated June 17, 2009,” and “ROW Fatality and Trespass Reduction Workshop 2008–Summary of Results, Final Report, dated February 2009,” were distributed to meeting attendees. All meeting handouts will be entered into the RSAC Docket and are not excerpted in their entirety in the RSAC Minutes.

Charles Bielitz (FRA) says much of the “heavy lifting” of the Passenger Safety Working Group is currently being handled by the General Passenger Safety Task Force. He says there will be separate reports on that group’s activities by Daniel Knoté (FRA–Office of Safety) and Brian Hontz (FRA–Office of Safety).

Under the slide, “RSAC recommendations being written into rules,” Mr. Bielitz says FRA is writing Passenger Safety Working Group/RSAC recommendations into rules for (1) passenger equipment crashworthiness (Final Rule), (2) Vehicle-Track Interaction (Notice of Proposed Rulemaking (NPRM)), and (3) Emergency Preparedness (NPRM). He asks Daniel Knoté for a report on General Passenger Safety Task Force activities.

Daniel Knoté (FRA) continues with the Microsoft PowerPoint Presentation, “Passenger Safety Working Group–Update to the Railroad Safety Advisory Committee.” Under the slide, “General Passenger Safety Task Force,” Mr. Knoté outlines the Task Force activity report as follows: (1) There will be a request to the full RSAC to approve proposed amendments to 49 CFR Part 239, Passenger train emergency preparedness; (2) There will be a report on work to develop a regulatory approach to passenger railroad system safety; (3) There will be a report on passenger train door safety and related work on regulatory changes; and (4) There will be a distribution of the Final Report from the Right of Way (ROW) Fatality and Trespasser Reduction Workshop, held April 1-2, 2008, in San Carlos, California.

Daniel Knoté (FRA) says the first topic is proposed amendments to 49 CFR Part 239. He asks the full RSAC to look at the handout, “Draft proposed amendments to FRA’s passenger train emergency preparedness regulations (49 CFR Part 239).

Under the slides, “Emergency Preparedness,” Mr. Knoté says the language for the following amendments has been approved by the General Passenger Safety Task Force and the Passenger Safety Working Group: (1) 49 CFR Part 239.301, Efficiency testing–this amendment clarifies that operational (efficiency) testing under Part 239.301 may be conducted as part of a railroad’s efficiency testing program under Part 217.9 and clarified efficiency testing requirements for railroads choosing to conduct efficiency testing, required under Part 239.301, outside Part 217.9; (2) 49 CFR Part 239.201, Plan filing and approval–this amendment limiting the need for FRA formal approval of purely administrative changes to an approved plan; (3) 49 CFR Part 239.101(2)(ii) Control center employee training–this amendment clarifying that railroad or contractor control center employees, responsible for establishing and maintaining communication with emergency responders, are the individuals in a railroad control center that are required

to be trained under this part; and (4) A requirement is added to 49 CFR Part 239.101, requiring railroads to include procedures for the safe evacuation of passengers with disabilities.

Daniel Knoté (FRA) asks Chairperson Cothen to conduct a vote on the proposed amendments.

Chairperson Cothen asks for a motion from the full RSAC to accept proposed amendments to FRA's passenger train emergency preparedness regulations (49 CFR Part 239), as presented.

Stephen Bruno (Brotherhood of Locomotive Engineers and Trainmen (BLET)) moves that the full RSAC accept proposed language to amend FRA's passenger train emergency preparedness regulations (49 CFR Part 239), as presented.

Rick Inclima (BMWED) seconds the motion.

BY VOICE VOTE, THE FULL RSAC APPROVES PROPOSED LANGUAGE TO AMEND FRA'S PASSENGER TRAIN EMERGENCY PREPAREDNESS REGULATIONS (49 CFR PART 239), AS PRESENTED.

Daniel Knoté (FRA) thanks the full RSAC. He continues with the report on General Passenger Safety Task Force activities with a report on the System Safety Task Group. Under the slide, "The System Safety Task Group met three times during the past year," Mr. Knoté describes the following dates: (1) Initial meeting – Baltimore, Maryland, July 2008; (2) Winter Meeting – Cambridge, Massachusetts, December 2008; and (3) Spring Meeting – Washington, DC, April 2009.

Under the slide, "The System Safety Rule Sub Group Adopted the following," Mr. Knoté lists the following six elements: (1) Passenger Railroads must have a System Safety Program; (2) The System Safety Program must be supported by a written System Safety Program Plan (SSPP); (3) The SSPP must include a robust Hazard Management Process; (4) All applicable elements of the SSPP must be fully implemented; (5) The System Safety Program and its implementation will be audited for compliance; and (6) The passenger railroad, host railroad, contract operators and others who provide safety sensitive services must participate in the System Safety Program.

Under the slides "Accomplishments to date," Mr. Knoté outlines the following: (1) Developed a draft System Safety Rule; (2) Reviewed an APTA red line markup of the rule and discussed issues; (3) Discussed the relationship between the System Safety Rule and the Risk Reduction Program; (4) Reviewed a second APTA red line markup; and (5) Currently preparing another draft for the next round of discussions—the draft will incorporate many of the comments and suggestions provided in the second APTA redline, and will be vetted with the System Safety Rule Sub Group.

Under the slide, “System Safety,” Mr. Knoté says FRA was asked about the relationship between System Safety and the FRA Risk Reduction Program.” Mr. Knoté says the System Safety Regulation is considered a Risk Reduction Program as defined in the Rail Safety Bill.

Under the slide, “§ 270.101 System Safety Program,” Mr. Knoté reads the following “(v) System safety programs developed and implemented under this section are risk reduction programs as described in Section 103 of HR 2095, the Rail Safety Improvement Act of 2008, and will satisfy federal requirements for risk reduction programs and receive the same protections from public disclosure as those provided to other risk reduction programs.”

Under the slide, “System Safety Program,” Mr. Knoté says additional parallels with the requirements of the Rail Safety Improvement Act of 2008 will be incorporated in the rule to further establish the relationship system safety and risk reduction programs. He says elements will be added to the System Safety Program Plan such as: (1) Fatigue management; (2) Safety culture; and (3) Technology programs.

Under the slide, “The System Safety Rule Structure,” Mr. Knoté says the System Safety Rule borrows elements from: (1) The American Public Transportation Association (APTA) Commuter Rail Program; (2) The Federal Transit Administration (FTA) 659 Program – State Safety Oversight; (3) Canadian Safety Management Systems; (4) Federal Aviation Administration Safety Management System Programs; and (5) Others.

Under the slides, “The System Safety Rule Section 270,” Mr. Knoté says (1) Section 270 is a place holder – the final section number is to be determined. He adds, the System Safety Rule group has requested a separate section number from the Risk Reduction Rule so that subsequent changes and modifications can be made more easily; and (2) The rule includes the following sections (similar to the Emergency Preparedness rule): (a) Subpart A – General; (b) Subpart B – Specific Requirements; (c) Subpart C – Review, Approval, and Retention of System Safety Program Plans; and (d) Appendix A to Part 270—Schedule of Civil Penalties.

Under the slide, “Subpart A – General,” Mr. Knoté says Subpart A contains legal, boiler plate language, which is not subject to RSAC input, including: (1) § 270.1 Purpose and Scope; (2) § 270.3 Application; (3) § 270.5 Preemptive effect; (4) § 270.7 Definitions; (5) § 270.9 Responsibility for Compliance; (6) § 270.11 Penalties; (7) § 270.13 Waivers; and (8) § 270.15 Information collection. Mr. Knoté says the only area of interest for the System Safety Rule Sub Group is the Definitions Section.

Under the slide, “Subpart B – Specific Requirements,” Mr. Knoté says Subpart B includes the following: (1) § 270.101 System Safety Program; (2) § 270.103 System

Safety Program Plan; (3) § 270.105 Hazard Management Processes; (4) § 270.107 System Safety Program Implementation; (5) § 270.109 System Safety Program Auditing; (6) § 270.111 System Safety Program Participation; and (7) § 270.113 System Safety Training.

Under the slide, “Subpart C – Review, Approval, and Retention of System Safety Program Plans,” Mr. Knoté says Subpart C includes: (1) §270.201 System Safety Program Plan; filing and approval; and (2) § 270.203 Retention of system safety program plan.

Under the slides, “Action Items,” Mr. Knoté says (1) FRA will add elements to firmly “connect” System Safety and Risk Reduction; and (2) FRA will create a new draft for distribution to all members.

Under the slide, “Estimated Approval Schedule,” Mr. Knoté lists the following: (1) System Safety Rule Sub Group Approval (September 09); (2) General Passenger Safety Task Force approval (October 09); (3) Passenger Safety Working Group approval (December 09); (4) Full RSAC approval (January 10); and (5) NPRM.

Daniel Knoté (FRA) asks for questions.

David Solow (American Public Transportation Association (APTA)) asks, “What is the relationship between what APTA is doing now and what FRA is proposing?”

Daniel Knoté (FRA) says William Grizard (APTA) is working with FRA to help bring the two programs together. He notes that the APTA program is voluntary.

David Solow (APTA) says FRA is proposing that railroad contractors must participate. He asks, “What does that mean?”

Daniel Knoté (FRA) says he hopes that host railroads have sat down with commuter railroads to discuss the system safety plan. He says accompanying the submission of the System Safety Plan, FRA is looking for a single letter coming into FRA with everyone’s signature on the letter.

Daniel Knoté (FRA) says FRA passed-out copies of “ROW Fatality and Trespass Reduction Workshop 2008–Summary of Results–Final Report, dated February 2009, at today’s meeting. He says discussions are underway for a second workshop to be held in 2010.

Daniel Knoté (FRA) asks Brian Hontz (FRA–Office of Safety) to continue the report on General Passenger Safety Task Force activities with a report on the Door Task Group.

Brian Hontz (FRA) shows a short video of a baby stroller becoming stuck in a closing passenger car door and being dragged down a station platform. He continues with the series of Microsoft PowerPoint Presentation slides, for “Passenger Safety Working Group—Update to the Railroad Safety Advisory Committee.”

Under the slide, “Overview,” Mr. Hontz says (1) The GPS Door Task Group has had five meetings; (2) 48 door issues have been identified; and (3) Consensus has been reached on 31 of the 48 door issues.

Under the slide, “Agreed in Principle,” Mr. Hontz outlines the following: (1) Protect the integrity of the train; (2) Require rules to ensure passenger safety; and (3) Develop minimum standards for new equipment.

Under the slides, “Protect the Integrity of the Train,” Mr. Hontz says the following: (1) Require the securing or sealing of safety-sensitive, or override switch that could cause an impact on the door system; (2) Require daily inspection of these switches to determine they are properly positioned or properly sealed; and (3) “Keys” for key switches utilized to establish control of the door system should not be capable of being removed while the door control panel is energized.

Under the slides, “Rules and Instructions to Ensure Passenger Safety,” Mr. Hontz lists the following: Require railroad operating rules and special instructions for train crews to (1) Verify the integrity of the train; (2) Govern the override of safety systems; (3) Include each crewmember’s role in assessing whether to override a safety device; (4) Require crewmember observations of boarding and alighting passengers to verify that it is safe to depart a train station; and (5) Take additional steps to ensure continued passenger safety following activation of a safety override device.

Under the slide, “Uniform Standard for New Equipment,” Mr. Hontz outlines the following: Require at a minimum that new passenger car side doors be equipped with a door safety system that can: (1) Detect an obstruction in a door opening; (2) Shows a door status display; and (3) Prohibits the development of traction power if a door is prevented from closing.

Under the slides, “Open Doors,” Mr. Hontz says FRA has not agreed to allow the operation of passenger cars with open doors, i.e., “All passenger train exterior side doors and traps must be closed before a train departs a station and must remain closed until the train is fully platformed at the subsequent station.” He says until the use of electro-pneumatic doors are widespread, something needs to be done. Mr. Hontz adds, passenger railroads may apply in writing to FRA’s Chief Safety Officer for special approval to operate with passenger train exterior side doors open. He says the request for special consideration must include: (1) Document the need to operate with passenger train doors open; and (2) Include a detailed hazard analysis with specific mitigations, based on the railroad’s System Safety Program.

Under the slide, "Questions," Mr. Hontz says the Door Task Group is considering the following issues: (1) Is there a time limit; (2) Is there a time limit for when the request is to be made by the railroad; and (3) Will this be applicable to tourist operations?

Under the slide, "Finding Summary," Mr. Hontz lists the following for the 17 commuter railroads that have been audited: (1) During normal train operation, can you become entangled in a door—"no," 33 percent, "yes," 67 percent; (2) During normal train operation, can you become entangled in a door and the train move—"no," 63 percent, "Yes," 37 percent; (3) For door control breaker failure, door response is—"open," 44 percent, "closed," 56 percent; and (4) Door control breaker failure and the door remains open, can the train move—"no," 59 percent, "yes," 41 percent. Mr. Hontz says if there is a door circuit breaker failure, FRA wants the doors to close.

Brian Hontz (FRA) asks for questions.

With no questions, Chairperson Cothen asks for members and attendees to "sign-in" on one of the attendance sheets that he is circulating.

Chairperson Cothen says there is a variety of circumstances on railroads involving crafts where an employee may observe a critical incident. He says this is especially true of highway-rail grade crossing incidents. He says the Medical Standards Working Group has been briefed on this topic. He says FRA may ask to assign this issue to the Medical Standards Working Group, at the next full RSAC meeting, i.e., September 10, 2009. In advance of that meeting, he asks the RSAC membership to consider this topic and whether it should be assigned to the Medical Standards Working Group. He says there will be an advance circulation of an RSAC Task Statement on Critical-Incident Responses.

In another topic, Chairperson Cothen says FRA has \$9 billion earmarked for High-Speed Rail Projects. He says FRA has been working with entities on a number of high-speed rail corridor projects. He says FRA will put together a strawman proposal document on addressing where these funds will go strategically.

Chairperson Cothen asks Alan Misiaszek (FRA—Office of Safety) for a Microsoft PowerPoint Presentation on "The RSIA [Rail Safety Improvement Act of 2008] Hazmat PPE [Personal Protective Equipment] Initiative—The EEBA [Emergency Escape Breathing Apparatus] Rule."

Alan Misiaszek (FRA) uses a series of Microsoft PowerPoint Presentation slides, projected onto a screen. All meeting handouts will be entered into the RSAC Docket and are not excerpted in their entirety in the RSAC Minutes.

Under the slide, “The Railroad Safety Improvement Act of 2008 contained the following language,” Mr. Misiaszek reads the following excerpt: “Not later than 18 months after the date of enactment of the Rail Safety Improvement Act of 2008, the Secretary of Transportation shall prescribe the regulations that require railroad carriers—(1) to provide emergency escape breathing apparatus [EEBA] suitable to provide head and neck coverage with respiratory protection for all crew members in locomotive cabs on freight trains carrying hazardous materials that would pose an inhalation hazard in the event of release; (2) to provide convenient storage in each freight train locomotive to enable crew members to access such apparatus quickly; (3) to maintain such equipment in proper working condition; and (4) to provide their crew members with appropriate training for using the breathing apparatus.”

Under the slide, “Work began in late 2008 to:,” Mr. Misiaszek outlines the following: (1) Review available information: (a) hazardous materials carried by railroads that would pose an inhalation hazard in the event of release; and (b) technical capabilities of available emergency escape breathing apparatus; and (2) Develop rule text describing the proposed FRA requirements.

Under the slides, “Some definitions,” Mr. Misiaszek reads the following: (1) What is EEBA—emergency escape breathing apparatus (EEBA) means an atmosphere supplying respirator device that is designed for use only during escape from hazardous atmospheres; and (2) How does FRA define inhalation hazard—inhalation hazard means any substance that may cause severe injury or death through inhalation due to either toxic effects or due to suffocation by the displacement of breathable atmosphere.

Under the slide, “Technical Issues Considered,” Mr. Misiaszek (1) lists the following hazardous materials that would pose an inhalation hazard in the event of release: (a) Toxic chemicals: (i) anhydrous ammonia; (ii) chlorine (as in the 1-6-05 train accident at Graniteville, South Carolina, and the 6-28-04, train accident at MacDona, Texas); (iii) styrene monomer; and (iv) vinyl chloride; and (b) Simple asphyxiants: (i) carbon dioxide; and (ii) liquefied petroleum gas; and (2) explains FRA’s concerns about simple asphyxiants, i.e., immediately dangerous to life or health (IDLH) atmospheres—means an atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual ability to escape from a dangerous atmosphere.

Under the slide, “what are the technical capabilities and limitations of escape respirators,” Mr. Misiaszek lists the two broad classes of available respirators: (1) Air-Purifying—remove specific air contaminants by passing ambient air through an air-purifying element such as an air-purifying filter, cartridge, or canister; and (2) Atmosphere-Supplying—supply breathing air from a source independent of the ambient atmosphere, and includes airline supplied air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

Under the slides, “Air purifying devices,” Mr. Misiaszek outlines the following: (1) must be used only in atmospheres with sufficient oxygen (between 19.5 percent and 23.5 percent); (2) must be used only within specified hazard concentration limitations of the specific device; (3) do not provide effective protection against all gas/vapor materials; (3) will not provide the maximum design protection unless the face piece is carefully fitted to the wearer’s face to prevent inward leakage; and (5) the time of protection provided is dependent on canister, cartridge, or filter type; concentration of contaminant; humidity levels in the ambient atmosphere; and the wearer’s respiration rate.

Under the slides, “What about gas masks,” Mr. Misiaszek says (1) Gas masks are air filtering devices and none offers the user 100 percent protection due to the limitations of the filtering media; (2) Gas masks cannot be used where the oxygen content of the atmosphere is depressed below 19.5 percent by the contaminants (about 21 percent is normal); (3) Gas masks are generally approved to a maximum use concentration of 20,000 parts per million (ppm) (i.e., 2 percent) by volume of a single gas; at these upper use conditions, the service time may be extremely short (as low as 12 minutes); (4) The following are general limitations for all gas masks (14G): (a) not for use in atmospheres immediately dangerous to life or health; (b) not for use in atmospheres containing less than 19.5 percent oxygen; (c) approval may include protection against particulates and multiple gases and vapors; the type of additional approval is listed in the approval record under the approval number; and (d) do not wear for protection against gases or vapors with poor warning properties or those which generate high heats of reaction with sorbent materials in the canister.

Under the slides, “Atmosphere-Supplying Devices—3 Basic Types,” Mr. Misiaszek lists the following: (1) Air-line respirators (also called an air-supplied respirator or supplied air respirator (SAR))—are connected to a stationary source by a hose: (a) are normally used when there are extended work periods required in atmospheres that are not immediately dangerous to life and health (IDLH); (2) Combination respirators—have a small auxiliary self-contained air supply that can be used to get to a safe atmosphere if the primary supply fails; (a) are normally used when there are extended work periods required in atmospheres that are or may be immediately dangerous to life and health (IDLH); and (3) Self-contained breathing apparatus (SCBA)—much like the apparatus a SCUBA (self-contained underwater breathing apparatus) diver or fire fighter might use. Air is supplied from a compressed air cylinder, which is worn on the back, giving greater movement than an air-line respirator, but the air supply is limited; (a) are normally used when there is a short-time need to enter and escape from atmospheres which are or may be immediately dangerous to life and health (IDLH).

Under the slides, “Atmosphere-Supplying Devices—General Limitations,” Mr. Misiaszek says the following: (1) Except for some air-line suits, no protection is provided against skin irritation by materials such as ammonia and hydrogen chloride, or against absorption through the skin of materials such as hydrogen cyanide and organic phosphate pesticides; and (2) Use of atmosphere-supplying respirators in an

atmosphere immediately dangerous to life of health (IDLH) is limited to self-contained breathing apparatus (SCBA) or to those supplied air-line respirators equipped with an “escape” bottle of compressed air.

Under the slide, “Atmosphere-Supplying Devices—Specific Limitations for SCBA,” Mr. Misiaszek outlines the following: (1) The period over which the device will provide protection is limited by the amount of breathing air in the apparatus, and the ambient atmospheric pressure; (2) Weight or bulk, or both; (3) The training required for their maintenance and safe use; and (4) All self-contained breathing apparatus to be used in an IDLH environment must be rated for at least 30 minutes and must be used in the pressure-demand mode.

Under the slides, “How will the rule deal with these issues,” Mr. Misiaszek says the following: (1) Catastrophic railroad hazardous material incidents have the potential to release IDLH concentrations and/or displace oxygen, or both; (2) The National Institute for Occupational Safety and Health (NIOSH) decision logic identifies self contained atmosphere supplying devices as the only appropriate type of device for these circumstances; (3) Within this class of device, a wide range of variables must be evaluated that will lead to selection of an appropriate device: (a) the railroad must select a NIOSH-certified respirator for escape from the atmosphere in which it will be used; and (b) adequacy of protection for all potential hazardous atmospheres expected must be documented; (4) The railroad will be expected to establish in writing how final selection of a device is made to accommodate the following: (a) breathing time—establish that the device will afford the user sufficient time: (i) to escape the cab of the train; (ii) to escape the potentially toxic environment surrounding the accident scene; (iii) to assist co-workers with escape; and (iv) to accommodate over-breathing that may occur; and (5) The railroad will be expected to establish in writing how final selection of a device is made to accommodate the following: (a) face protection—some of the potential hazardous materials involved are highly irritating to the eyes. The device selected must provide a means of protecting a users eyes to facilitate escape; and (b) accommodation for eyeglasses, facial features or deformities—the device selected must provide a means of protecting users who wear glasses or have very large or small facial features or facial deformities.

Under the slide, “FRA language currently requires a supplied air device (SCBA), Mr. Misiaszek says (1) A device such as this is limited by the size of the tank—these are rated for 5, 10, and 15 minutes. Longer times require larger tanks; and (2) A device such as this, equipped with a hood and a small oxygen tank can provide 30 to 60 minutes of breathable air.

Under the slide, “Other issues to be addressed,” Mr. Misiaszek lists the following: (1) Deployment—individual, or train; (2) Storage for EEBA’s in the locomotive cab; (3) Daly/periodic inspections and maintenance; (4) Training; and (5) Employee responsibilities.

Under the slide, “Other issues: Deployment—individually to crew members, or sets by locomotive,” Mr. Misiaszek says (1) Individual deployment may require more devices but insure each crew member has one; (2) Locomotive deployment may require fewer devices but require management process to insure the devices are present, ready for use and may risk increased losses due to pilferage; and (3) Locomotive deployment may place devices on trains without hazmat, e.g., unit coal trains.

Under the slide, Other issues: Storage on the Locomotive,” Mr. Misiaszek says the railroad must design the storage facility to: (1) Protect the EEBA from incidental damage while installed in the storage facility; (2) Provide the crew with ready access to the EEBA during an emergency; and (3) Provide a means for the users to locate the EEBA under adverse conditions such as darkness or disorientation.

Under the slide, “Other issues: Daily/periodic inspections and maintenance, Mr. Misiaszek says: (1) Devices need to be inspected daily to insure readiness for use; (2) Device need to be inspected periodically at a more detailed level to ensure continued operability and, in some cases, replacement of consumable components; and (3) Devices that are used, or found defective, will need maintenance before return to service.

Under the slide, “Other issues: Training,” Mr. Misiaszek says employees will need initial and periodic refresher training on: (1) The responsibilities of the railroad and of the employees; (2) A review of the technology of the EEBA, including the capabilities and limitations of the devices, particularly the limited time for use; (3) How and when to use the device; (4) How to properly put on and field fit test the device; (4) Emphasize the need to promptly exit the affected area “as if no device had been provided”—to guard against false confidence; and (5) What to do after use—throw away, recycle, re-build.

Under the slide, “Other issues—Employee responsibilities,” Mr. Misiaszek lists the following: (1) Participate in training when scheduled by the railroad; and (2) Follow railroad procedures to ensure: (a) EEBA, are maintained in a secure and accessible manner; (b) EEBA, are routinely inspected; (c) EEBA, found to be unserviceable upon inspection are turned-in to the appropriate railroad facility for repair or periodic maintenance; and (d) The railroad is notified of device failures, and of use incidents.

Under the slide, “Part 2XX—Emergency escape breathing apparatus,” Mr. Misiaszek says FRA has not yet prepared draft rule text language for EEBA. However, he says the rule text outline for Subpart A—General is as follows: (1) § 2XX.1 Purpose and scope; (2) § 2XX.3 Application; (3) § 2XX.5 Definitions; (4) § 2XX.7 Preemptive effect; (5) § 2XX.9 Penalties; (6) § 2XX.11 Responsibility for compliance; (7) § 2XX.13 Waivers; and (8) § 2XX.15.

Under the slide, “Subpart B—Emergency Escape Breathing Apparatus for Railroad Operating Employees, Mr. Misiaszek lists the following: (1) § 2XX.101 Scope and applicability; (2) § 2XX.103 Deployment criteria; (3) § 2XX.105 Device selection criteria; (4) § 2XX.107 Storage facilities; (5) § 2XX.109 Inspection, maintenance and replacement; (6) § 2XX.111 Training program; (7) § 2XX.113 Railroad responsibilities; (8) § 2XX.115 Written program; (9) § 2XX.117 Employee responsibilities; (10) § Record keeping; and (11) § 2XX.123 Effective dates.

Alan Misiaszek (FRA) asks for questions.

Rick Inclima (BMWED) says respiratory protection is a complex issue. He asks if there is current language on SCBA [self-contained breathing apparatus]?

Alan Misiaszek (FRA) says FRA’s Office of Chief Counsel is looking at this language now.

Rick Inclima (BMWED) asks how FRA’s initiative for Personal Protective Equipment (PPE) will relate to Section 4(b)(1) of the OSHA Act [Occupational Safety and Health Act of 1970]?

Alan Misiaszek (FRA) says FRA has a Congressional mandate to issue PPE rules. He imagines that when FRA issues its Notice of Proposed Rulemaking, OSHA will comment.

Rick Inclima (BMWED) says FRA could incorporate by reference the OSHA respiratory protection criteria.

Alan Misiaszek (FRA) says FRA is addressing a very specific issue.

Rick Inclima (BMWED) says FRA’s rule needs to be clearly defined so it does not conflict with current OSHA coverage applicable to railroad workers and not within the locomotive cab.

Larry Breeden (Association of American Railroads (AAR)) asks if there is a time line for FRA to issue its rules on PPE?

Alan Misiaszek (FRA) responds, “By April 2010, FRA’s rule needs to be on the street.”

Chairperson Cothen says the legislation for PPE is not something FRA sought. He says FRA does not want to create the expectation that employees have more protection than they do, or that they can do anything other than to leave a locomotive and the area, i.e., employees should not attempt to close a leaking chlorine valve; they need to leave the area.

James Grady (AAR) says the AAR is working on a standard approach for the railroad industry for this issue.

Keith Borman (American Short Line and Regional Railroad Association (ASLRRA)) asks about “waivers” from PPE requirements for the smallest railroads that do not transport any hazardous materials?

Chairperson Cothen asks Patricia Sun (FRA–Office of Chief Counsel) to take this question back to FRA’s Office of Chief Counsel. He recognizes that there are small carriers that do not haul any of these hazardous commodities.

Chairperson Cothen announces the morning break.

M O R N I N G B R E A K 11:05 A.M. - 11:20 A.M.

Chairperson Cothen reconvenes the meeting. He asks Larry Kish (FRA–Office of Safety) for a report on Track Safety Standards Working Group activities.

Larry Kish (FRA) uses a series of Microsoft PowerPoint Presentation slides, projected onto a screen for “Track Safety Standards (Rail Integrity Task Force) Working Group Report.” All meeting handouts will be entered into the RSAC Docket and are not excerpted in their entirety in the RSAC Minutes. Mr. Kish says on September 10, 2008, RSAC assigned RSAC Task No.: 08-03 to the Track Safety Standards Working Group, which was in turn assigned to the Rail Integrity Task Force.

Larry Kish (FRA) says the Rail Integrity Task Force (RITF) recently met on June 16-17, 2009, in Atlanta, Georgia.

Under the slide, “Task 08-03 (first item),” Mr. Kish reads the first RITF task: Factors that can and should be included in determining the frequency of internal rail flaw testing and a methodology for taking those factors into consideration with respect to mandatory testing intervals.

Under the slide, “Current Regulation,” Mr. Kish reads the following: “§213.237 Inspection of rail (a) In addition to the track inspections required by §213.233, a continuous search for internal defects shall be made of all rail in Classes 4 through 5 track, and Class 3 track over which passenger trains operate, at least once every 40 million gross tons (mgt) or once a year, whichever interval is shorter. On Class 3 track over which passenger trains do not operate such a search shall be made at least once every 30 mgt or once a year, whichever interval is longer. ** [This paragraph (a) is effective January 1, 1999.]”

Under a slide outlining Rail Integrity Task Force progress, Mr. Kish says (1) The Task Force agreed to accept performance based test interval, which could increase testing frequency; (2) Consensus was reached on a Volpe National Transportation Systems Center-recommended Model, driven by the following criteria: (a) service failure rate (fatigue defects only); (b) detected defect rate; (c) annual tonnage; (d) performance target (risk factor); and (e) slow crack growth life; and (3) There is a new requirement for a minimum once a year, or every 30 million gross tons, test frequency.

Under a slide explaining requirements for railroads, Mr. Kish says (1) Railroads are to provide FRA with an Internal Flaw Detection Program for approval; (2) The Internal Flaw Detection Program will be updated annually with adjustments made as necessary; and (3) Railroads are to allow FRA access to defect and failure data.

Under the slide, "Task 08-03 (second item)," Mr. Kish reads the second RITF task: Whether the quality and consistency of internal rail flaw testing can be improved and how.

Under the slide, "First Step Toward Consistency," Mr. Kish says consensus was reached on the definition of a "qualified operator" (to be issued as a Technical Bulletin).

Under the slide, "Task 08-03 (third item)," Mr. Kish reads the third RITF task: Whether adjustments to current remedial action criteria are warranted.

Larry Kish (FRA) describes the "Rail Defect Remedial Action Table" (Part 213.113) and explains "Remedial Action Codes" that are to be entered into the table.

Under the slide, "RITF Action Items," Mr. Kish lists the following: (1) FRA to present "crushed head" and "longitudinal web oriented weld defect" definitions for consideration in the Part 213 Defect Table; (2) FRA to present revision to the remedial actions; and (3) FRA has received all Class I railroads internal remedial action policies, for consideration in revising remedial actions.

Under the slide, "Task 08-03 (fourth item)," Mr. Kish reads the fourth RITF task: The effect of rail head wear, surface conditions and other relevant factors on the acquisition and interpretation of internal rail flaw test results.

Under the slide, "RITF Recommendation," Mr. Kish says the RITF reached consensus to recommend that this item be closed for the following reasons: (1) The task force does not recommend regulatory action concerning head wear; (2) Surface conditions and their affect on test integrity has been discussed and understood; (3) New technology has been developed that improves test performance; (4) The term, "valid test," has been defined; and (5) The term, "qualified operator," has been defined.

Under the slide, "Task Force Action Item Request," Mr. Kish says the U.S. Department of Transportation's Office of the Inspector General recommends that FRA revise its track safety regulations for internal rail flaw testing to require the railroads to report all track locations (milepost numbers or track miles) covered during internal rail flaw testing.

Larry Kish (FRA) reads language for existing 49 CFR § 213.237, that inserts language for "continuous search," i.e., "§ 213.237(a) In addition to the track inspections required by §213.233, a **continuous search** for internal defects shall be made of all rail in Classes 4 through 5 track, and Class 3 track over which passenger trains operate, at least once every 40 million gross tons (mgt) or once a year, whichever interval is shorter. On Class 3 track over which passenger trains do not operate such a search shall be made at least once every 30 mgt or once a year, whichever interval is longer..."

Larry Kish (FRA) reads language for existing 49 CFR § 213.241(c), i.e., "Rail inspection records shall specify the date of inspection, the location and nature of any internal defects found, the remedial action taken and the date thereof, and the location of any intervals of track not tested per § 213.237(d). The owner shall retain a rail inspection record for at least two years after the inspection and for one year after remedial action is taken."

Larry Kish (FRA) says FRA is not routinely provided access to detector car movement reports. He says, "Without access to this information, FRA cannot determine if a continuous test was performed." He says, "FRA proposes to revise Section 213.241(c) that will affirm FRA access to documentation that shows a continuous test was performed."

Larry Kish (FRA) asks for questions.

With no questions of Mr. Kish, Chairperson Cothen provides an update on Medical Standards Working Group activities. He says the Physician's Task Force of the Medical Standards Working Group has been meeting. He says FRA has been working on proposed rule text for guidance on medications. He says FRA would like to reconvene the Medical Standards Working Group before the end of this fiscal year, i.e., September 30, 2009.

Chairperson Cothen announces that the proposed rule for Positive Train Control (PTC) is in clearance at the U.S. Office of Management and Budget (OMB). He says FRA hopes to receive comments from OMB within a few days. This, he says, will give FRA a shot at publishing the PTC Notice of Proposed Rulemaking (NPRM) in early July, but not by the end of June, as previously promised. He says there will be a short turn-around for FRA's receipt of comments to the PTC NPRM so that the Agency will have a chance to bring the comments back before the PTC Working Group.

Chairperson Cothen says on June 24, 2009, the Passenger Hours of Service Working Group held its first meeting to address “issues requiring specific report” under RSAC Task No.: 09-01, accepted April 2, 2009. These are: (1) Whether existing hours of service restrictions are effective in preventing fatigue among subject employees; (2) Whether an alternative approach to hours of service for the subject employees would enhance safety; and (3) Whether alternative restrictions on hours of service could be coupled with other fatigue countermeasures to promote the fitness of employees for safety-critical duties. On June 24, 2009, he says, the Passenger Hours of Service Working Group had a good discussion. He says the American Public Transportation Association (APTA) is obtaining worker schedules, which will be made available to the Working Group. He says FRA will ask for a survey of workers in the form of two-week diaries. He says there is interest in railroad employees, principally passenger crews, having split schedules, which include an interim release from duty during the day, and how this type of schedule may affect employee fatigue. He says a Task Force of the Passenger Hours of Service Working Group, led by Scott Kaye (FRA–Office of Safety), will work on survey questions that will accompany the two-week diary. He says the effort for passenger railroads hours of service must be completed within three years of enactment of the Rail Safety Improvement Act of 2008, or the rules for hours of service that now pertain to freight railroads will also apply to passenger railroads.

Chairperson Cothen says concurrent with the completion of work on the RSAC Task on Electronic Record Keeping (RSAC Task No.: 08-06, Hours of Service Record Keeping and Reporting, dated December 10, 2008), FRA issued interpretative guidelines on Hours of Service terms on June 23, 2009 [74 *Federal Register* (FR) 30665, dated June 26, 2009].

Chairperson Cothen hopes that the Railroad Bridge Notice of Proposed Rulemaking will be published shortly.

Chairperson Cothen asks for additional questions on other topics.

With no questions on other topics, Chairperson Cothen announces the lunch break.

L U N C H B R E A K 11:50 A.M. - 1:00 P.M.

Chairperson Cothen reconvenes the meeting. He asks Ronald Ries (FRA–Office of Safety, Chief Highway-Rail Grade Crossing and Trespass Prevention Division) for a report on Rail Safety Improvement Act of 2008 initiatives affecting crossing safety and trespass prevention.

Ronald Ries (FRA) uses a series of Microsoft PowerPoint Presentation slides, projected onto a screen for “Crossing Safety and Trespass Prevention: Impacts and Required

Action (Public Law 110-432).” All meeting handouts will be entered into the RSAC Docket and are not excerpted in their entirety in the RSAC Minutes.

Ronald Ries (FRA) says Sections 201 through 210 of The Rail Safety Improvement Act of 2008 [Public Law No.: 110-432, effective October 16, 2008], directs FRA to undertake 10 activities to help improve crossing safety and trespass prevention. He outlines these during the remainder of his presentation.

Under the series of slides, “Pedestrian Crossing Safety–Section 201,” Mr. Ries says FRA will issue a guidance document, not a rulemaking, by October 16, 2009, on strategies and methods to prevent pedestrian accidents, incidents, injuries, and fatalities at or near passenger stations including: (1) Audible warning of approaching trains; (2) Signs, signals, or other visual devices; (3) Infrastructure at pedestrian crossings to improve the safety of pedestrians crossing railroad tracks; (4) Fences to prohibit access to railroad tracks; and (5) Other strategies or methods as determined by the Secretary of Transportation. He says FRA has completed a compilation of pedestrian devices.

Under the series of slides, “State Action Plans–Section 202,” Mr. Ries says FRA is required to identify the 10 states with the most collisions over the past three years. Through March 2009, the top nine states are Texas, California, Illinois, Indiana, Georgia, Louisiana, Ohio, Alabama, and Florida. He says the tenth state is currently Iowa, but Arkansas and Mississippi are within 2 collisions of tying for the tenth spot. He says the top ten states will be required to develop a State grade crossing action plan within a reasonable period of time that include the following: (1) Identify specific solutions for improving safety including: (a) crossing closures or grade separations; and (b) focus on crossings with multiple accidents or are at high risk for such accidents; (2) Provide assistance in developing and carrying out the plan; (3) the plan may be coordinated with other State or Federal planning requirements; and (4) The plan should cover a period of time determined to be appropriate by the Secretary of Transportation. He says FRA will review and either approve, or disapprove plans within 60 days. If disapproved, States have 30 days to correct deficiencies. Mr. Ries says states failing to submit plans could lose eligibility for FRA grants.

Under a series of slides relating to “Section 203–Improvements to Sight Distance at Highway-rail Grade Crossings,” Mr. Ries says FRA is developing model State legislation for improving safety by addressing sight obstructions at passive crossings (no active warning devices such as flashing lights and gates) including (1) vegetation growth; (2) topographic features; (3) structures; and (4) standing railroad equipment. Mr. Ries says draft model law is prepared and being reviewed, including a review by the Association of American Railroads. He says there will be outreach to the National Conference of State Legislatures and Governor’s Conference. He says FRA hopes to complete this by April 16, 2010.

Under the series of slides, “National Crossing Inventory–Section 204,” Mr. Ries outlines the following requirements: (1) Railroads and states must report any new or previously unreported crossings; (2) Railroads and States must update the crossing inventory no later than October 16, 2010, and then every year thereafter by September 30; (3) Railroads must report sold crossings on or after October 16, 2008, by April 16, 2010, within three months of sale, whichever is later; and (4) FRA is granted rulemaking authority to implement rules for the National Crossing Inventory.

Ronald Ries (FRA) says “crossing” includes the following: public highway, road, or street, or a private roadway, including associated sidewalks and pathways—either at grade or grade-separated Pathway authorized by a public authority or a railroad for the use of non-vehicular traffic, including pedestrians, bicyclists, and others, that is not associated with a public highway, road, or street, or a private roadway, crosses one or more railroad track.

Ronald Ries (FRA) says the Section 130 statute is revised to require States to comply. He says Tom Woll (tom.woll@dot.gov, (202) 493-6290) is FRA’s contact person for the crossing inventory.

Under the series of slides, “ENS [Emergency Notification System]–Section 205,” Mr. Ries says by April 16, 2010, each rail carrier will be required to establish and maintain a toll-free telephone service for right-of-ways over which it dispatches trains. He says railroads must be capable of directly receiving calls reporting (1) malfunctions of signals, crossing gates, and other devices on public or private roads; (2) disabled vehicles blocking railroad tracks; (3) obstructions to the view of a pedestrian or a vehicle operator for a reasonable distance in either direction of a train’s approach; or (4) other safety information involving such grade crossings.

Ronald Ries (FRA) says railroads shall install appropriately placed signs at each crossing that contains at a minimum, the following: (1) Toll-free number; (2) Explanation of the purpose of the toll-free number; and (3) The U.S. Department of Transportation Inventory Number. He says upon receiving reports of malfunctioning signals, disabled vehicles, sight obstructions, or other safety information, railroads need to immediately contact trains, appropriate local safety officials, and to timely investigate and remove obstructions, if possible, or correct the safety problem.

Ronald Ries (FRA) says FRA may waive the toll-free ENS requirement for Class II and Class III railroads.

Under the series of slides, “Operation Lifesaver–Section 206,” Mr. Ries says the Rail Safety Improvement Act of 2008 authorizes appropriations to FRA for Operation Lifesaver amounting to \$2 million for fiscal years 2010 and 2011, and \$1.5 million for fiscal years 2012 and 2013. He says FRA’s grant or grants to Operation Lifesaver are for a public information and education program to help prevent and reduce pedestrian,

motor vehicle, and other accidents, incidents, injuries, and fatalities, and to improve awareness along railroad rights-of-way and at highway-rail grade crossings. He says Operation Lifesaver's program shall include public service announcements in newspaper, radio, television, and other media, and school presentations, brochures and materials, support for public awareness campaigns, and related support for the activities of Operation Lifesaver's member organizations. He says Operation Lifesaver's program shall provide information to the public on how to identify and report to the appropriate authorities unsafe or malfunctioning highway-rail grade crossings.

Under the series of slides, "Federal Grants to States for Highway-Rail Grade Crossing Safety--Section 207," Mr. Ries says the Rail Safety Improvement Act of 2008 provides for two new grant programs for crossing safety: (1) Education-Enforcement Grants, including enhanced public education and enforcement research study (PEERS) programs to reduce violations of traffic laws at crossings and reduce casualties along right of ways; and (2) Infrastructure Grants, providing priority crossing safety improvements on an expedited basis at a location where there has been a serious collision within the past two years involving major loss of life (signals, gates, four quad gates, medians, traffic signals, lighting, signs, and crossing surfaces).

Ronald Ries (FRA) says the grants are to the State agency or agencies responsible for crossing safety. He adds, grants may not be used for quiet zones.

Under the series of slides, "Trespasser Prevention and Highway-Rail Grade Crossing Safety--Section 208," Mr. Ries says FRA will (1) Evaluate existing laws regarding trespassing, vandalism, and violations of crossing traffic control devices; (2) Develop model prevention strategies and enforcement laws; (3) Consult with State and local governments and railroad carriers; and (4) Develop model State legislation providing for civil or criminal penalties, or both, for violations of crossing traffic control devices.

Ronald Ries (FRA) says the definition of "violation of crossing traffic control devices," includes any of the following actions by a motorist unless directed by an authorized safety officer: (1) To drive around a crossing gate in a position intended to block passage over railroad tracks; (2) To drive through a flashing crossing signal; (3) To drive through a crossing with passive warning signs without ensuring that the crossing could be safely crossed before any train arrived; and (4) In the vicinity of a crossing, who creates a hazard of an accident involving injury or property damage at the crossing.

Ronald Ries (FRA) says for educational or awareness programs, items of nominal value may be purchased and distributed to the public without charge as part of an educational or awareness program to accomplish the purposes of Section 208, and any other sections of this Title related to improving the safety of highway-rail crossings and to preventing trespass on railroad rights of way..."

Under the slide, “Accident and Incident Reporting—Section 209,” Mr. Ries says to ensure that all crossing collisions and fatalities are reported to any Federal national database, FRA shall (1) Conduct an audit of each Class I railroad at least once every 2 years; and (2) conduct an audit of each non-Class I railroad at least once every 5 years.

Under the slides, “Fostering Introduction of New Technology to Improve Safety at Grade Crossings—Section 210,” Mr. Ries says new technology will be reviewed in accordance with FRA’s standards for processor-based signal and train control systems and shall consider the effects of safety. He adds that new technology installed under FRA’s rules preempt State laws concerning the adequacy of the warning, if approved by FRA and installed in accordance with the approval. Mr. Ries says it is the policy of the United States to encourage the development of new technology that can prevent loss of life and injuries at highway-rail grade crossings.

Ronald Ries (FRA) asks for questions.

Kelly Haley (Brotherhood of Railroad Signalmen (BRS)) asks about the guidance to railroads on strategies and methods to prevent pedestrian accidents, incidents, injuries, and fatalities at or near passenger stations. He asks if FRA will address pedestrians with disabilities?

Ronald Ries (FRA) says this is something FRA will look at, particularly for passenger stations.

Kelly Haley (BRS) cites Section 210 of the Rail Safety Improvement Act of 2008. He asks if FRA is going to approve systems that are not fail safe?

Chairperson Cothen says the statute points us back to the processor-based rule, which says if something fails, it fails safe. He says Part 234 references Part 236, Subpart H. He says Section 210 of the Rail Safety Improvement Act of 2008 does not point to anything new.

Ken Briers (National Association of Railroad Passengers (NARP)) references Section 202 and the requirement for State Action Plans for the ten states with the most collisions over the past three years. He asks what happens if there is a three-way tie for tenth place?

Ronald Ries (FRA) says if there was a tie, all three states would be required to submit State Action Plans.

With no further questions, Chairperson Cothen asks Lamar Allen (FRA—Office of Safety) for a status report on FRA’s “Alcohol and Drug Program (49 CFR Part 219).”

Lamar Allen (FRA) uses a series of Microsoft PowerPoint Presentation slides, projected onto a screen for “Alcohol and Drug Program (49 CFR Part 219).” All meeting handouts

will be entered into the RSAC Docket and are not excerpted in their entirety in the RSAC Minutes.

Under the slide, "Program Status," Mr. Allen says the following of FRA's Alcohol and Drug Program: (1) Generally all program components are working well but there is room for improvement; (2) Management/Service Agents, e.g., collectors, laboratories, labor, employees are proactively striving to improve; education/training is key factor; and (3) MDMA (3,4-methylenedioxymethamphetamine) (Ecstasy) will be added to the U.S. Department of Transportation's Part 40 drug screening panel.

Under the slide, "FRA Initiatives," Mr. Allen says there will be a Part 219 Notice of Proposed Rulemaking (NPRM) to (1) implement a Rail Safety Improvement Act of 2008 (RSIA) directive to cover maintenance-of-way (MOW) employees; (2) propose changes to address National Transportation Safety Board (NTSB) recommendations; and (3) mature and improve the regulation.

Under the slide, "Adding MOW," Mr. Allen says (1) The RSIA direction and NTSB recommendation came after several significant accidents; (2) Employers and MOW labor organizations have voluntarily initiated company testing programs in response to these accidents; (3) FRA is committed to proposing an NPRM that fits the safety need, does not overreach, and seamlessly fits into the current employer programs with the least negative, and cost impact; and (4) The goal is to provide the proven programs and tools to assist the industry in improving MOW safety.

Under the slide, "FRA Post-Accident Panel Expansion," Mr. Allen says FRA's post accident toxicological testing laboratory is Quest in Atlanta, Georgia. He says FRA's drug testing panel currently tests for nine drugs/classes of drugs: (1) Cannabinoids; (2) Cocaine; (3) Opiates; (4) Amphetamine; (5) Methamphetamine; (6) Phencyclidine; (7) Barbiturates; (8) Benzodiazepines; and (9) Alcohol.

Under the slide, "Expanded Panel," Mr. Allen says the following will be added to FRA's drug testing panel: (1) Additions to the Benzodiazepines: (a) lorazepam (Ativan); and (b) Clonazepam (Klonopin); (2) Additions to the Amphetamines: (a) MDMA (Ecstasy); (b) MDA (3,4-Methylenedioxyamphetamine); and (c) MDEA (3,4-methylenedioxy-N-ethylamphetamine); (3) Add Synthetic Opiates: (a) hydrocodone (Vicodin, Lortab, Lorcet); (b) oxycodone (OxyContin, Percocet, Percodan); (c) hydromorphone (Dilaudid); (d) oxymorphone (Numorphan); (e) methadone (Methadone, Dolophine); (f) fentanyl (Fentanyl, Sublimaze); (g) tramadol (Ultram, Ultracet); and (h) propoxyphene (Darvocet, Darvon); and (4) Add Sedating Antihistamines, i.e., "older antihistamines: (a) diphenhydramine (Benadryl); (b) chlorpheniramine; and (c) brompheniramine.

Under the slide, "Reporting and Use of Lab Findings," Mr. Allen says (1) As before, the post-accident testing lab (Quest in Atlanta) will report results to FRA and the Medical Review Officer (MRO) only; the MRO will then verify the test results before reporting

them to the railroad; (2) FRA will work very closely with the MRO on the decision to pass findings to the railroad's Designated Employee Representative or Medical Director; and (3) FRA is not trying to "catch" individual drug use, but to investigate the role of therapeutic drug use in railroad accidents.

Under the slide, "PEER Prevention," Mr. Allen says (1) FRA is committed to assisting railroad industry efforts to implement and/or improve Peer Prevention Programs designed to further the reduction of the negative impact of alcohol and drug use (both illicit and unsafe legal use); and (2) Actively involving employees in creating a sober and non-impaired workforce is a proven productive tool that is a safety "win-win" for all.

Lamar Allen (FRA) asks for questions.

Rick Inclima (BMWED) asks if the slide, "FRA Initiatives," i.e., There will be a Part 219 Notice of Proposed Rulemaking (NPRM) to (1) implement a Rail Safety Improvement Act of 2008 (RSIA) directive to cover maintenance-of-way (MOW) employees...applies to railroad contractors performing MOW work?

Lamar Allen (FRA) replies, "Yes."

Rick Inclima (BMWED) asks about "post-accident" triggers for employee drug panel testing.

Lamar Allen (FRA) says there are 110-120 accidents annually which reach the \$1 million property damage trigger threshold. However, he adds, FRA has received a petition from the Association of American Railroads requesting that the \$1 million property damage threshold be adjusted annually for inflation.

Rick Inclima(BMWED) asks if the proposed "Expanded Panel" of drug testing will be included during random employee drug testing?

Patrick Sullivan (National Transportation Safety Board (NTSB)) asks, "When will the Part 219 Notice of Proposed Rulemaking (NPRM) be published and what class of MOW employees will FRA cover?"

Lamar Allen (FRA) says FRA has numerous hurdles to cross before the Part 219 NPRM can be issued.

Patricia Sun (FRA—Office of Chief Counsel) says the statutory deadline for the Part 219 NPRM is October 2010.

Lamar Allen (FRA) says FRA is still discussing what categories of MOW employees will be included.

Chairperson Cothen says the word, “all,” is used in the Rail Safety Improvement Act of 2008.

Gerhard Thelen (Association of American Railroads (AAR)) says the AAR is sending out a survey to all Class I railroads on Peer Intervention Programs and will share the results with RSAC.

James Stem (United Transportation Union (UTU)) says once employees understand the choices under Peer Intervention Programs, they step forward. He wants the railroad industry to step forward also and promote Peer Intervention Programs. He says three railroad properties have already instituted Peer Intervention Programs.

Lawrence Mann (UTU) asks for a refresher on the NTSB Recommendations relating to employee drug testing.

Lamar Allen (FRA) says there are four NTSB recommendations relating to drug testing panels.

Chairperson Cothen says not all highway-rail grade crossing accidents will subject employees to post-accident drug testing. He says FRA is still working through the post-accident drug testing issue.

Chairperson Cothen asks Miriam Kloeppel (FRA–Office of Safety, Chief Risk Reduction Program Division) for a report on “FRA Risk Reduction Program.”

Miriam Kloeppel (FRA) uses a series of Microsoft PowerPoint Presentation slides, projected onto a screen for “FRA Risk Reduction Program.” All meeting handouts will be entered into the RSAC Docket and are not excerpted in their entirety in the RSAC Minutes.

Under the slide, “Two Components to RRP [Risk Reduction Program],” Ms. Kloeppel says Section 103 of the Rail Safety Improvement Act of 2008, requires railroads to develop risk reduction programs. She says the two components to RRP are (1) Voluntary; and (2) Regulatory.

Under the slide, “Voluntary,” Ms. Kloeppel says pilot projects will target operations, equipment, or systems that pose a risk to operational and personnel safety. She cites the following examples of RRP: (1) Close call reporting systems; (2) Peer observation programs; (3) Management development systems; (4) Collision hazard analysis; (5) Track quality index; and (6) Use of wayside equipment monitors and sensors.

Under the slide, “RRP Division Activities,” Ms. Kloeppel says FRA is supporting voluntary programs by: (1) Developing and implementing new pilot programs;

(2) Evaluating pilot programs; (3) Conducting mathematical modeling and statistical analysis; (4) Providing data security, as needed; (5) Implementing nationwide voluntary programs; and (6) Conducting training and outreach.

Under the slide, “Regulatory,” Ms. Kloeppel says under Section 103 of the Rail Safety Improvement Act of 2008: (1) Railroads must develop and submit risk reduction programs to FRA; (2) RRP Plans must include the implementation of fatigue management technology; (3) FRA is preparing an Advance Notice of Proposed Rulemaking (ANPRM) for comment; she says the deadline for having rules in place is October 16, 2012; (4) The RRP rules apply to Class I freight railroads, The National Railroad Passenger Corporation (Amtrak), commuter railroads, and other railroads with “inadequate safety records” (FRA has not defined this term yet); and (5) Other railroads not required to be included, may participate.

Under the slide, “RRP Division Activities,” Ms. Kloeppel says FRA is supporting regulatory efforts by: (1) Developing regulations; (2) Implementing regulations; (3) Auditing railroad compliance with RRP regulations; (4) Evaluating railroad requests for waivers from RRP regulations; and (5) Training and outreach.

Under the slide, “What have we done so far,” Ms. Kloeppel says FRA has (1) Developed communication and process products; (2) Begun drafting the initial ANPRM; (3) Examined current FRA activities that have non-regulatory components; (4) Promoted voluntary RRP projects; and (5) Prepared a Broad Agency Announcement—to promote the availability of funding for some RRP projects for FY 2010.

Under the slide, “What’s Next,” Ms. Kloeppel lists the following FRA activities: (1) Conduct stakeholder meetings in conjunction with the ANPRM; (2) Conduct workshop to explore FRA role in supporting risk reduction (planned for September 2009); (3) Publish a Broad Agency Announcement in FY 2010; (4) Continue to build FRA RRP Division staff (hire 13 people by FY 2013); and (5) Continue with the implementation and evaluation of existing pilot RRP projects.

Miriam Kloeppel (FRA) asks for questions.

Larry Breeden (AAR) believes that railroads should take the initiative for RRP projects. However, he does not want FRA to make a regulation out of all of these voluntary initiatives.

James Stem (UTU) thanks FRA for a philosophy that allows for risk reduction. He cites Operation Red Block, and the Confidential Close Call programs. He says overly burdensome regulations are not what is needed. He would like FRA to adopt a policy of removing unnecessary rules and to simplify railroad rule books. He asks that FRA adopt “simplification of rules.”

Chairperson Cothen says there will be opportunities for the railroad industry to have a dialogue. He adds, if that dialogue leads to something other than a regulation, that is fine with FRA.

Chairperson Cothen asks the Railroad Safety Advisory Committee to look at the draft Minutes for the April 2, 2009, meeting, held in Washington, D.C. He offers additions and corrections to the Minutes. He asks for additional corrections to the draft Minutes.

Kelly Haley (BRS) and Rick Inclima (BMWED) offer additions and corrections to the draft Minutes for the April 2, 2009, meeting, held in Washington, D.C.

Chairperson Cothen asks the Railroad Safety Advisory Committee to accept the Minutes for the April 2, 2009, meeting, held in Washington, D.C., as corrected.

Chairperson Cothen announces that the next meeting of Railroad Safety Advisory Committee will be September 10, 2009, in Washington, D.C.

Chairperson Cothen thanks Larry Woolverton (FRA–Office of Safety) and Catherine Buckley (FRA–Office of Safety) for their efforts in preparations for today's meeting.

Chairperson Cothen adjourns the meeting at 2:40 pm.

M E E T I N G A D J O U R N E D 2:40 P.M.

These minutes are not a verbatim transcript of the proceedings. Also, Microsoft PowerPoint overhead view graphs and handout materials distributed during presentations by RSAC Working Group Members, FRA employees, and consultants, generally become part of the official record of these proceedings and are not excerpted in their entirety in the minutes.

Respectively submitted by John F. Sneed, Event Recorder.