

DRAFT
RAILROAD SAFETY ADVISORY COMMITTEE (RSAC)

Minutes of Meeting
September 22, 2004

The twenty-fourth meeting of the RSAC was convened at 9:32 a.m., in the Franklin-Adams Room of the Washington Plaza Hotel, 10 Thomas Circle, N.W., Washington, D.C. 20005, by the RSAC Chairperson, the Federal Railroad Administration's (FRA) Acting Associate Administrator for Safety, Grady C. Cothen, Jr.

As RSAC members, or their alternates, assembled, attendance was recorded by sign-in log. Sign-in logs for each daily meeting are part of the permanent RSAC Docket. Fourteen of the forty-eight voting RSAC members were absent: The American Association of Private Railroad Car Owners (1 seat), The American Association of State Highway & Transportation Officials (1 seat), The American Train Dispatchers Department Brotherhood of Locomotive Engineers (1 seat), The Brotherhood of Locomotive Engineers and Trainmen (BLET)(1 of 3 seats), The Brotherhood of Maintenance of Way Employes (BMWE) (1 of 2 seats), The International Association of Machinists and Aerospace Workers (1 seat), The National Association of Railroad Passengers (1 seat), The National Conference of Firemen and Oilers (1 seat), The National Railroad Construction and Maintenance Association (1 seat), The Railway Supply Institute (1 seat), Safe Travel America (1 seat), The Sheet Metal Workers International Association (1 seat), and The Transport Workers Union of America (2 seats). Four of seven non-voting/ advisory RSAC members were absent: The Federal Transit Administration (FTA), The Labor Council for Latin American Advancement, The League of Railway Industry Women, and The National Association of Railway Business Women. Total meeting attendance, including presenters and support staff, was approximately 80.

Chairperson Cothen welcomes RSAC Members and attendees. He asks Edward Pritchard (FRA Office of Safety, Director Office of Safety Assurance and Compliance) to give a hotel meeting room safety briefing.

Mr. Pritchard identifies the hotel meeting room's fire and emergency exits. He asks for volunteers with cardiopulmonary resuscitation (CPR) qualification to identify themselves. A large number of RSAC attendees acknowledge having completed this training. Robert Keane (Association of American Railroads (AAR)) and Daniel Smith (FRA Assistant Chief Counsel for Safety) volunteer to perform CPR. Mr. Pritchard advises that a large number of RSAC attendees have cellular telephones, but volunteers himself to call the emergency telephone number, 911, should an emergency occur.

Chairperson Cothen asks Acting FRA Administrator Betty Monro to make opening remarks.

Acting Administrator Monroe thanks meeting attendees for their ongoing commitment to improving railroad safety. As FRA approaches the end of the President's first term, Ms. Monroe reflects on the accomplishments that rail management, rail labor, and FRA have achieved. Comparing statistics for the first six months of 2001 with the first six months of 2004, (1) total accident/incident rates are down almost 22 percent; (2) total fatalities are down 7 percent; (3) total non-fatal injuries are down 27 percent; and (4) employee-on-duty injury rates are down 25 percent. She adds that individual indicators for any six-month period will be up and down. Currently, FRA has a real concern that highway-rail crossing fatalities are up sharply from last year. However, compared to 2001, highway-rail crossing fatalities are also favorably trending downward. Acting Administrator Monroe acknowledges that RSAC has been at the heart of much of the progress for safety investments in the future. With RSAC's help, FRA has (1) issued final rules to authorize the use of the Gage Restraint Measurement System in lieu of visual evaluation of tie conditions—this completes Revisions to Track Safety Standards; (2) issued the first safety requirements for Roadway Maintenance Machines; (3) issued the first national requirements for Locomotive Cab Sanitation; and (4) revised the Accident/Incident Reporting Regulations to conform to new Occupational Safety and Health Administration (OSHA) criteria and make other important improvements, including capturing data on remote control locomotive operations. Based on RSAC's consensus proposed rule, FRA is concluding the process of clearance of a final rule on Performance Standards for Processor-Based Signal and Train Control Systems. RSAC has also helped FRA prepare recently-published proposed rules on Cab Noise Exposure and more crashworthy Locomotive Event Recorders. Ms. Monroe notes that RSAC has also completed work on a proposed rule for improved Locomotive Crashworthiness, which FRA expects to publish following completion of clearance in the very near future. Adding to RSAC's accomplishments, FRA has issued final rules on (1) Freight Power Brakes, including the authorization of extended haul trains; (2) U.S. Locational Requirements for Dispatching and Alcohol/Drug Testing Requirements for Foreign-Based Train Crews; and (3) Safety Integration Plans in connection with significant railroad mergers. In addition, FRA has issued an Interim Final Rule on Use of Locomotive Horns at Highway-Rail Grade Crossings, and the Agency is now preparing final rule amendments. Finally, FRA has issued a proposed rule, Reflectorization of Freight Rolling Stock, that benefitted immensely from early consultations regarding the issues involved, and the Agency is now completing a final rule in that proceeding.

Acting Administrator Monroe explains that as the end of the year approaches, the bulk of FRA's pending regulatory agenda will have been completed. She believes that all who have participated in this process can take pride in a safety program that is more comprehensive, more flexible, and more capable. She believes that the railroad industry, having demonstrated improved safety performance, is poised for even better days ahead. In looking forward, Ms. Monroe says there is now a responsibility to think creatively regarding how all of FRA's regulations—not just those recently issued or recently reviewed—remain relevant and are as flexible as they should be to facilitate future innovations. FRA knows from its work across a broad range of issues that

technology offers real opportunities for enhancing safety. But regulatory constraints can sometimes become impediments to taking advantage of these opportunities. She challenges RSAC to review unnecessary rules. As FRA moves forward into a new 4-year period, she asks that attention also be given to regulatory review and not just adding new requirements. Acting Administrator Monro concludes her remarks by thanking RSAC for its commitment to safety and to the critical role that railroads must play in the future of this great Nation.

Chairperson Cothen thanks Acting Administrator Monro for her remarks. He goes over the topics on the Meeting Agenda that will be presented today. These include alcohol/drug use, cross-border Issues with Mexico and Canada, Roadway Worker Protection, wireless (cellular) telephone use on trains, recent Safety Advisories, RSAC Working Group activities, and security issues. Chairperson Cothen acknowledges receipt of requests from the Association of American Railroads (AAR) and the American Short Line and Regional Railroad Association (ASLRRA) to resolve issues concerning the 92-day locomotive inspection requirements. FRA will begin a round of discussions with the parties within a few days on how to resolve these issues.

Chairperson Cothen asks Lamar Allen (FRA Office of Safety, Director Alcohol and Drug Program) for a presentation on railroad employee alcohol and drug use.

Mr. Allen begins by saying he appears today with an employee alcohol and drug use “report card” for the railroad industry. Within the U.S. Department of Transportation, FRA still has the best monitoring program among transportation modes. However, he is concerned by the recent increase in the number of “red” folders he has received—indicating that a train accident has occurred with crew members having a “positive” alcohol or drug test.

Mr. Allen uses a Microsoft PowerPoint presentation, projected onto a screen. Copies of the Microsoft PowerPoint viewgraphs 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.

In looking at “All Federal Drug Test Results” (these do not include railroad testing data) the test-positive rate has increased from 0.86 percent in year 2000 to 1.03 percent in year 2003. Of the five major identified types of drugs, marijuana ranks first in abuse followed by cocaine. Mr. Allen explains that the troubling trend is in “Random Drug Test Results,” which showed an increase in the positive rate from 0.79 percent in year 2000 to 0.93 percent in year 2003. Mr. Allen notes that the regulations require railroads to shift from “random” testing to testing 50 percent of all employees when the random drug test positive rate exceeds 1.0 percent.

Under “All Federal Alcohol Test Results,” there is also an increase in the number of rail employees who are testing positive for alcohol use. In “Post-Accident Testing,” there was a decline in the number of positive alcohol and drug tests in 1989, when random

testing began. The decline continued to the level of 2 in 2002. However, in 2003 there were 7 positive tests for drugs (6) and alcohol (1) in post accident testing. From January 1 through September 30, 2004, post accident testing were positive for 3 drug, 1 alcohol, and 1 refusal-to-take test events. But there are “Other Indicators” of increased alcohol and drug use. These include: (1) company authority testing results reveal an increasing number of drug and alcohol positives, (2) self-help program utilization is increasing, (3) refusals to be tested are increasing, and (4) other DOT industry program managers indicate similar increases in their respective industries. Mr. Allen outlines “Some Possible Reasons” for the increase in employee alcohol and drug use: (1) workforce change-over, (2) either tighter or looser abatement programs, (3) increased marketing, or access to products designed to “beat” the testing, and (4) less supervisory oversight.

Mr. Allen outlines “FRA’s Recommendations” for improving the rail industry’s report card. They are: (1) evaluate each program element for compliance and effectiveness, (2) ensure this critical safety program is an on-going priority with visible management support, (3) include meaningful supervisory observation in programs of operational testing, (4) actively involve labor organizations in helping to establish positive expectations, (5) enhance education of employees through marketing of programs and policy, (6) through joint labor-management action, reinvigorate peer intervention (recall that “peer intervention is not “regulation”), and (7) ask FRA for assistance.

Mr. Allen discusses “Redblock Programs.” Redblock programs (1) are “not regulations;” (2) strongly support good outcomes; (3) are founded on labor-management cooperation; (4) foster the highest level of involvement in responsible decision making regarding reporting for duty; and (5) provide a tool for fit employees to secure their own safety while assisting others. Mr. Allen believes that CSX Transportation Company (CSXT) has the best Redblock program, followed by Burlington Northern Santa Fe Railroad and the National Railway Passenger Corporation. CSXT employees know they can “mark-off” if they are impaired.

In concluding, Mr. Allen says “It’s Not Over . . .” Since the early 1980s, the railroad industry has made substantial progress. Because we are human beings, the problem is never “solved.” Vigilance and mutual support are required to manage this risk. It’s worth the effort because controlling the use of alcohol and other drugs in the work place promotes safety, health, and productivity.

Chairperson Cothen asks if there are any questions for Lamar Allen.

James Stem (United Transportation Union (UTU)) states that UTU will work with any entity on this topic. Peer intervention is working but education is the key to the success of peer intervention.

Chairperson Cothen responds that FRA is also available to assist. FRA can help produce brochures or other handouts that can be used in the education process.

With no further questions or comments, Chairperson Cothen asks Jane Bachner (FRA Office of Policy) Antonio Lozada Bautista (Secretaria de Comunicaciones y Transporte) and Don Pulciani (Transport Canada) for a presentation on cross-border rail safety issues involving the United States, Mexico, and Canada.

Ms. Bachner, Mr. Bautista, and Mr. Pulciani use a Microsoft PowerPoint presentation, projected onto a screen. Copies of the Microsoft PowerPoint viewgraphs 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. Subsequent to the Meeting, an English version of Mr. Bautista's viewgraphs was provided by Raul V. Bravo (High-Speed Ground Transportation Association).

Ms. Bachner begins with some background information on trade between Mexico, Canada, and the United States. While much of the \$362.3 billion in surface-only NAFTA trade between the United States and Canada, and the \$200.4 billion in surface-only NAFTA trade between the United States and Mexico in 2003 was by motor carrier, rail trade, particularly rail trade with Mexico is rising.

Mr. Pulciani continues with a description of Canada and the Canadian Rail System. Canada has 10 Provinces and 3 Territories. There are 34 Federally-regulated railways. There are 50 Provincially-regulated railways. The Railway Association of Canada lists 60 member railways. The Canadian railway infrastructure consists of approximately 38,892 miles of track, 3,292 motive power units, 112,000 freight cars, and 1,000 passenger cars, of which 424 are intercity-only. There are 23,000 public, and 26,000 private highway-rail grade crossings.

Mr. Bautista (through an interpreter—Raul V. Bravo, an RSAC Member) gives a general description of Mexico's railway system. There are approximately 17,288 kilometers of main line track, and 2,800 kilometers of surplus track. Mexico's rail system transports approximately 78,141,000 tons of cargo annually, generating about 48,916 million ton-kilometers of rail traffic. Annual passenger traffic is small. It approximates 360,000 passengers and 82 million passenger-kilometers. Mexico's railway system has 1,600 locomotives and 35,000 cars. Between 2001 and 2006, the investment in railroad infrastructure is expected to approximate 13,315 million pesos. Mexico's transportation authorities undertake a verification process when a Mexican State or company requests assignment of a rail line. This includes (1) compliance with laws, regulations and other requirements related to railway issues; (2) qualification verification of crews and dispatching centers, (3) verification of general maintenance conditions of tracks, structures, and facilities of the railway network, (4) verification of compliance with rolling stock maintenance programs, (5) formulate opinions or judgements of rail accidents, and (6) address complaints and suggestions from users of the rail network and forward them to the respective authorities, as necessary. Finally, Mr. Bautista describes the functions and responsibilities of his Agency. These include (1) regulating rail transportation, i.e., updating standards, validating standardization with the United States

and Canada, and developing official Mexican standards; (2) developing railway services in Mexico, i.e., assembling agreements with three levels of government and concessionaires to improve the relationship between railways and cities; (3) Safety, i.e., determining the criteria for qualifications and requirements to obtain Federal Railway License, coordinating dispatching processes, and analyzing the cause of rail accidents; and (4) verifying compliance with standards, i.e., supervising the proper development of railway services.

Ms. Bachner continues. Implementation of the North American Free Trade Agreement (NAFTA) by the Government of Canada, the Government of the United Mexican States, and the United States of America began on January 1, 1994. The Land Transportation Standards Subcommittee (LTSS) was established to consider compatibility of transportation standards for all modes. The goal of LTSS is harmonization where feasible with no compromise on safety. A trilateral Rail Working Group was established to evaluate existing regulations of Canada, the United States and Mexico. The Group concluded that rail operations in the three countries are basically compatible. There is no need for major changes. However, the same is not true for the motor carrier industry. The Group believes that additional harmonization could make cross-border rail operations more efficient. Subsequently, a Transportation Consultative Group (TCG) is exploring ways to increase harmonization, providing a forum for the discussion of proposed regulations, providing a forum to explore joint efforts on improving border efficiency and a venue for resolving cross-border problems. Under "International Regulatory Options," Ms. Bachner says there are three options: (1) harmonization, (2) reciprocity, and (3) exemptions/waivers.

Mr. Pulciani continues. Under "LTSS Bilateral Initiatives," Canada and the United States jointly developed a process to review compatibility of respective regulatory regimes. Under NAFTA, the three main operational issues identified are: (1) Crew Qualification Standards; (2) Hours of Service Rules; and (3) Occupational Safety and Health Regulations. Under "FRA-TC (Transport Canada) Response," a closer FRA-TC working relationship was established in 1995, involving both management and day-to-day operations. Under "TRWG (Technical Review Working Group)," a joint FRA-TC TRWG has been set-up with respect to operating procedures. Joint FRA-TC cross-border field inspections are being conducted. Mexico was invited as an observer even though the inspections were bilateral between the United States and Canada. The United States and Canada Cross-Border Review took about a year and involved the following issues: (1) operating rules and practices, (2) control of alcohol and drug use by rail employees, (3) railway communications, (4) rear-end marking devices, (5) accident/incident reporting, (6) hours of service, (7) occupational safety and health, and (8) locomotive engineer qualifications. At the end of the review, a report was issued, which concluded: ". . .neither the current regulations nor existing railway operating practices appear to impede the flow of goods and traffic under NAFTA." Under "FRA-TC Initiatives," the two Agencies have put together an action plan which includes: (1) Senior Management Meetings (now biannual), (2) increased consultation on regulations and policy, (3) improved data sharing, and (4) increased joint

inspections, currently mostly on the West coast and Central Canada. Mr. Pulciani used the “Drug and Alcohol Issue” as an example of the joint FRA-TC cooperation working, which resulted in modifying the Final United States Rule. Under “Ongoing Cross-Border Issues,” FRA and TC continue to work together on issues such as: (1) fatigue and human factors, (2) regulatory harmonization whenever possible, i.e., reflectorization and locomotive event recorders, (3) accident/incident reporting, and (4) new technology, i.e., positive train control.

Ms. Bachner continues the discussion with “FRA-SCT (Secretaria de Comunicaciones y Transportes) Initiatives.” There has been longstanding cooperation on emergency orders. In 2000, a Memorandum of Cooperation on Safety was issued. The LTSS and TCG are serving as forums for regulatory initiatives. And, there are joint hazardous materials inspections. Under “New FRA-SCT Initiatives,” there will be an FRA-SCT Senior Management meeting in November 2004. Canada has been invited as an observer. At the FRA-SCT border staff meeting, it was agreed to work on day-to-day issues. Finally, there is a proposal to expand joint inspections to include hazardous material inspections.

Ms. Bachner concludes that by “working together,” the three countries will better understand respective regulatory needs. There will be earlier consultation and cooperation. They will learn from each other’s best practices. There will be smarter regulations. This cooperation will facilitate safe cross-border trade.

Chairperson Cothen asks for questions.

James Brunkenhoefer (UTU) explains that he has traveled the world as a member of a trade union visiting many hostile environments, including Russia and Egypt. However, in a meeting with labor and management in Mexico, he felt threatened and unsafe. He could not understand his treatment in Mexico. He believes that authorities did not want him meeting with Mexican trade unionists. But meeting with trade unionists throughout the world is what he does, and with whom he feels most comfortable. He wants to help solve cross-border issues but believes that he is not welcome in Mexico.

Mr. Bautista (through translator Raul Bravo) responds that he is sorry for Mr. Brukenhoefer’s experience. He requests that Mr. Brukenhoefer submit a letter detailing the events that happened during his visit. Mr. Bautista offered to attempt to resolve the matter. (Further discussion clarified that the event occurred several years ago.)

Robert Harvey (BLET) has two questions. For Mr. Bautista, he questions the projected infrastructure investment for years 2001-2006. By converting pesos to dollars, it appears that only \$1 million will be invested in Mexico’s railroad infrastructure for the six-year period.

Mr. Bautista (through translator Raul Bravo) responds that the \$1 million shown on the view graph is the amount of money that is expected to be received from

concessionaires for the sale or lease of rail lines. After the new owner takes over the lines, additional funds will need to be spent to maintain the lines. He does not know how much money the Mexican rail industry is spending on railroad maintenance.

Mr. Harvey asks Mr. Pulciani if the level of accident and safety data being collected by Transport Canada is comparable to that collected by FRA?

Mr. Pulciani responds that Transport Canada is in the process of adding additional fields of data. But adds that it will not be the same as FRA's data collection requirements.

Mr. Harvey asks Mr. Bautista about the level of accident and safety data being collected by Mexico.

Mr. Bautista (through translator Raul Bravo) responds that Mexico is in the process of evaluating whether the types of accident and safety data currently collected are useful. He indicated that many of Mexico's future standards will be based on the United States's standards.

Raymond Holmes (BLET) says that of the 8 points of entry into the United States from Mexico, 5 are in Texas. He asks if there is an estimate in the increase in the number of carloads of traffic from Mexico for the next 10 years?

Ms. Bachner believes that she can obtain an estimate in tons.

Mr. Holmes says that he knows that the Union Pacific Railroad spends millions of dollars each year to keep illegal immigrants off its rail lines. He asks if Mr. Bautista has a solution to this issue.

Mr. Bautista (through translator Raul Bravo) responds that there are several issues beyond the scope of his agency. Illegal immigrants are a national security issue. He hopes that the Agencies in the United States and Mexico that have the responsibility for cross-border illegal immigration can resolve this issue.

Richard Johnson (Transportation Communications International Union/Brotherhood of Railway Carmen) asks if railroad regulations of Mexico are compatible with railroad regulations of the United States?

Ms. Bachner responds yes.

Mr. Johnson asks if that includes hazardous materials regulations?

Mr. Johnson states that there are Canadian railroads that own United States railroads. Is the same true for Mexican railroads?

Ms. Bachner responds yes, the Texas-Mexican Railroad Company is a United States carrier that is jointly owned by a Mexican and United States carrier.

Mr. Johnson asks who will pay “civil penalties” in jointly-owned track.

Daniel Smith (FRA Assistant Chief Counsel for Safety) says that track owners and equipment owners, respectively, will pay civil penalties assessed for track or equipment violations.

With no additional questions, Mr. Cothen announces a morning break.

M O R N I N G B R E A K 11:15 A.M. - 11:33 A.M.

Mr. Cothen calls the meeting to order. He asks Christopher Schulte (FRA Office of Safety) for a general discussion on how roadway worker protection rules are working.

Mr. Schulte uses a Microsoft PowerPoint presentation, projected onto a screen. Copies of the Microsoft PowerPoint viewgraphs were distributed to meeting attendees. Also distributed to meeting attendees is a draft document, Part 214 Subpart C: Roadway Worker Protection Known Issues–Master Matrix. In matrix form, this document identifies 106 issues by 49 Code of Federal Regulations (CFR) Section 214 break-down, as to issue, discussion/recommendation, whether a Technical Bulletin (TB) has been issued or is pending, whether the issue is active for a future Technical Resolution Committee (TRC) agenda item, and whether there has been a rule change. All meeting handouts will be entered into the RSAC Docket and are not excerpted in their entirety in the RSAC Minutes.

Mr. Schulte explains that issues and concerns about roadway worker protection (RWP) are continually being raised during compliance activities, FRA inspector training, and external customer inquiries. While the success of RWP regulation is remarkable, as evident by improvements in roadway worker fatalities and severe injuries statistics, he believes that revisions and clarifications to RWP regulations should be considered in order to make RWP regulations even more effective. FRA believes that one casualty is too many; zero casualties should be the goal. While two TRC meetings have been held and numerous TB’s have been issued to resolve RWP issues, Mr. Schulte believes that there remain a dozen significant issues which require detailed guidance. Under “Other Than Roadway Workers,” there is an on-going question regarding other crafts that may be performing work similar to engineering activities (e.g., mechanical employee performing light building maintenance in a shop under blue signal regulations). Under “(maintenance of way) MW Contracting,” RWP regulations treats contractors and railroads as equals. This issue raised a significant concern and discussion among FRA inspectors who are encountering an increased number of railroad contractors on many

carriers. Under "Movement of Certain Machines," RWP regulations do not address how snow blowers, weed sprayers, etc., can be operated over long distances of non-controlled track such as classification yards. Under "Station Platforms," employees at station platforms who are clear of the track, but with hand tools, may be close to fouling space (e.g., employees cleaning station platforms). Under "Roadway Worker at Job Site," the location of the roadway worker-in-charge at the job site needs to be clarified. Under "Tunnel Niches," a rule change would be necessary to recognize roadway worker use of tunnel niches (clearing bays). Under "Exclusive Occupancy and Emergencies," movements into and within exclusive track occupancy may only occur under the direction of the roadway worker-in-charge. Under "Occupy Behind," it is necessary to address the common practice of an authority that instructs the roadway worker-in-charge to occupy the track behind a moving train. Under "At-Will Occupation of Non-Controlled Track," it is a typical practice for railroads to allow equipment to occupy non-controlled track "at will." However, it is unreasonable to expect a crew to place derails at every highway crossing on a three-mile industrial led to perform work at various spots. Under "Securing Equipment With Inaccessible Limits," guidance is needed for "RWP tags" for non-occupied locomotives and the securing of rolling stock not coupled to trains within the limits within inaccessible track. Under "Remote Control Locomotives (RCL)," guidance is needed on the RCL environment, including inaccessible track, train approach warning, and audible warning from train. Under "Whistling," guidance is needed on sounding the locomotive whistle approaching roadway workers, i.e., duration of whistle and issues involving roadway workers on or about the track.

Mr. Schulte says that the TB's that have been issued or are pending do not appear to address the 12 significant issues outlined above. Of the options that are available to FRA, the Agency could: (1) maintain the status quo, (2) open selected sections of the regulation to RSAC, (3) open the entire regulation to RSAC, or (4) issue a Notice of Proposed Rulemaking (NPRM).

Mr. Schulte asks if there are any questions.

Rick Inclima (BMW) asks if the matrix will be placed on the Internet?

Mr. Schulte responds yes.

Mr. Inclima says that while the casualty trends are positive, BMW is willing to work with FRA and industry to revolve these issues. He does not favor the first option. He suggests that an informal ad hoc committee make a report to RSAC. The ad hoc committee could work through a number of the issues. If the informal group cannot work through the issues, then one of the other options could be considered.

Matthew Reilly (ASLRRA) thanks Mr. Schulte for his presentation. He says of the options, number 1 (status quo) and number 4 (NPRM) are out of the question. He adds that ASLRRA's 500 member railroads have spent a large amount of time investigating these issues. He has participated in the TRCs and found the process frustrating.

However, he would like to see something on a consensus basis, or at least start the process that way. He realizes that the RSAC process does not provide for anything other than the 4 options. He wants this regulation revisited.

Mr. Schulte says he does not believe the regulation is broken. He believes that guidance needs to clarify certain issues.

Robert Harvey (BLET) says there are a lot of issues that have not been resolved. He concurs that the unresolved issues should be examined on an informal basis.

Jeffrey Moller (AAR) would like to have these issues examined informally.

Joseph Mattingly (BRS) says that the seven potential TRC items may or may not be required to be opened. He asks if these 7 items could be examined informally?

Chairperson Cothen concludes the discussion by saying there have been two TRCs. He believes that 10-15 items can be examined without reopening the entire rule. The safety net is that FRA can always open an NPRM. However, these items need to be addressed in the near future.

Chairperson Cothen asks Dennis Yachechak (FRA Office of Safety) to discuss the issue, cellular (wireless) telephone use on trains by railroad employees.

Mr. Yachechak declares that the proliferation of personal cellular telephone technology has now made this device a necessity. However, there are countless examples of how the use of these devices by railroad employees in locomotive cabs of moving trains can be distracting. On May 28, 2002, a freight train collision in Texas was caused by a failure to obey a track warrant while a train engineer was using a cellular telephone. As a result, the National Transportation Safety Board (NTSB) issued a recommendation (R-03-01) on June 13, 2003, that FRA promulgate regulations that will control the use of cellular telephones by operating employees while on duty.

To view NTSB Safety Recommendation Letters, visit the NTSB Internet Web Site (www.nts.gov). Under "Data & Information Products," click-on "Safety Recommendation Letters." Then, click-on "Railroad."

This is an issue that appears in all forms of transportation. At the April 27, 2004, full RSAC meeting, members were asked to come to this meeting to discuss whether cellular telephone use while a locomotive is underway should be added as a Working Group item. Mr. Yachechak adds that all railroads have issued rules or instructions covering the use of electronic devices in locomotive cabs, although some are more detailed than others. Mr. Yachechak also stated that FRA believes that Federal intervention in this area is not warranted at this time. FRA told the NTSB that any Federal regulation restructuring cell phone use in the railroad industry would be virtually

unenforceable. He asks if RSAC members believe this issue should be tasked to an RSAC Working Group?

Jeffrey Moller (AAR) declares that carrier practices are changing. The use of cellular telephones while a locomotive is underway is a complex issue. He does not believe that RSAC members are ready for a Federal rule in this area yet.

Matthew Reilly (ASLRR) has surveyed the 500 members of his organization, which show that most restrict cellular telephone use. But, he adds, the use of this device allows more effective communication with employees and shippers. He believes that non-company-related cellular telephone use should be restricted. However, he adds, enforcement of any Federal rule in this area would be difficult.

Raymond Holmes (BLET) asks if there are some railroads that pay for employee cellular telephones.

AAR and ASLRR representatives respond yes.

Rick Inclima (BMW) points out that redundant communication devices are now required by Railroad Communications Rules (49 CFR Part 220), and cellular telephones are an example of a redundant communication device. He favors limits on cellular telephone use, rather than the elimination of cellular telephone use.

Mr. Yachechak commented that while cellular telephone use is addressed in the regulations, there are no restrictions on their use in the regulatory text. But FRA did address abuses in the Preamble text and stated that if warranted, it would revisit this issue in the future.

Dennis Mogan (AAR) says that the mere "ringing" of a cellular telephone can be a distraction. But he believes that rules regarding cellular telephone use should be left up to individual carriers.

Robert Harvey (BLET) believes that "distraction," not cellular telephones, is the issue. He believes that railroad management should undertake a risk assessment study of when and where cellular telephones should be used.

Mr. Mogan responds that his company has a policy that allows the cellular telephone to be turned-on for emergency purposes. But otherwise, Metra requires cellular telephones to be turned-off, to prevent distractions.

Chairperson Cothen concludes the discussion by asking that all carriers send copies of specific policies regarding cellular telephone use to Dennis Yachechak. FRA will then look at the "best practices" that emerge and compare these with FRA's existing rules regarding the use of electronic devices while a locomotive is underway. FRA proposes to incorporate these findings into a memorandum to the NTSB to address NTSB

Recommendation R-03-1. The memorandum may be circulated to RSAC members before being sent to the NTSB.

With no additional questions of Mr. Yachechak, Chairperson Cothen thanks RSAC members for their comments. He announces the lunch break.

LUNCH BREAK 12:41 P.M. - 1:50 P.M.

Chairperson Cothen reconvenes the meeting. He discusses FRA *Safety Advisory 2004-04: Effect of Sleep Disorders on Safety of Railroad Operations*.

Copies of Safety Advisory 2004-04 were handed-out to all meeting attendees. Safety Advisories can also be found on FRA's Internet Web Site (www.fra.dot.gov) under "Safety," "Public Advisories," and "Safety Advisories." A copy of Safety Advisory 2004-04 will be entered into the RSAC docket and is not excerpted in its entirety in the RSAC Minutes.

Issued September 21, 2004, Chairperson Cothen explains that FRA's Safety Advisory 2004-04 is FRA's initial effort to address the NTSB's recommendations following the collision of two Canadian National Railway Company/Illinois Central Railroad Company trains near Clarkston, Michigan. Two crew members were fatally injured; two crew members sustained serious injuries; and track and equipment damage were estimated to be approximately \$1.4 million. The NTSB determined that the probable cause of the accident was crewmembers' fatigue, which was primarily due to the engineer's untreated, and the conductor's insufficiently treated, obstructive sleep apnea.

Following the NTSB's investigation of the Clarkston, Michigan, accident, NTSB Report No. RAR/02/04 issued the following three recommendations to FRA: (1) R-02-24: "Develop a standard medical examination form that includes questions regarding sleep problems and requires that the form be used, pursuant to 49 CFR Part 240, to determine the medical fitness of locomotive engineers; the form should also be available for use to determine the medical fitness of other employees in safety-sensitive positions;" (2) R-02-25: "Require that any medical condition that could incapacitate, or seriously impair the performance of an employee in a safety-sensitive position be reported to the railroad in a timely manner;" and (3) R-02-26: "Require that, when a railroad becomes aware that an employee in a safety-sensitive position has a potentially incapacitating or performance-impairing medical condition, the railroad prohibit that employee from performing any safety-sensitive duties until the railroad's designated physician determines that the employee can continue to work safely in a safety-sensitive position."

To view NTSB Accident Reports, visit the NTSB Internet Web Site (www.nts.gov). Under "Data & Information Products," click-on "Accident Reports." Then, click-on Railroad "Accidents."

To view NTSB Safety Recommendation Letters, visit the NTSB Internet Web Site (www.nts.gov). Under "Data & Information Products," click-on "Safety Recommendation Letters." Then, click-on "Railroad."

Chairperson Cothen explains that FRA agrees with the safety concerns as expressed by the NTSB. However, in evaluating the recommendations, FRA has noted the importance of addressing these needs within a proper framework of accountability, scientific credibility, professional discipline, and fairness. Further, FRA notes that conditions that could threaten employee fitness for duty are not limited to sleep disorders. Accordingly, in the Fall of 2003, FRA awarded a contract for a comprehensive study to the consultant, Foster-Miller, Incorporated, to determine the need for, and options for implementing, medical standards for railroad employees in safety-critical occupations. Upon receipt of a final report from that study, FRA will evaluate the appropriate framework for addressing in greater detail the NTSB's recommendations.

Until the study data is available, Safety Advisory 2004-04 recommends that railroads and representatives of employees, working together, take the following actions to promote the fitness of employees in safety-sensitive positions: (1) establish training and educational programs to inform employees of the potential for performance impairment as a result of fatigue, sleep loss, sleep deprivation, inadequate sleep quality, and working at odd hours, and document when employees have received training. Incorporate elements that encourage self-assessment, peer-to-peer communication, and co-worker identification accompanied by policies consistent with these recommendations; (2) Ensure that employees' medical examinations include assessment and screening for possible sleep disorders and other associated medical conditions (including use of appropriate checklists and records). Develop standardized screening tools, or a good practices guide, for the diagnosis, referral and treatment of sleep disorders (especially sleep apnea) and other related medical conditions to be used by company paid or recommended physicians during routine medical examinations. And, provide an appropriate list of certified sleep disorder centers and related specialists for referral when necessary; (3) develop and implement rules that request employees in safety-sensitive positions to voluntarily report any sleep disorder that could incapacitate, or seriously impair, their performance; (4) develop and implement policies such that, when a railroad becomes aware that an employee in a safety-sensitive position has an incapacitating or performance-impairing medical condition related to sleep, the railroad prohibits that employee from performing any safety-sensitive duties until that medical condition appropriately responds to treatment; (5) implement policies, procedures, and any necessary agreements to—(a) promote self-reporting of sleep-related medical conditions by protecting the medical confidentiality of that information and protecting the employment relationship, provided that the employee

complies with the recommended course of treatment—(b) encourage employees with diagnosed sleep disorders to participate in recommended evaluation and treatment—and (c) establish dispute resolution mechanisms that rapidly resolve any issues regarding the current fitness of employees who have reported sleep-related medical conditions and have cooperated in evaluation and prescribed treatment.

Chairperson Cothen continues that Safety Advisory 2004-04 is a discrete entry to the overall suggestion for “medical standards,” which will be addressed later. The message is: human performance defects do not occur by accident or chance. FRA knows there is fatigue in the railroad industry. Increasingly, there are more and more medical professionals who are schooled in fatigue issues. He hopes that there will be a presentation on the Foster-Miller, Incorporated study at the next RSAC Meeting. However, he concludes that FRA does not know where this issue will go—it is not an easy issue.

Chairperson Cothen asks if there are any questions.

James A. Southworth (NTSB) comments that the NTSB is pleased with the issuance of FRA Safety Advisory 2004-04. The NTSB wants the issue to be left open to any type of disorder, not just sleep. There are other disorders besides sleep disorders that can impair safety-critical employees.

Chairperson Cothen adds that some other medical conditions, i.e., cardiac problems, are of concern. The Foster-Miller, Incorporated study that is underway may address other medical conditions. He hopes that FRA will be able to add this item on the agenda for the next full RSAC meeting.

With no further questions or comments, Chairperson Cothen asks Edward Pritchard (FRA Office of Safety) for a briefing on railroad security issues.

Mr. Pritchard explains that DOT and the Department of Homeland Security’s (DHS) Transportation Security Agency (TSA) are considering new requirements for transporting hazardous materials (hazmat). Some requirements under consideration that could affect the railroad industry might involve a new placarding system. There is concern that the current placarding system poses a security risk by identifying the types of hazmat being carried by specific rail cars. However, the identification of specific hazmat being carried by rail cars is essential information for First Responders to rail accidents involving hazmat. TSA is looking at other ways to identify hazmat other than by direct placarding of rail cars. TSA has also issued directives for passenger rail operations, some of which may differ from current rail passenger safety requirements. TSA will make a presentation at the next meeting of the RSAC Passenger Safety Working Group, October 26-27 at the Holiday Inn, BWI Airport, 890 Elkrigde Landing Road, Baltimore, Maryland.

Mr. Pritchard asks for questions.

With no questions of Mr. Pritchard, Chairperson Cothen comments on other RSAC Working Group activities. Under RSAC Task No. 97-2, Locomotive Cab Working Conditions, a Notice of Proposed Rulemaking (NPRM) on locomotive cab noise was published in the Federal Register (FR) on June 23, 2004 (69 FR 35146). The comment period ended yesterday (September 21, 2004). Mr. Cothen will ask RSAC for permission to have the Committee review and act on the NPRM's comments by mail ballot. Task statements and documents related to RSAC Task Statement No. 97-2, Locomotive Cab Working Conditions, are part of the permanent RSAC Docket and are not excerpted in detail in the RSAC Minutes. After the conclusion of the "locomotive cab noise" issue of this task, the Working Group will consider "vibration" and "emergency egress from the locomotive cab" issues under this Task. (Editorial note: Please see correction by Mr. Patrick Amin below.)

Under RSAC Task No. 97-3, Revision of Event Recorder Requirements, an NPRM was published on June 30, 2004 (69 FR 39774). The comment period for the NPRM ended on August 31, 2004, and a public hearing is scheduled for September 30, 2004. Mr. Cothen will ask RSAC for permission to have the Committee review and act on the NPRM's comments by mail ballot. Task statements and documents related to RSAC Task Statement No. 97-3, Revision to Event Recorder Requirements, are part of the permanent RSAC Docket and are not excerpted in detail in the RSAC Minutes.

Under RSAC Task No. 97-1, Locomotive Crashworthiness, the full RSAC approved the NPRM on March 21, 2004. FRA sent the NPRM to the Office of the Secretary of Transportation (OST) for review on May 27, 2004. OST sent the NPRM to the Office of Management and Budget for review on July 20, 2004, where it is currently pending review. Task statements and documents related to RSAC Task Statement No. 97-1, Locomotive Crashworthiness, are part of the permanent RSAC Docket and are not excerpted in detail in the RSAC Minutes.

Chairperson Cothen asks for a motion that RSAC review and act on comments by mail ballot for Locomotive Cab Working Conditions (noise issues) and Revisions to [Locomotive] Event Recorders [Regulations].

John Grundmann (AAR) moves that RSAC review and act on comments by mail ballot for Locomotive Cab Working Conditions (noise issues) and Revisions to [Locomotive] Event Recorders [Regulations].

Mr. Harvey (BLET) seconds the motion.

BY UNANIMOUS VOICE VOTE, RSAC AGREES TO REVIEW AND ACT ON COMMENTS BY MAIL BALLOT FOR LOCOMOTIVE CAB WORKING CONDITIONS (NOISE ISSUES) AND REVISIONS TO [LOCOMOTIVE] EVENT RECORDERS [REGULATIONS].

James Stem (UTU) is concerned that FRA continues to receive waiver requests for Blue Signal issues (RSAC Task No. 2000-1, Blue Signal Protection of Workers—withdrawn by FRA on December 2, 2003). He asks if FRA is going to amend the regulations by waiver?

Chairperson Cothen responds that many of the waivers deal with battery replacement. All of the cases were analyzed by the Blue Signal Working Group and there was no resolution. Now, railroads have indicated that they need to move-on and resolve these issues. FRA's Office of Chief Counsel has advised FRA's Office of Safety that there are no restrictions as to transportation employees carrying out these functions while working on the equipment that they were called to operate. This was not what the Office of Safety anticipated. Thus, the Office of Safety is dealing with individual waiver requests; these are not industry-wide waiver requests. For the specific issue involved—battery replacement—FRA will consider the individual waiver requests.

Mr. Stem says that the battery issue was resolved within the Working Group. His question raises a concern of what is happening—modifying Blue Signal Regulations by waiver. He also believes that granting Blue Signal worker protection waivers will nullify aspects of the Switching Operations Fatality Analysis (SOFA) lifesaver program.

Chairperson Cothen responds that FRA is aware that when waivers are granted, they may change other requirements. He says that before granting waiver requests, the Agency assesses other areas of safety that could be affected.

Patrick Ameen (AAR) confirms that once the noise issue is completed under Locomotive Cab Working Conditions, RSAC will look into locomotive cab emergency egress and locomotive vibration. However, he believes that locomotive cab emergency egress should be bought before the Locomotive Crashworthiness Working Group, rather than the Locomotive Cab Working Conditions Working Group.

Chairperson Cothen acknowledges that Mr. Ameen is correct.

Chairperson Cothen asks Tyrone Clements (FRA Office of Safety) to discuss two signal and train control (S&TC) FRA Safety Advisories.

Mr. Clements explains that FRA Safety Advisory 2004-02 was issued on August 3, 2004, to address the importance of having clear safety and response procedures for use in the event of reports of railroad signal system problems. A report issued by the NTSB (RAR-03/05) provided the underlying basis for the recommendations issued in this Safety Advisory. On September 15, 2002, a derailment occurred at Farragut, Tennessee, after a freight train traversed a defective switch, resulting in a derailment. The resultant spill of a tank car containing sulfuric acid produced a cloud of toxic fumes, prompting the evacuation of approximately 2,600 residents, from a 4.4 square mile area around the derailment site. While there were no fatalities, a number of the local residents required treatment for minor respiratory difficulties. Damages were estimated

to be in excess of \$1 million. FRA Safety Advisory 2004-02 recommendations include: (1) Any railroad employee encountering a condition that could interfere with the safe passage of a train should promptly report the condition or defect to the train dispatcher. Train dispatchers, upon receiving reports of potentially hazardous conditions involving a signal system or component, including any track segment or switch should immediately issue instructions to stop train movements or immediately implement an appropriate speed restriction, not to exceed 20 mph for the affected area. These restrictions should remain in effect until the component or trackage in the affected area is properly inspected and/or tested by a qualified employee to determine the cause and make any necessary repairs, replacements or adjustments; (2) Each railroad should ensure that it has procedures for responding to trouble calls that include providing priority in occupying track to a signal maintainer, technician or maintenance-of-way employee investigating a report of a signal system or component failure so that proper and sufficient inspections and tests may be conducted to determine the cause of the failure; (3) Each railroad should ensure that it has inspection and test procedures that will assure sufficient and proper inspection and testing to determine the cause of signal system or component failures; and (4) Each railroad should ensure that when a signal problem is suspected, detected, or reported, applicable signal personnel should be notified of the occurrence and provided with any applicable information about the circumstances.

Mr. Clements continues with FRA Safety Advisory 2004-03, which addresses the importance of clear, precise, unambiguous railroad safety procedures to ensure the safety of highway-rail grade crossing warning systems or wayside signal systems that are temporarily removed from service. Issued on August 5, 2004, FRA Safety Advisory 2004-03 recommends the following: (1) Each railroad with maintenance responsibility for one or more highway-rail grade crossing active warning systems should conduct system-wide surveys for the purpose of locating and repairing any active warning systems that are malfunctioning and/or temporarily removed from service; and (2) Each railroad with maintenance responsibility for one or more highway-rail grade crossing active warning systems should have specific policies or procedures in place requiring the restoration of highway-rail grade crossing active warning systems to proper operation in a timely manner.

Copies of FRA's Safety Advisories can also be found on FRA's Internet Web Site (www.fra.dot.gov) under "Safety," "Public Advisories," and "Safety Advisories," and are not excerpted in their entirety in the RSAC Minutes.

Mr. Clements asks if there are any questions.

Joe Mattingly (Brotherhood of Railroad Signalmen (BRS)) believes that both of the S&TC Safety Advisories are not necessary. He adds that the principal problem is that the repairs should already have been made.

Timothy DePaepe (BRS) believes that both advisories are incorrect. The Safety Advisories should require the railroads to make repairs.

Mr. Clements responds that the Safety Advisories direct railroads to make repairs as soon as possible.

Robert Harvey (BLET) says because of changes in technology, there are some transient faults in signal systems. He believes the challenge is how to record and track transient faults in railroad signal systems.

Chairperson Cothen concludes the discussion leaving open the possibility of revisiting transient faults in railroad signal systems.

Chairperson Cothen asks Charles Bielitz (FRA Office of Safety) and Cindy Gross (FRA Office of Safety) for a presentation on activities of the RSAC Passenger Safety Working Group. Task statements and documents related to RSAC Task Statement No. 03-01, Review of Passenger Equipment Safety Issues, are part of the permanent RSAC Docket and are not excerpted in detail in the RSAC Minutes.

Ms. Gross explains that the Passenger Equipment Safety Working Group established five task groups. They are: (1) crashworthiness/glazing; (2) emergency preparedness; (3) mechanical-general issues; (4) mechanical-safety appliances; and (5) track/vehicle interaction. At the next full Working Group meeting to be held October 26-27, 2004, it is hoped that issues concerning (1) crashworthiness, (2) emergency preparedness, and (3) track/vehicle interaction will be decided. She thanks the Working Group members for their ability to stay focused on each task.

Mr. Bielitz describes the progress being made by the task groups. The emergency preparedness task group has held two meetings. Under discussion has been the number of emergency windows, marking for window access, and photo luminescent marking for doors. The mechanical-general issue-task group has met twice. It focused on identifying priority issues. The group hopes to resolve 17 priority issues by the October full Working Group meeting. Some progress is being made by the safety appliance task force. Finally, the crashworthiness/glazing task force needs technical research from the Volpe National Transportation Systems Center before its work can move forward. There is some cross-over between glazing issues and emergency preparedness issues because of the common link of emergency egress. He concludes by saying the next full Working Group meeting will be held October 26-27, 2004.

Ms. Gross comments that Thomas Peacock (American Public Transportation Association) and the FRA Task Force Team Leaders have been very effective at moving the process forward.

Dennis Mogan (AAR) asks how close will the language on emergency access and egress come to a full set of requirements? Will there be changes to 49 CFR Parts 238 and 239?

Chairperson Cothen expects that there will be changes to the regulations. However, he adds, that nothing is a “sealed deal” at this time.

Mr. Mogan asks if the expected changes to 49 CFR Parts 238 and 239 will involve the retraining of employees? If so, the training could involve thousands of people ranging from railroad employees to emergency responders, i.e., police, fire, and rescue.

Chairperson Cothen responds no. He anticipates that the changes will only involve enhancements to the regulations.

With no further questions of Mr. Bielitz and Ms. Gross, Chairperson Cothen asks that RSAC approve the Minutes for the 23rd Meeting.

Robert Harvey (BLET) disagrees with the sentence, “After 48 hours, the carrier will be subject to a penalty,” found on page 15 of the minutes. In context, the excerpt from the minutes reads as follows:

“Under “Proposed Close Call Reporting System,” Mr. Raslear announces that there will be a pilot study in which several railroads (Class I, commuters, etc.) will be asked to participate. Accidents and efficiency tests will be excluded. There will be a 48-hour period to report the “close call” without penalties. After 48-hours, the carrier will be subject to a penalty. For the pilot program, there will be an agreement (between FRA , railroad management, and railroad labor) that the system will be non-punitive.”

After a brief discussion, Chairperson Cothen proposes to eliminate the sentence, “After 48 hours, the carrier will be subject to a penalty,” which is agreeable to RSAC members.

Mr. Harvey also asks about Remote Control Locomotive (RCL) operations. He believes that this issue is not resolved. He asks that guidance be given on the status of the safety implementation of this technology.

Chairperson Cothen apologizes for not including RCL issues at this meeting. He promises that RCL issues will be on the agenda at the next RSAC meeting.

Jeffrey Moller (AAR) states that it was not his intent to use the expression, “backfire” in describing the railroad management’s concerns about the Critical Incident Stress Debriefing program. His comments appear on page 14 of the minutes. He asks to modify his comments to eliminate references to “backfire” and to stress the importance of having a “best practices” approach to this issue.

Chairperson Cothen offers to have his office contact Mr. Moller and will insert the requested correction to page 14 of the 23rd RSAC Minutes in the Minutes of the 24th RSAC Meeting.

[Mr. Moller provided the following substitution: Mr. Moller (AAR) comments that carriers believe the study should adhere to the original premise that it would identify best practices rather than draw comparisons between various carrier programs or seek to identify the magnitude of any current problem in the industry.]

With no further corrections or comments, Chairperson Cothen asks for a motion that the Minutes for the 23rd RSAC Meeting be approved.

Bob Harvey moves, and Dennis Mogan seconds the motion that the Minutes for the 23rd RSAC Meeting be approved.

BY UNANIMOUS VOICE VOTE THE MINUTES FOR THE 23rd RSAC MEETING ARE APPROVED WITH THE CORRECTIONS NOTED ABOVE.

Chairperson Cothen asks for a date for the next RSAC Meeting. After a brief discussion, Chairperson Cothen announces that FRA will try to arrange the next RSAC Meeting on January 26, 2005 in Washington, D.C.

With no further business, Chairperson Cothen adjourns the 24th RSAC Meeting at 3:12 p.m.

MEETING ADJOURNED 3:12 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, Contractor.