

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

### **Minutes of Meeting January 28, 1999**

The tenth meeting of the RSAC was convened at 9:35 a.m., in the Polaris Suite of the International Trade Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20004, by the RSAC Chairperson, the Federal Railroad Administration's (FRA) Acting Associate Administrator for Safety, George Gavalla.

As RSAC members, or their alternates, assembled, attendance was recorded by sign-in log. Sign-in logs for each daily meeting are a permanent part of the RSAC Docket. Eleven of the forty-eight RSAC voting members were absent: The Association of American Railroads (3 of 12 seats absent), The Association of Railway Museums (1 seat), The Brotherhood of Locomotive Engineers (1 of 2 seats absent), The Hotel Employees & Restaurant Employees International Union (1 seat), The International Association of Machinists and Aerospace Workers (1 seat), The International Brotherhood of Boilermakers and Blacksmiths (1 seat), The National Conference of Firemen & Oilers (1 seat), Safe Travel America (1 seat) and Transport Workers Union of America (1 or 2 seats absent). All four RSAC non-voting members were present: Secretaria de Comunicaciones y Transporte (Mexico), Transport Canada, the Federal Transit Administration, and the National Transportation Safety Board (NTSB). Total meeting attendance, including presenters, was approximately 80.

Chairperson Gavalla welcomes RSAC Members and attendees. He asks Patricia Paoletta (FRA's Office of Safety) to brief attendees on the location of fire exits and emergency health procedures. Volunteers with knowledge of cardiopulmonary resuscitation are asked to identify themselves in case of a cardiac emergency. The volunteers are: Robin Buxton (International Brotherhood of Electrical Workers (IBEW)), Vern Graham (Association of American Railroads (AAR)), and James Stem (United Transportation Union (UTU)).

In introducing FRA Deputy Administrator Donald M. Itzkoff, Chairperson Gavalla acknowledges the many expressions of sympathy to FRA Administrator Jolene M. Molitoris following the death of her mother.

Mr. Itzkoff also thanks RSAC members for their expressions of sympathy and explains that Administrator Molitoris cannot attend the RSAC Meeting today because she is in Chicago with Secretary of Transportation Slater. Together they will announce the continuation and expansion of a successful public-private partnership to extend the Chicago Hub High-Speed Rail Corridor to Indianapolis and Cincinnati. The proposed extension will serve an urban population of more than 4 million persons which is in addition to the Chicago Hub Corridor population of about 20 million. This extension

entitles the area to Federal funds which will be combined with state and local funds to make highway-rail grade crossing improvements in the corridor and accommodate speeds of 110 miles per hour. To eliminate hazards at highway-rail grade crossings, the states plan for a mix of grade separations, improvements and closures. There are an estimated 1,075 highway-rail grade crossings in the 970-mile Chicago Hub Corridor. This is the first year of a six-year funding program under the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21). A total of \$5.25 million has been made available for all high-speed rail corridors for fiscal 1999 and for each subsequent year through fiscal year 2005.

As we approach the new millennium, this is a good time for us to reflect on what we have accomplished and what we must do to ensure that our industry continues to remain safe and efficient. Overall, 1998 was the safest year in railroad history. In preliminary data for the first 10 months of 1998 compared to 1997, rail-related fatalities are down 9 percent; highway-rail incidents are down 10 percent, and trespasser deaths are down 7 percent. I am extremely pleased to announce to you today that one of our most impressive safety gains in 1998 was in the area of employee-on-duty fatalities. Preliminary statistics reflect a 31 percent decline in employee fatalities, from 35 in 1997 to 24 in 1998. This is the first time there has been fewer than 30 fatalities in the railroad industry. Employee fatalities have fallen to the lowest level ever.

But the good news is tempered by the loss of 4 colleagues that have already occurred this month. Our work is never ending. There are two efforts underway to help eliminate employee fatalities. The first is the Switching Operations Fatality Analysis (SOFA). Yard and switching incidents involving train and engine service railroad employees continues to be the single highest category of on-duty railroad employee fatalities. A task force of expert representatives from FRA, rail labor and rail management has been working to identify, analyze and address the causes of, and contributing factors to, these fatalities. As a result of its detailed review of FRA fatality investigation files, the task force anticipates developing and recommending to FRA a more comprehensive method of collecting information during fatality investigations.

The second is the North American Rail Alertness Partnership (NARAP) initiative. In less than 18 months, this partnership has been significantly instrumental in raising the specter of fatigue and its dangers—from both the perspective of operations, and the lives of employees. For example, the practice of napping now has universal acceptance, even on long distance air line routes, and employee fatigue awareness education is becoming a standard element in training programs.

RSAC representatives have participated in over 130 meetings. However, outcomes, not output, has the greatest impact on what we do. In 1999, we will augment the Track Safety Standards by recognizing the innovative Gage Restraint Measurement System (GRMS); we will protect employee safety by moving forward on standards for roadway equipment; we will enhance standards for locomotive crashworthiness and cab working conditions; we hope to move forward on National Transportation Safety Board (NTSB)

recommendations regarding locomotive event recorders and the use of recorded information across all transportation modes; we will finish the first major revision to Steam Locomotive Standards in half a century; we will propose performance standards for Positive Train Control (PTC) technology; and we will finalize important improvements to the rules for Qualification and Certification of Locomotive Engineers.

This year, we will also continue work on passenger equipment safety, partnering with the American Public Transit Association (APTA) on this issue; we will continue with the joint planning efforts with the Surface Transportation Board on finalizing proposed rules to institutionalize Safety Integration Plans into the railroad merger process; we will begin to wrestle with the train whistle ban issue trying to conform to Congressional mandates with this politically sensitive issue; we will conclude research on the use of retro reflective materials to help prevent “automobile-hits-train” accidents during nighttime hours—we will need good peer review of that research as a foundation for a cost benefit analysis that will tell us whether we should propose regulations to equip a fleet of over 1.2 million pieces of rolling stock; FRA and the Federal Transit Administration will bring to our constituencies for comment a proposed joint policy for shared use of the general rail system by railroad and transit trains—however, nobody looks forward to this discussion because as a general rule intermingling of this kind is clearly not wise—but the issue has to be addressed because the appetite of public transit providers for new infrastructure will not abate; and finally, FRA’s Safety Reauthorization is up for renewal once again this year—we need to take the dialogue process forward in this area.

Mr. Itzkoff concludes by saying the challenge for 1999 is that we have a full agenda. RSAC is a noteworthy process. We have a lot of people working together. However, the word of what we are doing is largely confined to this room.

Chairperson Gavalla thanks Mr. Itzkoff for his remarks. He extends congratulations to the newest member of the Itzkoff family, Elizabeth Rose.

Chairperson Gavalla appreciates everyone’s efforts to attend the meeting, including the non-voting International RSAC Members, Ingeniero Lozada from Mexico, and Mr. Terry Burtch from Canada.

Chairperson Gavalla announces that FRA recently issued a Technical Bulletin to clarify the Roadway Worker Protection Rule in two areas: (1) multiple work groups (overlap); and (2) defining limits of authority. While the Technical Bulletin was directed at a single railroad, it still applies to all railroads. FRA is setting-up a meeting on February 11 or 12 to discuss problems that arose on the application of this Technical Bulletin to all railroads. RSAC members are asked to contact FRA if they want to participate in this meeting.

Chairperson Gavalla introduces Theodore (Ted) Bundy (FRA’s Office of Safety) to brief RSAC on the status of RSAC Task No. 97-4, Positive Train Control Systems Technologies, Definitions, and Capabilities, Task No. 97-5, Positive Train Control

Systems Implementation Issues, and Task No. 97-6, Standards for New Train Control Systems. Materials related to these topics are inserted at Tab 15 of Notebooks given to each RSAC member. These materials are part of the permanent RSAC Docket and are not excerpted in detail in the RSAC Minutes.

While Mr. Bundy readies overhead viewgraphs for his presentation, Chairperson Gavalla announces that the NTSB is going to have a symposium this year on transportation equipment event recorders. He asks Robert C. Lauby, the RSAC non-voting/advisory member from the NTSB for additional information.

Mr. Lauby announces that the NTSB will sponsor a symposium on “data” and “voice” event recorders this year. Aviation, rail, highway, and waterway users are invited to attend. Manufacturers will bring equipment in and demonstrate how the data is used. The International Symposium on Transportation Recorders is scheduled for May 3-5. Contact Mr. Lauby at the NTSB for brochures. Additional information is also available from Marci LaShells at (202) 314-6500; E-Mail: [recorders@ntsb.gov](mailto:recorders@ntsb.gov). Registration forms and additional information is available on the NTSB Web site at: <http://www.ntsbt.gov>.

Chairperson Gavalla introduces Steven R. Ditmeyer (Director, FRA’s Office of Research and Development) who announces two future meetings. The first meeting is a follow-up to an earlier Year 2000 (Y-2K) symposium in which participants discussed problems inherent in older software that only permit the use of last two digits of a 4-digit year. The “problem” manifests itself in year 2000 when databases will not be able to distinguish between year 1900 and year 2000. The follow-up meeting will be held on February 24<sup>th</sup> in the Monticello Room at the Wyndham Hotel (City Center), 1400 M Street, N.W., Washington, D.C. 20005, from 10:00 a.m. until approximately 3:00 p.m. FRA wants updates from major railroads and suppliers of how each is addressing the Y-2K problem; steps which have been taken to establish Y-2K contingency plans; a discussion of safety critical systems including: operating data systems, dispatching systems, and signal & telecommunications systems; and to identify the need for additional outreach activities.

Mr. Ditmeyer also announces that a Weather Information System Conference will be held in Bolder, Colorado on March 18-19. The conference is sponsored by the National Center for Atmospheric Research.

Mr. Bundy begins his update on PTC Systems by reminding RSAC members that the PTC Working Group has divided into two Task Forces, each consisting of approximately 35 members. The “Data and Implementation” Task Force is working on Tasks No. 97-4 and 97-5. The “Standards” Task Force is working on Task No. 97-6.

The Data and Implementation Task Force has agreed to prepare a PTC Progress Report for the Secretary of Transportation. This report may be submitted to Congress in the Spring of 1999. Four teams have been formed to write specific parts of the PTC

Progress Report. These are the RSAC Progress Report team, the accident review team, the PTC economic team, and the ITS/wayside detector team. The task force expects to complete a draft at their January 1999 meeting. The report is a consensus document. [Using an overhead viewgraph projector, the PTC Report to Congress "Table of Contents" is displayed to show the major topical areas that will be included in the report.] One of the final report items undergoing review is the glossary of terms. The glossary of terms will be used by the Standards Task Force.

The Data and Implementation Task Force has also established an Operating Rules Team. This entity will ensure that appropriate railroad operating rules are part of any PTC implementation process. Some of the members of this team service on the PTC Standards Task Force; we anticipate that additional team members will be drawn from the railroad.

The next scheduled meeting of the Data and Implementation Task Force is scheduled for March 1999.

Mr. Bundy explains that work continues on refining the Corridor Risk Analytical Model (CRAM), developed by the Volpe National Transportation Systems Center (Volpe). Members of the Data and Implementation Task Force examined the underlying causes of each identified PTC-preventable accident to determine if it should remain in the CRAM database. He adds that a contract has been executed to have Dr. Jarvis of the University of Virginia develop a risk measurement tool set. To assist Dr. Jarvis, a "hazards list" is being developed by one of the task forces.

To make progress reports on specific aspects of the PTC Working Group, Mr. Bundy asks for presentations from Howard Moody (Association of American Railroads (AAR)), Frank Roskind (FRA), Mark Jones (FRA), and Robin Buxton (IBWE).

Mr. Moody's presentation, "Positive Train Control Accident Review—Report to RSAC," uses a series of overhead viewgraphs, copies of which were distributed for inclusion at Tab 15 of Notebooks given to each RSAC member. These materials are part of the permanent RSAC Docket and are not excerpted in detail in the RSAC Minutes.

Mr. Moody reminds RSAC that the core objectives of the PTC Working Group are to explore technologies that may help: (1) prevent train-to-train collisions; (2) prevent train over speed derailments; and (3) provide protection to roadway workers. In addition, the same technologies are being examined to prevent accidents: (1) at highway-rail grade crossings; and (2) to roadway workers that are working in an area where they are not known to be working.

Under "Background," Mr. Moody cites the initial work undertaken by Volpe on the CRAM. CRAM seeks to identify PTC-preventable accidents, and to provide a basis for identifying rail corridors with high risk for further cost/benefit analysis. Volpe reviewed

over 6,400 accidents from a database of 25,000 accidents reported to FRA from 1988 to 1997.

Under "Accident Review Team," Mr. Moody explains that a group, composed of industry, labor and FRA representatives, was established by RSAC to review data. The team determined a basic outline for four PTC design concepts.

Under "Design Concepts," Mr. Moody describes the four PTC design concepts as being hierarchical as the level of architecture necessary to achieve increases in sophistication.

Mr. Moody explains under "Review of Accident Records" the difficulty involved in the review process because of missing, conflicting or insufficient information. Ultimately, however, all 6,400 accidents were placed into one of seven accident categories by consensus based on NTSB reports, in-depth railroad reports, and expert knowledge from team members and others.

Under "Summary," Mr. Moody concludes that from time-to-time the team has up-dated the database and may include 1998 data when it is available.

With no questions of Mr. Moody, Chairperson Gavalla announces the Morning Break.

#### M O R N I N G   B R E A K   (10:30 A.M. - 10:50 A.M.)

Chairperson Gavalla reconvenes the meeting.

Chairperson Gavalla announces that after an 18-month collaborative arrangement with TEXT-Trieve<sup>II</sup>, all of FRA's regulations and related rail safety statutes are available in Compact Disc, read-only-memory (CDROM) format. FRA cannot endorse any particular contractor or commercial program of this type. However, for informational purposes to RSAC members, TEXT-Trieve<sup>II</sup> offers a subscription service which includes all of FRA's regulations, safety laws, newly revised compliance manuals, and current technical bulletins for each of the Agency's five inspection disciplines. The subscription service also provides quarterly updates and a CDROM containing a history of Notices of Proposed Rulemakings and Final Rules for the previous year. For additional information, interested parties can contact TEXT-Trieve<sup>II</sup>, Attention: Vern Ward, Corporate Sales Manager, 1931 Second Avenue, Suite 300, Seattle, Washington 98101-1101, voice: (800) 578-4955; fax: (206) 443-0529.

Chairperson Gavalla introduces Grady Cothen (FRA's Deputy Associate Administrator for Safety Standards and Program Development) to continue the progress report on the PTC Tasks before RSAC.

Mr. Cothen acknowledges the many players who have made contributions to the PTC efforts. Today, RSAC has heard from Howard Moody, representing the carrier side of the issue and is about to hear from FRA staff (Frank Roskind and Mark Jones) and from Robin Buxton, representing the labor side of the issue. The efforts of all the participants is greatly appreciated.

Mr. Cothen introduces Frank Roskind (FRA Office of Safety) to continue with a status report on the PTC economic team.

Mr. Roskind explains that the PTC economic team has met four times. Much has been accomplished. The next meeting is scheduled for March 1-2,1999. Using computerized projector viewgraphs, Mr. Roskind outlines the PTC economic team's progress in determining: (1) accident avoidance benefits; (2) passenger issues; (3) PTC system costs (by Design Concept Level, i.e., 1,2,3, or 4 and by type); (4) alternatives to PTC technology to ensure safety; and (5) the remaining items to be started. Accident avoidance benefits include preventing fatalities, injuries, damage (to rail property, lading, and other property), evacuations and hazardous material remediation that would otherwise occur. Accident avoidance benefits also include preventing delay costs and wreck clearing costs. Passenger issues include determining the amount a railroad is willing to pay to avoid a passenger injury, track and equipment damage, wreck clearing and removal, and delay costs. Alternatives to PTC Technology to ensure safety may involve human factors considerations (i.e., fatigue countermeasures, simplified operating rules, and training), signaling "dark" territory, or enhancing signal systems. A copy of the visual presentation materials will become part of the permanent RSAC Docket and are not excerpted in detail in the RSAC Minutes.

With no questions of Mr. Roskind, Mr. Cothen introduces Mark Jones (FRA Office of Safety), and Robin Buxton (IBWE), who have collaborated on the final part of the PTC presentation today. This involves the efforts of the Intelligent Transportation Systems (ITS)/ wayside detector team.

Mr. Jones begins the presentation with background information on start-up activities. Using viewgraph visual projections, Mr. Jones describes PTC, ITS, and highway-railroad grade crossing safety. These materials are part of the permanent RSAC Docket and are not excerpted in detail in the RSAC Minutes. ITS User Service #30 is the part of the National ITS architecture which deals with ITS applications at highway-rail grade crossings.

Ms. Buxton continues the presentation with viewgraphs outlining: (1) overview; (2) PTC/ITS applications (including: Michigan/Amtrak project; Illinois project; New York State/Long Island Railroad "Atlas" project; Los Angeles Metro Blue Line project; the Minnesota Guidestar project; the pilot study of advisory on-board vehicle warning systems; the Mystic Connecticut School Street 4-quadrant gate installation project; the North Carolina sealed corridor project; and the Washington State DOT Positive Train

Separation (PTS) grade crossing project.); (3) future technological applications (including: higher levels of highway user and train crew safety; greater warning system reliability and flexibility; improved functionality and interconnection with highway traffic control systems; and increased deployment of active safety devices); (4) deployment issues (including: liability concerns; and testing, inspection and maintenance for new systems); (5) ITS user service # 30 (areas that need standardization including: radio frequencies; auditory alerts; message codes; and protocols); (6) recommendations (including: FRA should work with railroads to develop ITS standards; FHWA and ITS America should develop systems to warn motor vehicle drivers to yield to trains; work ; and (7) wayside detectors (whether coordination of detectors with a PTC system may be beneficial).

In concluding remarks, Mr. Jones announces that a committee will be established to determine standards for ITS User Service # 30. FRA requests help for any interested participants to be on this “standards committee.”

Mr. Ditmeyer adds that the Federal Highway Administration (FHWA) has gone through a program to develop different ITS architectures. The architectures have been taken to various organizations for approval. The standards are very important. All the different systems work. However, they are not interoperable. Mr. Ditmeyer reiterates that FRA will be asking for participants to participate on the ITS “standards committee,” where interoperability will be an important topic.

With no questions, Mr. Cothen announces that the PTC presentation is concluded. By the next full RSAC meeting, Mr. Cothen hopes to have a draft of the PTC Report to Congress available for member review.

Chairperson Gavalla thanks Mr. Cothen and all the participants in today’s PTC task-update presentation.

Chairperson Gavalla reminds RSAC members of the ongoing Switching Operations Fatality Analysis (SOFA). Yard and switching incidents involving train and engine service railroad employees continues to be the single highest category of on-duty railroad employee fatalities. Between 1992-1997, there were 68 fatalities. In January 1998, a task force of expert representatives from FRA, rail labor and rail management was convened to identify, analyze and address the causes of, and contributing factors to, these fatalities. As a result of its detailed review of FRA fatality investigation files, the task force anticipates developing and recommending to FRA a more comprehensive method of collecting information during fatality investigations. Each accident has been broken-down into 15 data elements. The SOFA task force is searching for a “best practices” approach to keep these accidents from occurring. The SOFA task force hopes to report its recommendations to RSAC later this year.

Chairperson Gavalla announces that FRA is reconvening Technical Resolution Committees (TRCs). TRCs are a labor/management/FRA task force that translates

rules text into specific actions. TRCs will be convened in each of the five inspection disciplines: track; operating practice; motive power & equipment; signals & train control; and hazardous materials. The principles that will guide the TRCs are: (1) realistic expectations; (2) no legal interpretations; and (3) addressing issues of policy, particularly safety policy. Interpretations of law are handled by FRA counsel in accordance with the principles that govern legal interpretations. A consensus process does not work for developing correct legal interpretations. RSAC members will receive notices of when the TRCs will be held. FRA anticipates 5-day meetings. Labor and management participants will be invited to join the TRCs on the 2<sup>nd</sup> day of the meetings. By the 4<sup>th</sup> day, FRA hopes that recommendations will be made.

Mr. Cothen asks Edward R. English, Director (FRA's Office of Safety Assurance and Compliance) to report on the progress of the Locomotive Event Recorder Working Group.

Mr. English's progress report on RSAC Task No. 97-3, Revision of Event Recorder Requirements, is part of the materials inserted at Tab 12 of Notebooks given to each RSAC member. These materials are part of the permanent RSAC Docket and are not excerpted in detail in the RSAC Minutes.

The Working Group created four task forces: (1) Testing Sequence, (2) Testing Criteria, (3) Data Element & Location, and (4) Maintenance, Inspection & Testing. All four task forces have completed their tasks. The testing sequence for the event recorder is: impact shock; static crush; high temperature; low temperature; fluid immersion; and hydro-static pressure. Consensus has been reached for the limits for each testing criteria. A list of data channels needed to be recorded for both freight and commuter rail equipment has been determined. Finally, recommendations for maintenance, inspection & testing of event recorders has been determined.

Mr. English explained that the Working Group met 1-27-99. The Working Group is still discussing data elements to be included, for example, the self-testing aspects of the event recorder. The Working Group will meet next in March. Mr. English hopes a rules package can be developed for presentation to the next full RSAC meeting.

In two separate but related issues, Mr. English reminds RSAC that in July 1998, FRA published revisions to Track Safety Standards (Task No. 96-2). First, RSAC agreed to supplement that effort with a final rule amendment on the Gage Restraint Measurement System (GRMS), based on a consensus reached within the Track Safety Standards Working Group. Mr. English believes that the GRMS amendment will be ready shortly. By unanimous voice vote at the last full RSAC meeting, the GRMS recommendations will be presented to RSAC members by mail ballot when available. Secondly, the Track Safety Standards Working Group has completed work and is formulating rules text for an amendment that will propose standards relating to the safety of persons riding or operating maintenance-of-way equipment. Final comments will be reviewed and a

complete draft rule package is being prepared for distribution through the Track Working Group and the full RSAC.

Chairperson Gavalla asks Vicky McCully (FRA Office of Safety) to discuss the RSAC membership database.

Ms. McCully explains that FRA is using a contractor to help automate and track RSAC membership on the full committee, working groups, and task forces. This effort is necessary to help speed communications to the many participants in this process. However, the response to inquiries for membership E-Mail, postal mail, voice mail, and facsimile mail contact information has been disappointing. Ms. McCully requests that RSAC members re-double their efforts to ensure that their own, and their staff contact information is accurate and complete.

Ross Capon (National Association of Railroad Passengers) asks for Ms. McCully's E-Mail address.

Ms. McCully responds that the E-Mail address for both her and Patricia Paoletta will be circulated to all RSAC members in the next request for membership contact information. The E-Mail addresses are:

VICKY.MCCULLY@FRA.DOT.GOV  
PATRICIA.PAOLELLA@FRA.DOT.GOV

Following some housekeeping and administrative announcements, Chairperson Gavalla announces the Lunch Break.

L U N C H   B R E A K   (11:45 A.M. - 1:05 P.M.)

Chairperson Gavalla reconvenes the meeting.

Chairperson Gavalla asks Brenda Hattery (FRA's Office of Safety) to brief RSAC on the status of Locomotive Cab Working Conditions, Task No. 97-2. Task Statements, Working Group membership composition, and a brief synopsis of Working Group activities related to locomotive crashworthiness are part of the materials inserted at TAB 10 of Notebooks given to each RSAC member. These materials are part of the permanent RSAC Docket and are not excerpted in detail in the RSAC Minutes.

Ms. Hattery explains that tentative consensus has been reached on the majority of issues before the Noise Task Force. At the April 1999 meeting of the Cab Working Conditions Working Group, the Noise Task Force hopes to finalize the "noise" rules text. The Temperature Task Force has reported recommendations to the Working Group; no consensus has been reached. The Working Group has reached tentative

consensus on a sanitation regulation; work continues on the “sanitary” rules text that will be part of a package submitted to the full RSAC. No action has been taken yet on vibration, or cab ergonomics.

Ms. Hattery asks for questions from RSAC members.

With no questions of Ms. Hattery, Chairperson Gavalla asks Mark H. McKeon (FRA's Regional Administrator, Region 1), to brief RSAC on the status of Revision of the Qualification and Certification of Locomotive Engineer Regulations, Task No. 96-6. Task Statements, Working Group membership composition, and prior synopses of Working Group activities are part of the materials inserted at TAB 9 of Notebooks given to each RSAC member. These materials are part of the permanent RSAC Docket and are not excerpted in detail in the RSAC Minutes. Assisting Mr. McKeon was Ms. Janet Lee (FRA Office of Safety, Region 1).

Mr. McKeon reports that following the publication of a Notice of Proposed Rulemaking (NPRM), the Working Group met to consider the comments that were filed. The group considered 25 comments, reached total consensus on 16, no consensus on 5, and 5 comments were withdrawn. FRA, of course, will use its discretion to resolve any issues on which there was not consensus. Using overhead viewgraphs, copies of which were distributed to each RSAC member, comments and the resolution of comments were described in each of the following areas: (1) Certification Revocation Procedures; (2) Medical Standards; (3) Proposal to Lengthen Certification Period from 3-5 Years (Class III); (4) Motor Vehicle Data; (5) Criteria for Consideration of Operating rules Compliance Data; (6) Criteria for Examining Skill Performance and Designated Supervisor of Locomotive Engineers (DSLE); (7) Training; (8) Preemption; (9) Application of Rule to Certain Service Vehicles; and (10) FRA Issue. In a number of instances, the Working Group has been unable to reach consensus on each of the comments received. Copies of the viewgraph materials are part of the permanent RSAC Docket and are not excerpted in detail in the RSAC Minutes.

At the conclusion of Mr. McKeon's presentation, Chairperson Gavalla announces that there is no requirement to put before the full RSAC Working Group recommendations on how FRA should address comments it has received on a proposed rule. However, at the May 14, 1998 RSAC Meeting, RSAC voted to send to the FRA Administrator, the 49 Code of Federal Regulations (CFR) Part 240 Working Group recommendations for a proposed rule on Locomotive Engineer Certification with the condition that, after issuance of the NPRM and the receipt of comments, the Working Group would be reconvened and make any appropriate recommendations for resolution of issues presented in those comments. The Working Group proceeded with an understanding that its recommendations would come before the full RSAC. This would permit representatives of the United Transportation Union (UTU) to state any reservations they have about the NPRM, including their belief that any movement of locomotives or locomotive-like equipment should be performed only by qualified “certified” locomotive

engineers. Current regulations permit the movement of some train equipment by other non-certified railroad employees. This would not change under the proposed revisions. TO ALLOW REVISION OF THE QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE ENGINEER REGULATIONS TO MOVE FORWARD, CHAIRPERSON GAVALLA MOTIONS:

THAT THE FULL RSAC ACCEPT ONLY THOSE RECOMMENDATIONS THAT HAVE RECEIVED THE FULL CONSENSUS OF THE WORKING GROUP AND THAT THOSE RECOMMENDATIONS BE INCORPORATED INTO THE FINAL RULE ON REVISION OF THE QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE ENGINEER REGULATIONS.

Leroy Jones (Brotherhood of Locomotive Engineers (BLE)) moves to accept the motion.

Charles Dettmann (AAR) seconds the motion.

Chairperson Gavalla asks for comments.

Ray Lineweber (UTU)—We have a process in place in which we are focussed on bringing things before RSAC in their entirety, not piecemeal. I voted for the NPRM contingent on being able to vote up or down on the whole package. We feel that this is not a consensus document before this body. We have made our position very clear. We are not doing this right if we handle it piecemeal. We are aware of injuries caused by non-certified engineers operating train equipment. FRA lawyers have had these issues before them for years. They need to be resolved now which is why this rule should be held over.

Rick Inclima (Brotherhood of Maintenance of Way Employees (BMWEE)) asks that there be a vote “up” or a vote “down” on the motion.

Mr. Jones adds that all the participants have worked very hard for this rule. The locomotive engineers need relief. This has been a learning process.

Lawrence Mann (UTU) states that UTU’s legal concern is that the statute says “licensing and certification of **any** operator of a locomotive.” The UTU believes that **any** means “anyone.” This matter has not been adequately addressed.

Mr. Lineweber continues that someone mentioned during the Working Group session that it would take too long to do an economic analysis of this issue. He does not believe that the Working Group needs an economic analysis. If we work as a group, we will function well.

Daniel C. Smith (FRA Safety Law Division Assistant Chief Counsel) responds to Mr. Mann. There is a request before FRA to determine whether the 1988 statute requires the certification of each and every operator of a locomotive. UTU made this request

just yesterday (January 27) in a meeting. FRA's preliminary analysis is that Congress used the word "any" advisedly and did not use "each and every" or "all," and that, when FRA issued its initial final rule under the 1988 statute in 1991, FRA had the authority to determine what the 1988 law meant and concluded that certain people who move locomotives were not intended to be covered by it. If the position of the UTU is accurate, then FRA will have to revisit Part 240 in a future rulemaking to bring all those who move locomotives under it. We will get an opinion to the UTU on the issue of statutory interpretation as soon as possible. However, resolution of this interpretive issue about a 1988 statute is not relevant to the consensus Working Group recommendations before the committee for a vote. It appears that UTU is raising as a separate issue its view that those recommendations are not a full consensus matter that the committee should accept.

Mr. Lineweber answers that the UTU did not just bring this issue up. He requests a "roll call" vote of each RSAC member on this issue.

Chairperson Gavalla explains that the Motion before RSAC is to approve only those consensus items which are being reported out by the Working Group. Only those items will be incorporated into the Final Rule.

Henry B. Lewin (Transportation Communications International Union/Brotherhood of Railway Clerks (TCIU/BRC) asks for clarification. When the Working Group is given a group of items, is it voted upon as a package, or as individual items? Was it the understanding of the subgroup that it had to be voted upon as a package? Before we vote, I want to know the answer to this question.

Chairperson Gavalla responds that Mr. McKeon will address Mr. Lewin's question. However, remember that the Motion before RSAC does not require a consensus on all of the comments which were submitted to the Working Group.

Mr. McKeon explains that there was an initial understanding within the Working Group that it would be a package deal. However, at the Scottsdale, Arizona meeting, the Working Group resolved a number of the comments by consensus and the "Minutes" of that meeting reflected a willingness of the majority of the participants to incorporate consensus items into the Final Rule.

Mr. Lewin asks if there was agreement within the group that the "ground rules" would change?

Mr. McKeon responds in the affirmative. However, he adds that those exact words were not used. It was his belief that was the Working Group's understanding.

Mr. Smith explains that under the RSAC Process document, which sets the rules for RSAC, the Working Group is authorized to report to RSAC on those issues on which it reached unanimous consensus when such consensus is not reached on all issues. He

also points out the provision of those rules that says that following issuance of a proposed rule, "FRA requests the RSAC to assist FRA in considering comments received," which is what occurred here.

Mr. Lineweber relates that the UTU went to Scottsdale. The UTU understood that it could stop this process if there was not consensus. He reminds RSAC that it was the UTU who first asked for an emergency order after the 1993 Christmas morning runaway train crash near Lincoln, Nebraska, seeking two-way end-of-train safety devices. It was the UTU who brought the "runaway trains" with defective brake chokes, to the attention of FRA on numerous occasions, a few years ago. This eventually led to the discovery of thousands of defective brake chokes on ABDX cars. The only way the UTU discovered the real problems was because there were live crews to interview.

Chairperson Gavalla gives the assessment that there is one group within the entire RSAC which could not reach consensus on all the comments to the NPRM. In the Motion before RSAC, we are simply asking RSAC to approve those issues for which there is consensus.

CHAIRPERSON GAVALLA REQUESTS ALL RSAC VOTING MEMBERS TO GIVE A "THUMBS-UP" (APPROVAL), "THUMBS-SIDEWAYS" (I CAN LIVE WITH IT), OR "THUMBS-DOWN (REJECT) TO THE MOTION THAT ONLY THOSE RECOMMENDATIONS THAT HAVE RECEIVED THE FULL CONSENSUS OF THE WORKING GROUP BE INCORPORATED INTO THE FINAL RULE ON REVISION OF THE QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE ENGINEER REGULATIONS. HE MAKES CLEAR THAT "THUMBS-SIDEWAYS" IS A VOTE IN FAVOR OF THE MOTION AND MERELY SHOWS LESS THAN COMPLETE ENTHUSIASM FOR THE RECOMMENDATIONS.

Vote Tally:	Thumbs-up	30
	Thumbs-sideways	4
	Thumbs-down	2
	No vote	12

BY MAJORITY VOTE, THOSE RECOMMENDATIONS ON COMMENTS TO THE NPRM THAT RECEIVED THE FULL CONSENSUS OF THE WORKING GROUP WILL BE INCORPORATED INTO THE FINAL RULE ON REVISION OF THE QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE ENGINEER REGULATIONS.

Mr. Itzkoff expresses his appreciation for the efforts of everyone in the Working group and the full RSAC to work through these issues. The Administrator has been personally involved. This is the Railroad Safety Advisory Committee. What the Administrator has received are the issues on which consensus has been realized. The Final Rule must also receive approval of the Office of the Secretary of Transportation

and the Office of Management and Budget. FRA will report to the Administrator what RSAC can agree upon.

Mr. Lineweber announces that he has written comments concerning this matter which he would like to incorporate into the record. He asks for answers to the following questions:

- (1) Please explain FRA Counsel's role in the Technical Resolution Committee process.
- (2) How will FRA's Counsel advise us in advance of whether an issue cannot be resolved by a TRC because it makes a legal interpretation?

Chairperson Gavalla advises that if Mr. Lineweber's question concerns when FRA will answer Mr. Lineweber's questions about TRCs, he is sure that FRA counsel will try to answer Mr. Lineweber's legal question about 49 CFR Part 240 within a couple of weeks.

Mr. Smith replies that Alan Nagler (FRA's Office of Chief Counsel, Safety Law Division) will be writing the letter response to the UTU. Because Mr. Nagler is also responsible for drafting the final rule on 29 CFR Part 240 very soon, he will not be getting the legal interpretation out in the next two weeks. However, FRA will try to be as timely as possible.

Mr. Dettmann asks if the AAR could also receive a copy of the legal interpretation?

Chairperson Gavalla responds in the affirmative. He adds that the UTU is one of RSAC's most stalwart supporters in this process. And, this will not be the last time that individual members will not agree on everything.

Chairperson Gavalla asks Shraham (Sean) Mehrvazi (FRA's Office of Safety) to brief RSAC on the status of Locomotive Crashworthiness, Task No. 97-1. Task Statements, Working Group membership composition, and prior synopses of Working Group activities are part of the materials inserted at TAB 10 of Notebooks given to each RSAC member. These materials are part of the permanent RSAC Docket and are not excerpted in detail in the RSAC Minutes.

Using an overhead viewgraph, Mr. Mehrvazi shows a flow chart, which outlines the methodology being used by the Working Group to address this topic. A.D. Little, Inc., Consultants, has been contracted by FRA, through the Volpe National Transportation Systems Center, to model accidents and to test changes in various accident scenarios resulting from modifying locomotive structural components. The Working Group is considering a set of draft requirements for crashworthiness improvements for freight road service locomotives. In the area of collision posts, a different proposal from the existing S-580 regulations is being considered. Proxy objects have been proposed that

will be tested against collision posts, the short hood structure, and cab window frames under a variety of impact scenarios.

Phil Olekszyk (High Speed Rail Transportation Association) asks how close is the Working Group to completing the locomotive crashworthiness task?

Mr. Mehrvazi responds that the Working Group will consider recommendations at its next meeting and may report these findings to the full RSAC.

Mr. Cothen adds that the Working Group is considering the use of performance-based standards in the final product. There is an approval process for this, which may delay things. But ultimately, with performance-based standards, FRA could modify these rules more rapidly in the future.

With no additional questions, Chairperson Gavalla continues with administrative items.

A MOTION IS MADE FOR RSAC TO APPROVE THE MINUTES OF THE 9<sup>TH</sup> RSAC MEETING, HELD SEPTEMBER 9, 1998. THESE MINUTES WERE CIRCULATED FOR REVIEW AND COMMENT TO ALL RSAC MEMBERS IN ADVANCE OF TODAY'S MEETING.

Richard A. Johnson (TCIU/BRC) moves that the "Minutes" be approved.

Mr. Inclima seconds the motion.

THE MINUTES OF THE 9<sup>TH</sup> RSAC MEETING ARE APPROVED BY UNANIMOUS VOICE VOTE.

A MOTION IS MADE FOR THE DATE OF THE NEXT FULL RSAC MEETING. WEDNESDAY, APRIL 14, 1999, OR THE WEEK OF APRIL 12<sup>TH</sup> IS SUGGESTED. WITH NO OBJECTIONS, CHAIRPERSON GAVALLA ANNOUNCED THAT FRA WILL ATTEMPT TO FIND A MEETING ROOM IN WASHINGTON, D.C. FOR WEDNESDAY, APRIL 14, 1999, OR OTHER AVAILABLE TIME DURING THE WEEK OF APRIL 12<sup>TH</sup>. AS SOON AS A MEETING ROOM IS RESERVED, RSAC MEMBERS WILL BE NOTIFIED OF THE DATE, TIME AND PLACE.

With no additional business, Chairperson Gavalla adjourns the 10th RSAC Meeting at 2:30 p.m.

M E E T I N G   A D J O U R N E D   2:30 P.M.

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

Respectively submitted by John F. Sneed, Secretary.