MEMORANDUM

To: Rulemaking Docket No. FRA-2008-0059, Notice No. 1

From: Anna Winkle A.W.
FRA Office of Chief Counsel

Date: August 7, 2008

Re: Telephone Conversations and Emails with a Representative of the Brotherhood of Maintenance of Way Employes Division (BMWED)

On or about the dates listed below, a representative of the BMWED contacted various members of FRA to discuss concerns with the Notice of Proposed Rulemaking (NPRM) on adjacent-track on-track safety. A summary of those conversations and emails has been provided below.

- July 21, 2008: FRA employee James Schwichtenberg received a voicemail message from BMWED representative Rick Inclima indicating that he was upset about the head-end provision in the NPRM. Mr. Inclima stated that the Roadway Worker Protection (RWP) Railroad Safety Advisory Committee (RSAC) agreed that work will stop for the entire passage of a train operating at speeds over 25 mph. The NPRM does not make this distinction, and states that work may continue after the head-end of the movement passes the location of the workers. Mr. Schwichtenberg returned Mr. Inclima's call only to leave him a message and explain that this issue should be formally submitted to FRA within the 30-day period allowed for comment.

- July 21, 2008: FRA employee Kenneth Rusk received a voicemail message from BMWED representative Rick Inclima asking Mr. Rusk to call him concerning the NPRM. Mr. Rusk asked FRA employee James Schwichtenberg to join him on the call back to Mr. Inclima. At the beginning of the conversation, Mr. Rusk informed Mr. Inclima that FRA could not discuss any action items for the NPRM and that comments should be formally submitted. Mr. Inclima again stated his concern that the NPRM did not reflect what the RSAC group agreed to (i.e., that work will stop for the entire passage of a train operating at speeds over 25 mph). FRA did not agree or disagree with Mr. Inclima, and did not offer any commitment to change anything in the NPRM.

- July 25, 2008: BMWED representative Rick Inclima spoke with FRA employee Michael Deemilio. Mr. Deemilio indicates that Mr. Inclima wanted to let him know that the BMWE was not happy with the published NPRM on adjacent track protection. During the conversation, Mr. Inclima was "venting his frustrations" about how the proposed NPRM in his opinion did not truly reflect the agreed

upon document that was worked out in the RSAC process. Mr. Deemilio told him that he was not involved in that process, and also informed him that he would be afforded an opportunity, as everyone else would be, to comment on the proposed rule during the comment period.

- July 25, 2008: BMWED representative Rick Inclima emailed FRA employee Christopher Schulte. Mr. Inclima attached a document that he described as a marked-up version of the consensus language that was deliberated and voted on at the February 2006 working group meeting. He indicated that the final edits to the document were made on screen in response to final deliberations prior to voting, and that the document refers to "head end" as it relates to speeds less than 25 mph. Mr. Inclima also attached another document that he described as FRA's final report on RWP consensus, which he believed was presented to the full RSAC for a vote. He noted that nowhere is it reflected that the group agreed to change the current definition of adjacent track under 214.7. The NPRM definition effectively removes adjacent tracks from yards and other non-controlled track, and also removes the Employee in Charge's (EIC's) current discretion to establish adjacent track protection at distances between 19 and 25 feet.

- July 26, 2008: After making two attempts to speak with FRA employee Dean Hollingsworth on the phone (Mr. Hollingsworth indicates that he received two telephone calls from Mr. Inclima on July 25th and 26th; however, both calls were "dropped," due to poor cell phone reception, and no substantive discussions took place), BMWED representative Rick Inclima emailed Mr. Hollingsworth two documents. The first was described as FRA's powerpoint presentation to the full RSAC on February 22, 2006, regarding the RWP consensus (slide # 8, was referenced in the email for its brief summary on Adjacent Track consensus). The second document was described as the RWP RSAC Report from FRA dated 5/30/07 (page #10, was referenced in the email for the section 214.335 consensus language). Both documents have been attached to this memorandum for posting to the docket.

- July 27, 2008: BMWED representative Rick Inclima spoke with FRA employee Dean Hollingsworth. He raised several issues concerning the NPRM, namely the issues regarding removing the definition of adjacent track as well as the NPRM's language that would have permitted all work to continue, regardless of speed, once the head-end had passed by the worker's location. Mr. Hollingsworth indicated that it was difficult to understand all of the issues Mr. Inclima was raising without having the documents that Mr. Inclima was referencing in front of him. Mr. Hollingsworth made no promises to Mr. Inclima about any resolution other than that he would pass on his concerns.

- July 28, 2008: BMWED representative Rick Inclima sent an email to FRA employee Dean Hollingsworth that attached six documents related to the RWP WG consensus on Adjacent Track Protection. All six documents have been

attached to this memorandum for posting to the docket. He described the documents as follows:

1. RWP 06 03 15 16 06 Final February Minutes.pdf *(Final Minutes of Feb 06 WG meeting)*
2. RWP 06 02 01 02 10 marked up consensus.pdf *(Consensus Agreement on adj. tracks with Chris/Anna's highlights and notes. The highlights/note were done "on screen" and agreed to by WG just prior to the consensus vote on the document)*
3. RWP RSAC Consensus Text line numbered 12-10-07.pdf *(This is the WG Report of Consensus Items produced and distributed by FRA 12-07.*
4. RSAC report Feb 2006 RWP Consensus.pdf *(This is the power point presented by FRA to the Full RSAC, Feb 22, 2006 after working group consensus reached on adjacent track –See slide #8)*
5. RSAC minutes, Feb 22, 2006.pdf *(These are the minutes of the Full RSAC meeting held Feb 22, 2006)*
6. Compare Consensus to NPRM Adjacent Track BMWED.doc (*This is BMWED's initial comparison of the Consensus Language vs NPRM Language [comments imbedded]*

Mr. Inclima stated that nowhere in these documents, or subsequent documents produced and presented by FRA, is there any mention of eliminating the current definition of adjacent track. He further noted that the marked-up consensus document makes reference to head-end speed (at the EIC's discretion) only as it relates to roll by speeds lower than 25 MPH.

- July 28, 2008: BMWED representative Rick Inclima spoke with FRA employees Dean Hollingsworth and Christopher Schulte. Mr. Schulte was conferenced in for only a portion of the telephone call. The first part of the call (with Mr. Hollingsworth only) was repeating the same concerns that he had raised in his July 27th phone call and July 28th email to Mr. Hollingsworth. During the second part of the call (where Mr. Schulte was conferenced in), Mr. Schulte indicates that Mr. Inclima stated that the working group did not make a consensus recommendation to remove the existing definition of "adjacent track" from § 214.7. Mr. Inclima was concerned that the removal of the definition could be interpreted as taking away the discretion of the roadway worker in charge (RWIC) to establish on-track safety for adjacent tracks meeting the existing definition, but not the proposed definition (i.e., any adjacent non-controlled track within 25 feet of the centerline of the occupied track and any adjacent controlled track with a centerline that is greater than 19 feet away from the centerline, but less than 25 feet away). Mr. Schulte indicated that he has heard Mr. Inclima's concerns, but did not want to discuss the issue ex parte. Mr. Schulte then left the conference call. At that point, Mr. Hollingsworth asked Mr. Inclima if the conversation had covered his concerns, and Mr. Inclima replied that it had, and they ended that call.

Later that evening, Mr. Inclima called Mr. Hollingsworth again to express his views on a different part of the NPRM. Mr. Inclima recommended that FRA should remove the provisions of (c) Training and (d) Recordkeeping from the proposal. He indicated that the language is not consensus language from any part of the RSAC discussions. Furthermore, it was Mr. Inclima's opinion that anything to do with these two subjects belonged in § 214.343, where there was consensus to make changes to the training timelines, that being an annual requirement. Lastly, Mr. Inclima advised that these provisions would place a huge paperwork burden on the carriers that was never intended or discussed. Mr. Inclima asked if FRA intended to have these provisions for each level of proficiency (RWIC, Flagman, etc.) and do away with § 214.343. Mr. Hollingsworth gave no answer to that question, but noted he would pass along Mr. Inclima's concerns.

Federal Railroad Administration

February 22, 2006

Railroad Safety Advisory Committee

Roadway Worker Protection Regulation Working Group Report

Session Status

- **2005 Sessions**
  - April 12 - 13, Washington, DC
  - June 22 - 24, Washington, DC
  - August 8 - 11, Chicago
  - September 20 - 22, Washington, DC
  - November 8 - 9, Chicago

  - January 10 - 11, 2006 Washington, DC
  - February 1 - 2,

Session Status

- **2006 Sessions**
  - January 10 - 11, Washington, DC
  - February 1 - 2, San Francisco, CA
  - March 15 - 16, San Antonio, TX (scheduled)
  - April 11 - 12, Chicago, IL (scheduled)
  - May 31 - June 1, Baltimore, MD (scheduled)
  - August 22 - 23, Kansas City, KS (wrap-up scheduled)

Consensus items

- Use of Part 236 definitions for control point and manual/automatic interlocking. Consensus also to not develop a new term for “switch arrangement.”
- Clarification of existing definition - “Effective Securing Device”
- Consensus to not revise definition “Fouling a Track”
- New definition - “On-Track Safety Manual”
- New definition - “Maximum Authorized Speed” as applies to on-track safety

Consensus items

- **Sec. 214.309 revised to clarify requirements of the on-track safety manual**
  - Provisions for lone worker walking track
  - Allows for changes temporally in bulletins
- **Sec. 214.315 new sub-subparagraph for on-track safety briefing to require procedural instructions regarding adjacent tracks**
- **Sec. 214.317 new paragraph enabling roadway workers to cross tracks**

Consensus items

- Sec. 214.321 new paragraph allowing unique identifier vs. employee name for a roadway work group on an authority
- Sec. 214.323 revised to clarify that roadway worker may not allow movement into foul time
- Sec. 214.324 (new) “Verbal Protection” similar to foul time for interlockings/CPs to facilitate movements through such working limits

Consensus items

- Sec. 214.329 consensus to not include “tactile” as an alternative to audible and visual for train approach warning
- Sec. 214.337 revised to allow individual train detection at control point without switches
- Sec. 214.337 new paragraph prohibiting the use of individual train detection for work involving material or equipment that cannot be readily moved by hand

Consensus items

- **Sec. 214.335 regarding roadway work groups and adjacant tracks**
  - Requires on-track safety for adjacent controlled track closer than 19 feet to the occupied track for workers with rail-bound machines.
  - Requires all work to stop upon notification when speeds are greater than 25 mph
  - Permits hi-rail vehicles/tower catenary cars with on-ground work, and on-ground work to field side to proceed without controlled adjacant track on-track safety. Special on-track safety briefing required and rule text also reinforces roadway the worker in charge's prerogative to establish adjacant track on-track safety as necessary.

Consensus items

- **Sec. 214.339 clarifications regarding locomotive horn sounding when approaching roadway workers**

Non-Consensus items

- Remote hump yard facility definition
- Occupancy behind
- Tunnel niches
- Train approach warning and prohibition of work involving material or equipment that cannot be moved by hand

Additional items

- Roadway worker definition and work preparation activities
- Assignment of roadway worker in charge for contractors
- Electronic documentation
- Train coordination non-controlled track
- Activities of roadway work when warned by watchman
- Activities of lone worker when trains approaches

Additional items

- Individual train detection at controlled points
- On-track training of other than roadway workers who provide protection for roadway work groups (contractors)
- Maximum training time span for roadway workers
- Location of roadway worker in charge
- On-track snow throwers and week sprayer operation on non-controlled track

Additional items

- Snow removal at passenger platforms
- Training frequency of contractors
- Yard limits – controlled/non controlled
- Block register territory
- Railroads informing contractor of on-track safety

Roadway Worker Protection Rulemaking Status Report
June 26, 2007

Background

In 1990, the FRA received a petition to amend its track safety standards from the Brotherhood of Maintenance of Way Employes (BMWE), which included issues pertaining to the hazards faced by roadway workers. This proceeding, however, formally originated with the Rail Safety Enforcement and Review Act. FRA issued an Advanced Notice of Proposed Rulemaking (ANPRM) on November 16, 1992, announcing the opening of a proceeding to amend the Federal Track Safety Standards.

FRA held workshops to solicit the views of the railroad industry and representatives of railroad employees on the need for substantive change in the track regulations. The subject of injury and death to roadway workers was of such great concern that FRA received petitions for emergency orders and requests for rulemaking from both the BMWE and the Brotherhood of Railroad Signalmen. FRA did not grant the petitions for emergency orders, but instead initiated a separate proceeding to consider regulations to eliminate hazards faced by these employees.

FRA published its notice of intent to establish a Federal Advisory Committee for regulatory negotiation on August 17, 1994. The Advisory Committee would be responsible for submitting a report, including an NPRM, containing the Committee's consensus decisions. On December 27, 1994, the Office of Management and Budget approved the Charter to establish a Roadway Worker Safety Advisory Committee comprised of twenty-five members. The Advisory Committee held seven multiple-day negotiating sessions. An independent task force, comprised of representatives of several railroads and labor organizations, had met during the preceding year and independently analyzed on-track safety practices. This task force presented information at the first Advisory Committee meeting. The Advisory Committee reached consensus on 11 specific recommendations and 9 general recommendations to serve as the basis for a regulation.

FRA published a notice of proposed rulemaking on March 14, 1996, receiving 15 comments and a request for a public hearing. A public hearing was held on July 11, 1996, with a final Advisory Committee meeting occurring on July 12. Published on December 16, 1996, the Final Rule became effective on January 15, 1997.

Post-Rule Considerations

The reduction in the number of casualties to roadway workers since the promulgation of the rule is a testimony to its effectiveness. However, as an entirely new regulation, a number of interpretative questions arose in the post-rule years. In an attempt to reconcile these issues, FRA held three Technical Resolution Committee (TRC) meetings with railroad management and labor organizations. The TRC resolved some of the issues, but a number saw no conclusion due to legal constraints. (That is, the plain language of the regulation did not allow for the desired interpretation, clarification or differing application.) Currently, there are 30 Technical Bulletins and a Safety Advisory dealing with a variety of RWP topics. These documents, along with many additional unresolved issues, prompted FRA to consider rulemaking in the RSAC venue.

On January 26, 2005, FRA presented Task No. 05-01 to the full RSAC. This Task Statement proposed a review of 49 CFR 214, Subpart C, Roadway Worker Protection, and related sections of Subpart A. It recommended consideration of specific actions to advance the on-track safety of railroad employees and contractors engaged in maintenance-of-way activities throughout the general railroad system of transportation, including clarification of existing requirements. It also recommended that the working group review the existing regulation, technical bulletins, and safety advisory dealing with on-track safety to consider implications and, as appropriate, consider enhancements to the existing regulation. The Working Group would report to the RSAC any specific actions identified as appropriate. It would report planned activity to the full Committee at each scheduled Committee meeting, including milestones for completion of projects and progress toward completion. The RSAC accepted the task on January 26, 2005.

Working Group Products

Since accepting the Task Statement, the Working Group held 12 multi-day sessions. The last meeting, three days in length, occurred February 27 through March 1, 2007. The group worked diligently and was able to reach consensus on 32 separate items; however, the group was unable to reach consensus on eight items. Considering the technical and intricate nature of all the items discussed, the group was productive as evidenced by its ability to construct draft regulatory text as outlined below and as shown in the attached document.

Concerning Subpart A, the working group attained consensus to add two new definitions (maximum authorized speed and on-track safety manual), revise two definitions (effective securing device and watchman/lookout), and incorporate three definitions from Part 236 (automatic interlocking, controlled point, and manual interlocking). In addition, the working group came to consensus on the following items in Subpart C:

- Section 214.309 - revision to address on-track safety manual for lone workers and changes to the manual.

- Section 214.315 - requirement that information concerning adjacent tracks be included in on-track safety job briefings; accessibility of the roadway worker in charge.

- Section 214.317 - new paragraph to formalize procedures for roadway workers to cross tracks; new paragraph for on-track weed spray and snow blowing operations on non-controlled track.

- Section 214.321 - new paragraph to address the use of work crew numbers.

- Section 214.323 - clarification of foul time provision whereby roadway worker in charge or train dispatcher may not permit movements into such working limits.

- Section 214.324 - new section called “verbal protection” for abbreviated working limits within manual interlocking and controlled points.

- Section 214.327 - new paragraphs to formalize the following instruments to make non-controlled track inaccessible: occupied locomotive as a point of inaccessibility; block register territory; and yard limit bulletins.

- Section 214.335 - complete revision of paragraph (c) concerning on-track safety for track adjacent to occupied tracks. Key elements are the elimination of "large-scale" and the addition of a new requirement for on-track safety for tracks adjacent to occupied tracks for specific work activities.

- Section 214.337 - allowance for the use of individual train detection at controlled points consisting only of signals; otherwise no consensus reached on changes to the limitation on the use of this type of on-track safety. Also, new paragraph limiting equipment/materials that can only be moved by hand by a lone worker.

- Section 214.339 - complete revision of this section concerning audible warning by trains to address operational considerations.

- Section 214.343 - new paragraph to ensure contractors receive requisite training/and or qualification before engaged by a railroad.

- Section 214.345 - lead-in phrase requiring all training to be consistent with initial or recurrent training, as specified in Sec. 214.343 (b).

- Sections 214.347, 349, 351, 353, and 355 - consistent requirements for various roadway worker qualifications and maximum 24-month span between qualifications.

In addition to the above, the group worked on a proposal for use of electronic display of authorities as a provision under exclusive track occupancy. The group developed lead-in rule text and agreed to some conceptual items. When circulated back to the group, two parties raised technical issues that could not be resolved in the time available. Accordingly, FRA will offer a proposal on this item in the NPRM.

In addition to the above products, a separate task group has been analyzing over 100 post-rule on-track safety accidents. The group is currently finishing its activities and a comprehensive report that will be presented to FRA for comparative analysis during the development of the NPRM.

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RWP RSAC Consensus Items

Working group consensus
FRA minor edits consistent with the consensus items
*** = Unchanged text removed for brevity (removed are entire sections where there was no Working Group activity or text in a section past the point where there was activity by the group)

The Rule - Railroad Workplace Safety, General

Sec. 214.7 Definitions.

Controlled point. A location where signals and/or other functions of a traffic control system are controlled from the control machine. (Sec. 236.782).

Effective securing device, when used in relation to on-track safety, means a vandal and tamper resistant lock, keyed for application and removal only by the roadway worker(s) for whom the protection is provided. In the absence of a lock, it is acceptable to use a spike driven firmly into a switch tie or a switch point clamp to prevent the use of a manually operated switch. It is also acceptable to use portable derails secured with specifically designed metal wedges. Securing devices without a specially keyed lock shall be designed in such a manner that require railroad track tools for installation and removal and the operating rules of the railroad must prohibit removal by employees other than the class, craft, or group of employees for whom the protection is being provided. Regardless of the type of securing device, the throwing handle or hasp of the switch or derail shall be uniquely tagged. If there is no throwing handle, the securing device shall be tagged.

Interlocking, automatic, means an arrangement of signals, with or without other signal appliances, which functions through the exercise of inherent powers as distinguished from those whose functions are controlled manually, and which are so interconnected by means of electric circuits that their movements must succeed each other in proper sequence, train movements over all routes being governed by signal indication. (Sec. 236.750)

Interlocking, manual, means an arrangement of signals and signal appliances operated from an interlocking machine and so interconnected by means of mechanical and/or electric locking that their movements must succeed each other in proper sequence, train movements over all routes being governed by signal indication. (Sec. 236.751)

Maximum authorized speed, for on-track safety purposes, means the highest speed permitted for the movement of trains permanently established by timetable/special instructions, general order, or track bulletin.

On-track safety manual means the entire set of instructions to prevent roadway workers from being struck by trains or other on-track equipment. These instructions include operating rules and other procedures concerning on-track safety protection and on-track safety measures.

Roadway worker in charge means a roadway worker who is qualified in accordance with Sec. 214.353 of this chapter for the purpose of establishing on-track safety for roadway work groups. (Part 217/218 NPRM - FR Vol. 71 No. 197, October 12, 2006)

Watchman/lookout means an employee who has been ~~annually~~ trained and qualified to provide warning to roadway workers of approaching trains or on-track equipment. Watchmen/lookouts shall be properly equipped to provide visual and auditory warning such as whistle, air horn, white disk, red flag, lantern, fusee. A watchman/lookout's sole duty is to look out for approaching trains/on-track equipment and provide at least fifteen seconds advanced warning to employees before arrival of trains/on-track equipment.

Subpart C--Roadway Worker Protection

Sec. 214.305 Compliance dates.

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Sec. 214.307 Review and approval of individual on-track safety programs by FRA.

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Sec. 214.309 On-track safety program documents.

(a) Rules and operating procedures governing track occupancy and protection shall be maintained together in one on-track safety manual and be readily available to all roadway workers. Each roadway worker responsible for the on-track safety of others, and each lone worker, shall be provided with and shall maintain a copy of the on-track safety manual.

(b) When it is impracticable for a lone worker to carry the manual, the employer shall establish provisions for such worker to have alternative access to the information in the manual. Such provisions for alternative access shall be addressed and included in the training provisions of 214.347.

(c) Changes to the on-track safety manual may be temporarily published in bulletins or notices. Such publications shall be carried along with the on-track safety manual until fully incorporated in the manual.

Sec. 214.311 Responsibility of employers

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Sec. 214.313 Responsibility of individual roadway workers

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Sec. 214.315 Supervision and communication.

(a) When an employer assigns duties to a roadway worker that call for that employee to foul a track, the employer shall provide the employee with an on-track safety job briefing that includes:

(1) Information on the means by which on-track safety is to be provided for tracks identified to be fouled; instruction on the on-track safety procedures to be followed;

(2) Information about any tracks adjacent to the track to be occupied, on-track safety for such tracks, and identification of roadway maintenance machines that will foul any adjacent track. In such cases, the briefing shall include procedural instructions addressing the nature of the work to be performed and the characteristics of the work location to ensure compliance with this part; and

(3) Information on the accessibility of the roadway worker in charge and alternative procedures in the event the roadway worker in charge is no longer accessible to the members of the roadway work group.

(b) An on-track safety job briefing for on-track safety shall be deemed complete only after the roadway worker(s) has acknowledged understanding of the on-track safety procedures and instructions presented.

(c) Every roadway work group whose duties require fouling a track shall have one roadway worker in charge designated by the employer to provide on-track safety for all members of the group. The designated person shall be qualified under the rules of the railroad that conducts train operations on those tracks to provide the protection necessary for on-track safety of each individual in the group. The responsible person may be designated generally, or specifically for a particular work situation.

(d) Before any member of a roadway work group fouls a track, the ~~designated person~~ roadway worker in charge providing on-track safety for the group under paragraph (c) of this section shall inform each roadway worker of the on-track safety procedures to be used and followed during the performance of the work at that time and location. Each roadway worker shall again be so informed at any time the on-track safety procedures change during the work period. Such information shall be given to all roadway workers affected before the change is effective, except in cases of emergency. Any roadway workers who, because of an emergency, cannot be notified in advance shall be immediately warned to leave the fouling space and shall not return to the fouling space until on-track safety is re-established.

(e) Each lone worker shall communicate at the beginning of each duty period with a supervisor or another designated employee to receive an on-track safety job briefing and to advise of his or her planned itinerary and the procedures that he or she intends to use for on-track safety. When communication channels are disabled, the on-track safety job briefing shall be conducted as soon as possible after the beginning of the work period when communications are restored.

Sec. 214.317 On-track safety procedures, generally.

(a) Each employer subject to the provisions of this part shall provide on-track safety for roadway workers by adopting a program that contains specific rules for protecting roadway workers that comply with the provisions of Secs. 214.319 through 214.337 of this part.

(b) Roadway workers may walk across any track provided each roadway worker shall stop and look in both directions before starting across the track to ensure that they can safely be across and clear of the track before a train or other on-track equipment would arrive at the crossing point under the following circumstances:

(1) The employer shall have in place and the roadway workers shall comply with the applicable railroad safety rules to determine that it is safe to cross the track before starting across;

(2) Roadway workers move directly and promptly across the track;

(3) On-track safety protection is in place for all roadway workers who are actually engaged in work, including inspection, construction, maintenance or repair, and extending to carrying tools or material that restricts motion, impairs sight or hearing, or prevents an employee from moving rapidly away from an approaching train or other on-track equipment, as defined in the rule; and

(4) These safety rules are addressed in all roadway worker training.

(c) On non-controlled track, on-track roadway maintenance machines engaged in weed spraying or snow removal may proceed under the provisions of 214.301(c), except where remotely controlled hump yard facility operations are in effect, provided the following conditions are met:

(1) Each railroad shall establish and comply with an operating procedure for on-track snow removal and weed spray equipment to ensure that:

(i) All on-track movements are informed of such operations,

(ii) All movements shall operate at restricted speed as defined in §214.7, except on other than yards and yard switching leads, where all movements shall operate prepared to stop within one-half the range of vision but not exceeding 25 mph,

(iii) A means for communications between the on-track equipment and other movements is provided, and

(iv) During periods of such operations, the kicking of cars is prohibited unless agreed to by the roadway worker in charge.

(2) Roadway workers engaged in such snow removal or weed spraying operations shall retain an absolute right to use the provisions of §214.327 (inaccessible track).

(3) Roadway workers assigned to work with this equipment may line switches for the machine's movement but shall not engage in any roadway work activity unless protected by another form of on-track safety.

(4) Each roadway maintenance machine engaged in snow removal or weed spraying under this provision shall be equipped with and utilize:

(i) An operative 360-degree intermittent warning light or beacon,

(ii) Work lights, if the machine is operated during the period between one-half hour after sunset and one-half hour before sunrise or in dark areas such as tunnels, unless equivalent lighting is otherwise provided,

(iii) An illumination device, such as a headlight, capable of illuminating obstructions on the track ahead in the direction of travel for a distance of 300 feet under normal weather and atmospheric conditions,

(iv) A brake light activated by the application of the machine braking system, and designed to be visible for a distance of 300 feet under normal weather and atmospheric conditions, and

(v) A rearward viewing device, such as a rearview mirror.

Sec. 214.319 Working limits, generally.

Working limits established on controlled track shall conform to the provisions of Sec. 214.321 Exclusive track occupancy, or Sec. 214.323 Foul time or Sec. 214.324 Verbal protection, or Sec. 214.325 Train coordination. Working limits established on non-controlled track shall conform to the provision of Sec. 214.327 Inaccessible track. Working limits established under any procedure shall, in addition, conform to the following provisions:

(a) Only a roadway worker who is qualified in accordance with Sec. 214.353 of this part shall establish or have control over working limits for the purpose of establishing on-track safety.

(b) Only one roadway worker shall have control over working limits on any one segment of track.

(c) All affected roadway workers shall be notified before working limits are released for the operation of trains. Working limits shall not be released until all affected roadway workers have either left the track or have been afforded on-track safety through train approach warning in accordance with Sec. 214.329 [Note - this corrects the typo in original rule] of this subpart.

Sec. 214.321 Exclusive track occupancy.

Working limits established on controlled track through the use of exclusive track occupancy procedures shall comply with the following requirements:

(a) The track within working limits shall be placed under the control of one roadway worker by either:

(1) Authority issued to the roadway worker in charge by the train dispatcher or control operator who controls train movements on that track,

(2) Flagmen stationed at each entrance to the track within working limits and instructed by the roadway worker in charge to permit the movement of trains and equipment into the working limits only as permitted by the roadway worker in charge, or

(3) The roadway worker in charge causing fixed signals at each entrance to the working limits to display an aspect indicating “Stop.”

(b) An authority for exclusive track occupancy given to the roadway worker in charge of the working limits shall be transmitted on a written or printed document directly, by relay through a designated employee, in a data transmission, or by oral communication, to the roadway worker by the train dispatcher or control operator in charge of the track.

(1) Where authority for exclusive track occupancy is transmitted orally, the authority shall be written as received by the roadway worker in charge and repeated to the issuing employee for verification.

(2) The roadway worker in charge of the working limits shall maintain possession of the written or printed authority for exclusive track occupancy while the authority for the working limits is in effect.

(3) The train dispatcher or control operator in charge of the track shall make a written or electronic record of all authorities issued to establish exclusive track occupancy.

(4) An authority shall specify a unique roadway work group number, an employee name, or a unique identifier. The railroad's procedures shall include precise communication to ensure trains and other on-track equipment communicate, either directly or through the dispatcher, with the roadway worker in charge or lone worker controlling the working limits in accordance with §214.319.

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Sec. 214.323 Foul time.

Working limits established on controlled track through the use of foul time procedures shall comply with the following requirements:

(a) Foul time may be given orally or in writing by the train dispatcher or control operator only after that employee has withheld the authority of all trains and other on-track equipment to move into or within the working limits during the foul time period.

(b) Each roadway worker in charge to whom foul time is transmitted orally shall repeat the track number, track limits and time limits of the foul time to the issuing employee for verification before the foul time becomes effective.

(c) The train dispatcher or control operator shall not permit the movement of trains or other on-track equipment into working limits protected by foul time until the roadway worker in charge who obtained the foul time has reported clear of the track.

(d) The roadway worker in charge shall not permit the movement of trains or other on-track equipment into or within working limits protected by foul time.

214.324 Verbal protection (new section)

Working limits established through verbal protection may only occur within manual interlockings or within controlled points and shall comply with the following requirements.

(a) Verbal protection shall be communicated to the roadway worker in charge by the train dispatcher or control operator only after that employee has withheld the authority of all trains to move into or within the limits to be protected.

(b) Each roadway worker in charge to whom verbal protection is transmitted shall repeat the track number, track limits and time limits of the verbal protection to the issuing employee for verification before the verbal protection becomes effective.

(c) No train or on-track equipment may move into working limits protected by verbal protection until permission has been received from the roadway worker in charge and authority has been given by the train dispatcher.

Sec. 214.325 Train coordination.

Working limits established by a roadway worker through the use of train coordination shall comply with the following requirements:

(a) Working limits established by train coordination shall be within the segments of track or tracks upon which only one train holds exclusive authority to move.

(b) The roadway worker in charge who establishes working limits by train coordination shall communicate with a member of the crew of the train holding the exclusive authority to move, and shall determine that:

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Sec. 214.327 Inaccessible track.

(a) Working limits on non-controlled track shall be established by rendering the track within working limits physically inaccessible to trains at each possible point of entry by one or more of the following features:

(1) A flagman with instructions and capability to hold all trains and equipment clear of the working limits;

(2) A switch or derail aligned to prevent access to the working limits and secured with an effective securing device by the roadway worker in charge of the working limits;

(3) A discontinuity in the rail that precludes passage of trains or engines into the working limits;

(4) Working limits on controlled track that connects directly with the inaccessible track, established by the roadway worker in charge of the working limits on the inaccessible track;

(5) A remotely controlled switch aligned to prevent access to the working limits and secured by the control operator of such remotely controlled switch by application of a locking or blocking device to the control of that switch, when:

(i) The control operator has secured the remotely controlled switch by applying a locking or blocking device to the control of the switch, and

(ii) The control operator has notified the roadway worker who has established the working limits that the requested protection has been provided, and

(iii) The control operator is not permitted to remove the locking or blocking device from the control of the switch until receiving permission to do so from the roadway worker who established the working limits.

(6) Train crew directly in control of a locomotive with or without cars may be considered a physical feature at one or more points of entry to working limits. The roadway worker who establishes the locomotive as a physical feature shall communicate with a member of the crew and determine that:

(i) The locomotive is visible to the roadway worker in charge that is establishing the working limits;

(ii) The locomotive is stopped;

(iii) Further movements of the locomotive shall be made only as permitted by the roadway worker in charge controlling the working limits;

(iv) The crew of the locomotive shall not leave the locomotive unattended or go off duty unless communication occurs with the roadway worker in charge and an alternate means of on-track safety protection has been established by the roadway worker in charge; and

(v) Cars coupled to the locomotive on the same end and on the same track as the roadway workers shall be connected to the train line air brake and such system shall be charged with compressed air to initiate an emergency brake application in case of unintended uncoupling. Cars coupled to the locomotive on the same track on the opposite end of the roadway workers shall have sufficient braking capability to control movement.

(7) The provisions of a block register territory that prevent trains and other on-track equipment from occupying the track when the territory is under the control of a lone worker or roadway worker in charge. The roadway worker in charge or lone worker shall have the absolute right to render such block register territory inaccessible under the provisions of Sec. 214.327(a)(1) through 214.327(a)(5).

(8) Railroad operating rules that require train or engine movements to be prohibited on a main track within yard limits or restricted limits until the train or engine receives notification of any working limits in effect and do not enter working limits until permission is received by the roadway worker in charge. Such working limits shall be delineated with stop signs (flags), and where speeds are in excess of restricted speed, and where physical characteristics permit, advance signs (flags).

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Sec. 214.329 Train approach warning provided by watchmen/lookouts

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Sec. 214.331 Definite train location.

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Sec. 214.333 Informational line-ups of trains.

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Sec. 214.335 On-track safety procedures for roadway work groups.

(a) No employer subject to the provisions of this part shall require or permit a roadway worker who is a member of a roadway work group to foul a track unless on-track safety is provided by either working limits, train approach warning, or definite train location in accordance with the applicable provisions of Secs. 214.319, 214.321, 213.323, 214.324, 214.325, 214.327, 214.329 and 214.331 of this part.

(b) No roadway worker who is a member of a roadway work group shall foul a track without having been informed by the roadway worker responsible for the on-track safety of the roadway work group that on- track safety is provided.

(c) On-track safety is required for adjacent controlled track within 19 feet of the centerline of the occupied track when roadway work group(s) consisting of roadway workers on the ground and on-track self-propelled or coupled equipment are engaged in a common task on an occupied track:

(1) Except as provided by paragraph (c)(3) of this section, when trains are cleared through working limits on an adjacent controlled track, or when watchman/lookout warning in accordance with section 214.329 is the form of adjacent on-track safety, roadway workers shall occupy a predetermined place of safety and all on-ground work and equipment movement activity within the fouling space of the occupied track shall cease upon notification of pending adjacent track movement (working limits) or upon receiving the watchman/lookout warning.

(2) When single or multiple movements are cleared through adjacent controlled track working limits, on-ground work and equipment movement on the occupied track may resume only after all such movements on adjacent track have passed each component of the Roadway Work Group(s). If the train stops before passing all roadway workers, the roadway worker in charge shall communicate with the engineer prior to allowing the work to resume.

(3) When single or multiple movements are cleared through adjacent controlled track working limits at a speed no greater than 25 mph, work performed exclusively between the rails of the occupied track, or to the field side of the occupied track with no adjacent track, may continue upon notification of each roadway worker of movement on adjacent track. On-ground work shall not be performed within 25 feet to the front or 25 feet to the rear of roadway maintenance machine(s) on the occupied track during such adjacent track movement.

(d) Equipment may not foul an adjacent controlled track unless protected by working limits and there are no movements.

(e) The mandatory provisions for adjacent controlled track protection under this subpart are not applicable to work activities involving:

(1) A hi-rail vehicle as defined in Sec. 214.7, provided such hi-rail vehicle is not coupled to railroad cars. Where multiple hi-rail vehicles are engaged in a common task, the on-track safety briefing shall include discussion of the nature of the work to be performed to determine if adjacent controlled track protection is necessary. Nothing in this subpart prohibits the roadway worker in charge of the hi-rail vehicle from establishing adjacent controlled track protection, as he/she deems necessary;

(2) On-ground roadway workers exclusively performing work on the field side of the occupied track; or

(3) Catenary maintenance tower cars with roadway workers positioned on the ground within the gage of the occupied track for the sole purpose of applying or removing grounds. Nothing in this subpart prohibits the roadway worker in charge of the catenary maintenance tower car from establishing adjacent track protection, as he/she deems necessary.

Sec. 214.337 On-track safety procedures for lone workers.

(a) A lone worker who fouls a track while performing routine inspection or minor correction may use individual train detection to establish on-track safety only where permitted by this section and the on-track safety program of the railroad.

(b) A lone worker retains an absolute right to use on-track safety procedures other than individual train detection if he or she deems it necessary, and to occupy a place of safety until such other form of on- track safety can be established.

(c) Individual train detection may be used to establish on-track safety only:

(1) By a lone worker who has been trained, qualified, and designated to do so by the employer in accordance with Sec. 214.347 of this subpart;

(2) While performing routine inspection and minor correction work;

(3) On track outside the limits of a manual interlocking, a controlled point (except those without switches), or a remotely controlled hump-yard facility;

(4) Where the lone worker is able to visually detect the approach of a train moving at the maximum speed authorized on that track, and move to a previously determined place of safety, not less than 15 seconds before the train would arrive at the location of the lone worker;

(5) Where no power-operated tools or roadway maintenance machines are in use within the hearing of the lone worker; and

(6) Where the ability of the lone worker to hear and see approaching trains and other on-track equipment is not impaired by background noise, lights, precipitation, fog, passing trains, or any other physical conditions.

(d) The place of safety to be occupied by a lone worker upon the approach of a train may not be on a track, unless working limits are established on that track.

(e) A lone worker using individual train detection for on-track safety while fouling a track may not occupy a position or engage in any activity that would interfere with that worker's ability to maintain a vigilant lookout for, and detect the approach of a train moving in either direction as prescribed in this section.

(f) A lone worker who uses individual train detection to establish on-track safety shall first complete a written statement of on-track safety. The statement shall designate the limits of the track for which it is prepared and the date and time for which it is valid. The statement shall show the maximum authorized speed of trains within the limits for which it is prepared, and the sight distance that provides the required warning of approaching trains. The

lone worker using individual train detection to establish on-track safety shall produce the statement of on-track safety when requested by a representative of the Federal Railroad Administrator.

(g) Individual train detection shall not be used to provide on-track safety for a lone worker using a roadway maintenance machine, equipment, or material that cannot be readily removed by hand.

Sec. 214.339 Audible warning from trains.

(a) Each railroad shall have in effect and comply with written procedures that prescribe effective requirements for audible warning by horn and/or bell for trains and locomotives approaching roadway workers or roadway maintenance machines that are either on the track on which the movement is occurring, or about the track if at risk of fouling. At a minimum, such written procedures shall address:

(1) Initial horn warning;

(2) Subsequent warning(s); and

(3) Alternative warnings in areas where sounding the horn adversely affects roadway workers (e.g. in tunnels, terminals, etc.).

(b) Such audible warning shall not substitute for on-track safety procedures prescribed in this part.

Sec. 214.343 Training and qualification, general.

(a) No employer shall assign an employee to perform the duties of a roadway worker, and no employee shall accept such assignment, unless that employee has received training in the on-track safety procedures associated with the assignment to be performed, and that employee has demonstrated the ability to fulfill the responsibilities for on-track safety that are required of an individual roadway worker performing that assignment.

(b) Each employer shall provide to all roadway workers in its employ initial or recurrent training once every calendar year on the on-track safety rules and procedures that they are required to follow.

(c) Railroad employees other than roadway workers, who are associated with on-track safety procedures, and whose primary duties are concerned with the movement and protection of trains, shall be trained to perform their functions related to on-track safety through the training and qualification procedures prescribed by the operating railroad for the primary position of the employee, including maintenance of records and frequency of training.

(d) Each employer of roadway workers shall maintain written or electronic records of each roadway worker qualification in effect. Each record shall include the name of the employee, the type of qualification made, and the most recent date of qualification. These records shall be kept available for inspection and photocopying by the Federal Railroad Administrator during regular business hours.

(e) Each railroad shall require that each contractor employee has received the requisite training and/or qualification before engaging such employee to perform any roadway worker duties.

Sec. 214.345 Training for all roadway workers.

Consistent with Sec. 214.343(b), the training of all roadway workers shall include, as a minimum, the following:

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Sec. 214.347 Training and qualification for lone workers.

Each lone worker shall be trained and qualified by the employer to establish on-track safety in accordance with the requirements of this section, and must be authorized to do so by the railroad that conducts train operations on those tracks.

(a) The training and qualification for lone workers shall include, as a minimum, consideration of the following factors:

(1) Detection of approaching trains and prompt movement to a place of safety upon their approach.

(2) Determination of the distance along the track at which trains must be visible in order to provide the prescribed warning time.

(3) Rules and procedures prescribed by the railroad for individual train detection, establishment of working limits, and definite train location.

(4) On-track safety procedures to be used in the territory on which the employee is to be qualified and permitted to work alone.

(b) Each employer shall provide to lone workers initial or recurrent training once every calendar year. For the purposes of this section, initial training and qualification shall occur before a lone worker is assigned duties covered by this Part.

(c) Qualification of lone workers shall be evidenced by demonstrated proficiency and shall be performed on a recurrent basis not to exceed 24 months between such demonstrations.

Sec. 214.349 Training and qualification of watchmen/lookouts.

(a) The training and qualification for roadway workers assigned the duties of watchmen/lookouts shall include, as a minimum, consideration of the following factors:

(1) Detection and recognition of approaching trains.

(2) Effective warning of roadway workers of the approach of trains.

(3) Determination of the distance along the track at which trains must be visible in order to provide the prescribed warning time.

(4) Measures and procedures of the railroad to be used for train approach warning.

(b) Each employer shall provide to watchmen/lookouts initial or recurrent training once every calendar year. For the purposes of this section, initial training and qualification shall occur before a watchman/lookout is assigned duties covered by this Part.

(c) Qualification of watchmen/lookouts shall be evidenced by demonstrated proficiency and shall be performed on a recurrent basis not to exceed 24 months between such demonstrations.

Sec. 214.351 Training and qualification of flagmen.

(a) The training and qualification for roadway workers assigned the duties of flagmen shall include, as a minimum, the content and application of the operating rules of the railroad pertaining to giving proper stop signals to trains and holding trains clear of working limits .

(b) Each employer shall provide to flagmen initial or recurrent training once every calendar year. For the purposes of this section, initial training and qualification shall occur before a flagman is assigned duties covered by this Part.

(c) Qualification of flagmen shall be evidenced by demonstrated proficiency and shall be performed on a recurrent basis not to exceed 24 months between such demonstrations.

Sec. 214.353 Training and qualification of ~~roadway workers who provide on-track safety for roadway work groups~~ each roadway worker in charge.

(a) The training and qualification of ~~roadway workers~~ each roadway worker in charge who provide for the on-track safety of groups of roadway workers through establishment of working limits or the assignment and supervision of watchmen/lookouts or flagmen shall include, as a minimum:

(1) All the on-track safety training and qualification required of the roadway workers to be supervised and protected.

(2) The content and application of the operating rules of the railroad pertaining to the establishment of working limits.

(3) The content and application of the rules of the railroad pertaining to the establishment or train approach warning.

(4) The physical characteristics of the territory of the railroad upon which the roadway worker is qualified to establish on-track safety protection.

(5) The procedures required to ensure that the roadway worker in charge of the on-track safety of a group(s) of roadway workers remains immediately accessible and available to all roadway workers being protected under the working limits or other provisions of on-track safety established by the roadway worker in charge.

(b) Each employer shall provide to ~~roadway workers who provide on-track safety for roadway work groups~~ each roadway worker in charge initial or recurrent training once every calendar year. For the purposes of this section, initial training and qualification shall occur before a roadway worker who provides on-track safety is assigned duties covered by this Part.

(c) Qualification of employees who provide on-track safety for roadway workers shall be evidenced by a recorded examination and shall be performed on a recurrent basis not to exceed 24 months between each recorded examination.

Sec. 214.355 Training and qualification in on-track safety for operators of roadway maintenance machines.

(a) The training and qualification of roadway workers who operate roadway maintenance machines shall include, as a minimum:

(1) Procedures to prevent a person from being struck by the machine when the machine is in motion or operation.

(2) Procedures to prevent any part of the machine from being struck by a train or other equipment on another track.

(3) Procedures to provide for stopping the machine short of other machines or obstructions on the track.

(4) Methods to determine safe operating procedures for each machine that the operator is expected to operate.

(b) Each employer shall provide to roadway workers who operate roadway maintenance machines initial or recurrent training once every calendar year. For the purposes of this section, initial training and qualification shall occur before a roadway worker operates a roadway maintenance machine covered by this Part.

(c) Qualification of roadway worker to operate roadway maintenance machines shall be evidenced by demonstrated proficiency and shall be performed on a recurrent basis not to exceed 24 months between such demonstrations.

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RWP 06 03 15 16 06

SUMMARY OF PROCEEDINGS
RAILROAD SAFETY ADVISORY COMMITTEE (RSAC) MEETING
Roadway Worker Protection Working Group (WG)

February 1 & 2, 2006
San Francisco, California

In attendance:

Larry Anderson, Association of American Railroads (AAR)/Canadian National Railway Company; Rik Anderson, AAR/Canadian National Railway Company; Dan Bodeman, AAR - BNSF Railway Company (BNSF); Tom Brown, Federal Railroad Administration (FRA), Region 6, Council Bluffs, IA; Bill Burt, American Short Line & Regional Railroad Association (ASLRRA)/Western New York & Pennsylvania Railroad; Andy Corcoran, AAR/Norfolk Southern Corporation; Grady Cothen, FRA, Office of Safety, Washington D.C.; Kenny Crews, CSX; Tim DePaepe, Brotherhood of Railroad Signalmen (BRS); Tim Drake, AAR/Norfolk Southern Corporation; Kelly Haley, BRS; Hugh Henry, FRA, Region 2, Waynesboro, PA; Dean Hollingsworth, FRA, Office of Safety - Meeting Facilitator; Jeff Horn, FRA, Office of Safety, Washington, D.C.; Rick Inclima, Brother of Maintenance-of-Way Employees Division (BMWED); Mark Jones, FRA, Office of Safety, Washington, D.C.; Paula Lawson, FRA, Region 7, Sacramento, CA; John Leeper, AAR/BNSF; Alan Lindsey, AAR/BNSF; Rod McCorkle, AAR/Canadian Pacific Railway Company; Jeff Moller, AAR, Washington, D.C.; Dennis Mogan, AAR/METRA; Bobby Odom, AAR/Union Pacific Railroad Company (UP); Tom Pontolillo, Brotherhood of Locomotive Engineers & Trainmen (BLET); Bill Roe, AAR/UP; Chris Schulte, FRA, Office of Safety, Washington, D.C.; Gary Sharp, AAR/Norfolk Southern Corporation; James Stem, United Transportation Union (UTU) Tom Streicher, ASLRRA; Frank Vacca, Amtrak; Anna Winkle, FRA, Attorney, Washington, D.C.; Dennis Yachechak, FRA, Office of Safety, Washington, D.C.

(As RSAC members, or their alternates, assembled, attendance was recorded on sign-in log by attendees initialing and verifying organization and contact information. Total meeting attendance numbered 32 persons.)

Meeting Documents

RWP 06 02 01 02 01 Agenda.pdf
RWP 06 02 01 02 02 Issues table.pdf
RWP 06 02 01 02 03 Draft January minutes.pdf
RWP 06 02 01 02 04 Remaning topics.pdf
RWP 06 02 01 02 05 FRA adjacent proposal 2.pdf
RWP 06 02 01 02 06 AAR edits to FRA table.pdf
RWP 06 02 01 02 07 Labor edits to FRA adjacent proposal.pdf
RWP 06 02 01 02 08 Labor counter proposal to FRA 2.PDF
RWP 06 02 01 02 09 AAR adjacent track.pdf

RWP 06 03 15 16 06

RWP 06 02 01 02 10 Adjacent track consensus.pdf
RWP 06 02 01 02 11 Final January minutes.pdf
RWP 06 02 01 02 12 Sign in Sheet.PDF

Wednesday, February 1, 2006 -
Location: Argonaut Hotel, 495 Jefferson Street, San Francisco, California 94109

Meeting convened - 8:30 a.m.

Safety Briefing given by Dean Hollingsworth (Facilitator)

- Review made of hotel's exits, restrooms, alarms, and First Aid Kit (located at Front Desk), and check made of attendees for those qualified in cardiopulmonary resuscitation (CPR) and the availability of cellular telephones for use in calling emergency telephone number 911.

Comments made by Dean Hollingsworth and others that Trish Butera did well in choosing the hotel and setting up the meeting and it was further remarked that both the hotel and meeting facilities were "great."

Change to Agenda

- Dean announced that with the majority of attendees being from the east, it had been suggested that lunch, as shown on the agenda from 12:30 p.m. to 1:30 p.m., be changed to begin at 11:15 a.m. or 11:30 a.m. Consensus was to change the lunch break as proposed.

Introductions: **Self-introductions were made around the room.**

Reminder made by Dean that the committee's meeting protocol should be observed throughout the proceedings.

- **Review and acceptance of draft meeting minutes from January 2006.**
  - Requested changes/corrections to draft minutes were presented by Rick Inclima, Kelly Haley, Dan Bodeman, and Gary Sharp.

  - Edits to minutes were made by Chris Schulte to draft document "on screen" as they were presented to him.

- Upon completion of edits being made, Dean asked for approval of draft January 2006 minutes.

- Minutes were unanimously approved, as corrected.

- **Post-RWP Analysis Work (Presenter: Chris Schulte)**
  - Charts were presented "on screen" by Chris that were created from accident/incident data gathered and entered into an informational spreadsheet.

    - **"Total Incidents by Railroad" Chart reviewed and discussed.** Discussion included Chris, Bill Roe, and Jeff Horn, with a suggestion made that the information provided include statistics relating to track miles versus man hours.

    - **"Total Incidents by Type Railroad" Chart reviewed and discussed.** Question asked what definition of "incident" was being used to compile statistics and Chris explained that it related to accidents with fatalities or strikes. Discussion held between Chris and Tim Drake concerning reports of incidents. Specifically, Mr. Drake feels that incidents involving movement of machines only should not be included in the statistics.

    - **"Incidents by State" Chart reviewed and discussed.**

    - **"Total Casualties" Chart reviewed and discussed.**

    - **"Incident - Type Strike" Chart reviewed and discussed.** Noted that Train/RMM highest category with comment added that Hi-rail vehicles are included. Question asked if the "Person"(worker) or RMM (machine) is taken into account in the information provided in the chart. Chris indicated he may try another run on the data after adding a new field.

    - **"Type Casualties" Chart reviewed and discussed.** Noted that Sum of Labor casualties represent the highest category, with comment added that passengers were included in the statistics. Rick Inclima added that the chart does an excellent job in illustrating on-ground statistics.

- **"Base Factor" Chart reviewed and discussed.**
  Noted that R Human Factor highest category. Chris reviewed breakdown shown in addition to the definitions of categories. It was also noted that human factor category included miscommunication.

- **"Group/LoneWorker/No Worker" Chart reviewed and discussed.**
  Noted that Group category highest. Chris explained incidents included in each category. Brief discussion held regarding further breakdown of Group category - Chris will look at additional possibilities

- **"Circumstance" Chart reviewed and discussed.**
  A different version of the chart was also presented as a "Pie Chart" and Chris explained the definitions of each category.

- **"Type of Work Activity" Chart reviewed and discussed.**
  Noted that the three highest categories were: 1) RMM Travel; 2) Track Maintenance; and 3) Surfacing, respectively. Suggestion made to change category HRGX Maintenance to X'ing Maintenance.

  A different version of the chart was also presented as a "Pie Chart" with discussions held on Standby category and what information is actually included in the percentages shown.

- **"Type Track" Chart reviewed and discussed.**
  A different version of the chart was also presented as a "Pie Chart."

- **"Incidents by Year" Chart reviewed and discussed.**
  Noted that the three highest category years were: 1) 2005; 2) 2003; and 3) 2000, respectively. Suggestion made that 2005 was the highest because the RSAC group was formed in 2005 and more concentration was made on the data for that year.

- **"Incidents by Outcome" Chart reviewed and discussed.**
  Chris explained definitions of chart categories; Dean commented that 18 months of data is reflected in Fatality category.

- **"Incidents by Month" Chart reviewed and discussed.**
  It was pointed out that October has the highest incident rate in most years.

- **"Large Railroads Incident by Year" Chart reviewed and discussed.**
  Chris explained information provided by chart.

- **"Passenger Railroads Incident by Year " Chart reviewed and discussed.**

- **"Total Type Incidents by Year" Chart reviewed and discussed.**
  Chris explained that some early information was not available or was missing, i.e., from 1997.

- Dean asked if there were any questions regarding Chris' presentation - there were none; Rick Inclima commended Chris on the hard work put into the presentation and in compiling the data.

- Suggestion for an earlier start-time brought up to group and discussed with a 7:00 a.m. start-time for the following day agreed on. Dean said he would check that the meeting rooms would be available beginning at 7:00 a.m. the next morning.

- Dean presented agenda item dealing with the FRA's second proposed draft revisions to 49 CFR 214.7; 49 CFR 214.315; and 49 CFR 214.335 and informed the group that Chris Schulte would conduct the presentation.

  - (Chris) Opening comments - the focus of the revisions are to address the data compiled of incidents that occur involving adjacent track which statistics indicate as 17% of the incidents. The current regulations pertaining to roadway work groups and the fouling of a track were stressed. Despite having these regulations in place, we have still had incidents of this type and a "shift" needs to be made to awareness of "being on track." Examples of incidents were presented to the group.

  - Proposed by Dean that Chris go through the FRA's draft proposal "on screen."

  - (Chris) Attention of group directed to 49 CFR 214.7 and definition of adjacent track "on screen." Adjacent track protection was discussed with examples given by Chris.

- Discussed that, when we use the term “adjacent track,” we are focusing on “A track next to an occupied track w/centerline less than 25 feet.”

- FRA’s proposed diagram shown “on screen” for review and discussion. Comment by Chris that examples need to be looked at relating to incidents when a track is fouled and need to look at what protection is needed.

- (Chris) Under proposal: 1) 49 CFR 214.7 - Definition keeps “25 feet”; 2) 49 CFR 214.315 - No changes; 3) 49 CFR 215.335 - Will change if proposal is adopted; proposed changes need to be examined to see if it works with current working scenarios of the railroads.

- “Working margin” introduced as a proposal that addressed how overlapping margins would be handled. Comments were also made that problems may arise with the proposal involving tracks having centers closer than 19 feet, such as 13-foot track. Rick Inclima suggested that scenario be “revisited” for a decision on how that would be handled.

- Dean expressed his concern with the 4-foot margin proposed when Hi-rails are involved and suggested it be discussed.

- Tim DePaepe brought up his concern with the proposed margin allowances in connection with the train speeds of trains passing roadway work groups.

- Dean stressed to group that the members present are the best people to handle the changes needed to stop the incidents that result in fatalities.

- Chris mentioned during discussion that statistics indicate that most of the adjacent track accidents involved 13-foot/14-foot track centers and no adjacent track incidents involving Hi-rails were included in the data/statistics compiled.

- Discussions held relating to scenarios where Hi-rails are involved when an adjacent track is fouled.

- Rick Inclima suggested that the group look at the basic problem compared to the proposed changes and see if the changes work, then look at the areas that don’t work with the proposal, i.e., Hi-rails and track centers less than 19 feet, and find a solution to those problems; suggested further

that maybe another procedure to follow is needed for 19-foot track and below.

- Suggestion also made by Rick that "A, B, C" scenarios in table for track below 19 feet be reviewed in connection with adjusted/changed train speeds in the scenarios.

- Suggested by Bill Roe that the group review the table and look at what can be done and can't. In response, Chris reviewed table "on screen," going over the outlined scenarios and actions. A scenario was also reviewed and discussed concerning multiple trains passing a roadway work group in relation to the "A, B, C" scenarios of the table.

- A discussion was held regarding the 100 feet mentioned in the table's #2 with Chris explaining that distance could be changed.

- Gary Sharp expressed his feelings that the group is "attacking" the same problem (which in his opinion is personal accountability) the same way as in the past. He commented further that he felt safety is personal and could be addressed to the workers through actual accident scenarios exhibited to them. Gary and Dean briefly continued discussion with Dean saying he wants something that will stop the fatalities.

- Agreement of group members to caucus with their respective groups (FRA/ Management/Labor) on proposals. Members asked, by Anna, to keep the issues of 19-foot track (+/-) in mind when discussing solutions to problems brought up and discussed, and Dean suggested keeping changes to proposal and regulations "short and sweet."

[Lunch Break - 11:30 a.m. to 12:30 p.m.]

- **Caucus activities - 12:30 p.m. to 2:15 p.m.**

- **2:15 p.m. - Management group's proposed changes presented by Bill Roe.**

  - Management group's consensus that the "A, B, C" table/matrix, as proposed, seemed complicated.

- Management group modified table/matrix provisions with workers moving to safety within gage or field side of track and addressed A, B, C:

  - A - OK on work
  - B - Train speed increased to 40 mph; OK on work
  - C - Train speed increase to "greater than 40 mph"; stand down work until train passes

- **Labor group members' proposed changes presented by Rick Inclima.**

  - Proposed changes addressed in "B" of table/matrix, decreased train speed to 10 mph, with "C" changed to decrease train speed and read "greater than 10 mph**."**

  - Suggestion made that less than 19-foot track could be addressed with an explanation of which column in table/matrix would apply**.**

  - Suggestion made that a column "D" be added to address Roadway Maintenance Machines (RMM) with language added in Footnote #2 to address Hi-rail and other equipment.

- "On screen" changes to FRA's proposal made by Chris, Section 2, from suggestions presented to him by Management and Labor groups regarding RMM as related to "train approach warning."

  - Discussion held concerning RMM weights mentioned in regulations with Rick Inclima suggesting machine weight should be eliminated and no weight threshold mentioned in the definition.

[Afternoon Break]

3:10 p.m. - Meeting Reconvened

- Labor's draft proposal was distributed with Rick Inclima again commending Chris on a great job done on the FRA's proposal.

- Comment made by Dennis Mogan that Labor's proposal would cripple operations.

- Comment made by Al Lindsey that protection on adjacent track and Hi-rail need to be addressed in Labor's proposal. Rick responded that Labor's proposal could be adjusted to address those issues.

- Bobby Odom complimented Rick on Labor's simplification of the proposal and added that he felt the proposal needed to address what work activities can still be safely performed during RMM movement.

- Tim Drake also complimented Rick on Labor's proposal, and said he shared Bobby's concerns, felt equipment issues needed to be addressed, but felt the the proposal was very close to addressing everyone's concerns.

- Dennis Mogan commented that restricted speed is not a form of protection in connection with adjacent track limits.

- Bill Roe said Management felt some work could be performed during a movement, such as tie work, and could see a shut-down problem with the proposal if no work is allowed and there are, say, 60 trains lined up and going by a roadway worker group. Form B limits, work equipment, and communication issues were then briefly discussed by the group.

- Chris commented that the group had presented a fresh approach to the FRA's draft proposal and he did not mind scrapping FRA's proposal for changes that addressed all the issues and problems directly related to incidents involving roadway workers that resulted in fatalities.

- Suggestion made by Al Lindsey that the meeting be adjourned for the day to give everyone time to think about the proposals submitted with caucus activities for the groups scheduled to begin at 7:00 a.m. the following morning.

- **Meeting adjourned at 5:00 p.m.**

Thursday, February 2, 2006

- **7:00 a.m. - Caucus activities began for members of work group.**

- **[Lunch Break - 12:00 noon to 1:00 p.m.]**

- **2:35 p.m. - Caucus activities concluded; members of work group returned to meeting.**

- Meeting began with a discussion concerning the proposal addressing controlled or main track.
  - Chris asked – should we consider speed as the threshold?
  - Dan Bodeman replied - no.

  - A concern was expressed by Dan Bodeman that the BNSF has track warrant sidings that have been turned into controlled track and requested that the BNSF be granted a waiver in connection with those areas.

    - Dean explained to Dan that any track considered controlled track is governed by the regulations for controlled track.

    - Suggested by Tom Pontolillo that instead of an exception added to the proposal, something instead could be added (another line of explanation) to address the issue.

    - Dan presented scenarios regarding controlled sidings and asked that something be "carved out" in the proposal for those sidings on the BNSF.

    - James Stem and Kelly Haley expressed their opposition to Dan's request for an exception.

    - Dan offered his apologies if his intentions of asking for an exception were misunderstood, and explained that he was looking at how to address a siding turned into a controlled track when a yard track is adjacent.

    - Chris commented that the statistics compiled addressed track other than yard track and made a suggestion to leave out controlled track in regard to the proposal.

    - Suggestion made by Al Lindsey that the issue be put on hold and discussed later.

    - Suggestion made that controlled track be used and the FRA address BNSF's issues separately.

- Dan Bodeman said he withdrew his request that an exception be granted the BNSF in connection with their controlled sidings.

- Suggestion made to leave “controlled track” in and move ahead.

- Dean asked if everyone was in agreement with having “C” address controlled track and everyone agreed.

- Comment made by Bill Roe that it is presumed that when adjacent track is mentioned in the regulations it is controlled.

- Equipment issues discussed relating to: on-track self-propelled equipment; language to be used concerning tower cars and the use of ground straps; and the protection needed in connection with various types of equipment use.

  - Watchman/lookout protection discussed and when it can or can’t safely be used.

- Chris made change to proposal “on screen” to address Rick Inclima’s suggestion that proposal read: “Roadway workers shall occupy a pre-determined place of safety.”

- Change made to proposal by Chris to address Bobby Odom’s suggestion to change wording that “excluded” detector cars to “not including.”

- Jeff Moller brought up matter of “movement” versus “train” wording and a discussion was held among the members of the work group on the concern.

- Question asked by Rick Inclima about the procedures to be followed in a scenario involving equipment operating on adjacent track with it mentioned by Bill Roe that procedures pertaining to a Form B/Red Flag would be followed.

  - Discussion held on when a train can increase its speed with it agreed that the EIC would be responsible for communicating with the engineer when it is safe to increase train speed.

- Discussion held to address Bobby Odom’s concern over the word “single” used in proposal regarding Hi-rail.

- Various scenarios brought up involving operations requiring equipment, trucks, Hi-rail, detector car, welder, etc.

[Afternoon Break]

- Rick Inclima provided suggestion for clarification regarding Hi-rail number with “single or two Hi-rail vehicles, as defined in 214.7, engaged in a common task.”

- Discussion held on definition of on-track equipment - proposal changed “on screen” to add “not coupled to railroad cars.”

- Bill Roe commented that he was concerned with the Hi-rail number changed in proposal from Rick Inclima’s suggestion.

  - Tim DePaepe commented that future scenarios need to be looked at and Bobby Odom commented that the explanation needs to be clear so violations aren’t issued by mistake.

  - Suggestion made by Bobby Odom to use “multiple” when referring to Hi-rails, and suggested that the group add that where multiples are being used, the on-track safety briefing shall address adjacent track protection.

  - Anna mentioned that the addition reiterated a previously approved amendment to the briefing provision in 214.315, but added it would be “OK” to state it again here.

- At Rick Inclima’s suggestion - Chris changed wording “on screen” from “required” to “necessary” under (e).

- Discussion held on what the procedures are in a scenario where a Hi-rail enters onto an occupied track, and Dean explained that the minute the Hi-rail enters the working area, working limits apply and communication will be made with the EIC as to the established protection and limits.

- Discussion on omitting paragraph (2), at Bobby Odom’s suggestion, pertaining to communicating protection established. Scenarios presented and discussed relating to concern, with final decision to omit paragraph (2) by members’ work group consensus.

- Discussion held to address "field side" issues and Bill Roe's question pertaining to work/observations on field side. Bill also added that with work on the field side, having a watchman/lookout doesn't make sense.

  - Dean asked if Bill's scenarios could be added to the preamble and Anna explained that the preamble can't be enforced.

  - Decision made to add (f) as: "The mandatory provisions for adjacent controlled track protection under this subpart are not applicable if ground employees are exclusively performing work on the field side of the occupied track." [Preamble scenarios – to be provided to Anna by Chris]

- Dean asked the members of the work group if they were satisfied that the proposal was ready to be voted on without copies of the draft provided to everyone. He also reminded the group that the vote would be on the concepts of the proposal and the language may change and be simplified when finalized.

  - Jeff Moller asked if everyone agreed on the principles of the write-up; Dean asked for "Thumbs Up" from the members of the work group as a show of consensus.

    BY UNANIMOUS HAND VOTE THE ADJACENT TRACK PROTECTION PROPOSAL WAS APPROVED.

- The meeting was closed with Tim DePaepe distributing a memorandum dated December 23, 2004, from the Federal Railroad Administration - Bulletin S-04-01; a brief address was made by Grady Cothen thanking the members of the work group for working hard and staying on task; and a reminder was made that the next meeting is to be held in San Antonio, Texas, on March 14, 15, & 16, 2006.

[Meeting was adjourned at 5:20 p.m.]

Meeting Proceedings Recorded by:

Paula Lawson
Administrative Specialist
Federal Railroad Administration
Region 7
Sacramento, California

#

RWP 06 02 01 02 10

BMWED STRAW MAN 2/1&2/06 - Adjacent Track (Joint Effort- 2/2/06)

REPLACES EXISTING Section 214.335(c)

Consensus voted 02/02/06 5:30 PM

(c) Adjacent track protection. On-track safety is required for adjacent controlled track within 19 feet of the centerline of the occupied track when roadway work group(s) consisting of roadway workers on the ground and on-track self-propelled or coupled equipment are engaged in a common task on an occupied track.

(1) Except as provided by paragraph (c)(3) of this section, when trains are cleared through working limits on an adjacent controlled track, or when watchman/lookout warning in accordance with section 214.329 is the form of adjacent on-track safety, roadway workers shall occupy a predetermined place of safety and all on-ground work and equipment movement activity within the fouling space of the occupied track shall cease upon notification of pending adjacent track movement (working limits) or upon receiving the watchman/lookout warning.

[could use both - preamble]

(2) When single or multiple movements are cleared through adjacent controlled track working limits, on-ground work and equipment movement on the occupied track may resume only after all such movements on adjacent track have passed each component of the Roadway Work Group(s). [preamble - not including detector car b/c no men on the ground.] If the train stops before passing all roadway workers, the employee in charge shall communicate with the engineer prior to allowing the work to resume. [preamble - this communication will be made to ensure that the train will not move again without first notifying the EIC and allowing the EIC enough time to get all roadway workers in the clear.]

(3) When single or multiple movements are cleared through adjacent controlled track working limits at a speed no greater than 25 mph, [preamble - head end restriction per RWIC] work performed exclusively between the rails of the occupied track, or to the field side of the occupied track with no adjacent track, may continue upon notification of each roadway worker of movement on adjacent track. On-ground work shall not be performed within 25 feet to the front or 25 feet to the rear of roadway maintenance machine(s) on the occupied track during such adjacent track movement.

(d) Equipment may not foul an adjacent controlled track unless protected by working limits and there are no movements cleared through the working limits by the employee in charge.

(e) The mandatory provisions for adjacent controlled track protection under this subpart are not applicable to a hi-rail vehicle as defined in 214.7 provided such hi-rail vehicle is not coupled to railroad cars. Where multiple hi-rail vehicles are engaged in a common task, the on-track safety briefing shall include discussion of the nature of the work to be performed to determine if adjacent controlled track protection is necessary. [preamble – remember to link to good faith challenge] Nothing in this subpart prohibits the roadway worker in charge of the hi-rail vehicle from establishing adjacent controlled track protection, as he/she deems necessary.

(f) The mandatory provisions for adjacent controlled track protection under this subpart are not applicable if ground employees are exclusively performing work on the field side of the occupied track. [preamble – discuss changing a stone on the field side of a grinding train, etc.]

(g) The mandatory provisions for adjacent controlled track protection under this subpart are not applicable to catenary maintenance tower cars when roadway workers are on the ground within the gage for the sole purpose of applying or removing grounds within the gage of the occupied track. Nothing in this subpart prohibits the roadway worker in charge of the catenary maintenance tower car from establishing adjacent track protection, as he/she deems necessary.

Note – E, F, & G to be consolidated in next draft by FRA RCC.

RSAC Working Group
Consensus Items 12/10/07 (*Italic Text*)

Subpart C--Roadway Worker Protection

Sec. 214.5 Definitions

****

Controlled point means a location where signals and/or other functions of a traffic control system are controlled from the control machine. (§236.782).

****

Effective securing device, when used in relation to on-track safety, means a vandal and tamper resistant lock, keyed for application and removal only by the roadway worker(s) for whom the protection is provided. In the absence of a lock, it is acceptable to use a spike driven firmly into a switch tie or a switch point clamp to prevent the use of a manually operated switch. It is also acceptable to use portable derails secured with specifically designed metal wedges. Securing devices without a specially keyed lock shall be designed in such a manner that require railroad track tools for installation and removal and the operating rules of the railroad must prohibit removal by employees other than the class, craft, or group of employees for whom the protection is being provided. Regardless of the type of securing device, the throwing handle or hasp of the switch or derail shall be uniquely tagged. If there is no throwing handle, the securing device shall be tagged.

***

Interlocking, automatic, means an arrangement of signals, with or without other signal appliances, which functions through the exercise of inherent powers as distinguished from those whose functions are controlled manually, and which are so interconnected by means of electric circuits that their movements must succeed each other in proper sequence, train movements over all routes being governed by signal indication. (§236.750)

Interlocking, manual, means an arrangement of signals and signal appliances operated from an interlocking machine and so interconnected by means of mechanical and/or electric locking that their movements must succeed each other in proper sequence, train movements over all routes being governed by signal indication. (§236.751)

****

Maximum authorized speed, for on-track safety purposes, means the highest speed permitted for the movement of trains permanently established by timetable/special instructions, general order, or track bulletin.

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On-track safety manual means the entire set of instructions to prevent roadway workers from being struck by trains or other on-track equipment. These instructions include operating rules and other procedures concerning on-track safety protection and on-track safety measures.

****

Sec. 214.301 Purpose and scope.

(a) Rules and operating procedures governing track occupancy and protection shall be maintained together in one on-track safety manual and be readily available to all roadway workers. Each roadway worker responsible for the on-track safety of others, and each lone worker, shall be provided with and shall maintain a copy of the on-track safety manual.

(b) When it is impracticable for a lone worker to carry the manual, the employer shall establish provisions for such worker to have alternative access to the information in the manual. Such provisions for alternative access shall be addressed and included in the training provisions of 214.347.

(c) Changes to the on-track safety manual may be temporarily published in bulletins or notices. Such publications shall be carried along with the on-track safety manual until fully incorporated in the manual.

Sec. 214.302 Information and collection requirements.

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Sec. 214.303 Railroad on-track safety programs, generally.

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Sec. 214.305 Compliance dates.

****

Sec. 214.309 On-track safety program documents.

****

Sec. 214.311 Responsibility of employers.

****

Sec. 214.313 Responsibility of individual roadway workers.

****

Sec. 214.315 Supervision and communication.

(a) When an employer assigns duties to a roadway worker that call for that employee to foul a track, the employer shall provide the employee with an on-track-safety job briefing that includes:

(1) Information on the means by which on-track safety is to be provided for tracks identified to be fouled; instruction on the on-track safety procedures to be followed;

(2) Information about any tracks adjacent to the track to be occupied, on-track safety for such tracks, and identification of roadway maintenance machines that will foul any adjacent track. In such cases, the briefing shall include procedural instructions addressing the nature of the work to be performed and the characteristics of the work location to ensure compliance with this part; and

(3) Information on the accessibility of the roadway worker in charge and alternative procedures in the event the roadway worker in charge is no longer accessible to the members of the roadway work group.

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Sec. 214.317 On-track safety procedures, generally.

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(b) Roadway workers may walk across any track provided each roadway worker shall stop and look in both directions before starting across the track to ensure that they can safely be across and clear of the track before a train or other on-track equipment would arrive at the crossing point under the following circumstances:

(1) The employer shall have in place and the roadway workers shall comply with the applicable railroad safety rules to determine that it is safe to cross the track before starting across;

(2) Roadway workers move directly and promptly across the track;

(3) On-track safety protection is in place for all roadway workers who are actually engaged in work, including inspection, construction, maintenance or repair, and extending to carrying tools or material that restricts motion, impairs sight or hearing, or prevents an employee from moving rapidly away from an approaching train or other on-track equipment, as defined in the rule; and

(4) These safety rules are addressed in all roadway worker training.

(c) On non-controlled track, on-track roadway maintenance machines engaged in weed spraying or snow removal may proceed under the provisions of 214.301(c), except where remotely controlled hump yard facility operations are in progress provided the following conditions are met:

(1) Each railroad shall establish and comply with an operating procedure for on-track snow removal and weed spray equipment to ensure that:

(i) All on-track movements are informed of such operations,

(ii) All movements shall operate at restricted speed as defined in §214.7, except on other than yard tracks and yard switching leads, where all movements shall operate prepared to stop within one-half the range of vision but not exceeding 25 mph,

(iii) A means for communications between the on-track equipment and other movements is provided, and

(iv) During periods of such operations, the kicking of cars is prohibited unless agreed to by the roadway worker in charge.

(2) Roadway workers engaged in such snow removal or weed spraying operations shall retain an absolute right to use the provisions of §214.327 (inaccessible track).

(3) Roadway workers assigned to work with this equipment may line switches for the machine's movement but shall not engage in any roadway work activity unless protected by another form of on-track safety.

(4) Each roadway maintenance machine engaged in snow removal or weed spraying under this provision shall be equipped with and utilize:

(i) An operative 360-degree intermittent warning light or beacon,

(ii) Work lights, if the machine is operated during the period between one-half hour after sunset and one-half hour before sunrise or in dark areas such as tunnels, unless equivalent lighting is otherwise provided,

(iii) An illumination device, such as a headlight, capable of illuminating obstructions on the track ahead in the direction of travel for a distance of 300 feet under normal weather and atmospheric conditions,

(iv) A brake light activated by the application of the machine braking system, and designed to be visible for a distance of 300 feet under normal weather and atmospheric conditions, and

(v) A rearward viewing device, such as a rearview mirror.

Sec. 214.319 Working limits, generally.

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Sec. 214.321 Exclusive track occupancy.

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(b) An authority for exclusive track occupancy given to the roadway worker in charge of the working limits shall be transmitted on a written or printed document directly, by relay through a designated employee, in a data transmission, or by oral communication, to the roadway worker by the train dispatcher or control operator in charge of the track.

(1) Where authority for exclusive track occupancy is transmitted orally, the authority shall be written as received by the roadway worker in charge and repeated to the issuing employee for verification.

(2) The roadway worker in charge of the working limits shall maintain possession of the written or printed authority for exclusive track occupancy while the authority for the working limits is in effect.

(3) The train dispatcher or control operator in charge of the track shall make a written or electronic record of all authorities issued to establish exclusive track occupancy.

(4) An authority shall specify a unique roadway work group number, an employee name, or a unique identifier. The railroad's procedures shall include precise communication to ensure trains and other on-track equipment communicate, either directly or through the dispatcher, with the roadway worker in charge or lone worker controlling the working limits in accordance with §214.319.

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Sec. 214.323 Foul time.

Working limits established on controlled track through the use of foul time procedures shall comply with the following requirements:

(a) Foul time may be given orally or in writing by the train dispatcher or control operator only after that employee has withheld the authority of all trains and other on-track equipment to move into or within the working limits during the foul time period.

(b) Each roadway worker in charge to whom foul time is transmitted orally shall repeat the track number, track limits and time limits of the foul time to the issuing employee for verification before the foul time becomes effective.

(c) The train dispatcher or control operator shall not permit the movement of trains or other on-track equipment into working limits protected by foul time until the roadway worker in charge who obtained the foul time has reported clear of the track.

(d) The roadway worker in charge shall not permit the movement of trains or other on-track equipment into or within working limits protected by foul time.

§ 214.324 Verbal protection

Working limits established through verbal protection may only occur within manual interlockings or within controlled points and shall comply with the following requirements:

(a) Verbal protection shall be communicated to the roadway worker in charge by the train dispatcher or control operator only after that employee has withheld the authority of all trains to move into or within the limits to be protected.

(b) Each roadway worker in charge to whom verbal protection is transmitted shall repeat the track number, track limits and time limits of the verbal protection to the issuing employee for verification before the verbal protection becomes effective.

(c) No train or on-track equipment may move into working limits protected by verbal protection until permission has been received from the roadway worker in charge and authority has been given by the train dispatcher.

Sec. 214.325 Train coordination.

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Sec. 214.327 Inaccessible track.

(a) Working limits on non-controlled track shall be established by rendering the track within working limits physically inaccessible to trains at each possible point of entry by one of the following features:

(1) A flagman with instructions and capability to hold all trains and equipment clear of the working limits;

(2) A switch or derail aligned to prevent access to the working limits and secured with an effective securing device by the roadway worker in charge of the working limits;

(3) A discontinuity in the rail that precludes passage of trains or engines into the working limits;

(4) Working limits on controlled track that connects directly with the inaccessible track, established by the roadway worker in charge of the working limits on the inaccessible track; or

(5) A remotely controlled switch aligned to prevent access to the working limits and secured by the control operator of such remotely controlled switch by application of a locking or blocking device to the control of that switch, when:

(i) The control operator has secured the remotely controlled switch by applying a locking or blocking device to the control of the switch, and

(ii) The control operator has notified the roadway worker who has established the working limits that the requested protection has been provided, and

(iii) The control operator is not permitted to remove the locking or blocking device from the control of the switch until receiving permission to do so from the roadway worker who established the working limits.

(6) Train crew directly in control of a locomotive with or without cars may be considered a physical feature at one or more points of entry to working limits. The roadway worker who establishes the locomotive as a physical feature shall communicate with a member of the crew and determine that:

(i) The locomotive is visible to the roadway worker in charge that is establishing the working limits,

(ii) The locomotive is stopped,

(iii) Further movements of the locomotive shall be made only as permitted by the roadway worker in charge controlling the working limits, and

(iv) The crew of the locomotive shall not leave the locomotive unattended or go off duty unless communication occurs with the roadway worker in charge and an alternate means of on-track safety protection has been established by the roadway worker in charge.

(v) Cars coupled to the locomotive on the same end and on the same track as the roadway workers shall be connected to the train line air brake and

such system shall be charged with compressed air to initiate an emergency brake application in case of unintended uncoupling. Cars coupled to the locomotive on the same track on the opposite end of the roadway workers shall have sufficient braking capability to control movement.

(7) The provisions of a block register territory that prevent trains and other on-track equipment from occupying the track when the territory is under the control of a lone worker or roadway worker in charge. The roadway worker in charge or lone worker shall have the absolute right to render such block register territory inaccessible under the provisions of §§214.327(a)(1) through 214.327(a)(5).

(8) Railroad operating rules that require train or engine movements to be prohibited on a main track within yard limits or restricted limits until the train or engine receives notification of any working limits in effect and do not enter working limits until permission is received by the roadway worker in charge. Such working limits shall be delineated with stop signs (flags), and where speeds are in excess of restricted speed, and where physical characteristics permit, advance signs (flags).

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Sec. 214.329 Train approach warning provided by watchmen/lookouts.

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Sec. 214.331 Definite train location.

****

Sec. 214.333 Informational line-ups of trains.

****

Sec. 214.335 On-track safety procedures for roadway work groups.

****

(c) On-track safety is required for adjacent controlled track within 19 feet of the centerline of the occupied track when roadway work group(s) consisting of roadway workers on the ground and on-track self-propelled or coupled equipment are engaged in a common task on an occupied track.

(1) Except as provided by paragraph (c)(3) of this section, when trains are cleared through working limits on an adjacent controlled track, or when watchman/lookout warning in accordance with §214.329 is the form of adjacent on-track safety, roadway workers shall occupy a predetermined place of safety

and all on-ground work and equipment movement activity within the fouling space of the occupied track shall cease upon notification of pending adjacent track movement (working limits) or upon receiving the watchman/lookout warning.

(2) When single or multiple movements are cleared through adjacent controlled track working limits, on-ground work and equipment movement on the occupied track may resume only after all such movements on adjacent track have passed each component of the Roadway Work Group(s). If the train stops before passing all roadway workers, the employee in charge shall communicate with the engineer prior to allowing the work to resume.

(3) When single or multiple movements are cleared through adjacent controlled track working limits at a speed no greater than 25 mph, work performed exclusively between the rails of the occupied track, or to the field side of the occupied track with no adjacent track, may continue upon notification of each roadway worker of movement on adjacent track. On-ground work shall not be performed within 25 feet to the front or 25 feet to the rear of roadway maintenance machine(s) on the occupied track during such adjacent track movement.

(d) Equipment may not foul an adjacent controlled track unless protected by working limits and there are no movements authorized through the working limits by the roadway worker in charge.

(e) The mandatory provisions for adjacent controlled track protection under this subpart are not applicable to work activities involving –

(1) A hi-rail vehicle as defined in §214.7, provided such hi-rail vehicle is not coupled to railroad cars. Where multiple hi-rail vehicles are engaged in a common task, the on-track safety briefing shall include discussion of the nature of the work to be performed to determine if adjacent controlled track protection is necessary. Nothing in this subpart prohibits the roadway worker in charge of the hi-rail vehicle from establishing adjacent controlled track protection, as he/she deems necessary.

(2) On-ground roadway workers exclusively performing work on the field side of the occupied track.

(3) Catenary maintenance tower cars with roadway workers positioned on the ground within the gage of the occupied track for the sole purpose of applying or removing grounds. Nothing in this subpart prohibits the roadway worker in charge of the catenary maintenance tower car from establishing adjacent track protection, as he/she deems necessary.

Sec. 214.337 On-track safety procedures for lone workers.

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(c) Individual train detection may be used to establish on track safety only:

(1) By a lone worker who has been trained, qualified, and designated to do so by the employer in accordance with §214.347 of this subpart;

(2) While performing routine inspection and minor correction work;

(3) On track outside the limits of a manual interlocking, a controlled point (*except those consisting of signals only*), or a remotely controlled hump-yard facility;

****

(g) Individual train detection shall not be used to provide on-track safety for a lone worker using a roadway maintenance machine, equipment, or material that cannot be readily removed by hand.

Sec. 214.339 Audible warning from trains.

(a) Each railroad shall have in effect and comply with written procedures that prescribe effective requirements for audible warning by horn and/or bell for trains and locomotives approaching roadway workers or roadway maintenance machines that are either on the track on which the movement is occurring, or about the track if at risk of fouling. At a minimum, such written procedures shall address:

(1) Initial horn warning,

(2) Subsequent warning(s), and

(3) Alternative warnings in areas where sounding the horn adversely affects roadway workers (e.g. in tunnels, terminals, etc.).

(b) Such audible warning shall not substitute for on-track safety procedures prescribed in this part.

Sec. 214.341 Roadway maintenance machines.

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Sec. 214.343 Training and qualification, general.

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(e) Each railroad shall require that each contractor employee has received the requisite training and/or qualification before engaging such employee to perform any roadway worker duties.

Sec. 214.345 Training for all roadway workers.

Consistent with §214.343(b), the training of all roadway workers shall include, as a minimum, the following:

****

Sec. 214.347 Training and qualification for lone workers.

****

(b) Each employer shall provide to lone workers initial or recurrent training once every calendar year. For the purposes of this section, initial training and qualification shall occur before a lone worker is assigned duties covered by this Part.

(c) Qualification of lone workers shall be evidenced by demonstrated proficiency and shall be performed on a recurrent basis not to exceed 24 months between such demonstrations.

Sec. 214.349 Training and qualification of watchmen/lookouts.

****

(b) Each employer shall provide to watchmen/lookouts initial or recurrent training once every calendar year. For the purposes of this section, initial training and qualification shall occur before a watchman/lookout is assigned duties covered by this Part.

(c) Qualification of watchmen/lookouts shall be evidenced by demonstrated proficiency and shall be performed on a recurrent basis not to exceed 24 months between such demonstrations.

Sec. 214.351 Training and qualification of flagmen.

****

(b) Each employer shall provide to flagmen initial or recurrent training once every calendar year. For the purposes of this section, initial training and qualification shall occur before a flagman is assigned duties covered by this Part.

(c) Qualification of flagmen shall be evidenced by demonstrated proficiency and shall be performed on a recurrent basis not to exceed 24 months between such demonstrations.

Sec. 214.353 Training and qualification of roadway workers who provide on-track safety for roadway work groups.

(a) The training and qualification of roadway workers who provide for the on-track safety of groups of roadway workers through establishment of working limits or the assignment and supervision of watchmen/lookouts or flagmen shall include, as a minimum:

(1) All the on-track safety training and qualification required of the roadway workers to be supervised and protected.

(2) The content and application of the operating rules of the railroad pertaining to the establishment of working limits.

(3) The content and application of the rules of the railroad pertaining to the establishment or train approach warning.

(4) The relevant physical characteristics of the territory of the railroad upon which the roadway worker is qualified.

(5) The procedures required to ensure that the roadway worker in charge of the on-track safety of a group(s) of roadway workers remains immediately accessible and available to all roadway workers being protected under the working limits or other provisions of on-track safety established by the roadway worker in charge.

(b) Each employer shall provide to roadway workers who provide on-track safety for roadway work groups initial or recurrent training once each calendar year. For the purposes of this section, initial training and qualification shall occur before a roadway worker who provides on-track safety is assigned duties covered by this Part.

(c) Qualification of employees who provide on-track safety for roadway workers shall be evidenced by a recorded examination and shall be performed on a recurrent basis not to exceed 24 months between each recorded examination.

Sec. 214.355 Training and qualification in on-track safety for operators of roadway maintenance machines.

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(b) Each employer shall provide to roadway workers who operate roadway maintenance machines initial or recurrent training once each calendar year. For the purposes of this section, initial training and qualification shall occur before a roadway worker operates a roadway maintenance machine covered by this Part.

(c) Qualification of roadway worker to operate roadway maintenance machines shall be evidenced by demonstrated proficiency and shall be performed on a recurrent basis not to exceed 24 months between such demonstrations.

Federal Railroad Administration

February 22, 2006

Railroad Safety Advisory Committee

Roadway Worker Protection Regulation Working Group Report

Session Status

- **2005 Sessions**
  - April 12-13, Washington, DC
  - June 22-24, Washington, DC
  - August 8-11, Chicago, IL
  - September 20-22, Washington, DC
  - November 8-9, Chicago, IL

Session Status

- **2006 Sessions**
  - January 10-11, Washington, DC
  - February 1-2, San Francisco, CA
  - March 15-16, San Antonio, TX (scheduled)
  - April 11-12, Chicago, IL (scheduled)
  - May 31-June 1, Baltimore, MD (scheduled)
  - August 22- 23, Overland Park, KS (wrap-up scheduled)

Consensus Items

- Use of Part 236 definitions for control point and manual/automatic interlocking
- Consensus not to develop a new term for “switch arrangement”
- Clarification of existing definition - “Effective Securing Device”
- Consensus not to revise definition “Fouling a Track”
- New definition - “On-Track Safety Manual”
- New definition - “Maximum Authorized Speed” as applies to on-track safety

Consensus Items (Continued)

- **Sec. 214.309 (revised) to clarify requirements of the on-track safety manual**
  - Provisions for lone worker walking track
  - Allows for temporary changes in bulletins
- **Sec. 214.315 (new sub-subparagraph) for on-track safety briefing to require procedural instructions regarding adjacent tracks**
- **Sec. 214.317 (new paragraph) enabling roadway workers to cross tracks**

Consensus Items (Continued)

- Sec. 214.321 (new paragraph) allowing unique identifier vs. employee name for a roadway work group on an authority
- Sec. 214.323 (revised) to clarify that roadway worker may not allow movement into foul time
- Sec. 214.324 (new) “Verbal Protection” similar to foul time for interlockings/CP’s only to facilitate movements

Consensus Items (Continued)

- Sec. 214.329 consensus not to include “tactile” as a regulatory alternative to audible and visual for train approach warning
- Sec. 214.337 (revised) to allow individual train detection at control point without switches
- Sec. 214.337 (new paragraph) prohibiting the use of individual train detection for work involving material or equipment that cannot be readily moved by hand

Consensus Items (Continued)

- **Sec. 214.335 regarding roadway work groups and adjacent tracks**
  - Requires on-track safety for adjacent controlled track closer than 19 feet to the occupied track for on-ground workers with rail-bound machines.
  - Requires all work to stop upon notification when speeds are greater than 25 mph.
  - Permits hi-rail vehicles (214.7)/tower catenary cars with on-ground work, and on-ground work to field side, to proceed without controlled adjacent track on-track safety. Special on-track safety briefing required, and rule text also reinforces the prerogative of the roadway worker in charge to establish adjacent track on-track safety as necessary.

Consensus Items (Continued)

- Sec. 214.339 (revised) clarifications regarding locomotive horn sounding when approaching roadway workers

Non-Consensus Items

- **Remote hump yard facility definition**
- **Occupancy behind**
- **Tunnel niches**
- **Train approach warning and prohibition of work involving material or equipment that cannot be readily moved (non-consensus):**
  - by hand
  - by hand one worker and
  - by hand two workers

Future Discussion Points

- Roadway worker definition and work preparation activities
- Assignment of roadway worker in charge for contractors
- Electronic documentation
- Train coordination non-controlled track
- Roadway-worker limitations when warned by watchman
- Lone-worker limitations when trains approach

Future Discussion Points (Continued)

- Individual train detection at controlled points
- On-track training of other than roadway workers who provide protection for roadway work groups
- Maximum training time span for roadway workers
- Location of roadway worker in charge
- On-track snow throwers and weed-sprayer operations on non-controlled track

Future Discussion Points (Continued)

- Snow removal at passenger platforms
- Training frequency of contractors
- Yard limits – controlled/non-controlled
- Block register territory
- Railroads informing contractor of on-track safety requirements
- Switch manipulation

Questions and Discussion

RAILROAD SAFETY ADVISORY COMMITTEE (RSAC)

Minutes of Meeting
February 22, 2006

The twenty-eighth meeting of the RSAC was convened at 9:38 a.m., in the National Hall (Franklin/Monroe Rooms) of the Washington Plaza Hotel, 10 Thomas Circle, N.W., Washington, D.C. 20005, by the RSAC Chairperson, the Federal Railroad Administration's (FRA) Deputy Associate Administrator for Safety Standards and Program Development, Grady C. Cothen, Jr.

As RSAC members, or their alternates, assembled, attendance was recorded by sign-in log. Sign-in logs for each daily meeting are part of the permanent RSAC Docket. Seven of the forty-eight voting RSAC members were absent: The American Association of State Highway & Transportation Officials (AASHTO) (1 seat), The Association of Railway Museums (1 seat), The Brotherhood of Locomotive Engineers and Trainmen (BLET) (2 of 3 seats), The Brotherhood of Railroad Signalmen (BRS) (1 of 2 seats), Safe Travel America (1 seat), and The Transport Workers Union of America (TWU) (1 of 2 seats). Three of seven non-voting/advisory RSAC members were absent: The Labor Council for Latin American Advancement, The League of Railway Industry Women, and Secretaria de Communicationes y Transporte (Mexico). Total meeting attendance, including presenters and support staff, was approximately 100.

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

Mr. Pritchard (FRA) identifies the meeting room's fire and emergency exits. He asks for volunteers with cardiopulmonary resuscitation (CPR) qualification to identify themselves. A large number of RSAC attendees acknowledge having completed this training. Mr. Pritchard advises that a large number of RSAC attendees have cellular telephones, but volunteers Christopher Schulte (FRA) to call the emergency telephone number, 911, should an emergency occur. Mr. Pritchard advises that the hotel does not have an automated external defibrillator (AED).

Chairperson Cothen welcomes RSAC members and attendees. He introduces FRA Administrator, Joseph H. Boardman and asks that he make opening remarks. Prior to his appointment by President George W. Bush to FRA, Mr. Boardman served as the Commissioner of the New York State Department of Transportation and led a major transformation effort that better enabled that Agency to respond to changes associated with an ever-expanding global market place. He has served in the transportation industry for nearly thirty years with experience in city, county, and State government. In addition, he owned his own transportation management company. Most recently, he was chairman of the Executive Committee of the Transportation Research Board and Chair of the AASHTO's Standing Committee on Rail Transportation.

Joseph Boardman (FRA) thanks RSAC members for attending today's meeting. He describes his early working life–on a dairy farm in upstate New York–to his previous position as Commissioner of Transportation for the State of New York. While he acknowledges that these positions may not qualify him as an "expert" on the many complex issues facing the railroad industry, he applauds and supports the commitment

that RSAC, originally chartered on March 25, 1996, is undertaking to make the railroad industry safer.

Citing recent accident/incident statistics, comparing the first 11 months of calendar year 2005, with the same period of 2004: (1) the employee-on-duty injury rate is down 14 percent; (2) train accidents per million train miles are down 10 percent, but the actual number of these events exceeded the number in 2003; and (3) highway-rail grade crossing incidents resulting in death and injury are down in 2005 from 2004. However, fatalities remain almost 6 percent higher than the record low year of 2003. He notes that train collisions continue to rise, acknowledging that most of these occur in rail classification yards at low speeds. However, there have been several serious train collisions on main line tracks as well. While FRA and railroads can find encouragement in these statistics, Administrator Boardman says that railroads need to show progress in improving safety. To this end, he says, that is where the work of RSAC is so important.

Mr. Boardman acknowledges receiving briefings on RSAC Working Group (WG) activities. He knows that WG's are working hard to accomplish assigned Tasks. However, he encourages WG's to act quickly on issues. If WG's get hung-up on a particular issue, he requests that they move-on. He says, "The only constant we deal with in our lives is change. This means there is always work for this industry."

Administrator Boardman describes a recent Retreat with Secretary of Transportation Mineta DOT's Modal Administrators to explore the direction of the Nation's transportation needs over the next 3-4 years. Safety emerged as a high priority. But so was congestion. He says that a greater use of rail transportation in both freight traffic and passenger traffic can help reduce the Nation's "addiction to oil." A greater use of the National Rail Passenger Corporation (Amtrak) services in the Northeast corridor could help reduce congestion in the northeast corridor. Administrator Boardman says that FRA believes that increasing rail capacity and improving rail safety centers around three elements: (1) Technology, i.e., making people and systems more productive, smarter and safer. FRA can help through research and development, liaison with others in government, and through regulatory strategies that encourage innovation; (2) Quality Assurance, i.e., focusing on building safety and reliability into systems–investments will be needed to anticipate requirements, not catch up after failure sets in; and (3) Public-Private Partnerships, i.e., FRA offers its services for planning and coordination; the Agency is custodian of a $35 billion loan guarantee program that may play a role in projects going forward. Mr. Boardman hopes that RSAC will focus on technology and quality assurance issues and how they can benefit safety.

He offers a story, which he calls the "Parable of the Donkey." Briefly, a donkey falls into an abandoned well. A farmer is unable to retrieve the donkey, so he asks friends to help bury the donkey by shoveling dirt into the abandoned well. As the dirt is shoveled, the donkey shakes the dirt off his back and packs the dirt down with his feet. Eventually, the donkey reaches the surface of the well and walks off. Mr. Boardman says, "Life often shovels dirt on us. The trick to get out of a hole is to shake the dirt off and to step up." In a parallel to RSAC WG activities, Mr. Boardman repeats his request for WG's to move quickly to claim safety improvements, or to move on to other topics. He says WG's do not have the time for traditional bargaining as it has been known historically in the railroad industry.
He offers five points to help guide WG's to eliminate the personal interest bias against change. These are: free the heart from hatred, free the mind of worries, live simply,

give more, and expect less. He concludes his remarks by asking RSAC to think about how to make railroads safer and more productive. The two have to go together if the railroad industry is going to make its maximum contribution to a balanced transportation system.

Chairperson Cothen thanks Administrator Boardman for his opening remarks. He says Ross Capon has an announcement.

Ross Capon (National Association of Railroad Passengers (NARP)) announces that NARP is accepting nominations for the annual Dr. Gary Burch Memorial Award. Additional information on this topic can be found at NARP's Internet Web Site, i.e., www.narprail.org. [The Dr. Gary Burch Memorial Safety Award is an annual award granting $1,000 to the railroad worker who has done the most to improve the safety of railroad passengers. Dr. Burch was chief, of the Ear, Nose, and Throat Clinic at the Eisenhower Hospital at Fort Gordon, Georgia. He was one of eight passengers who died July 31, 1991, at Lugoff, South Carolina, while traveling on Amtrak's Silver Star. It derailed at a switch that the National Transportation Safety Board (NTSB) later said was "poorly maintained." Dr. Burch's wife, Bette, was traveling with him and was injured. Later, she and her children (Michael Burch and Kathryn Pettyjohn) decided to do what they could to improve passenger rail safety. Their effort resulted in the award. A selection committee solicits nominations from railroad companies and operating agencies and selects someone to receive the award at NARP's annual Washington, D.C., reception in April of every year.]

With no questions of Mr. Capon, Chairperson Cothen asks Douglas Taylor (FRA–Office of Safety Staff Director Operating Practices Division) for a report on Railroad Operating Rules (ROR) Working Group (WG) activities.

Douglas Taylor (FRA) uses a series of Microsoft PowerPoint presentations, projected onto a screen. Photocopies 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. RSAC Task No. 05-02, Reduce Human Factor-Caused Train Accidents/Incidents, was accepted by the full RSAC on May 18, 2005. Mr. Taylor explains that the WG has met 8 times, twice in 2006. The primary focus was on accidents/incidents involving 8 different accident/incident cause codes. He says the deadline for the WG to produce a Notice of Proposed Rulemaking (NPRM) has passed without the WG reaching consensus in any single area. However, he estimates that agreement was reached on about 70-80 percent of the issues under study.

FRA will now proceed to write the NPRM in order to meet a deadline set by Secretary of Transportation Mineta, having greatly benefitted from the RSAC WG input to the draft NPRM. He notes that nearly the entire October 25-26, 2005, WG meeting in Denver, Colorado, was devoted to resolving issues related to FRA Emergency Order (EO) No. 24, Emergency Order Requiring Special Handling, Instruction and Testing of Railroad Operating Rules Pertaining to Hand-Operated Main Track Switches, issued October 19, 2005. As a result of ROR WG input, Notice No. 2 to EO 24 was issued. Under the viewgraph, "Working Group Focus," Mr. Taylor says the WG concentrated on "Federalizing" railroad operating rules for the following: (1) shoving/pushing movements; (2) leaving equipment in the clear; (3) switches and derails; (4) instruction/training; (5) operational tests and inspections; and (6) the "good faith challenge." Under the viewgraph, "EO 24," Mr. Taylor says that all of the requirements

under EO 24 and EO 24 Notice 2, except for the continued use of a Switch Position Awareness Form (SPAF), have been integrated into the draft NPRM, which when final, will replace EO 24. This includes rules for hand-operated main-track switches, intra-crew communication, job briefings, and operational tests and inspections.

Joseph Boardman (FRA Administrator) says he is surprised that RSAC members are not cheering at the prospect at eliminating the SPAF from the Final Rule.

Douglas Taylor (FRA) continues. Under the viewgraph, "Working Group Discussion," Mr. Taylor repeats that substantial agreement was reached on many issues, but there is no overall WG consensus for the draft NPRM. Under the viewgraph, "Operational Tests & Inspections," the WG reached tentative agreement for railroad officers to be instructed and qualified on rules, the testing program and procedures and be provided appropriate field training. FRA proposed a system of monthly, quarterly, and semi-annual reviews of accidents/incidents by company officers to determine whether the testing program is focusing on the accidents/incidents that have occurred. However, concerns or objections by one or more of the WG participants were expressed over the level of detail and frequency of these reviews.

Finally, the WG discussed an exception to the operational tests and inspections requirements for railroads with less than 400,000 employee work hours. Under the viewgraph, "Training & Instruction," draft rule text was circulated to the WG for written instruction, examination and qualification programs addressing 49 Code of Federal Regulation (CFR) § 218 rules with Federal sanctions including: (1) shoving, (2) leaving equipment in clear, and (3) switches and derails. However, concerns or objections by one or more of the WG participants were expressed for including provisions for the "good faith challenge" in the rule. Borrowed from Roadway Worker Protection Rules, i.e., 49 CFR § 214, the "good faith challenge" provision provides an mechanism for an employee to challenge, in good faith, any directive that would violate an on-track safety or operating rule. The draft NPRM requires that employees be trained on provisions of the rule within 12 months of the effective date of the rule.

The draft NPRM also allows FRA, for cause stated, to approve, or disapprove a railroad's training program. However, concerns or objections by one or more of the WG participants were expressed over whether the training and instruction involve extensive and unjustified recordkeeping requirements and whether re-training is required for experienced employees within the 12-month period following the effective date of the rule. Under the viewgraph, "Good Faith Challenge," Mr. Taylor repeats that this provision of the NPRM was taken directly from existing Roadway Worker Protection Rules. Under the "good faith challenge," there is an employee right to challenge on the basis of a violation of FRA's regulations. The employee would not be subject to discharge or discrimination. No work will be performed until the challenge is resolved. The resolution process includes the involvement of a railroad officer other than the person issuing the directive. However, concerns or objections by one or more of the WG participants were expressed over whether FRA has statutory authority to include the "good faith challenge" provision in its rules, saying an employee's refusal to perform work falls under provisions of 49 United States Code § 20109.
Mr. Taylor next describes ROR WG efforts to "Federalize" railroad operating rules in three areas. Under the viewgraph, "Shoving / Pushing Movements," proposed new rules require employees to visually determine that the track is clear, with limited equivalent exceptions, before beginning shoving/pushing movements. In addition, there

are requirements for remote control operations. FRA is considering how these rules will affect short-line operations, particularly short-line remote control operations. However, concerns or objections by one or more of the WG participants were expressed over the applicability of restrictions to shoving/pushing movements over private grade crossings or pathways and whether there should be exceptions for movements over grade crossings equipped with flashing lights only. Under the viewgraph, "Leaving Equipment in the Clear," equipment must not be left where it would foul connecting track, with limited exceptions. However, concerns or objections by one or more of the WG participants were expressed over wording that would accommodate yard/industry track with insufficient capacity to hold equipment.

Under the viewgraph, "Switches & Derails," Mr. Taylor says the proposed "Federal" rules are typical of every railroad's operating rules, i.e., switches should be locked in their normal position when not in use; derails should be locked in the derailing position; equipment shall not foul track until switches/derails are properly lined, the route is clear, or the train has movement authority. Mr. Taylor says the Switch Position Awareness Form (SPAF) will not be carried forward from EO 24 due to the administrative burden on crews and railroads. In addition, the rules specify that cross-over switches need to be in correspondence, and job briefings are required when crews handle main track switches. However, concerns or objections by one or more of the WG participants were expressed over whether hand-operated main-track switches should be operated without permission of a train dispatcher, or employee-in-charge (EIC). Mr. Taylor concludes his report on ROR WG activities by asking for questions.

Fran Hooper (American Public Transportation Association (APTA)) understands that there was a discussion involving APTA members and FRA that was "in progress" at the conclusion of the last ROR WG meeting. She says APTA would like to complete that conversation before FRA proceeds with the NPRM.

Chairperson Cothen says counsel permitting, a continuation of the conversation may be possible. He says FRA established a February 2006, deadline based on the Secretary of Transportation's dictates. FRA covered many areas in the ROR WG meetings. However, he reminds RSAC members that FRA Administrator Boardman said in earlier remarks, "If a WG gets hung-up on an issue, move-on." He adds, everyone in the ROR WG worked hard. He says FRA has benefitted greatly from the WG conversations. He reads the following ROR WG consensus statement:

"The Working Group recognizes that FRA will proceed with a notice of proposed rulemaking addressing human factor train accidents and employee casualties involving railroad operating practices.

"The Working Group recommends that, in doing so, FRA take into consideration the issues and considerations brought forward during the Working Group's discussions.

"The Working Group requests that comments on FRA's proposal be referred to the Working Group for further consideration, with the goal of achieving consensus on the final rule. The Working Group further requests that its task remain in effect so that it may consider non-regulatory actions that may be helpful in addressing human factors affecting the safety of railroad operations."

Chairperson Cothen explains that the ROR WG consensus statement says the WG wants to revisit the NPRM for another look at the proposed rules. He says FRA wants to

publish the NPRM not later than September 2006. He says comments to the NPRM will be brought forward to the ROR WG. He asks for a motion to accept the ROR WG Final Report on WG activities.

Tom Pontolillo (Brotherhood of Locomotive Engineers and Trainmen (BLET)) moves that the full RSAC accept the Final Report on ROR WG activities.

Richard A. Johnson (Transportation Communications International Union/Brotherhood of Railway Carmen (TCIU/BRC) seconds the motion.

> BY UNANIMOUS VOICE VOTE, THE FULL RSAC ACCEPTS THE FINAL REPORT ON THE RAILROAD OPERATING RULES WORKING GROUP ACTIVITIES.

Chairperson Cothen asks for a permission from the full RSAC for FRA to give comments to the NPRM on railroad operating rules to the ROR WG for review and resolution.

> BY UNANIMOUS VOICE VOTE, THE FULL RSAC GIVES PERMISSION TO FRA TO HAVE THE ROR WG REVIEW COMMENTS TO THE NPRM ON RAILROAD OPERATING RULES.

Chairperson Cothen thanks RSAC for its votes on ROR WG activities. He asks Cindy Gross (FRA–Office of Safety, RSAC WG Facilitator) for a report on Passenger Safety WG activities.

Cindy Gross (FRA) says the full Passenger Safety WG has not met since September 7, 2005. Its next meeting is scheduled for March 21-22, 2006. However, she will ask John Mardente (FRA–Office of Safety) for a report on Track Vehicle Interaction (TVI) Task Force (TF) activities and Brenda Moscoso (FRA–Office of Safety) for a report on Emergency Preparedness (EPREP) TF activities. These two TF's have met subsequent to the last full meeting of the full Passenger Safety WG. Ms. Gross asks John Mardente for a report on TVI TF activities.

John Mardente (FRA) uses a series of Microsoft PowerPoint presentations, projected onto a screen. Photocopies 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. Mr. Mardente says much progress is being made in this highly technical area. He says the TVI TF began meeting in 2004. Now, the TF is beginning to draft proposed rule text language.

Under the viewgraph, "RSAC TVI Technical Subgroup Issues," the principle issues are: (1) Vehicle Track Interaction (VTI) Limits; (2) Vehicle Qualification (VQ); (3) Monitoring Requirements;
(4) Review of High-Speed Track Geometry Limits; (5) Track Geometry and High Cant Deficiency; (6) 49 CFR §§ 213/238 Language Consolidation; and (7) Elimination of FRA Class 9 Track Standards, i.e., maximum allowable operating speed is 200 mph. Under the viewgraph, "Vehicle Track Interaction (VTI) Limits," the TF is looking at wheel-rail force and carbody and truck acceleration criteria for (1) power cars, and (3) coaches. The TF is giving consideration to placing accelerometers on truck bodies. Under the viewgraph, "Vehicle Qualification (VQ)," Mr. Mardente explains that this is Item G-2 under the Passenger Safety WG's Issue Matrix. Undergoing TF review are the following considerations affecting 49 CFR § 213.345: (1) new equipment and qualified equipment;

(2) route; (3) simulations; (4) lean test, i.e., 49 CFR § 213.57; (5) carbody and truck acceleration; (6) instrumented wheelset (IWS); and (7) submittals and approvals. The Volpe National Transportation Systems Center (Volpe) is looking into simulations for VQ. Under the viewgraph, "Monitoring Requirements," the TF is looking to amend 49 CFR §213.333 in the following areas: (1) track geometry measurement systems (TGMS); (2) carbody and truck acceleration; (3) IWS annual test; and (4) reporting. Under the viewgraph, "Review of High-Speed Track Geometry Limits and Track Geometry and High Cant Deficiency," Mr. Mardente explains that this is Item G-4 under the Passenger Safety WG's Issue Matrix.

The TF is studying analysis by Volpe and FRA, looking for commonality, so that tests in the following areas will flow: (1) combined defect limits;
(2) short warp limit; (3) the relationship between track geometry and cant deficiency; and (4) simulation. Under the viewgraph, "213/238 Language Consolidation," the TF is looking at roll angle requirements for passenger safety as it removes duplicate requirements in 49 CFR § 238. Under the viewgraph, "Elimination of Class 9," the TVI TF has completed its review and has drafted language to delete references in the CFR to Class 9 Track Standards and to reduce the maximum operating speed for Class 8 track to 150 mph. The TVI TF will present the draft language as part of a package containing all of the TVI TF recommendations at a future Passenger Safety WG meeting. However, Mr. Mardente estimates that another year of work and perhaps 4-6 additional TF meetings will be required before the TVI TF completes its work. He says the most technical aspect involves the review of high-speed track geometry limits and track geometry and high cant deficiency. The next TVI TF meeting will be March 7-8, 2006, at the Melrose Hotel in Washington, D.C. He encourages RSAC members to attend at least one TVI TF meeting.

Chairperson Cothen asks if there are any questions for John Mardente on TVI TF activities. With no questions, Chairperson Cothen asks Brenda Moscoso for a report on EPREP TF activities.

Brenda Moscoso (FRA) uses a series of Microsoft PowerPoint presentations, projected onto a screen. Photocopies 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. Under the viewgraph, "Notice of Proposed Rulemaking" (NPRM), Ms. Moscoso says that the an NPRM is being reviewed by FRA. The NPRM has been designated "significant" by the Office of Management and Budget (OMB), adding additional review by that Executive Branch of Government Agency. FRA anticipates publication of the NPRM by the Summer of 2006. [Note: At its May 18, 2005, meeting, the full RSAC has approved draft NPRM rule text for:
(1) emergency window exits, (2) rescue access windows, (3) emergency communications, (4) emergency roof access, and (5) inspection and repair of emergency systems.] Subsequently, the EPREP TF began a review of additional topics. Under the viewgraph, "Removable Windows/Panels in Vestibule Doors," Ms. Moscoso says the TF is considering requirements to provide access to side and end frame door exits in new passenger cars. End doors are the preferred means of emergency exit. In addition, end doors are likely to be the preferred exit route from cars that have rolled onto their sides. The criteria under consideration for removable windows and panels in vestibule doors include: (1) ease of operability, i.e., rapid and easy removal without the use of tools or other implements; (2) dimensions, i.e., 23-inches horizontally and approximately 28-inches vertically; (3) markings and instructions, i.e., the same as for emergency window exits; and (4) inspections, i.e., a representative sample will be tested every 184 days.

For Powered Bi-Parting Doors, the following criteria are under consideration: (1) manual override feature; (2) door retention mechanism, e.g., ratchet and pawl or sprag; (3) markings and instructions, i.e., the same as for removable panels/windows; and (4) inspection, i.e., a representative sample will be tested every 184-days.

Among the outstanding issues for removable windows/panels in vestibule doors include the following: (1) location, i.e., in the lower half of the door, to the extent possible; (2) applicability to interior vestibule/cab compartment doors due to potential security implications; and (3) removable windows/panels in end-frame doors. Under the viewgraph, "Emergency Lighting," Ms. Moscoso explains the goal is to have a well-protected emergency power supply. For new equipment, the TF is recommending that the American Public Transportation Association (APTA) revise its emergency lighting standard to include a requirement for an independent power source. For existing equipment, the TF is monitoring Amtrak's experience with its "disaster lighting system" before proceeding with recommendations in this area. Under the viewgraph, "Incorporation by Reference of APTA PRESS Standards," Ms. Moscoso explains that FRA intends to incorporate by reference into the Code of Federal Regulations (CFR) APTA's Passenger Rail Equipment Safety Standards (PRESS), when issued, for: (1) Emergency Lighting (existing equipment compliant by 2015; new equipment will have independent power source); (2) Low-Location Exit Path Markings (implementation schedule to be determined); and (3) Emergency Signage for Egress/Access (non-high-performance photo-luminescent (HPPL) material will not be "grandfathered;" for new equipment, HPPL Extended (HPPLX) material or electrically powered with an independent power source will be required; for existing equipment, HPPL material or electrically powered (electrically powered with an independent power source after five years) will be required. Ms. Moscoso asks for questions.

Rick Inclima (Brotherhood of Maintenance of Way Employes Division (BMWED)) asks about any problems with incorporating APTA Standards into the CFR. He asks what happens if APTA modifies its Standards?

Chairperson Cothen explains that incorporating APTA PRESS Standards into the CFR is a two-phase process. FRA first looks for either a "material" change, or a "language" change. In adopting APTA PRESS Standards into the CFR, FRA is looking for an "equivalent level of safety." He asks Ms. Moscoso for an ETA (estimated time of arrival) of the APTA PRESS Standards for the full RSAC's consideration.

Brenda Moscoso (FRA) explains that two of the three APTA PRESS Standards may be ready for the Passenger Safety Working Group's consideration at its March 21-22, 2006, meeting.

Chairperson Cothen explains that the comment period for the NPRM on Passenger Safety Mechanical Issues is closed. He says that any material comments on the NPRM received by FRA will be referred-back to the Passenger Safety Working Group's Mechanical Task Force for review.

Chairperson Cothen announces the morning break.

M O R N I N G B R E A K 10:45 A.M. - 11:05 A.M.

Mr. Cothen calls the meeting to order. He announces that Fred Ohly (National Railroad Passenger Corporation (Amtrak)) is retiring shortly. He asks RSAC to thank Mr. Ohly for his contribution to RSAC. He recognizes the new Federal Transit Administration member, Levern McElveen. Mr. McElveen replaces John Bell. He asks Christopher Schulte (FRA–Office of Safety) for a report on Roadway Worker Protection (RWP) Working Group (WG) activities.

Christopher Schulte (FRA) uses a series of Microsoft PowerPoint presentations, projected onto a screen. Photocopies 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. Under the viewgraph, "Session Status," Mr. Schulte explains that the RWP WG met five times in calendar year 2005, since its start-up in April 2005. It has met twice in 2006. The next scheduled WG meeting is March 15-16, 2006, in San Antonio, Texas.

Under the viewgraphs, "Consensus Items," Mr. Schulte summarizes the progress being made as follows. The WG has agreed to: (1) use 49 CFR § 236 definitions for control point and manual/automatic interlocking in the definition section of 49 CFR § 214; (2) not develop a new term for "switch arrangement," i.e., a type of power-operated switch; (3) clarify the existing definition for "effective securing device;" (4) not revise the definition, "Fouling a Track;" (5) define "On-Track Safety Manual;" (6) define "Maximum Authorized Speed" (as it applies to on-track safety); (7) revise § 214.309 to clarify requirements of the on-track safety manual; (8) add new sub-paragraph for on-track safety briefing to require procedural instructions regarding adjacent tracks (§ 214.315); (9) add new paragraph enabling roadway workers to cross tracks (§ 214.317); (10) add new paragraph allowing unique identifier versus employee name for a roadway work group on an authority (§ 214.321); (11) revise § 214.323 to clarify that roadway workers may not allow movement into foul time; (12) a proposed new § 214.324, "verbal protection," similar to foul time for interlockings/control points only–to facilitate movements; (13) not include "tactile" as a regulatory alternative to audible and visual for train approach warning; (14) revise § 214.337 to allow individual train detection at control points without switches; (15) add a new paragraph prohibiting the use of individual train detection for work involving material or equipment that cannot be readily moved by hand (§ 214.337); (16) changes in § 214.335 regarding roadway work group activities in the vicinity of adjacent tracks: (a) requires on-track safety for adjacent controlled track closer than 19 feet to the occupied track for on-ground workers with rail-bound machines; (b) requires all work to stop upon notification when speeds are greater than 25 mph; and (c) permits hi-rail vehicles, tower catenary cars with on-ground work, and on-ground work to the field side, to proceed without controlled adjacent track on-track safety. Special on-track safety briefing required, and the rule text also reinforces the prerogative of the roadway worker in charge (RWIC) to establish adjacent track on-track safety, as necessary.); and (17) clarify locomotive horn sounding when approaching roadway workers (revisions to § 214.339).

Under the viewgraph, "Non-Consensus Items," Mr. Schulte describes the following areas where the WG has been unable to reach consensus: (1) definition of a remote hump yard facility (The WG can agree where the hump yard facility begins, but not where it ends); (2) occupancy behind; (3) use of tunnel niches that may be closer than 4-feet from active track; and (4) train approach warning and the prohibition of work involving material or equipment that cannot be readily moved.

Under the viewgraphs, “Future Discussion Points,” Mr. Schulte explains the labor, management, and FRA WG members contributed to the following list if issues the WG wants to address: (1) definition of roadway worker and work preparation activities; (2) assignment of a RWIC for contractors; (3) electronic versus paper documentation; (4) train coordination on non-controlled track; (5) roadway worker limitations when warned by a watchman; (6) lone worker limitations when trains approach; (7) individual train detection at controlled points; (8) on-track training of other than roadway workers who provide protection for roadway work groups; (9) maximum training time span for roadway workers; (10) location of roadway worker in charge; (11) on-track snow throwers and weed-sprayer operations on non-controlled track; (12) snow removal at passenger platforms (affects commuter railroads and railroad contractors, where men and equipment are closer than 4-feet to active tracks); (13) training frequency of contractors; (14) yard limits–controlled/non-controlled; (15) block register territory; (16) railroads informing contractor of on-track safety requirements; and (17) switch manipulation. Mr. Schulte asks for questions.

With no questions of Mr. Schulte, Chairperson Cothen announces that the Transportation Security Agency (TSA) had been expected to make a presentation before RSAC today. However, TSA is unable to attend today’s meeting. He asks FRA Administrator Boardman for additional comments on this topic.

Administrator Boardman says he spoke with Robert D. Jamison, Deputy Director, TSA (former Acting FRA Administrator) about today’s TSA presentation. But, he adds, in the Government structure, Agency staff cannot always say what they want. TSA wanted to be here today, but they were not able to get the rest of the Department of Homeland Security (DHS) informed of what they were going to say. He says that TSA’s presentation will be postponed until a later RSAC meeting.

Chairperson Cothen asks RSAC’s permission to vary the meeting Agenda. He says Acting FRA Associate Administrator for Safety, Jo Strang, is attending a DOT meeting for Administrator Boardman, so that Mr. Boardman can attend today’s RSAC meeting. Chairperson Cothen proposes that RSAC hear Jo Strang’s remarks on the National Rail Safety Action Plan during the afternoon session.

He asks Michael E. Iden (Association of American Railroads–Union Pacific Railroad) for a presentation on a proposed new RSAC Task involving the review and revision of locomotive safety standards. As Mr. Iden sets up his presentation, Chairperson Cothen explains that locomotive safety standards were last revised 25 years ago. He notes that the Agency would like to review its rules at least every 10 years. Along the way, there have been requests for a rulemaking, i.e., there is an AAR Petition before FRA for permission to remove the requirement for locomotive sanders. Both the AAR and the American Short Line and Regional Railroad Association (ASLRRA) have requested waivers to both daily and periodic locomotive inspections. FRA would like an RSAC WG to take-up this issue. FRA also notes that remote control locomotive operations have not been integrated into its safety standards. There is also the issue of electronic record keeping, as part of the Paperwork Reduction Act. Chairperson Cothen says the locomotive sander issue has been before the Agency for eight months. Therefore, there is a short time frame for dealing with this issue. For other issues that would come before the WG for revisions to locomotive safety standards, Chairperson Cothen hopes that the WG can process the issues in an orderly way, consistent with members’ work loads.

Michael E. Iden (AAR) uses a series of Microsoft PowerPoint presentations, projected onto a screen. Photocopies 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.

Under the viewgraph, "49 CFR 229.131," Mr. Iden explains that the Petition of the AAR before FRA is a request to delete 49 CFR § 229.131, Sanders, i.e., "Except for MU locomotives, each locomotive shall be equipped with operable sanders that deposit sand on each rail in front of the first power operated wheel set in the direction of movement." Under the viewgraph, "Sand for Braking," Mr. Iden offers the following observations: (1) Sand is an historic adhesion enhancer for locomotive "traction" (first recorded use occurred in 1936);(2) There is no documented evidence supporting sand as a "braking" adhesion enhancer; (3) Canadian tests from 1988 show no difference in freight and passenger train stopping distances with and without sand under various weather conditions and speeds; (4) A Canadian Air Brake Club report from 1989 shows that sand does not perform a safety function; (5) Sanders are not required by regulation in Canada, where railroads make decisions about sanders and sand (and operate locomotives accordingly) based on operational considerations. Mr. Iden says clear and consistent test results under a variety of weather conditions, speeds, with sand, without sand, and for both freight and passenger trains show that the presence or absence of sand does not have any significant influence on emergency stop distances for freight or passenger trains.

Chairperson Cothen asks if there are questions of Mr. Iden?

Ross Capon (NARP) asks if Canadian railroads use sand at all? He asks if there is a safety consideration for trains using sand for "traction" versus "braking?"

Michael Iden (AAR) says with the current high horsepower locomotives, there is no operational need for sand. He says the use of sand is an operational managerial decision.

David Elliott (High-speed Ground Transportation Association (HSGTA) asks if leaf season in the Northeastern United States was considered in the analysis.

Mr. Iden says it is a case of "traction adhesion" versus "braking adhesion."

Chairperson Cothen introduced Mr. Elliott as the new RSAC representative for the HSGTA. Formerly he represented APTA on RSAC Working Groups.

Timothy DePaepe (Brotherhood of Railway Signalmen (BRS)) asks if the data on the inefficiency of locomotive sanders for braking has been around for 17 years, why is the AAR making this request now?

Mr. Iden says the Union Pacific Railroad has had an interest in removing the requirement for locomotive sanders for the past 7 years. He asks Mike Rush (AAR–Counsel) for an explanation of when the AAR first considered the Petition to delete 49 CFR § 229.131, Sanders.

Mike Rush (AAR) responds that the timing of AAR's Petition was based on a question of the railroad association's priorities.

Mr. DePaepe asks if any testing involving locomotive sanders was undertaken in extreme conditions such as heat in the Southern United States?

Rick Inclima (BMWED) asks if research has been undertaken concerning internal rail flaws and engine burn factors. He suggests that the WG will need to look at these issues as it considers the AAR's request to remove locomotive sanders.

Chairperson Cothen offers new RSAC Task No.: 06-01, Review and Revision of the Locomotive Safety Standards for RSAC consideration. Copies of RSAC Task No.: 06-01 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 addition, all RSAC Task Statements will be posted on the RSAC Internet Web Site (http://rsac.fra.dot.gov).

Mark Schulze (AAR) asks for clarification of the third Task Statement Issue, i.e., "Apart from traditional train control, what is the role of electronic control systems in the operation of locomotives for switching and for train operations? What safety criteria should be applied?"

Chairperson Cothen explains that it is a Subpart H issue, i.e., whether electronic controls can operate in a fail-safe condition.

Mr. Inclima asks to add to the "Issues Requiring Specific Report," a report on internal rail flaws and engine burn failures that may result from the elimination of 49 CFR § 229.131, Sanders.

Chairperson Cothen asks that the Minutes of the RSAC meeting reflect Mr. Inclima's request, i.e., that it is the intention of FRA to add a discussion on train handling practices and internal rail flaws to the WG's consideration of the elimination of 49 CFR § 229.131. He asks for a motion that the full RSAC accept proposed new Task No.: 06-01, Review and Revision of the Locomotive Safety Standards.

James Stem (United Transportation Union (UTU)) moves that the full RSAC accept proposed new Task No.: 06-01, Review and Revision of the Locomotive Safety Standards.

Bob VanderClute (AAR) seconds the motion. He requests that for the variety of issues considered by the WG, under proposed new Task No.: 06-01, that each issue be examined and reported-out separately, rather than wait for a draft NPRM at the conclusion of the WG's activities.

Chairperson Cothen responds, "So noted."

> BY UNANIMOUS VOICE VOTE, THE FULL RSAC ACCEPTS PROPOSED NEW TASK NO.: 06-01, REVIEW AND REVISION OF THE LOCOMOTIVE SAFETY STANDARDS.

Chairperson Cothen thanks the full RSAC for accepting new Task No.:06-01. He announces the lunch break.

L U N C H B R E A K 12:05 P.M. - 1:20 P.M.

Chairperson Cothen reconvenes the meeting. He asks acting FRA Associate Administrator for Safety Jo Strang for a progress report on National Rail Safety Action Plan implementation, which has a goal of improving safety by targeting the most frequent and highest risk causes of train accidents in America.

Jo Strang (FRA) explains that the National Rail Safety Action Plan is targeting the following areas: (1) reduce human factor accidents, (2) address fatigue, (3) improve track safety, (4) improve hazardous materials safety and emergency response capability, (5) strengthen FRA compliance program, and (6) foster further improvements in highway-rail grade crossing safety.

In the area of "Human Factor Related Accidents," Ms. Strang says RSAC heard earlier from Douglas Taylor on the ROR WG activities. FRA will issue a notice of proposed rulemaking by September 2006, to "Federalize" a small number of railroad operating rules in the areas of (1) shoving and pushing movements, (2) leaving equipment in the clear, and (3) switches and derails.

In addition, FRA's Office of Railroad Development will undertake a "Close Call Reporting" pilot project. Four railroads have expressed an interest in taking part. But Ms. Strang encourages others to offer to participate. A contract to evaluate Close Call Demonstration Project data has been awarded to the Altarum Institute. A revised target date for starting to take reports is July 30, 2006.

In the area of "Fatigue" an analysis of accident data provided by five Class I railroads using FRA's "fatigue model" is underway. A preliminary report is anticipated during March 2006; a final report is planned for August 2006. In the area of "Improve Track Safety," FRA is on target to develop a vehicle-mounted system and related crack detection software for its Joint Bar Imaging System (for automated crack detection). Testing and demonstrations are planned for the coming months. In addition, two additional automated track geometry cars will be operational by September 15, 2006, and December 15, 2006, respectively.

In the area of "Improve Hazardous Materials Safety and Emergency Response Capability" are the following: (1) a promising technology using a wireless communications network and switch position detectors is being demonstrated on BNSF railroad to in inform train dispatchers of switch positions in non-signaled territory; (2) a review of a pilot project on CSX Transportation to make commodities lists of a train's consist available to first responders is underway; (3) FRA is accelerating tank car structural research to complete this project mandated by the Safe, Accountable, Flexible, Efficient Transportation Equity Act, A Legacy for Users (SAFETEA–LU). SAFETEA-LU calls for this research to be finished by August 19, 2006, which is not possible. FRA is adding resources to this effort in hope to complete research by August 2007; (4) Research by Volpe and Foster-Miller, Incorporated is underway to model tank car deformation during derailments. A comparison between observed and calculated deformations from the January 6, 2005, Graniteville, South Carolina, train accident may be accomplished by August 2006; (5) dynamic fracture toughness testing of metal samples from cars involved in accidents are being collected and inventoried by Southwest Research Institute for future reference for accident investigations; and (6) preliminary low-level risk analysis, expected to be completed by December 2006, is under way to prioritize the tank cars that are most vulnerable to catastrophic failure.

Higher-level analysis can be conducted after the research on derailment forces and testing for fracture toughness has been completed.

In the area of "Strengthen FRA Compliance Program," as of January 2006, FRA has implemented the use of a National Inspection Plan (NIP) for four inspection disciplines (Track, Operating Practices, Motive Power and Equipment, and Signal and Train Control) to better target railroad inspections. The Hazardous Materials inspection discipline is expected to be integrated into NIP by March 31, 2006.

In the area of "Foster Further Improvements in Highway-Rail Grade Crossing Safety," FRA continues to build partnerships with State and Local Agencies. A Safety Advisory offering assistance in accident investigation has been distributed at national law enforcement conferences. A target to develop a Louisiana State Action Plan was delayed because of hurricanes. Ms. Strang asks for questions.

With no questions of Jo Strang, Chairperson Cothen asks Ken Rusk (FRA–Office of Safety Staff Director for Track) for a presentation on Continuous Welded Rail (CWR) issues.

Ken Rusk (FRA) explains that he was formerly with FRA's Atlanta, Georgia office and was recruited to replace Al MacDowell, who retired, as Staff Director for Track. He uses a series of Microsoft PowerPoint presentations, projected onto a screen. Photocopies 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.

Mr. Rusk says an Interim Final Rule has been issued for Continuous Welded Rail Bolted Joints. Under the viewgraph, "History" three major accidents involving joint bar failure or CWR failure between 2002 and 2004, i.e., accidents near Minot, North Dakota, Flora, Mississippi, and Pico Rivera, California prompted the Safe, Accountable, Flexible, Efficient Transportation Equity Act, A Legacy for Users (SAFETEA–LU) to require that FRA take certain measures regarding CWR. Under the viewgraph, "SAFETEA-LU," FRA is required to: (1) instruct FRA track inspectors to obtain copies of the most recent CWR programs of each railroad within the inspectors' area of responsibility; (2) establish a program to review CWR joint bar inspection data from railroads; (3) require each track owner to implement procedures to improve the identification of cracks and other incipient failures in bolted joints within CWR.

To meet Congressional requirements under tight time restraints, FRA needed to bypass its preferred method of rules formation, RSAC. An Interim Final Rule regarding CWR was published on November 2, 2005, 70 Federal Register (FR) 66288 (FRA Docket Number FRA 2005-22522). The compliance date for new paragraph (g) under 49 CFR § 213.119, is January 3, 2006.

Under the viewgraph, "Interim Final Rule (IFR)" are the following: (1) railroads are to identify and locate each bolted rail joint in CWR, including a system to inventory, locate, and identify each joint. There are requirements for recordkeeping of each CWR joint inspection and any remedial action required; (2) railroads are to conduct periodic and special on-foot inspections of all bolted rail joints in CWR; (3) the IFR specifies the conditions of potential joint failure; (4) the IFR specifies the appropriate remedial actions; and (5) the IFR specifies the minimum timing of the inspections, based on FRA Track Class, which should also be based on the configuration and condition of the joint.

Under the viewgraph, “IFR Alternative,” in lieu of the requirements for the on-ground inspection, a track owner may seek approval from the FRA Associate Administrator for Safety to use alternate procedures. The Associate Administrator for Safety shall determine that the alternate procedure provides an “equivalent level of safety.” While the alternate procedure is undergoing FRA review, the track owner shall continue to comply with the inspection requirements of the IFR. Under the viewgraph, “IFR Comments,” the following is a sampling of comments that FRA has received to the IFR: (1) the IFR should not require railroads to inventory CWR joints or record inspection results by joint; (2) it is unnecessary for IFR to apply to joints next to turnouts and diamonds since monthly inspections of turnouts and diamonds are already required; (3) the requirement to inspect for rail end batter or mismatch should be clarified; (4) railroads should not be required to remove pavement or crossing pads to inspect joints; (5) railroads should be permitted to operate an irregularly scheduled train over Class 2 CWR track without the required CWR joint inspections; and (6) current inspection frequency is a one-size fits all approach that will not establish sufficient levels of safety under certain conditions. Ken Rusk asks for questions.

With no questions of Mr. Rusk, Chairperson Cothen offers new RSAC Task No.: 06-02, Track Safety Standards and Continuous Welded Rail, for RSAC consideration. Copies of RSAC Task No.: 06-02 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 addition, all RSAC Task Statements will be posted on the RSAC Internet Web Site (http://rsac.fra.dot.gov).

He says the WG will be asked to look at the IFR comments received by FRA and to help decide how to integrate the comments into the Final Rule. In explaining the need for RSAC to take up Task No.: 06-02, he cites recent comments made by FRA Deputy Administrator Eby to the effect that, “if you are treating symptoms to a problem, you are not treating the underlying cause.” He says FRA needs a discussion about the management of CWR. He says FRA has a rail integrity Task Force also working on this issue.

For the proposed new RSAC Task No.: 06-02, FRA envisions at a minimum that the WG will integrate comments to the IFR into the Final Rule. He hopes this would be a fairly quick process. Then, he says, the WG can look at other track structure issues. He says it is not necessary for the WG to look at all of 49 CFR § 213, unless it wants to. Also, he says the WG will not be asked to repeat Passenger Safety WG issues under proposed new Task No.: 06-02. He asks for RSAC comments on proposed new Task No.: 06-02, Track Safety Standards and Continuous Welded Rail.

Bob VanderClute (AAR) is pleased to see an aggressive date for addressing CWR issues. But he adds, that the WG will need to resolve the CWR inventory issue early-on.

Rick Inclima (BMWED) says in looking at the proposed new Task Statement, it appears to be open-ended. He says there are time restraints. He says if the WG focuses exclusively on CWR issues under 49 CFR § 213, the task will be manageable. He reiterates that the focus of the Task Statement should be amended to only look at CWR issues under 49 CFR Part 213. He is concerned about the ability to get the task accomplished in short order. He proposes to modify the “Purpose” section of the Task as follows: “To review and revise the [**Continuous Welded Rail (CWR)-related provisions**] of Track Safety Standards, with particular emphasis on reduction of derailments and consequent injuries and damage caused by defective conditions,

including joint failures, in track using CWR." To also narrow the focus of the proposed new Task, he requests that the 4th bullet under "Description," be eliminated, i.e., "Recommend other enhancements or corrections to the Track Safety Standards, as needed."

Mr. VanderClute agrees with Mr. Inclima's suggestions.

Chairperson Cothen expresses hope that a systems approach can be taken. He says this Task is not just about 49 CFR § 213.119, Continuous Welded Rail (CWR); general. He asks for a motion from the full RSAC to accept proposed new RSAC Task No.: 06-02, Track Safety Standards and Continuous Welded Rail, as amended.

John Samuels (AAR) explains that CWR is a dynamic system. He says there are many factors that can cause fractures in CWR. He says the WG will get into many high-cost areas of making changes to the current system. He asks at what point will there be a "reality check" on this process?

Chairperson Cothen responds that FRA has economists assigned to each WG who can assist the WG with this type of analysis. He repeats his request for a motion from the full RSAC to accept proposed new RSAC Task No.: 06-02, Track Safety Standards and Continuous Welded Rail, as amended. He says FRA needs RSAC's help on resolving IFR issues. The IFR was issued to conform with Congressional intent and deadlines. But, he adds, FRA has heard that Capitol Hill is not entirely happy with FRA's approach. He agrees with Dr. Samuels that the approach should be cost effective.

Mr. Inclima moves that the full RSAC accept proposed new RSAC Task No.: 06-02, Track Safety Standards and Continuous Welded Rail, as amended.

Timothy DePaepe (BRS) seconds the motion.

> BY UNANIMOUS VOICE VOTE, THE FULL RSAC ACCEPTS PROPOSED NEW TASK NO.: 06-02, TRACK SAFETY STANDARDS AND CONTINUOUS WELDED RAIL, AS AMENDED.

Chairperson Cothen thanks the full RSAC for accepting new Task No.:06-02. He asks that the major stakeholders for both Task No.: 06-01, Review and Revision of the Locomotive Safety Standards, and Task No.: 06-02, Track Safety Standards and Continuous Welded Rail, as amended, submit nominations to serve on the respective Working Groups. He asks that nominations, both Principals and Alternates, be submitted by March 8, 2006, two weeks hence, to FRA's Patricia Butera (E-mail address: Patricia.Butera@FRA.DOT.GOV).

Fran Hooper (APTA) asks for "electronic" versions of the new Task Statements.

Chairperson Cothen says the Task Statements will be put on FRA's Internet Web Site and will be E-mailed to RSAC members.

With no further questions, Chairperson Cothen asks Joseph Gallant (FRA-Office of Safety) for a report on the Collision Analysis Study. He says this will be an interim briefing.

Joseph Gallant (FRA) gives background information for the Collision Analysis Working Group (CAWG) Study. [The railroad industry formed a working group to examine main line train collisions. Under the direction of FRA, the working group also included representatives from the American Short Line and Regional Railroad Association, the Association of American Railroads, the Brotherhood of Locomotive Engineers and Trainmen, the United Transportation Union, and the Volpe National Transportation Systems Center. The CAWG held its first meeting on July 17-18, 2002.

Initially, CAWG agreed to review the data available for 49 incidents where human factor causes contributed to the accidents. The 49 main line train collisions occurred during a five-year period from January 1, 1997, through December 31, 2001, and resulted in 12 employee fatalities, 52 passenger and 97 employee injuries, with an estimated $54 million in track, signal, and equipment damage. At the CAWG meeting in August 2003, the database was expanded by adding qualifying collisions that had occurred during 2002. This expanded the CAWG database to 65 qualifying incidents occurring between January 1, 1997, and December 31, 2002. All selected incidents contained the following criteria: (1) each collision must have occurred during mainline operations (eliminating yard operations); (2) except for Amtrak operations, each collision must have involved a train that had at least two crewmembers on the locomotive consist (eliminating switching operations); and (3) each collision must have involved a train exceeding its authority by passing a stop signal, failing to comply with a signal requiring restricted speed or by entering territory without train order, track warrant or direct traffic control authority (eliminating vandalism, and most adjacent track cases).

The CAWG review will provide the railroad industry with an opportunity to re-examine its safety practices and policies based on any commonalities found, which will help ensure that every reasonable precaution is being taken to prevent future collisions.] Mr. Gallant says in 2005, an initial CAWG Report was critiqued by the AAR. In September 2005, CAWG accepted the AAR's suggested modifications. Upon further review, additional recommendations were made by the AAR. When these additional recommendations were not accepted by CAWG, the AAR withdrew its sponsorship of the final report. Mr. Gallant explains that there are eight sections to the CAWG Report. He says there will be a slide show presentation of the CAWG Report at the next full RSAC meeting.
Mr. Gallant asks for questions.

James Stem (UTU) congratulates FRA for staying the course to get the CAWG Report out. He says it was the same "Team" that got the Switching Operations Fatality Analysis (SOFA) Report out. He says he has served on many RSAC WG's. He has found that a small group of labor, management, and FRA representatives can sit down, when an impasse is reached within the WG, and usually, issues can be resolved. He says a small group can get down to problem solving. He hopes that the AAR removed its name from the CAWG Report only for this one issue. He believes that the CAWG Report will make recommendations that will help protect lives and prevent accidents.

Tom Pontolillo (BLET) adds that RSAC WG's tend to look at issues from a "forest" viewpoint. He says the CAWG Report lifted out 65 "trees" and looked at each from a ground-up approach as the Working Group looked for ways to manage the "forest."

Chairperson Cothen thanks the RSAC for its comments on the CAWG Report. He says this study is the type of root cause analysis that FRA is looking for. He says that at the end of the day, FRA does not look for everybody to agree on everything. For the next meeting agenda topic, Chairperson Cothen says the issue of non-accident releases of

hazardous materials (hazmat) has been a concern at FRA for a long time. He says FRA is constantly working with other Agencies to address this issue. He asks William Schoonover, FRA–Office of Safety Staff Director of Hazardous Materials Division, for a presentation on FRA's Non-Accident Release Reduction Program.

William Schoonover (FRA) uses a series of Microsoft PowerPoint presentations, projected onto a screen. Photocopies 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. Under the viewgraph, "Accident Trends," Mr. Schoonover explains that between calendar year 2000 and calendar year 2005 there were very few accidents that resulted in the release of hazmat. In calendar year 2000, train accidents resulted in 75 cars releasing hazmat; in calendar year 2005, train accidents resulted in 44 cars releasing hazmat.

Under the viewgraph, "Non-Accident Release Trends," there has been a 41 percent reduction in non-accident releases of hazmat between calendar year 1996, and calendar year 2005. Mr. Schoonover says bulk shipments account for about 85 percent of hazmat shipments by rail, and 94 percent of non-accident hazmat releases in calendar year 2005. Under the viewgraph, "HM-229 Regulatory Changes," the Final Rule became effective January 1, 2005. Changes included the following: (1) electronic filing of reports; (2) revisions to the reporting form; (3) expansion of reporting requirements to entities other than carriers; (4) expansion of exceptions; (5) notification to shippers; (6) reporting of undeclared shipments; and (7) criteria for updating reports.

Under the viewgraph, "Update Requirements," a Hazmat Incident Report must be updated within one year of the date of occurrence of the incident whenever: (1) a death results from injury caused by hazmat; (2) there was a misidentification of the hazmat or packaging information on a prior incident report; (3) damage, loss, or related cost that was not known when the initial incident report was filed becomes known; or (4) damage, loss, or related cost changes by $25,000 or more, or 10 percent of the prior total estimate, whichever is greater.

Under the viewgraph, "Railroad Categorizing," Mr. Schoonover explains that U.S. Rail carriers categorize hazmat releases using a risk ranking index referred to as the Non-Accident Release Ranking Index (NARRI) Rating, which uses various factors to rank the results of a release. These factors include: (1) prevention factors; (2) shipping package factors; (3) product hazard factors; (4) extenuating product risk factors; (5) human impact factors; and (6) environmental impact factors. FRA investigates any incident with a NARRI Rating above 100.

Under the viewgraph, "FRA Focus Issues," Mr. Schoonover explains that about 10 percent of non-accident hazmat releases are from a single product, i.e., bulk alcohol shipments. Under the viewgraph, "The Facts," there is increased demand for ethanol for use as a fuel additive to gasoline for motor vehicles. This helps reduce foreign energy demands. Consequently, new ethanol production facilities have been built (20 new facilities since 2000). There are currently 94 facilities that produce ethanol. Under the viewgraph, "The Future," there are 28 additional ethanol facilities in development in 13 States. Also, 9 of the 94 existing facilities have expansion plans under development. When all of these projects are complete, annual production capacity of ethanol will be 6 billion gallons, of which about 95 percent will move by rail.

Under the viewgraph, “Alcohol Action Plan,” FRA intends to focus inspection efforts with alcohol shippers and the Renewable Fuels Association. There is a $200,000 research program specific to alcohol. Mr. Schoonover notes that the capillary action of alcohol is different from water. Under the viewgraph, “Additional Program Plans,” Mr. Schoonover notes that the latest data show that 30 percent of non-accident releases of hazmat are tied to 53 companies in 64 different locations. He repeats FRA’s intention to investigate all non-accident hazmat releases with a NARRI Rating greater than 100. FRA will review employee injuries from hazmat releases. As a result of FRA’s investigation of releases, the Agency will seek appropriate legal remedies. Finally, in support of industry efforts, FRA will develop a “best practices/found solutions” approach to reduce non-accident-related hazmat releases. Mr. Schoonover asks for questions.

With no questions of Mr. Schoonover, Chairperson Cothen offers a status report on other FRA regulatory actions. He says the Locomotive Crashworthiness NPRM is undergoing clearance at the Office of Management and Budget. The Occupational Noise NPRM is at the Office of the Secretary of Transportation (OST) awaiting clearance. Finally, the Train Horn NPRM is awaiting clearance at OST. Chairperson Cothen says that the staff at FRA is also working on fine tuning rules for accident/incident reporting. He asks if RSAC Member Francis G. McKenna (Tourist Railway Association, Incorporated) is still in attendance? He relates that Mr. McKenna was concerned that small railroads were required to spend $2 to have every Accident/Incident Report notarized. After researching the United States Code, Mr. McKenna found a process to relieve small railroads of this requirement. FRA is currently revising its forms to provide for use of affirmations. Chairperson Cothen also notes that the AAR has requested FRA to look at electronic recordkeeping overall. Many carriers have requested waivers from maintaining “paper” records. The AAR says FRA should not be in a “waiver mode” forever. Chairperson Cothen says FRA staff is working on a provision to allow electronic recordkeeping.

Fran Hooper (APTA) asks that before FRA’s staff moves forward on electronic recordkeeping, they should look at whether the Agency understands the way commuter railroads are complying with these Standards as well as how the Class I railroads comply with these Standards.

Timothy DePaepe (BRS) asks for an explanation of what is meant by electronic recordkeeping.

Chairperson Cothen responds that the AAR has raised a larger obligation of FRA to comply with requirements of the Government Paperwork Elimination Act.

Mr. DePaepe asks if labor representatives are being asked about this topic.

Chairperson Cothen responds, “Yes, particularly on railroads where waivers are in place.”

Mr. DePaepe asks for BRS involvement in this process.

In other regulatory activities, Chairperson Cothen says FRA is waiting for validation of a model on fatigue issues. The Agency is also working on sleep disorder issues. Finally, FRA is waiting for a report on Medical Standards for railroad employees.

David Elliott (HSGTA) asks for clarification of the three rules undergoing clearances (i.e., Locomotive Crashworthiness, Occupational Noise, and Train Horn).

Chairperson Cothen repeats the review status for the rules for Locomotive Crashworthiness, Occupational Noise, and Train Horn NPRM's. He also mentions that other Agency reports are under development, including the Report on Push-Pull Train Operations.

Chairperson Cothen asks for additions or corrections to the October 11, 2005, Minutes for the 27th RSAC meeting.

John Drake (AAR) asks to correct the Minutes to identify his organization as CSX Transportation, not Norfolk Southern Corporation, on Page 22.

Chairperson Cothen says that change will be noted.

> WITH NO ADDITIONAL CORRECTIONS TO THE OCTOBER 11, 2005, RSAC MEETING MINUTES, CHAIRPERSON COTHEN SAYS THE MEETING MINUTES FOR THE 27TH RSAC MEETING ARE ADOPTED, AS CORRECTED.

Chairperson Cothen requests that the full RSAC meet in May 2006. He suggests May 18, 2006.

Bob VanderClute (AAR) says there is a Rail T&I (Transportation and Infrastructure) Subcommittee meeting on May 18, 2006. He adds, the Harriman Awards are scheduled for May 16, 2006.

Timothy DePaepe (BRS) asks if there could be a tentative date set for a September 2006, full RSAC meeting.

Fran Hooper (APTA) says APTA's Annual Meeting is scheduled for October 8-11, 2006.

Chairperson Cothen notes members concerns. He says member organizations can send alternates to the full RSAC meeting, if members have other commitments. He says FRA is not prepared to commit to a meeting date for September 2006. With no further business, Chairperson Cothen adjourns the 28th RSAC Meeting at 2:55 p.m.

M E E T I N G A D J O U R N E D 2:55 P.M.

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

Respectively submitted by John F. Sneed, Event Recorder.

Initial DRAFT comparison of Adjacent Track NPRM with Consensus Language
R. Inclima, BMWED 7/21/08

NOT FOR DISTRIBUTION

CONSENSUS WG LANGUAGE REACHED 2/06

Working group consensus
Text crafted by FRA to formalize concepts accepted by the working group
~~Existing text which was deleted by consensus~~

Sec. 214.335 On-track safety procedures for roadway work groups.

(a) No employer subject to the provisions of this part shall require or permit a roadway worker who is a member of a roadway work group to foul a track unless on-track safety is provided by either working limits, train approach warning, or definite train location in accordance with the applicable provisions of Secs. 214.319, 214.321, 213.323, 214.324, 214.325, 214.327, 214.329 and 214.331 of this part.

(b) No roadway worker who is a member of a roadway work group shall foul a track without having been informed by the roadway worker responsible for the on-track safety of the roadway work group that on-track safety is provided.

~~© Roadway work groups engaged in large-scale maintenance or construction shall be provided with train approach warning in accordance with §214.327 for movements on adjacent tracks that are not included within working limits.~~

(c) On-track safety is required for adjacent controlled track within 19 feet of the centerline of the occupied track when roadway work group(s) consisting of roadway workers on the ground and on-track self-propelled or coupled equipment are engaged in a common task on an occupied track:

(1) Except as provided by paragraph (c)(3) of this section, when trains are cleared through working limits on an adjacent controlled track, or when watchman/lookout warning in accordance with section 214.329 is the form of adjacent on-track safety, roadway workers shall occupy a predetermined place of safety and all on-ground work and equipment movement activity within the fouling space of the occupied track shall cease upon notification of pending adjacent track movement (working limits) or upon receiving the watchman/lookout warning.

(2) When single or multiple movements are cleared through adjacent controlled track working limits, on-ground work and equipment movement on the occupied track may resume only after all such movements on adjacent track have passed each component of the Roadway Work Group(s). If the train stops before passing all roadway workers, the roadway worker in charge shall communicate with the engineer prior to allowing the work to resume.

(3) When single or multiple movements are cleared through adjacent controlled track working limits at a speed no greater than 25 mph, work performed exclusively between the rails of the occupied track, or to the field side of the occupied track with no adjacent track, may continue upon notification of each roadway worker of movement on adjacent track. On-ground work shall not be performed within 25 feet to the front or 25 feet to the rear of roadway maintenance machine(s) on the occupied track during such adjacent track movement.

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Comment [RAI1]: This existing language of Section 214.335 (c) has been deleted by consensus to remove any references to "large scale maintenance or constuction." New 214.335 (c) in shaded text below requires mandatory adjacent track protection for tracks within 19' centerline of the occupied track where men and equipment are are engaged in a common task.

Comment [RAI2]: The NPRM deletes the current definition of Adjacent Track which states, "adjacent track means two or more tracks with track centers spaced less than 25 feet apart." This was never agreed to by the working group. Labor strongly advocated for the preservation of the 25' definition, arguing that the 19 foot "trigger" in the consensus (new) 214.225 (c) laguage was included in the existing definition of "track centers spaced less than 25 feet apart." BNSF and UP have a lot of trackage built with 25 foot centers between tracks. Thus, eliminating the current definition of adjacent track will effectively prohibit an RWIC from establishing adjacent track protection on tracks that may be within 19 foot and 25 foot center lines. In other words, where track centers are 19.5 foot, it no longer will meet the definition of adjacent track and therefore, no adjacent track protection is comtemplated within the revised NPRM. In addition, the NPRM change of the definition of Adjacent Track renders all yard tracks and other non-controlled track from being considered to have adjacent tracks, thus removing adjacent track protection … [1]

Comment [RAI3]: The consensus language requires all on-ground work and equiment movement on the occupied track to cease, except that certain work may continue to be performed under (c) (3) where trains are moving at less than 25 MPH.

Comment [RAI4]: When single or multiple movements are cleared through adjacent track working limits, it was agreed by consensus that "on-ground work and equipment movement on the occupied track may resume only after all such movements on adjacent track … [2]

Comment [RAI5]: Labor agreed to allow certain work activities while trains pass at 25 MPH or Less. Again, this provision was incorrectly and inappropriately expanded within the NPRM to allow work to resume once the head end passes for movements gr … [3]

(d) Equipment may not foul an adjacent controlled track unless protected by working limits and there are no movements.

(e) The mandatory provisions for adjacent controlled track protection under this subpart are not applicable work activities involving:

(1) A hi-rail vehicle as defined in Sec. 214.7, provided such hi-rail vehicle is not coupled to railroad cars. Where multiple hi-rail vehicles are engaged in a common task, the on-track safety briefing shall include discussion of the nature of the work to be performed to determine if adjacent controlled track protection is necessary. Nothing in this subpart prohibits the roadway worker in charge of the hi-rail vehicle from establishing adjacent controlled track protection, as he/she deems necessary;

(2) On-ground roadway workers exclusively performing work on the field side of the occupied track; or

(3) Catenary maintenance tower cars with roadway workers positioned on the ground within the gage of the occupied track for the sole purpose of applying or removing grounds. Nothing in this subpart prohibits the roadway worker in charge of the catenary maintenance tower car from establishing adjacent track protection, as he/she deems necessary.

###

NPRM Language as published in Federal Register July 17, 2008

Section 214.335 is amended by removing paragraph (c) and revising the section heading to read as follows:

§ 214.335 On-track safety procedures for roadway work groups, general.

* * * * *

5. New § 214.336 is added to read as follows:

§ 214.336 Adjacent-track on-track safety for certain roadway work groups; procedures, training, and recordkeeping.

(a) *Procedures; general.* Except as provided in paragraph (b) of this section, on-track safety is required for each adjacent track when a roadway work group with at least one of theroadway workers on the ground, is engaged in a common task with an ontrack roadway maintenance machine or coupled equipment on an occupied track. The required on-track safety shall be in accordance with § 214.319 (Working limits, generally); § 214.321 (Exclusive track occupancy); § 214.323 (Foul time); § 214.325 (Train coordination); or § 214.329 (Train approach warning provided by watchmen/lookouts) and as more specifically described in this paragraph(a). If an occupied track has two adjacent tracks, and one of the tracks has one or more adjacent-track movements authorized at 25 mph or less, and the other has one or more concurrent adjacent-track movements authorized at over 25 mph, the more restrictive procedures in paragraph (a)(1) of this section apply. For purposes of this section, ‘‘*adjacent track*’’ means a controlled track whose track center is spaced 19 feet or less from the track center of the occupied track, and ‘‘*occupied track*’’ means the track on which a roadway maintenance

Comment [RAI6]: BMWED requested, and the NPRM adopted, a restructuing of this paragraph (e) (1-3) to clarify the consensus intent that " Nothing in this subpart prohibits the roadway worker in charge from establishing adjacent controlled track protection, as he/she deems necessary." This clarification was added in the NPRM to clarify and preserve the RWIC right to establish adjacent track protection as he/she deems necessary (i.e., not just limited to high-rail vehicles and catenary trucks). However, with the removal of the current definition of Adjacent track from the NPRM, this clarification is rendered meaningless because an adjacent track is defined under the NPRM as 19' or less. Thus, under the construct of the NPRM, a track with center line of 19.5' would no longer be considered an "adjacent track" and therefore the provisions providing " establishing adjacent controlled track protection, as he/she deems necessary" would not apply for any tracks greater than 19' center line.

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Comment [RAI7]: For purposes of this subsection (i.e., 214.236) this would be fine to define the 19 foot "trigger" for mandatory adjacent track protection. However, with the removal of the existing definition of adjacent track (25 foot track centers) in the NPRM, the Supervision and Communication section on adjacent track (See NPRM 214.315) would only apply to those adjacent tracks within the 19' definition of the NPRM. Again, a track with centers of 19.5 foot would be exempt because it will not meet the new non-consensus NPRM definition of 19' or less.

machine or coupled equipment is located while engaged in a common task with a roadway work group.

(1) *Procedures for adjacent-track movements over 25 mph.* If a train or other on-track equipment is authorized to move on an adjacent track at a speed greater than 25 mph, each roadway work group to which this section applies must comply with the following procedures:

(i) Each roadway worker in the roadway work group shall cease any on ground work and movement of any roadway maintenance machine or coupled equipment in the fouling space of the occupied track and the adjacent track, and occupy a predetermined place of safety upon receiving—

(A) A watchman/lookout warning, if on-track safety through train approach warning (§ 214.329) has been established on the adjacent track; or

(B) A notification in accordance with § 214.319(c) that the roadway worker in charge intends to authorize one or more train or other on-track equipment movements through the working limits on the adjacent track, if adjacent-track on-track safety has been established through working limits alone.

(ii) A component of a roadway work group may resume on-ground work and movement of any roadway maintenance machine or coupled equipment on or fouling the occupied track only after the head-end of all trains or other on-track equipment moving on the adjacent track (either authorized through the working limits by the roadway worker in charge or for which a watchman/lookout has provided a warning) has passed and remains ahead of that component of the roadway work group; however, if the train or other on-track equipment stops before its head-end has passed all of the roadway workers in the roadway work group (or if a roadway worker in the roadway work group moves to a position on or fouling the occupied track in advance of the head-end of the adjacent-track movement), the work to be performed on or fouling the occupied track ahead of the train or other on-track equipment on the adjacent track may resume only—

(A) If on-track safety through train approach warning (§ 214.329) is still in effect or has been re-established on the adjacent track; or

(B) After the roadway worker in charge has communicated with the train engineer or equipment operator and obtained or regained control of such train or other on-track equipment, if adjacent-track on-track safety has been established by working limits alone.

(2) *Procedures for adjacent-track movements 25 mph or less.* If a train or other on-track equipment is authorized to move on an adjacent track at a speed of 25 mph or less, each roadway work group to which this section applies must comply with the procedures listed in paragraph (a)(1) of this section, except that the following work may continue:

(i) Work that is performed exclusively while positioned between the rails of the occupied track, provided that any on-ground work is performed more than 25 feet away from the front or rear of any roadway maintenance machine on or fouling the occupied track during such adjacent-track movement;

(ii) Work that is performed exclusively to the field side of the occupied track furthest from the adjacent track where the movement is authorized, provided that—

(A) Either no adjacent track is on that side or on-track safety has been established in accordance with this subpart on any adjacent track on that side; and

Comment [RAI8]: We never agreed to the "head end" provision when trains are passing at greater than 25 MPH. The intent of the consensus agreement for greater than 25 MPH was that work could resume "only after all such movements (i.e., the entire movement(s)) on adjacent track have passed each component of the roadway work group."

Comment [RAI9]: This parenthetical phrase makes no sense. A roadway worker may not foul or enter the space after receiving the warning of an impending movement. The NPRM implies that it is OK to foul a track in advance of the head end approach. Very dangerous message that makes no practical sense.

Comment [RAI10]: The consensus agreement provided that everyone remain clear once the warning or notification of adjacent track movement is received. The consensus agreement states in (c)(2) that " If the train stops before passing all roadway workers, the roadway worker in charge shall communicate with the engineer prior to allowing the work to resume."
. The NPRM languge here really confuses this issue and makes little sense.

Comment [RAI11]: These are the restrictions applicable to performing work when trains are moving at less than 25 MPH. However, the NPRM allow work to continue when trains pass at greater than 25 MPH without even applying these conditions. Again, the consensus agreement was that at greater than 25 MPH work may "resume only after all such movements (i.e., the entire train or trains) on adjacent track have passed each component of the roadway work group.

(B) Any on-ground work is performed more than 25 feet away from the front or rear of any roadway maintenance machine on or fouling the occupied track during such adjacent-track movement.

(3) *Procedures for a roadway maintenance machine or coupled equipment fouling an adjacent track.* A roadway maintenance machine or coupled equipment shall not foul an adjacent track unless working limits have been established on the adjacent track and there are no movements authorized through the working limits by the roadway worker in charge.

(b) *Exceptions to the requirement for adjacent-track on-track safety.* Adjacent-track on-track safety is not required for the work activities described in paragraphs (b)(1) through (b)(3) of this section. Nothing in this section prohibits the roadway worker in charge from establishing adjacent-track on-track safety as he or she deems necessary.

(1) One or more on-ground roadway workers performing work while exclusively positioned on the field side of the occupied track, provided that either no adjacent track is on that side or on-track safety has been established in accordance with this subpart on any such adjacent track.

(2) A hi-rail vehicle on or fouling the occupied track while engaged in a common task with one or more roadway workers on the ground, provided such hi-rail vehicle is not coupled to one or more railroad cars.

(3) A catenary maintenance tower car on or fouling the occupied track that is engaged in a common task with one or more roadway workers positioned on the ground within the gage of the occupied track for the sole purpose of applying or removing grounds.

(c) *Training.* Prior to assigning an employee to perform roadway worker duties for which adjacent-track on-track safety is required, the employer shall provide the employee with—

(1) Training on the procedures for adjacent-track on-track safety required by this section; or

(2) A copy of a railroad-issued bulletin, order, general order, notice, operating rule, or other document adopting the procedures for adjacent track on-track safety required by this section.

Comment [RAI12]: The NPRM correctly restructed the language in this section (b) to make the intent clear that the RWIC had full authority to establish adjacent track protection without limitation. However, with the removal of the existing 25' adjacent track definition, this protective provision is rendered moot.

Comment [RAI13]: As structured in the NPRM, the training for adjacent track will only be applicable to tracks with center of 19' or less. The communications provisions under new 214.315 requiring the job briefing to address " Information about any adjacent track to be fouled" will also only be applicable to controlled tracks within 19 feet. This is also a major departure from consensus due to the NPRM change in the definition of adjacent track.

Page 1: [1] Comment [RAI2] **Richard A. Inclima** **7/25/2008 11:49:00 AM**

The NPRM deletes the current definition of Adjacent Track which states, "adjacent track means two or more tracks with track centers spaced less than 25 feet apart." This was never agreed to by the working group. Labor strongly advocated for the preservation of the 25' definition, arguing that the 19 foot "trigger" in the consensus (new) 214.225 (c) laguage was included in the existing definition of "track centers spaced less than 25 feet apart." BNSF and UP have a lot of trackage built with 25 foot centers between tracks. Thus, eliminating the current definition of adjacent track will effectively prohibit an RWIC from establishing adjacent track protection on tracks that may be within 19 foot and 25 foot center lines. In other words, where track centers are 19.5 foot, it no longer will meet the definition of adjacent track and therefore, no adjacent track protection is comtemplated within the revised NPRM. In addition, the NPRM change of the definition of Adjacent Track renders all yard tracks and other non-controlled track from being considered to have adjacent tracks, thus removing adjacent track protection in all yards and other non-controlled track.

Page 1: [2] Comment [RAI4] **Richard A. Inclima** **7/25/2008 11:52:00 AM**

When single or multiple movements are cleared through adjacent track working limits, it was agreed by consensus that "on-ground work and equipment movement on the occupied track may resume only after all such movements on adjacent track have passed each component of the Roadway Work Group(s)." The NPRM radically changes the intent of this principle by allowing (see NPRM 214.236 (a) (1) (ii)) "A component of a roadway work group may resume on-ground work and
movement of any roadway maintenance machine or coupled equipment on or fouling the occupied track only after the head-end of all trains or other on-track
equipment moving on the adjacent track..." regardless of train speed. This NPRM language treats adjacent track movement over 25 MPH no different that movements traveling less the 25 MPH. The consensus language of the working group established specific provisions for continuing certain work while trains pass at less then 25 MPH in consensus 214.335 (c) (3) with head end speed controlled by the RWIC (see marked up consensus language posted on RSAC website) . The NPRM removes this significant distinction and is not in accord with the consensus principle of "occupy a predetermined place of safety and all on-ground work and equipment movement activity... shall cease" until "all such movements on adjacent track have passed each component of the Roadway Work Group." The intent of consensus agreement for passing trains at greater than 25 MPH was to have the roadway workers on the occupied track focus thier full attention on the passing "movement" (at greater than 25 MPH) from a predetermined place of safety and remain in that state of hightened and focused awareness until the entire movements passes "each component of the Roadway Work Group.

Page 1: [3] Comment [RAI5] **Richard A. Inclima** **7/25/2008 11:57:00 AM**

Labor agreed to allow certain work activities while trains pass at 25 MPH or Less. Again, this provision was incorrectly and inappropriately expanded within the NPRM to allow work to resume once the head end passes for movements greater than 25 MPH (i.e., track speed). Again, the "head-end" speed for Less than 25 MPH is reflected in the marked up consensus agreement posted on the RSAC webpage. No such reference or intent was ever agreed to when movements are passing at over 25 MPH.

Docket No. FRA-2008-0059

Memorandum

U. S. Department of Transportation

Federal Railroad Administration

Date: August 7, 2008

Subject: RWP-NPRM-ex-parte contact

From: Joe Gallant
Operating Practices Specialist

To: RWP-NPRM-File

On Friday, August 1, 2008, I met with James Stem, Alternate Legislative Director-United Transportation Union to catch up on some personal matters and to talk about re-forming the Switching Operation Fatality Analysis (SOFA) Group. However, the subject of the recently released RWP NPRM came up and we talked for a time about that issue. The substance of that conversation is as follows:

Mr. Stem mentioned that the definition of "Adjacent Track" as published was a problem for him and that it was not what he and others expected to see based on open discussions during the RSAC-WG meetings.

He expressed frustration about the language that was presented-ostensibly thought to have captured a point discussed at the prior meeting- then having to re-work it again in order to re-capture the meaning agreed to during the former meeting.

He also indicated that he was startled that the published version of the Working Group's efforts required only the head end to pass workers on the adjacent track prior to work re-starting rather than that the entire train must pass before work could resume.

When asked, he told me that his "dog in the fight" was twofold. First, issues of safety-regardless of craft boundaries-were important to him, including safety concerns about the employees he represents vis-a-vis wide-load restrictions when passing or being passed by another train on an adjacent track. The other issue is one of trust. He thought it important that participants in any Working Group be able to trust that when issues arise, are argued and resolved, that the record reflect accurately the resolution of the issue(s). Further, if there are going to be changes to consensus language agreed to in this or any working group he is associated with, FRA should be clear up front about their intent when making unilateral decisions to nullify the consensus language about those changes to all members prior to issuing any written documentation.

I told him I knew nothing about this NPRM, couldn't comment and hadn't been involved with any aspect of it's development.

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MEMORANDUM

To: Rulemaking Docket No. FRA-2008-0059, Notice No. 1

From: Anna Winkle A.W.
FRA Office of Chief Counsel

Date: August 7, 2008

Re: Conversation with a Representative of the Brotherhood of Railroad Signalmen (BRS)

On July 5, 2008, BRS representative Kelly Haley had a conversation with FRA Deputy Associate Administrator for Safety Standards Grady Cothen. Mr. Haley asked Mr. Cothen if the BRS/BMWED joint request for extension of time would be granted. Mr. Cothen indicated that it was still under review, but he expected that they would get at least some of the time they requested. Mr. Haley then asked if Mr. Cothen was aware of the issues with the proposed rule. Mr. Cothen responded that he was aware of the major differences from the RSAC consensus (resuming work after the head-end passed and the adjacent track definition). Mr. Haley agreed that those were some of the issues, but added the requirement for the employee to sign acknowledging training. Mr. Cothen encouraged Mr. Haley to put all of his issues in writing to the docket.