held on March 31, 1993 was devoted specifically to employee safety and addressed the hazards associated with working adjacent to moving trains and equipment. It was determined that for the purposes of any proceeding, the term "roadway worker" would be used rather than "maintenance of way employee" to describe the group of employees at risk. This term encompasses all employees of a railroad or a contractor to a railroad who construct, maintain, inspect or repair railroad tracks, structures, signal and train control systems, communication systems, utility systems, or any other fixed property of a railroad while in close or potentially close proximity to tracks on which trains or equipment can be operated. The term applies regardless of the craft or class title of the employee, affiliation with any labor organization, or rank within the railroad organization.

Because FRA decided that this issue should be addressed quickly and because the hazards involved relate more closely to employee safety than to track standards, FRA moved roadway worker safety from the track safety standard review (FRA Docket No. RST–90–1) and placed it in FRA Docket No. RSOR 13.

Since 1989, 24 roadway workers have been fatally injured by moving trains or equipment. Ten workers were struck by trains while performing work, four were struck by trains on track adjacent to the work location, five stepped into a train's path, and five were struck by maintenance-of-way equipment. These fatalities are among the following crafts: signal maintainers, machine operators. welders, track foremen, track inspectors, and track laborers. These figures reflect a serious problem that may require changes in railroad operating rules, training and practices. In the past year, the Brotherhood of Maintenance of Way Employes and the Brotherhood of Railroad Signalmen have filed petitions for emergency order and rulemaking that suggest procedures to reduce roadway worker fatalities and injuries.

On June 3, 1994 FRA Administrator Jolene M. Molitoris convened a meeting with all affected industry representatives to discuss what actions the industry and the agency should take to prevent injuries and fatalities among roadway workers. FRA and the industry concluded that extensive input from all interested parties would be necessary to develop a rule that will address both the risk of injury from moving railroad equipment and the operational concerns that the issue presents. Therefore, it was determined that the agency should initiate a negotiated rulemaking to

develop new standards to protect roadway workers.

On August 17, 1994 FRA published a notice of intent to establish an advisory committee (Committee) for regulatory negotiation to develop a report including a recommended proposed and final rule concerning protection for roadway workers (59 FR 42200). The notice requested comment on membership, the interests affected by the rulemaking, the issues the Committee should address, and the procedures it should follow. The notice also announced the intent to seek the services of a professional neutral to facilitate the negotiations and requested nominations for this position from the industry.

FRA received over 30 comments on the notice of intent. None of the comments opposed using regulatory negotiation for this rulemaking; most endorsed the process and included requests to serve on the Committee. Based on this response and for the reasons stated in the notice of intent. FRA has determined that establishing an advisory committee on this subject is necessary and in the public interest. In accordance with Section 9(c) of the Federal Advisory Committee Act, 5 U.S.C. App. I § 9(c), FRA prepared a Charter for the establishment of the Roadway Worker Safety Advisory Committee. On December 27, 1994 the Office of Management and Budget approved the Charter, authorizing the Committee to begin negotiating the provisions of a proposed rule.

II. Mediators

In the notice of intent, FRA stated that it was seeking an impartial mediator to conduct the negotiations. FRA is pleased to announce that the Federal Mediation and Conciliation Service (FMCS) has agreed to provide mediation personnel for this purpose.

III. Membership

In addition to a representative from FRA, the Committee will consist of the following members:

American Public Transit Association (APTA)

The American Short Line Railroad Association (ASLRA)

Association of American Railroads

Brotherhood of Locomotive Engineers

(BLE) Brotherhood of Locomotive Engineers, American Train Dispatchers

Department (ATDA) Brotherhood of Maintenance of Way Employes (BMWE)

Brotherhood of Railroad Signalmen (BRS)

Burlington Northern Railroad (BN) Consolidated Rail Corporation (Conrail) CSX Transportation, Inc. (CSX) Florida East Coast Railway Company (FEC)

Metra

National Railroad Passenger Corporation (AMTRAK)

Norfolk Southern Corporation (NS) Regional Railroads of America (RRA) Transport Workers Union of America (TWU)

Union Pacific Railroad Company (UP) United Transportation Union (UTU)

In order to ensure balance on the Committee, the BMWE and BRS will be represented by more than one individual: five for the BMWE and three for the BRS. FRA was not able to grant requests for multiple seats made by two other organizations. APTA and RRA each submitted two names for membership, and FRA chose one name from each organization. In making those decisions, the agency selected the individuals with operating experience rather than the lawyers that were nominated by APTA and RRA. FRA believes that the Committee will benefit greatly from members who have actual knowledge of railroad operating practices and hands-on field experience with those practices.

FRA regrets being unable to accommodate all requests for membership on the Committee. Several factors, which were listed in the notice of intent, guided FRA's decision to limit the Committee's size to 25. The Committee must be kept to a size that permits effective negotiation, but that ensures all interests a voice in the recommendation adopted. Although FRA would have preferred a smaller Committee, the agency erred on the side of inclusion to be certain that all interests affected by a rule would be represented in this process. Summarized below is FRA's rationale for denying the remaining applications for membership.

The Chicago and North Western Railway Company (CNW) requested representation on the Committee, but unfortunately could not be selected. Other Class 1 railroads on the Committee work with operating procedures, environmental conditions, topographical characteristics, and employee relations that are quite similar to those of CNW. Each of these factors may impact the content of a recommended proposed rule and so it is important that they be fully represented. However, FRA believes that AAR, BN, CSX, Conrail, NS, and UP adequately

The Massachusetts Bay Transportation Authority (MBTA)

represent CNW's interests.