

hazardous materials transportation law, 49 U.S.C. 5701–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (1) The designation, description, and classification of hazardous material;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;
- (3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or
- (5) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subjects under items (1), (2), (3), and (5) above and, if adopted as final, would preempt State, local, or Indian tribe requirements not meeting the “substantively the same” standard. Federal hazardous materials transportation law provides at § 5125(b)(2) that if DOT issues a regulation concerning any of the covered subjects DOT must determine and publish in the Federal Register the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be June 16, 1997 under this docket. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

### C. Regulatory Flexibility Act

This final rule incorporates by reference the 1997–98 ICAO Technical Instructions and Amendment 28 to the IMDG Code. It applies to offerors and carriers of hazardous materials and facilitates the transportation of hazardous materials in international commerce by providing consistency with international requirements. U.S. companies, including numerous small entities competing in foreign markets, will not be at an economic disadvantage by being forced to comply with a dual system of regulation. Therefore, I certify that this final rule will not have a

significant economic impact on a substantial number of small entities.

### D. Paperwork Reduction Act

The requirements for information collection have been approved by the Office of Management and Budget (OMB) under OMB control numbers 2137–0034 for shipping papers and 2137–0557 for approvals. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number.

### E. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

### List of Subjects in 49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

## PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

### § 171.7 [Amended]

2. In § 171.7, in the table in paragraph (a)(3), the following changes are made:

a. Under International Civil Aviation Organization (ICAO), for the entry Technical Instructions for the Safe Transport of Dangerous Goods by Air, the date “1995–1996” is revised to read “1997–1998”.

b. Under International Maritime Organization (IMO), the entry “International Maritime Dangerous Goods (IMDG) Code” is amended by removing the wording “1990 Consolidated Edition, as amended by Amendment 27 (1994)” and adding in its place “1994 Consolidated Edition, as amended by Amendment 28 (1996)”.

Issued in Washington, DC on December 9, 1996, under authority delegated in 49 CFR part 1.

Kelley S. Coyner,

Deputy Administrator.

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## Federal Railroad Administration

### 49 CFR 214

[FRA Docket No. RSOR 13, Notice No. 9]

RIN 2130–AA86

### Roadway Worker Protection

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** FRA is issuing rules for the protection of railroad employees working on or near railroad tracks. This regulation requires that each railroad devise and adopt a program of on-track safety to provide employees working along the railroad with protection from the hazards of being struck by a train or other on-track equipment. Elements of this on-track safety program include an on-track safety manual; a clear delineation of employers' responsibilities for providing on track safety, as well as employees' rights and responsibilities related thereto; well defined procedures for communication and protection; and annual on-track safety training. The program adopted by each railroad would be subject to review and approval by FRA.

**DATES: Effective Dates:** This rule is effective January 15, 1997.

**Compliance Dates:** Each railroad must notify the FRA not less than 30 days before their respective date for compliance. Each railroad must be in compliance with this rule no later than the date specified in the following schedule: For each Class I railroad (including National Railroad Passenger Corporation) and each railroad providing commuter service in a metropolitan or suburban area, March 15, 1997; For each Class II railroad, April 15, 1997; For each Class III railroad, switching and terminal railroad, and any railroad not otherwise classified, May 15, 1997; For each railroad commencing operations after the pertinent date specified in this paragraph, the date on which operations commence.

### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### Introduction

##### *Background*

Concern regarding hazards faced by roadway workers has existed for many years. The FRA received a petition to amend its track safety standards from the Brotherhood of Maintenance of Way Employees (BMWE) in 1990, which included issues pertaining to the hazards faced by roadway workers. This proceeding, however, formally originated with the Rail Safety Enforcement and Review Act, Public Law No. 102-365, 106 Stat. 972, enacted September 3, 1992, which required FRA to review its track safety standards and revise them based on information derived from that review. FRA issued an Advanced Notice of Proposed Rulemaking (ANPRM) on November 16, 1992 (57 FR 54038) announcing the opening of a proceeding to amend the Federal Track Safety Standards.

Workshops were held in conjunction with this effort, to solicit the views of the railroad industry and representatives of railroad employees on the need for substantive change in the track regulations. A workshop held on March 31, 1993 in Washington, D.C., specifically addressed the protection of employees from the hazards of moving trains and equipment. 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 Brotherhood of Maintenance-of-Way Employees 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 removed this issue from the track standards docket, FRA Docket No. RST-90-1 and established a new docket, FRA Docket No. RSOR 13, specifically to address hazards to roadway workers to expedite the effective resolution of this issue.

FRA also determined that standards addressing this issue would be more closely related to workplace safety than to standards addressing the condition of railroad track. Since Railroad Workplace Safety is addressed in 49 CFR Part 214, standards issued for the protection of roadway workers would be better categorized in this section, than Part 213, Track Safety Standards. Accordingly, the minimum standards proposed in this notice would amend Part 214 of Title 49, Code of Federal

Regulations by adding a new subpart, Subpart C, addressing hazards to roadway workers.

FRA convened a Safety Summit Meeting on June 3, 1994 with affected railroad industry, contractor, and labor representatives. This meeting considered certain aspects of FRA accident data involving roadway workers. The meeting also facilitated a discussion of various short-term and long-term actions that could be taken by FRA and the industry to prevent injuries and deaths among roadway workers. One long-range alternative suggested by FRA was to use the negotiated rulemaking process to allow input from both railroad management and labor to develop standards addressing this risk. The agency determined that this was an appropriate subject for a negotiated rulemaking, and initiated this process.

FRA published its notice of intent to establish a Federal Advisory Committee for regulatory negotiation on August 17, 1994 (59 FR 42200). This notice stated the purpose for the Advisory Committee, solicited requests for representation on the Advisory Committee, and listed the key issues for negotiation. Additionally, the notice summarized the concept of negotiated rulemaking including an explanation of consensus decision making. The Advisory Committee would be responsible for submitting a report, including an NPRM, containing the Committee's consensus decisions. If consensus was not reached on certain issues, the report would identify those issues and explain the basic disagreement. Pursuant to negotiated rulemaking, FRA committed the agency to issue a proposed rule as recommended by the committee unless it was inconsistent with statutory authority, agency or legal requirements, or if in the agency's view the proposal did not adequately address the subject matter. FRA agreed to explain any deviations from the committee's recommendations in the NPRM.

FRA established an Advisory Committee in accordance with the Federal Advisory Committee Act, 5 U.S.C. 581, based on the response to its notice. On December 27, 1994, the Office of Management and Budget approved the Charter to establish a Roadway Worker Safety Advisory Committee, enabling the committee to begin negotiations. FRA announced the establishment of this Advisory Committee, with the first negotiating session to be held on January 23-25, 1995 (60 FR 1761). FRA chose the Federal Mediation and Conciliation Service to mediate these sessions, and administrative support was acquired to

carry out organizational and record keeping functions.

The twenty-five member Advisory Committee was comprised of representatives from the following organizations:

- American Public Transit Association (APTA)
- The American Short Line Railroad Association (ASLRA)
- Association of American Railroads (AAR)
- Brotherhood of Locomotive Engineers (BLE)
- Brotherhood of Locomotive Engineers, American Train Dispatchers Department (ATDD)
- Brotherhood of Maintenance of Way Employees (BMWE)
- Brotherhood of Railroad Signalmen (BRS)
- Burlington Northern Railroad (BN)
- Consolidated Rail Corporation (Conrail)
- CSX Transportation, Inc. (CSX)
- Florida East Coast Railway Company (FEC)
- Federal Railroad Administration (FRA)
- Northeast Illinois Regional Railroad Corporation (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)

The Advisory Committee held 7 multiple-day negotiating sessions that were open to the public, as prescribed by the Federal Advisory Committee Act, 5 U.S.C. 581. In an effort to assist this proceeding, information was presented at the first Advisory Committee meeting by committee members who had participated earlier in an independent task force. This task force, comprised of representatives of several railroads and labor organizations, had met during the preceding year to independently analyze the issue of on-track safety. The findings and recommendations of the task force were considered along with information presented by other Advisory Committee members.

The Advisory Committee reached consensus on 11 specific recommendations and 9 general recommendations to serve as the basis for a regulation. These recommendations were incorporated into a report that was submitted to the Secretary of Transportation and the Federal Railroad Administrator on May 17, 1995. This report did not include an NPRM, as originally conceived, but established the basis for the proposed rule.

The Advisory Committee held one additional two-day session, and reached consensus on a proposed rule that conformed to the recommendations submitted in its report. The Committee recommended that FRA publish that document as a proposed Federal regulation and continue the rulemaking

procedures necessary to adopt its principles in a final rule. FRA published a notice of proposed rulemaking on March 14, 1996 (61 FR 10528). In that notice, FRA specifically solicited comment from contractors and tourist railroads, since these two groups were not represented on the Advisory Committee. (61 FR 10531, 10532) FRA received 15 comments, including a comment from the National Railroad Construction and Maintenance Association (NRC), representing railroad contractors. FRA also received a request for a public hearing in response to the NPRM. A public hearing was held July 11, 1996 where various parties made oral presentations. A final Advisory Committee meeting was held on July 12, 1996 where committee members considered comments submitted to the docket. An NRC representative was present and participated in the discussion.

#### Comments and Responses

##### *Effective Dates*

Several commenters expressed concern that the effective dates listed in the NPRM were not feasible for adoption and implementation of the necessary on-track safety programs, in order to be in compliance with the expected Federal standards. The NPRM provided for staggered effective dates of June 1st, September 1st, and December 1st of 1996. These dates were published as part of the Advisory Committee's recommended language and were appropriate at the time the committee reached its consensus recommendation. The time required to complete this rulemaking necessitates an extended implementation schedule. The final dates included in this publication reflect the date on which FRA expects full compliance. Each railroad must notify FRA of their on-track safety program at least 30 days prior to their respective compliance date. Contractors to railroads are expected to be in compliance with this rule, at the same time that their host railroads are to comply. A reference to section § 214.305 Compliance Dates establishes the final dates for compliance.

##### *Scope of the Rule*

Comments were submitted suggesting that FRA expand the scope of the rulemaking in several ways. One commenter expressed the need to include protection against the hazards of vehicular traffic at highway-rail grade crossings. Another commenter suggested that FRA include contractors who are granted access to a railroad's right of way for work not associated

with the railroad, including duties such as fiber-optic installation and utility installation. The same commenter also suggested that locomotive engineers and conductors be considered roadway workers in order to afford them an opportunity to challenge on-track safety procedures.

FRA identified major issues for negotiation and solicited comments regarding additional issues that would be appropriate for consideration regarding the potential scope of this rule, as early as August of 1994, when it issued its Notice of Proposal to Form a Negotiated Rulemaking Advisory Committee and Request for Representation (59 FR 42200). FRA received comments to this notice devoted solely to membership on the committee. No comments were submitted addressing the potential scope of this rule. Once negotiations began, the Advisory Committee deliberated at length regarding the appropriate scope of this rule, as well (61 FR at 10531). The Advisory Committee purposely chose not to address all conceivable hazards, but studied the available data regarding safety issues and selected those circumstances presenting the greatest risk to roadway workers. The issues presented by these commenters may be valid, but extend beyond the scope of the issues highlighted by the data reviewed.

Neither FRA nor the Advisory Committee discussed or intended to address the hazards that vehicular traffic at grade crossings pose for roadway workers. The accident data studied does not provide information regarding this type of hazard. FRA's accident expertise has led it to believe that roadway workers are, rarely, if ever, struck by vehicular traffic at grade crossings. In addition, consultation with persons currently working in the roadway work environment has not focused FRA's attention on the hazards of vehicular traffic as a significant issue. Although some risk may exist, FRA believes that the risk is not significant and that adequate voluntary measures are being taken to protect roadway workers at highway rail grade crossings.

The issue of protecting contractors who are working on the right of way, but not conducting work associated with the railroad was at least contemplated by FRA. However, in most instances these contractors are instructed by each host railroad not to foul the track. In many instances, railroads provide watchmen to ensure that these workers adhere to this instruction. Additionally, if the work to be performed, potentially causes these

workers to foul the track, railroads will often provide protection to make sure that these contractors are safe, while in foul of the track. Perhaps most important is the fact that these contractors are rarely out on the right of way, limiting the risk to which they subject themselves. This situation is clearly distinguishable from that of a roadway worker whose daily work environment requires him or her to perform duties on the right of way, under traffic, virtually the duration of the working day. FRA believes that the current situation, where contractors who are not conducting work associated with railroad operations, coordinate with railroads for safety procedures while working on the right of way is preferable to Federal mandate at this time.

Finally, engineers and conductors are currently covered by this regulation and afforded the right to challenge on-track safety procedures when performing as roadway workers. In instances where engineers and conductors are not functioning as roadway workers, but functioning as train and engine crew members, the rationale for affording them the right to challenge on-track safety procedures that do not affect them is unclear. In addition, all railroad workers when confronted by hazardous conditions related to the performance of their duties are protected by Federal statute wholly independent of this regulation.

##### *Jurisdiction*

Two comments were submitted essentially requesting clarification regarding FRA jurisdiction. Specifically, clarification was sought regarding whether these rules apply on track that is not subject to FRA jurisdiction and not on the general system of railroad transportation. As noted in § 214.3, Application, FRA is concerned with track that is part of the general system of railroad transportation. For further information regarding FRA's exercise of jurisdiction, one should consult 49 CFR Part 209, Appendix A. This Federal regulation, as all other rules issued under FRA authority will only apply in instances where FRA exercises jurisdiction, on track that is part of the general system.

##### *On Track Safety Programs*

One commenter inquired whether contractors would be in compliance with the rules by adopting the on-track safety programs of the host railroad. The committee understood the circumstances under which most contractors conduct their work and in an effort to promote uniformity and

safety, as well as minimize the burden on contractors to railroads, the committee concluded that contractors should not devise their own complete programs in most instances, but would be expected to comply with programs established by the railroads on which they are working (61 FR 10531). Contractors would be responsible for ensuring that their employees received the appropriate training and that their employees complied with the appropriate railroad's program, but would not necessarily need their own FRA approved program.

#### *Definition of Roadway Worker*

Several commenters suggested the definition of roadway worker be reworded to refer to a worker "whose duties include and who is engaged in" to clarify that the rule applies to workers performing their roadway worker tasks. This suggestion essentially adds the qualifier "who is engaged in" to the definition that appeared in the NPRM. FRA believes that this qualifier would severely limit application of the rule due to the difficulty in determining when a worker becomes engaged in a task. In addition, the Advisory Committee determined that the term roadway worker was intended to describe employees who are covered and not to describe when this coverage begins and ends. Other provisions of the regulation enumerate the instances in which a worker must have some form of on-track safety and which methods are permissible. Neither the committee nor FRA was persuaded that this addition to the definition would be useful.

#### *Restricted Speed and Lone Workers*

Two commenters expressed their view that restricted speed should be considered a form of on-track safety protection. These commenters also expressed their intention to apply for waivers to the lone worker provisions and utilize restricted speed as an alternative method of protection. The committee determined after much deliberation that a blanket provision allowing restricted speed as an on-track safety measure for the protection of roadway workers would be ineffective (61 FR 10537). The NPRM also noted that unusual circumstances at certain locations where this measure might be considered sufficient would have to be addressed by the waiver process. Nothing in the comments provides a basis for changing that initial assessment. Beyond acknowledging the waiver process as the appropriate avenue for such concerns, FRA cannot speculate regarding the outcome of waiver petitions the agency may receive

at some future date. If such petitions arrive, FRA will, as with any other waiver petition, evaluate the operational facts presented by the petitioner and determine whether granting a waiver is appropriate.

Two additional comments were made regarding the lone worker provisions. These commenters stated that the prohibition on using individual train detection within manual interlockings, controlled points, or remotely controlled hump yards is unduly restrictive. They said that roadway workers should be allowed to use individual train detection for inspection purposes at any location where sight distance, background noise, and adjacent track constraints are not present. These commenters expressed concern that this extreme limitation on the use of individual train detection may have a negative impact on safety. The commenters believe that when lone workers are required to seek methods other than individual train detection for on-track safety and are unable to obtain them, they will not inspect. Essentially, these commenters fear that a tendency to inspect these locations less frequently will emerge, if lone workers are forced to seek other methods of on-track safety. They also stated that the relevant accident data are not compelling since, they do not show even one death involving a lone worker inspecting at a controlled point, manual interlocking and/or remotely controlled hump yard. Most important, the rule itself gives lone workers using individual train detection the right to secure more restrictive on-track safety protection, whenever they deem it necessary. The commenter also stressed that a railroad that considers it appropriate can restrict the use of individual train detection at certain locations in its On-Track Safety Programs. Lastly, a suggestion was made during the final Advisory Committee meeting to at least allow the use of individual train detection for inspections at single siding, single track controlled points (usually a simple junction where there is only one switch, and three signals). Consensus was not reached to change the original recommendation.

The Advisory Committee recommended that the NPRM restrict the use of individual train detection in interlockings and controlled points. This recommendation was adopted and incorporated into the proposed rule. The Advisory Committee reached a consensus on this issue after much debate. By reaching consensus, the Advisory Committee acknowledged the safety benefits of this provision.

FRA is not persuaded that allowing the use of individual train detection at these locations would enhance safety, and in fact, believes that it would compromise safety. The use of individual train detection does not reduce or lower the risk of being struck by a train, since workers are not assured that a train will not operate over track on which they are working. This method of on-track safety should therefore be limited to locations where the risks associated with the roadway work environment are fairly minimal. FRA has provided statistical data indicating that controlled points, manual interlockings and remotely controlled hump yards are not areas of low roadway risk.

The Advisory Committee was not willing to disturb its previous consensus to limit the use of individual train detection. FRA is of the independent belief that restricting individual train detection is based on sound safety principles and is not persuaded to change this provision. First, the appropriate safety data, indicates that several employees (admittedly not lone workers) who were working in interlockings and controlled points, and had relied on their ability to see and hear an approaching train in time to retreat from the track (essentially individual train detection) were killed. In many cases, these employees had the right to establish more restrictive protective measures, but failed to exercise that right. Although the comments accurately state that there is no record of fatalities to lone workers using individual train detection while working in controlled points in the accident data reviewed by the committee, this assertion is misleading. Eleven (11) fatalities occurred within interlockings or controlled points where workers were being afforded no more protection than that of a lone worker using individual train detection. The fact that these people were not lone workers is irrelevant. The important fact is that they were relying for safety solely on their own ability to see and hear an approaching train.

Finally, FRA is not persuaded that inspections should be allowed using individual train detection at single siding, single track controlled points. The distinction between inspections and other work in the rail industry is imprecise. The term entails both the examination of systems and apparatus and the performance of minor repairs and adjustments to ensure conformance with prescribed standards. For example, a track worker performing a track inspection may examine track structure, take measurements, install bolts and

replace broken angle bars. A signal worker performing a switch inspection may measure tolerances, make adjustments to the switch machine and replace worn lock rods. In addition, this type of controlled point accounts for a significant portion of the affected locations in the U.S. FRA has decided that the reasoning for restricting the use of this on-track safety method was sound and does not merit modification.

#### *Preemption*

Comments were submitted addressing the potential preemptive effect of this rule. One commenter wanted FRA to expressly state that the provision requiring an audible warning from trains preempts state and local whistle ban laws. FRA believes there is no need to include rule language indicating that state and local whistle bans are preempted. FRA could potentially include language in all provisions of this rule, and all others, stating that any state and local rules covering the same subject matter as the identified Federal regulatory provision are preempted. Instead, FRA has issued a general statement regarding the preemptive effect of all the provisions of the rule in § 214.4. In addition, the section-by-section analysis corresponding to § 214.339, Audible Warning from trains, expressly states FRA's intention to preempt state and local whistle ban ordinances. Although preemption decisions in any particular factual context are a matter for courts to resolve, courts generally afford great deference to the subject matter the appropriate regulatory agency intended to cover. In this instance, the rulemaking record establishes FRA's intent to cover the same subject matter as state and local whistle bans in the section-by-section analysis and the Federalism Assessment which acknowledges potential Federalism implications that was prepared for the docket at the NPRM stage of this rulemaking. (61 FR at 10542). FRA notes that no comments were submitted to the docket substantively in opposition to this provision requiring audible warnings. States and local governments did not respond to the NPRM with concerns regarding this provision potentially in conflict with their whistle ban orders.

Additional comments regarding preemption focused on this regulation's impact on state clearance requirements. The NPRM uses the term *fouling a track* to essentially specify the proximity to railroad track at which an individual or equipment could be struck by a moving train or on-track equipment. Conversely, state clearance requirements establish

specifications to govern the minimum distance between track and fixed structures. Although the two concepts, proximity of humans and equipment to track and proximity of fixed structures to track, are distinguishable, the potential for misinterpretation of the Advisory Committee's intent persuaded the agency to address this issue. To clarify the situation, FRA wants to explicitly state that FRA and the Advisory Committee did not intend to affect state clearance requirements.

#### *Use of Universal Marker for Exclusive Track Occupancy*

One commenter suggested that FRA establish a universal marker to denote exclusive track occupancy zones. Although this suggestion may promote industry-wide uniformity which has some measure of appeal, individual railroads are in the best position to assess the appropriate symbol to incorporate into their existing operating rules and new on-track safety program. While analyzing this suggestion, FRA realized that the additional burden on the railroads of designing and securing uniform symbols or markers would render no substantial benefit above those symbols currently used by each railroad. FRA made a conscious decision to allow railroads to utilize the flags or signals that are prescribed in their current operating rules.

#### *Inaccessible Track*

One commenter suggested changing the language of the provision regarding inaccessible track to read, "Inaccessible track shall be defined by one or more of the following physical features." \* \* \* This commenter was attempting to clarify that establishment of inaccessible track does not require use of the same physical feature at each entry point. The Advisory Committee reached consensus on this suggestion and recommended incorporation of this concept into the final rule. The suggested language is not adopted precisely as presented. Instead, FRA drafted language clarifying that inaccessible track can be established by using any of the features listed in the provision at any possible point of entry. Essentially, a flagman could be used at one entry point, while a secured switch could be used at another entry point.

FRA has independently added another method to restrict entry to inaccessible track, in § 214.327(a)(4). That method recognizes that where a roadway worker has established working limits on controlled track, the existence of those working limits can be used to restrict entry of trains or equipment onto non-controlled track

that connects to the controlled track that is within the working limits. At its simplest, this provision would permit a roadway worker who has established exclusive track occupancy on a main track to occupy side tracks and yard tracks that connect exclusively with the main track, provided that no operable locomotives or other equipment are located on those non-controlled tracks. Without this provision, the roadway worker would most likely have been required to spike and tag all switches leading to the non-controlled tracks, even though assurance had been obtained that no trains would arrive at those two switches.

Another legitimate use for this provision would exist in a remotely controlled hump facility, where switches at the hump end of the classification tracks can be remotely lined and secured away from the working limits, but the manual switches at the other end would have to be spiked and tagged. If a form of controlled track were established at the far end, requiring the authority of a control operator to enter a classification track, the requirements of this section could be met.

#### *Flag protection*

FRA has independently revised the provisions for exclusive track occupancy to accommodate circumstances in which a roadway worker may use this method to establish working limits when unable to communicate with the train dispatcher or control operator. The provisions for use in these circumstances incorporate either flag protection, or the control of signals by the roadway worker.

FRA understands that the Advisory Committee intended to permit the use of flag protection for immediate protection of unsafe track conditions and the roadway workers who are correcting those conditions. Flag protection has been used by railroads for many years to protect trains from other trains or unusual conditions, and is often the first means available to quickly establish protection. The operating rules under which this method is used are well established, and FRA has no evidence that they are not effective for this purpose, regardless of whether the train dispatcher or control operator is notified beforehand.

In some locations, such as some automatic interlockings and moveable bridges, railroad employees are able to control the signals governing train movements and cause them to display an aspect that indicates "Stop." For instance, a roadway worker who performs an inspection at an automatic

interlocking might be able to open a control that prevents any signals at that location from clearing for a train, and would thereby receive protection within the limits of the interlocking. This protection would not depend upon the authority of a train dispatcher or control operator, but would be obtained directly by the roadway worker through the signal system. In the same manner, a bridge tender on a moveable bridge might be able to obtain protection within the interlocking limits on the bridge by withdrawing the bridge locks, causing the signals to assume their most restrictive indication. In either case, the rules and instructions of the railroad might or might not require permission from the train dispatcher or control operator, but such permission would not be a regulatory requirement for the establishment of working limits through exclusive track occupancy under these circumstances.

It must be carefully noted that the term, "aspect that indicates 'Stop'" does not include aspects that permit a train to proceed at restricted speed, or to pass the signal under any other circumstances without flag protection. Railroad programs must provide adequate protection for roadway workers who have operated signals directly, without the knowledge of the train dispatcher or control operator. Particular concern arises in a case where a train dispatcher or control operator may authorize a train to pass a signal at restricted speed while a roadway worker is protected by that signal. FRA would consider that a rule which requires a member of the train crew to precede the train through the limits of the interlocking would adequately address that concern.

#### *Training*

A comment was submitted suggesting that each roadway worker receive cross-training for all roadway work positions. The commenter envisioned potential misuse of the training and qualification provisions to circumvent collectively bargained seniority rights. It would be inappropriate for FRA to mandate training for potential promotions. FRA can and does require that employees have the requisite training and qualification for the duties of their current positions. During discussions involving this concern, the Advisory Committee agreed that railroads should employ as universal an approach to training as possible. However, it might be inefficient and costly to train roadway workers for duties which they never perform, in anticipation of a potential promotion at some future date. FRA also believes that the suggested

cross-training would restrict a railroad's employment of new workers, especially entry-level employees. New employees would have to be trained and qualified for all functions, including the most complex and demanding, before performing any work near the track. FRA did not intend to require such a restriction.

#### *Emergency Procedures/Train Coordination*

Commenters suggested that a provision be added to the rule permitting roadway workers to perform their duties on the track, in an emergency, without establishing one of the prescribed forms of on-track safety. For example, if an ice storm has caused trees to fall across the track and into the signal and communication wires, roadway workers would accompany trains to remove the trees and reestablish communications. Under the proposed rule, the roadway workers would be unable to establish working limits because of the presence of the train and the inability to immediately communicate with the dispatcher. The Advisory Committee discussed this question at the July 12 meeting. Various members clearly stated their need for such a provision, as well as their concerns regarding potential problems associated with it. The Advisory Committee did not reach consensus on the question.

However, FRA has considered the concerns expressed by the Advisory Committee. FRA believes that a form of on-track safety can be arranged whereby a roadway worker or a roadway work group would be protected by the movement authority of a train. The method prescribed by FRA, termed Train Coordination, incorporates all the safeguards necessary to protect the roadway workers from train movements, and addresses the concerns of the commenters as well. FRA independently expanded the concept discussed in the comments and by the Advisory Committee. FRA believes that, rather than restricting this provision to emergency situations, it should be crafted for use in any situation, including cleaning snow out of switches for a specific train, handling materials with a work train, or repairing track at a derailment site. The underlying principle is that a roadway worker should be assured that a train will not arrive unexpectedly at a work location. The provision for Train coordination provides that assurance.

#### *Regulatory Impact*

FRA received written and oral comments focusing on economic aspects

of the NPRM and the regulatory impact analysis. All commenters were supportive of the safety initiatives required by the proposed regulation and acknowledge the requisite safety benefits derived from this rule. However, commenters were doubtful that an estimated \$174 million benefit derived from the estimated worker productivity increases would occur. In fact, some commenters felt that no productivity increase would result from the proposed rule. In addition, some commenters questioned the underlying assumptions and methodologies used to compile the regulatory impact analysis. One commenter suggested that FRA independently address the costs and benefits of this regulation for the commuter rail segment of the industry. In contrast to the skepticism communicated, one public hearing participant found the economic analysis to be valid.

FRA appreciates the responses about the potential economic impact of the rule. FRA continues to believe that its underlying methodology and assumptions are valid. These methods are consistently used by the agency and provide the foundation for virtually all regulatory impact analyses. One commenter disagreed with FRA's expectation that only two (2) minutes will be added to job briefings and further contended that costs for the job briefing will be more than two times the amount calculated by FRA. FRA continues to support its estimate of two minutes because it is based on sound economic reasoning. Many railroads currently conduct job briefings and as noted in the NPRM, the requirements of this regulation will structure time that is presently already allotted for job briefings. Small railroads with simpler operations will not require significant time to provide the method of on-track safety, provide instructions to be followed and receive acknowledgment and understanding. FRA was not persuaded to change its estimate regarding the additional time necessary to conduct the required job briefing, based on the comments submitted.

FRA did not find the concerns regarding potential productivity increases compelling. In particular, the argument that absolutely no productivity increases will occur was not extremely persuasive. However, FRA acknowledges the difficulty in quantifying these potential increases in productivity and believes that these benefits are more appropriately considered qualitative (non-quantified) benefits. FRA has modified the regulatory impact analysis so that the

analysis does not factor an estimate of the value of productivity increases into the total benefits numerical calculation. FRA remains confident that productivity increases will result from this rulemaking, but strongly believes in conjunction with labor and management that this rule is justified on the basis of safety benefits alone. Further detailed discussion of the Regulatory Impact Analysis can be found in the analysis itself and the Regulatory Impact section of the preamble.

#### *Penalty Schedule and Enforcement*

Although notice and comment is not required for statements of policy, FRA invited submission of views on the revision of Appendix A to Part 214.—Schedule of Civil Penalties to include penalties for violations of Supart C (61 FR 10541). No comments were submitted on the subject of enforcement in general or appropriate penalty amounts. FRA established a penalty schedule for issuance with this final rule without specific public input. Since no comments were submitted on the subject of enforcement generally, FRA believes that regulated public understand and expect that this rule will be enforced upon contractors and contractor employees, as well as railroads and railroad employees, in accordance with its normal exercise of enforcement authority detailed in Appendix A, 49 CFR Part 209.

In the interest of preserving the rationale for this rule in general, and the integrity of the negotiated rulemaking process in particular, FRA refers interested parties to the preamble of the NPRM for a complete understanding of the events resulting in this rule (61 FR 10528). The relevant safety issues, statistical data, and a synopsis of the Advisory Committee's report, recommended NPRM and FRA's deviations from that recommendation are set forth in great detail in the NPRM. The Advisory Committee indicated that the preamble of the NPRM accurately represented their intent and provided a succinct document detailing the important issues related to this rulemaking from the inception of this proceeding to the publication of the NPRM.

The final rule that follows reflects the culmination of FRA's first Negotiated Rulemaking. The rule incorporates the collective wisdom of various segments of the railroad industry, labor, including support and input from the NRC, FRA, State governmental entities, and the public. FRA received no overall opposition by any railroad or labor organization to the issuance of Roadway Worker protection rules. FRA has

asserted its independent judgement to adopt the proposal recommended by the Advisory Committee where sufficient and as noted earlier, in a limited number of instances enhance certain provisions where necessary. FRA believes that the positive input received from the contractors organization completes the process and the final rule issued below represents the consensus of the entire railroad industry.

#### *Section Analysis*

FRA amends Part 214 of Title 49, Code of Federal Regulations by adding a new subpart specifically devoted to the protection of employees from the hazards associated with working near moving trains and equipment.

##### *1. Application: § 214.3*

This subpart will apply to all railroads and contractors to railroads in the general system of railroad transportation, including commuter rail operations. Accordingly, existing section 214.3 will not change. This means that tourist and excursion railroads that are not part of the general system of railroad transportation will not be subject to these rules. The data illustrating the serious nature of the hazards addressed in this subpart did not include tourist and excursion railroads. FRA has not otherwise been notified that these hazards causing death and injury to roadway workers are a serious problem for tourist and excursion railroads or any other railroads not operating over the general system of railroad transportation. FRA extended an invitation for comments to the NPRM to tourist railroads, but received no comments to the docket. FRA therefore concludes that inclusion of tourist and excursion railroads that do not operate on the general system of railroad transportation is inappropriate at this time.

##### *2. Preemptive Effect: § 214.4*

Consistent with the mandate of 49 U.S.C. 20106 (formerly section 205 of the Federal Railroad Safety Act of 1970), Section 214.4 is added to this rule to indicate that states cannot adopt or continue in force laws related to the subject matter covered in this rule except where there is a local safety hazard consistent with this part involved, and where no undue burden on interstate commerce is imposed. FRA realizes that preemption determinations regarding any particular factual context are a matter for courts to resolve, but also believes that inclusion of this section provides a statement of agency intent and promotes national uniformity

of regulation in accordance with the statute.

##### *3. Definitions: § 214.7*

Section 214.7 will be amended to add new definitions. Several definitions are particularly important to the understanding of the rule, and are explained here. However, many other terms are defined and explained with the analysis of the rule text to which they apply.

*Effective securing device* is defined in this part as one means of preventing a manually operated switch or derail from being operated so as to present a hazard to roadway workers present on certain non-controlled tracks. This definition is specifically intended to include the use of special locks on switch and derail stands that will accommodate them, and switch point clamps that are properly secured. It also includes the use of a spike driven into the switch tie against the switch point firmly enough that it cannot be removed without proper tools, provided that the rules of the railroad prohibit the removal of the spike by employees not authorized to do so. Every effective securing device must be tagged. FRA will examine each railroad's on-track safety program to determine that the rules governing the securement of switches will provide the necessary level of protection.

*Lone workers* are defined in this part as roadway workers who are not being afforded on-track safety by another roadway worker, are not members of a roadway work group, and are not engaged in a common task with another roadway worker. Generally, a common task is one in which two or more roadway workers must coordinate and cooperate in order to accomplish the objective. Other considerations are whether the roadway workers are under one supervisor at the worksite; or whether the work of each roadway worker contributes to a single objective or result.

For instance, a foreman and five trackmen engaged in replacing a turnout would be engaged in a common task. A signal maintainer assigned to adjust the switch and replace wire connections in the same turnout at the same time as the track workers would be considered a member of the work group for the purposes of on-track safety. On the other hand, a bridge inspector working on the deck of a bridge while a signal maintainer happens to be replacing a signal lens on a nearby signal would not constitute a roadway work group just by virtue of their proximity. FRA does not intend that a common task may be subdivided into individual tasks to avoid the use of on-track safety

procedures required for roadway work groups.

*On-track safety* is defined as the state of freedom from the danger of being struck by a moving railroad train or other railroad equipment, provided by operating and safety rules that govern track occupancy by personnel, trains and on-track equipment. This term states the ultimate goal of this regulation, which is for workers to be safe from the hazards related to moving trains and equipment while working on or in close proximity to the track. The rule will require railroads to adopt comprehensive programs and rules to accomplish this objective. This rule, and required programs, will together produce a heightened awareness among railroad employees of these hazards and the methods necessary to reduce the related risks.

*Qualified* as used in the rule with regard to roadway workers implies no provision or requirement for Federal certification of persons who perform those functions.

*Roadway worker* is defined as any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts as defined in this rule.

Some railroad employees whose primary function is transportation, that is, the movement and protection of trains, will be directly involved with on-track safety as well. These employees would not necessarily be considered roadway workers in the rule. They must, of course, be capable of performing their functions correctly and safely.

The rule requires that the training and qualification for their primary function, under the railroad's program related to that function, will also include the means by which they will fulfill their responsibilities to roadway workers for on-track safety. For instance, a train dispatcher would not be considered a roadway worker, but would have to be capable of applying the railroad's operating rules to the establishment of working limits for roadway workers. Likewise, a conductor who protects a roadway maintenance machine, or who protects a contractor working on railroad property, would not be considered a roadway worker, but would receive training on functions related to on-track safety as part of the training and qualification of a conductor.

Employees of contractors to railroads are included in the definition if they perform duties on or near the track. They should be protected as well as employees of the railroad. The responsibility for on-track safety of employees will follow the employment relationship. Contractors are responsible for the on-track safety of their employees and any required training for their employees. FRA expects that railroads will require their contractors to adopt the on-track safety rules of the railroad upon which the contractor is working. Where contractors require specialized on-track safety rules for particular types of work, those rules must, of course, be compatible with the rules of the railroad upon which the work is being performed.

The rule does not include employers, or their employees, if they are not engaged by or under contract to a railroad. Personnel who might work near railroad tracks on projects for others, such as cable installation for a telephone company or bridge construction for a highway agency, come under the jurisdiction of other Federal agencies with regard to occupational safety.

The terms explained here are not exhaustive of the new definitions that will be added to Section 214.7. This introduction merely provides a sampling of the most important concepts of this proposed regulation. A number of defined terms are explained in the section by section analysis when analyzing the actual rule text to which they apply.

#### *4. Purpose and Scope: § 214.301*

Section 214.301 states the purpose for the minimum standards required under this subpart to protect roadway workers. Railroads can adopt more stringent standards as long as they are consistent with this subpart.

#### *5. Information Collection Requirements: § 214.302*

Section 214.302 details the information collection requirements of the rule and their OMB approval number.

#### *6. Railroad On-Track Safety Programs, Generally: § 214.303*

Section 214.303 contains the general requirement that railroads shall adopt and implement their own program for on-track safety, which meets Federal minimum standards. Rather than implement a command and control rule, FRA decided to establish the parameters for such a program and defer to the expertise of each individual railroad to adopt a suitable on-track safety program

for their railroad, in accordance with these parameters. FRA felt that establishing an internal monitoring process to determine compliance and effectiveness would be a necessary component of any On-Track Safety Program. Consequently, each railroad must incorporate an internal monitoring process as a component of its individual program. It should be noted that this internal monitoring will not replace FRA's inspection and monitoring efforts for compliance with this subpart.

#### *7. Compliance Dates: § 214.305*

Section 214.305 establishes the schedule for compliance with this rule. The dates vary by class of railroad. FRA believes that staggering effective dates allows the largest number of workers who are exposed to the highest level of risk to benefit from the On-Track Safety Program first. FRA hopes to be able to expedite the review process, as the smallest number of individual programs will be put in place by the major carriers. After this initial phase of reviews for Class I railroads, FRA will have established review policies and resolved many recurrent issues, making the larger number of reviews for smaller railroads more efficient. The experience gained through the initial phase of the review process will contribute to the next and larger phase of reviews. Although the rule formally establishes a later compliance date for smaller railroads, this would not prevent smaller railroads from implementing their programs sooner.

#### *8. Review and Approval of Individual On-Track Safety Programs by FRA: § 214.307*

Section 214.307 specifies the process for review and approval of each railroad's on-track safety program by FRA. The intent of the review and approval is to be constructive rather than restrictive. FRA prefers that a review of each program take place at the railroad because an open discussion of the program would be beneficial to all concerned. The effective date of a railroad's program will not be delayed by FRA's scheduling of a review, or granting approval. The railroad will be responsible for compliance with this rule regardless of the status of FRA review or approval of its program.

Likewise, a railroad may amend its program following FRA's initial approval without prior approval of the amendment from FRA. Of course, should FRA later disapprove the amendment, the program would have to be changed to FRA's satisfaction. The railroad will still be responsible for compliance with this rule, and subject

to compliance monitoring and enforcement by FRA. FRA will make every effort, when requested, to provide a timely review of a program or amendment before its effective date, and to assist in any manner possible to enhance the on-track safety afforded to roadway workers.

Contractors will be required to conform to the on-track safety programs on the railroads upon which they are working. Contractors whose employees are working under a railroad's approved on-track safety program need not submit a separate on-track safety program to FRA for review and approval.

Some contractors operate highly specialized equipment on various railroads on a regular basis. That equipment might require special methods to provide on-track safety for railroad and contractor employees. Such a special method will require a clear and reasonable way to mesh with the on-track safety programs of the railroads upon which the equipment is operated.

The rule does not specifically call for the involvement of employees or their representatives in the program design or review process, because the responsibility for the program's compliance with this rule lies with the employer. However, it should be noted that this rule itself is the product of a successful proceeding in which management, employee representatives and the Federal government were fully involved from the beginning. That fact should be an encouragement to all concerned to realize that the success of an on-track safety program will require the willing cooperation of all persons whose duties or personal safety are affected by the program.

#### *9. On-Track Safety Program Documents: § 214.309*

Section 214.309 specifies the type of on-track safety manual each railroad must have. Essentially, the railroad must have all on-track safety rules in one place, easily accessible to roadway workers. This provision is intended to provide the roadway worker with a single resource to consult for on-track safety, to avoid fragmentation of the rules and the ultimate dilution of their vital message.

All on-track safety rules could be placed together as an on-track safety section of an already existent manual. FRA is aware that many railroads use a binder system for railroad manuals. Adding a section to such a binder might be less burdensome than creating a separate manual, and would clearly comply with this provision.

An employer, such as a contractor, whose roadway workers work on

another employer's railroad, will usually adopt and issue the on-track safety manual of that railroad for use by their employees. It will be the employer's responsibility to provide the manual to its employees who are required to have it and to know that each of its employees is knowledgeable about its contents.

This section also sets forth the responsibility of the employer to provide this manual to all employees who are responsible for the on-track safety of others, and those who are responsible for their own on-track safety as lone workers. Workers who are responsible for the protection of others must have the manual at the work site for easy reference. Lone workers must also have this manual easily available to them. FRA does not intend that the individual must necessarily have this manual on his or her person while performing work, but to have it available and readily accessible at the work site.

FRA also does not intend that all related operating rules, timetables or special instructions must be reproduced in this manual. Any related publications or documents should be cross-referenced in the On-Track Safety Manual and provided to employees whose duties require them.

Lastly, the manual must be at the work site available for reference by all roadway workers. Many roadway workers will not be responsible for providing protection for themselves or others, but still must comply with the rules. All employees have a responsibility to remain at a safe distance from the track unless they are assured that adequate protection is provided. Although not responsible for providing protection for others, they must be familiar with the rules to determine whether adequate protection is provided and have the rules readily available if it is necessary to consult them.

#### *10. Responsibility of Employers: § 214.311*

Section 214.311 addresses the employer's responsibility in this rule. This section applies to all employers of roadway workers. Employers may be railroads, contractors to railroads, or railroads whose employees are working on other railroads. Although most on-track safety programs will be implemented by railroads rather than contractors, both are employers and as such each is responsible to its employees to provide them with the means of achieving on-track safety.

Railroads are specifically required by § 214.303 to implement their own on-

track safety programs. Section 214.311 however, places responsibility with all employers (whether they are railroads or contractors) to see that employees are trained and supervised to work with the on-track safety rules in effect at the work site. The actual training and supervision of contractor employees might be undertaken by the operating railroad, but the responsibility to see that it is done rests with the employer.

The guarantee required in paragraph (b) of an employee's absolute right to challenge on-track safety rules compliance will be a required part of each railroad's on-track safety program, as will be the process for resolution of such challenges. On-track safety depends upon the faithful and intelligent discharge of duty by all persons who protect or are protected by it. Any roadway worker who is in doubt concerning the on-track safety provisions being applied at the job location should resolve that uncertainty immediately.

The term *at the job location* is not meant to restrict who can raise an issue or where an issue can be raised. Rather, the challenge must address the on-track safety procedures being applied at a particular job location.

A fundamental principle of on-track safety is that a roadway worker who is not entirely certain that it is safe to be on the track should not be there. A discrepancy might be critical to the safety of others, and the first roadway worker who detects it should take the necessary action to provide for the safety of all.

The Advisory Committee used the term *No-Fault Right* in its report to describe the absolute right of each employee to challenge, without censure, punishment, harm or loss, the on-track safety compliance expressed in paragraph (b) of this section. A challenge must be made in good faith in order to fall within the purview of this rule. A good faith challenge would trigger the resolution process called for in paragraph (c).

The written process to resolve challenges found in paragraph (c) is intended to provide a prompt and equitable resolution of these concerns. This is necessary in order that any problems that arise regarding on-track safety should be resolved and that any possible lapses in safety be quickly corrected.

The resolution process should include provisions to permit determination by all parties as to the safe, effective application of the on-track safety rule(s) being challenged at the lowest level possible, and for successive levels of review in the event of inability to

resolve a concern at lower levels. FRA believes it best for employers, consulting with employees and their representatives where applicable, to write effective processes to accomplish these objectives.

A railroad's on-track safety program will be reviewed and approved in accordance with section 214.307(b). FRA will consider this written process during its review and approval of the overall on-track safety submission. FRA will consider whether the written processes afford a prompt and equitable resolution to concerns asserted in good faith and their effectiveness in promoting the intelligent, reasoned application of the on-track safety principles.

#### *11. Responsibility of Individual Roadway Workers: § 214.313*

Section 214.313 addresses the individual responsibility of each roadway worker. Each roadway worker has a responsibility to comply with this subpart which is enforceable under the provisions of individual liability. FRA has a statement of Enforcement Policy set forth in Appendix A to Part 209 that explains the way in which FRA employs its enforcement powers. FRA's concerns regarding individual liability are willful violations, which are intentional actions, or grossly negligent behavior. Paragraph (a) requires that each roadway worker follow the railroad's on-track safety rules. Paragraph (b) prohibits roadway workers from fouling a track unnecessarily. It is FRA's opinion, as well as that of the Advisory Committee, that roadway workers should under no circumstances foul a track unless it is necessary to accomplish their duties.

A reference to the definition of fouling a track is useful to understand when protection is required. Fouling a track describes the circumstance in which a person is in danger of being struck by a moving train. Under paragraphs (c) and (d), each roadway worker has the responsibility to know that on-track safety is being provided before actually fouling a track, and to remain clear of the track and inform the employer when the required level of protection is not provided. If a roadway worker is not sure that sufficient on-track safety is being provided, he or she can satisfy paragraph (c) by simply not fouling the track.

It is a roadway worker's responsibility to advise the employer of exceptions taken to the application of a railroad's rules, or provisions of this subpart, in accordance with paragraph (d). Employees must approach this responsibility in good faith. Essentially

an employee must have honest concerns whether the on-track safety procedures being used provide the necessary level of safety in accordance with the rules of the operating railroad. Furthermore, employees must be able to articulate those concerns in order to invoke the resolution process of the railroad. Initiating an action under the resolution process, absent a good faith concern regarding the on-track safety procedures being applied, would not be in compliance with this subpart.

#### *12. Supervision and Communication: § 214.315*

Section 214.315 details supervision and communication of on-track safety methods prior to working. Employees must be notified and acknowledge understanding of the on-track safety methods they are to use, prior to commencing duties on or near the track. Paragraphs (a) and (b) establish the duty of notification by the employer and the reciprocal duty of communicating acknowledgment by the employee. These sections essentially require a job briefing to inform all concerned of on-track safety methods at the beginning of each work period. The acknowledgment is an indication by the employee of understanding, or the opportunity to request explanation of any issues that are not understood.

Paragraph (c) requires that an employer designate at least one roadway worker to provide on-track safety while a group is working together. This designation can either be for a specific job or for a particular work situation. This section is vital to the success of any on-track safety program because the mere presence of two or more persons together can be distracting for all persons involved. FRA believes that awareness will be enhanced and confusion limited by requiring railroads to formally designate a responsible person. This designation must be clearly understood by all group members in order to be effective. An individual, such as a foreman, may generally be designated to be responsible for his or her group, but if two groups are working together or roadway workers of different crafts are assisting one another, it is imperative that this formal designation be communicated to and understood by all affected employees.

Paragraph (d) explains the duties of the roadway worker designated to provide on-track safety for the work group. Before roadway workers foul a track, the designated person must inform each roadway worker in the group of the on-track safety methods to be used at that time and location, including all necessary details

associated with the specific form of on-track safety that will be used. Essentially, the designated person must conduct an on-track safety briefing prior to the beginning of work on or near the track. This briefing might also fulfill the requirements of paragraph (a) of this section.

Before changing on-track safety methods during a work period, the designated roadway worker must again inform the group of the new methods to be used for their safety. If, for example, roadway workers are working on a track within working limits when the on-track safety method changes to train approach warning, all roadway workers fouling the track must first be informed that trains might approach on that track, and that they will be warned of the approaching train by watchmen/lookouts. They must also know that they can no longer depend on that track as a place of safety when a train approaches.

This provision also establishes methods to be used in the face of unforeseen circumstances. In these emergency situations, where notification of a change in methods cannot be accomplished, an immediate warning to leave the fouling space and not return until on-track safety is reestablished is required.

Paragraph (e) addresses the lone worker. The lone worker must also have a job briefing before fouling the track. This briefing will be slightly different, since the lone worker is not working under direct supervision. At the beginning of the duty period, and prior to fouling the track, the lone worker must communicate with a supervisor or another designated employee to advise of his itinerary and the means by which he or she plans to protect himself. This briefing should include his geographical location, approximate period of time he or she is expected to be in this general locality, different locations planned for the day, and the planned method of protection. This paragraph assumes that in accordance with other sections, the lone worker is capable of determining the proper means to achieve his or her own on-track safety.

This paragraph also provides for emergencies in which the channels of communication are disabled. In those cases, the briefing must be conducted as soon as possible after communication is restored. An interruption in communication does not prevent the lone worker from commencing work. However, since the lone worker will not have described his or her itinerary and the on-track safety methods to be used in this location to another qualified employee, he or she must do all that is

necessary to maintain the requisite awareness of his surroundings.

**13. On-track Safety Procedures, Generally: § 214.317**

Section 214.317 refers to the following sections 214.319 through 214.337 that prescribe several different types of procedures that may be used to achieve on-track safety. It requires employers to adopt one or more of these types of procedures whenever employees foul a track.

The definition of fouling a track includes a minimum distance limit of four feet from the field, or outer, side of the running rail nearest to the roadway worker. A person could be outside that distance and still be fouling the track under this rule if the person's expected or potential activities or surroundings could cause movement into the space that would be occupied by a train, or if components of a moving train could extend outside the four-foot zone.

Railroad equipment is commonly 10 feet 8 inches wide. Standard track gauge is 4 feet 8½ inches but when adding the nominal width of the rail, the rail spacing can be taken as 5 feet 0 inches for the purposes of this rule. The fouling space would therefore be 13 feet wide (5+4+4 feet).

One exception to the four-foot minimum distance is found in paragraph § 214.339(c) (Roadway maintenance machines) and is discussed in the analysis of that section.

The report of the Advisory Committee includes the statement that "The provisions of restricted speed do not solely provide protection for track equipment, or roadway workers, performing maintenance." The rule does not recognize restricted speed as a sole means of providing on-track safety.

The Advisory Committee also found, and FRA agrees, that although the definitions of "restricted speed" found in this rule and in use throughout the railroad industry provide adequate separation between trains and on-track machines in a traveling mode, a blanket provision that would rely upon restricted speed to protect persons working while fouling the track would not be effective. Individual locations at which unusual circumstances could result in sufficient protection for roadway workers from trains moving at restricted speed would be addressed by FRA through the waiver process.

**14. Working Limits, Generally: § 214.319**

Section 214.319 prescribes the general requirements for the establishment of working limits. A reference to the definition of Working Limits is helpful to the understanding of this section.

*Working limits* is an on-track safety measure which when established eliminates the risk of being struck by trains. Several methods of establishing working limits are found in this subpart. Those methods are distinguished by the method by which trains are authorized to move on a track segment, the physical characteristics of the track, and the operating rules of the railroad.

Paragraphs (a) and (b) specifically refer to the roadway worker who is given control over working limits. These requirements assure that the roadway worker has the requisite knowledge and training, and prevent confusion by giving control to only one qualified roadway worker.

Paragraph (c) addresses the procedure when working limits are released. It requires that all affected roadway workers be notified before trains will begin moving over the affected track. They must be either away from the track, or provided with another form of on-track safety.

An example is a work group using a crane to replace rail. Rails are removed from the track, the crane is on the track, and on-track safety is provided by the establishment of working limits. When the rails have been replaced, the crane moves out of the working limits onto another track, the roadway worker in charge stations watchmen/lookouts to provide train approach warning and notifies all the roadway workers at the work site that train approach warning is now in effect and the working limits are to be released. The roadway worker in charge then releases the working limits to the train dispatcher to permit the movement of trains. The roadway workers at the work site continue to work with hand tools while on-track safety is provided by the watchmen/lookouts.

**15. Exclusive Track Occupancy: § 214.321**

Section 214.321 prescribes working limits on controlled track as one form of on-track safety allowed in accordance with the provisions of this subpart. Reference to the definitions of Controlled Track and Exclusive Track Occupancy are helpful to the understanding of this section.

*Controlled track* is track on which trains may not move without authorization from a train dispatcher or a control operator. On most railroads, trains move on main tracks outside of yard limits, and through interlockings, only when specifically authorized by a train dispatcher or control operator. This authorization might take the form of an indication conveyed by a fixed signal, or a movement authority

transmitted in writing, orally, or by digital means. Such track would conform to the definition of controlled track.

Some railroads extend the control of a train dispatcher to main tracks within yard limits. This control is exercised by requiring the crew of every train and engine to obtain a track warrant specifying the limits of the territory in which the crew may operate. The track warrant lists all restrictions that are in effect within the limits specified, including any working limits established to protect roadway workers or train movements. The working limits are delineated by flags as specified in section 214.321(c)(5). Track from which trains can be effectively withheld by such a procedure would conform to the definition of controlled track.

*Exclusive track occupancy* is the means prescribed in this section to establish working limits on controlled track. The procedures associated in this section with exclusive track occupancy are intended to assure that unauthorized train movements will not occur within working limits established by exclusive track occupancy.

This section addresses controlled track, as it is the type of track upon which exclusive track occupancy can be established by the dispatcher or control operator. By virtue of their authority to control train movements on a segment of controlled track, a dispatcher or control operator can also hold trains clear of that segment by withholding movement authority from all trains. The procedure depends upon communication of precise information between the train dispatcher or control operator, the roadway worker in charge of the working limits, and the crews of affected trains. This section is intended to prescribe that level of precision.

Paragraph (a) requires that authority for exclusive track occupancy may only be granted by the train dispatcher or control operator who has control of that track to a roadway worker who has been trained and designated to hold such an authority. No other person may be in control of the same track at the same time.

Paragraph (b) and corresponding subparagraphs prescribe the methods for transferring the authority for exclusive track occupancy to the roadway worker with the requisite level of accuracy.

Paragraphs (c) and corresponding subparagraphs prescribe physical markers or features that may be used to indicate the extent of working limits established under this paragraph with the requisite level of precision. Flagmen are included as a valid means of establishing exclusive track occupancy

because they are effective, and they might be the only means available on short notice or at certain locations.

**16. Foul Time: § 214.323**

Section 214.323 prescribes another form of on-track safety involving the establishment of working limits through exclusive track occupancy. This method of protection is called foul time and is only authorized for use on controlled track. The definition of foul time should be referenced for a complete understanding of this concept. Foul time requires oral or written notification by the train dispatcher or control operator to the responsible roadway worker that no trains will be operating within a specific segment of track during a specific time period. The steps to obtain foul time are detailed in this section. Once foul time is given, a dispatcher or control operator may not permit the movement of trains onto the protected track segment until the responsible roadway worker reports clear.

**17. Train Coordination: § 214.325**

This section provides procedures for establishing working limits using the train itself and the exclusive authority the train holds on a segment of track as a method of on-track safety. This method could be used during an unforeseen circumstance or at any other time the railroad deems appropriate and authorizes its use in their respective program.

**18. Inaccessible Track: § 214.327**

Section 214.327 requires that working limits on non-controlled track be established by rendering the track physically inaccessible to trains and equipment. A reference to the definitions of non-controlled track and inaccessible track is useful to the understanding of this section. Trains and equipment can operate on non-controlled track without having first received specific authority to do so. Trains and equipment cannot be held clear of non-controlled track by simply withholding their movement authority. The roadway worker in charge of the working limits must therefore render non-controlled track within working limits physically inaccessible to trains and equipment, other than those operating under the authority of that roadway worker, by using one or more of the provisions of this section.

Typical examples of non-controlled track to which this section would apply include main tracks within yard limits where trains are authorized by an operating rule to move without further specific authority, yard tracks, and

industrial side tracks. Paragraph (a) and corresponding subparagraphs detail the physical features that may be used to block access to non-controlled track within working limits.

Paragraph (b) provides the restrictions under which trains and roadway maintenance machines will be allowed to operate within working limits. The intent is that the roadway worker in charge will be able to communicate with a train while it is within the working limits, and to control its movement to prevent conflicts between trains, machines and roadway workers.

The requirement that trains move at restricted speed in working limits unless otherwise authorized by the roadway worker in charge is intended as a fail-safe provision to afford the highest level of safety in the absence of authority for higher speed. FRA does not contemplate, nor would it condone, a situation in which a roadway worker could authorize a higher speed for a train than would be otherwise permitted by the operating rules and instructions of the railroad. Paragraph (c) merely prohibits other locomotives from being within these established working limits.

**19. Train Approach Warning Provided by Watchmen/lookouts: § 214.329**

Section 214.329 establishes the procedures for on track safety of groups that utilize train approach warning. A reference to the definition of train approach warning would be useful to the understanding of this section. Section 214.329 specifies the circumstances and the manner in which roadway work groups may use this method of on-track safety. Prescribed here is the minimum amount of time for roadway workers to retreat to a previously arranged place of safety (usually designated during job briefing), the duties of the watchman/lookout and the fundamental characteristics of train approach warning communication.

This section further imposes a duty upon the employer to provide the watchman/lookout employee with the requisite equipment necessary to carry out his on-track safety duties. It is intended that a railroad's on-track safety program would specify the means to be used by watchmen/lookouts to communicate a warning, and that they be equipped according to that provision.

The rule does not include a provision for train approach warning by any means other than the use of watchmen/lookouts. FRA is not aware of any other means of effectively performing this function with the requisite reliability, and will not place requirements for an untried system in this rule. However, the Advisory Committee report states

that "FRA will incorporate a near-term time-specific requirement to utilize on-track personal warning systems for roadway workers working alone under any conditions not requiring positive protection." FRA realizes that the technological advancements incorporated in ATCS, PTC or PTS might in the future provide another method of establishing on-track safety in compliance with this subpart. Although such technology is not specifically provided for in the current rule, opportunities to employ advancements in this area will be handled pursuant to the waiver process. FRA will therefore be most interested in knowing when such systems are developed, tested, and proven reliable.

**20. Definite Train Location: § 214.331**

Section 214.331 describes a system of on-track safety which provides roadway workers with information as to the earliest times at which trains may leave certain stations, having been restricted at those stations by the train dispatcher or control operator. This form of on-track safety is called *Definite Train Location*. A reference to its definition is helpful to distinguish it from an *informational lineup of trains*, which is addressed in § 214.333.

Paragraph (a) limits the use of definite train location for on-track safety by Class I railroads and Commuter railroads to track where such a system was already in use on the effective date of this rule.

Paragraph (b) requires that a Class I railroad or commuter railroad using definite train location system must phase its use out according to a schedule submitted to FRA with that railroad's on-track safety program.

Paragraph (c) establishes that definite train location can be used on certain subdivisions owned by railroads other than Class I and Commuter railroads under certain specified conditions. These conditions include whether the system was in use before the effective date of this rule, or whether the subdivision has railroad traffic density below certain levels specified in that section during periods when roadway workers are normally on and about the track. Advisory Committee members felt that the amount and frequency of the traffic on a particular track dictated whether this form of on-track safety was feasible. FRA therefore proposes to incorporate this factor into the rule to allow some short lines and regional railroads to utilize this system.

Paragraph (d) and corresponding subparagraphs (1) through (7) set forth the requirements for a definite train location system and the qualifications

that a roadway worker must have before using this system as a form of on-track safety.

**21. Informational Line-ups of Trains: § 214.333**

Section 214.333 specifies conditions for the use of *informational line-ups of trains*. Some railroads have used a form of informational line-ups to provide on-track safety for roadway workers for many years. Such a procedure requires the roadway worker to have a full understanding of the particular procedure in use, and the physical characteristics of the territory in which they are working. The Advisory Committee addressed this issue with the following specific recommendation:

The Committee realizes that line-ups are being used less as a form of protection in the industry and recommends that line-up use be further reduced, eventually discontinued and replaced with Positive Protection as quickly as feasible, grandfathering line-up systems presently in use. \* \* \*

Line-ups as used in this section differ from lists of trains in § 214.331 in that line-ups need not include definite restriction as to the earliest times at which trains may depart stations. FRA therefore follows the Advisory Committee recommendation by allowing railroads presently using line-ups to continue doing so under conditions presently in effect, provided that their on-track safety programs that are reviewed and approved by FRA contain adequate provisions for safety, and a definite date for completion of phase-out.

**22. On-track Safety Procedures for Roadway Work Groups: § 214.335**

Section 214.335 specifies requirements for on-track safety to be provided for roadway work groups. Other sections of the regulation discuss matters affecting the group such as the different types of on-track safety protection available to a group and the job briefing necessary for a group, but this section prescribes what procedures are required to fully comply with this subpart. The definition of roadway work group enables the distinction between general methods of providing on-track safety for groups and for individuals working alone. Examples of roadway work groups are a large or small track gang, a pair of signal maintainers, a welder and welder helper, and a survey party.

Paragraph (a) indicates that employers shall not require or permit roadway work groups to foul a track unless they have established on-track safety through working limits, train approach warning, or definite train location.

The reciprocal responsibility for the roadway worker is expressed in Paragraph (b). He or she should not foul a track without having been informed by the roadway worker in charge that on-track safety is being provided.

The concept of protecting roadway workers from the hazards of trains and other on-track equipment on adjacent tracks is also important in this rule. A reference to the definition of adjacent tracks will clarify the meaning of paragraph (c) which details the conditions under which train approach warning must be used on adjacent tracks that are not within working limits. These are conditions in which the risk of distraction is significant, and which require measures to provide on-track safety on adjacent tracks.

The principle behind the reference to large scale maintenance or construction is the potential for distraction, or the possibility that a roadway worker or roadway maintenance machine might foul the adjacent track and be struck by an approaching or passing train. This issue was addressed in the report of the Advisory Committee with the recommendation:

Before performing any work that requires Fouling the track or Adjacent Track(s) Positive Protection must be obtained and verified to be in effect by the roadway worker assigned responsibility for the work. Large scale track maintenance and/or renovations, such as but not limited to, rail and tie gangs, production in-track welding, ballast distribution, and undercutting, must have Positive Protection on Adjacent Tracks as well.

FRA will consider the provisions made for this situation when reviewing each railroad's on-track safety program.

The spacing of less than 25 feet between track centers, which defines *adjacent tracks* for the purpose of this rule, represents a consensus decision of the Advisory Committee. Several railroads have recently extended their lateral track spacing to 25 feet. Tracks spaced at that distance may not cause a hazard to employees in one track from trains and equipment moving on the other track. FRA believes that no purpose would be served by requiring these tracks to be again spaced at a slightly greater distance. Therefore, tracks spaced at 25 feet are not defined as adjacent tracks, but tracks spaced at a lesser distance will be so defined. Tracks that converge or cross will be considered as adjacent tracks in the zone through which their centers are less than 25 feet apart.

As a practical matter, FRA will apply a rule of reason to the precision used in measuring track centers, so that minor alignment deviations within the limits

of the Federal Track Safety Standards (49 CFR 213) would not themselves place such short segments of track within the definition of adjacent tracks.

**23. On-track Safety Procedures for Lone Workers: § 214.337**

Section 214.337 establishes specific on-track safety procedures for the lone worker. Paragraph (a) sets forth the general requirement that restricts the use of individual train detection to circumstances prescribed in this section and the corresponding on-track safety program of the railroad.

Paragraph (b) represents the clear consensus of the Advisory Committee that a decision to not use individual train detection should rest solely with the lone worker, and may not be reversed by any other person. On the other hand, improper use of individual train detection where this rule or the on-track safety program of the railroad prohibit it would be subject to review. This provision was stated by the Advisory Committee as part of its Specific Recommendation 3, which part reads, "All roadway workers have the absolute right to obtain positive protection at any time and under any circumstances if they deem it necessary, or to be clear of the track if adequate protection is not provided."

Paragraph (c) establishes a method of on-track safety for the lone worker, in which the roadway worker is capable of visually detecting the approach of a train and moving to a previously determined location of safety at least 15 seconds before the train arrives. A reference to the definition of individual train detection is useful to understand this concept.

It is important to note that the Advisory Committee decided that the use of individual train detection is appropriate only in limited circumstances. FRA has therefore drafted this section to prescribe strictly limited circumstances in which an individual may foul a track outside of working limits while definitely able to detect the approach of a train or other on-track equipment in ample time to move to a place of safety. This safety method requires the lone worker to be in a state of heightened awareness, since no other protection system will be in place to prevent one from being struck by a train or other on-track equipment. The corresponding subparagraphs to paragraph (c) provide detailed requirements for the use of this form of on-track safety.

Paragraph (f) prescribes the concept of a written Statement of On-track safety, prepared by the lone roadway worker. The reasoning behind this requirement

is to assist the roadway worker in focusing on the nature of the task, the risks associated with the task, and the form of on-track safety necessary to safely carry out assigned duties.

*24. Audible Warning from Trains:  
§ 214.339*

Section 214.339 requires audible warning from locomotives before trains approach roadway workers. The implementation of this requirement will necessitate railroad rules regarding notification to trains that roadway workers are on or about the track. This notification could take the form of portable whistle posts, train movement authorities, or highly visible clothing to identify roadway workers and increase their visibility. This section is not optional for a railroad, and FRA intends that this provision covers the same subject matter as that of any state or local restrictions on the sounding of locomotive whistles.

*25. Roadway Maintenance Machines:  
§ 214.341*

Section 214.341 addresses specific issues concerning roadway maintenance machines that need to be included in individual railroad program submissions. FRA decided to address the hazards associated with these machines separately from those associated with trains, as the nature of the hazard is different. Referencing the definition of this term is a good place to start to understand this section. Roadway maintenance machines are devices, the characteristics or use of which are unique to the railroad environment. The term includes both on-track and off-track machines. A roadway maintenance machine need not have a position for the operator on the machine nor need it have an operator at all; it could operate automatically, or semi-automatically.

This provision excludes hand-powered devices in order to distinguish between hand tools which are essentially portable, and devices which either are larger, move faster, or produce more noise than hand tools. Hand-held power tools are not included in the definition, but because of the noise they produce, and because of the attention that must be paid to their safe operation they are addressed specifically in § 214.337, On-track safety for lone workers.

Examples of devices covered by this section include, but are not limited to, crawler and wheel tractors operated near railroad tracks, track motor cars, ballast regulators, self-propelled tampers, hand-carried tampers with remote power units, powered cranes of

all types, highway-rail cars and trucks while on or near tracks, snow plows-self propelled and pushed by locomotives, spreader-ditcher cars, locomotive cranes, electric welders, electric generators, air compressors—on-track and off-track.

Roadway maintenance machines have a wide variety of configurations and characteristics, and new types are being developed regularly. Each type presents unique hazards and necessitates unique accident prevention measures. Despite the wide diversity of the subject matter, FRA attempted to provide some guidance for the establishment of on-track safety when using roadway maintenance machines.

FRA believes that it is most effective to promulgate a general requirement for on-track safety around roadway maintenance machines, and require that the details be provided by railroad management, conferring with their employees, and industry suppliers. Several railroads have adopted comprehensive rules that accommodate present and future machine types, as well as their own operating requirements. FRA has seen the text of such rules, as well as witnessed their application and believes that they can set examples for other railroads. The requirement for issuance of on-track safety procedures for various types of roadway maintenance machines may be met by general procedures that apply to a group of various machines, supplemented wherever necessary by any specific requirements associated with particular types or models of machines.

*26. Training and Qualification, General:  
§ 214.343*

Section 214.343 requires that each roadway worker be given on-track safety training once every calendar year. Adequate training is integral to any safety program. Hazards exist along a railroad, not all of which are obvious through the application of common sense without experience or training. An employee who has not been trained to protect against those hazards presents a significant risk to both himself or herself and others.

Roadway workers can be qualified to perform various duties, based on their training and demonstrated knowledge. Training will vary depending on the designation of a roadway worker. Furthermore, roadway workers should generally know the designations of others in their group, so that proper on-track safety protection arrangements can be made. Written or electronic records must be kept of these qualifications,

available for inspection and photocopying by the Administrator.

The term "demonstrated proficiency" is used in this and other sections relative to employee qualification in a broad sense to mean that the employee being qualified would show to the employer sufficient understanding of the subject that the employee can perform the duties for which qualification is conferred in a safe manner. Proficiency may be demonstrated by successful completion of a written or oral examination, an interactive training program using a computer, a practical demonstration of understanding and ability, or an appropriate combination of these in accordance with the requirements of this subpart.

*27. Training for All Roadway Workers:  
§ 214.345*

Section 214.345 represents the basic level of training required of all roadway workers who work around moving railroad trains and on-track equipment. All persons subject to this rule must have this training. This basic level of training is required in addition to any specialized training required for particular functions called for in §§ 214.347 through 214.355. Any testing required to demonstrate qualification need not be written, because the requirements can be fulfilled by a practical demonstration of ability and understanding.

*28. Training and Qualification for Lone Workers: § 214.347*

Section 214.347 requires a higher degree of qualification, as the lone worker is fully responsible for his or her own protection.

*29. Training and Qualification of Watchmen/Lookouts: § 214.349*

Section 214.349 details the standards for qualification of a lookout, who by definition is responsible for the protection of others. The definition of watchman/lookout is useful to understand the functions of roadway workers discussed in this section. Watchmen/lookouts must be able to perform the proper actions in the most timely manner without any chance of error in order to provide proper protection for those who are placed in their care.

*30. Training and Qualification of Flagmen: § 214.351*

Section 214.351 requires that flagmen be qualified on the operating rules of the railroad on which they are working. Referencing the definition of flagman would be useful to identify the class of

roadway workers discussed in this section. Generally, flagmen are already required to be qualified on the operating rules that apply to their work. Flagging is an exacting procedure, and a flagman must be ready to act properly at all times in order to provide proper protection for those under his care. The distinction between flagmen and watchmen/lookouts should be noted, in that flagmen function to restrict or stop the movement of trains, while watchmen/lookouts detect the approach of trains and provide warning thereof to other roadway workers.

**31. Training and Qualification of Roadway Workers Who Provide On-Track Safety for Roadway Work Groups: § 214.353**

Section 214.353 details training standards applicable to the roadway worker who is qualified to provide on-track safety for roadway work groups. This roadway worker has the most critical responsibilities under this subpart. This individual must be able to apply the proper on-track safety rules and procedures in various circumstances, to communicate with other railroad employees regarding on-track safety procedures, and to supervise other roadway workers in the performance of their on-track safety responsibilities.

This section is unique in this subpart in requiring a recorded examination as part of the qualification process. This requirement reflects the additional responsibility of this position. The recorded examination might be written, or it might be, for example, a computer file with the results of an interactive training course.

**32. Training and Qualification in On-Track Safety for Operators of Roadway Maintenance Machines: § 214.355**

Section 214.355 requires training for those roadway workers operating roadway maintenance machines. As noted earlier, there is a wide variety of equipment requiring specific knowledge. However, FRA determined that establishing minimum qualifications closely associated with the type of machine to be operated, and the circumstances and conditions under which it is to be operated, was necessary.

**33. Appendix A: Penalty Schedule**

The revision to Appendix A includes a penalty schedule which establishes civil penalty amounts that for assessment when specific provisions of this subpart are violated. This penalty schedule constitutes a statement of FRA enforcement policy.

**Environmental Impact**

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and related directives. These regulations meet the criteria that establish this as a non-major action for environmental purposes.

**Regulatory Impact**

**Executive Order 12866 and DOT Regulatory Policies and Procedures**

This rule has been evaluated in accordance with existing policies and procedures. It is considered to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, 7th Floor, Washington, D.C. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8201, Washington, D.C. 20590.

Consistent with the mandate of Executive Order 12866 for regulatory reform, FRA conducted a Negotiated Rulemaking which provided the basis for the proposed and final rules. This collaborative effort included representatives from the railroad industry and railroad labor, along with an agency representative as members on a Federal Advisory Committee. This Advisory Committee held several negotiation sessions throughout the past year to reach consensus on the concepts that this proposed rule would embody. As envisioned by regulatory reform, public participation was encouraged by holding open Advisory Committee meetings. This negotiated Rulemaking's success has clearly met many of the objectives highlighted in this Executive Order.

As part of the regulatory impact analysis the FRA has assessed quantitative measurements of costs and benefits expected from the adoption of the final rule. Over a ten year period, the NPV of the estimated quantifiable societal benefits is \$88.1 million, and the NPV of the estimated societal quantified costs is \$228.63 million.

The NPV of major benefits anticipated from adopting the final rule include:

- \$11.9 million from averted roadway worker injuries; and

- \$62 million from averted roadway workers fatalities (a statistical estimation of 32.6 lives saved).

The NPV of major costs (including estimated paperwork burdens) over the ten year period expected to accrue from adopting the final rule include:

- \$26 million for additional dispatching resources;
- \$47 million for watchmen/lookouts;
- \$22 million for other forms of positive protection;
- \$63 million for job briefings; and
- \$53 million for the various types of roadway training.

Additionally, FRA anticipates other qualitative benefits accruing from the final rule which are not factored into the quantified cost analysis that could be significant. These non-quantified benefits include potential worker productivity increases, a possible increase in the capacity or volume of some rail lines, and an improved employee morale.

FRA's quantified cost estimate includes time allotted for daily job briefings. Many railroads currently conduct job briefings and others have allotted the time for such briefings. FRA contends that the rule will structure time already allotted or spent in job briefings. Although FRA considered this 2 minute briefing a cost and included it within the quantified cost calculations, it is conceivable that structuring the existing job briefing time actually imposes very little additional cost. The job briefing requirement essentially mandates the specific information to be communicated during briefings that would be held, even in the absence of this rule.

FRA's regulatory impact analysis finds the final rule to be cost justified based on the values associated with the safety benefits, and the additional qualitative benefits identified. The recommendation of the Roadway Worker Federal Advisory Committee that FRA adopt this rule reflects the consensus of the rail labor and management representatives on the committee that the final rule is beneficial.

**Federalism Implications**

This rule has been analyzed in accordance with the principles of Executive Order 12612 ("Federalism"). As noted previously, there are potential preemption issues resulting from a provision of this rule, requiring audible warning before entering work sites. Various States and local authorities have "whistle bans" preventing railroads from sounding whistles or ringing locomotive bells while operating through those communities. FRA

acknowledges an impact on scattered States and localities throughout the country, depending on the time of day and the frequency with which track maintenance occurs. However, these measures are necessary to protect roadway workers from possible death and injury. Sufficient Federalism implications have been identified to warrant the preparation of a Federalism Assessment and it has been placed in the docket. Document inspection and copying facilities are located at 1120 Vermont Avenue, 7th Floor, Washington, D.C. Photocopies may also be obtained by submitting written requests to the FRA Docket Clerk at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8201, Washington, D.C. 20590.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires a review of final rules to assess their impact on small entities. FRA's assessment on small entities can be found in Appendix B of the final rule's Regulatory Impact Analysis, located in the docket. After consultation with the Office of Advocacy, Small Business Administration (SBA), FRA made the determination to use the Surface Transportation Board's (STB) classification of Class III railroads as representing small entities. This is a revenue based classification where Class III railroads earn less than \$40 million per annum. Both FRA and the industry routinely use the STB classifications for data collection and regulation. By using the Class III classification, FRA is capturing most railroads that would be defined by the SBA as small businesses.

FRA certifies this rule is not expected to have a significant economic impact on a substantial number of small entities. There are no small government jurisdictions affected by this regulation. Approximately 455 small entities will be impacted. However, the actual burden on most of these railroads is

limited because of the slower and simpler operation of Class III railroads.

Entities that are not subject to this rule include railroads that do not operate on the general system of railroad transportation, due to FRA's current exercise of its jurisdiction. 49 CFR Part 209, Appendix A. FRA's jurisdictional approach, greatly reduces the number of tourist, scenic, historic, and excursion railroads that are subject to this rule and its associated burdens. FRA estimates that approximately 180 small entities will be exempted from this regulation, since they do not operate on the general system.

In general, the requirements for this rule can be met with minimal effort by most small railroads. The requirements and burdens for this rule are focused around the performance of work on or near tracks that are live or adjacent to live tracks. The ability to perform track related maintenance on track(s) that are taken out of service is inversely related to the railroad's (or the line's) volume. Most small railroads have a traffic volume low enough to avoid the burdens that have higher costs.

A majority of the burdens from this regulation occur only when roadway risks are present. For many of the small railroads this type of work is performed on track that has been rendered out of use, or during time periods where there is no traffic flow. Therefore, a small railroad that does not perform track related maintenance or inspections on tracks that are under traffic or adjacent to tracks under traffic, will have very little burden at all from this rule. Essentially, these railroads perform all or a majority of their track maintenance when the roadway hazards are not present.

FRA has estimated that the average burden of this regulation per roadway worker is \$630 Net Present Value (NPV) per year. However, forty-four percent of the total costs of this regulation are not likely to affect small railroads. In addition, the affected small entities represent less than 3 percent of the

employment in the railroad industry. Therefore, FRA estimates that this regulation will burden a small railroad an average amount of \$350 NPV per roadway worker, per year, almost half the burden estimated for the industry as a whole.

**Small Business Regulatory Enforcement Fairness Act of 1996**

Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (P.L. 104-121), FRA will issue a Small Entity Compliance Guide to summarize the requirements of this rule. The Guide will be made available to all affected small entities to assist them in understanding the actions necessary to comply with the rule. The Guide will in no way alter the requirements of the rule, but will be a tool to assist small entities in the day-to-day application of those requirements.

**Paperwork Reduction Act**

The Federal Railroad Administration may not conduct or sponsor, and the respondent is not required to comply with an information collection requirement that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) et seq.), the information collection requirements in 49 CFR 214, Subpart C established in this publication have been approved by OMB and assigned OMB approval number 2130-0539.

The time needed to complete and file the information collection requirements will vary by size of the railroads involved and the number of accidents experienced by each railroad. The sections that contain the new and/or revised information collection requirements and the estimated average time to fulfill each requirement are as follows:

| CFR section  | Respondent universe   | Total annual responses                          | Average time per response  | Total annual burden hours                     |
|--|-----------------------|---|--|---|
| Railroad on-track safety programs 214.303-214.309-214.341-214.307-214.311-214.331. | 620 RRs .....         | 65—First Year .....<br>1—Subsequent Years ..... | 2,000 hrs. Class I .....<br>1,400 hrs. Class II .....<br>250 hrs. Class III .....<br>3,500 hrs. Blanket Class II .....<br>3,000 hrs. Blanket Class III ..... | 69,750—First Year<br>250—Subsequent<br>Years. |
| Responsibility of individual roadway workers—214.313.                              | 20 RRs .....          | 4 Challenges year per<br>railroad.              | 4 hrs. ....  | 320.  |
| Supervision and communication—Job Briefings—214.315-214.335.                       | 51,500 employees .... | 327 job briefings per year<br>per employee.     | 2 minutes each briefing .....  | 561,350.                                      |
| Working limits—214.319-214.325   | N/A .....             | N/A .....                                       | Usual & customary procedure<br>no new paperwork.   | N/A.  |

| CFR section  | Respondent universe        | Total annual responses     | Average time per response                     | Total annual burden hours |
|--|----------------------------|----------------------------|---|---------------------------|
| Exclusive track occupancy—working limits—214.321.  | 8,583 employees .....      | 700,739 authorities .....  | 40 seconds per authority .....                | 7,786.                    |
| Foul Time Working Limit Procedures—214.323.  | N/A .....                  | N/A .....                  | Usual & customary procedure no new paperwork. | N/A.                      |
| Inaccessible Track—214.327 .....   | 620 RRs .....              | 50,000 occurrences .....   | 10 minutes per occurrence .....               | 8,333.                    |
| Train approach warning provided by watchman/lookouts—214.329.                                  | 620 RRs .....              | 51,500 occurrences .....   | 15 seconds per occurrence .....               | 215.                      |
| On-track safety procedures for lone workers—214.337.   | 10,300 employees per year. | 2,142,400 statements ..... | 30 seconds per statement .....                | 17,853.                   |
| Training requirements—record of Qualification—214.343–214.347–214.349–214.351–214.353–214.355. | 51,500 employees .....     | 51,500 records .....       | 2 minutes per record .....                    | 1,717.                    |

These estimates include the time for reviewing instructions; searching existing data sources; gathering and maintaining the data needed; and completing and reviewing the collection of information.

List of Subjects in 49 CFR Part 214

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

In consideration of the foregoing, FRA amends Part 214, Title 49, Code of Federal Regulations as follows:

**PART 214—[AMENDED]**

1. Revise the authority citation for Part 214 to read as follows:

Authority: 49 U.S.C. Chs. 210–213; 49 CFR 1.49.

2. Add § 214.4 to read as follows:

**§ 214.4 Preemptive effect.**

Under 49 U.S.C. 20106 (formerly section 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434)), issuance of the regulations in this part preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision directed at an essentially local safety hazard that is not incompatible with this part and that does not unreasonably burden on interstate commerce.

3. Amend § 214.7 by removing the paragraph designations for each definition, removing the definition for *Railroad employee or employee*, and adding new definitions in alphabetical order to read as follows:

**§ 214.7 Definitions.**

*Adjacent tracks* mean two or more tracks with track centers spaced less than 25 feet apart.

*Class I, Class II, and Class III* have the meaning assigned by, Title 49 Code of

Federal Regulations part 1201, General Instructions 1–1.

*Control operator* means the railroad employee in charge of a remotely controlled switch or derail, an interlocking, or a controlled point, or a segment of controlled track.

*Controlled track* means track upon which the railroad's operating rules require that all movements of trains must be authorized by a train dispatcher or a control operator.

*Definite train location* means a system for establishing on-track safety by providing roadway workers with information about the earliest possible time that approaching trains may pass specific locations as prescribed in § 214.331 of this part.

*Effective securing device* when used in relation to a manually operated switch or derail means one which is:

- (a) Vandal resistant;
- (b) Tamper resistant; and
- (c) Designed to be applied, secured, uniquely tagged and removed only by the class, craft or group of employees for whom the protection is being provided.

*Employee* means an individual who is engaged or compensated by a railroad or by a contractor to a railroad to perform any of the duties defined in this part.

*Employer* means a railroad, or a contractor to a railroad, that directly engages or compensates individuals to perform any of the duties defined in this part.

*Exclusive track occupancy* means a method of establishing working limits on controlled track in which movement authority of trains and other equipment is withheld by the train dispatcher or control operator, or restricted by flagmen, as prescribed in § 214.321 of this part.

*Flagman* when used in relation to roadway worker safety means an employee designated by the railroad to direct or restrict the movement of trains past a point on a track to provide on-track safety for roadway workers, while

engaged solely in performing that function.

*Foul time* is a method of establishing working limits on controlled track in which a roadway worker is notified by the train dispatcher or control operator that no trains will operate within a specific segment of controlled track until the roadway worker reports clear of the track, as prescribed in § 214.323 of this part.

*Fouling a track* means the placement of an individual or an item of equipment in such proximity to a track that the individual or equipment could be struck by a moving train or on-track equipment, or in any case is within four feet of the field side of the near running rail.

*Inaccessible track* means a method of establishing working limits on non-controlled track by physically preventing entry and movement of trains and equipment.

*Individual train detection* means a procedure by which a lone worker acquires on-track safety by seeing approaching trains and leaving the track before they arrive and which may be used only under circumstances strictly defined in this part.

*Informational line-up of trains* means information provided in a prescribed format to a roadway worker by the train dispatcher regarding movements of trains authorized or expected on a specific segment of track during a specific period of time.

*Lone worker* means an individual roadway worker who is not being afforded on-track safety by another roadway worker, who is not a member of a roadway work group, and who is not engaged in a common task with another roadway worker.

*Non-controlled track* means track upon which trains are permitted by railroad rule or special instruction to move without receiving authorization from a train dispatcher or control operator.

*On-track safety* means a state of freedom from the danger of being struck by a moving railroad train or other railroad equipment, provided by operating and safety rules that govern track occupancy by personnel, trains and on-track equipment.

*Qualified* means a status attained by an employee who has successfully completed any required training for, has demonstrated proficiency in, and has been authorized by the employer to perform the duties of a particular position or function.

*Railroad bridge worker or bridge worker* means any employee of, or employee of a contractor of, a railroad owning or responsible for the construction, inspection, testing, or maintenance of a bridge whose assigned duties, if performed on the bridge, include inspection, testing, maintenance, repair, construction, or reconstruction of the track, bridge structural members, operating mechanisms and water traffic control systems, or signal, communication, or train control systems integral to that bridge.

*Restricted speed* means a speed that will permit a train or other equipment to stop within one-half the range of vision of the person operating the train or other equipment, but not exceeding 20 miles per hour, unless further restricted by the operating rules of the railroad.

*Roadway maintenance machine* means a device powered by any means of energy other than hand power which is being used on or near railroad track for maintenance, repair, construction or inspection of track, bridges, roadway, signal, communications, or electric traction systems. Roadway maintenance machines may have road or rail wheels or may be stationary.

*Roadway work group* means two or more roadway workers organized to work together on a common task.

*Roadway worker* means any employee of a railroad, or of a contractor to a railroad, whose duties include inspection, construction, maintenance or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts as defined in this section.

*Train approach warning* means a method of establishing on-track safety by warning roadway workers of the approach of trains in ample time for them to move to or remain in a place of safety in accordance with the requirements of this part.

*Train coordination* means a method of establishing working limits on track upon which a train holds exclusive authority to move whereby the crew of that train yields that authority to a roadway worker.

*Train dispatcher* means the railroad employee assigned to control and issue orders governing the movement of trains on a specific segment of railroad track in accordance with the operating rules of the railroad that apply to that segment of track.

*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.

*Working limits* means a segment of track with definite boundaries established in accordance with this part upon which trains and engines may move only as authorized by the roadway worker having control over that defined segment of track. Working limits may be established through "exclusive track occupancy," "inaccessible track," "foul time" or "train coordination" as defined herein.

#### 4. Add subpart C to read as follows:

### Subpart C—Roadway Worker Protection

#### Sec.

- 214.301 Purpose and scope.
- 214.302 Information and collection requirements.
- 214.303 Railroad on-track safety programs, generally.
- 214.305 Compliance dates.
- 214.307 Review and approval of individual on-track safety programs by FRA.
- 214.309 On-track safety program documents.
- 214.311 Responsibility of employers.
- 214.313 Responsibility of individual roadway workers.
- 214.315 Supervision and communication.
- 214.317 On-track safety procedures, generally.
- 214.319 Working limits, generally.
- 214.321 Exclusive track occupancy.
- 214.323 Foul time.
- 214.325 Train coordination.
- 214.327 Inaccessible track.
- 214.329 Train approach warning provided by watchmen/lookouts.
- 214.331 Definite train location.
- 214.333 Information line-ups of trains.
- 214.335 On-track safety procedures for roadway work groups.
- 214.337 On-track safety procedures for lone workers.

- 214.339 Audible warning from trains.
- 214.341 Roadway maintenance machines.
- 214.343 Training and qualification, general.
- 214.345 Training for all roadway workers.
- 214.347 Training and qualification for lone workers.
- 214.349 Training and qualification of watchmen/lookouts.
- 214.351 Training and qualification of flagmen.
- 214.353 Training and qualification of roadway workers who provide on-track safety for roadway work groups.
- 214.355 Training and qualification in on-track safety for operators of roadway maintenance machines.

### Subpart C—Roadway Worker Protection

#### § 214.301 Purpose and scope.

(a) The purpose of this subpart is to prevent accidents and casualties caused by moving railroad cars, locomotives or roadway maintenance machines striking roadway workers or roadway maintenance machines.

(b) This subpart prescribes minimum safety standards for roadway workers. Each railroad and railroad contractor may prescribe additional or more stringent operating rules, safety rules, and other special instructions that are consistent with this subpart.

(c) This subpart prescribes safety standards related to the movement of roadway maintenance machines where such movements affect the safety of roadway workers. This subpart does not otherwise affect movements of roadway maintenance machines that are conducted under the authority of a train dispatcher, a control operator, or the operating rules of the railroad.

#### § 214.302 Information and collection requirements.

(a) The information collection requirements of this part were reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. §§ 3501-3520), and are assigned OMB control number 2130-0539. FRA may not conduct or sponsor and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(b) The information collection requirements are found in the following sections: §§ 214.303, 214.307, 214.309, 214.311, 214.313, 214.315, 214.319, 214.321, 214.323, 214.325, 214.327, 214.329, 214.331, 214.335, 214.341.

#### § 214.303 Railroad on-track safety programs, generally.

(a) Each railroad to which this part applies shall adopt and implement a

program that will afford on-track safety to all roadway workers whose duties are performed on that railroad. Each such program shall provide for the levels of protection specified in this subpart.

(b) Each on-track safety program adopted to comply with this part shall include procedures to be used by each railroad for monitoring effectiveness of and compliance with the program.

**§ 214.305 Compliance dates.**

Each program adopted by a railroad shall comply not later than the date specified in the following schedule:

(a) For each Class I railroad (including National Railroad Passenger Corporation) and each railroad providing commuter service in a metropolitan or suburban area, March 15, 1997.

(b) For each Class II railroad, April 15, 1997.

(c) For each Class III railroad, switching and terminal railroad, and any railroad not otherwise classified, May 15, 1997.

(d) For each railroad commencing operations after the pertinent date specified in this section, the date on which operations commence.

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

(a) Each railroad shall notify, in writing, the Associate Administrator for Safety, Federal Railroad Administration, RRS-15, 400 Seventh Street SW, Washington, DC 20590, not less than one month before its on-track safety program becomes effective. The notification shall include the effective date of the program, the address of the office at which the program documents are available for review and photocopying by representatives of the Federal Railroad Administrator, and the name, title, address and telephone number of the primary person to be contacted with regard to review of the program. This notification procedure shall also apply to subsequent changes to a railroad's on-track safety program.

(b) After receipt of the notification from the railroad, the Federal Railroad Administration will conduct a formal review of the on-track safety program. The Federal Railroad Administration will notify the primary railroad contact person of the results of the review, in writing, whether the on-track safety program or changes to the program have been approved by the Administrator, and if not approved, the specific points in which the program or changes are deficient.

(c) A railroad's on-track safety program will take effect by the established compliance dates in

§ 214.305, without regard to the date of review or approval by the Federal Railroad Administration. Changes to a railroad's program will take effect on dates established by each railroad without regard to the date of review and approval by the Federal Railroad Administration.

**§ 214.309 On-track safety program documents.**

Rules and operating procedures governing track occupancy and protection shall be maintained together in one 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 program document.

**§ 214.311 Responsibility of employers.**

(a) Each employer is responsible for the understanding and compliance by its employees with its rules and the requirements of this part.

(b) Each employer shall guarantee each employee the absolute right to challenge in good faith whether the on-track safety procedures to be applied at the job location comply with the rules of the operating railroad, and to remain clear of the track until the challenge is resolved.

(c) Each employer shall have in place a written procedure to achieve prompt and equitable resolution of challenges made in accordance with §§ 214.311(b) and 214.313(d).

**§ 214.313 Responsibility of individual roadway workers.**

(a) Each roadway worker is responsible for following the on-track safety rules of the railroad upon which the roadway worker is located.

(b) A roadway worker shall not foul a track except when necessary for the performance of duty.

(c) Each roadway worker is responsible to ascertain that on-track safety is being provided before fouling a track.

(d) Each roadway worker may refuse any directive to violate an on-track safety rule, and shall inform the employer in accordance with § 214.311 whenever the roadway worker makes a good faith determination that on-track safety provisions to be applied at the job location do not comply with the rules of the operating railroad.

**§ 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 a job

briefing that includes information on the means by which on-track safety is to be provided, and instruction on the on-track safety procedures to be followed.

(b) A job briefing for on-track safety shall be deemed complete only after the roadway worker 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 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 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 a 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 job briefing shall be conducted as soon as possible after the beginning of the work period when communications are restored.

**§ 214.317 On-track safety procedures, generally.**

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 §§ 214.319 through 214.337 of this part.

**§ 214.319 Working limits, generally.**

Working limits established on controlled track shall conform to the provisions of § 214.321 Exclusive track occupancy, or § 214.323 Foul time, or § 214.325 Train coordination. Working limits established on non-controlled track shall conform to the provision of § 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 § 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 § 214.329 of this subpart.

**§ 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.

(c) The extent of working limits established through exclusive track occupancy shall be defined by one of the following physical features clearly identifiable to a locomotive engineer or other person operating a train or railroad equipment:

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

(2) A fixed signal that displays an aspect indicating "Stop";

(3) A station shown in the time-table, and identified by name with a sign, beyond which train movement is prohibited by train movement authority or the provisions of a direct train control system.

(4) A clearly identifiable milepost sign beyond which train movement is prohibited by train movement authority or the provisions of a direct train control system; or

(5) A clearly identifiable physical location prescribed by the operating rules of the railroad that trains may not pass without proper authority.

(d) Movements of trains and roadway maintenance machines within working limits established through exclusive track occupancy shall be made only under the direction of the roadway worker having control over the working limits. Such movements shall be restricted speed unless a higher speed has been specifically authorized by the roadway worker in charge of the working limits.

**§ 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 to move into or within the working limits during the foul time period.

(b) Each roadway worker 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 onto the working limits protected by foul time until the roadway worker who obtained the foul time has reported clear of the track.

**§ 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 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:

(1) The train is visible to the roadway worker who is establishing the working limits,

(2) The train is stopped,

(3) Further movements of the train will be made only as permitted by the roadway worker in charge of the working limits while the working limits remain in effect, and

(4) The crew of the train will not give up its exclusive authority to move until the working limits have been released to the train crew by the roadway worker in charge of the working limits.

**§ 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.

(b) Trains and roadway maintenance machines within working limits established by means of inaccessible track shall move only under the direction of the roadway worker in charge of the working limits, and shall move at restricted speed.

(c) No operable locomotives or other items of on-track equipment, except those present or moving under the direction of the roadway worker in charge of the working limits, shall be located within working limits established by means of inaccessible track.

**§ 214.329 Train approach warning provided by watchmen/lookouts.**

Roadway workers in a roadway work group who foul any track outside of working limits shall be given warning of approaching trains by one or more watchmen/lookouts in accordance with the following provisions:

(a) Train approach warning shall be given in sufficient time to enable each roadway worker to move to and occupy a previously arranged place of safety not less than 15 seconds before a train moving at the maximum speed authorized on that track can pass the location of the roadway worker.

(b) Watchmen/lookouts assigned to provide train approach warning shall devote full attention to detecting the approach of trains and communicating a warning thereof, and shall not be assigned any other duties while functioning as watchmen/lookouts.

(c) The means used by a watchman/lookout to communicate a train approach warning shall be distinctive and shall clearly signify to all recipients of the warning that a train or other on-track equipment is approaching.

(d) Every roadway worker who depends upon train approach warning for on-track safety shall maintain a position that will enable him or her to receive a train approach warning communicated by a watchman/lookout

at any time while on-track safety is provided by train approach warning.

(e) Watchmen/lookouts shall communicate train approach warnings by a means that does not require a warned employee to be looking in any particular direction at the time of the warning, and that can be detected by the warned employee regardless of noise or distraction of work.

(f) Every roadway worker who is assigned the duties of a watchman/lookout shall first be trained, qualified and designated in writing by the employer to do so in accordance with the provisions of § 214.349.

(g) Every watchman/lookout shall be provided by the employer with the equipment necessary for compliance with the on-track safety duties which the watchman/lookout will perform.

**§ 214.331 Definite train location.**

A roadway worker may establish on-track safety by using definite train location only where permitted by and in accordance with the following provisions:

(a) A Class I railroad or a commuter railroad may only use definite train location to establish on-track safety at points where such procedures were in use on January 15, 1997.

(b) Each Class I or commuter railroad shall include in its on-track safety program for approval by FRA in accordance with § 214.307 of this part a schedule for phase-out of the use of definite train location to establish on-track safety.

(c) A railroad other than a Class I or commuter railroad may use definite train location to establish on-track safety on subdivisions only where:

(1) Such procedures were in use on January 15, 1997, or

(2) The number of trains operated on the subdivision does not exceed:

(i) Three during any nine-hour period in which roadway workers are on duty, and

(ii) Four during any twelve-hour period in which roadway workers are on duty.

(d) Definite train location shall only be used to establish on-track safety according to the following provisions:

(1) Definite train location information shall be issued only by the one train dispatcher who is designated to authorize train movements over the track for which the information is provided.

(2) A definite train location list shall indicate all trains to be operated on the track for which the list is provided, during the time for which the list is effective.

(3) Trains not shown on the definite train location list shall not be operated

on the track for which the list is provided, during the time for which the list is effective, until each roadway worker to whom the list has been issued has been notified of the train movement, has acknowledged the notification to the train dispatcher, and has canceled the list. A list thus canceled shall then be invalid for on-track safety.

(4) Definite train location shall not be used to establish on-track safety within the limits of a manual interlocking, or on track over which train movements are governed by a Traffic Control System or by a Manual Block System.

(5) Roadway workers using definite train location for on-track safety shall not foul a track within ten minutes before the earliest time that a train is due to depart the last station at which time is shown in approach to the roadway worker's location nor until that train has passed the location of the roadway worker.

(6) A railroad shall not permit a train to depart a location designated in a definite train location list before the time shown therein.

(7) Each roadway worker who uses definite train location to establish on-track safety must be qualified on the relevant physical characteristics of the territory for which the train location information is provided.

**§ 214.333 Informational line-ups of trains.**

(a) A railroad is permitted to include informational line-ups of trains in its on-track safety program for use only on subdivisions of that railroad upon which such procedure was in effect on March 14, 1996.

(b) Each procedure for the use of informational line-ups of trains found in an on-track safety program shall include all provisions necessary to protect roadway workers using the procedure against being struck by trains or other on-track equipment.

(c) Each on-track safety program that provides for the use of informational line-ups shall include a schedule for discontinuance of the procedure by a definite date.

**§ 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 §§ 214.319, 214.321, 213.323, 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) 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.

**§ 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 § 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, 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.

**§ 214.339 Audible warning from trains.**

Each railroad shall require that the locomotive whistle be sounded, and the locomotive bell be rung, by trains approaching roadway workers on or about the track. Such audible warning shall not substitute for on-track safety procedures prescribed in this part.

**§ 214.341 Roadway maintenance machines.**

(a) Each employer shall include in its on-track safety program specific provisions for the safety of roadway workers who operate or work near roadway maintenance machines. Those provisions shall address:

(1) Training and qualification of operators of roadway maintenance machines.

(2) Establishment and issuance of safety procedures both for general application and for specific types of machines.

(3) Communication between machine operators and roadway workers assigned to work near or on roadway maintenance machines.

(4) Spacing between machines to prevent collisions.

(5) Space between machines and roadway workers to prevent personal injury.

(6) Maximum working and travel speeds for machines dependent upon weather, visibility, and stopping capabilities.

(b) Instructions for the safe operation of each roadway machine shall be provided and maintained with each machine large enough to carry the instruction document.

(1) No roadway worker shall operate a roadway maintenance machine without having been trained in accordance with § 214.355.

(2) No roadway worker shall operate a roadway maintenance machine

without having complete knowledge of the safety instructions applicable to that machine.

(3) No employer shall assign roadway workers to work near roadway machines unless the roadway worker has been informed of the safety procedures applicable to persons working near the roadway machines and has acknowledged full understanding.

(c) Components of roadway maintenance machines shall be kept clear of trains passing on adjacent tracks. Where operating conditions permit roadway maintenance machines to be less than four feet from the rail of an adjacent track, the on-track safety program of the railroad shall include the procedural instructions necessary to provide adequate clearance between the machine and passing trains.

**§ 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.

**§ 214.345 Training for all roadway workers.**

The training of all roadway workers shall include, as a minimum, the following:

- (a) Recognition of railroad tracks and understanding of the space around them within which on-track safety is required.
- (b) The functions and responsibilities of various persons involved with on-track safety procedures.
- (c) Proper compliance with on-track safety instructions given by persons performing or responsible for on-track safety functions.
- (d) Signals given by watchmen/lookouts, and the proper procedures upon receiving a train approach warning from a lookout.
- (e) The hazards associated with working on or near railroad tracks, including review of on-track safety rules and procedures.

**§ 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) Initial and periodic qualification of a lone worker shall be evidenced by demonstrated proficiency.

**§ 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) Rules and procedures of the railroad to be used for train approach warning.

- (b) Initial and periodic qualification of a watchman/lookout shall be evidenced by demonstrated proficiency.

**§ 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) Initial and periodic qualification of a flagman shall be evidenced by demonstrated proficiency.

**§ 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.

- (b) Initial and periodic qualification of a roadway worker to provide on track safety for groups shall be evidenced by a recorded examination.

**§ 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) Initial and periodic qualification of a roadway worker to operate roadway maintenance machines shall be evidenced by demonstrated proficiency.

**Appendix A to Part 214 [Amended]**

5. Amend Appendix A to Part 214 by adding the provisions of this subpart C into the table as set forth below.

**APPENDIX A TO PART 214—SCHEDULE OF CIVIL PENALTIES**

| Section   | Violation | Willful |
|---|-----------|---------|
| <b>Subpart C— Roadway Worker Protection Rule</b>  |           |         |
| 214.303 Railroad on-track safety programs, generally:   |           |         |
| (a) Failure of a railroad to implement an On-track Safety Program .....   | 10,000    | 20,000  |
| (b) On-track Safety Program of a railroad includes no internal monitoring procedure .....                         | 5,000     | 10,000  |
| 214.305 Compliance Dates:   |           |         |
| Failure of a railroad to comply by the specified dates .....  | 5,000     | 10,000  |
| 214.307 Review and approval of individual on-track safety programs by FRA:  |           |         |
| (a)(i) Failure to notify FRA of adoption of On-track Safety Program .....   | 1,000     | 5,000   |
| (ii) Failure to designate primary person to contact for program review .....                                      | 1,000     | 2,000   |
| 214.309 On-track safety program documents:  |           |         |
| (1) On-track Safety Manual not provided to prescribed employees .....   | 2,000     | 5,000   |
| (2) On-track Safety Program documents issued in fragments .....   | 2,000     | 5,000   |
| 214.311 Responsibility of employers:  |           |         |
| (b) Roadway worker required by employer to foul a track during an unresolved challenge .....                      | 5,000     | 10,000  |
| (c) Roadway workers not provided with written procedure to resolve challenges of on-track safety procedures ..... | 5,000     | 10,000  |

## APPENDIX A TO PART 214—SCHEDULE OF CIVIL PENALTIES—Continued

| Section   | Violation | Willful |
|---|-----------|---------|
| 214.313 Responsibility of individual roadway workers:   |           |         |
| (b) Roadway worker fouling a track when not necessary in the performance of duty .....  |           | 1,000   |
| (c) Roadway worker fouling a track without ascertaining that provision is made for on-track safety .....                                  |           | 1,500   |
| (d) Roadway worker failing to notify employer of determination of improper on-track safety provisions .....                               |           | 3,000   |
| 214.315 Supervision and communication:  |           |         |
| (a) Failure of employer to provide job briefing .....   | 2,000     | 10,000  |
| (b) Incomplete job briefing .....   | 2,000     | 5,000   |
| (c)(i) Failure to designate roadway worker in charge of roadway work group .....  | 2,000     | 5,000   |
| (c)(ii) Designation of more than one roadway worker in charge of one roadway work group .....   | 1,000     | 2,000   |
| (c)(iii) Designation of non-qualified roadway worker in charge of roadway work group .....  | 3,000     | 6,000   |
| (d)(i) Failure to notify roadway workers of on-track safety procedures in effect .....  | 3,000     | 6,000   |
| (d)(ii) Incorrect information provided to roadway workers regarding on-track safety procedures in effect .....                            | 3,000     | 6,000   |
| (d)(iii) Failure to notify roadway workers of change in on-track safety procedures .....  | 3,000     | 6,000   |
| (e)(i) Failure of lone worker to communicate with designated employee for daily job briefing .....  |           | 1,500   |
| (e)(ii) Failure of employer to provide means for lone worker to receive daily job briefing .....  | 3,000     | 6,000   |
| 214.317 On-track safety procedures, generally:  |           |         |
| On-track safety rules conflict with this part .....   | 5,000     | 10,000  |
| 214.319 Working limits, generally:  |           |         |
| (a) Non-qualified roadway worker in charge of working limits .....  | 5,000     | 10,000  |
| (b) More than one roadway worker in charge of working limits on the same track segment .....  | 2,000     | 5,000   |
| (c)(1) Working limits released without notifying all affected roadway workers .....   | 5,000     | 10,000  |
| (c)(2) Working limits released before all affected roadway workers are otherwise protected .....  | 5,000     | 10,000  |
| 214.321 Exclusive track occupancy:  |           |         |
| (b) Improper transmission of authority for exclusive track occupancy .....  | 2,000     | 5,000   |
| (b)(1) Failure to repeat authority for exclusive track occupancy to issuing employee .....  |           | 1,500   |
| (b)(2) Failure to retain possession of written authority for exclusive track occupancy .....  |           | 1,000   |
| (b)(3) Failure to record authority for exclusive track occupancy when issued .....  |           | 2,000   |
| (c) Limits of exclusive track occupancy not identified by proper physical features .....  | 2,000     | 4,000   |
| (d)(1) Movement authorized into limits of exclusive track occupancy without authority of roadway worker in charge .....                   | 5,000     | 10,000  |
| (d)(2) Movement authorized within limits of exclusive track occupancy without authority of roadway worker in charge .....                 | 5,000     | 10,000  |
| (d)(3) Movement within limits of exclusive track occupancy exceeding restricted speed without authority of roadway worker in charge ..... | 5,000     | 10,000  |
| 214.323 Foul time:  |           |         |
| (a) Foul time authority overlapping movement authority of train or equipment .....  | 5,000     | 10,000  |
| (b) Failure to repeat foul time authority to issuing employee .....   |           | 1,500   |
| 214.325 Train coordination:   |           |         |
| (a) Train coordination limits established where more than one train is authorized to operate .....  | 1,500     | 4,000   |
| (b)(1) Train coordination established with train not visible to roadway worker at the time .....  |           | 1,500   |
| (b)(2) Train coordination established with moving train .....   |           | 1,500   |
| (b)(3) Coordinated train moving without authority of roadway worker in charge .....   | 2,000     | 5,000   |
| (b)(4) Coordinated train releasing movement authority while working limits are in effect .....  | 3,000     | 6,000   |
| 214.327 Inaccessible track:   |           |         |
| (a) Improper control of entry to inaccessible track .....   | 3,000     | 6,000   |
| (a)(5) Remotely controlled switch not properly secured by control operator .....  | 3,000     | 6,000   |
| (b) Train or equipment moving within inaccessible track limits without permission of roadway worker in charge .....                       | 3,000     | 6,000   |
| (c) Unauthorized train or equipment located within inaccessible track limits .....  | 2,000     | 5,000   |
| 214.329 Train approach warning provided by watchmen/lookouts:   |           |         |
| (a) Failure to give timely warning of approaching train .....   |           | 5,000   |
| (b)(1) Failure of watchman/lookout to give full attention to detecting approach of train .....  |           | 3,000   |
| (b)(2) Assignment of other duties to watchman/lookout .....   | 3,000     | 5,000   |
| (c) Failure to provide proper warning signal devices .....  | 2,000     | 5,000   |
| (d) Failure to maintain position to receive train approach warning signal .....   |           | 2,000   |
| (e) Failure to communicate proper warning signal .....  | 1,500     | 3,000   |
| (f)(1) Assignment of non-qualified person as watchman/lookout .....   | 3,000     | 5,000   |
| (f)(2) Non-qualified person accepting assignment as watchman/lookout .....  |           | 1,500   |
| (g) Failure to properly equip a watchman/lookout .....  | 2,000     | 4,000   |
| 214.331 Definite train location:  |           |         |
| (a) Definite train location established where prohibited .....  | 3,000     | 5,000   |
| (b) Failure to phase out definite train location by required date .....   | 3,000     | 5,000   |
| (d)(1) Train location information issued by unauthorized person .....   | 2,000     | 5,000   |
| (d)(2) Failure to include all trains operated on train location list .....  | 3,000     | 5,000   |
| (d)(5) Failure to clear a by ten minutes at the last station at which time is shown .....   |           | 2,000   |
| (d)(6) Train passing station before time shown in train location list .....   | 3,000     | 5,000   |
| (d)(7) Non-qualified person using definite train location to establish on-track safety .....  | 2,000     | 3,000   |
| 214.333 Informational line-ups of trains:   |           |         |
| (a) Informational line-ups of trains used for on-track safety where prohibited .....  | 3,000     | 5,000   |
| (b) Informational line-up procedures inadequate to protect roadway workers .....  | 5,000     | 10,000  |
| (c) Failure to discontinue informational line-ups by required date .....  | 5,000     | 10,000  |
| 214.335 On-track safety procedures for roadway work groups :  |           |         |
| (a) Failure to provide on-track safety for a member of a roadway work group .....   | 3,000     | 5,000   |

APPENDIX A TO PART 214—SCHEDULE OF CIVIL PENALTIES—Continued

| Section  | Violation | Willful |
|--|-----------|---------|
| (b) Member of roadway work group fouling a track without authority of employee in charge .....                 |           | 2,000   |
| (c) Failure to provide train approach warning or working limits on adjacent track where required .....         | 3,000     | 5,000   |
| 214.337 On-track safety procedures for lone workers:   |           |         |
| (b) Failure by employer to permit individual discretion in use of individual train detection .....             | 5,000     | 10,000  |
| (c)(1) Individual train detection used by non-qualified employee .....   | 2,000     | 4,000   |
| (c)(2) Use of individual train detection while engaged in heavy or distracting work .....                      |           | 2,000   |
| (c)(3) Use of individual train detection in controlled point or manual interlocking .....                      |           | 2,000   |
| (c)(4) Use of individual train detection with insufficient visibility .....                                    |           | 2,000   |
| (c)(5) Use of individual train detection with interfering noise .....  |           | 2,000   |
| (c)(6) Use of individual train detection while a train is passing .....  |           | 3,000   |
| (d) Failure to maintain access to place of safety clear of live tracks .....                                   |           | 2,000   |
| (e) Lone worker unable to maintain vigilant lookout .....  |           | 2,000   |
| (f)(1) Failure to prepare written statement of on-track safety .....   |           | 1,500   |
| (f)(2) Incomplete written statement of on-track safety .....   |           | 1,000   |
| (f)(3) Failure to produce written statement of on-track safety to FRA .....                                    |           | 1,500   |
| 214.339 Audible warning from trains:   |           |         |
| (a) Failure to require audible warning from trains .....   | 2,000     | 4,000   |
| (b) Failure of train to give audible warning where required .....  | 1,000     | 3,000   |
| 214.341 Roadway maintenance machines:  |           |         |
| (a) Failure of on-track safety program to include provisions for safety near roadway maintenance machines .... | 3,000     | 5,000   |
| (b) Failure to provide operating instructions .....  | 2,000     | 4,000   |
| (b)(1) Assignment of non-qualified employee to operate machine .....   | 2,000     | 5,000   |
| (b)(2) Operator unfamiliar with safety instructions for machine .....  | 2,000     | 5,000   |
| (b)(3) Roadway worker working with unfamiliar machine .....  | 2,000     | 5,000   |
| (c) Roadway maintenance machine not clear of passing trains .....  | 3,000     | 6,000   |
| 214.343 Training and qualification, general:   |           |         |
| (a)(1) Failure of railroad program to include training provisions .....  | 5,000     | 10,000  |
| (a)(2) Failure to provide initial training .....   | 3,000     | 6,000   |
| (b) Failure to provide annual training .....   | 2,500     | 5,000   |
| (c) Assignment of non-qualified railroad employees to provide on-track safety .....                            | 4,000     | 8,000   |
| (d)(1) Failure to maintain records of qualifications .....   | 2,000     | 4,000   |
| (d)(2) Incomplete records of qualifications .....  | 1,000     | 3,000   |
| (d)(3) Failure to provide records of qualifications to FRA .....   | 2,000     | 4,000   |
| 214.345 Training for all roadway workers   |           |         |
| 214.347 Training and qualification for lone workers  |           |         |
| 214.349 Training and qualification of watchmen/lookouts  |           |         |
| 214.351 Training and qualification of flagmen  |           |         |
| 214.353 Training and qualification of roadway workers who provide on-track safety for roadway work groups      |           |         |
| 214.355 Training and qualification in on-track safety for operators of roadway maintenance machines            |           |         |

Issued this 6th day of December, 1996  
 Jolene M. Molitoris,  
 Administrator, Federal Railroad  
 Administration.  
 [FR Doc. 96-31533 Filed 12-13-96; 8:45 am]  
 BILLING CODE 4910-06-P

Atmospheric Administration (NOAA),  
 Commerce.  
**ACTION:** Final rule.

implemented through regulations at 50  
 CFR part 622 under the authority of the  
 Magnuson-Stevens Fishery  
 Conservation and Management Act  
 (Magnuson-Stevens Act).

Based on a preliminary evaluation of  
 Amendment 12 at the beginning of  
 formal agency review, NMFS  
 disapproved measures in Amendment  
 12 that would have reduced the  
 minimum size limit for red snapper  
 harvested in the commercial fishery. On  
 August 21, 1996, NMFS published a  
 proposed rule to implement the  
 remaining measures of Amendment 12  
 (61 FR 43215). The Council's rationale  
 for the remaining measures in  
 Amendment 12, as well as the reasons  
 for NMFS' disapproval of the proposed  
 measures to reduce the minimum size  
 limit for red snapper, are contained in  
 the preamble of the proposed rule and  
 are not repeated here.

Comments and Responses

A total of 354 entities, including the  
 Florida Marine Fisheries Commission

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric  
 Administration**

**50 CFR Part 622**

[Docket No. 950810206-6288-06; I.D.  
 070296D]

RIN 0648-AG29

**Fisheries of the Caribbean, Gulf of  
 Mexico, and South Atlantic; Reef Fish  
 Fishery of the Gulf of Mexico;  
 Amendment 12**

**AGENCY:** National Marine Fisheries  
 Service (NMFS), National Oceanic and

**SUMMARY:** NMFS issues this final rule to  
 implement the approved measures of  
 Amendment 12 to the Fishery  
 Management Plan for the Reef Fish  
 Resources of the Gulf of Mexico (FMP).  
 These measures reduce the bag limit for  
 greater amberjack to one fish and  
 establish a 20-fish aggregate bag limit for  
 reef fish species for which there are no  
 other bag limits. The intended effects of  
 this rule are to provide additional  
 protection for greater amberjack,  
 conserve reef fish, and enhance  
 enforcement.

**EFFECTIVE DATE:** January 15, 1997.

**FOR FURTHER INFORMATION CONTACT:**  
 Robert Sadler, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The reef  
 fish fishery of the Gulf of Mexico is  
 managed under the FMP. The FMP was  
 prepared by the Gulf of Mexico Fishery  
 Management Council (Council) and is