

### F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

### G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: December 26, 2000.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 214

[Docket No. FRA-2000-8156, Notice No.1]

RIN 2130-AB28

### Roadway Maintenance Machine Safety

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FRA proposes to amend its regulations by adding operational and design safety standards for railroad on-track roadway maintenance machines. The proposed regulations cover self-propelled rail-mounted non-highway machines whose light weight exceeds 7,500 pounds.

**DATES:** *Written Comments:* Written comments must be received before March 12, 2001. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

*Public Hearing:* FRA does not plan to conduct a public hearing unless requested to do so by an interested party.

**ADDRESSES:** *Written comments:* Submit one copy to the Department of Transportation Central Docket Management Facility located in Room PL-401 at the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. All docket material on the proposed rule will be available for inspection at this address and on the Internet at <http://doms.dot.gov>. Docket hours at the Nassif Building are Monday-Friday, 10 a.m. to 5 p.m., excluding Federal holidays. Persons desiring notification that their comments have been received should submit with their comments a stamped, self-addressed postcard. The postcard will be returned to the addressee with a notation of the date on which the comments were received.

*Public hearing:* The date and location of the public hearing will be announced at a later date in this publication.

**FOR FURTHER INFORMATION CONTACT:** Allison H. MacDowell, Office of Safety Enforcement, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone: 202-493-6236), or Nancy Lummen Lewis, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202-493-6047).

## SUPPLEMENTARY INFORMATION:

### Introduction

#### Background

In May, 1990, the Brotherhood of Maintenance of Way Employees (BMWE) filed a petition with FRA to revise the Track Safety Standards and add to them new regulations addressing the safety of roadway workers and roadway maintenance machines. In response, FRA first initiated a negotiated rulemaking to address roadway worker safety. The final rule resulting from that rulemaking was published in December, 1996 (*see* 61 FR 65959), and the regulations addressing roadway worker safety now reside in 49 C.F.R. part 214, subpart C.

Also in 1996, FRA requested that the newly formed Railroad Safety Advisory Committee (RSAC) address by rulemaking the revision of the Track Safety Standards, as petitioned by the BMWE. The RSAC agreed to the task and formed a Track Working Group to draft a proposed revision. The Track Working Group decided by consensus that the draft revision would update the Track Safety Standards found at 49 C.F.R. part 213, and that a new set of regulations addressing the safety of on-track roadway maintenance machines would be initiated in a separate rulemaking. The RSAC approved by majority consensus a draft Notice of Proposed Rulemaking (NPRM) for revision of part 213 in October, 1996. FRA published the NPRM on July 3, 1997 (*see* 62 FR 36138), and the final rule on June 22, 1998 (*see* 63 FR 33992). The revised track standards became effective on September 21, 1998.

Even after the publication of the revised Track Safety Standards, the Track Working Group remained in existence to accomplish two additional tasks adopted by the RSAC: the amendment of part 213 to add safety standards for Gage Restraint Measuring Systems (GRMS) and the amendment of part 214 to add safety standards for on-track roadway maintenance machines. To accomplish the latter, the Track Working Group appointed a six-member Task Group to draft by consensus rule language, as well as analysis of the new rule for the preamble. The product of that Task Group is contained in this document.

The Task Group consisted of representatives from FRA, Association of American Railroads (AAR), Norfolk Southern Railway, an equipment supplier, and the BMWE. The group met several times and conducted numerous conference calls before reaching

agreement on draft rule language to recommend to the RSAC for approval.

#### *Early Efforts and Size Categories*

The Task Group initially divided roadway maintenance machines into three broad categories: On-track, on/off track, such as hi-rails, and off-track. The group quickly decided to confine the regulations to on-track equipment and equipment used both on and off track. The group further divided two remaining categories of roadway maintenance machines into five sub-categories: large self propelled equipment, medium self propelled equipment, small "walk-along" equipment, hi-rail equipment and motor cars.

The Task Group conducted a systematic review of various types and configurations of machinery, as well as their current use in the railroad industry. The group determined that the railroad industry is rapidly phasing out the use of motor cars, replacing them with hi-rail vehicles. In fact, motor cars have not been manufactured for use in the United States in several years. Therefore, the Task Group decided there was no need to write a rule covering motor cars. However, if in the future, the industry returns motor cars for widespread use as inspection vehicles, FRA may reconsider its decision to exclude motor cars from this regulation.

Next, the Task Group decided to eliminate small "walk-along" track equipment from the scope of the new regulations. "Walk-along" equipment includes small pieces of track maintenance equipment that rolls on the rails but may not be self-propelled. This type of machine includes tie borers, nut runners, portable rail grinders and other track maintenance equipment of similar size which can be placed on, or removed from, the track with relative ease by one or more roadway workers. The group determined that the great variety of this type of equipment would dictate writing a very complicated set of regulations governing a category of equipment that does not pose a very significant safety hazard. Therefore, the Task Group decided to focus the rulemaking on the three remaining sub-categories groups of roadway maintenance equipment: large on-track machines, medium on-track machines, and hi-rails.

To distinguish large on-track machines from medium-sized on-track machines, the Task Group decided to consider the light weight of the vehicles. Large equipment was designated "Category I" and included on-track self-propelled roadway maintenance machines that weigh (light weight) more

than 17,500 lbs. "Category II" machines included similar equipment whose light weight was less than 17,500 lbs. but more than 7,500 pounds.

The final categorization of covered roadway maintenance machines dealt with the age of the vehicles. The Task Group determined that all of the regulations would apply to new machines. The group decided to define "new" as any machine ordered for manufacture 90 days after the issuance of a final rule. This delay in the implementation of the rule on new equipment is meant to prevent the rule from interfering with the manufacture of new equipment already on order but not yet completed as of the date of the issuance of the final rule.

Likewise, the Task Group felt it necessary to limit the number of older roadway maintenance machines that would need retrofitting following the issuance of a final rule in this proceeding. Because technology has much changed and many types of roadway maintenance machines have been redesigned in more recent years, the Task Group determined that the new rule should not apply to the oldest equipment in the industry's collective fleet. Therefore, the group decided that the requirements for retrofitting would not apply to any roadway maintenance machine manufactured prior to 1990.

With the parameters about types of equipment agreed upon, the Task Group then set out to determine what safety features on the machine should be covered by the regulations. The group reviewed existing standards for work equipment issued by the Occupational Safety and Health Administration (OSHA), and discussed the American National Standards Institute (ANSI) and the Society of Automotive Engineers (SAE) standards, which are voluntary industry standards. The group identified 18 items on the Category I and Category II machines that should be included in the regulations:

- Operator Seating
- Brakes
- Horn
- Work Lights
- Mirrors
- Change of Direction Alarm
- Fire Extinguisher
- Safety Glass
- Power Wipers
- Strobe Light
- Heat and Ventilation Non-Pressurized Cab
- Flagging Equipment
- Headlights
- Turntable Positive Restraint Device
- Equipment Lite Weight Displayed
- Heat, Ventilation, Air Conditioning Pressurized Cab

- Brake Lights
- First Aid Kit

For hi-rail vehicles, the group determined that the regulations should address:

- Operator Seating
- Brakes
- Horn
- Mirrors
- Fire Extinguisher
- Safety Glass
- Power Wipers
- Heat and Ventilation Non-Pressurized Cab
- Headlights
- Equipment Lite Weight Displayed
- Brake Lights
- Change of Direction Alarm
- Strobe Light
- Flagging Equipment
- First Aid Kit

Because the regulations are meant to cover hi-rails only when they are being used as on-track vehicles, the Task Group determined that the regulations should not replace any state requirements covering hi-rail vehicles when they are used as roadway motor vehicles.

As the discussions continued over many months and the proposed rule evolved, early decisions made by the group also evolved and some changed. For example, the Category I and II designations, which helped the group early in the discussions, eventually became unnecessary as proposed requirements changed. The proposed rule reflected in this document makes the distinction between large equipment and medium-sized equipment in only two instances, making it unnecessary to maintain the designated categories for purposes of the rule.

#### *Shunting*

Early in the deliberations, the Task Group explored whether or not these proposed regulations should require that the covered track maintenance machines be non-insulated for the purpose of shunting the track circuits. Machines capable of shunting track circuits would enable a track circuit to indicate track occupancy by the machine, affording an extra measure of protection for the track crew through the signal system, as well as protection at highway-rail crossings through the activation of warning devices at crossings so equipped.

The railroad industry has struggled many years to develop a technology that would provide reliable shunting capabilities for track maintenance machines. Even heavy equipment such as rail diesel cars (RDC's) and lite locomotives do not always shunt the track circuits. The Task Group

discussed the advantages of current shunting technologies when the technologies work successfully, and balanced them against the possibility that the technologies might fail. Roadway workers could develop a false sense of security when using machines designed to shunt track circuits, perhaps relying too heavily on shunting as a method of protection when the reliability of the shunting is not failsafe.

The Task Group agreed that, because present shunting technology has not advanced enough to guarantee a level of reliability necessary for track maintenance machines, this rule should not propose to require that the machines be non-insulated. However, if FRA finds in the future that the technology has advanced to a high level of reliability for track maintenance machines, the agency may reconsider its position regarding insulation.

#### *Noise Conservation*

The Task Group considered including in the proposed regulations a design standard that would require new roadway maintenance machines covered by this proposed rule to maintain the noise level in the cab of the machine to 85 dBA measured on the A-scale of a standard sound level meter at slow response over an eight-hour period. Hearing loss caused by exposure to loud levels of noise over an extended period of time is a significant issue among roadway workers. Workers on roadway maintenance machines are currently protected by Occupational Safety and Health Administration (OSHA) regulations in Title 29, Code of Federal Regulations, Section 1910.95, which requires a covered employer to provide a hearing conservation program, hearing protection, and training for employees.

However, if FRA were to establish noise exposure standards here with a new design standard, the standards would preempt OSHA's jurisdiction over hearing conservation, pursuant to section 4(b)(1) of the Occupational Safety and Health Act, 29 U.S.C. 653(b)(1). Therefore, with a design standard for new equipment, but no requirement for a hearing conservation program, personal hearing protection and employee training, the roadway workers affected by this proposed rule would receive less protection than they receive now under OSHA regulations. In addition, an effort by FRA to enter the field of hearing conservation on some roadway maintenance machines could result in FRA's preemption of OSHA regulations as to all roadway maintenance machines. This result would leave operators of roadway equipment not under the proposed

design standard (*i.e.*, older equipment or equipment weighing less than 7,500 lbs.) with no hearing protection under Federal law whatsoever.

To prevent such an unwanted result, FRA would need to institute its own set of comprehensive regulations dealing with hearing protection, hearing conservation programs, and testing. Given the fact that OSHA currently has authority to address noise exposure and hearing loss for these employees, and the requisite expertise at hand to do so effectively, FRA sees no need to duplicate such a program. In fact, as FRA understands it, the railroads currently follow the OSHA regulations and have established hearing conservation programs that include these employees.

#### *Environmental Controls in Cabs*

The issue of environmental controls in cabs of roadway maintenance machines, including heating, air conditioning, and protection from air contaminants like silica dust, was the topic of much discussion among Task Group members. The group worked hard to find a balance between environmental controls perceived to be safety enhancements and those perceived by some to be merely "comfort" improvements. The resulting requirement in this proposed rule therefore is designed to protect employees working on certain types of roadway machines from air contaminants that may cause respiratory health problems for employees while also protecting equipment components from the effects of temperature extremes or degradation from dust and debris. The proposed standard would also enhance safety by reducing noise inside the equipment cabs, thereby effectuating clearer radio communications between employees. In addition, the proposed standard would afford clearer visibility for those working inside the cab.

Under this proposed regulation, OSHA environmental standards, which already govern the working environments of roadway maintenance machines, would essentially remain in effect. The NPRM proposes to "incorporate by reference" the OSHA standards contained in 29 CFR 1910.1000. This action would mean that FRA would become the enforcing agency as to environmental controls over the selected types of equipment, rather than OSHA. Environmental controls in equipment not covered by this proposed rule and the limiting of exposure to employees working outside equipment would remain subject to OSHA enforcement, although the

regulation is the same (29 CFR 1910.1000).

It is important to note that the proposed requirement is to incorporate the OSHA standards "as amended." OSHA has announced plans to revise its environmental standards. By incorporating the standards "as amended," FRA's environmental standards under this rule would automatically change with any revision by OSHA so as to remain in conformance with those standards. This action prevents an undesirable result where operators of roadway machines covered by this regulation receive less protection than other operators after OSHA revises its standards.

The regulation proposed here is meant to cover only certain roadway maintenance machines. The regulation proposes positive pressurized ventilation systems with temperature controls only on new roadway maintenance machines as defined in the proposed definition in § 214.7. In addition, the proposed regulation is limited to ballast regulators, tampers, mechanical brooms, rotary scarifiers, undercutters, and other equipment with equivalent functions. It is FRA's understanding that these types of equipment are now typically manufactured with engineering controls that prevent inhalation of hazardous substances. The proposed regulation would require temperature controls because, by their nature, pressurized cabs require full enclosure without access to open windows or alternative sources of ventilation. It becomes imperative, therefore, that the cabs also be equipped with a means to control the temperature inside the cab. If the engineering controls fail for the ventilation system of any roadway maintenance machine covered by this section of the regulation, employees on the machine must be equipped with personal respiratory protective equipment that is operative and meets the OSHA standards in 29 CFR 110.134.

To prevent confusion about which agency has enforcement authority over specific roadway maintenance machines, the rule proposes to require railroads to maintain a roster of machinery that would fall under FRA's jurisdiction for purposes of this regulation. The roster may be maintained on paper or electronically, but it must be accessible and available to FRA, OSHA, and other Federal and state agencies so that inspectors may determine which agency has responsibility for inspection of which machines. The roster should prevent confusion that may cause certain machines to be inspected by two

Federal agencies while other machines go uninspected altogether.

Although the proposed rule addresses pressurized cabs and temperature controls for only certain types of new roadway maintenance machines, railroads are not precluded from equipping other types of machinery, or older machinery, with the same features. If the railroad desires that FRA become the inspection agency for those machines so retrofitted, the railroad may simply add the designated machines to the roster. However, once added to the roster, a designated machine must remain on the roster until it is retired or its ownership changes.

#### *Crane Safety*

In 1998, the BMW petitioned FRA to issue new regulations governing the safety of on-track railroad maintenance cranes. Currently, the safety of railroad crane operations is governed generally by OSHA regulations at 29 CFR 1910.180. In its petition, the BMW is seeking to reduce the number of railroad crane operators who are killed or seriously injured when cranes accidentally tip over due to shifting loads, excessive loads, defective equipment, supervisor misjudgment, or operator error. It is not clear from the data FRA has now whether a reduction in railroad crane accidents is best accomplished through better equipment design or improved employee training.

This proposed rule is not intended to cover crane safety as envisioned by the petition. FRA has made a commitment to gather data and information regarding crane safety and upon completing that, to seek the advice of the RSAC about the necessity of issuing regulations.

#### **Section by Section Analysis**

FRA proposes to amend part 214 of Title 49, Code of Federal Regulations by adding a new subpart D specifically devoted to the prevention of accidents and casualties caused by the operation of on-track roadway maintenance machines and hi-rail vehicles. FRA also proposes to amend subpart A of part 214 by adding new definitions to section 214.7 that describe and categorize the types of roadway maintenance machines that subpart D will address. (see page 15)

#### *Section 214.7—Definitions*

Section 214.7 contains additional entries which are particularly important to the understanding of the types of equipment that are to be covered by the proposed rule. Subpart D will address two general types of roadway maintenance machines. *On-track roadway maintenance machines* are

defined as self-propelled, rail mounted, non-highway, roadway maintenance machines whose light weight is in excess of 7,500 pounds, and whose purpose is not for the inspection of railroad track. *Hi-rail vehicles* are defined as roadway maintenance machines that are manufactured to meet Federal Motor Vehicle Safety Standards and are equipped with retractable flanged wheels so that the vehicle may travel over the highway or on railroad tracks.

Both *on-track roadway maintenance machines* and *hi-rail vehicles* are classified as either new or existing for the purposes of this rule. The new classification is defined as any vehicle covered by subpart D which is ordered after 90 days following the effective date of this rule, and completed after one year following the effective date of this rule. The *existing* classification is defined as any vehicle covered by subpart D which does not meet the definition of a *new* vehicle.

Roadway maintenance machines not included within the scope of the proposed subpart D are *on-track roadway maintenance machines* whose light weight does not exceed 7,500 pounds, off-track equipment such as bulldozers, backhoes, and road graders, as well as that class of antiquated equipment referred to as motor cars. Although this equipment is not covered under the scope of proposed subpart D, it nevertheless meets the general definition of *roadway maintenance machines* as defined in this section for purposes of the Roadway Worker Protection regulations contained in subpart C of this Part.

In addition, it is important to note here that the term “employer” as defined in Subpart A includes railroads and contractors of railroads. In Subpart D, FRA has used the term “employer” as defined; that is both railroads and their contractors are subject to the requirements of subpart D.

#### *Section 214.501—Purpose and Scope*

The purpose for the minimum safety standards prescribed under this subpart is the protection of roadway workers during the lawful operation of on-track roadway maintenance machines and hi-rail vehicles. This subpart prescribes minimum safety standards for on-track roadway maintenance machines and hi-rail vehicles, although railroads and railroad contractors (referred to collectively as “employer” throughout subpart D, as the term is defined in subpart A) may adopt more stringent standards as long as they are consistent with this subpart. As it has done in other regulations, FRA would include

railroad contractors in the scope of this proposal. A good deal of track maintenance is completed by contractors to railroads, and so it is important for those entities to fall within the requirements for safe completion of that work.

This section further states that any working condition which involves the protection of railroad employees engaged in roadway maintenance duties but which is not specifically addressed in this subpart (for example, noise exposure) continues to be governed by the regulations of OSHA.

In addition, FRA would like to clarify here that all of the provisions set forth in subpart A to this part, which discuss purpose and scope of the part, would apply to subpart D as well.

#### *Section 214.503—Good Faith Challenges; Procedures for Notification and Resolution*

Section 214.503 outlines the circumstances under which employees operating on-track roadway maintenance machines are guaranteed the right and have the responsibility to make challenges relative to the operation or condition of the on-track roadway maintenance machine. A challenge must be made in good faith in order to fall within the purview of this section.

Paragraph (a) addresses the employee’s responsibility to inform the employer whenever the employee makes a good faith determination that the employer’s rules governing the on-track roadway maintenance machine do not comply with FRA regulations. The employee should not only consider the minimum safety requirements specified in this subpart, but should also consider the general requirements specified in § 214.341 of subpart C of this Part, which addresses the issue of on-track safety around roadway maintenance machines.

Paragraph (b) guarantees the employee’s right of refusal to operate any on-track roadway maintenance machine once the employee has made a good faith determination that the machine does not meet all the requirements of this subpart, or has a condition that prohibits its safe operation. Section 531 allows the employer up to seven days to repair a roadway machine found to be noncompliant. However, the employer cannot require an employee, who in good faith challenges the fitness of a machine, to operate the machine until the challenge has been resolved.

Under paragraph (c), each employer must have in place, and must adhere to, written procedures for attaining a

prompt and equitable resolution of challenges resulting from good faith determinations made in accordance with this section. The procedures shall outline the steps the employer will take to investigate each good faith challenge. They shall also include steps to be taken, once the employer's investigation shows that the challenged machine should not be used as it is, to ensure that the challenged machine is not used until repaired to comply with this subpart. FRA's purpose in requiring these procedures is to make certain that a machine operator who makes a good faith challenge of a machine's fitness to operate receives an explanation of an employer's decision to either keep the machine in service, or repair or replace it. FRA will not consider an employer to be compliant with this section if it responds to any good-faith challenge with a mere "yes" or "no" answer.

The written procedures shall also include the title and location of the employer's designated official(s) for the purpose of reporting conditions found to be in non-compliance with this subpart. This requirement helps ensure that machine operators are informed as to whom they should address any good faith challenges.

FRA envisions that machine operators will challenge the fitness of an assigned machine only in good faith, and the employer likewise will respond only in good faith. FRA realizes that a employer's fleet of roadway maintenance machines may be very large and that machines may sometimes become unfit for safe use without the employer's immediate knowledge. This provision seeks to establish a system under which a machine operator, who on any day may be in the best position to assess the safety fitness of a particular machine, can call the employer's attention to safety deficiencies and other defects that should be immediately addressed.

However, FRA also realizes that sometimes defects can appear to be more serious than they actually are. What may appear to be a defect jeopardizing operational safety may in reality be a minor flaw that can be addressed at a later, more convenient time or location. This section allows for employers to investigate a good faith challenge to a machine's safety fitness and make its own good faith determination that the machine may be used without immediate repairs. However, this section requires good faith on the part of all parties involved. If FRA determines that an employer has not exercised good faith in determining that a machine need not be immediately repaired or replaced, FRA may seek

enforcement action against the employer for violation of this section. On the other hand, FRA will not consider an employer's response to a challenge a violation of this section if FRA determines that the challenge was made for purposes of disrupting or delaying work or in a manner demonstrating a motivation other than good faith and concern for safety.

*Section 214.505—Required Environmental Control and Protection Systems for New On-Track Roadway Maintenance Machines*

Paragraph (a) proposes to require that certain types of new roadway maintenance machines be equipped with enclosed cabs with a positive pressurized ventilation system that includes climate control. By design, most pressurized ventilation systems do not provide a means of exchanging internal air for outside air while the roadway maintenance machine is in operation. In other words, the machine cabs with pressurized ventilation systems generally are not equipped with other means of ventilation or climate control, such as operable windows. Therefore, the proposed requirement for positive pressurized ventilation systems in new on-track roadway maintenance machines dictates that these machines also be equipped with operative heating and air conditioning systems.

The equipment subject to this requirement includes ballast regulators, tampers, mechanical brooms, rotary scarifiers, undercutters, and other equipment with equivalent functions. This equipment is used to perform track and roadbed maintenance that typically creates a good deal of noise, debris, and dust. This work often occurs while employees are situated both in the cab of the equipment and along the right-of-way, in close proximity to the equipment as it is operated.

This proposed requirement will ensure the safety of employer operations and employee safety in a variety of ways.

- Employees working in the cab will be protected from exposure to unhealthy levels of silica dust, which is prevalent in many regions of the country where track repair is done, as well as other air contaminants.

- The components of the equipment will be protected from temperature extremes and the degradation that may occur due to concentrations of dust and debris.

- Any combustion fumes generated by the equipment will be prevented from entering the cab so that employees are not exposed to the potential hazards of fuel exhaust.

- With diminished noise, dust, and debris in the cab, employees will be able to better communicate with one another in the cab and, through the use of radios, with those employees working on the ground who might be placed at risk if the equipment moves or operates unexpectedly.

- The visibility of those working in the cab will improve.

The standards of this section affect only those listed machines manufactured after [insert date 90 days following the effective date of this rule]. FRA proposes to incorporate by reference and enforce OSHA environmental standards contained in 29 CFR 1910.1000 as amended. Environmental controls of older machinery will be governed by the same regulations, but compliance will be enforced by OSHA. It is FRA's understanding that new roadway machines of the type listed in this section are manufactured with engineering controls that prevent the inhalation of hazardous substances, as required by the OSHA standards. By adopting the OSHA regulations for new machinery, FRA will be in a position to make progressive improvements in environmental quality of roadway equipment based upon a foundation of protection already established by OSHA.

FRA proposes that employers maintain a roster of machinery that will fall under FRA's jurisdiction for purposes of this regulation. The roster, which may be electronic, must be readily available to FRA and other federal and state agencies upon request so that inspectors may determine which agency has responsibility for inspection and enforcement of respiratory safety regulations for each roadway machine.

Employers may elect to include on the roster older machines that are equipped with engineering controls for air ventilation. These machines designated for inclusion on the roster may be ones manufactured with engineering controls for ventilation or machines retrofitted by the employer to have engineering controls. If added to the roster, the designated machines become subject to FRA's inspection and enforcement. Once a machine is added to the roster, however, it must remain on the roster until it is retired or its ownership changes.

FRA recognizes that engineering controls for ventilation may fail from time to time. When a new or designated roadway maintenance machine of the type listed in paragraph (a) does not offer the protection required by 29 CFR 1910.1000 because the engineering controls have temporarily failed, the

employer must provide employees on that machine personal respiratory protective equipment for protection from air contamination. The personal respiratory protective equipment must be operative and must meet the standards issued by OSHA in 29 CFR 1910.134. The standards set by OSHA require employers to use NIOSH-certified respirators. Employers must have in place a respiratory protection program including procedures for proper inspection and maintenance of the respirators and medical evaluations of personnel designated to use the respirators.

By referencing OSHA's regulations already in effect, FRA is not creating a new burden on employers. Rather, FRA is simply adopting standards that are already required by another government agency. A requirement in the final rule for heating, air conditioning, pressurized cabs, and personal respiratory protective equipment in new roadway maintenance machines would constitute an exercise of FRA jurisdiction over the working condition of employee exposure to temperature extremes and air contaminants for those employees working in the cabs of this equipment. This exercise would oust any authority or enforcement actions by OSHA concerning working conditions related to the operation of air conditioning and heating systems or high levels of air contaminants in the cabs of this equipment. FRA is prepared to address these working conditions that may arise in these cabs, either through consultation with employers to remedy problems, or through the imposition of an enforcement action to bring about compliance.

OSHA has announced plans to revise its regulations regarding protection from silica dust. Therefore, FRA proposes to incorporate by reference the OSHA standards as revised, making it clear that when the revised OSHA standards go into effect, FRA will likewise enforce the revised standards on those machines over which FRA has jurisdiction. This incorporation will ensure that the proposed OSHA revision does not create an inconsistency where some types of roadway machines are governed by the revised standards enforced by OSHA and others are governed by the older standards enforced by FRA. FRA's extent of protection reaches only as far as the cab of the covered on-track roadway maintenance machine. The adoption of OSHA standards by FRA does not include protection from silica dust for employees not working inside the cabs of covered on-track roadway maintenance machines. For example, roadway workers working along the

right-of-way continue to receive silica dust protection as administered by OSHA. Workers inside the cabs receive protection from FRA while working inside the cab, but receive protection from OSHA when working outside the cab.

This proposal adopted in final form would not constitute an exercise of authority over noise exposure for employees working on or around equipment covered by this section. This requirement does not establish permissible noise exposure levels for employees working on or around this equipment. OSHA's existing standards for noise exposure, 29 CFR 1910.95, will continue to apply.

Paragraph (g) requires that new on-track roadway maintenance machines, other than the specific types listed in paragraph (a) that are designed with enclosed cabs, shall be equipped with operative heating and ventilation systems.

Paragraph (h) refers to new on-track roadway maintenance machines that have, in addition to the main cab, non-enclosed operator stations in other places on the machine. These stations should be equipped with covering of some kind that will protect the operator in that position from midday sun or from normal rain. Of course, there will be times during the day when the sun is in such a position in the sky that a covering will not completely protect the operator from the sun. Likewise, a cover may not completely protect an operator from very heavy or wind-driven rain. This paragraph is not intended to require coverings to protect the operator in all circumstances.

The coverings are required only where the design of the machine allows for placement of a covering. Some operator's positions may be situated such that the addition of a covering is either impossible or would obstruct another working part of the equipment. In those instances, the coverings will not be required.

#### *Section 214.507—Required Safety Equipment for New On-Track Roadway Maintenance Machines*

Section 214.507 specifies the safety equipment required on all new on-track roadway maintenance machines. Several of the requirements are structural in nature, such as seats and handrails, and would be best met through engineering design by the equipment manufacturer. Other requirements, like fire extinguishers and first aid kits, can be installed either by the manufacturer or by the employer after delivery from the manufacturer.

Paragraph (a) requires that each new on-track roadway maintenance machine be equipped with a seat for each operator, unless the machine is designed to be operated by an operator in the standing position. Each roadway worker transported on a piece of on-track roadway maintenance machinery is required to have a safe and secure position with handholds, handrails, or a secure seat. These safe and secure positions should be located so that they offer protection from moving parts of the machine which could entangle clothing or body extremities. FRA is considering additional regulatory language describing "safe and secure positions" with more specificity. FRA requests comments about the need for more specific descriptions of "safe and secure positions" and what those descriptions should include.

Some on-track roadway maintenance machines are equipped with turntables to allow them to quickly change working direction when wye or loop tracks are not readily accessible. Paragraph (a) will require new machines to have turntables equipped with a positive method of mechanical securement, through engagement of pins and hooks, to prevent the lowering of the turntable device below the head of the rail when not in use. This arrangement of pins and hooks will provide a safety redundancy in case the main activation system fails or is accidentally triggered.

Paragraph (a) requires new on-track roadway maintenance machines to have windshields made of safety glass or other material with similar properties, such as Lexan. The machinery is also required to have power windshield wipers; however, in cases where traditional windshield wipers are incompatible with the windshield material, the employer should provide a suitable alternative that offers the operator an equivalent level of vision.

Paragraph (a) requires that new on-track roadway maintenance machines be equipped with primary braking systems capable of effectively controlling the movement of the machines under normal operating conditions. New machines must also have a suitable first aid kit and fire extinguisher readily accessible to the operator(s). The first aid kit must meet the requirements of 29 CFR 1926.50(d)(2), as amended (OSHA regulations). This requirement means that the first aid supplies in the kits must be in individual sealed packages for each type of item and placed in a weatherproof container. The kits must be inspected weekly and expended items replaced. OSHA does not regulate the minimum contents of the first aid

kit, but it recommends as an example the description of the contents of a generic first aid kit described in American National Standard (ANSI) Z308.1-1978 "Minimum Requirements for Industrial Unit-Type First-Aid Kits." (See Appendix A to 29 CFR 1926.50.)

The fire extinguisher must be operative and properly charged, securely mounted near the operator's work station, and designed with a rating of 5 BC or higher. A fire extinguisher with a "BC" rating is suitable to combat fires generated by flammable liquids or electrical equipment. The "5" designation indicates the extinguisher's volume and fire-fighting capacity. A requirement of a 5BC rating is consistent with workplace standards in other industries.

Where new on-track roadway maintenance machines are designed to be operated with the operator in a standing position, the requirements of paragraph (a)(1) of this section do not apply. Paragraph (b) requires these machines to be designed and equipped with handholds and handrails that provide the operator with a safe and secure position.

Paragraph (c) requires that an on-track roadway maintenance machine with a light weight in excess of 32,500 pounds be equipped with a speed indicator if the machine is operated at speeds in excess of 20 mph. The speed indicator must be calibrated to be accurate within  $\pm 5$  mph of the actual speed when speeds are 10 mph or faster.

Paragraph (d) requires the manufacturer of new on-track roadway maintenance machines to clearly display the as-built light weight of the machine. Light weight of the machine is calculated when the machine is not loaded with passengers or extraneous equipment not part of the machine itself. The light weight should be displayed in a conspicuous location on the machine and will serve to identify its proper category for the purposes of this regulation. The light weight will also provide essential information to crane operators in the event the machines are off-loaded to flatbed trucks or rail cars for shipment from one work site to another.

*Section 214.509—Required Visual Illumination and Reflective Devices for New On-Track Roadway Maintenance Machines.*

Section 214.509 prescribes requirements for lights and reflective devices for new on-track roadway maintenance machines. The machine operator must have sufficient light to safely work or travel, especially during night time operations. To ensure that

the machines are visible to roadway workers on the track and to vehicular traffic at highway-rail crossings, they must be equipped with headlights or other illumination devices that, under normal weather and atmospheric conditions, can illuminate the track ahead for a distance of 300 feet.

In several paragraphs, this section refers to visibility in normal weather and atmospheric conditions. The requirement for illumination for 300 feet is a measure to be considered under generally clement weather and atmospheric conditions. FRA understands that during periods of rain, fog, snow and other occurrences that are common in normal weather patterns, the lighting capability of the illuminating devices may temporarily be unable to extend a full 300 feet. These temporary instances when full illumination is not possible will not be considered a violation of this regulation. In addition, FRA will not consider unusual weather events such as hurricanes, tornadoes, eclipses, or horizontally driven snowstorms to be normal weather and atmospheric conditions under which this regulation must apply.

Paragraph (a)(1) requires an illumination device, such as a headlight, capable of illuminating obstructions on the track ahead in the direction of travel for a distance of 300 feet under normal weather and atmospheric conditions. When on-track roadway maintenance machines are operated between  $\frac{1}{2}$  hour after sunset and  $\frac{1}{2}$  hour before sunrise, or in dimly lit areas such as tunnels, they are required by paragraph (a)(2) to be equipped with operating work lights unless equivalent lighting is otherwise provided, for example, by portable wayside generator-driven light plants.

Paragraph (a)(3) requires an operative warning light or beacon mounted to the roof of the machine. The light or beacon should be designed to intermittently flash while rotating 360 degrees. Exempt from this requirement are on-track roadway maintenance machines that have a light weight greater than 7,000 pounds and less than 17,500 pounds and are designed without fixed roofs.

Paragraph (a)(4) requires on-track roadway maintenance machines to be equipped with brake lights activated by an application of the machine braking system. The brake light should be visible for a distance of 300 feet under normal weather and atmospheric conditions.

Paragraph (a)(5) requires that on-track roadway maintenance machines be equipped with operative rearward viewing devices, such as rearview mirrors or their functional equivalent, to

enable machine operators to better see other machines or roadway workers within the immediate work zone.

*Section 214.511—Required Audible Warning Devices for New On-Track Roadway Maintenance Machines*

This section requires audible warning devices on new on-track roadway maintenance machines to provide additional safety for roadway workers as well as other machine operators.

Paragraph (a)(1) specifies that audible warning devices, such as horns, produce sound loud enough to be heard by roadway workers and other machine operators within the immediate work area. The triggering mechanism for the audible warning device must be clearly identifiable and within easy reach of the machine operator.

Paragraph (a)(2) requires that automatic change-of-direction alarms produce an audible signal that is at least three seconds long, is loud enough to be heard by roadway workers and other machine operators within the immediate work area, and is uniquely distinguishable from any surrounding noise. The change-of-direction alarm should sound automatically in each instance where the on-track roadway maintenance machine's transmission changes the machine's movement direction.

In addressing the required loudness of the audible warning devices and change-of-direction alarms, the Task Group chose not to set a decibel standard. However, the standard as proposed, *i.e.*, "loud enough to be heard by \* \* \* workers \* \* \* within the immediate work area," may invite too many variables, making the standard difficult for FRA to enforce. FRA invites comments about whether or not this standard should be changed to a particular decibel level, and if so, what level.

*Section 214.513—Retrofitting of Existing On-Track Roadway Maintenance Machines*

This section specifies a schedule of retrofit items applicable to all existing on-track roadway maintenance machines. By definition referenced in § 214.7, *existing* means any on-track roadway maintenance machine that was in existence or was on order prior to [insert date 90 days following the effective date of this rule.]

Paragraph (a)(1) states that each roadway worker transported on an existing on-track roadway maintenance machine shall have a safe and secure position that also provides protection from moving machine parts that could entangle clothing or body extremities.

These positions may include seats or foot platforms with handholds so that the roadway worker can maintain a stable and balanced position on the machine as it is moving down the track. Roadway workers are prohibited from being transported on machines on which it is not possible to provide safe and secure positions for them.

Because there exists no set standard or pattern for where positions are located on an on-track roadway maintenance machine for roadway workers to ride, paragraph (b) requires that each existing machine have stenciling or documentation on the machine to clearly identify the location of safe and secure positions for the machine operator and any roadway workers transported on the machine. If roadway workers are not permitted on a particular machine, that prohibition should be so noted on the stenciling or documentation. FRA received a suggestion from some members of the Track Working Group that a systemwide operating rule prohibiting the transport of roadway workers on certain roadway maintenance machines could serve as an effective and efficient means of documenting this prohibition. FRA is therefore requesting comments regarding the effectiveness and efficiency of allowing employers the option of using an operating rule to identify which roadway maintenance machines are prohibited from transporting roadway workers.

Paragraph (c) states that within 18 months from the effective date of this rule, each existing on-track roadway maintenance machine shall have a permanent or portable horn or other audible warning device. The audible warning device shall be easily accessible to the machine operator and shall produce a sound loud enough to be heard by roadway workers and other machine operators within the immediate work area.

As in section 214.511, the Task Group chose not to set a decibel standard to address the required loudness of the audible warning devices on existing roadway maintenance machines. FRA invites comments addressing whether or not such a standard is necessary, and if so, what decibel level is appropriate.

Paragraph (d) states that within 18 months from the effective date of this rule, each existing on-track roadway maintenance machine shall be equipped with a permanent illumination device, such as a headlight, or a portable light source securely placed on the machine and not hand-held. The portable light does not have to be permanently affixed to the vehicle. FRA will consider the light source to be securely placed on the

machine if it is held in place through any arrangement of screws, bolts, mounting clips, or heavy-duty magnets that maintains the light steadily in place without requiring a person to hold it. Lights are required if the machine is operated between ½ hour after sunset and ½ hour before sunrise or in dimly light areas such as tunnels. The illumination device or portable light source must be capable of illuminating obstructions on the track ahead for a distance of 300 feet under normal weather and atmospheric conditions.

The regulation permits the employers up to 18 months to retrofit the on-track roadway maintenance machines with audible warning and illumination devices to allow time to order this new equipment if necessary. The stenciling requirement, however, becomes effective within one year of the effective date of the rule because most employers are already equipped with stencils and paint.

#### *Section 214.515—Overhead Covers for Existing On-Track Roadway Maintenance Machines*

This section addresses the maintenance of overhead covers on existing on-track roadway maintenance machines, as well as the feasibility of providing overhead covers on certain machines not originally designed and manufactured with such protection.

Paragraph (a) states that within 18 months from the effective date of this rule, overhead covers on existing on-track roadway maintenance machines shall be repaired and thereafter maintained in accordance with the provisions of § 214.531 of this subpart. The covers or canopies must be capable of shielding the operator from overhead sunlight, but are not expected to offer complete protection from the sun when the sun is relatively low in the sky, soon after sunrise and just before sunset. The covers should also be capable of shielding the operator from ordinary rainfall or snowfall, but are not expected to shield the operator from the effects of windblown precipitation.

Many older on-track roadway maintenance machines were not designed with overhead covers, although machine operators could greatly benefit from their presence. Paragraph (b) allows an operator assigned to operate a particular on-track roadway maintenance machine, or that operator's designated representative, to request in writing that the employer evaluate the feasibility of providing an overhead cover where original design specifications did not provide for one or where the overhead cover was an option that was not purchased. Under

paragraph (b), the employer must respond in writing within 60 days to each request.

If the employer finds that the addition of an overhead cover is not feasible for a particular machine, the written response must state why. There may be a number of reasons why an employer would find that the addition of an overhead cover is not feasible. There may be no room on the machine to install an effective cover or canopy, or the machine may not provide a safe place on which a cover may be mounted or attached. Employers must proceed with caution in retrofitting a cover that is supported by an additional pole or stanchion. A stanchion may be used incorrectly by a roadway worker as a handhold. FRA therefore recommends that stanchions added to a machine for any reason should be strong and secure enough to also qualify as a safe handhold for a roadway worker.

#### *Section 214.517—Retrofitting of Existing On-Track Roadway Maintenance Machines Manufactured After 1990*

This section specifies a schedule of retrofit items for existing on-track roadway maintenance machines manufactured after 1990. On-track roadway maintenance machines manufactured prior to 1990 are exempt from these requirements. Within 18 months from the effective date of this rule, the following retrofitted items should be installed:

- Change-of-direction alarm, or rearview mirror or other rearward viewing device. The proposed rule makes such an alarm or rearview mirror a requirement "if feasible from an engineering standpoint." Among the wide variety of roadway maintenance machines, there exist some machines to which such a retrofit would be useless, unnecessary, impossible, or impractical. Under this proposed regulation, feasibility for retrofitting a change-of-direction alarm or rearview mirror to a particular roadway maintenance machine would be determined by the employer after considering available compliance options, as well as the durability and functional quality of the proposed retrofit on a machine specific basis.

A change-of-direction alarm notifies workers near the roadway maintenance machine that its movement is about to change. A rearward viewing device assists the operator of the machine in safeguarding roadway workers in area of the machine. Both devices offer protection for roadway workers, but from two different perspectives. FRA seeks comments regarding whether this standard should require both a change-

of-direction alarm and a rearward viewing device in order to afford adequate protection for roadway workers working in the area of a roadway maintenance machine.

- Heater that is operative when the ambient temperature is less than 50 degrees Fahrenheit. Roadway workers typically dress in seasonal clothes appropriate to perform work outdoors, unlike locomotive cab employees who expect to spend most of the workday inside the cab of a locomotive. Therefore, the threshold ambient temperature may be as low as 49 degrees Fahrenheit before triggering the requirement for an operative heater in a roadway maintenance machine.

- Light weight of the machine stenciled, or otherwise clearly displayed, on the machine if the light weight is known.

- Brake lights or other reflective devices or material.

- Safety glass when glass is normally replaced on the machine. However, if the employer has on hand as of the effective date of this rule replacement glass that is other than safety glass and is specifically intended for use on these machines, the employer may utilize the supply until it is exhausted. The Task Group did not specify standards for safety glass. FRA requests comments about whether the final rule should include safety glass standards, such as requirements delineated in 49 CFR part 223 (Safety Glazing Standards).

- Turntable restraint devices, such as an arrangement of pins and hooks designed to prevent an undesired lowering of the turntable device, or a warning light that would indicate to the machine operator that the turntable device is not in a normal travel position.

- Handholds, handrails, secure seats or benches for each roadway worker transported on a machine. FRA is considering adding to this rule regulatory standards for these handholds, handrails, seats and benches. Therefore, FRA seeks comments regarding the need for such regulatory standards and what those standards should include.

*Section 214.519—Floors, Decks, Stairs, and Ladders for New and Existing On-Track Roadway Maintenance Machines*

All new and existing on-track roadway maintenance machines shall have floors, decks, stairs, and ladders that are of appropriate design. The purpose of this requirement is to provide secure footing for the machine operator and any roadway workers transported on the machine. Current industry standards specifying material such as diamond plate, rubber tile, or

other slip-resistant material design would be considered appropriate for the purposes of this regulation.

In addition, accumulations of oil, grease, or other contaminants or obstructions that could create a slipping, falling, or fire hazard must be promptly removed from floors, decks, stairs, and ladders.

*Section 214.521—Flagging Equipment for On-Track Roadway Maintenance Machines and Hi-Rails Vehicles*

This section requires that flagging kits be available when on-track roadway maintenance machines and hi-rail vehicles are operated over trackage subject to a railroad operating rule requiring flagging. Flagging kits must comply with the requirements specified in the operating rules of railroads over which the equipment is being operated. This requirement applies to each on-track roadway maintenance machine or hi-rail vehicle that is being operated alone or as the lead or trailing piece of equipment in a roadway work group operating under the same occupancy authority. Flagging kits are not needed, and thus are not required, for machines and hi-rail vehicles that are being operated as middle vehicles in a single roadway work group. However, vehicles must be under the same occupancy authority to be considered part of a single group.

*Section 214.523—Hi-Rail Vehicles*

This section prescribes certain inspection and record keeping requirements for all hi-rail vehicles, new as well as existing. It also prescribes specific requirements applied to only new hi-rail vehicles.

By definition, hi-rail vehicles have retractable flanged wheels giving them the ability to operate over the general highway system as well as on the railroad track. Operation of these vehicles over the general highway system requires the vehicle to be manufactured to meet Federal Motor Vehicle Safety Standards.

Paragraph (a) requires that all hi-rail vehicles must have the safety critical components of the hi-rail gear inspected at least annually. Tram, wheel wear and gage measurements must be checked at least annually and adjusted, if necessary, to provide for continued safe operation. If the hi-rail vehicle is involved in a derailment or highway accident, it shall be inspected and necessary repairs or adjustments made in the hi-rail gear prior to its next operation on the railroad track. An inspection of a hi-rail vehicle following a derailment or highway accident may consist of a cursory safety check to

ensure that the vehicle remains safe to operate; it need not be a full inspection comparable to the required annual inspection.

Paragraph (b) specifies a record keeping requirement to document the safety inspections. Records may be retained on paper forms devised by the employer, or they may be stored electronically in a computer data base. The employer shall maintain each record for at least one year, and the records shall be made available for inspection and copying by the FRA during normal business hours. The records may be kept on the hi-rail vehicle itself, or maintained at a location designated by the employer.

The requirements specific to only new hi-rail vehicles are contained in Paragraph (c). Each new hi-rail vehicle shall be equipped with:

- An automatic change-of-direction alarm or backup alarm which produces an audible signal that is at least three seconds long, loud enough to be heard by roadway workers and other machine operators within the immediate work area, and uniquely distinguishable from any surrounding noise.

- An operative warning light or beacon mounted to the roof of the vehicle and designed to intermittently flash or rotate 360 degrees. The Task Group did not discuss requirements for a particular color for the warning light or beacon. FRA requests comments about whether or not the final rule should specify a color for the warning light and if so, what color is appropriate.

Paragraph (c) does not specify a decibel level required for the change-of-direction or backup alarms on hi-rail vehicles. Rather, the proposed standard for loudness of these devices is "loud enough to be heard by roadway workers and other machine operators within the immediate area." Such a standard may invite too many variables, making it difficult for FRA to enforce. FRA invites comment about whether or not a decibel standard should be required for these devices, and if so, what that decibel level should be.

Paragraph (d) requires the operator of each new hi-rail vehicle to inspect the vehicle for compliance with this subpart prior to each daily operation of that vehicle.

Paragraph (e) requires that any non-complying condition that cannot be repaired immediately should be tagged and dated in a manner prescribed by the employer and promptly reported to the employer's designated official.

Paragraph (f) states that defective automatic change-of-direction or backup alarms and 360-degree intermittent

warning lights or beacons must be repaired or replaced as soon as practical within seven calendar days.

*Section 214.525—Towing With On-Track Roadway Maintenance Machines or Hi-Rails Vehicles*

This section prescribes the manner in which on-track roadway maintenance machines or hi-rail may be used to tow pushcars or other on-track roadway maintenance machines.

Paragraph (a) specifies that whenever an on-track roadway maintenance machine or hi-rail is used to tow other equipment, it must provide a safe and secure attachment with a towing bar or other coupling device designed for that purpose.

The towing of pushcars or other on-track roadway maintenance equipment is prohibited under paragraph (b) when such an operation would exceed the braking capabilities of the on-track roadway maintenance machine or hi-rail doing the towing. When determining whether or not the braking capability of a machine or vehicle would be exceeded, the employer must also consider the track gradient or slope in the area, as well as the number and weight of pushcars or other equipment being towed. Paragraph (b) does not cover locomotives hauling conventional rail cars used in track maintenance work, such as ballast cars. Such locomotives must meet the requirements in 49 CFR part 229 (Railroad Locomotive Safety Standards).

*Section 214.527—On-Track Roadway Maintenance Machines: Inspection for Compliance; Schedule for Repairs*

This section prescribes the manner in which on-track roadway maintenance machines are to be inspected and repaired. Paragraph (a) requires the operator of an on-track roadway maintenance machine to perform a daily inspection of that machine for compliance with the requirements of this subpart. The inspection must take place prior to each daily operation of that machine. Under paragraph (b), any non-complying condition that cannot be immediately repaired must be tagged and dated according to established employer procedures and reported to the designated official.

Paragraph (c) allows for continued operation of on-track roadway maintenance machines with noted non-complying conditions subject to certain requirements:

- A machine with non-complying headlights or work lights may be operated only between the period from ½ hour before sunrise to ½ hour after sunset for seven calendar days. In other

words, it may not be operated during the darkness between sunset and sunrise. The ½ hour before sunrise (dawn) and the ½ hour after sunset (dusk) are thought to provide enough light for safe operation on a temporary basis.

- Portable horns may be substituted for non-complying or missing horns or other audible warning devices for no more than seven calendar days.

- Temporary portable fire extinguishers that are readily available for use may replace missing, defective, or discharged permanent fire extinguishers on new on-track roadway maintenance machines for seven calendar days, after which time the permanent fire extinguisher must be replaced or repaired.

- Non-complying change-of-direction alarms or backup alarms, and 360-degree intermittent warning lights or beacons shall be repaired or replaced as soon as practical within seven calendar days.

- A structurally defective or missing operator seat shall be replaced or repaired within 24 hours, or by the start of the machine's next tour of duty, whichever is later. This paragraph provides flexibility for the employer in cases where the operator seat is found to be defective on a Thursday afternoon and the next tour of duty for that machine is not scheduled until the following Monday. If the operator's seat becomes defective during the machine's tour of duty, the machine may be operated for the remainder of the operator's tour of duty only if it is determined that the operation may continue in a safe manner.

*Section 214.529—In-Service Failure of Primary Braking System*

Paragraph (a) states that in the event of a total in-service failure of an on-track roadway maintenance machine's primary braking system, the machine may be operated for the remainder of the tour of duty through the use of a secondary braking system, if the machine is so equipped, or by coupling to another on-track roadway maintenance machine. In either case, the employer must determine that continued operation of the machine is safe. FRA is considering adding to this section criteria to be used by the employer in determining the safety of continuing to use an on-track roadway maintenance machine after its primary braking system has experienced a total in-service failure. FRA seeks comments about the need for such criteria and what the criteria should include.

Paragraph (b) states that in the event of a total in-service failure of an on-track

roadway maintenance machine's primary braking system, when no secondary braking system is available and no other machine is available for coupling, the machine may, if it is determined to be safe to do so, travel to a clearance or repair point where it shall be placed out of service until repaired.

*Section 214.531—Schedule of Repairs*

This section specifies a general schedule of repairs for all on-track roadway maintenance machines and hi-rail vehicles. If an on-track roadway maintenance machine or hi-rail vehicle does not meet all of the requirements of this subpart, it shall be repaired as soon as practical within seven days.

More restrictive requirements for repairs to on-track roadway maintenance machines apply for missing or defective operator seats as prescribed in § 214.527(c)(5), as well as a total in-service failure of a primary braking system as prescribed in § 214.529. In the event necessary parts for the repair of a non-complying on-track roadway maintenance machine or hi-rail vehicle are not in the employer's inventory and must be ordered, the repair schedule is governed by the requirements specified in § 214.533 which addresses the availability of repair parts.

*Section 214.533—Schedule of Repairs: Subject to Availability of Parts*

Under paragraph (a) of this section, when necessary parts needed to repair a non-complying condition on an on-track roadway maintenance machine or new hi-rail vehicle are not in the employer's inventory, the employer must order the necessary parts by the end of the next business day following the report of the non-complying condition.

Paragraph (b) requires the employer to repair the non-complying on-track roadway maintenance machine or new hi-rail within seven days after receiving the necessary parts. However, if the non-complying condition still exists 30 days after the initial report of the condition, regardless of the reason, the employer must remove the on-track roadway maintenance machine or new hi-rail from service until the condition is brought into compliance. FRA realizes that there may be times when parts needed for repairs are difficult or impossible for the employer to obtain. The employer may continue to use the on-track roadway maintenance machine or new hi-rail with a non-complying condition until the necessary parts for repair are received, subject to the requirements of § 214.503. The defective machine or hi-rail must be removed

from service 30 days after the defect is reported. This provision prevents the use of a defective on-track roadway maintenance machine or new hi-rail for a protracted and undetermined length of time.

Paragraph (c) states that if the employer fails to order the necessary parts as required in paragraph (a) of this section, or fails to install the repair parts within seven days after receiving them as required in paragraph (b) of this section, it must remove the on-track roadway maintenance machine or new hi-rail from service until it is brought into compliance.

To ensure that the provisions of this section are followed, FRA must be able to review records concerning the ordering and installation of parts necessary to repair machines and hi-rails. Paragraph (d) requires the employer to maintain for one year records relating to the ordering and installation of repair parts on-track roadway maintenance machines and new hi-rails. The employer may decide how and where the records are kept. The records may be electronic or on paper. They may be stored on the vehicles or in a location chosen and designated by the employer.

### Regulatory Impact

#### A. Executive Order 12866 and DOT Regulatory Policies

This NPRM has been evaluated in accordance with existing policies and procedures. It is considered to be non-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, NW., Seventh Floor, Washington, DC. Photocopies also may be obtained by submitting a written request to the FRA Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590.

This proposal would cost about \$1,250,000 per year. About 40% of that or \$500,000 per year would go into safety enhancements which serve to prevent accidents and acute injuries of the type usually reported to FRA. That portion would generate benefits of about \$1,900,000 per year. The remainder of the proposal would address long term risks like skin cancer and chronic diseases related to silica exposure, or would address event mitigation, through requiring first-aid kits and fire extinguishers. FRA does not have a good

way to quantify that portion of the benefit, although existing industry practices, and the willing participation of the representatives of the railroads are substantial evidence that the burden is likely not to be very great. The almost infinite variety of equipment involved combined with limited information collection resources and reporting detail, make it impossible more accurately to measure the problem without a substantial expenditure of resources. But in consultation with our industry partners, we have agreed that there is a risk reduction opportunity. We have, together, come up with a reasonable minimum set of precautions and measures, at a reasonable level of costs, that we believe will achieve the desired reduction in risk. Our industry partners will willingly absorb these new costs because they believe it is justified to do so.

A significant portion of the costs of environmental controls will be offset by productivity enhancements. The vast majority of new roadway maintenance machines are ordered with air conditioning because it enhances productivity. There may be some cases in which the additional productivity does not offset the cost of the environmental controls, but there will be a safety benefit in terms of reduced long term exposure to silica dust.

FRA found one fatal accident in the years 1996–2000 which would have been prevented by the proposed rule. In that case a contract employee fell off a crane, which then rolled over him. The proposal would have required a safe place to ride on the crane and likely would have prevented the fatality. See FRA accident file CFE-4-97, 6/23/97, Fort Worth, Texas.

FRA analyzed the costs estimates provided to the task group by AAR. FRA believes that the number of units affected was estimated as too high a number by AAR, and has adjusted its estimates accordingly, but FRA seeks comments from knowledgeable parties regarding the number of units affected by each provision, the unit cost of the provision as it applies to those roadway maintenance machines, the annual maintenance and upkeep costs of the proposal, and the benefits of the proposal, including any particular serious accidents which FRA has overlooked in its analysis, which may be found in the public docket.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket an

Initial Regulatory Flexibility Assessment (IRFA) which assesses the small entity impact on this proposal. Document inspection and copying facilities are available at 1120 Vermont Avenue, 7th floor, Washington, DC. Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590.

“Small entity” is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a “small entity” in the railroad industry is a railroad business “line-haul operation” that has fewer than 1,500 employees and a “switching and terminal” establishment with fewer than 500 employees. SBA’s “size standards” may be altered by Federal agencies, in consultation with SBA and in conjunction with public comment.

Pursuant to that authority, FRA has published an interim policy which formally establishes “small entities” as being railroads which meet the line haulage revenue requirements of a Class III railroad. Currently, the revenue requirements are \$20 million or less in annual operating revenue. The \$20 million limit is based on the Surface Transportation Board’s (STB’s) threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment (49 CFR part 1201). The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA proposes to use this alternative definition of “small entity” for this rulemaking. Since this is an alternative definition, FRA is using it in consultation with the SBA and requests public comments on its use.

FRA took steps during the proceedings for this rulemaking to minimize the adverse effects of the proposal on small entities. FRA invited the American Short Line Railroad Administration (ASLRRRA) to be a member of the task group. ASLRRRA declined, securing representation by the individual also representing the AAR. It appears the proposal will have a minimal effect on small entities as the overwhelming majority of roadway maintenance machines owned by small entities were manufactured before 1990, and would be exempt from the proposal. FRA was careful to limit retrofit requirements, which might have imposed an undue burden on small

entities. There appears to be no substantial impact on a significant number of small entities. FRA seeks comments on the effect of the accompanying proposal on small entities.

The IRFA concludes that this proposed rule would not have a significant economic impact on a substantial number of small entities. Thus, FRA certifies that this proposed rule is not expected to have a "significant" economic impact on a "substantial" number of small entities.

In order to determine the significance of the economic impact for the final rule's Regulatory Flexibility Assessment (RFA), FRA invites comments from all interested parties concerning the potential economic impact on small entities caused by this proposed rule. The Agency will consider the comments and data it receives, or lack thereof, in making a decision on the RFA for the final rule.

*C. Paperwork Reduction Act*

The information collection requirements in this amendment to the final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements of the Subpart D, which will be added to those of the Roadway Worker Protection Final Rule (49 CFR part 214), and the estimated time to fulfill each requirement are as follows:

| CFR Section   | Respondent universe     | Total annual responses          | Average time per response | Total annual burden hours | Total amount burden cost |
|---|-------------------------|---------------------------------|---------------------------|---------------------------|--------------------------|
| 214.503—Good Faith Challenges; Procedures for Notification and Resolution.—Resolution Procedures  | 50,000 Roadway Workers. | 250 notifications               | 10 minutes                | 42                        | 1,260                    |
| 214.505—Req'd Environmental Control and Protection Systems For New On-Line Roadway Maintenance Machines with Enclosed Cabs.—Designated Machines | 685 Railroads           | 20 procedures                   | 2 hours                   | 40                        | 1,520                    |
| 214.511—Req'd Audible Warning Devices For New On-Track Roadway Maintenance Machines.  | 685 Railroads           | 30 lists                        | 2.5 hours                 | 75                        | 2,850                    |
| 214.513—Retrofitting of Existing On-Track Roadway Maintenance Machines.—Identification of Triggering Mechanism—Horns.                           | 685 Railroads           | 20 add'l machine                | 5 minutes                 | 2                         | 76                       |
| 214.515—Overhead Covers For Existing On-Track Roadway Maintenance Machines.   | 685 Railroads           | 250 mechanisms                  | 5 minutes                 | 21                        | 630                      |
| 214.517—Retrofitting of Existing On-Track Roadway Maintenance Machines Manufactured After 1990.   | 685 Railroads           | 1,200 stencils                  | 5 minutes                 | 100                       | 3,000                    |
| 214.523—Hi-Rail Vehicles.—Non-Complying Conditions  | 685 Railroads           | 4,000 mechanisms                | 5 minutes                 | 333                       | 9,990                    |
| 214.527—inspection for Compliance; Repair Schedules.  | 685 Railroads           | 1,050 requests + 050 responses. | 10 minutes + 20 minutes.  | 525                       | 18,550                   |
| 214.533—Schedule of Repairs; Subject to Availability of Parts.  | 685 Railroads           | 6,000 stencils                  | 5 minutes                 | 500                       | 15,000                   |
|   | 685 Railroads           | 3,000 insp. record              | 30 minutes                | 1,500                     | 45,000                   |
|   | 685 Railroads           | 250 tags + 250 reports.         | 5 min. + 5 min            | 84                        | 2,250                    |
|   | 685 Railroads           | 550 tags + 550 reports.         | 5 min. + 5 min            | 184                       | 5,520                    |
|   | 685 Railroads           | 250 records                     | 15 minutes                | 63                        | 2,394                    |

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), the FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork

package submitted to OMB contact Robert Brogan at 202-493-6292.

FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Comments must be received no later than March 12, 2001. Organizations and individuals desiring to submit comments on the collection of

information requirements should direct them to Robert Brogan, Federal Railroad Administration, RRS-21, Mail Stop 17, 1120 Vermont Ave., NW., MS-17, Washington, DC 20590.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain

current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

*D. Environmental Impact*

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impact of the FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et. seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. This NPRM meets the criteria that establish this as a non-major action for environmental purposes.

*E. Federalism Implications*

FRA has analyzed this NPRM in accordance with the principles and criteria contained in Executive Order 13132 issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. See 64 FR 43255. From the information FRA has at this time, it is apparent that the rule as proposed may have federalism implications. The governance of safety of hi-rail vehicles may have an unintended effect on state laws addressing the safety of these vehicles as they are operated over roads and highways. The rule proposed in this document is meant to cover the safety of hi-rail vehicles only while they are operated on railroad tracks. The proposed requirements on hi-rail vehicles are not intended to preempt any state laws addressing motor vehicles. FRA requests comments concerning what state laws, if any, may be affected by this proposed rule.

If it is determined through the comment period that federalism is impacted, FRA will document its consultations with State and local officials as appropriate and will prepare a federalism summary impact statement to accompany the final rule. FRA will continue to consult with State and local officials during this rulemaking proceeding. The RSAC, which recommended this proposed rule, has as permanent members two organizations representing State and local interests: the American Association of State Highway and Transportation Officials (AASHTO) and the Association of State Rail Safety Managers (ASRSM). The RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory

issues that reflect significant input from its State members.

**F. Unfunded Mandates Reform Act of 1995**

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law.” (See Section 201). Section 202 of the Act further requires that “before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflations) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement . . .” detailing the effect on State, local and tribal governments and the private sector. The NPRM issued today will not result in the expenditure, in the aggregate, of \$100,000,000 or more in any one year, and thus preparation of a statement is not required.

**List of Subjects in 49 CFR Part 214**

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and record keeping requirements.

**The Proposed Rule**

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

1. The authority citation for Part 214 continues to read as follows:

**Authority:** 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

2. Section 214.7 is amended by adding in alphabetical order definitions as follows:

**§ 214.7 Definitions.**

\* \* \* \* \*

*Designated official* means any person(s) designated by the employer to receive notification of non-complying conditions on-track roadway maintenance machines and hi-rail vehicles.

\* \* \* \* \*

*Hi-rail vehicle* means a roadway maintenance machine that is manufactured to meet Federal Motor Vehicle Safety Standards and is

equipped with retractable flanged wheels so that the vehicle may travel over the highway or on railroad tracks.

*Hi-rail vehicle, new* means a hi-rail vehicle that is ordered after [date 90 days following the effective date of this rule] or completed after [date one year following the effective date of this rule].

\* \* \* \* \*

*On-track roadway maintenance machine* means a self-propelled, rail mounted, non-highway, maintenance machine whose light weight is in excess of 7,500 pounds, and whose purpose is not for the inspection of railroad track.

*On-track roadway maintenance machine, existing* means any on-track roadway maintenance machine that does not meet the definition of a new on-track roadway maintenance machine.

*On-track roadway maintenance machine, new* means an on-track roadway maintenance machine that is ordered after [date 90 days following the effective date of this rule] and completed after [date one year following the effective date of this rule].

\* \* \* \* \*

3. Subpart D is added to part 214 reading as follows:

**Subpart D—On-Track Roadway Maintenance Machines and Hi-Rails**

- Sec.
- 214.501 Purpose and scope.
- 214.503 Good faith challenges; procedures for notification and resolution.
- 214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs.
- 214.507 Required safety equipment for new on-track roadway maintenance machines.
- 214.509 Required visual illumination and reflective devices for new on-track roadway maintenance machines.
- 214.511 Required audible warning devices for new on-track roadway maintenance machines.
- 214.513 Retrofitting of existing on-track roadway maintenance machines.
- 214.515 Overhead covers for existing on-track roadway maintenance machines.
- 214.517 Retrofitting on existing on-track roadway maintenance machines manufactured after 1990.
- 214.519 Floors, decks, stairs, and ladders for on-track roadway maintenance machines.
- 214.521 Flagging equipment for on-track roadway maintenance machines and hi-rail vehicles.
- 214.523 Hi-rail vehicles.
- 214.525 Towing with on-track roadway maintenance machines or hi-rail vehicles.
- 214.527 Inspection for compliance; schedule for repairs.
- 214.529 In-service failure of primary braking system.
- 214.531 Schedule of repairs.

214.533 Schedule of repairs; subject to availability of parts.

**§ 214.501 Purpose and scope.**

(a) The purpose of this subpart is to prevent accidents and casualties caused by the lawful operation of on-track roadway maintenance machines and hi-rail vehicles.

(b) This subpart prescribes minimum safety standards for on-track roadway maintenance machines and hi-rail vehicles. An employer may prescribe additional or more stringent standards that are consistent with this subpart.

(c) Any working condition that involves the protection of employees engaged in roadway maintenance duties covered by this subpart but is not within the subject matter addressed by this subpart, including employee exposure to noise, shall be governed by the regulations of the U.S. Department of Labor, Occupational Safety and Health Administration (29 CFR part 110).

**§ 214.503 Good faith challenges; procedures for notification and resolution.**

(a) An employee operating an on-track roadway maintenance machine will inform the employer whenever the employee makes a good faith determination that the employer's rules governing the machine do not comply with FRA regulations.

(b) Any employee charged with operating an on-track roadway maintenance machine covered by this subpart may refuse to operate the machine if the employee makes a good faith determination that it does not comply with this subpart or has a condition that prohibits its safe operation. The employer will not require the employee to operate the machine until the challenge resulting from the good faith determination is resolved.

(c) Each employer will have in place, and will follow, written procedures to assure prompt and equitable resolution of challenges resulting from good faith determinations made in accordance with this section. The procedures will include specific steps to be taken by the employer to investigate each good faith challenge, as well as procedures to follow once the employer finds a challenged machine does not comply with this subpart or is otherwise unsafe to operate. The procedures will also include the title and location of the employer's designated official.

**§ 214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs.**

(a) The following new on-track roadway maintenance machines will be

equipped with enclosed cabs with operative heating systems, operative air conditioning systems, and operative positive pressurized ventilation systems:

- (1) Ballast regulators;
- (2) Tampers;
- (3) Mechanical brooms;
- (4) Rotary scarifiers;
- (5) Undercutters; or
- (6) Functional equivalents of any of the machines listed in the paragraph (a).

(b) New on-track roadway maintenance machines, and existing roadway maintenance machines specifically designated by the employer, of the types listed in paragraph (a) of this section will be capable of protecting employees on the machines from exposure to air contaminants, in accordance with 29 CFR 1910.1000.

(c) An employer will maintain a list of new and designated roadway maintenance machines of the types listed in paragraph (a) of this section. The list will be kept current and available to the Federal Railroad Administration and other Federal and state agencies upon request.

(d) An existing roadway maintenance machine of the types listed in paragraph (a) of this section becomes "designated" when the employer adds the machine to the list required in paragraph (c) of this section. The designation is irrevocable, and the designated existing roadway maintenance machine remains subject to paragraph (b) of this section until it is retired or sold.

(e) If the ventilation system on a new on-track roadway maintenance machine or a designated existing on-track roadway maintenance machine of the types listed in paragraph (a) of this section becomes incapable of protecting employees on the machine from exposure to air contaminants in accordance with 29 CFR 1910.1000, personal respiratory protective equipment will be provided for each operator of that machine until the machine is repaired in accordance with § 214.531.

(f) Personal protective equipment provided for operators of new on-track roadway maintenance machines and designated existing on-track roadway maintenance machines of the types listed in paragraph (a) of this section will meet U.S. Department of Labor standards set forth in 29 CFR 1910.134, including Appendices A, B-1, B-2, C, and D of that section.

(g) New on-track roadway maintenance machines with enclosed cabs, other than the types listed in paragraph (a) of this section, will be equipped with operative heating and ventilation systems.

(h) When new on-track roadway maintenance machines require operation from non-enclosed stations outside of the main cab, the non-enclosed stations will be equipped, where feasible from an engineering standpoint, with a permanent or temporary roof, canopy, or umbrella designed to provide some cover from normal rain and midday sun.

**§ 214.507 Required safety equipment for new on-track roadway maintenance machines.**

(a) Each new on-track roadway maintenance machine will be equipped with:

(1) A seat for each operator, except as provided for in paragraph (b) of this section;

(2) A safe and secure position with handholds, handrails, or a secure seat for each roadway worker transported on that machine, as well as protection from moving parts inside of the cab;

(3) A positive method of securement for turntables through engagement of pins and hooks that block the descent of devices below the rail head when not in use;

(4) A windshield with safety glass, or other material with similar properties, and power windshield wipers or suitable alternatives that provide the operator an equivalent level of vision if windshield wipers are incompatible with the windshield material;

(5) A machine braking system capable of effectively controlling the movement of the machine under normal operating conditions;

(6) A first aid kit that is readily accessible and meets U.S. Department of Labor requirements of 29 CFR 1926.50(d)(2); and

(7) An operative and properly charged fire extinguisher of 5 BC rating or higher which is securely mounted and readily accessible to the operator from the operator's work station.

(b) New on-track roadway maintenance machines designed to be operated and transported by the operator in a standing position will be equipped with handholds and handrails to provide the operator with a safe and secure position.

(c) Each new on-track roadway maintenance machine that weighs more than 32,500 pounds light weight and is operated in excess of 20 mph will be equipped with a speed indicator that is accurate within  $\pm 5$  mph of actual speed at speeds 10 mph and above.

(d) Each new on-track roadway maintenance machine will have the as-built light weight displayed in a conspicuous location on the machine.

**§ 214.509 Required visual illumination and reflective devices for new on-track roadway maintenance machines.**

Each new on-track roadway maintenance machine will be equipped with the following visual illumination and reflective devices:

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

(b) Work lights, if the machine is operated during the period from ½ hour after sunset to ½ hour before sunrise or in dark areas such as tunnels, unless equivalent lighting is otherwise provided;

(c) An operative 360-degree intermittent warning light or beacon mounted on the roof of the machine. New roadway maintenance machines that are not equipped with fixed roofs and have a light weight greater than 7,000 pounds but less than 17,500 pounds are exempt from this requirement;

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

(e) Visual reflective equipment, such as rearview mirrors.

**§ 214.511 Required audible warning devices for new on-track roadway maintenance machines.**

Each new on-track roadway maintenance machine will be equipped with:

(a) A horn or audible warning device that produces a sound loud enough to be heard by roadway workers and other machine operators within the immediate work area. The triggering mechanism for the device shall be clearly identifiable and within easy reach of the machine operator; and

(b) An automatic change-of-direction alarm which provides an audible signal that is at least three seconds long and is distinguishable from the surrounding noise.

**§ 214.513 Retrofitting of existing on-track roadway maintenance machines.**

(a) Each existing on-track roadway maintenance machine will have a safe and secure position for each roadway worker transported on that machine and protection from moving parts inside the cab.

(b) By [date one year following the effective date of this rule], each existing on-track roadway maintenance machine will have stenciling or documentation

on the machine identifying the location of safe and secure positions for the machine operator and roadway workers to be transported on the machine. If roadway workers are not permitted on the machine, the prohibition will be noted by the stenciling or documentation on the machine.

(c) By [date 18 months following the effective date of this rule], each existing on-track roadway maintenance machine will be equipped with a permanent or portable horn or audible warning device that produces a sound loud enough to be heard by roadway workers and other machine operators within the immediate work area. The triggering mechanism for the device will be clearly identifiable and within easy reach of the machine operator.

(d) By [date 18 months following the effective date of this rule], each existing on-track roadway maintenance machine will be equipped with a permanent illumination device or a portable light that is securely placed and not hand-held. The illumination device or portable light will be capable of illuminating obstructions on the track ahead for a distance of 300 feet under normal weather and atmospheric conditions when the machine is operated during the period from ½ hour after sunset to ½ hour before sunrise or in dark areas such as tunnels.

**§ 214.515 Overhead covers for existing on-track roadway maintenance machines.**

(a) Overhead covers on existing on-track roadway maintenance machines will be repaired by [date 18 months following the effective date of this rule] and thereafter maintained in accordance with the provisions of § 214.531.

(b) The employer will evaluate the feasibility of providing an overhead cover for an existing on-track roadway maintenance machine if requested in writing by the operator assigned to operate that machine or by the operator's designated representative. The employer will provide the operator a written response for each request within 60 days. When the employer finds the addition of an overhead cover is not feasible, the response will include an explanation of the reasoning used by the employer to reach that conclusion.

**§ 214.517 Retrofitting of existing on-track roadway maintenance machines manufactured after 1990.**

In addition to the requirements of § 214.513, after [date 18 months following the effective date of this rule], each existing on-track roadway maintenance machine manufactured after 1990 must have the following:

(a) A change-of-direction alarm or rearview mirror or other rearward

viewing device, if feasible from an engineering standpoint;

(b) An operative heater, when the machine is equipped with a heater by the manufacturer and is operated at an ambient temperature less than 50 degrees Fahrenheit;

(c) The light weight of the machine stenciled, or otherwise clearly displayed, on the machine if the light weight is known;

(d) Reflective material, or a reflective device, or operable brake lights;

(e) Safety glass when glass is normally replaced, except that replacement glass that is specifically intended for on-track roadway maintenance machines and is in the employer's inventory as of [effective date of this rule] may be utilized until exhausted;

(f) A turntable restraint device to prevent undesired lowering, or a warning light indicating that the turntable is not in the normal travel position; and

(g) Handholds, handrails, or a secure seat or bench position for each roadway worker transported on the machine.

**§ 214.519 Floors, decks, stairs, and ladders for on-track roadway maintenance machines.**

Floors, decks, stairs, and ladders of on-track roadway maintenance machines will be of appropriate design and maintained to provide secure access and footing, and will be free of oil, grease, or any obstruction which creates a slipping, falling, or fire hazard.

**§ 214.521 Flagging equipment for on-track roadway maintenance machines and hi-rail vehicles.**

When operating over trackage subject to a railroad operating rule requiring flagging, each on-track roadway maintenance machine and each hi-rail vehicle will have on board a flagging kit that complies with the operating rules of the railroad if the equipment is not part of a roadway work group or is the lead or trailing piece of equipment in a roadway work group operating under the same occupancy authority.

**§ 214.523 Hi-rail vehicles.**

(a) The hi-rail gear of all hi-rail vehicles will be safety inspected at least annually. Tram, wheel wear and gage measurements will be adjusted if necessary to allow the vehicle to be safely operated.

(b) Each employer will keep records pertaining to compliance with paragraph (a) of this section. Records may be kept on forms provided by the employer or by electronic means. The employer will retain each record for at least one year, and the records will be available for inspection and copying by

the Federal Railroad Administration during normal business hours. The records may be kept on the hi-rail vehicle or at a location designated by the employer.

(c) A new hi-rail vehicle will be equipped with:

(1) An automatic change-of-direction alarm or backup alarm that provides an audible signal at least three seconds long and distinguishable from the surrounding noise; and

(2) An operable 360-degree intermittent warning light or beacon mounted on the outside of the vehicle.

(d) Prior to starting work each day, the operator of a new hi-rail vehicle will check the hi-rail vehicle for compliance with this subpart.

(e) Non-complying conditions that cannot be repaired immediately will be tagged and dated in a manner prescribed by the employer and reported to the designated official.

(f) Non-complying automatic change-of-direction alarms, backup alarms, or 360-degree intermittent warning lights or beacons will be repaired or replaced as soon as practical within seven days.

**§ 214.525 Towing with on-track roadway maintenance machines or hi-rail vehicles.**

(a) When used to tow pushcars or other maintenance-of-way equipment, each on-track roadway maintenance machine or hi-rail vehicle will be equipped with a towing bar or other coupling device that provides a safe and secure attachment.

(b) An on-track roadway maintenance machine or hi-rail vehicle will not be used to tow pushcars or other maintenance-of-way equipment if the towing would cause the machine or hi-rail vehicle to exceed the capabilities of its braking system. In judging the limit of the braking system, the employer will consider the track grade (slope), as well as the number and weight of pushcars or other equipment being towed.

**§ 214.527 Inspection for compliance; schedule for repairs.**

(a) Prior to starting work each day, the operator of the on-track roadway maintenance machine will check the machine components for compliance with this subpart.

(b) Non-complying conditions that cannot be repaired immediately will be tagged and dated in a manner prescribed by the employer and reported to the designated official.

(c) The operation of an on-track roadway maintenance machine with noted non-complying conditions will be governed by the following requirements:

(1) An on-track roadway maintenance machine with headlights or work lights

that are not in compliance may be operated from ½ hour before sunrise to ½ hour after sunset for seven calendar days;

(2) Portable horns may be substituted for non-complying or missing horns for a period not to exceed seven calendar days;

(3) Fire extinguishers readily available for use may temporarily replace missing, defective or discharged fire extinguishers on new on-track roadway maintenance machines for a period not to exceed seven calendar days pending the permanent replacement or repair of the missing, defective or used fire extinguisher;

(4) Non-complying automatic change-of-direction alarms, backup alarms, or 360-degree intermittent warning lights or beacons will be repaired or replaced as soon as practical within seven calendar days; and

(5) A structurally defective or missing operator seat will be replaced or repaired within 24 hours or by the start of the machine's next tour of duty, whichever is later. The machine may be operated for the remainder of the operator's tour of duty if the defective or missing operator seat does not prevent its safe operation.

**§ 214.529 In-service failure of primary braking system.**

(a) In the event of a total in-service failure of its primary braking system, an on-track roadway maintenance machine may be operated for the remainder of the tour of duty with the use of a secondary braking system or by coupling to another machine, if such operations may be done safely.

(b) If the total in-service failure of an on-track roadway maintenance machine's primary braking system occurs where other equipment is not available for coupling, the machine may, if it is safe to do so, travel to a clearance or repair point where it shall be placed out of service until repaired.

**§ 214.531 Schedule of repairs.**

Except as provided in §§ 214.527(c)(5), 214.529, and 214.533, an on-track roadway maintenance machine or new hi-rail vehicle that does not meet all the requirements of this subpart will be repaired as soon as practical within seven calendar days. If repairs are not made within seven calendar days, the on-track roadway maintenance machine or new hi-rail vehicle will be placed out of service.

**§ 214.533 Schedule of repairs; subject to availability of parts.**

(a) The employer will order parts necessary to repair a non-complying

condition on an on-track roadway maintenance machine or a new hi-rail vehicle by the end of the next business day following the report of the defect.

(b) When the employer cannot repair a non-complying condition as required by § 214.531 because of the temporary unavailability of necessary parts, the employer will repair the on-track roadway maintenance machine or new hi-rail vehicle within seven days after receiving the necessary parts. The employer may continue to use the on-track roadway maintenance machine or new hi-rail with a non-complying condition until the necessary parts for repair are received, subject to the requirements of § 214.503. However, if repair of a non-complying condition exceeds 30 days following the report of the defect, the employer will remove the on-track roadway maintenance machine or new hi-rail vehicle from service.

(c) If the employer fails to order parts necessary to repair the reported non-complying condition, or if it fails to install available parts within the required seven calendar days, the on-track roadway maintenance machine or new hi-rail vehicle will be removed from service until brought into compliance with this subpart.

(d) Each employer will maintain records pertaining to compliance with this section. Records may be kept on forms provided by the employer or by electronic means. The employer will retain each record for at least one year, and the records will be available for inspection and copying by the Federal Railroad Administration during normal business hours. The records may be kept on the on-track roadway maintenance machine or new hi-rail vehicle or at a location designated by the employer.

Issued in Washington, DC, on January 4, 2001.

**John V. Wells,**

*Acting Federal Railroad Administrator.*

[FR Doc. 01-591 Filed 1-9-01; 8:45 am]

BILLING CODE 4910-06-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

[I.D. 122800A]

**Coral Reef Ecosystem Fisheries of the Western Pacific Region; Public Hearings**

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