data on a 3.5-inch floppy diskette formatted for WordPerfect 5.1, or formatted so that it can be readily converted into WordPerfect 5.1. Any such diskette submission (one diskette will be sufficient) should be in addition to the written submission (an original and 10 copies).

Small Entities

Because this is not a notice of proposed rulemaking within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we need not conduct at this point an examination of impacts on small entities. We will certainly welcome, of course, any comments respecting whether regulations that commenters may suggest would have significant economic effects on any substantial number of small entities.

Environment

The issuance of this advance notice of proposed rulemaking will not significantly affect either the quality of the human environment or the conservation of energy resources. Furthermore, we would not expect that regulations suggested for implementing new 49 U.S.C. 15701 would significantly affect either the quality of the human environment or the conservation of energy resources. We certainly welcome, of course, any comments respecting whether suggested regulations would have any such effects.

Authority: 49 U.S.C. 721(a) and 15701.

Decided: March 6, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 96–6086 Filed 3–13–96; 8:45 am]

BILLING CODE 4915–00–P

Federal Railroad Administration

49 CFR Part 214

[FRA Docket No. RSOR 13, Notice No. 6]

RIN 2130–AA86

Roadway Worker Protection

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

ACTION: Notice of proposed rulemaking.

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

DATES: (1) Written comments must be received no later than May 13, 1996. Comments received after that date will be considered to the extent possible without incurring additional expense or delay. Requests for formal extension of the comment period must be made by April 29, 1996.

(2) Requests for a public hearing must be made by April 15, 1996.

ADDRESSES: Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590. Persons wishing notification that their comments have been received should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the comment period closes, during regular business hours in Room 8201 of the Nassif Building located at the address listed above. Any person interested in requesting a hearing should contact the Docket Clerk at (202) 366–2257.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, P.E., Bridge Engineer, Office of Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone: 202–366–0507); Phil Olekszyk, Deputy Associate Administrator for Safety Compliance and Program Implementation, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone: 202–366–0897); or Cynthia Walters, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street SW., Washington, DC 20590 (telephone: 202–366–0621).

SUPPLEMENTARY INFORMATION:

Comments and Hearing

In accordance with Executive Order 12866, FRA is allowing 60 days for comments. FRA believes that a 60 day comment period is necessary for parties with interests that were not represented on the Advisory Committee. Public hearings are generally held to provide interested parties an opportunity for oral presentations of data, views, or arguments concerning the proposed standards. Proceeding pursuant to regulatory negotiation has allowed participation by the public and a public hearing will only be scheduled, if requested.

Introduction

Background

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

Workshops were held in conjunction with this effort, to solicit the views of the railroad industry and representatives of railroad employees on the need for substantive change in the track regulations. A workshop held on March 31, 1993 in Washington, D.C., specifically addressed the protection of employees from the hazards of moving trains and equipment. The subject of injury and death to roadway workers was of such great concern that FRA received petitions for emergency orders and requests for rulemaking from both the Brotherhood of Maintenance-of-Way Employees and the Brotherhood of Railroad Signalmen. FRA did not grant the petitions for emergency orders, but instead initiated a separate proceeding to consider regulations to eliminate hazards faced by these employees. FRA removed this issue from the track standards docket, FRA Docket No. RST–90–1 and established a new docket, FRA Docket No. RSOR 13, specifically to address hazards to roadway workers to expedite the effective resolution of this issue.

FRA also determined that standards addressing this issue would be more closely related to workplace safety than to standards addressing the condition of railroad track. Since Railroad Workplace Safety is addressed in 49 CFR Part 214, standards issued for the protection of

roadway workers would be better categorized in this section, than Part 213, Track Safety Standards. Accordingly, the minimum standards proposed in this notice would amend Part 214 of Title 49, Code of Federal Regulations by adding a new subpart, Subpart C, addressing hazards to roadway workers.

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

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

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

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

American Public Transit Association (APTA)
The American Short Line Railroad Association (ASLRA)
Association of American Railroads (AAR)
Brotherhood of Locomotive Engineers (BLE)
Brotherhood of Locomotive Engineers, American Train Dispatchers Department (ATDD)
Brotherhood of Maintenance of Way Employees (BMWE)
Brotherhood of Railroad Signalmen (BRS)
Burlington Northern Railroad (BN)
Consolidated Rail Corporation (Conrail)
CSX Transportation, Inc. (CSX)
Florida East Coast Railway Company (FEC)
Federal Railroad Administration (FRA)
Northeast Illinois Regional Railroad Corporation (METRA)
National Railroad Passenger Corporation (AMTRAK)
Norfolk Southern Corporation (NS)
Regional Railroads of America (RRA)
Transport Workers Union of America (TWU)
Union Pacific Railroad Company (UP)
United Transportation Union (UTU)

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

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

The Advisory Committee held one additional two-day session, and reached consensus on a proposed rule that conformed to the recommendations submitted in their report. The Committee recommended that FRA publish that document as a proposed Federal regulation and continue the rulemaking procedures necessary to adopt its principles in a final rule. The differences in substance between this proposed rule and that recommended by the Advisory Committee are enumerated below, with the reasons therefore.

Safety Issues

Early Efforts

FRA attempted to analyze the safety concerns, known risks, and prevention methods during the March, 1993 workshop. Information derived from that workshop focused the agency’s efforts. Discussions indicated that major carriers, regional railroads, short lines, and commuter railroads had rules addressing the hazards associated with working on and near railroad track. Railroad representatives at the workshop explained the safety procedures used on their respective properties, including the use of watchmen, protection from trains on adjacent tracks, use of radios, establishing working limits, use of line-ups, slowing the speed of trains, protection while using maintenance of way equipment, training, efficiency testing, and other related topics. The concept of allowing workers the right to question the system set up for their protection was also introduced into the discussion.

FRA presented information from its data base regarding employee fatalities for the years 1988 through 1993 and attempted to categorize the risks associated with these fatalities. FRA identified 23 accidents resulting in fatalities and categorized these accidents into 6 groups: employees struck by a train on live track while not directly engaged in work, accounting for 11 fatalities; employees struck by a train while directly engaged in work, accounting for 3 fatalities; employees struck by a train or rolling stock moving without authority, accounting for one fatality; employees who fell from track machines, accounting for 2 fatalities; employees struck by moving track machinery, accounting for 5 fatalities; and improper machine operation, accounting for one fatality.

Although there was disagreement regarding FRA’s designation of certain accidents as belonging in certain categories, the discussion successfully delineated the risks affecting workers and whether carrier rules would have applied. This initial attempt to

categorize accident data provided the framework for additional analysis of the safety problem. The following emerged:

A. Persons Affected by This Rule

One topic discussed was the scope of the population of employees exposed to this risk. Attention was focused on terminology that would appropriately describe the population of employees who were at risk of death or injury while working on or about the track. All participants agreed that the risk of injury or death to those working on or about track is not restricted to a particular craft or class of employees. To assure understanding of the broad reach of the proceeding, FRA coined the term roadway worker and proposed use of that term in its Notice of Intent.

B. The Specific Issues

FRA's Notice of Intent listed several specific issues for negotiation by the Advisory Committee. FRA did not limit negotiations to these subjects only, but determined that the following issues should be covered:

- The availability of any devices to reduce the risk of danger to roadway workers and any costs associated with such devices;
- Any additional or revised procedures or operating practices that could be instituted to effectively reduce the risk of danger, and any costs associated with these procedures;
- Training programs that would reduce the risks of danger to roadway workers, the proper intervals for such training, and the costs associated with that training;
- The topographical, environmental, or operational conditions that must be considered in developing a program to reduce the risks of harm to roadway workers and the costs of addressing these conditions;
- Possible variations in programs according to size of railroads, and an explanation regarding why these variations are necessary;
- The recordkeeping and reporting requirements necessary to implement programs to advance the safety of roadway workers, and the cost of these requirements;
- The enforcement procedures FRA would utilize to ensure compliance with any rule that is developed;
- Any additional benefits resulting from a rule, aside from the obvious reduction of risk of injury and death;
- The usefulness of operating practices currently used by any particular railroad, their background, implementation, effectiveness, and cost.

Accident Data and Statistical Analysis

FRA published a report entitled *Engineering Department Fatalities Resulting from the Operation or Maintenance of On-Track Equipment,* representing the findings of FRA's investigation of 22 Engineering Department railroad employee fatalities during calendar years 1989–1993. The document was officially published in 1994, but the information was compiled in 1993, and was used in preliminary discussions regarding on-track safety, beginning with the March, 1993, workshop. Four categories of causes were established: struck by a train, struck by on-track maintenance of way equipment, crushed or pinned by on track equipment, and struck by free-rolling equipment.

A summary of information gathered from the investigation of each accident was included in the report. This document provided an information base from which to isolate causes and contributing factors that could be addressed in a proposed rule. FRA accident data provided the statistical basis to focus efforts toward certain prevention measures.

The independent labor management task force mentioned earlier also conducted an analysis of accident data. They focused on 43 accidents resulting in 46 roadway worker fatalities from 1986 through 1994. They also used data regarding 150 injuries to roadway workers reported to FRA from 1989 through 1994, and additional injury data submitted from carrier files. Questionnaires regarding the current industry practice for roadway worker safety were submitted by representatives from management and labor and reviewed by the task force. The cumulative effort of the task force included review of over 2,600 FRA reports as well as review of available NTSB reports related to roadway worker fatalities and injuries.

The data analysis conducted by the independent task force suggested that there were identifiable trends regarding these fatal accidents. The following are examples of patterns discovered in the accident data:

- Higher numbers of fatalities seem to occur in the fall and winter months of October, November, December, and January, but two summer months, May and July, also have a high number of fatalities.
- Fatalities tend to occur more often on Wednesdays and Thursdays.
- The highest number of fatalities tend to occur around 9:00 a.m. or 10:00 a.m.
- The largest number of employees killed are between the ages of 40 and 49 years old. These individuals generally have at least 15 years of railroad experience, with some having more than 20 years of experience.
- The largest number of fatalities occurred within approximately six months following rules training and safety training.
- Most fatalities occurred while some form of protection system was available or in use.
- Maintenance of Way employees and Signal employees had the highest number of fatalities.

There are numerous possible explanations for these trends. Multiple factors may have contributed to these incidents, and isolating a single distinct cause or explanation is virtually impossible. Inclusion of these patterns was not intended for that purpose, but to merely to inform the group of identifiable tendencies that appear in the accident data.

Advisory Committee Report

As noted earlier, the Advisory Committee reached consensus on a report containing 11 specific recommendations and 9 general recommendations. The specific recommendations provided the concepts that formed the basis for the text of this proposed rule. The data review by the independent task force and the Advisory Committee revealed other useful information regarding conditions that need special emphasis in the on-track safety programs. The Advisory Committee made the general recommendation that this information should be published by FRA with this rule.

This information identifies particular conditions to which roadway workers should devote special attention, as they appear to be more problematic than others. This information and other relevant trends are included here, so that these facts might be considered by railroads when devising on-track safety programs.

Analysis of the data indicates that 16% of the fatal accidents and 37% of the injury incidents were the result of on-track equipment striking roadway workers or other roadway equipment. The Advisory Committee concluded that training, job briefings, and operation of on-track equipment should place special emphasis on:

- Attention to visibility/stopping distance
- Review of stopping capability and limitations
- Purpose and limits of work zones
- Attention to existing weather conditions

- Importance of maintaining proper equipment spacing
- Briefing concerning joint track occupancy
- Procedures for traveling on track

Further analysis indicated that 35% of non-fatality incidents were on Thursdays, and 50% of non-fatality incidents occurred between 7:30 a.m. and 10:30 a.m. to Maintenance of Way roadway workers. The Committee could not explain this trend with any degree of certainty. However, it was generally agreed that special emphasis to alert Maintenance of Way roadway workers to these facts must be made in safety awareness training during job briefings, safety meetings and rules training.

The Committee also discovered that 69% of fatal incidents to signal maintainers occurred during November, December, and January. The Committee recommended that employers should consider and point out this fact in safety awareness training during job briefings, safety meetings, and rules training.

Considerable discussion in the Committee sessions centered around training. Because statistics indicate that 65% of the fatally-injured roadway workers had attended rules training within the previous 12 months, the Advisory Committee concluded that training must be improved. Areas to focus on for improvement would include:

- Curriculum development and content
- Learning environment
- Presentation and interactive instruction
- Understanding and application
- Peer training
- On-Track Safety specific subjects

It had been thought by some that employees involved in these accidents were generally among newer employees who perhaps were not familiar with the railroad environment. Contrary to this likely assumption, the data indicated that 26% of the fatalities involved supervisory employees. These roadway workers are familiar with the railroad environment and protection methods, and had many years of railroad experience. The Committee therefore concluded that additional emphasis should be placed on the following:

- Selection of Managers
- Quality of Training
- Management commitment to on-track safety
- Priority to on-track safety
- Serving as a role model

The negotiated rulemaking process has been a success. Continued joint efforts such as this should be of great benefit to the railroad industry, its employees, and the public. In recognition of this, the Advisory Committee adopted the following recommendations to foster continued collaboration among the interested parties:

- Establish a joint labor/management/FRA process to evaluate analyze and encourage emerging technologies which may enhance roadway on-track worker safety. This recommendation is made to allow prompt and thorough evaluation of such emerging technology.
- The Joint Labor-Management On-Track Safety Task Force should meet on a periodic basis (at least semi-annually) to review progress, to review current data and to continue a joint labor/management dialogue seeking ways to improve roadway worker on-track safety.

It should be noted that the Joint Labor-Management On-Track Safety Task Force is not the Federal Advisory Committee on Roadway Worker Protection, nor does the Joint Task Force have any official standing with the Federal government. The Federal Advisory Committee recommended that the Joint Labor-Management On-Track Safety Task Force remain in existence and meet periodically, and to the extent that the parties represented on the Task Force elect to do so, it undoubtedly will. FRA encourages close cooperation among the various parties and interests to resolve safety problems both in this rule and as a matter of good public policy. FRA also gives considerable attention to proposals that represent a consensus of the interested parties, and anticipates that the Joint Labor-Management On-Track Safety Task Force will facilitate this type of cooperative effort.

Scope of the Rule

FRA and the Advisory Committee deliberated at length over how much the proposed rule would cover. Scoping discussions ranged from who would be covered under this rule, as discussed earlier, to what measurement of the surrounding track space places an employee in danger of being struck by a train or moving equipment. During these discussions, two additional issues surfaced requiring an explanation of who would be covered under this rule, contractors and tourist railroads.

Contractors

FRA realizes that parties who have not traditionally been considered railroads will be affected by this regulation. The decision to include employees of contractors as roadway workers in this regulation was a well-reasoned one. FRA's objective was to promulgate standards applicable to anyone working on or about railroad tracks who may be in danger while performing their duties. The craft or job title of an employee is of little relevance. Equally irrelevant is whether an employee is paid by a railroad or by a contractor engaged by a railroad. The most important issue is the prevention of deaths and injuries. FRA holds no position on the practice of a railroad contracting work out to another company, but FRA strongly believes that contractor employees are entitled to the same level of safety as railroad employees. To the extent that contractor employees work under circumstances presenting the hazards addressed here they must be protected.

FRA understands the circumstances under which many contractors conduct their work and realizes that adhering to the standards of this rule may appear burdensome to contractors. However, a closer examination of the standards in the rule shows that contractors will not normally devise their own on-track safety programs, but would follow the programs established by the railroads on which they are working. Most of a contractor's employee training will be of a basic nature, as railroad employees are usually working with and protecting contractors working near moving trains. Those railroad employees will normally arrange protection in accordance with the rules and procedures of the railroad.

Contractors will, however, be responsible for compliance with this subpart. They are responsible as employers to ensure that their employees have protection prior to assigning them to work on or near the track, and to ensure that their employees have been properly trained to work safely in the railroad environment. Since contractors were not represented on the Advisory Committee, FRA specifically invites comments from contractors on this proposed rule.

Tourist Railroads

Tourist and excursion railroads that operate on the general system of railroad transportation will be included. Tourist and excursion railroads that do not operate on the general system will be excluded. FRA realizes that adhering to the standards in this rule may appear burdensome to railroads operating in the tourist industry. However, a closer examination of the issue reveals that many tourist railroads operating on the general system actually operate on track owned by another railroad. Those tourist railroads would be required to follow the rules of the track owners, if they were to operate over that portion of track or conduct any maintenance on that portion of track.

Additionally, it is FRA's understanding that many tourist and excursion railroads do not conduct their maintenance work under traffic, but do so during periods when there is little or no traffic. Therefore, any program devised to adhere to the standards of this subpart by a tourist railroad could be fairly simple, and any required training for roadway workers would be of a basic and general nature.

FRA does not intend to unduly burden railroads operating in the tourist industry. However, if these railroads are going to operate in the general system of transportation and there is any chance that their employees will be confronted with the risk of injury and death from trains or moving equipment, they must adhere to the standards of this regulation. Since tourist railroads were not represented on the Advisory Committee, FRA specifically invites comments from tourist railroads on this proposed rule.

Rights and Responsibilities of Employees and Employers

FRA agreed with the Advisory Committee that roadway workers must understand, and therefore must be able to review and question, on-track safety provisions. The proposed rule therefore provides that a roadway worker who finds that the on-track safety provisions in place do not comply with the rules of the operating railroad has both a right and a responsibility to occupy a place of safety until the question is resolved. Section 214.313 imposes a reciprocal responsibility for on-track safety onto each individual roadway worker. Accordingly, a roadway worker has to be able to decide whether on-track safety is being provided and if not, he or she has a right and an obligation to remain off the track until the matter is resolved, and to notify the employer of possible flaws in on-track safety provisions.

FRA has considerable authority in the area of railroad safety. This authority extends to individuals as well as to railroad carriers. FRA will act whenever it finds or receives notice of possible violations of this rule. Should a potential violation involve the rights and responsibilities of an individual roadway worker to question on-track safety procedures, FRA will consider all available evidence, including written records maintained by parties in the case, statements of witnesses, the nature of the on-track safety provisions in effect at the time, and whether the involved employee or employees had been correctly informed of those on-track safety provisions.

Deviations From the Advisory Committee Reports

FRA committed to adhere to the consensus reached by the Advisory Committee, unless the agreed upon course of action violated legal requirements, statutory authority, departmental regulations, or in the agency's view, did not adequately address the subject matter. The Advisory Committee produced two documents, an initial report of principles to be addressed in this proceeding, and later a proposed Notice of Proposed Rulemaking which incorporated the basic principles in language recommended by the Committee.

The two substantive deviations between the Advisory Committee Report and the proposed NPRM involved changes in terminology. They were enumerated in the proposed NPRM, and are retained here for reference.

Term, Positive Protection

The report submitted by the Advisory Committee used the term Positive Protection to describe several circumstances in which roadway workers would be safe from the threat of approaching trains, or essentially ''protected'' from them.

Analysis of the Committee recommendation by FRA showed that two quite different procedures were contemplated under the provision of Positive Protection. One was a broad group of existing railroad procedures designed to hold trains clear of certain tracks, and the other was a procedure in which roadway workers would be warned of an approaching train in time to clear the tracks before the train arrived. Strictly for purposes of semantics, to permit consistency in the text of the rule, FRA has divided the procedures grouped in the recommendation under the term Positive Protection into two categories: Working Limits and Train Approach Warning. Explanation of these two categories of on-track safety procedures are found in the rule text and corresponding section-by-section analysis.

Term, Positive Train Location System

The Advisory Committee proposed use of the term positive train location system to identify a type of on-track safety protection available in accordance with this rule. The term positive has greater implications than the Committee intended. FRA does not wish to confound the terminology of this or other proceedings by using terms already applied to concepts that were under development for several years before this proceeding began. FRA particularly does not wish to limit or inhibit the development of any aspect of Advanced Train Control Systems (ATCS), Positive Train Control (PTC), or Positive Train Separation (PTS). Promulgating a regulation that would limit a practice termed positive train location could be misconstrued as somehow limiting ATCS, PTC, or PTS.

FRA therefore substitutes the term definite train location as the name of a system which is the same as that termed by the Advisory Committee a positive train location system. The definition will not change. It is FRA's contention that this new term captures the meaning of the former term. Essentially, the proposition is the same, in which trains will only be authorized to pass certain locations at or after definite times.

FRA also found it necessary to deviate from the exact language of the NPRM proposed by the Advisory Committee in several instances. Most were simple editorial changes for clarification or correction, and the renumbering of sections for correct sequencing behind section 214.229. Some substantive changes were also made, which are enumerated and either explained or referenced here.

Term , Definite Train Location

FRA removed three sentences of operational requirements from the definition, and replaced them with a reference to section 214.329 of this part, which implements and specifies the requirements for definite train location. The change was made to eliminate redundancy and to conform to standards of proper regulatory language.

Term—Exclusive Track Occupancy

FRA made an editorial change, and added the cross reference to section 214.321 of this part for reasons stated under Term, Definite train location, above.

Term—Foul Time

FRA made an editorial change, and added the cross reference to section 214.323 of this part for reasons stated under Term, Definite train location, above.

Term—Inaccessible Track

FRA inserted additional clarifying language at the end of the definition, by physically preventing entry and movement of trains and equipment, to clarify the definition.

Term—Restricted Speed

FRA added references to train or other equipment and the range of vision of the

person operating the train or other equipment. This term as originally written is commonly found in railroad operating rules which govern the movement of trains. In that context, the applicability is clear. However, in this regulation FRA feels that the applicability should be more clearly specified. There is no intent by FRA to supersede this definition in other regulations or applications.

Term—Roadway Maintenance Work Train

FRA deleted references to roadway maintenance work train from the rule, and from the definition of roadway maintenance machine. The term is not used in the regulation, and was an artifact of an earlier draft. There is no distinction between roadway maintenance work trains and trains operated for any other purpose under the same types of controls.

Term—Working Limits

FRA made editorial changes to this definition to replace the word limits within the definition with the word boundaries simply to avoid use of a defined word in its own definition. The meaning of the definition is not changed.

Section 214.317 On Track Safety Procedures, Generally

FRA proposes that a phrase be added to his section that more clearly requires an employer to adopt a program containing specific rules that comply with the requirements of this section. FRA also proposes to eliminate the qualifier, roadway workers who foul a track, because roadway workers are, by definition, employees whose duties situate them where they may potentially foul a track.

Section 214.329 Definite Train Location

Besides the change in the definition of the term Definite train location mentioned above, FRA proposes to add operative language, previously found in the definition of definite train location, to this section, which is referenced in the definition.

Section Analysis

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

1. Application: § 214.3

FRA proposes that this subpart will apply to all railroads and contractors to railroads in the general system of railroad transportation, including commuter rail operations. Accordingly, existing section 214.3 will not change. This means that tourist and excursion railroads that are not part of the general system of railroad transportation will not be subject to these rules. The data illustrating the serious nature of the hazards addressed in this subpart did not include tourist and excursion railroads. FRA has not otherwise been notified that these hazards causing death and injury to roadway workers are a serious problem for tourist and excursion railroads or any other railroads not operating over the general system of railroad transportation. However, FRA reserves the right to include tourist and excursion railroads that do not operate on the general system of railroad transportation in the final rule, if the record reflects such a need.

2. Definitions: § 214.7

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

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

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

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

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

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

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

Some railroad employees whose primary function is transportation, that is, the movement and protection of trains, will be directly involved with on-

track safety as well. These employees would not necessarily be considered roadway workers in the rule. They must, of course, be capable of performing their functions correctly and safely.

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

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

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

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

3. Purpose and Scope: § 214.301

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

4. Railroad On-Track Safety Programs, Generally: § 214.303

Section 214.303 gives the general requirement that railroads shall adopt and implement their own program for on-track safety, which meets Federal minimum standards. Rather than implement a command and control rule, FRA decided to establish the parameters for such a program and defer to the expertise of each individual railroad to adopt a suitable on-track safety program for their railroad, in accordance with these parameters. FRA felt that establishing an internal monitoring process to determine compliance and effectiveness would be a necessary component of any On-Track Safety Program. Consequently, each railroad must incorporate an internal monitoring process as a component of its individual program. It should be noted that this internal monitoring will not replace FRA's inspection and monitoring efforts for compliance with this subpart.

5. Effective Dates: § 214.305

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

6. Review and Approval of Individual On-track Safety Programs by FRA: § 214.307

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

Likewise, a railroad may amend its program following FRA approval without prior approval of the amendment from FRA. Of course, should FRA later disapprove the amendment, the program would have to be changed to secure FRA's approval. The railroad will still be responsible for compliance with this rule, and subject to compliance monitoring and enforcement by FRA. FRA will make every effort, when requested, to provide a timely review of a program or amendment before its effective date, and to assist in any manner possible to enhance the on-track safety afforded to roadway workers.

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

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

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

7. On-track Safety Program Documents: § 214.309

Section 214.309 specifies the type of on-track safety manual each railroad

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

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

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

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

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

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

8. Responsibility of Employers: § 214.311

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

Railroads are specifically required by § 214.303 to implement their own on-track safety programs. Section 214.311 however, places responsibility with all employers (whether they are railroads or contractors) to see that employees are trained and supervised to work with the on-track safety rules in effect at the work site. The actual training and supervision of contractor employees might be undertaken by the operating railroad, but the responsibility to see that it is done rests with the employer.

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

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

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

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

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

The resolution process should include provisions to permit determination by all parties as to the safe, effective application of the on-track safety rule(s) being challenged at the lowest level possible, and for successive levels of review in the event of inability to resolve a concern at lower levels. FRA believes it best for employers, consulting with employees and their representatives where applicable, to write effective processes to accomplish these objectives.

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

9. Responsibility of Individual Roadway Workers: § 214.313

Section 214.313 addresses the individual responsibility of each roadway worker. Each roadway worker has a responsibility to comply with this subpart which is enforceable under the provisions of individual liability. Paragraph (a) requires that each roadway worker follow the railroad's on-track safety rules. Paragraph (b) prohibits roadway workers from fouling a track unnecessarily. It is FRA's opinion, as well as that of the Advisory Committee, that roadway workers should under no circumstances foul a track unless it is necessary to accomplish their duties.

A reference to the definition of fouling a track is useful to understand when protection is required. Fouling a track describes the circumstance in which a person is in danger of being struck by a moving train.

Under paragraphs (c) and (d), each roadway worker has the responsibility to know that on-track safety is being provided before actually fouling a track, and to remain clear of the track and inform the employer when the required

level of protection is not provided. If a roadway worker is not sure that sufficient on-track safety is being provided, he or she can satisfy paragraph (c) by simply not fouling the track.

It is a roadway worker's responsibility to advise the employer of exceptions taken to the application of a railroad's rules, or provisions of this subpart, in accordance with paragraph (d). Employees must approach this responsibility in good faith. Essentially an employee must have honest concerns whether the on-track safety procedures being used provide the necessary level of safety in accordance with the rules of the operating railroad. Furthermore, employees must be able to articulate those concerns in order to invoke the resolution process of the railroad. Initiating an action under the resolution process, absent a good faith concern regarding the on-track safety procedures being applied, would not be in compliance with this subpart.

10. Supervision and Communication: § 214.315

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

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

Paragraph (d) explains the duties of the roadway worker designated to provide on-track safety for the work group. Before roadway workers foul a track, the designated person must inform each roadway worker in the group of the on-track safety methods to be used at that time and location. Essentially, the designated person must conduct an on-track safety briefing prior to the beginning of work on or near the track. This briefing might also fulfill the requirements of paragraph (a) of this section.

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

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

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

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

11. On-track Safety Procedures, Generally: § 214.317

Section 214.317 refers to the following sections 214.319 through 214.335 that prescribe several different types of procedures that may be used to achieve on-track safety. It requires employers to use one or more of these types of procedures whenever employees foul a track.

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

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

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

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

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

roadway workers from trains moving at restricted speed would be addressed by FRA through the waiver process.

12. Working Limits, Generally: § 214.319

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

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

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

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

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

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

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

13. Exclusive Track Occupancy: § 214.321

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

Controlled track is track on which trains may not move without authorization from a train dispatcher or a control operator. On most railroads, trains move on main tracks outside of yard limits, and through interlockings, only when specifically authorized by a train dispatcher or control operator. This authorization might take the form of an indication conveyed by a fixed signal, or a movement authority transmitted in writing, orally, or by digital means. Such track would conform to the definition of controlled track.

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

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

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

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

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

Paragraph (c) and corresponding subparagraphs prescribe physical markers or features that may be used to indicate the extent of working limits established under this paragraph with the requisite level of precision. Flagmen are included as a valid means of establishing exclusive track occupancy because they are effective, and they might be the only means available on short notice or at certain locations.

14. Foul Time: § 214.323

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

15. Inaccessible Track: § 214.325

Section 214.325 requires that working limits on non-controlled track be established by rendering the track physically inaccessible to trains and equipment. A reference to the definitions of non-controlled track and inaccessible track is useful to the

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

Typical examples of non-controlled track to which this section would apply include main tracks within yard limits where trains are authorized by an operating rule to move without further specific authority, yard tracks, and industrial side tracks. Paragraphs (a) through (d) detail the physical features that may be used to block access to non-controlled track within working limits.

16. Train Approach Warning Provided by Watchmen/Lookouts: § 214.327

Section 214.327 establishes the procedures for on track safety of groups that utilize train approach warning. A reference to the definition of train approach warning would be useful to the understanding of this section. Section 214.327 specifies the circumstances and the manner in which roadway work groups may use this method of on-track safety. Prescribed here is the minimum amount of time for roadway workers to retreat to a previously arranged place of safety, the duties of the watchman/lookout and the fundamental characteristics of train approach warning communication.

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

The rule does not include a provision for train approach warning by any means other than the use of watchmen/lookouts. FRA is not aware of any other means of effectively performing this function with the requisite reliability, and will not place requirements for an untried system in this rule. However, the Advisory Committee report states that ''FRA will incorporate a near-term time-specific requirement to utilize on-track personal warning systems for roadway workers working alone under any conditions not requiring positive protection.'' FRA realizes that the technological advancements incorporated in ATCS, PTC or PTS might in the future provide another method of establishing on-track safety in compliance with this subpart. Although such technology is not specifically provided for in the current rule. Opportunities to employ advancements in this area will be handled pursuant to the waiver process. FRA will therefore be most interested in knowing when such systems are developed, tested, and proven reliable.

17. Definite Train Location: § 214.329

Section 214.329 describes a system of on-track safety which provides roadway workers with information as to the earliest times at which trains may leave certain stations, having been restricted at those stations by the train dispatcher or control operator. This form of on-track safety is called *Definite Train Location.* A reference to its definition is helpful to distinguish it from an *informational lineup of trains,* which is addressed in § 214.331.

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

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

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

Paragraph (d) and corresponding subparagraphs (1) through (6) set forth the requirements for a definite train location system and the qualifications that a roadway worker must have before using this system as a form of on-track safety.

18. Informational Line-ups of Trains: § 214.331

Section 214.331 specifies conditions for the use of *informational line-ups of trains.* Some railroads have used a form of informational line-ups to provide on-track safety for roadway workers for many years. Such a procedure requires the roadway worker to have a full understanding of the particular procedure in use, and the physical characteristics of the territory in which they are working. The Advisory Committee addressed this issue with the following specific recommendation:

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

Line-ups as used in this section differ from lists of trains in § 214.329 in that line-ups need not include definite restriction as to the earliest times at which trains may depart stations. FRA therefore follows the Advisory Committee recommendation by allowing railroads presently using line-ups to continue doing so under conditions presently in effect, provided that their on-track safety programs that are reviewed and approved by FRA contain adequate provisions for safety, and a definite date for completion of phase-out.

19. On-track Safety Procedures for Roadway Work Groups: § 214.333

Section 214.333 specifies requirements for on-track safety to be provided for roadway work groups. Other sections of the regulation discuss matters affecting the group such as the different types of on-track safety protection available to a group and the job briefing necessary for a group, but this section prescribes what procedures are required to fully comply with this subpart. The definition of roadway work group enables the distinction between general methods of providing on-track safety for groups and for individuals working alone. Examples of roadway work groups are a large or small track gang, a pair of signal maintainers, a welder and welder helper, and a survey party.

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

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

The concept of protecting roadway workers from the hazards of trains and

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

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

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

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

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

As a practical matter, FRA will apply a rule of reason to the precision used in measuring track centers, so that minor alignment deviations within the limits of the Federal Track Safety Standards (49 CFR 213) would not themselves place such short segments of track within the definition of adjacent tracks.

20. On-track Safety Procedures for Lone Workers: § 214.335

Section 214.335 establishes specific on-track safety procedures for the lone worker. Paragraph (a) sets forth the general requirement that restricts the use of individual train detection to circumstances prescribed in this section and the corresponding on-track safety program of the railroad.

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

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

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

Paragraph (f) prescribes the concept of a written Statement of On-track safety, prepared by the lone roadway worker. The reasoning behind this requirement is to assist the roadway worker in focusing on the nature of the task, the risks associated with the task, and the form of on-track safety necessary to safely carry out assigned duties.

21. Audible Warning from Trains: § 214.337

Section 214.337 requires audible warning from locomotives before trains approach roadway workers. The implementation of this requirement will necessitate railroad rules regarding notification to trains that roadway workers are on or about the track. This notification could take the form of portable whistle posts, train movement authorities, or highly visible clothing to identify roadway workers and increase their visibility. This section is not optional with a railroad, and FRA intends that it will preempt any local restrictions on the sounding of locomotive whistles.

22. Roadway Maintenance Machines: § 214.339

Section 214.339 addresses specific issues concerning roadway maintenance machines that need to be included in individual railroad program submissions. FRA decided to address the hazards associated with these machines separately from those associated with trains, as the nature of the hazard is different. Referencing the definition of this term is a good place to start to understand this section. Roadway maintenance machines are devices, the characteristics or use of which are unique to the railroad environment. The term includes both on-track and off-track machines. A roadway maintenance machine need not have a position for the operator on the machine nor need it have an operator at all; it could operate automatically, or semi-automatically.

This provision excludes hand-powered devices in order to distinguish between hand tools which are essentially portable, and devices which either are larger, move faster, or produce more noise than hand tools. Hand-held power tools are not included in the definition, but because of the noise they produce, and because of the attention that must be paid to their safe operation they are addressed specifically in § 214.335, On-track safety for lone workers.

Examples of devices covered by this section include, but are not limited to, crawler and wheel tractors operated near railroad tracks, track motor cars, ballast regulators, self-propelled tampers, hand-carried tampers with remote power units, powered cranes of all types, highway-rail cars and trucks while on or near tracks, snow plows-self propelled and pushed by locomotives, spreader-ditcher cars, locomotive

cranes, electric welders, electric generators, air compressors—on-track and off-track.

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

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

23. Training and Qualification, General: § 214.341

Section 214.341 requires that each roadway worker be given on-track safety training once every calendar year. Adequate training is integral to any safety program. Hazards exist along a railroad, not all of which are obvious through the application of common sense without experience or training. An employee who has not been trained to protect against those hazards presents a significant risk to both himself and others.

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

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

24. Training for All Roadway Workers: § 214.343

Section 214.343 represents the basic level of training required of all roadway workers who work around moving railroad trains and on-track equipment. All persons subject to this rule must have this training. This basic level of training is required in addition to any specialized training required for particular functions called for in §§ 214.345 through 214.353. Any testing required to demonstrate qualification need not be written, because the requirements can be fulfilled by a practical demonstration of ability and understanding.

25. Training and Qualification for Lone Workers: § 214.345

Section 214.345 requires a higher degree of qualification, as the lone worker is fully responsible for his or her own protection.

26. Training and Qualification of Watchmen/lookouts: § 214.347

Section 214.347 details the standards for qualification of a lookout, who by definition is responsible for the protection of others. The definition of watchman/lookout is useful to understand the functions of roadway workers discussed in this section. Watchmen/lookouts must be able to perform the proper actions in the most timely manner without any chance of error in order to provide proper protection for those who are placed in their care.

27. Training and Qualification of Flagmen: § 214.349

Section 214.349 requires that flagmen be qualified on the operating rules of the railroad on which they are working. Referencing the definition of flagman would be useful to identify the class of roadway workers discussed in this section. Generally, flagmen are already required to be qualified on the operating rules that apply to their work. Flagging is an exacting procedure, and a flagman must be ready to act properly at all times in order to provide proper protection for those under his care. The distinction between flagmen and watchmen/lookouts should be noted, in that flagmen function to restrict or stop the movement of trains, while watchmen/lookouts detect the approach of trains and provide warning thereof to other roadway workers.

28. Training and Qualification of Roadway Workers Who Provide On-track Safety for Roadway Work Groups: § 214.351

Section 214.349 details training standards applicable to the roadway worker who is qualified to provide on-track safety for roadway work groups. This roadway worker has the most critical responsibilities under this subpart. This individual must be able to apply the proper on-track safety rules and procedures in various circumstances, to communicate with other railroad employees regarding on-track safety procedures, and to supervise other roadway workers in the performance of their on-track safety responsibilities.

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

29. Training and Qualification in On-track Safety for Operators of Roadway Maintenance Machines: § 214.353

Section 214.353 requires training for those roadway workers operating roadway maintenance machines. As noted earlier, there is a wide variety of equipment requiring specific knowledge. However, FRA determined that establishing minimum qualifications closely associated with the type of machine to be operated, and the circumstances and conditions under which it is to be operated, was necessary.

Environmental Impact

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

Appendix

FRA plans to revise Appendix A to Part 214.—Schedule of Civil Penalties, to include penalties for violations of the provisions of this Subpart to be included in the final rule. Because such penalty schedules are statements of policy, notice and comment are not required prior to their issuance. (see 5 U.S.C. 553(b)(3)(A)). Nevertheless, interested parties are welcome to submit their views on what penalties may be appropriate.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

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

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

As part of the benefit-cost analysis the FRA has assessed quantitative measurements of costs and benefits expected from the adoption of the proposed rule. The Net Present Value (NPV) of the net benefits is 28.7 million. Over a ten year period, the NPV of the estimated quantifiable societal benefits is $252.6 million, and the NPV of the estimated societal quantified costs is $223.87 million.

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

- $10 million from averted roadway worker injuries;
- $174 million from worker productivity increases that are a due to a safer working environment;
- $62 million from averted roadway workers fatalities (a statsitical estimation of 32.6 lives saved); and
- $1.5 million from the reduction in lost work days.

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

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

Sections 8.0—10.0 of this analysis outline the above findings in greater detail. FRA anticipates significant other qualitative benefits accruing from the proposed rule which are not factored into the quantified benefit-cost analysis. These non-quantified benefits include a possible increase in the capacity or volume of some rail lines, and an improved employee morale.

FRA's quantified cost estimate includes time alloted for daily job briefings. Many railroads currently conduct job briefings and others have alloted the time for such briefings. FRA contends that the proposed rule will structure time already alloted or spent in job briefings. Although FRA considered this 2 minute briefing a cost and included it within the quantified benefit-cost calculations, it is conceivable that structuring the existing job briefing time actually means no additional cost. The job briefing requirement essentially mandates a more efficient use of already allotted time.

With respect to the quantified benefits anticipated, expected savings from a one percent increase in workplace productivity was included. FRA estimates that productivity of roadway workers should increase because adoption of the proposed rule will decrease the amount of risk that exists in their work environment. This is especially true in certain work areas where the risk is the highest such as within interlocking limits. Individual worker productivity should increase since there will be less time and concentration being focused on whether a train is approaching. The requirements for positive protection in this rule will provide this mental and physical relief in numerous roadway work situations. The productivity increases will be reflected in less time needed to complete work that will be performed on or near the track. FRA estimates that a one percent increase in rail workplace productivity, or less than 5 minutes per day, is a reasonable and conservative estimate.

FRA's sensitivity assessment conducted as part of this regulatory impact analysis (see Section 14.0) calculates a three percent increase in productivity as well. If a three percent productivity is achieved as a result of this rulemaking the expected quantified benefits would increase to a NPV of $600.1 million. The sensitivity assessment also shows estimated benefits given an assumption of no increased productivity. FRA does not believe this is a reasonable assumption. If productivity did not increase at all as a result of this rule and the other non-quantified benefits discussed above are not considered then the benefits would be reduced by a NPV of $174 million.

FRA also conducted sensitivity assessments on key components of the cost estimates. The cost estimates were sensitive to assumptions about the incremental time for job briefings (including the proportion of briefings that take place during ''down time'') and the number of additional employee years necessary to comply with the proposal. Under alternative assumptions regarding these parameters, the discounted 10-year cost estimates range from $187 million to $338 million.

FRA's regulatory impact analysis finds the proposed rule to be cost beneficial (greater benefits than costs), and further identifies substantial qualitative benefits. The recommendation of the Roadway Worker Safety Federal Advisory Committee that the FRA adopt the proposed rule reflects the consensus of the rail labor and management representatives on the committee that the proposed rule is beneficial.

As previously noted, FRA is allowing 60 days for comments and invites public comment on the issue of regulatory impact. FRA seeks comment and or data to help identify or quantify other factors that may affect the benefits or costs of the proposal, including alternatives that were not explored by the advisory committee and any costs or benefits associated with such alternatives. FRA specifically invites comments from contractors and tourist railroads on regulatory impact, since they were not members of the Advisory Committee. Comments received after May 13, 1996 will be considered to the extent possible

without incurring additional expense or delay. In addition, a public hearing will be scheduled only if requested by April 15, 1996. It should be noted that a final rule may change based on comments received. However, FRA will take the appropriate prompt action at the close of the comment period.

Federalism Implications

This proposed rule has been analyzed in accordance with the principles of Executive Order 12612 (''Federalism''). As noted previously, there are potential preemption issues resulting from a provision of this proposed rule, requiring audible warning before entering worksites. Various States and local authorities have ''whistle bans'' preventing railroads from sounding whistles or ringing locomotive bells while operating through those communities. FRA acknowledges an impact on scattered States and localities throughout the country, depending on the time of day and the frequency with which track maintenance occurs. However, these measures are necessary to protect roadway workers from possible death and injury. Sufficient Federalism implications have been identified to warrant the preparation of a Federalism Assessment and it has been placed in the docket. It may be inspected and photocopied at Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Room 8201, Washington, D.C. 20590. Photocopies may also be obtained by submitting written requests to the FRA Docket Clerk at the above address.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed rules to assess their impact on small entities. In reviewing the economic impact of the proposed rule, FRA has concluded that it will have a moderate economic impact on small entities. There are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

Paperwork Reduction Act

The proposed rule contains information collection requirements. FRA will submit these information collection requirements to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) *et seq.*). FRA has endeavored to keep the burden associated with this proposal as simple and minimal as possible. The proposed sections that contain information collection requirements and the estimated time to fulfill each requirement are as follows:

Proposed section	Brief description	Estimated average time
214.303	Railroad On-Track Safety Programs.	2,000 hrs. Class I.
214.309	.....	1,400 hrs. Class II.
214.337	.....	250 hrs. Class III.
214.307	.....	3,500 hrs. Blanket Class II.
214.311	.....	3,000 hrs. Blanket Class III.
214.329		
214.313	Responsibility of Individual Road Workers.	4 hrs.
214.315	Supervision and Communications—Job Briefings.	2 minutes.
214.333		
214.319	Working Limits	Usual & Customary Procedure—No new paperwork.
214.321	Exclusive Track Occupancy—Working Limits Authorities.	40 seconds.
214.323	Foul Time Working Limit Procedures.	Usual & Customary Procedure—No new paperwork.
214.325	Inaccessible Track.	10 minutes.
214.327	Train Approach Warning Provided by Watchman/Lookouts.	15 seconds.
214.335	On-Track Safety Procedures for Lone Workers.	30 seconds.
214.339	Training Requirements—Record of Qualifications.	2 minutes.
214.343		
214.345		
214.347		
214.349		
214.351		

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. FRA solicits comments on the accuracy of the estimates, the practical utility of the information, and alternative methods that might be less burdensome to obtain this information. Persons desiring to comment on this topic should submit their views in writing to Gloria D. Swanson, Federal Railroad Administration, 400 Seventh Street, S.W., Washington D.C. 20590; and to the Office and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer (DOT/FRA), New Executive Office Bldg., 726 Jackson Place, N.W., Washington, D.C. 20530. Copies of any such comments should also be submitted to the docket of this rulemaking at the address provided above.

List of Subjects in 49 CFR Part 214

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

The Proposed Rule

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

PART 214—[AMENDED]

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

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

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

§ 214.7 Definitions.

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

* * * * *

Class I, Class II, and Class III have the meaning assigned by, Title 49 CFR part 1201, General Instructions 1–1.

* * * * *

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

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

* * * * *

Definite train location means a system for establishing on-track safety by providing roadway workers with information about the earliest possible time that approaching trains may pass specific locations as prescribed in § 214.329.

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

(1) Vandal resistant;

(2) Tamper resistant; and

(3) Designed to be applied, secured, uniquely tagged and removed only by the class, craft or group of employees for whom the protection is being provided.

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

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

* * * * *

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

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

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

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

* * * * *

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

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

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

* * * * *

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

* * * * *

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

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

* * * * *

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

* * * * *

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

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

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

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

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

* * * * *

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

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

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

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

3. Add subpart C to read as follows:

Subpart C—Roadway Worker Protection

Sec.
214.301 Purpose and scope.
214.303 Railroad on-track safety programs, generally.
214.305 Effective dates.
214.307 Review and approval of individual on-track safety programs by FRA.
214.309 On-track safety program documents.
214.311 Responsibility of employers.
214.313 Responsibility of individual roadway workers.

214.315 Supervision and communication.
214.317 On-track safety procedures, generally.
214.319 Working limits, generally.
214.321 Exclusive track occupancy.
214.323 Foul time.
214.325 Inaccessible track.
214.327 Train approach warning provided by watchmen/lookouts.
214.329 Definite train location.
214.331 Informational line-ups of trains.
214.333 On-track safety procedures for roadway work groups.
214.335 On-track safety procedures for lone workers.
214.337 Audible warning from trains.
214.339 Roadway maintenance machines.
214.341 Training and qualification, general.
214.343 Training for all roadway workers.
214.345 Training and qualification for lone workers.
214.347 Training and qualification of watchmen/lookouts.
214.349 Training and qualification of flagmen.
214.351 Training and qualification of roadway workers who provide on-track safety for roadway work groups.
214.353 Training and qualification in on-track safety for operators of roadway maintenance machines.

Subpart C—Roadway Worker Protection

§ 214.301 Purpose and scope.

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

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

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

§ 214.303 Railroad on-track safety programs, generally.

(a) Each railroad to which this part applies shall adopt and implement a program that will afford on-track safety to all roadway workers whose duties are performed on that railroad. Each such program shall provide for the levels of protection specified in this subpart.

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

§ 214.305 Effective dates.

Each program adopted by a railroad to comply with this Rule shall be effective not later than the date specified in the following schedule:

(a) For each Class I railroad (including National Railroad Passenger Corporation) and each railroad providing commuter service in a metropolitan or suburban area, June 1, 1996.

(b) For each Class II railroad, September 1, 1996.

(c) For each Class III railroad, switching and terminal railroad, and any railroad not otherwise classified, December 1, 1996.

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

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

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

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

(c) A railroad's on-track safety program will take effect by the date established in § 214.305, without regard to the date of review or approval by the Federal Railroad Administration.

§ 214.309 On-track safety program documents.

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

§ 214.311 Responsibility of employers.

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

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

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

§ 214.313 Responsibility of individual roadway workers.

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

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

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

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

§ 214.315 Supervision and communication.

(a) When an employer assigns duties to a roadway worker that call for that employee to foul a track, the employer shall provide the employee with a job briefing that includes information on the means by which on-track safety is to be provided, and instruction on the on-track safety procedures to be followed.

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

(c) Every roadway work group whose duties require fouling a track shall have one roadway worker designated by the employer to provide on-track safety for all members of the group. The designated person shall be qualified under the rules of the railroad that conducts train operations on those

tracks to provide the protection necessary for on-track safety of each individual in the group. The responsible person may be designated generally, or specifically for a particular work situation.

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

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

§ 214.317 On-track safety procedures, generally.

Each employer subject to the provisions of this part shall provide on-track safety for roadway workers by adopting a program that contains specific rules for protecting roadway workers that comply with the provisions of §§ 214.319 through 214.335.

§ 214.319 Working limits, generally.

Working limits established on controlled track shall conform to the provisions of § 214.321 Exclusive track occupancy, or § 214.323 Foul time. Working limits established on non-controlled track shall conform to the provisions of § 214.325 Inaccessible track. Working limits established under any procedure shall, in addition, conform to the following provisions:

(a) Only a roadway worker who is qualified in accordance with § 214.351 shall establish or have control over working limits for the purpose of establishing on-track safety.

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

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

(d) All affected roadway workers shall be notified before working limits are released for the operation of trains. Working limits shall not be released until all affected roadway workers have either left the track or have been afforded on-track safety through train approach warning in accordance with § 214.327.

§ 214.321 Exclusive track occupancy.

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

(a) The working limits shall be placed under the control of one roadway worker, who is designated in accordance with § 214.351, by the train dispatcher or control operator in charge of the track.

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

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

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

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

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

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

(2) A fixed signal that displays an aspect indicating ''Stop''.

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

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

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

§ 214.323 Foul time.

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

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

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

(c) Each roadway worker who obtains foul time shall first have been trained and qualified by the operating railroad to provide on-track safety to roadway work groups or as a lone worker.

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

§ 214.325 Inaccessible track.

Working limits on non-controlled track shall be established by rendering the track within working limits physically inaccessible to trains. No operable locomotives or other items of on-track equipment, except those moving under the direction of the roadway worker in charge, shall be located within working limits on non-controlled track. The extent of working limits established as inaccessible track shall be defined by one of the following physical features:

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

(b) A switch or derail aligned to prevent access to the working limits and

secured with an effective securing device by the roadway worker in charge of the working limits.

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

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

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

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

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

§ 214.327 Train approach warning provided by watchmen/lookouts.

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

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

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

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

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

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

(f) Every roadway worker who is assigned the duties of a watchman/lookout shall first be trained, qualified and designated in writing by the employer to do so in accordance with the provisions of § 214.345.

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

§ 214.329 Definite train location.

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

(a) A Class I railroad may only use definite train location to establish on-track safety at points where such procedures were in use on the effective date of the final rule.

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

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

(1) such procedures were in use on the effective date of this rule; or

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

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

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

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

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

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

(3) Trains not shown on the definite train location list shall not be operated on the track for which the list is provided, during the time for which the list is effective, until each roadway worker to whom the list has been issued has been notified of the train movement, has acknowledged the notification to the train dispatcher, and has canceled the list. A list thus canceled shall then be invalid for on-track safety.

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

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

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

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

§ 214.331 Informational line-ups of trains.

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

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

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

§ 214.333 On-track safety procedures for roadway work groups.

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

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

roadway work group that on-track safety is provided.

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

§ 214.335 On-track safety procedures for lone workers.

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

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

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

(1) by a lone worker who has been trained, qualified, and designated to do so by the employer in accordance with § 214.345;

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

(3) on track outside the limits of a manual interlocking, a controlled point, or a remotely controlled hump yard facility;

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

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

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

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

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

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

§ 214.337 Audible warning from trains.

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

§ 214.339 Roadway maintenance machines.

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

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

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

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

(4) Spacing between machines to prevent collisions.

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

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

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

(1) No roadway worker shall operate a roadway maintenance machine without having been trained in accordance with § 214.353.

(2) No roadway worker shall operate a roadway maintenance machine without having complete knowledge of the safety instructions applicable to that machine.

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

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

§ 214.341 Training and qualification, general.

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

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

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

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

§ 214.343 Training for all roadway workers.

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

(a) Recognition of railroad tracks and understanding of the space around them within which on-track safety is required.

(b) The functions and responsibilities of various persons involved with on-track safety procedures.

(c) Proper compliance with on-track safety instructions given by persons performing or responsible for on-track safety functions.

(d) Signals given by watchmen/lookouts, and the proper procedures upon receiving a train approach warning from a lookout.

(e) The hazards associated with working on or near railroad tracks, including review of on-track safety rules and procedures.

§ 214.345 Training and qualification for lone workers.

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

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

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

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

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

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

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

§ 214.347 Training and qualification of watchmen/lookouts.

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

(1) The detection and recognition of approaching trains.

(2) The effective warning of roadway workers of the approach of trains.

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

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

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

§ 214.349 Training and qualification of flagmen.

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

(b) Initial and periodic qualification of a flagman shall be evidenced by demonstrated proficiency .

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

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

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

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

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

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

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

§ 214.353 Training and qualification in on-track safety for operators of roadway maintenance machines.

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

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

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

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

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

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

Issued this 11th Day of March, 1996.

Jolene M. Molitoris,

Administrator. Federal Railroad Administration

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Federal Highway Administration

49 CFR Parts 382, 383, 390, and 391

[FHWA Docket No. MC–96–6]

RIN 2125–AD66

Safety Performance History of New Drivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to amend its regulations to specify minimum safety information that new and prospective employers must seek from former employers during the investigation of a driver's employment record. This notice of proposed rulemaking (NPRM) also proposes to increase the period of time for which carriers must record accident information in the accident register from one to three years. This proposal is mandated by section 114 of the Hazardous Materials Transportation Authorization Act of 1994 (HazMat Act). The proposed rules would ensure that employers would be cognizant of critical information concerning a driver's prior safety performance, while also affording the driver the opportunity to review and comment on that information.

DATES: Comments must be received on or before May 13, 1996.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the beginning of this document and must be submitted to the Docket Clerk, Room 4232, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or envelope.

FOR FURTHER INFORMATION CONTACT: Ms. Valerie Height, Office of Motor Carrier Research and Standards, (202) 366–