

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****49 CFR Part 214**

[Docket No. FRA-2000-8156, Notice No. 2]

RIN 2130-AB28

Roadway Maintenance Machine Safety

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

ACTION: Final rule.

SUMMARY: FRA is amending its Railroad Workplace Safety regulations by adding a new subpart prescribing safety standards for railroad on-track roadway maintenance machines and hi-rail vehicles. The purpose of these standards is to protect roadway workers during the lawful operation of this equipment and to promote railroad safety overall.

DATES: (1) *Effective Date:* This regulation is effective September 26, 2003.

(2) Any petition for reconsideration of any portion of the rule must be submitted no later than September 26, 2003.

ADDRESSES: A petition for reconsideration (identified by DOT DMS Docket Number FRA-2000-8156) may be submitted by any of the following methods:

- Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.

- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number for this rulemaking. Note that all submissions received will be posted without change to <http://dms.dot.gov> including any personal information provided. Please see the Privacy Act heading under Regulatory Impact/Notices, below.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5

p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT:

Allison H. MacDowell, Staff Director, Office of Safety Enforcement, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone: 202-493-6236), or Daniel L. Alpert, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202-493-6026).

SUPPLEMENTARY INFORMATION:**Introduction***Background*

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

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

Even after the publication of the revised Track Safety Standards, the Track Working Group remained in existence to accomplish two additional tasks accepted by the RSAC: The amendment of part 213 to add safety standards for Gage Restraint Measuring Systems (GRMS), and the amendment of

part 214 to add safety standards for on-track roadway maintenance machines. To accomplish the latter, the Track Working Group appointed a six-member Task Group to draft, by consensus, rule text and analysis for the preamble.

The Task Group consisted of representatives from FRA, Association of American Railroads (AAR), BMW, Norfolk Southern Railway Co., and an equipment supplier. The Task Group met several times and conducted numerous conference calls before drafting proposed rule language to recommend to the RSAC for approval. The Task Group's recommended proposed rule was approved by the RSAC in 2000, and the proposed rule was subsequently issued by the Administrator and then published on January 10, 2001. *See* 66 FR 1930.

FRA received comments from five organizations in response to the proposed rule. The commenters included the BMW, the AAR, Loram Maintenance of Way, Inc. (Loram), Transtar, Inc. (Transtar), and the Wisconsin Central System (Wisconsin Central). Loram recommended that FRA terminate the rulemaking because the Task Group included only one representative of the equipment industry who could not adequately represent the diversity of roadway maintenance equipment. Loram further suggested that, in the alternative, FRA should convene a task group that included at least two representatives of manufacturers and operators of roadway maintenance equipment.

In February 2002, the Task Group met with most of the commenters, as well as other representatives from the industry, to gain clarification of, and further discuss, the comments and suggestions provided by the commenters. The Task Group met with representatives of Loram, Plasser American, and the Railway Progress Institute, and then, by unanimous vote, recommended how this final rule would respond to each of the comments. (Discussion of those recommendations is detailed in the Section-by-Section Analysis segment of this document, below.) Thereafter, in May 2002, the Task Group's recommendations were unanimously approved by the full RSAC.

Categories of Equipment

When the Task Group began the task of developing a proposed rule for roadway maintenance machine safety, it initially divided roadway maintenance machines into three broad categories: on-track, on/off track (such as hi-rail vehicles), and off-track. The Task Group quickly decided to confine the regulations to on-track equipment and