

method of protection when the reliability of the shunting is not failsafe.

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

#### *Noise Conservation*

The Task Group considered including in the regulations a design standard that would require new roadway maintenance machines covered by the rule to maintain the noise level in the cab of the machine to no more than 85 dBA measured on the A-scale of a standard sound level meter at slow response over an eight-hour period. Hearing loss caused by exposure to loud levels of noise over an extended period of time is a significant issue among roadway workers. Workers on roadway maintenance machines are currently protected by OSHA regulations set forth in 29 CFR 1910.95, which require a covered employer to provide a hearing conservation program, hearing protection, and training for employees.

However, if FRA were to establish noise exposure standards here with a new design standard, such standards would oust OSHA's jurisdiction over hearing conservation, pursuant to section 4(b)(1) of the Occupational Safety and Health Act, 29 U.S.C. 653(b)(1). Therefore, with a design standard for new equipment, but no requirement for a hearing conservation program, personal hearing protection or employee training, the roadway workers affected by this rule would receive less protection than they receive now under OSHA regulations. In addition, an effort by FRA to enter the field of hearing conservation on some roadway maintenance machines could result in FRA displacing OSHA regulations for all roadway maintenance machines. This result would leave operators of roadway equipment not under the design standard (*i.e.*, older equipment or equipment weighing less than 7,500 pounds) with no hearing protection under Federal law whatsoever.

To prevent such an unwanted result, FRA would need to institute its own set of comprehensive regulations dealing with hearing protection, hearing conservation programs, and testing. Given the fact that OSHA currently has authority to address noise exposure and hearing loss for these employees, as well

as the requisite expertise at hand to do so effectively, FRA sees no need to duplicate such a program. In fact, as FRA understands, the railroads currently follow the OSHA regulations and have established hearing conservation programs that include these employees.

#### *Environmental Controls in Cabs*

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

Under this regulation, OSHA environmental standards, which already govern the working environments of roadway maintenance machines, essentially remain in effect. By cross-referencing in this regulation the OSHA standards contained in 29 CFR 1910.1000, FRA becomes the enforcing agency as to environmental controls over the selected types of equipment, rather than OSHA. Environmental controls in equipment not covered by this rule and the limiting of exposure to employees working outside equipment remain subject to OSHA enforcement, and the regulation is the same (29 CFR 1910.1000).

It is important to note that the rule cross-references OSHA standards without limiting the references to OSHA standards in effect on a certain date. As with all regulatory agencies, OSHA from time to time revises and updates its standards. By cross-referencing the OSHA standards without limiting the references to standards in effect on a certain date, this regulation automatically references any revisions by OSHA to these standards so as to remain in conformance with any revised OSHA standards. This action prevents the undesirable result whereby

operators of roadway maintenance machines covered by this regulation could receive less protection than other operators in the event that OSHA revises any of the referenced standards.

The regulation requires positive pressurized ventilation systems with temperature controls only on new roadway maintenance machines as defined in § 214.7. In addition, the requirement is limited to ballast regulators, tampers, mechanical brooms, rotary scarifiers, undercutters, and other equipment with equivalent functions. It is FRA's understanding that these types of equipment are now typically manufactured with engineering controls that prevent inhalation of hazardous substances. The regulation requires temperature controls because, by their nature, pressurized cabs require full enclosure without access to open windows or similar sources of ventilation. It becomes imperative, therefore, that the cabs also be equipped with a means to control the temperature inside the cab. If the engineering controls fail for the ventilation system of any roadway maintenance machine covered by the requirement, employees on the machine must be equipped with personal respiratory protective equipment that is operative and meets the OSHA standards contained in 29 CFR 1910.134.

To prevent confusion about which agency has enforcement authority over specific roadway maintenance machines, the rule requires railroads to maintain a roster of machinery that falls under FRA's jurisdiction for purposes of this regulation. The roster may be maintained on paper or electronically, but it must be accessible and available to FRA, OSHA, and other Federal and State agencies so that inspectors may determine which agency has responsibility for inspection of which machines. The roster is intended to prevent confusion that may otherwise cause certain machines to be inspected by two Federal agencies while other machines go uninspected altogether.

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