

roadway worker sought to address a legitimate safety concern. The Task Group reiterated its belief that the provision is a necessary part of the new regulation. FRA believes that this provision is necessary for employee safety and that it does not impose an undue burden; therefore, FRA has declined to adopt Loram's comment.

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

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

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

The requirements of this section provide for the safety of employer operations and employees in a variety of ways:

- The visibility of those working in the cab is improved.
- Employees working in the cab are protected from exposure to unhealthy levels of silica dust, which is prevalent in many regions of the country where track repair work is done, as well as other air contaminants.
- Equipment components are protected from temperature extremes and the degradation that may occur due to concentrations of dust and debris.
- Any combustion fumes generated by the equipment are prevented from entering the cab, so that employees are not exposed to the potential hazards of fuel exhaust.

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

FRA is cross-referencing and enforcing OSHA environmental standards contained in 29 CFR 1910.1000. Environmental controls of on-track roadway maintenance machines not covered by § 214.505 are governed by these same OSHA regulations, but compliance continues to be enforced by OSHA. It is FRA's understanding that new roadway maintenance machines of the types covered by this section are manufactured with engineering controls that prevent the inhalation of hazardous substances, as required by OSHA standards. By adopting the OSHA regulations for such new machinery, FRA is in a position to make progressive improvements in the environmental quality of roadway equipment based upon a foundation of protection already established by OSHA.

Employers must maintain a roster of roadway maintenance machines that come under FRA's jurisdiction for purposes of this regulation. The roster, which may be electronic, must be readily available to FRA and other Federal and State agencies upon request so that inspectors may determine which agency has responsibility for enforcement of respiratory safety regulations for each roadway maintenance machine.

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

FRA recognizes that engineering controls for ventilation may fail from time to time. Consequently, when a new or designated roadway maintenance machine of the type listed in paragraph (a), or functionally equivalent thereto, does not offer the protection required by 29 CFR 1910.1000 because the engineering controls have temporarily failed, the employer must provide employees in the cab of the machine with personal respiratory protective equipment for protection from air

contaminants, in accordance with paragraph (e). Paragraph (f) specifies that the personal respiratory protective equipment must be operative and comply with standards issued by OSHA in 29 CFR 1910.134. These OSHA standards require employers to use respirators certified by the National Institute for Occupational Safety and Health (NIOSH). Employers must have in place a respiratory protection program including procedures for proper inspection and maintenance of the respirators and medical evaluations of personnel designated to use the respirators.

By referencing OSHA's regulations already in effect, FRA is not imposing a new burden on employers. Rather, FRA is simply adopting standards that are already required by another government agency. The requirement for heating, air conditioning, pressurized cabs, and personal respiratory protective equipment in these new roadway maintenance machines constitutes an exercise of FRA jurisdiction over the working condition of employee exposure to temperature extremes and air contaminants for those employees working in the cabs of this equipment. This exercise of FRA jurisdiction consequently ousts any authority or enforcement power of OSHA concerning working conditions related to the operation of air conditioning and heating systems or high levels of air contaminants in the cabs of this equipment. FRA makes clear that it is prepared to address any failure to comply with the working condition requirements, either through consultation with employers to remedy any problems or by taking enforcement action to bring about compliance.

In cross-referencing the OSHA standards, FRA makes clear that when OSHA revises the standards FRA will enforce the revised standards on those machines over which FRA has jurisdiction. This will ensure that any OSHA revision does not create an inconsistency whereby some types of roadway maintenance machines would be governed by the revised standards enforced by OSHA and others would be governed by the standards without the revisions as enforced by FRA.

FRA makes clear that it is not adopting those OSHA standards that include protection from silica dust for employees not working inside the cabs of on-track roadway maintenance machines covered by this section. The extent of FRA's adoption of OSHA standards in this section reaches only as far as the cab of the covered on-track roadway maintenance machine. As a result, when working inside the cab,