

workers receive protection from FRA; when working outside the cab, workers receive protection from OSHA. For example, roadway workers working along the right-of-way will continue to receive silica dust protection as administered by OSHA. In addition, to make clearer which employees are protected by this section when the ventilation system fails on a machine, FRA has modified paragraph (e) to make clear FRA's intent that the protections of this section apply only to employees "in the cab" of the machine, and not generally to any employee "on the" machine, whether inside the cab or not, as stated in the NPRM.

FRA also makes clear that this section of the final rule does not constitute an exercise of FRA authority over noise exposure for employees working on or around equipment covered by this section. This section does not establish permissible noise exposure levels for employees working on or around this equipment. OSHA's existing standards for noise exposure at 29 CFR 1910.95 continue to apply.

Paragraph (g) applies to new on-track roadway maintenance machines with enclosed cabs that are not of the type covered by paragraph (a). These new on-track roadway maintenance machines must be equipped with operative heating and ventilation systems.

Paragraph (h) refers to new on-track roadway maintenance machines that have, in addition to the main cab, non-enclosed operator stations in other places on the machine. These stations must be equipped with a covering of some kind that protects the operator in that position from midday sun or from normal rain. Of course, there will be times during the day when the sun is in such a position in the sky that a covering will not completely protect the operator from the sun. Likewise, a cover may not completely protect an operator from very heavy or wind-driven rain. This paragraph is not intended to require coverings to protect the operator in all circumstances. The coverings are required only when the design of the machine allows for the placement of a covering. Some operators' positions may be situated such that the addition of a covering is either impossible or would obstruct another working part of the equipment. In those instances, the coverings are not required.

One of the commenters to the NPRM, Loram, noted that the proposed rule referenced silica dust as an air contaminant that would be addressed by pressurized cabs on roadway maintenance machines. Loram suggested that the final rule be directed more specifically to silica dust

contamination. The Task Group disagreed. Air contaminants generated by roadway maintenance work may include more than silica. Following a discussion of the issue at a meeting with the Task Group, Loram withdrew the comment stating that it agreed that the rule should address the broader issue of contaminants.

Loram further suggested that the final rule clearly define the word "cab" as a "structure in which crews are housed and from which they operate controls required for the machine to carry out its primary function or movement."

According to Loram, some machines are equipped with "work rooms, convenience areas and storage locations" which may resemble a cab. The Task Group disagreed that the word "cab" requires specific definition, and FRA has not adopted Loram's comment. FRA does not believe there should be any confusion about the term "cab." The types of compartments described by Loram as resembling a cab are typically found on rail grinders only. However, rail grinders are not covered by this section of the rule.

Loram also commented that the proposed rule did not clearly distinguish between the types of equipment requiring enclosed cabs from equipment that must be provided with an overhead covering above the operator's stand. Loram suggested that this distinction could be accomplished by listing the elements each type of feature (enclosed cab or overhead covering) is meant to shield against. The Task Group discussed this comment directly with representatives of Loram at the Task Group meeting following publication of the NPRM. Loram acknowledged that it had misread the proposed regulation and withdrew the comment from consideration.

In commenting on the NPRM, Transtar maintained that small railroads would bear an onerous burden from the requirement that personal respiratory protective equipment be supplied to employees in the event of a failure of the environmental controls in a pressurized cab. Transtar suggested that the regulation permit employers to use "engineering and/or administrative controls" when the environmental controls fail on pressurized cabs. Transtar did not identify what those engineering and administrative controls should be. The Task Group disagreed with Transtar and FRA has not adopted the comment. The provision would not present a new burden since it mirrors OSHA regulations already in effect.

Transtar also stated that the proposed regulation did not clearly describe the demarcation between FRA's jurisdiction

and OSHA's jurisdiction over the working conditions of the roadway maintenance machines. The Task Group believed that this division of enforcement jurisdiction between the two agencies was discussed extensively in the preamble and recommended that the language of the proposed rule remain the same. FRA believes that it has addressed this issue in both the NPRM and this final rule.

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

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

Paragraph (a) requires that each new on-track roadway maintenance machine be equipped with a seat for each operator, unless the machine is designed to be operated by an operator in the standing position. Further, each roadway worker transported on an on-track roadway maintenance machine is required to have a safe and secure position with handholds, handrails, or a secure seat. These safe and secure positions must be located so that they offer protection from moving parts of the machine which could entangle clothing or body extremities. In the final rule, FRA has modified paragraph (a)(2) to make clear that moving parts of the machine which could entangle clothing or body extremities are not located only inside of the cab. This is consistent with the preamble to the NPRM which described the proposed protection from moving parts of the machine generally, without limiting that protection to parts located inside of the cab, and makes good safety sense.

In the NPRM, FRA offered to consider adding regulatory language to the final rule to describe "safe and secure positions" with more specificity. FRA requested comment on the need for a more specific description and asked for suggestions about what the description should include. The AAR responded to the request by stating that the phrase "safe and secure positions" needed no further definition. The BMW suggested that a safe and secure position should have a minimum of three points of contact for a person riding in that position. Loram commented that any description of "safe and secure" should