

response to this comment, FRA has added language to paragraph (b) permitting operators of such machines to interrupt or turn off the change-of-direction alarms on those machines when they are performing functions that would cause the alarms to sound constantly or almost constantly. Nevertheless, FRA has not found it possible to specify a precise list of machines that would typically fit these criteria. Therefore, FRA has added a sentence to paragraph (b) to indicate that FRA will presume that all machines must engage their change-of-direction alarms, unless the employer can show that the alarm on a particular machine would sound constantly or almost constantly while the machine is performing its work function. Of course, the employer has to make such a showing only in the event that FRA inquires about a particular machine.

In developing the requirement as to how loud the audible warning devices and change-of-direction alarms must be, the Task Group rejected proposing a decibel standard, choosing instead to propose simply that the warning devices be "loud enough to be heard by roadway workers and other machine operators within the immediate work area." However, FRA invited comment on whether or not the requirement should specify a particular decibel level, and if so, what level. Two commenters, AAR and Loram, stated that a standard decibel level would remove flexibility needed to address varying noise levels in different situations. Transtar disagreed, however, stating that the varying sound levels of different warning devices could result in excess noise and confusion for the work crews, especially as machines repeatedly change direction to perform their functions, and employees may ignore the warning alarms if they hear them all day long. Transtar also noted that the proposal did not specify minimum distances at which the audible warning devices need to be heard, or whether different tones should be used to help employees distinguish between different machines.

After discussing the comments, the Task Group concluded that different work situations require different decibel levels for the audible warnings and recommended that the language of the final rule not specify a decibel level for these warning devices. FRA agrees with the Task Group's reasoning and also notes that no comment was received recommending what decibel level(s) should be set. Accordingly, the final rule does not specify any decibel level(s). In regard to the concern that the rule may lead to excessive noise and

confusion for work crews, the final rule provides, as noted above, that change of direction alarms may be interrupted by the machine operator when operating a machine in the work mode if the function of the machine would result in a constant, or almost constant, sounding of the device.

#### *Section 214.513 Retrofitting of Existing On-Track Roadway Maintenance Machines; General*

This section specifies a schedule of retrofit items applicable to all existing on-track roadway maintenance machines. Pursuant to § 214.7, an *existing* on-track roadway maintenance machine is defined as any on-track roadway maintenance machine other than a new on-track roadway maintenance machine. Consequently, an *existing* on-track roadway maintenance machine is any on-track roadway maintenance machine in existence or on order on or before December 26, 2003, or completed on or before September 27, 2004.

Paragraph (a) states that each roadway worker transported on an existing on-track roadway maintenance machine shall have a safe and secure position that also provides protection from moving machine parts that could entangle clothing or body extremities. These positions may include seats or foot platforms with handholds so that the roadway worker can maintain a stable and balanced position on the machine as it is moving down the track. Roadway workers are prohibited from being transported on machines on which it is not possible to provide safe and secure positions for them. In the final rule, FRA notes that it has modified paragraph (a) in the same way it has modified § 214.507(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. *See* discussion of § 214.507(a)(2), above.

In the NPRM, FRA proposed requiring in paragraph (b) that each existing machine be stenciled or have documentation on the machine to clearly identify the location of safe and secure positions for the machine operator and any roadway workers transported on the machine. In the final rule, that requirement has been revised from the NPRM and re-designated as § 214.518. Discussion of this revised requirement is included under the heading for that section in this portion of the preamble, below.

In paragraph (b) of the final rule, formerly paragraph (c) of the proposed rule, each existing on-track roadway maintenance machine is required to

have a permanent or portable horn or other audible warning device by March 28, 2005. The audible warning device shall be easily accessible to the machine operator and shall produce a sound loud enough to be heard by roadway workers and other machine operators within the immediate work area.

As in the case of the similar requirement for new on-track roadway maintenance machines in § 214.511, the Task Group recommended not setting a decibel standard to address how loud the audible warning devices on existing roadway maintenance machines must be. In addition, comments received in response to the proposed requirement were the same as those received in response to § 214.511. Consequently, this paragraph's requirements are the same as those proposed in the NPRM.

Paragraph (c), formerly paragraph (d) in the proposed rule, states that by March 28, 2005, each existing on-track roadway maintenance machine shall be equipped with a permanent illumination device, such as a headlight, or a portable light source securely placed on the machine and not hand-held. The portable light does not have to be permanently affixed to the vehicle, however. FRA will consider the light source to be securely placed on the machine if it is held in place through any arrangement of screws, bolts, mounting clips, or heavy-duty magnets that maintains the light steadily in place without requiring a person to hold it. Lights are required if the machine is operated during the period between one-half hour after sunset and one-half hour before sunrise or in dimly lit areas such as tunnels. The illumination device or portable light source must be capable of illuminating obstructions on the track ahead for a distance of at least 300 feet under normal weather and atmospheric conditions.

The regulation affords employers up to twenty months after the date of publication of the final rule to retrofit existing on-track roadway maintenance machines with audible warning and illumination devices on those machines not so equipped. This is sufficient time for employers to order these safety appurtenances and fit them on machines not so equipped, and FRA expects all machines to be in compliance by the retrofit date.

#### *Section 214.515 Overhead Covers for Existing On-Track Roadway Maintenance Machines*

This section addresses the reinstallation and maintenance of overhead covers on existing on-track roadway maintenance machines, as well as the feasibility of providing overhead