

covers on certain machines not originally designed and manufactured with such protection.

Paragraph (a) states that for those existing on-track roadway maintenance machines either currently or previously equipped with overhead covers for the operator's position, defective covers shall be repaired, and missing covers shall be reinstalled, by March 28, 2005, and thereafter maintained in accordance with the provisions of § 214.531. FRA has modified the text of this paragraph from that proposed in the NPRM. In the NPRM, FRA proposed that "[o]verhead covers on existing on-track roadway maintenance machines will be repaired by * * * and thereafter maintained in accordance with the provisions of § 214.531." FRA has clarified the text by stating what had been implicit: a cover does not have to be repaired if it is not defective. Further, FRA has made clear that if a machine has previously been equipped with an overhead cover that has since been removed, that cover must be reinstalled. In addition, FRA has made clear that the cover is for the operator's position. FRA believes that this paragraph more accurately reflects the intent of the Task Group as it has been revised.

Many older on-track roadway maintenance machines were not designed with overhead covers, although machine operators could greatly benefit from their presence. Paragraph (b) allows an operator assigned to operate a particular on-track roadway maintenance machine, or that operator's designated representative, to request in writing that the employer evaluate the feasibility of providing an overhead cover for the operator's position where original design specifications did not provide for one or where the overhead cover was an option that was not purchased. Under paragraph (b), the employer must respond in writing within 60 days to each such request.

If the employer finds that the addition of an overhead cover is not feasible for a particular machine, the written response must state why. There may be a number of reasons why an employer would find that the addition of an overhead cover is not feasible. There may be no room on the machine to install an effective cover or canopy to protect the operator's position, or the machine may not provide a safe place on which a cover may be mounted or attached. Employers must proceed with caution in retrofitting a cover that is supported by an additional pole or stanchion. A roadway worker may try to use a stanchion as a handhold, depending on its location.

Consequently, if a stanchion is in a location identified as a safe and secure location for a roadway worker to ride on the machine, the stanchion must be securely attached to the machine so that it may serve as a handhold.

In preparing the final rule, FRA has modified the text of paragraph (b) from that proposed in the NPRM to make the requirement clearer and consistent with the changes made to paragraph (a), noted above.

As provided in paragraph (c), for purposes of this section the covers or canopies must be capable of shielding the operator from overhead sunlight, but are not expected to offer complete protection from the sun when the sun is relatively low in the sky, soon after sunrise or just before sunset. The covers must also be capable of shielding the operator from ordinary rainfall or snowfall, but are not expected to shield the operator from the effects of windblown precipitation. For clarity, FRA has added paragraph (c) to place in the rule text what FRA had proposed the covers protect against, as stated in the preamble discussion in the NPRM. In addition, FRA has used the same rule text contained in § 214.505(h), which is the counterpart to this section for new on-track roadway maintenance machines.

Section 214.517 Retrofitting of Existing On-Track Roadway Maintenance Machines Manufactured on or After January 1, 1991

This section specifies requirements for existing on-track roadway maintenance machines manufactured on or after January 1, 1991. Consequently, on-track roadway maintenance machines manufactured prior to 1991 are exempt from these requirements. Existing on-track roadway maintenance machines that are subject to the requirements of this section must conform to these requirements after March 28, 2005. As a result, such machines that are not already equipped with the safety appurtenances required by this section must have those appurtenances installed and comply with the other requirements of this section after this date.

Under paragraph (a), existing on-track roadway maintenance machines covered by this section must have a change-of-direction alarm, or rearview mirror or other rearward viewing device, if adding the device is feasible from an engineering standpoint and promotes operational safety. Among the wide variety of roadway maintenance machines, there exist some machines for which such a retrofit would be useless, unnecessary, impossible, or impractical.

Under this regulation, the feasibility and usefulness of retrofitting a change-of-direction alarm or rearward viewing device to a particular roadway maintenance machine will be determined by the employer after considering available compliance options and the durability and functional quality of the proposed retrofit.

A change-of-direction alarm notifies workers near the roadway maintenance machine that its movement is about to change. A rearward viewing device assists the operator in safeguarding roadway workers in the vicinity of the machine. Both devices offer protection for roadway workers, but from two different perspectives. In the NPRM, FRA sought comment regarding whether this standard should require both a change-of-direction alarm and a rearward viewing device in order to afford adequate protection for roadway workers working in the vicinity of a roadway maintenance machine. The BMW responded that a requirement for both devices would offer roadway workers a higher level of protection. The AAR noted that installation of a rearward viewing device may be impracticable on some older machines and, in particular, that some older machines may not have the proper electrical system to sustain a change-of-direction alarm. According to the AAR, by requiring either one device or the other, rather than both, the rule would provide employers with the kind of flexibility they may need in retrofitting old machines. The AAR also stated that either device by itself would provide an adequate level of protection for roadway workers.

Loram commented that the proper choice of either a rearward viewing device or a change-of-direction alarm, or both, depends on the particular machine. For example, Loram believed that rearward viewing devices would be of little use on large machine consists in protecting workers alongside the machines. Loram also stated that automatic change-of-direction alarms may not work on large machine consists in protecting workers alongside the machines or on certain roadway maintenance machines, such as ballast vacuum machines, which, by the nature of the work they do, move back and forth on the track at very short intervals. A change-of-direction alarm would sound almost constantly on such a machine.

The Task Group recommended that FRA add language to the regulation that would exclude certain machines for which change-of-direction alarms and rearward viewing devices would make