

standards are necessary, Loram pointed out that OSHA has standards defining a good handhold or handrail, but noted that they are vague about the best means of attachment. Separately, the BMW commented that a safe and secure position should have a minimum of three points of contact for each roadway worker riding on a roadway maintenance machine. An example of three-point contact is two feet securely positioned and one hand on a structurally sound handhold or handrail.

FRA has examined whether OSHA's regulations provide a definition of what is a good handhold or handrail for application to the requirements of this paragraph. OSHA regulations do address handrails for various work sites. However, FRA does not believe it appropriate at this time to refer to any specific OSHA regulation for application to this paragraph, and, in light of the comments received in response to this section, the paragraph remains unchanged.

Section 214.518 Safe and Secure Positions for Riders

In discussing the NPRM and the comments received on it, the Task Group noted that while § 214.513(b) of the NPRM proposed requiring employers to stencil or document the safe and secure positions for roadway workers to ride on *existing* roadway maintenance machines, no such requirement was expressly proposed for new machines. Consequently, the requirement proposed as § 214.513(b) in the NPRM has been moved here so that it may apply to any on-track roadway maintenance machine, new or existing.

Some members of the Track Working Group suggested that a systemwide operating rule prohibiting the transport of roadway workers on certain roadway maintenance machines, rather than stenciling or documentation, could serve as a more effective and efficient means of conveying information as to when it is prohibited to transport roadway workers on roadway maintenance machines. FRA expressly invited comment on this suggestion in the NPRM.

The BMW responded to the request for comment by stating that employers should not be given the option of using an operating rule to identify those roadway maintenance machines prohibited from transporting roadway workers because it would create too great a potential for error in its application. According to the BMW, the wide variety of types and configurations of roadway maintenance machines would cause confusion about

the proper application of a broad operating rule, especially for roadway workers encountering a particular machine with which they are unfamiliar. In addition, the BMW stated that roadway workers do not have instant or easy access to operating rules, in case a question arises about the applicability of such a rule to a particular machine.

The AAR stated that stenciling and documentation could be overlooked easily by busy roadway workers. According to the AAR, a more effective way to address the issue would be for the employers to emphasize training of employees as to operating rule restrictions on roadway maintenance machines. Transtar agreed with the AAR, as did Loram, which cautioned that an operating rule should also specify the speeds and distances workers are permitted to be transported.

In extensive discussion about the language of the proposed rule and the comments received in response to the proposal, the Task Group noted that the rule as proposed would have required that all existing roadway maintenance machines be stenciled or documented, even if the stenciling and documentation merely stated, "No riders." The Task Group concluded that a simpler way to reach the same result would be for the regulation to prohibit roadway workers, other than the machine operator(s), from riding on roadway maintenance machines (new and existing) unless the machines were stenciled or documented with information about the safe and secure riding positions.

FRA has elected to adopt the Task Group's suggestion by adding this new section to indicate this prohibition. Under the new language, employers need only identify those machines intended to carry roadway workers, in addition to the machine operator(s), by stenciling, marking, or other written notice on the machines. Roadway workers, for their part, will know that they are prohibited from riding on a machine unless it has the required stenciling, marking, or other written notice. Any employer who allows its roadway workers to ride on a roadway maintenance machine that has neither stenciling, marking, nor other written notice identifying safe and secure riding positions will be deemed in violation of the regulation.

Under § 214.513(b) as proposed, employers would have had to document or stencil each and every existing roadway maintenance machine to indicate whether riders would be permitted on each machine and, if so, where the safe and secure positions

were located. The proposed rule afforded employers one year from the effective date of the final rule to accomplish this requirement. Under this final rule, however, the requirement is less burdensome, with stenciling, marking, or other written notice required only for those machines permitted to transport riders. FRA therefore has concluded that the additional one-year interval for compliance is not necessary. This requirement becomes effective on the effective date of this final rule, and any machine that is not stenciled, marked, or otherwise has written notice indicating it can accept riders will not be permitted to carry riders until that indication is in place.

FRA notes that in preparing the final rule it has clarified how the safe and secure position on each machine will be identified. The rule text provides that each such position shall be identified by "stenciling, marking, or other written notice on the machine," instead or stating by "stenciling or documentation on the machine" as proposed in the NPRM. FRA believes that the proposed language could possibly have been too restrictive in limiting the manner in which a safe and secure position is identified. FRA makes clear that a safe and secure position may certainly be identified by documentation on the machine, but such a position may also be identified by other written notice on the machine.

Section 214.519 Floors, Decks, Stairs, and Ladders for On-Track Roadway Maintenance Machines

All new and existing on-track roadway maintenance machines shall have floors, decks, stairs, and ladders that are of appropriate design. The purpose of this requirement is to provide secure footing for the machine operator and any roadway workers transported on the machine. Current industry standards specifying material such as diamond plate, rubber tile, or other slip-resistant material design will be considered appropriate for the purposes of this regulation. Accumulations of oil, grease, or other contaminants or obstructions that could create a slipping, falling, or fire hazard must be promptly removed from floors, decks, stairs, and ladders.

FRA received no comment on this section in the NPRM; therefore, the language of the final rule remains as proposed.