

FRA has elected not to change the language of this paragraph from that in the proposed rule. The agency could detect no clear consensus among the commenters about which color(s) would work best. Different railroads utilize different colors. FRA can point to no clear safety benefit from a new requirement that would force railroads to change a large number of light bulbs.

Paragraph (d)(1) requires the operator of each hi-rail vehicle to inspect the vehicle for compliance with this subpart prior to using the vehicle at the start of the operator's work shift. The intent of the inspection of hi-rail equipment prior to use is to identify a condition that inhibits the safe operation of the vehicle. For hi-rail vehicles that are in constant use, such as during a construction project, it is expected that each designated employee at the beginning of his or her shift will inspect the hi-rail gear. If multiple employees use the same equipment during the same work shift, it is expected that only the first employee will inspect the equipment for that shift.

In preparing the final rule, FRA recognized that this paragraph did not expressly cover the inspection of existing hi-rail vehicles. Yet, it is not evident to FRA why only new hi-rail vehicles should be made subject to an inspection requirement for compliance with this subpart. Consequently, FRA has modified the rule to make clear that existing hi-rail vehicles must be inspected for compliance with this subpart, such as checking for flagging kits when required by § 214.521. FRA would also expect that a hi-rail vehicle operator conduct at least a visual inspection following a derailment or accident involving the hi-rail vehicle to ensure that the vehicle remains safe to operate.

In commenting on the NPRM, Transtar noted that the paragraph included no requirement for recording the performance of these inspections. Although Transtar's observation is accurate, the omission was deliberate. FRA believes that the chief purpose of a requirement for keeping records of these checks of hi-rail vehicles would be to strengthen the enforceability of this paragraph. In this regard, paragraph (d)(2) requires that each non-complying condition not immediately repaired following an inspection be tagged and reported to the employer's designated official. (Paragraph (d)(2) was formerly proposed as paragraph (e) in the NPRM.) If FRA finds a hi-rail vehicle operating with a non-complying condition that has not been properly tagged or reported, FRA will presume that the hi-rail has not received a proper inspection

prior to operation that shift, unless the operator or employer can show that the defect developed after the inspection was performed. FRA believes that this presumption will provide the agency with adequate ability to enforce the provisions of the paragraph without further burdening the employer with daily record keeping requirements.

This same rationale underlies the requirements of § 214.527. Section 214.527 requires a pre-work inspection of roadway maintenance machines and the tagging and reporting of any discovered defects, but no record keeping of the inspections themselves. Of course, nothing in this paragraph or in § 214.527 prohibits an employer from maintaining records of these inspections for its own purposes.

Paragraph (d)(3) states that defective automatic change-of-direction or backup alarms and 360-degree intermittent warning lights or beacons must be repaired or replaced as soon as practicable within seven calendar days. This paragraph is consistent with § 214.531, and was formerly proposed as paragraph (f) in the NPRM.

Section 214.525 Towing With On-Track Roadway Maintenance Machines or Hi-Rail Vehicles

This section prescribes the manner in which on-track roadway maintenance machines or hi-rail vehicles may be used to tow pushcars or other on-track maintenance-of-way equipment. Paragraph (a) specifies that whenever an on-track roadway maintenance machine or hi-rail vehicle is used to tow such equipment, it must be equipped with a towing bar or other coupling device designed for that purpose that provides a safe and secure attachment.

The towing of pushcars or other on-track maintenance-of-way equipment is prohibited under paragraph (b) when it would exceed the braking capabilities of the on-track roadway maintenance machine or hi-rail vehicle doing the towing. When determining whether or not the braking capability of a machine or vehicle would be exceeded, the employer must consider the track gradient or slope in the area, as well as the number and weight of pushcars or other equipment to be towed. Paragraph (b) does not cover locomotives hauling conventional rail cars used in track maintenance work, such as ballast cars. Such locomotives must comply with the requirements in 49 CFR part 229 (Railroad Locomotive Safety Standards).

Transtar commented that the requirement for towing equipment under this section would force railroads to keep multiple towing apparatuses for towing different types of equipment.

Transtar suggested that the final rule provide some relief from the requirements of this section for towing performed on an emergency basis, such as by including an exception that under emergency circumstances equipment may be towed by any safe method. In considering this comment, the Task Group believed that the language of this section is general enough to adequately cover all types of towing situations, including emergency situations. FRA agrees, and the text of the final rule remains as proposed.

Section 214.527 On-Track Roadway Maintenance Machines; Inspection for Compliance and Schedule for Repairs

This section prescribes the manner in which on-track roadway maintenance machines are to be inspected and repaired. The title of this section has been modified to make clear that it applies only to on-track roadway maintenance machines.

Paragraph (a) requires the operator of an on-track roadway maintenance machine to perform an inspection of that machine for compliance with the requirements of this subpart. The operator must perform the inspection prior to using the machine at the start of the operator's work shift. As is the case for the inspection of hi-rail vehicles pursuant to § 214.523, if multiple employees use the same equipment during the same work shift, it is expected that only the first employee will inspect the equipment for that shift.

Under paragraph (b), any non-complying condition that cannot be immediately repaired must be tagged and dated according to established employer procedures and reported to the designated official. As in § 214.523, this section does not require an employer to maintain records of each daily inspection. However, should FRA find an on-track roadway maintenance machine operating with a defect that has not been properly tagged or reported to the employer's designated official, FRA will presume that the daily inspection was not properly performed—a presumption the employer or operator may rebut by showing that the defect occurred after the inspection was performed.

Paragraph (c) allows for the continued operation of an on-track roadway maintenance machine with a reported non-complying condition subject to certain requirements:

(1) A machine with non-complying headlights or work lights may be operated only between the period from one-half hour before sunrise to one-half hour after sunset for no more than seven calendar days. In other words, it may