

not be operated during the darkness between sunset and sunrise. The thirty-minute periods both before sunrise (dawn) and after sunset (dusk) are thought to provide enough light for safe operation on a temporary basis.

(2) A portable horn may be substituted for a non-complying or missing horn or other audible warning device for no more than seven calendar days.

(3) A temporary, portable fire extinguisher that is readily available for use may replace a missing, defective, or discharged permanent fire extinguisher on a new on-track roadway maintenance machine for no more than seven calendar days, after which time the permanent fire extinguisher must be replaced or repaired.

(4) Non-complying change-of-direction alarms or backup alarms, and 360-degree intermittent warning lights or beacons, shall be repaired or replaced as soon as practicable within seven calendar days.

(5) A structurally defective or missing operator's seat shall be replaced or repaired within 24 hours, or by the start of the machine's next tour of duty, whichever is later. This paragraph provides flexibility for the employer in cases such as where the operator's seat is found to be defective on a Thursday afternoon and the next tour of duty for that machine is not scheduled until the following Monday. If the operator's seat becomes defective during the machine operator's tour of duty, the machine may be operated for the remainder of the operator's duty tour only if it is determined that the operation may continue in a safe manner.

In commenting on the proposed rule's requirement for repairs to be made within seven calendar days, Transtar suggested that the provision should be changed to require repairs to be made within seven working days to allow employers adequate time to contact suppliers and perform the work around weekends and holidays. The Task Group considered this comment and recommended that the language of this section remain the same as that in the proposed rule. The provisions in this section were discussed at length by the Task Group when the proposed rule was being developed, and the resulting proposal was endorsed by the RSAC. FRA does not believe that this requirement is burdensome for the railroad industry, and has not modified the final rule in response to Transtar's comment.

Section 214.529 In-Service Failure of Primary Braking System

Paragraph (a) states that in the event of a total in-service failure of an on-track roadway maintenance machine's primary braking system, the machine may be operated for the remainder of its tour of duty through the use of a secondary braking system, if the machine is so equipped, or by coupling to another on-track roadway maintenance machine. In either case, the employer must determine that continued operation of the machine is safe.

In the NPRM, FRA stated that it was considering adding to this section criteria to be used by the employer in determining the safety of continuing to use an on-track roadway maintenance machine after its primary braking system has experienced a total in-service failure. FRA sought comment about the need for such criteria and what the criteria should include. The AAR was the only commenter to respond to this request. The railroad organization stated that the judgment as to the safety of the machine's continued operation is best left to the employer in the situation and that more specific criteria is not required. FRA therefore has decided that the language in this paragraph of the final rule should remain as proposed in the NPRM.

Paragraph (b) states that in the event of a total in-service failure of an on-track roadway maintenance machine's primary braking system, when no secondary braking system is available and no other machine is available for coupling, the machine may, if it is determined to be safe to do so, travel to a clearance or repair point where it shall be placed out of service until repaired. The BMW observed in its comments on the proposed rule that this provision would permit a roadway maintenance machine to be operated to a clearance or repair point with no braking system whatsoever. FRA notes, however, that the machine may be moved only if it is determined that such movement can be done safely. For instance, the wings and broom on a ballast regulator or the rail clamps on a tamping machine could be used to slow or stop the machine, if the operator determines that it is safe to do so in his or her particular situation. A roadway machine operator operating a machine with failed brakes may, in accordance with § 214.503, challenge in good faith the safety of any instruction to move the machine to a clearance or repair point. The good-faith challenge provision should provide the machine operator protection from an improper order by the employer to operate a

machine that has no braking capability when it is unsafe to do so.

Section 214.531 Schedule of Repairs; General

This section specifies a general schedule of repairs for all on-track roadway maintenance machines and hi-rail vehicles. If an on-track roadway maintenance machine or hi-rail vehicle does not meet all of the requirements of this subpart, it shall be repaired as soon as practicable within seven calendar days.

More restrictive requirements for repairs to on-track roadway maintenance machines apply to missing or defective operator seats as prescribed in § 214.527(c)(5), and a total in-service failure of a primary braking system as prescribed in § 214.529. In the event a part necessary for the repair of a non-complying on-track roadway maintenance machine or a hi-rail vehicle is not in the employer's inventory and must be ordered, the repair schedule is governed by the requirements specified in § 214.533, which addresses the availability of repair parts.

FRA has modified the rule text in this section to make clear that it applies to both existing and new hi-rail vehicles. This is consistent with the preamble discussion of this section in the NPRM, which made no distinction between existing and new hi-rail vehicles. Further, this subpart imposes requirements on existing hi-rail vehicles. For example, § 214.521 requires hi-rail vehicles to have flagging kits as specified in that section, and makes no distinction between whether the machine is new or existing.

In commenting on the NPRM, Transtar observed that this section requires hi-rail vehicles to be removed from service if non-complying conditions are not repaired within seven days. Noting that hi-rail vehicles are frequently used off the track, Transtar suggested that the language of the rule specify that the hi-rail should be removed from track service only, since the defect may not prevent the vehicle from being safely used off the track. FRA notes that the requirements of this rule apply to roadway maintenance machines as they are used for on-track maintenance; they do not apply to service performed by the machines in another capacity off the track. To clarify this point, FRA has followed Transtar's suggestion and revised this section to read that on-track roadway maintenance machines and hi-rail vehicles must be kept out of on-track service if not repaired within seven calendar days. Consistent with this change, FRA has