

modified paragraphs (b) and (c) of § 214.533, below, to read that on-track roadway maintenance machines and hi-rail vehicles not repaired in accordance with the requirements of that section must be removed from on-track service.

*Section 214.533 Schedule of Repairs Subject to Availability of Parts*

Under paragraph (a) of this section, when a part needed to repair a non-complying condition on an on-track roadway maintenance machine or hi-rail vehicle is not in the employer's inventory, the employer must order the necessary part by the end of the next business day following the report of the non-complying condition.

In commenting on the proposed rule, Transtar stated that, as long as a piece of equipment is removed from service so that it poses no risk to an operator, there should be no requirement that repair parts be ordered within a specified period of time. In declining to adopt this comment, FRA notes that the requirement to order repair parts is integral to the structure of this section, which provides flexibility to the employer, and cannot be viewed in isolation. By taking the step of ordering a necessary repair part that is not held in the employer's inventory, the employer is permitted to keep the machine or vehicle in on-track service if safe to do so until the part arrives. Thereafter, as specified in paragraph (b), below, the employer must repair the machine or vehicle within seven calendar days after receiving the necessary part(s). The employer may simply choose to remove the machine or vehicle from on-track service altogether. Yet, FRA does not intend to withdraw the flexibility provided to the employer to keep the machine or vehicle in on-track service by ordering the necessary part(s). Of course, if the employer wishes to remove the machine or vehicle from service altogether, it is free to forgo ordering a necessary repair part, and the machine or vehicle must be kept out of service until brought into compliance with this subpart, pursuant to paragraph (c), below.

FRA notes that, in preparing this final rule, it has modified the text of this section by using the term repair "part" in the singular, rather than as repair "parts" as proposed in the NPRM. The use of the word "parts" suggests that more than one part is necessary to repair each non-complying condition, which may not necessarily be the case. As modified, the rule text better effectuates FRA's intent. Further, as in § 214.531, FRA has modified the rule text in this section to make clear that the section

applies to both existing and new hi-rail vehicles.

Paragraph (b) requires the employer to repair the non-complying on-track roadway maintenance machine or hi-rail vehicle within seven calendar days after receiving the necessary part(s). However, if the non-complying condition still exists 30 days after the initial report of the condition, regardless of the reason, the employer must remove the on-track roadway maintenance machine or hi-rail vehicle from service until the condition is brought into compliance. FRA realizes that there may be times when a part needed to repair the condition is difficult or impossible for the employer to obtain. In such case the employer may continue to use the on-track roadway maintenance machine or hi-rail vehicle with a non-complying condition until the necessary part or parts are received, subject to the requirements of § 214.503. Yet, the defective machine or hi-rail vehicle must be removed from on-track service 30 days after the defect is reported, if it is still not repaired. This provision prevents the use of a defective on-track roadway maintenance machine or hi-rail vehicle for a protracted and undetermined length of time.

In commenting on the NPRM, Wisconsin Central suggested that this provision of the regulation is overly complicated and would impose an administrative burden on employers to track the arrival of replacement parts and repair dates. Wisconsin Central recommended that the provision simply state that repairs must be made within 30 days of discovery, or the on-track roadway maintenance machine or hi-rail vehicle must be removed from track service. As an alternative, Wisconsin Central suggested that the employer be given seven days to repair an on-track roadway maintenance machine or hi-rail vehicle once the part is received where the machine is located, noting that machines may break down when they are far away from their home locations.

The Task Group disagreed with both of Wisconsin Central's suggestions. The Group found that the second (alternative) suggestion is unnecessary because machine parts can be delivered overnight to most locations. Seven days is ample time within which to repair a machine once the necessary part or parts are with the employer. The Task Group further noted that the proposed provisions of this paragraph were discussed at length when the Task Group was developing the proposed rule, and the proposed rule was endorsed by the RSAC. FRA agrees with the Task Group's reasoning and has

elected not to change the rule in response to Wisconsin Central's comments.

Paragraph (c) states that if the employer fails to order a necessary repair part as required in paragraph (a) of this section, or fails to install such a repair part within seven days after receiving it as required in paragraph (b) of this section, it must remove the on-track roadway maintenance machine or hi-rail vehicle from on-track service until the equipment is brought into compliance. Of course, the equipment may continue in other service off the track, as in the case of hi-rail vehicles that may be defective for work on the track but may still operate on streets and highways.

To ensure that the provisions of this section are followed, FRA must be able to review records concerning the ordering and installation of parts necessary to repair roadway maintenance machines and hi-rail vehicles. Paragraph (d) requires the employer to maintain records for one year relating to the ordering and installation of repair parts for on-track roadway maintenance machines and hi-rail vehicles. The records must be made available to FRA and State inspectors for inspection and copying during normal business hours, yet the employer may decide how and where the records are kept. For example, the records may be kept electronically or on paper and may be stored on the machines and vehicles or in a location chosen and designated by the employer.

In commenting on the NPRM, Loram stated that the record keeping made necessary by this rule will detract from machine crews' ability to complete assigned objectives and will be costly to employers. FRA is aware of the added costs related to record keeping. However, the record keeping requirements are needed in order for FRA to enforce the rule. The additional costs created by the record keeping requirements have been factored into the cost/benefit analysis performed for this final rule. Accordingly, FRA has declined to modify the record keeping requirement in response to the comment.

*Appendix A to Part 214—Schedule of Civil Penalties*

Pursuant to 49 U.S.C. 20111, this final rule includes amendments to the penalty schedule contained in Appendix A to part 214. The amendments consist of the addition of penalties associated with violations of the regulations under new subpart D to part 214.