



October 19, 2012

U.S. Department of Transportation  
Docket Operations  
M-30 West Building Ground Floor  
1200 New Jersey Avenue, SE  
Room W12-140,  
Washington, DC 20590

**RE: FTA-2008-0086**

Dear Docket Clerk:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Railroad Workplace Safety; Roadway Worker Protection Miscellaneous Revisions (RRR) Notice of Proposed Rulemaking (NPRM), published August 20, 2012, at 77 FR 50324.

***About APTA***

APTA is a non-profit international trade association of 1,500 public and private member organizations, including public transit systems; high-speed rail agencies; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA member transit systems.

**Request for Comment on NTSB Recommendation R-08-06**

In addition to its regulatory proposals, the Federal Railroad Administration (FRA) requested industry input on the National Transportation Safety Board's (NTSB) recommendation to require shunts or other redundant measures when establishing working limits.

While we are aware of a number of alternative equipment and methods that may provide redundant protection in some operating environments, we do not believe any of them have been field tested sufficiently to be validated. They have not been sufficiently established as "redundant" in that they have not been demonstrated to provide the same level of protection of working limits, train operation, and employee warning as currently provided by rule or work zone design. As such we do not believe these practices and equipment are mature enough to warrant mandatory use. Instead, we encourage FRA to support further voluntary use, development, and testing to ensure whatever is ultimately adopted provides truly redundant protection.

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## **Additional Items for Comment**

FRA has posited a number of proposed requirements for which it provided no proposed text. We have provided comments on these proposals but caution that our comments do not imply that we agree with this practice. We encourage FRA to provide detailed language or further describe area of interest in seeking public comment. Doing so would help focus and weight our comments on the regulatory provisions prior to incorporation of such provisions in a final rule. Rulemaking based on anything other than specific language reduces the effectiveness of public comment.

### ***RWP and Blue Signal Protections in Shop Areas***

There is no passenger industry accident history that would support concern for the safety of workers performing duties under either RWP or Blue Signal in maintenance areas. APTA believes that the protection provided under existing Blue Signal or Roadway Worker Protection is adequate for the tasks performed in shop areas.

### ***Use of Tunnel Niches as a Place of Safety***

Tunnel niches, clearing bays on bridges, and passenger platforms all provide clearance of the dynamic envelope of the trains and equipment utilized on the rail corridor. Although they can be used to provide a place of safety under the provisions of Part 214, it is only after the 1997 adoption of Part 214 that this issue has been considered. AS FRA noted, the definition of the fouling limits (four feet from the field side of the nearest rail) can affect the entrance to some tunnel niches and clearing bays that were constructed nearer to the track. While occupying tunnel niches and clearing bays, no work is being performed. Station platforms are all outside of the dynamic envelope of the train but a small portion at the platform edge will be within the arbitrary definition of fouling limits as well. These are all safe places and there is no historical incident data that supports the need for FRA to establish additional regulatory provisions to improve their safety.

Part 214 should allow tunnel niches, clearing bays on bridges, and platforms to be designated as a place of safety and any potential safety issues regarding them should be analyzed under Part 270. Hazard analysis and risk mitigation are more appropriate means of ensuring the safety of these locations than an overarching, potentially unduly prescriptive addition to Part 214.

### ***Highly Visible Protective Equipment for Roadway Workers on Station Platforms***

APTA would support the use of high visibility apparel as a means to help passengers identify workers on the platform and provide visibility to train crews to allow them to identify workers as not being passengers waiting to board. APTA does not support the concept that these workers are "Roadway Workers" since they work on a station platform which is designed to be safe for passengers. FRA makes provisions for "casual fouling" for employees that temporarily

foul limits at track level, however, inappropriately applies fouling limits to workers with lower risk working on platforms whose tools may encroach into the defined fouling limits while remaining clear themselves.

### **Specific Provisions**

***APTA does not support FRA's attempt to reclassify routine station maintenance under the regulations of Part 214 and create a new classification of employees that the railroads will have to hire and train***

Passenger railroads already have the ability under Part 214 to establish On-Track Safety any time workers could potentially foul the track. They can also assign flagmen to work with contractors to ensure safe passage of trains. Historically, train approach warning has been used for safety of workers (employees or contractors) whenever power snow removal equipment is used on platforms. However, when passengers are present power tools are impractical and hand tools are most commonly used, representing a much reduced hazard of conflict with trains. APTA does not support the proposed provisions of sections 214.338, 214.352, and 214.353 which would require railroads to hire and train Station Platform Work Coordinators, a completely new work classification that does not now currently exist. The requirement to hire a Station Platform Work Coordinator for each platform maintenance crew performing work and the additional provision of having a Roadway Worker in Charge in all cases, including light maintenance such as trash removal and mopping, is excessive, would add substantial costs, and provide no discernible increase in safety.

We oppose application of Part 214 requirements to all routine passenger station maintenance tasks. Passenger railroads are committed to safety of their patrons, employees and contractors. Passenger railroads are prepared to demonstrate commitment to enhancement of safety where review of hazard analysis indicates alternative methods for protection of employees and contractors could optimize safety within the constraints of time, cost and operational effectiveness. Routine Station Maintenance, inclusive of seasonal tasks such as manual snow removal, has been accomplished safely and efficiently in thousands of locations across the country for decades. The proposal to burden snow removal, light duty cleaning, trash pickup, and platform mopping tasks with Part 214 requirements represents a significant enlargement of Part 214 that does not appear to be a response to incidents or accidents or any consequences from hazard analysis that current practices are unsafe. We support passenger railroad risk based analysis to apply Part 214 rules whenever there is a potential to foul with motorized equipment or excessive noise and reduced visibility could affect safety.

Since the differences among intercity, regional, and commuter rail operations dictate different safety practices be applied in routine station maintenance, we believe that a risk based approach to alternative practices is more appropriate than coverage through additions to Part 214. Because routine platform maintenance work conditions vary so widely across the country, any rule provisions affecting platform maintenance would be better served in Part 270 rather than in Part 214. Part 270, created under the *Rail Safety Improvement Act of 2008*, would allow for differing operating criteria to achieve comparable levels of safety regardless of differences in

rules, operating conditions and local community restrictions, or whether work is performed on intercity, regional, or commuter rail operations.

Application of Part 214 to routine station maintenance tasks introduces inefficiency and inflated costs into these tasks without increasing safety in any meaningful way. Diverting a railroad's efforts and funding through application of Part 214 to routine station maintenance ultimately results in reduced resources available for safety improvements likely to be far more effective. Moreover, since FRA recognizes station maintenance is not roadway track work and does not require the same level of safety precautions, the addition of this new category of work within Part 214 would likely cause confusion and reduce the effectiveness of the current rule provisions that protect roadway workers.

APTA believes that the FRA can achieve its purposes without modification of Part 214. Part 270 is better suited to deal with the variations of approaches that will be necessary to address platform safety.

APTA urges FRA to remain mindful that workers performing routine maintenance on passenger platforms are all within space available to the free movement of untrained passengers. It defies logic to suggest that workers in these areas are at higher risk than passengers that may be distracted, tired, inebriated, or have physical or cognitive disabilities that limit their ability to recognize or respond to an oncoming train.

We appreciate the opportunity to assist the Administration in solving these important issues and would be happy to provide any additional information necessary to complete this process. For additional information, please contact James LaRusch, APTA's chief counsel and vice president corporate affairs, at (202) 496-4808 or [jlarsch@apta.com](mailto:jlarsch@apta.com).

Sincerely yours,



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President & CEO