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Railroad Workplace Safety; Roadway Worker Protection Miscellaneous Revisions (RRR); Proposed Rule

DEPARTMENT OF TRANSPORTATION**Federal Railroad Administration****49 CFR Part 214**

[Docket No. FRA-2008-0086]

RIN 2130-AB89

Railroad Workplace Safety; Roadway Worker Protection Miscellaneous Revisions (RRR)

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to amend its regulations on railroad workplace safety to resolve interpretative issues that have arisen since the 1996 promulgation of the original Roadway Worker Protection (RWP) regulation. In particular, this NPRM proposes to define certain terms, establish new procedures for snow removal and cleaning on passenger station platforms, resolve miscellaneous interpretive issues, codify certain FRA Technical Bulletins, and requests comment on certain training requirements for roadway workers. FRA is also proposing to update three incorporations by reference of industry standards in existing sections of FRA's Bridge Worker Safety Standards.

DATES: (1) Written comments must be received by October 19, 2012. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) FRA anticipates being able to resolve this rulemaking without a public hearing. However, if prior to September 19, 2012, FRA receives a specific request for a public hearing accompanied by a showing that the party is unable to adequately present his or her position by written statement, a hearing will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: You may submit comments identified by the docket number FRA-2008-0086 by any one of the following methods:

- *Fax:* 1-202-493-2251;
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590;
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room

W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or

- *Electronically through the Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name and docket number or Regulatory Identification Number (RIN) for this rulemaking (2130-AB89). Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kenneth Rusk, Staff Director, Track Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue SE., RRS-15, Mail Stop 25, Washington, DC 20590 (telephone (202) 493-6236); or Joseph St. Peter, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., RCC-10, Mail Stop 10, Washington, DC 20590 (telephone (202) 493-6047 or 202-493-6052).

SUPPLEMENTARY INFORMATION:**Table of Contents for Supplementary Information**

- I. Executive Summary
- II. Rulemaking Authority and Background of the Existing RWP Rule
- III. Railroad Safety Advisory Committee (RSAC) Overview
- IV. RWP RSAC Working Group and Proceedings in This Rulemaking to Date
- V. Proceedings concerning On-Track Safety Procedures for Adjacent Tracks
- VI. Inclusion and Exclusion of RSAC and Non-RSAC RWP Items
- VII. Request for Comment on NTSB Recommendation R-08-06
- VIII. Additional Items for Comment
 - A. RWP and Blue Signal Protections in Shop Areas
 - B. Frequency of Training and Qualification for Additional Roadway Worker Qualifications
 - C. Physical Characteristics Qualification for Lone Workers and Watchmen/ Lookouts

- D. Use of Tunnel Niches as a Place of Safety
- E. Highly Visible Protective Equipment for Roadway Workers on Station Platforms
- F. Splitting of Roadway Worker in Charge Qualifications
- G. Effective Date of Final Rule
- IX. Executive Order 13563 Retrospective Review
- X. Section-by-Section Analysis
- XI. Regulatory Impact and Notices
 - A. Executive Order 12866, Executive Order 13563 and DOT Regulatory Policies and Procedures
 - B. Regulatory Flexibility Act and Executive Order 13272; Initial Regulatory Flexibility Assessment
 - C. Paperwork Reduction Act
 - D. Federalism Implications
 - E. Environmental Impact
 - F. Unfunded Mandates Reform Act of 1995
 - G. Energy Impact
 - H. Trade Impact
 - I. Privacy Act

I. Executive Summary

In 2005, the Railroad Safety Advisory Committee (RSAC) accepted a task to review the existing RWP regulation at subpart C of part 214. The RSAC established the RWP Working Group (the "Working Group") to recommend consideration of specific actions to advance the on-track safety of railroad employees and contractors engaged in maintenance-of-way activities throughout the general system of railroad transportation, including clarification of existing regulatory requirements.

The Working Group reached consensus on 32 separate items, which the full RSAC recommended to FRA. FRA drafted this NPRM to address the RSAC consensus recommendations, the issue of electronic display of track authorities, several other items on which the Working Group was unable to reach consensus, and miscellaneous other revisions. FRA is also proposing to update certain incorporations by reference of personal protective equipment standards in FRA's Bridge Worker Safety Standards at subpart B of part 214 by cross referencing the Occupational Safety and Health Administration's (OSHA) regulations on the same point.

Noteworthy consensus recommendations that FRA is addressing in this NPRM include: a job briefing requirement regarding the accessibility of the roadway worker in charge; the adoption of procedures for how roadway workers walk across railroad track; a new allowance for railroad's conducting snow removal and weed spraying operations; a clarification of the existing "foul time" provision; a new "verbal protection" provision; three new permissible methods of

establishing working limits on non-controlled track; the expanded use of individual train detection at controlled points; an amended provision governing audible warnings by trains for roadway workers; and, a request for further comment on certain training requirements for roadway workers.

As mentioned above, FRA is also addressing other items on which the Working Group was unable to reach consensus and certain miscellaneous other revisions. Noteworthy among these items are: A new provision regarding the removal of objects from railroad track when train approach warning is used as the method of on-track safety; the electronic display of working limits authorities; amendments

to the existing provision governing the qualification of roadway workers in charge; a new section addressing passenger station platform snow removal; a new provision governing the use of "occupancy behind" or "conditional" working limit authorities; the phase-out of the use of definite train location and informational train line-ups, potential amendments to the existing roadway worker protection and blue signal protection requirements for work performed within shop areas, and, the use of other railroad track as a place of safety when train approach warning is used as the method of on-track safety; and, a request for further comment on the use of certain tunnel niches as a place of safety for roadway workers.

FRA has estimated the costs of this proposed rule, evaluated over a 20-year period and using discount rates of 3 and 7 percent. For the 20-year period analyzed, the estimated quantified cost that would be imposed on industry totals \$5,840,921 with a present value of \$3,103,980 (PV, 7 percent) and \$4,350,537 (PV, 3 percent). FRA also estimates that for the 20-year period analyzed, the estimated quantified benefits total \$119,507,405 with a present value of \$63,310,902 (PV, 7 percent) and \$88,902,763 (PV, 3 percent). This analysis demonstrates that the benefits for this proposed rule would exceed the costs.

TABLE—COSTS AND BENEFITS OF THE PROPOSED RULE

| | Year 1 | 2–20 | Total 20 year | 7% PV | 3% PV |
|--|------------------|------------------|--------------------|-------------------|-------------------|
| Costs: | | | | | |
| 214.315 Job Briefings | \$143,055 | \$143,055 | \$2,861,100 | \$1,515,527 | \$2,128,297 |
| 214.339 Audible Warning from Trains | 24,796 | 0 | 24,796 | 23,174 | 24,074 |
| 214.345 Training on Safe Crossing of Track | 72,250 | 72,250 | 1,445,000 | 765,418 | 1,074,898 |
| 214.347 Training on Access to Manual | 10,838 | 10,838 | 216,750 | 114,813 | 161,235 |
| 214.352 Training Platform Work Coordinate | 22,759 | 22,759 | 455,175 | 241,107 | 338,593 |
| 214.353 Training RWIC | 41,905 | 41,905 | 838,100 | 443,942 | 623,441 |
| Total | 315,602 | 290,806 | 5,940,921 | 3,103,980 | 4,350,537 |
| Benefits: | | | | | |
| 214.307 Plans No Longer Reviewed | 19,553 | 426 | 27,653 | 22,392 | 24,912 |
| 214.317 Track Snow Removal | 292,613 | 292,613 | 5,852,250 | 3,099,941 | 4,353,335 |
| 214.324 Use of Verbal Protection | 5,386,021 | 5,386,021 | 107,720,415 | 57,059,581 | 80,150,388 |
| 214.327 Inaccessible Track | 204,016 | 204,016 | 4,080,319 | 2,161,348 | 3,035,242 |
| 214.337 ITD | 4,335 | 4,335 | 86,700 | 45,925 | 64,494 |
| 214.338 Platform Snow Removal | 87,003 | 87,003 | 1,740,069 | 921,716 | 1,294,392 |
| Total | 5,993,541 | 5,974,414 | 119,507,405 | 63,310,902 | 88,902,764 |
| NET BENEFITS | 5,677,938 | 5,683,608 | 113,666,484 | 60,206,922 | 84,552,226 |

* Dollars are discounted over a 20-year period.

II. Rulemaking Authority and Background of the Existing RWP Rule

The Federal Railroad Safety Act of 1970, as codified at 49 U.S.C. 20103, provides that, "[t]he Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970". The Secretary's responsibility under this provision and the balance of the railroad safety laws have been delegated to the Federal Railroad Administrator. 49 CFR 1.49(m). In the field of railroad workplace safety, FRA has traditionally pursued a very conservative course of regulation, relying upon the industry to implement suitable railroad safety rules and mandating in the broadest of ways that employees be "instructed" in the requirements of those rules and that railroads create and administer

programs of operational tests and inspections to verify rules compliance. This approach is based on several factors, including recognition of the strong interest of railroads in avoiding costly accidents and personal injuries, the limited resources available to FRA to directly enforce railroad safety rules, and the apparent success of management and employees in accomplishing most work in a safe manner.

Over the years, however, it became necessary to codify certain requirements, either to remedy perceived shortcomings in the railroads' rules to emphasize the importance of compliance, or to provide FRA a more direct means of promoting compliance. These actions, which in many cases were preceded or followed by statutory mandates, included adoption of rules governing:

- Bridge Worker Safety Standards (49 CFR part 214 subpart B);
- Roadway Worker Protection (49 CFR part 214 subpart C); and
- On-Track Roadway Maintenance Machines and Hi-Rail Vehicles (49 CFR part 214 subpart D).

In 1990, FRA received a petition to amend its track safety standards from the Brotherhood of Maintenance of Way Employees Division (BMWED), which included issues pertaining to the hazards faced by roadway workers. Subsequently, in response to the Rail Safety Enforcement and Review Act, Public Law 102-365, 106 Stat. 972, enacted September 3, 1992. FRA issued an Advanced Notice of Proposed Rulemaking (ANPRM) on November 16, 1992, announcing the opening of a proceeding to amend the Federal Track Safety Standards to, in part, address hazards faced by roadway workers. 57 FR 54038.

FRA held workshops to solicit the views of the railroad industry and representatives of railroad employees on the need for substantive change in the track regulations. The subject of injury and death to roadway workers was of such great concern that FRA received petitions for emergency orders and requests for rulemaking from both the BMWED and the Brotherhood of Railroad Signalmen (BRS). Finding that no imminent hazards existed that would justify issuance of emergency orders at the time, FRA did not issue any emergency orders in response to those petitions, but instead initiated a separate proceeding to consider regulations to eliminate hazards faced by roadway workers.

On August 17, 1994, FRA published its notice of intent to establish a Federal Advisory Committee (FAC) for regulatory negotiation. 59 FR 42200. The FAC was tasked with submitting a report, including proposed regulatory language, containing the FAC's consensus recommendations. On December 27, 1994, the Office of Management and Budget approved the Charter to establish a Roadway Worker Safety Advisory Committee (Advisory Committee) comprised of twenty-five members. The Advisory Committee held seven multiple-day negotiating sessions. An independent task force, comprised of representatives of several railroads and labor organizations, had met during the preceding year and independently analyzed on-track safety practices. This task force presented information at the first Advisory Committee meeting. The Advisory Committee reached consensus on eleven specific recommendations and nine general recommendations. These recommendations served as the basis for FRA's first RWP NPRM, which was published on March 14, 1996. 61 FR 10528. FRA published a final rule establishing the original RWP regulation on December 16, 1996, which became effective on January 15, 1997 (61 FR 65959). The final rule largely incorporated the Advisory Committee's recommendations.

III. RSAC Overview

In March 1996, FRA established the RSAC, which provides a forum for collaborative rulemaking and program development. The RSAC includes representatives from all of the railroad industry's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of RSAC members follows:

- American Association of Private Railroad Car Owners (AARPCO);

- American Association of State Highway and Transportation Officials (AASHTO);
- American Chemistry Council;
- American Petroleum Institute;
- American Public Transportation Association (APTA);
- American Short Line and Regional Railroad Association (ASLRRA);
- American Train Dispatchers Association (ATDA);
- Association of American Railroads (AAR);
- Association of Railway Museums (ARM);
- Association of State Rail Safety Managers (ASRSM);
- Brotherhood of Locomotive Engineers and Trainmen (BLET);
- Brotherhood of Maintenance of Way Employees Division (BMWED);
- Brotherhood of Railroad Signalmen (BRS);
- The Chlorine Institute, Inc.;
- Federal Transit Administration (FTA);*
- The Fertilizer Institute;
- High Speed Ground Transportation Association (HSGTA);
- Institute of Makers of Explosives;
- International Association of Machinists and Aerospace Workers;
- International Brotherhood of Electrical Workers (IBEW);
- Labor Council for Latin American Advancement;*
- League of Railway Industry Women;*
- National Association of Railroad Passengers (NARP);
- National Association of Railway Business Women;*
- National Conference of Firemen & Oilers;
- National Railroad Construction and Maintenance Association (NRC);
- National Railroad Passenger Corporation (Amtrak);
- National Transportation Safety Board (NTSB);*
- Railway Supply Institute (RSI);
- Safe Travel America (STA);
- Secretaria de Comunicaciones y Transporte;*
- Sheet Metal Workers International Association (SMWIA);
- Tourist Railway Association, Inc.;
- Transport Canada;*
- Transport Workers Union of America (TWU);
- Transportation Communications International Union/BRC (TCIU/BRC);
- Transportation Security Administration (TSA);* and
- United Transportation Union (UTU).

*Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to the RSAC, and after consideration

and debate, the RSAC may accept or reject the task. If the task is accepted, the RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The individual task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff plays an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations are noted and explained in the rulemaking document issued by FRA. If the working group or the RSAC is unable to reach consensus on a recommendation for action, FRA may move ahead to resolve the issue through traditional rulemaking proceedings.

IV. RWP RSAC Working Group and Proceedings in This Rulemaking to Date

As discussed above, on January 26, 2005, the RSAC formed the RWP Working Group to consider specific actions to advance the on-track safety of employees of covered railroads and their contractors who are engaged in maintenance-of-way activities throughout the general system of railroad transportation, including clarification of existing requirements. The assigned task was to review the existing RWP regulation, technical bulletins, and a safety advisory dealing with on-track safety for roadway workers, and, as appropriate, consider enhancements to the existing rule which would further reduce the risk of serious injury or death to roadway workers. The Working Group was directed to report

specific actions identified as appropriate, including planned milestones for completion of projects and progress towards completion, to the full RSAC at each scheduled RSAC meeting.

The Working Group was comprised of members from the following organizations:

- Amtrak;
- APTA;
- ASLRRRA;
- ATDA;
- AAR, including members from BNSF Railway Company (BNSF), Canadian National Railway Company (CN), Canadian Pacific Railway, Limited (CP), Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSXT), The Kansas City Southern Railway Company (KCS), Norfolk Southern Corporation railroads (NS), and Union Pacific Railroad Company (UP);
- Belt Railroad of Chicago;
- BLET;
- BMWED;
- BRS;
- FRA;
- Indiana Harbor Belt Railroad (IHB);
- Long Island Rail Road (LIRR);
- Metro-North Commuter Railroad Company (Metro-North);
- Montana Rail Link;
- NRC;
- Northeast Illinois Regional Commuter Railroad Corporation (Metra);
- RailAmerica, Inc.;
- Southeastern Pennsylvania Transportation Authority (SEPTA);
- UTU; and
- Western New York and Pennsylvania Railroad (WNY&P).

The Working Group held 12 multi-day meetings. The Working Group worked diligently and was able to reach consensus on 32 separate items. The Working Group attained consensus to recommend that part 214¹ be amended to: add two new definitions; revise an existing definition; and, incorporate three other existing definitions from 49 CFR part 236. The Working Group also came to consensus to add or amend various provisions in the following sections in subpart C of part 214:

- § 214.309—revision to address on-track safety manual for lone workers and changes to the manual.
- § 214.315—requirement that information concerning adjacent tracks be included in on-track safety job briefings; accessibility of the roadway worker in charge.
- § 214.317—new paragraph to formalize procedures for roadway

workers to walk across tracks; new paragraph for on-track weed spray and snow blowing operations on non-controlled track.

- § 214.321—new paragraph to address the use of work crew numbers.
- § 214.323—clarification of foul time provision whereby roadway worker in charge or train dispatcher may not permit movements into such working limits.
- § 214.324—new section called “verbal protection” for abbreviated working limits within manual interlocking and controlled points.
- § 214.327—three new paragraphs to formalize the following instruments to make non-controlled track inaccessible: occupied locomotive as a point of inaccessibility; block register territory; and, the use of track bulletins to make track inaccessible within yard limits.
- § 214.335—complete revision of paragraph (c) concerning on-track safety for tracks adjacent to occupied tracks. Key elements are the elimination of “large-scale” and the addition of a new requirement for on-track safety for tracks adjacent to occupied tracks for specific work activities (addressed in separate rulemaking proceeding as discussed further below).
- § 214.337—allowance for the use of individual train detection at controlled points consisting only of signals and a new paragraph limiting equipment/materials that can only be moved by hand by a lone worker.
- § 214.339—complete revision of this section concerning audible warning by trains to address operational considerations.
- § 214.343—new paragraph to ensure contractors receive requisite training/and or qualification before engaged by a railroad.
- § 214.345—lead-in phrase requiring all training to be consistent with initial or recurrent training, as specified in § 214.343(b).
- §§ 214.347, .349, .351, .353, and .355—consistent requirements for various roadway worker qualifications and a maximum 24-month time period between qualifications.

On June 26, 2007, the full RSAC voted to accept the above recommendations presented by the Working Group. In addition to the above, the Working Group worked on a proposal for use of electronic display of authorities as a provision under exclusive track occupancy. The Working Group developed lead-in regulatory text and agreed to some conceptual items. When circulated back to the Working Group prior to the full RSAC vote, however, technical issues were raised that could not be resolved in the time available.

Accordingly, in this NPRM, FRA is addressing the electronic display issue, and certain of the other issues that the Working Group was unable to reach consensus on. The other items that the Working Group was unable to reach consensus on were:

- § 214.7—new term and definition for a “remotely controlled hump yard facility.”
- § 214.7—revision to the definition for the term “roadway worker.”
- § 214.317—use of tunnel clearing bays.
- § 214.321—track occupancy after passage of a train.
- § 214.329—removal of objects from the track under train approach warning.
- § 214.336—passenger station platform snow removal and cleaning.
- § 214.337—consideration of allowance for the use of individual train detection at certain types of manual interlockings or controlled points.
- § 214.353—qualification of employees other than roadway workers who directly provide for the on-track safety of a roadway work group.

V. Proceedings Concerning On-Track Safety Procedures for Adjacent Tracks

As mentioned above, the Working Group was able to reach consensus on items that dealt specifically with the adjacent-track on-track safety issues. In light of roadway worker fatality trends involving adjacent track protections, and to expedite the lowering of the safety risk associated with roadway workers fouling adjacent tracks, FRA decided to undertake a rulemaking proceeding separately, and in advance of this NPRM, to specifically address adjacent-track safety issues contemplated by the Working Group. As such, FRA published an NPRM addressing adjacent-track on-track safety on July 17, 2008 (73 FR 41214), but formally withdrew the NPRM on August 13, 2008 (73 FR 47124). FRA then issued a revised NPRM, which was published on November 25, 2009 (74 FR 61633), and a final rule was published on November 30, 2011 (76 FR 74586). The provisions contained in that final rule are currently scheduled to become effective on July 1, 2013. Accordingly, as the adjacent track rulemaking was undertaken separately, the subpart C section numbering for the consensus items as agreed upon by the Working Group has changed slightly from that recommended. This NPRM will note any relevant numbering changes in the section-by-section analysis below. FRA acknowledges that it has received petitions for reconsideration of the adjacent track final rule. See Docket No. FRA-2008-0059; available online at

¹ All references to the CFR in this document reference Title 49.

www.regulations.gov. There is limited interaction between the provisions of this NPRM and those contained in the final rule in the adjacent track rulemaking. FRA will note any potential changes (specifically with regard to section numbering) in a final rule which result from any FRA response to petitions for reconsideration in the adjacent track rulemaking.

VI. Inclusion and Exclusion of RSAC and Non-RSAC RWP Items

The section-by-section analysis below includes explanations of the proposed revisions to the RWP regulation, including certain consensus items recommended by the Working Group, certain of the non-consensus items listed above, and certain other miscellaneous items being proposed by FRA. FRA notes that the Working Group meetings discussed above took place between 2005 and 2007. In the interim, during FRA's efforts to publish the adjacent track rulemaking discussed above, there have been changes in the railroad industry. Notably, Congress' passage of the Rail Safety Improvement Act of 2008 (Pub. L. 110-432, Division A, 122 Stat. 4848) (RSIA), has required significant new FRA regulatory efforts.

These new efforts include FRA's recently published NPRM addressing minimum training standards and plans. Section 401 of RSIA (codified at 49 U.S.C. 20162) mandates that FRA promulgate a regulation that sets minimum training standards for "each class and craft of safety-related railroad employee." FRA has undertaken this mandated rulemaking via the RSAC process (Task No. 10-01, Training Standards Working Group). The training standards NPRM was published on February 7, 2012 (77 FR 6412), and includes proposed minimum training standards for roadway workers as defined by existing § 214.7.

As a result, although in 2007 the full RSAC recommended that FRA adopt the RWP Working Group's proposed consensus training requirements for roadway workers, FRA's training standards NPRM proposes to address training issues pertaining to roadway workers.² As such, FRA is not proposing certain of the RWP Working Group's consensus training recommendations in this rulemaking (e.g., the proposed

proficiency demonstration for additional roadway worker qualifications required every 24 months), but rather seeks comment below on whether to adopt the training and qualification frequencies prescribed by the minimum training standards NPRM, or those previously recommended by the RWP Working Group. FRA notes that it is not proposing to amend the existing mandatory annual roadway worker training requirements contained in subpart C of part 214.

The Working Group also came to consensus to add a new paragraph (e) to existing § 214.343, which pertains to the training of roadway workers. That recommended paragraph would have required that each railroad require that contractor employees receive the requisite roadway worker training and qualification prior to performing any roadway worker duties. FRA is not including that consensus recommendation in this NPRM. Under the existing RWP regulation, contractor employees are already required to receive roadway worker training prior to performing roadway worker duties. See 49 CFR 214.5, 214.7, 214.343 and 214.345; FRA Technical Bulletin G-05-19. Therefore, this recommended paragraph would not actually amend or enhance any existing training requirements, but could require additional costs to be incurred by railroads. Further, the training standards NPRM contains proposed requirements regarding coordination between contractors and railroads pertaining to the training of contractor employees at §§ 243.1(b), 243.101(e)-(f), and 243.209.77 FR 6453. These proposed requirements are actually more extensive than the ones recommended by the RWP Working Group. For these reasons, FRA is not proposing this consensus recommendation.

The RSAC also recommended that FRA adopt the Working Group consensus language for the definition of the term "interlocking, automatic", with that definition mirroring the existing definition of the same term found at 49 CFR 236.750. However, that term is not actually used anywhere in the existing text of part 214, nor is it used in any of the text proposed in this NPRM. The minutes to the Working Group meetings indicate that potentially this definition was recommended in an effort to help the regulated community differentiate between an automatic interlocking and a manual interlocking (within the limits of which individual train detection is not permitted via existing § 214.337). Because the term is not used in the regulation as it exists currently or as

proposed in this NPRM, FRA is not proposing to adopt the Working Group's recommended definition. The recommended consensus definition of "interlocking, manual", and the accompanying discussion in the section-by-section analysis, should enable differentiation of those terms. Further, FRA and the regulated community can always look to the existing definition of "interlocking, automatic" contained in part 236 for additional guidance, if necessary.

There were several items addressed during the Working Group meetings for which no consensus was reached. For most of those items, FRA is proposing rule text in this NPRM and is requesting comment on those proposals. However, for certain of these non-consensus items, FRA is not proposing rule text. For example, the Working Group discussed various potential amendments to the definition of "roadway worker" found at 49 CFR 214.7. After consideration, FRA is not proposing an amendment to that definition. FRA believes the meaning of the existing definition is clear. One of the potential recommendations discussed by the Working Group was to specifically add the words "who fouls a track in connection with" to the first sentence of the existing definition. FRA, in contemplating such an addition, revisited the preamble to the 1996 final rule promulgating the RWP regulation. In that preamble FRA explained that a proposal for a similar addition of language to the definition of the term "roadway worker" was unnecessary and would "severely limit the application of the rule due to the difficulty in determining when a worker becomes engaged in a task." (61 FR 65962). FRA maintains that same position today. The definition for the term "roadway worker" describes employees who are covered by this regulation, and not when that coverage begins or ends. As is explained in FRA Technical Bulletin G-05-13, the existing provisions of § 214.313 already require that when a roadway worker fouls a track, including when performing preparatory activities to make such track inaccessible to establish working limits, that on-track safety is required. FRA disagrees that an amendment to the definition of the term "roadway worker", as discussed during the Working Group meetings, would make the established RWP on-track safety requirements any more clear.

The Working Group also discussed the potential addition of a definition to existing § 214.7 for the term "remotely controlled hump yard facility." That term is used in existing § 214.337(c)(3), which prohibits the use of individual

² These consensus recommendations were meant, in part, to eliminate confusion in the railroad industry regarding the requirements of the roadway worker protection training provisions and also to provide uniformity, particularly with regard to additional roadway worker qualifications (e.g., lone worker and roadway worker in charge qualifications, which currently only require "periodic" requalification with no specified interval).

train detection inside the limits of a remotely controlled hump yard facility. There was agreement among the Working Group that a remotely controlled hump yard facility began at the crest of a hump. The segment of a hump yard from the crest, through the retarders, and to the end of classification tracks would clearly be within the limits of a remotely controlled hump yard facility. However, there was no consensus in the Working Group as to the limit of such a facility at the far pull-out end, in part due the myriad of physical layouts in existing hump yards. Unlike the voluminous number of manual interlockings and controlled points that exist (the other two locations in which the use of individual train detection is prohibited by § 214.337), there are a limited number of remotely controlled hump yard facilities in the United States, and enforcement problems for FRA have not been noteworthy to date. Also, the varying physical layouts for these facilities would make it difficult to attempt to propose language defining the limits of the pull-out ends of such facilities which could reasonably apply to all existing layouts. Finally, if a lone worker is unsure whether the track he or she needs to foul is within the limits of a remotely controlled hump yard facility, or if there is any question regarding the safety of fouling any track, the existing individual train detection regulation already contains an absolute right for a lone worker to utilize an on-track safety procedure other than individual train detection.

For these reasons, FRA is not proposing a definition for the term "remotely controlled hump yard facility" in this NPRM. If a dispute regarding the limits of a remotely controlled hump yard facility arises, FRA will, on a case-by-case basis, provide assistance in identifying that facility's limits based on the particular physical layout of the facility.

The Working Group also addressed the use of tunnel niches or clearing bays as a place of safety for roadway workers when such niches are outside the clearance envelope but, by design, may be less than four feet from the field side of the rail. The Working Group discussed this issue at length, but no consensus was reached. FRA is not proposing regulatory text regarding this issue in this NPRM. Instead, FRA is requesting further comment below on how to best address the use of such tunnel niches in a final rule.

For the remaining non-consensus items listed in Section IV above, FRA is proposing regulatory text in this NPRM. FRA is also proposing other

miscellaneous revisions to the existing RWP rule that were not addressed by the Working Group; some of which codify existing guidance and interpretations and some of which are intended to merely clean-up or clarify existing requirements. FRA's rationale for these proposed revisions is contained in the relevant section-by-section analysis below. Upon issuance of a final rule in this proceeding, FRA intends to supplant, as appropriate, technical bulletins concerning the existing RWP regulation.

VII. Request for Comment on NTSB Recommendation R-08-06

On January 9, 2007, two Massachusetts Bay Transportation Authority (MBTA) maintenance-of-way employees were killed in an accident that occurred near Woburn, Massachusetts. The incident occurred when a passenger train struck a roadway maintenance machine that was on the track. The NTSB found the probable cause of that accident was "the failure of the train dispatcher to maintain blocking that provided signal protection for the track segment occupied by the maintenance-of-way work crew, and the failure of the work crew to apply a shunting device that would have provided redundant signal protection for their track segment." (See NTSB Accident Report NTSB/RAR-0801, Collision of Massachusetts Bay Transportation Authority Train 322 and Track Maintenance Equipment near Woburn, Massachusetts, January 9, 2007; available online at <http://www.ntsb.gov/doclib/reports/2008/RAR0801.pdf>).

The MBTA had a rule in effect at the time of the accident which required that roadway workers shunt track circuits in order to provide additional signal protections to prevent trains or other rolling equipment from entering working limits. The NTSB found that the roadway work group involved in the incident did not comply with that rule. The NTSB made several recommendations in response to that accident, including Recommendation R-08-06. That recommendation states FRA should "[r]equire redundant signal protection, such as shunting, for maintenance of way work crews who depend on the train dispatcher to provide signal protection."

This incident occurred near the end of the Working Group's work in 2007, and the Working Group did not consider the use of shunting devices in conjunction with the applicable controlled track "working limits" requirements of the RWP regulation (exclusive track occupancy (§ 214.321), foul time

(§ 214.323), or verbal protection (§ 214.324)). While the mandatory use of shunts as an additional measure of safety when establishing working limits had not previously been considered, FRA wishes to analyze available options for redundant forms of working limits protection. FRA understands that shunting procedures can be disruptive to signal systems, and, in some circumstances, might not be permissible under FRA's signal system regulations at 49 CFR part 236. However, if safe and cost-effective procedures can be implemented, FRA may add a provision in the final rule or proceed with an additional rulemaking in the future to require the use of redundant forms of protection. FRA specifically invites comment on this issue from the railroad industry and other interested parties, to include potential costs of implementing various redundant measures. The RWP regulation does not currently prescribe the use of every device or procedure that may be used by a railroad to supplement the establishment of working limits. However, FRA notes that roadway workers are already required by existing § 214.313(a) to follow all on-track safety rules and procedures of a railroad, including those such as the MBTA redundant protection requirement discussed above, even if such rules are not enumerated in Federal regulation.

VIII. Additional Items for Comment

FRA is requesting comment on several requirements or amendments for which regulatory text is not being proposed in this NPRM, but which FRA is considering adopting in a final rule in this proceeding. FRA specifically requests comment on these additional items, and also discusses some of them further in the section-by-section analysis below.

A. RWP and Blue Signal Protections in Shop Areas

Under the existing roadway worker and blue signal protection requirements, any roadway workers performing work that involves fouling track within locomotive servicing track areas or car shop repair track areas (or performing work on structures within those areas that involves fouling a track) are required to utilize on-track safety procedures via the requirements of part 214. Any "workers", as defined by § 218.5, performing work on, under, or between rolling equipment within such facilities are required to do so via the blue signal protection requirements of subpart B of part 218. Since the promulgation of the RWP regulation, there has been confusion in the railroad

industry over what protections are appropriate within such shop facilities for certain types of work activities (e.g., performing work on the overhead doors of a locomotive maintenance building when such work involves fouling a track). FRA issued Technical Bulletin G-08-03 to help clarify the issue, and explained that whether or not employees are working in a shop area, it is always the type of work being performed that dictates which type of protection is required, roadway worker protection or blue signal protection. Technical Bulletin G-08-03 also explained that FRA would not take exception to any work being performed that appeared to be more akin to roadway worker duties, but that was of an "incidental" nature to the larger job of mechanical personnel performing work on rolling equipment, e.g., sweeping a shop floor or changing a light bulb in an inspection pit.

Railroads have argued that FRA should exempt certain maintenance of way work within shop areas from the on-track safety requirements of part 214, as the employees within the limits of the shop areas may perform such work safely while utilizing the blue signal protections that they have been trained on the requirements of and are familiar with. Railroads have also argued that training shop personnel on two different protection regimes is costly, and is also confusing for employees that actually have to apply those two different types of protection, and, thus, detrimental to safety.

FRA is not proposing any specific rule text regarding this issue in this NPRM, but is contemplating amending the existing blue signal protection and/or roadway worker protection regulations in a final rule to make additional allowances for certain maintenance work performed within the limits of locomotive and car shops. FRA would only make such amendments if they provided for at least an equivalent level of employee safety to that which exists via the existing Federal regulations governing this issue. FRA is requesting comment on this issue, and specifically requests comment on how the issue of contractor employees would best be addressed, as contractor employees are subject to the requirements of part 214, but are not considered "workers" via existing part 218's blue signal protection requirements. As throughout the history of the blue signal regulation it has only governed work being performed on, under, or between rolling equipment, FRA also specifically requests comment on how an amendment to the existing regulations could best accommodate the protection of additional work activities

within shop areas. Among other amendments, FRA anticipates existing § 218.29(a)(7) would be required to be amended to require that workers clear any shop track on which a locomotive is to be repositioned on. If in a final rule FRA decides to forego making any amendments to the current roadway worker and blue signal protection regulations within shop areas, FRA may utilize the comments received on this issue in a future rulemaking proceeding.

B. Frequency of Qualification and Training for Additional Roadway Worker Qualifications

The existing sections in part 214 that govern the training and qualification requirements for additional roadway worker qualifications (§§ 214.347 (lone worker), 214.349 (watchman/lookout), 214.351 (flagman), 214.353 (roadway worker in charge), and 214.255 (roadway maintenance machine operator)) do not expressly specify an interval for refresher training and qualification. Those existing sections currently only state that "[i]nitial and periodic qualification of [additional roadway worker qualification] shall be evidenced by" either demonstrated proficiency or a recorded examination, depending on section. The Working Group made the consensus recommendation that FRA propose regulatory text expressly requiring initial training and qualification before a roadway worker is assigned to perform duties involving that qualification, and also recommended requiring refresher training annually and qualification every 24-months. The requirement that initial training and qualification must be provided before assigning a roadway worker duties involving an additional qualification is required by the current regulation. The consensus recommendation would only more clearly state such if adopted in a final rule.

With regard to the refresher training and qualification consensus recommendations, however, in the time period that has passed since the Working Group proposed consensus text for this section, RSIA 2008 mandated that FRA undertake a rulemaking to set minimum training standards for "each class and craft of safety-related employee," to include training standards for roadway workers. That rulemaking was undertaken by the RSAC and FRA recently published an NPRM proposing such minimum training standards. 77 FR 6412. The training standards NPRM contains an extensive proposal for refresher training and qualification requirements for roadway workers, and would require

such refresher training and qualification every three years, to include for the additional roadway worker qualifications in part 214.

As the consensus recommendation made by the RWP Working Group and those proposed by the minimum training standards rulemaking do not parallel one another with regard to frequency of refresher qualification and training, FRA is requesting comment on the best manner to proceed in setting refresher qualification and training intervals for the additional roadway worker qualifications in a final rule. FRA specifically requests comment on the costs and/or potential benefits of the two different approaches.

FRA notes that the existing RWP regulation requires that each roadway worker be trained each calendar year on the items listed in § 214.345, and on the on-track safety rules and procedures they are required to follow via § 214.343. FRA is not proposing to amend those existing annual basic roadway worker training requirements. Rather, FRA is only seeking comment on the appropriate interval of refresher qualification and training requirements for additional roadway worker qualifications found in existing §§ 214.347, 214.349, 214.351, 214.353, and 214.255. FRA would also apply the interval adopted in a final rule to proposed § 214.352.

C. Physical Characteristics Qualification for Lone Workers and Watchmen/ Lookouts

Existing § 214.353 governs qualification and training for roadway workers in charge that provide for on-track safety, and paragraph (a)(4) of that section requires that such training include the "relevant physical characteristics of the territory of the railroad upon which the roadway worker is qualified." However, such a qualification is absent from existing § 214.347, which governs training for lone workers, and also from existing § 214.349, which governs training for watchmen/lookouts. FRA is currently considering amending §§ 214.347 and 214.349 to include a requirement for such training.

Existing § 214.349(a)(3) requires that watchmen/lookouts receive training and qualification on the "[d]etermination of the distance along the track at which trains must be visible in order to provide the prescribed warning time." FRA believes that requiring qualification on the physical characteristics could potentially aid a watchman/lookout in making the safe distance determination to identify an appropriate location to give train

approach warning. Such a qualification could be important in areas where curves, the possible presence of trains on adjacent tracks, and other unique physical layouts or situations exist. In addition, lone workers often essentially act as roadway workers in charge when performing work on their own. FRA believes that a requirement to be qualified on the physical characteristics at a location where a lone worker fouls track to perform work could similarly improve safety. Qualification on the physical characteristics at a particular location could aid in a lone worker's ability to be able to safely detect approaching trains and similarly make the appropriate distance determination as required by existing § 214.337(a). A discussion of the level of qualification required by a lone worker, to include qualification on physical characteristics, was undertaken in FRA Technical Bulletin G-05-03 (January 10, 2005).³ This proposed requirement, if adopted in a final rule, would codify the substance of that technical bulletin discussion.

To clarify, FRA does not believe that a watchman/lookout or a lone worker would need to be versed in the physical characteristics of an entire territory in the same manner as a roadway worker in charge, and is aware of the challenges such a broad requirement could present to system-wide roadway work gangs on larger railroads. However, FRA seeks comment on its potential inclusion of a provision in a final rule that would require an abbreviated physical characteristics qualification at a particular location where train approach warning is to be given by a watchman/lookout, or at a particular location where a lone worker is to perform work. FRA is considering the inclusion of such a requirement in the final rule issued in this rulemaking. FRA also specifically requests comment on the potential costs that could be associated with this requirement, and the factual basis of any such costs.

D. Use of Tunnel Niches as a Place of Safety

Some railroad tunnels have niches or clearing bays built into their sidewalls that permit roadway workers to occupy

a place of safety while performing work in tunnels (typically inspection work). However, some of these niches that are outside the clearance envelope may, by design, be slightly less than four feet from the field side of the rail. Technically, the use of such niches as a place of safety would be a violation of the existing RWP regulation, as a roadway worker occupying such a niche could be "fouling a track" per the existing definition for that term in § 214.7. The Working Group discussed this issue at length, but no consensus solution was reached. The Working Group did, however, decide against modifying the definition of "fouling a track" to accommodate such niches or bays. Working Group discussions indicated that such niches that were outside the clearance envelope but less than four feet from the field side of the rail existed on a small number of railroads, and were located primarily in the Eastern United States. Amtrak indicated that its tunnel niches have been used for 100 years, and are essential to protecting roadway workers in high traffic areas. The BMWED indicated during Working Group discussions that its membership largely did not utilize clearing bays, but rather primarily obtained working limits while fouling track within tunnels.

FRA is not proposing specific text regarding this issue in the NPRM, but is contemplating whether to adopt regulatory text in a final rule that would permit the use of these structures as a place of safety by roadway workers, provided certain safety requirements are complied with. FRA requests further comment on this issue.

FRA anticipates that if the use of such tunnel niches and clearing bays were permitted, that railroads would be required to designate in their on-track safety programs which niches or clearing bays could be used as places of safety. In making such designations, railroads would have to take into account the time it may take an individual to move into such niches or bays when departing a track upon the approach of a train (to ensure that a roadway worker could occupy a designated niche as a place of safety at least 15 seconds before a train would pass the location of the bay, in accordance with the existing requirements of §§ 214.329(a) or 214.337(c)(4)). Requirements that such niches be free from any type of debris or supplies and also be of an adequate size to safely accommodate a roadway worker would also likely be necessary.

E. Highly Visible Protective Equipment for Roadway Workers on Station Platforms

FRA is considering adding a requirement in a final rule in this proceeding to the proposed station platform snow removal and cleaning section (proposed § 214.338) that would require roadway workers performing duties under the procedures proposed in that section to wear highly visible protective equipment (vest or other outer garment) which would meet a standard of the American National Standards Institute/International Safety Equipment Association. The request for comment regarding this item is also discussed further in the section-by-section analysis below.

F. Splitting of Roadway Worker in Charge Qualifications

FRA is considering adopting a requirement in a final rule in this proceeding that would only permit the splitting of roadway worker in charge qualifications to occur in situations where a conductor or other railroad employee serves as a pilot to a roadway worker in charge who is not qualified on the physical characteristics of a particular territory. FRA is considering such, as every roadway work group is already required to have a roadway worker in charge, and if the proposed amendment to paragraph (a) of existing § 214.353 is adopted in a final rule in this proceeding, any employee acting as a roadway worker in charge would be required to be trained on the substantive requirements listed in § 214.353. This issue is detailed further in the section-by-section analysis for § 214.353 below, and FRA specifically requests comment on this issue.

G. Effective Date of Final Rule

FRA currently anticipates that the effective date of a final rule in this proceeding would be 180 days from the date of publication of the final rule in the **Federal Register**. However, FRA is cognizant that depending on when a final rule is published, the training schedules of railroads may have to be taken into account when establishing the implementation schedule. FRA welcomes comment on an appropriate effective or applicability date for a final rule in this matter.

IX. Executive Order 13563 Retrospective Review

In accordance with the requirements of Executive Order 13563, this NPRM proposes to modify the existing RWP requirements, in part, based on what has been learned from FRA's retrospective review of the existing regulation.

³ Effective January 10, 2005, RWP technical bulletins WPS-99-01 through 99-09 were reissued and designated as technical bulletins G-05-02 through G-05-10. New RWP bulletins G-05-11 through G-05-30, most of which are discussed below, were also issued on that date. These technical bulletins are all available on FRA's internet site at: http://www.fra.dot.gov/rws/pages/fp_1532.shtml. FRA plans, as appropriate, to supplant the majority of these technical bulletins based on changes made to the RWP regulation in any final rule in this proceeding.

Executive Order 13563 requires agencies to review existing regulations “* * * that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.”⁴ As a result of its retrospective review, FRA is proposing to reduce burdens on the industry by no longer requiring that railroads submit their on-track safety programs to FRA for review and approval before such programs become effective and when any subsequent changes are made to such programs (§ 214.307). FRA is also proposing to delete several sections of the existing RWP regulation it believes to be outmoded or superfluous (§§ 214.302, 214.305, 214.331 and 214.333), and has also proposed to allow for greater industry flexibility in several other sections (§§ 214.317, 214.324, 214.327, 214.337 and 213.338). FRA does not believe that these proposals will reduce safety.

X. Section-by-Section Analysis

FRA seeks comments on all proposals made in this NPRM. Proposed Amendments to 49 CFR part 214 (Part 214).

Section 214.7 Definitions

FRA proposes to amend the existing definitions section for Part 214 by both adding new definitions and amending existing definitions. FRA proposes to add new definitions for the following terms: controlled point; interlocking, manual; maximum authorized speed; on-track safety manual; roadway worker in charge; station platform work coordinator; and verbal protection. FRA also proposes to amend Part 214's existing definitions for the terms effective securing device and watchman/lookout.

The proposed definition of the term “controlled point” was a consensus recommendation agreed to by the Working Group. This new definition is being proposed because existing § 214.337 prohibits the use of individual train detection by a lone worker inside the limits of a “controlled point.” See § 214.337(c)(3). However, that term is not defined in the existing RWP regulation and over the years interpretive issues have arisen. In response, FRA issued Technical Bulletin G-05-29. The Working Group discussed this topic, and decided to recommend the incorporation of the existing definition for the same term found in FRA's signal and train control

regulations (§ 236.782), along with the definition of “interlocking, manual” (the definition for the term automatic interlocking was also adopted as consensus language by the Working Group, but as explained above, is not being proposed by FRA in this NPRM). If definitions for the terms “controlled point” and “interlocking, manual” are adopted in a final rule, those definitions will supplant FRA Technical Bulletins G-05-29 and G-05-11, as discussed further below.

FRA is proposing to amend the definition for existing term “effective securing device” as recommended by the Working Group. The term “effective securing device” is intended to describe an appurtenance preventing the operation of mechanisms that make non-controlled track inaccessible. Since promulgation of the original RWP regulation, a number of interpretive questions have arisen about this definition. In response, FRA issued Technical Bulletin G-05-20 to provide clarity. This new proposed definition incorporates the contents of that technical bulletin in order to clarify what constitutes an “effective securing device.”

The proposed amendment would require that locks used to lock switches or derails for the purpose of providing on-track safety for roadway workers must be keyed to allow for removal by only the roadway workers for whom protection is being provided. In the absence of a lock, the definition would allow a spike to be driven into a switch tie to secure a switch, so long as the spike cannot be removed without the use of railroad track tools. Clamps and metal wedges (solidly driven on a derail securing it to the rail) without a lock would also be acceptable if they cannot be removed without the use of railroad track tools. For example, a clamp that could be removed with an ordinary adjustable wrench would need to be locked. This is to ensure that other employees, such as transportation employees who may attempt to access a track with rolling equipment, could not readily remove such on-track safety protections applied by roadway workers to establish on-track safety.

To clearly identify effective securing devices, and thus, to prevent railroad employees from being injured by attempts to operate a secured device, the throwing handle, hasp, or keeper of the switch or derail shall have a unique tag which is clearly displayed. The unique tag must clearly indicate to other

railroad employees, such as trainmen, who may attempt to operate a switch that such switch is secured. If there is no throwing handle, this proposed definition would require that the securing device itself shall be tagged. Regardless of the type of securing device used, each tag must be clearly marked to indicate that it is securing an entrance into inaccessible track.

Members of the Working Group had the opportunity to make comments on a draft of the consensus language after the close of the Working Group meetings. One of those comments, made by the AAR, requested that the consensus language be amended to allow a generic tag, rather than a unique tag, be applied to the throwing handle or hasp of a switch or derail being secured. FRA acknowledges this comment, but has chosen to propose the consensus language as agreed to by the Working Group. However, FRA requests comment by AAR and other interested parties further explaining their request, and will consider amending the wording in the final rule, if appropriate.

FRA has made a minor amendment to the language of the Working Group's consensus recommendation for the definition of this term. FRA removed the phrase “when used in relation to on-track safety” from the first sentence of the proposed definition. FRA removed the phrase because it is unnecessary, as anytime that term appears in part 214 the proposed definition would apply. This change is not substantive in nature, and is intended to reflect conformance with the structure for defining regulatory terms.

FRA is also proposing to adopt the Working Group's recommended definition for the new term “interlocking, manual” (as discussed in Section VI above, FRA is not proposing the consensus definition for the term “interlocking, automatic”, as that term is not actually used in either the proposed or existing regulatory text). As recommended by the Working Group, this definition mirrors the existing definition for the same term in FRA's signal and train control regulation (§ 236.751). Existing § 214.337 prohibits the use of individual train detection at manual interlockings. However, the term “manual interlocking” is not defined. As such, inquiries have arisen regarding what does, or does not, constitute a manual interlocking. In response, FRA issued Technical Bulletins G-05-11 and G-05-29. The following table incorporates the

⁴ Exec. Order No. 13563, 76 FR 3821 (Jan. 21, 2011); available online at <http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf>.

substance of those technical bulletins and summarizes the applicability of individual train detection on various types of track arrangements:

| Track arrangement | Individual train detection permitted |
|---|--------------------------------------|
| Controlled point/manual interlocking with switches, crossings (diamonds), or moveable bridges | No. |
| Controlled point with signals only—see proposed text of § 214.337(c)(3) | Yes. |
| Manual interlocking | No. |
| Automatic interlocking | Yes. |
| Power operated switch installations | See discussion below. |

Power operated switch installations are included in the table above because FRA has received many questions regarding whether certain power operated switch installations, which are operated by train crews to manipulate switch position and have wayside indication devices that convey the position of a switch, are considered to be manual interlockings. Typically, they are not. The use of individual train detection by a lone worker at power operated switch installation locations is permitted if:

- The signals at these installations do not convey train movement authority.
- The switch installation is not controlled by a train dispatcher or control operator, and is not part of a manual interlocking or controlled point.

FRA notes again that lone workers performing work at these installations, or any other locations where the use of individual train detection is permitted, have the absolute right to use a form of on-track safety other than individual train detection. See § 214.337(b). Also, regardless of the type of on-track safety being utilized, FRA notes that all roadway workers should be cognizant of potential pinching hazards associated with performing work on such power-operated switches. FRA further notes that switches which can either be manipulated by hand or by a train dispatcher or control operator, typically referred to as “dual control switches”, are located within manual interlockings or controlled points and the use of individual train detection within these installations is prohibited.

Existing § 214.329(a) requires that train approach warning be given in sufficient time for a roadway worker to “occupy a previously arranged place of safety not less than 15 seconds before a train moving at the maximum speed authorized on that track can pass the location of the roadway worker.”

Existing § 214.337(c) contains a similar requirement for lone workers. However, no definition for such maximum speed authorized exists in the current RWP regulation. Accordingly, the Working Group addressed this issue and reached

consensus on a definition of the term “maximum authorized speed.”⁵ FRA proposes to largely adopt the Working Group’s consensus definition, which, for purposes of part 214, is the permanent speed designated for a track in a railroad’s timetable, special instructions, or bulletin. The Working Group agreed that using a temporary speed restriction as the basis for determining the appropriate train approach warning distance could pose inherent dangers. That danger occurs in situations where a party might remove a temporary restriction from a particular segment of track without notifying the roadway work group or lone worker using that temporary speed restriction to determine the appropriate train approach warning distance. FRA notes that this new definition would also apply in the context of certain new RWP requirements promulgated in the adjacent track final rule discussed above. Similar to the proposed definition for the term “effective securing device” discussed above, FRA has made a minor amendment to the language of the Working Group’s consensus recommendation for the definition of this term. FRA removed the phrase “for on-track safety purposes” from the proposed definition. FRA removed that phrase because it is unnecessary, as anytime this term appears in part 214, the proposed definition would apply. This change is not substantive in nature, and is only intended to conform with regulatory drafting practices.

FRA is also proposing a definition for the term “on-track safety manual.” Existing § 214.309 requires each roadway worker in charge and lone worker to have with them a manual containing the rules and operating procedures governing track occupancy and protection. The Working Group agreed to recommend consensus amendments to that existing section, where such manual is referred to as an

⁵ The difference in word order between the proposed definition and the wording as it appears in existing § 214.329(a) is addressed in the section-by-section analysis for § 214.329 below.

“on-track safety manual.” As such, the Working Group also came to consensus on a recommended definition for this new term. This proposed definition is intended to provide clarity regarding the materials that must be included in the on-track safety manual, as the manual is a critical element of any on-track safety program. FRA previously issued Technical Bulletins G-05-12 and G-05-25, both of which addressed concerns regarding the requirement regarding such manuals. The following is a general discussion of on-track safety manual requirements.

First, via existing §§ 214.311(b)–(c) and 214.313(d), roadway workers have the right to challenge in good faith whether the on-track safety procedures to be applied at a job location comply with the operating rules of the railroad. Thus, the good faith challenge procedures must be included in a railroad’s on-track safety manual, as roadway workers at a work site may require access to the procedures for making such a challenge. FRA has left to a railroad’s discretion how to best fulfill this requirement. The documents fulfilling the requirement could take many forms, including a simple set of instructions explaining the good faith challenge procedures, a flow chart that roadway workers could follow when invoking a challenge, or even a form for a roadway worker to fill out when making such a challenge that explains the challenge procedures.

FRA Technical Bulletin G-05-12 explains that the on-track safety manual could take the form of: (1) One document containing on-track safety procedures, good faith challenge procedures, and on-track safety operating rules of a railroad (absent operating rules not pertaining on-track safety); or (2) a binder system holding together separate documents such as the on-track safety procedures, on-track safety operating rules, and all operating rules/procedures, with the on-track safety procedures and good faith challenge procedures composing tabs or sections of that binder. The RWP regulation does not specify that a

roadway worker in charge must have the railroad's timetable and/or special instructions readily available along with the on-track safety manual. However, if the timetable and/or special instructions contain operating rules or instructions that affect the on-track safety procedures of roadway workers, those documents must also be available with the on-track safety manual.

If a railroad chooses not to use certain methods of establishing working limits or on-track safety, it is not necessary to include procedures for establishing those types of on-track safety in its on-track safety manual. For example, if a railroad chooses not to use "foul time" via § 214.323 as a method of establishing working limits, "foul time" procedures do not need to be included in that railroad's on-track safety manual. Likewise, a short line railroad that does not have any controlled track would only utilize § 214.327 (inaccessible track) as a form of working limits, and would not need to include procedures governing the establishment of other forms of working limits.

If a railroad uses electronic display of authorities to establish working limits, as is proposed in new § 214.322 below, the use of such display would also need to be addressed in the on-track safety manual. Also, FRA notes that part 214 does not prohibit the use of an electronic device that can display the contents of an on-track safety manual as an alternative to a written copy (hard copy) of an on-track safety manual. So long as the contents of the on-track safety manual are readily viewable via an electronic device, FRA would not take exception to the use of such device. However, if a device malfunctions such that the contents of the on-track safety manual could not be retrieved and viewed, a printed copy of the on-track safety manual must be readily available for a roadway work group to continue its work. If no alternative on-track safety manual is available, the roadway work group must cease its work and occupy a place of safety.

FRA also notes that the general procedures applicable to all machines and roadway workers must be included in the on-track safety manual (e.g., machine-to-machine spacing and space between roadway workers and machines as established by existing § 214.341). However, § 214.341 requires that unique instructions for the safe operation of roadway maintenance machines must be provided and maintained with each machine if such machine is large enough to carry the instruction document. If feasible, FRA recommends that these machine-specific instructions

be incorporated into the on-track safety manual as well.

Finally, FRA has amended the proposed definition for the term "on-track safety manual" slightly from that as recommended by the Working Group. FRA inserted the words "designed to" into the first sentence of the proposed definition. This change is to reflect that the instructions in the manual, if followed, are designed to prevent roadway workers from being struck by trains, rather than the instructions themselves preventing such collisions. This amendment is intended to be clarifying in nature, not substantive.

FRA is also proposing a definition for the existing term "roadway worker in charge." The term is used in existing § 214.321, and is also described interchangeably throughout the existing regulation as the "roadway worker responsible for the on-track safety of others", the "roadway worker designated by the employer to provide for on-track safety for all members of the group", the "roadway workers in charge of the working limits", as well as by other similarly descriptive terms. The Working Group recommended consensus language for this rulemaking which also uses the term "roadway worker in charge" in several places. However, that term is not defined in the existing regulation, and the Working Group did not reach agreement on a recommended definition of the term.

As such, FRA is proposing a definition for the term "roadway worker in charge." The proposed definition mirrors the existing definition for the term found in FRA's Railroad Operating Practices Regulation (see § 218.93). FRA is also proposing amending numerous sections of part 214 to substitute the term "roadway worker in charge" for the wide variety of different terms listed above which are currently used to describe the roadway worker who is in charge of a roadway work group and establishes on-track safety for that group.

Regarding the "roadway worker in charge" definition, FRA wishes to address a related issue. Inquiries are often made regarding whether a roadway worker in charge is simultaneously allowed to provide train approach warning under existing § 214.329 as a watchman/lookout. A roadway worker in charge may only perform watchman/lookout duties so long as the requirements of § 214.329 are met. Section 214.329(b) requires that watchmen/lookouts "shall devote full attention to detecting the approach of trains and communicating warning thereof, and shall not be assigned any other duties while functioning as

watchmen/lookouts." Thus, a roadway worker in charge could not perform any other duties, such as providing direction to a roadway work group, while simultaneously serving as a watchman/lookout. The limitation on performing other tasks while simultaneously serving as a watchman/lookout severely limits the instances in which a roadway worker in charge may permissibly fill both roles. Also, if a roadway worker in charge also intends to serve as a watchman/lookout for a roadway work group, a discussion of such would have to take place during the job briefing as required by existing § 214.315(a), and would be subject to the good faith challenge provisions of part 214. FRA stresses that it is extremely safety-critical that a watchman/lookout devote full attention to detecting trains and not perform any other tasks while providing on-track safety for a roadway work group.

FRA is also proposing a definition for the new term "station platform work coordinator" in this NPRM, because FRA is also proposing new procedures for "station platform work coordinators" to oversee snow removal and light cleaning on passenger station platforms. See discussion of proposed § 214.338 below. This topic was discussed at length during the Working Group meetings, but no consensus was reached. A "station platform work coordinator" refers to a roadway worker who coordinates the on-track safety for a roadway work group performing snow removal or cleaning activities on a passenger station platform, and who is qualified in accordance with new proposed training § 214.352.

FRA is also proposing a definition for the new term "verbal protection" in this NPRM. Similar to "foul time", "verbal protection" is a proposed method of establishing working limits within an interlocking or controlled point via new proposed § 214.324. This new proposed § 214.324 is a Working Group consensus item, and is meant to accommodate the method of establishing working limits utilized by railroads in the western portion of the United States. This new § 214.324 is discussed at length further below in the section-by-section analysis. The Working Group did not contemplate a definition for this new term, but FRA has proposed one that is similar to the existing definition of "foul time", except that it refers to establishing working limits within an interlocking or a controlled point, rather than on controlled track outside the limits of those configurations.

Finally, FRA is proposing to amend the existing definition for the term "watchman/lookout". The only

proposed change to the definition is to account for the proposed new § 214.338 regarding the use of station platform work coordinators, as discussed further below. Section 214.338(a)(2) of the proposed station platform work coordinator provision requires train approach warning be given that would require roadway workers to withdraw hand-held, non-powered tools from the edge of a passenger station platform upon the approach of a train. However, that section states such warning may be based on available sight distance at the platform and may give less than the 15 seconds notice prescribed by existing § 214.329(a). The proposed amendment to the definition of “watchman/lookout” acknowledges this difference.

FRA is also requesting comment on whether the existing definition of the term “watchman/lookout” should be further amended in a final rule in this proceeding. The existing definition states, in part, that a watchman/lookout “means an employee who has been annually trained and qualified to provide train approach warning to roadway workers of approaching trains or equipment. * * *” However, as discussed below, the frequency of refresher training and qualification requirements for additional roadway worker qualifications (e.g., for a lone worker, watchman/lookout, flagman, or roadway worker in charge qualification) is not currently specified. Existing § 214.349(b) only currently states that “[i]nitial and periodic qualification of a watchman/lookout shall be evidence by demonstrated proficiency,” mirroring the other existing additional roadway worker qualification sections. As discussed both above and below, FRA is requesting comment on the refresher training and qualification requirements for the additional roadway worker qualifications. Thus, FRA requests comment on whether the word “annually” should be removed from existing definition of “watchman/lookout” in order that the definition more accurately reflect both the current and any future RWP refresher qualification and training requirements, and also for purposes of consistency with the other existing additional roadway worker qualification definitions.

Subpart B—Bridge Worker Safety Standards

Section 214.113 Head Protection

FRA proposes to amend three existing sections in subpart B (Bridge Worker Protection) to delete the existing incorporations by reference to certain outdated industry standards for

personal protective equipment (PPE). Specifically, §§ 214.113, 214.115, and 214.117, contain incorporations by reference to certain standards governing head, foot, eye, and face protection, respectively. Those sections were originally promulgated in 1992 when an FRA final rule establishing subpart B was published and reference standards dating back to 1986. 57 FR 28116 (June 24, 1992). Although the regulatory requirements have not been substantively updated in some time, the standards themselves have been updated. Employers and employees may currently have difficulty obtaining PPE manufactured in accordance with the standards currently incorporated by reference. As such, FRA is proposing to amend these existing sections to reflect that the standards incorporated by reference have been updated. In doing so, FRA wishes to allow for the continued use of any existing equipment which meets the standards currently incorporated by reference, as well as for the use of equipment meeting updated versions of those standards.

FRA’s incorporations by reference of PPE standards in subpart B were initially patterned after certain OSHA general industry PPE standards located in Title 29 of the Code of Federal Regulations. OSHA faced a situation similar to that FRA currently faces with regard to updating its PPE incorporations by reference. As such, OSHA updated those standards in a 2009 final rule. 74 FR 46350 (Sept. 9, 2009). OSHA’s updates to the PPE regulations that correspond to FRA’s subpart B PPE regulations (29 CFR 1910.133(b), 1910.135(b), and 1910.136(b)) allow for the continued use of PPE meeting older standards which had previously been incorporated by reference, as well as the use of PPE meeting updated versions of those same standards. OSHA’s corresponding regulation also permits “employers to use subsequent national consensus standards that they can demonstrate provide the requisite level of employee protection.” 74 FR 46353. OSHA has indicated that that agency will update the standards referenced in its PPE regulations via direct final rulemaking as new editions of those standards become available. *Id.*

As such, FRA has decided to propose deleting its existing subpart B incorporations by reference. FRA proposes to replace those incorporations by reference by requiring that PPE comply with OSHA’s corresponding general industry regulations. FRA has also decided to propose such because the setting of PPE standards falls more appropriately within OSHA’s area of

expertise, and that agency is better suited to update these standards as appropriate. As explained in the preamble to the 1992 FRA final rule promulgating the subpart B PPE regulations, “[m]any federal agencies and manufacturers rely on OSHA’s research abilities and expertise in formulating procedural guidelines and performance criteria that reduce exposure to the risk of injury. FRA is relying on OSHA’s greater expertise in occupational health and safety.” 57 FR 28116.

FRA’s proposal is illustrated as follows. Section 214.113 governs head protection for railroad bridge workers. FRA proposes to update this section by deleting the existing incorporation by reference to American National Standards Institute (ANSI), Z89.1–1986, Protective Headwear for Industrial Workers. In its place, FRA proposes to reference the requirements of 29 CFR 1910.135(b), OSHA’s general industry head protection PPE regulation. Section 1910.135(b) not only permits the use of head protection meeting ANSI standard Z89.1–1986 (FRA’s current standard incorporated by reference), but also incorporates two updated versions of that standard as well. Under this proposal, equipment meeting the standard currently incorporated by reference in existing § 214.113 would be permitted to be used indefinitely, and equipment meeting more updated versions of that standard would also be permitted to be used. Adoption of this proposal would help facilitate compliance with Federal regulation, and would also eliminate any economic concerns associated with updating PPE standards, as equipment currently in use which conforms to the requirements of existing 49 CFR 214.113(b) would be permitted to continue in use indefinitely. FRA acknowledges that the most recent ANSI standard listed in OSHA’s updated Section 1910.135(b) is the 2003 standard. FRA has learned that, in the interim, between the time of publication of OSHA’s 2009 final rulemaking to present, that another updated ANSI head protection standard has been released. However, as mentioned above, 29 CFR 1910.135(b)(2) provides that head protection that an employer demonstrates is “at least as effective as head protection devices that are constructed in accordance with ” the consensus standards “will be deemed to be in compliance with the requirements of [1910.135(b)].” Therefore, in interim time periods between when updated versions of the standards incorporated by reference are introduced and OSHA decides to adopt those standards in a

direct final rulemaking, PPE acquired by railroads or employers that conforms to an updated version of the standards incorporated by reference may still comply with the requirements of OSHA's regulation. However, FRA requests comment on this particular point, both with regard to this section and to the parallel proposed amendments to §§ 214.115 and 214.117 below.

Section 214.115 Foot Protection

Section 214.115, governs foot protection for bridge workers. Similar to the proposed amendments to § 214.113 discussed above, FRA proposes to update this section by deleting the existing incorporation by reference to ANSI American National Standard Z41–1991, Standard for Personal Protective Equipment Footwear. In its place, FRA proposes to reference OSHA's general industry foot protection regulation at 29 CFR 1910.136(b). Section 1910.136(b) permits the use of foot protection meeting ANSI standard Z41–1991, and also permits the use of PPE meeting updated versions of that standard. Section 1910.136(b) also reflects that ANSI Z41 was withdrawn and replaced by two ASTM standards in 2005. Adoption of this approach would help eliminate any potential costs associated with the continual updating of PPE standards, while also facilitating compliance with Federal regulation.

Section 214.117 Eye and Face Protection

Finally, § 214.117, governs eye and face protection for bridge workers. Similar to the proposed amendments to §§ 214.113 and 214.115 discussed above, FRA proposes to update this section by deleting the existing incorporation by reference to ANSI Standard Z87.1–1989, Practice for Occupational and Educational Eye and Face Protection. In its place, FRA proposes to cross reference OSHA's general industry foot protection regulation at 29 CFR 1910.133(b). Section 1910.133(b) permits the continued use of eye and face protection meeting ANSI standard Z87.1–1989, and also permits the use of PPE meeting two updated versions of that standard. Adoption of this approach would help eliminate any potential costs associated with the continual updating of PPE standards, while also facilitating compliance with Federal regulation.

Subpart C—Roadway Worker Protection

Section 214.301 Purpose and Scope

Section 214.301 sets forth the purpose and scope of subpart C of part 214. FRA is proposing to amend only paragraph

(c) of this section. FRA is proposing regulatory text to clarify existing paragraph (c)'s meaning and also to address a certain situation that has arisen since the 1996 promulgation of the RWP regulation. Specifically, the second sentence of existing paragraph (c) permits the movement of roadway maintenance machines to be conducted under the authority of a train dispatcher, a control operator, or the operating rules of a railroad. As such, FRA Technical Bulletin G–05–14 explained that under existing paragraph (c) “[r]oadway maintenance machines operating/traveling over non-controlled track do so under the operating rules of the railroad.” When these machines are actually conducting work, however, on-track safety must first be established (e.g., if working on non-controlled track, working limits must be established via the inaccessible track working limits procedures of § 214.327). FRA is proposing regulatory text that explicitly states that while roadway maintenance machines are traveling under the authority of a train dispatcher, a control operator, or the operating rules of the railroad, on-track safety in accordance with part 214 is not required to be established for such movements. This amendment is not substantive in nature and is only intended to clarify the existing meaning of this paragraph. An example of a roadway maintenance machine movement permitted to be conducted under this section would be the movement of a roadway maintenance machine between two separate work locations. Another example would be when traveling to or from a work location, or traveling between a worksite and a repair or storage facility.⁶

FRA wishes to discuss another situation that often occurs with regard to this topic. Railroad officials (such as transportation superintendents) often travel their territories in hi-rail vehicles for a variety of purposes. Because a railroad official such as a transportation superintendent would not typically be a “roadway worker” under that term's definition at § 214.7, such movements are not subject to the requirements of subpart C. However, most roadway maintenance machine operators are roadway workers as their duties include the inspection, construction, maintenance, or repair of railroad track,

bridges, roadway, signal and communication systems, electric tractions systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track. Any roadway maintenance machine movements made by roadway workers are required to comply with the requirements of subpart C, and part 214 generally (i.e., if a roadway maintenance machine is merely “traveling” it may be moved in accordance with paragraph (c) of this section without the establishment of working limits, but if a roadway maintenance machine is actually conducting work, working limits must be established, unless part 214 contains an exception for a particular type of operation).

FRA is also proposing an amendment to paragraph (c) to address a potential safety issue that has arisen when roadway maintenance machine movements are made on non-controlled track under this section. Movements on non-controlled track may be made without authorization from a train dispatcher or control operator, per the definition of the term “non-controlled track” at § 214.7. Thus, such movements have traditionally been made under railroad operating rules requiring that they be made at speeds not exceeding restricted speed. Restricted speed rules require that trains or other on-track equipment be able to stop within one-half the operator's range of vision. The requirement to stop within one-half the range of vision prevents collisions between any equipment that may be operating on the same non-controlled track. As such, under existing § 214.301(c), operations at restricted speed allow for roadway maintenance machines to safely travel over non-controlled track without having to establish working limits. FRA is aware, however, that some stretches of non-controlled track have been equipped with automatic block signal (ABS) systems. ABS systems are designed to prevent collisions while allowing for trains to operate at speeds greater than restricted speed. This scenario is problematic for purposes of the movement of roadway maintenance machines on non-controlled track under existing paragraph (c) because roadway maintenance machines do not all shunt ABS signal systems. Absent the establishment of inaccessible track working limits or other protections, nothing prevents a train operating on non-controlled ABS-signaled track at a speed greater than restricted speed from colliding with roadway maintenance machines traveling on the same track

⁶ FRA is also proposing an RSAC consensus recommendation at § 214.317 below, whereby roadway workers conducting snow blowing and weed spraying operations on non-controlled track would be permitted to conduct such operations under this existing section rather than being required to establish working limits in all circumstances.

that do not shunt the signal system (no authority is needed to occupy such track and trains are not required to stop within one-half their operator's range of vision).

Based on the above-described situation, FRA is proposing that roadway maintenance machine movements on non-controlled track may only be made under paragraph (c) (e.g., without establishing working limits) if train and locomotive speeds on such track are required to be made at restricted speed. Because such situations have arisen in the past, FRA is proposing regulatory text to prevent future occurrences.⁷ As explained above, FRA believes that most non-controlled track is already limited to restricted speed operations (with one exception being block register territories, which are addressed further in proposed § 214.327(a)(7) below). Thus, this proposed requirement should not represent a cost burden to the industry. However, in order to provide additional flexibility on this point, FRA is proposing that railroads may also utilize other operating rules that provide a level of protection equivalent to that provided by the provisions of restricted speed rules on non-controlled track. As proposed, such other operating rules must first be approved by FRA in writing if they are intended to be used to satisfy this requirement.

FRA notes that this proposed provision only refers to train and locomotive speeds on non-controlled track. This provision would not affect the speeds that roadway maintenance machines are authorized to travel over non-controlled track. Existing § 214.341 already requires each railroad's on-track safety program address the spacing between machines and the maximum working and travel speeds for machines depending on weather, visibility, and stopping capabilities. Roadway maintenance machines typically have stopping capabilities far in excess of that of trains. The intent of this provision is to address situations where trains and locomotives are not required to stop within one-half the range of vision on non-controlled track, and could collide with roadway

⁷ One Class I railroad had a significant stretch of ABS non-controlled track (within yard limits) where such a situation did exist, and an incident occurred where a hi-rail machine was struck by a train. FRA is aware that this railroad has since required movements over this track to be made at restricted speed. Another Class I railroad has such a situation involving non-controlled signaled track, but while moving roadway maintenance machines over such track, FRA understands that the railroad creates working limits via a dispatcher controlling the signals at either end of the non-controlled limits to make such limits inaccessible.

maintenance machines that do not shunt signal systems.

Section 214.302 Information Collection Requirements

FRA is proposing to remove this existing section from part 214. This section is both outdated and superfluous, as the Paperwork Reduction Act section below lists all of the information collection requirements pertaining to each section of part 214 as proposed in this NPRM. The Paperwork Reduction Act discussion that will be published in a final rule in this proceeding will also list all final information collection requirements. For a detailed summary of the information collection requirements, please see the Paperwork Reduction Act discussion in Section XI of the preamble below.

Section 214.305 Compliance Dates

FRA is proposing to delete existing § 214.305, as that section is now obsolete. Section 214.305 only references the phase-in dates by which a railroad's on-track safety program was required to comply with the original 1996 RWP rulemaking. Those dates are no longer applicable, and existing railroads' programs have been required to comply with the RWP regulation since those dates in 1997. Further, if a new railroad that is subject to part 214 is formed, that railroad's program is required to comply with the requirements of the existing RWP regulation upon commencing operations, as already established by existing §§ 214.301, 214.303, 214.317, and 214.335. Currently, the relevant date by which a railroad's on-track safety program will be required to comply with any changes or additions to the RWP regulation that are adopted by FRA in this rulemaking will be the effective date of any final rule issued.

Section 214.307 Review of Individual On-Track Safety Programs by FRA

Existing § 214.307 requires railroads to notify FRA in writing at least one month in advance of its on-track safety program becoming effective and sets forth FRA's formal review and approval process for such plans. FRA is proposing to amend this section to modify the existing on-track safety program approval process. This proposed revision was not contemplated by the Working Group, but parallels similar updated requirements in recent FRA rulemakings and is intended to ease burdens imposed under the existing section.

First, the proposed text would rescind the current requirement in this section

that railroads notify FRA not less than one month before the effective date of their on-track safety programs. The proposed text also modifies the existing requirement that FRA review and approve every railroad's program. The proposed text would instead only require that FRA be permitted to review a railroad's on-track safety program upon request. This proposed change reflects that, generally, the railroad industry now has much experience with this regulation, as the regulation has been in effect for approximately 15 years. As such, the wholesale review of every aspect of a railroad's program that took place when the original rule was promulgated is not warranted. The approach as proposed in this section recognizes that typically FRA would review a railroad's program during audits or investigations. Upon review of a program, the proposed text would provide FRA's Associate Administrator for Railroad Safety/Chief Safety Officer with the authority to disapprove a program if it does not meet the requirements of part 214.

If the FRA Associate Administrator for Railroad Safety/Chief Safety Officer disapproves a program, proposed paragraph (b)(1) provides that a railroad would be required to respond within 35 days by either amending its program and submitting those proposed amendments for approval, or by providing a written response in support of its program. FRA's Associate Administrator for Railroad Safety/Chief Safety Officer would subsequently render a decision in writing either approving or disapproving the program. Paragraph (b)(2) provides that FRA would consider a failure to submit an amended program or provide a written response as required by the section to be a failure to implement a program under this part.

The proposed amendments to this section also ease the burden on both railroads and FRA as railroads would no longer be required to notify FRA of changes to their on-track safety programs, and FRA would be able to better utilize its limited resources to address legitimate safety concerns brought to its attention, rather than conducting mandatory reviews of on-track safety programs, the bulk of whose contents have already been established and approved by FRA for many years. Finally, the proposed text would also eliminate reference to the compliance dates in § 214.305, because as explained above, those dates are obsolete.

Section 214.309 On-Track Safety Manual

Existing § 214.309, titled “On-track safety program documents,” mandates, in part, that rules and operating procedures governing track occupancy and protection be maintained together in one manual and be readily available to all roadway workers. With minor exceptions (discussed below), FRA is proposing amendments to this section consisting of consensus language recommended by the Working Group. As explained above in the section-by-section analysis for the definitions section, the proposed revisions to this section incorporate the definition for the new term “on-track safety manual.” That definition and the discussion above establish the minimum contents such manual should include. FRA is also proposing to amend the title of this section, to more accurately reflect the proposals to update this section.

Proposed paragraph (a) of this section incorporates the new proposed term “on-track safety manual.” Other than that change, the Working Group’s consensus recommendation language for the first sentence of this paragraph then only repeated the text of the section as it currently exists. However, that existing language describes the “[r]ules and operating procedures governing track occupancy and protection,” which is the language that described what is now being proposed to be expressly defined as the “on-track safety manual.” As there is now a proposed definition for that term which describes what must be included in the on-track safety manual, the description of those items as it exists in the current regulation text is no longer necessary. Thus, FRA has proposed to amend the first sentence of the Working Group’s recommended paragraph (a) to state “[t]he applicable on-track safety manual (as defined by § 214.7) shall be readily available to roadway workers.”

Proposed paragraph (b) addresses the difficulty that a lone worker, such as a signal maintainer or a walking track inspector, might experience in carrying a large on-track safety manual. Paragraph (b) proposes that a railroad must provide for an alternate process for such a lone worker to obtain on-track safety information. The alternate process may include the use of a phone or radio for the lone worker to contact an employee who has the contents of the on-track safety manual readily accessible. FRA has added the words “on-track safety” before the word “manual,” which appears twice in this proposed paragraph. This amendment to the consensus recommendation is to

consistently and accurately refer to the newly proposed term “on-track safety manual” throughout this section.

Although FRA is adopting the Working Group’s consensus language recommended to be included in the last sentence of proposed paragraph (b) (which read “[s]uch provisions for alternative access shall be addressed and included in the training provisions of § 214.347”), FRA is moving that language to § 214.347, which is discussed further below. FRA decided to make this change in the interests of simplicity and ease of use of the regulations. By putting the consensus language recommended by the Working Group setting forth this substantive training requirement in the lone worker training section itself (§ 214.347), FRA eliminates an unnecessary cross reference to another section of the RWP regulation, and thus keeps the applicable training requirements in the actual training sections.

Proposed paragraph (c) recognizes that in practice changes often occur to on-track safety rules and procedures. Often, it is necessary for a railroad to publish and distribute new or revised on-track safety measures or protection rules on an as-needed basis before those documents can be permanently incorporated into a revised manual, or to sometimes publish temporary changes to a program via bulletin or notice. While these amendments to an on-track safety program must be incorporated into an on-track safety manual, existing § 214.309 does not include any allowance for the temporary nature of some documents or the practical difficulties with incorporating such changes immediately after issuance. This proposed text would account for updates or changes to the on-track safety manual.

Section 214.315 Supervision and Communication

Existing § 214.315 mandates that job briefings be provided to roadway workers assigned duties that require the fouling of track and sets forth certain communication requirements between members of a roadway work group, and, in the case of a lone worker, between that lone worker and his or her supervisor or other designated employee. The Working Group recommended that FRA add new requirements to existing § 214.315. Those items largely govern the substance of job briefings performed prior to roadway workers fouling track, and also change reference to these job briefings to “on track safety job briefing[s].” Most of those consensus recommendations were addressed in

FRA’s adjacent track rulemaking. 74 FR 74614. However, one item that was not included in the adjacent track rulemaking involves information during the on-track safety job briefing regarding the accessibility of the roadway worker in charge and alternative procedures in the event the roadway worker in charge is not accessible to the members of the roadway work group. FRA is now proposing the recommended consensus language addressing this issue.

As a roadway worker in charge is the person who establishes and directs the on-track safety for a roadway work group, it is critical that each roadway worker in a roadway work group have access to the roadway worker in charge. Access is necessary where a member of the group invokes a good faith challenge, or where he or she has other questions concerning the established on-track safety protection. Thus, a roadway worker in charge must be located in the immediate vicinity of the work activity. As discussed in FRA Technical Bulletin G–05–07, sometimes it may be necessary for a roadway worker in charge to depart a work location for a short period to travel to another area encompassing the same work activity (e.g., to conduct on-track safety checks throughout a large mechanized production activity). During such periods where the roadway worker in charge may be away from a work site for a short period, it is imperative the roadway work group have a readily available means to communicate with this employee. When a roadway worker in charge departs a work site for an extended period, a substitute employee with the relevant qualifications must be designated. If any exclusive track occupancy authorities are involved, the change in the roadway worker in charge designation must be formally addressed in the railroad operating rule. To eliminate confusion, FRA notes that this recommended consensus item regarding the accessibility of the roadway worker in charge was initially listed by the Working Group as new paragraph (a)(3) of § 214.315. However, after numbering and other minor changes as promulgated in the adjacent track rulemaking, FRA is proposing to include this provision as new § 214.315(a)(5). In the regulation text as proposed below, new paragraphs (a)(3) and (a)(4) of this section, as promulgated in the adjacent track rulemaking, also appear again. This is to reflect that FRA has to remove the “and” from the end of paragraph (a)(3) and move it to the end of paragraph (a)(4). This change is necessary as the

newly proposed (a)(5) would be the new last paragraph under (a).

FRA is also proposing a minor change to existing § 214.315(b). FRA is proposing to replace the word “worker” in the first sentence of that paragraph with the word “worker(s)”, merely to reflect that roadway work groups often include multiple roadway workers. In addition, FRA is proposing to slightly amend existing paragraphs (c) and (d) of this section, by adding the new term “roadway worker in charge” to the first sentence of each of those paragraphs. The new term replaces the existing language in those paragraphs that generically refers to the person or roadway worker designated to provide on-track safety for a roadway work group. It is generally understood by the industry that this person is the “roadway worker in charge.” This change, along with the new definition for that term, only acknowledge this understanding and provide uniformity of reference to “roadway worker[s] in charge” in the regulation text. Finally, FRA is proposing to amend the first sentence of paragraph (e) of this section to replace the words “job briefing” with “on-track safety job briefing”, merely for uniformity to reflect the Working Group’s consensus recommendation regarding job briefings as referred to in paragraph (a) of this section.

Section 214.317 On-Track Safety Procedures, Generally

Currently, § 214.317 generally requires employers to provide on-track safety for roadway workers by adopting on-track safety programs compliant with §§ 214.319 through 214.337. FRA is proposing two substantive amendments to this existing section. These two proposed amendments are consensus recommendations of the Working Group and would impose requirements for roadway workers who walk across railroad track and provide for new allowances when snow removal or weed spraying operations are conducted on non-controlled tracks.

FRA is proposing to redesignate the existing text of § 214.317 as paragraph (a) of this section in order to account for the additional proposed amendments. In that existing text, FRA is proposing to amend the reference to § 214.337 to instead refer to proposed § 214.338. This change is to acknowledge that if proposed § 214.338 is adopted in a final rule, § 214.337 would no longer chronologically be the last section in this part governing on-track safety procedures, but rather the last section would be § 214.338.

Consistent with the consensus recommendation of the Working Group,

FRA is proposing a new paragraph (b) regarding procedures for roadway workers to walk across railroad track. This section addresses the practical reality that roadway workers often have to walk across tracks while not directly engaged in activities covered by the existing RWP regulation. For example, a roadway worker might incidentally walk from a work site on a track in which working limits are in effect to a vehicle adjacent to the right of way. While walking to a vehicle, a roadway worker may have to cross over other “live” tracks where working limits or another form of on-track safety is not in effect. This proposed section, a consensus recommendation of the Working Group, is intended to prevent roadway workers from being struck by trains while incidentally crossing track, while at the same time recognizing the need for procedures enabling roadway workers to cross tracks safely without the need for formal on-track safety to be in place.

Proposed paragraph (b) would require that if roadway workers walk across track they must first stop and look in all directions from which a train or other on-track equipment could approach before starting across, in order to ensure they may safely clear the track before the arrival of any train or other on-track equipment. The proposal to require roadway workers to stop and look before crossing a track would provide an opportunity for roadway workers to physically stop what they are doing and consider the on-track circumstances before proceeding across live track. Although the Working Group recommended that roadway workers “look in both directions” before crossing any track, FRA has amended that consensus language to require roadway workers look in “all directions from which a train or other on-track equipment could approach.” FRA understands the Working Group’s recommendation, but to require roadway workers to look in “both directions” without providing further context is ambiguous. FRA believes it is more precise to require roadway workers to first look in all directions from which a train could approach before crossing track. This proposed amendment also acknowledges that varying physical layouts could allow for trains to approach from more than two directions (a diamond, certain turnouts, etc.).

Next, asserting that depending on the sight distances groups of tracks may be safely crossed without stopping between each track, in post-Working Group comments on the consensus recommendations, AAR requested that

FRA amend the language to permit roadway workers to walk across more than one track at a time without stopping and looking before crossing each track. FRA agrees that in certain instances, where sight distance allows, multiple tracks may be crossed safely without stopping and looking between each track. FRA is concerned, however, that incorporating such a change into the regulatory text with no limiting language could potentially be unsafe in certain circumstances (e.g., walking across tracks in a hump yard where there may be limited sight distance and the constant potential for rolling equipment to simultaneously be moving on many tracks exists). Accordingly, FRA is not proposing to deviate from the recommended consensus language in this regard, but requests additional comment on whether a roadway worker should be required to look in all directions before crossing each track.

Paragraph (b)(1) proposes to require that railroads adopt rules governing how roadway workers determine that it is safe to cross track, and that employees comply with those rules. FRA is modifying the language recommended by the Working Group by inserting the words “governing how to” into the lone sentence in this paragraph, as the rules themselves do not determine that it is safe to cross the track, but they govern the conduct of the person making that determination. This change is not substantive, and is intended for clarity only. Paragraph (b)(2) proposes to require that roadway workers move directly and promptly across tracks. Again, FRA modified the Working Group’s recommended language by adding the word “shall” into the consensus language of that paragraph. FRA added “shall” in order to clearly indicate that this would be a mandatory requirement. Proposed paragraph (b)(3) would establish that § 214.317(b) would not substitute for the on-track safety that is required when roadway workers are required to foul a track while actually engaged in roadway worker duties.

FRA notes, as discussed in relation to the definition of the term “roadway worker” above, that when a roadway worker fouls track to install a device such as a portable derail or temporary sign to delineate working limits, on-track safety is required to be established. This proposed paragraph would not amend that existing requirement. FRA is also removing the words “as defined in the rule” from the language recommended by the Working Group, as neither the existing RWP regulation nor this NPRM define on-track equipment. In the context of this section, FRA would interpret roadway maintenance

machines, hi-rail vehicles, or any other on-track equipment with the capability to strike a roadway worker as on-track equipment.

FRA does not intend for this new paragraph (b) to apply to what is commonly referred to as “casual fouling.” For example, if a track inspector is conducting a track inspection on No. 1 track from a hi-rail vehicle and on-track safety is provided for on No. 1 track (e.g., by exclusive track occupancy), typically no occupancy authority exists on the adjacent No. 2 track. If the track inspector departs the hi-rail vehicle on the same side as the adjacent track, and the centerline distance is insufficient to enable the employee to remain clear of the adjacent track as the inspector walks along the hi-rail vehicle to reach the front or rear of the vehicle, such fouling of the adjacent track would not be considered a “track crossing” under paragraph (b).

As a related matter, proposed paragraph (b) is not intended to affect how roadway workers move over highway-rail grade crossings. The movement of workers or equipment over designated public or private highway-rail grade crossings should occur in accordance with traffic laws and railroad safety rules (e.g., adherence to active and passive warning devices). Trains always have the right-of-way at highway-rail grade crossings. FRA notes that if any type of work activity as regulated under existing part 214 occurs at a highway-rail grade crossing, such an activity would require that an appropriate form of on-track safety be established.

The Working Group also recommended language for a new paragraph (b)(4) of this section, which would require that a railroad’s safety rules governing walking across railroad tracks be included in all roadway worker training. FRA is proposing this recommended training requirement, but in order to eliminate unnecessary cross references and for the regulation’s ease of use, FRA is proposing to include it in proposed § 214.345. Section 214.345 contains the mandatory items on which roadway workers must be annually trained and, as discussed in the section-by-section analysis for proposed § 214.309 above, FRA believes that all training requirements should be contained in the actual training sections.

The Working Group also provided recommended consensus language pertaining to on-track snow removal and weed spraying on non-controlled track. FRA proposes to include this recommended language in § 214.317(c).

The proposed language would permit on-track snow removal and weed spraying operations on non-controlled track without requiring that such track first be made inaccessible. This proposed provision was crafted due to the difficulty of establishing working limits on non-controlled track for the operation of equipment that moves over long distances, and where there are limited to no on-ground work activities being conducted by roadway workers. FRA notes that this proposed language is specific to weed spraying and snow removal operations being conducted with on-track roadway maintenance machines, including on-track snow removal equipment, such as jet snow blowers. This provision is not intended to apply to situations where equipment, such as a front-end-loader, fouls track when being used to plow or scoop snow off of track or railroad right-of-way. This provision would also not apply to controlled track, where some form of working limits would still be required to be established. In addition, this provision would only apply where on-track snow removal and weed spraying operations are actually being conducted. Roadway maintenance machines not engaged in that work, but rather just traveling over non-controlled track, would still do so under the operating rules of the railroad as established in existing § 214.301(c) of the RWP regulation.

This proposed provision contains many requirements. First, before machines could operate under this provision in remotely controlled hump yard facilities, the recommended consensus introductory text of paragraph (c) would require that remotely controlled hump yard operations be suspended. FRA has proposed this requirement regarding the suspension of hump operations, but has moved it to proposed paragraph (c)(1)(iv) of this section. FRA made this amendment to the recommended consensus language only for purposes of organizing the regulatory text. The introductory text of paragraph (c) contains the permissive language which would allow weed spraying and snow removal operations to proceed under the provisions of § 214.301, with the limitations and/or conditions for utilizing that permissive provision listed in paragraphs (c)(1)–(c)(4). As the requirement to suspend hump operations is also a limitation on when the permissive provision may be utilized, FRA believed that requirement would be more appropriately listed with all of the other requirements in paragraphs (c)(1)–(c)(4).

In a post-Working Group consensus language draft that was circulated for comment, the BMWED noted that the language regarding the status of hump operations in the first sentence of proposed paragraph (c) initially read “in effect”, rather than “in progress”. AAR’s post-RSAC recommendation indicated that it favored the words “in progress”, but did not explain the reason for favoring such. The BMWED’s post-RSAC comment indicated it favored “in effect”, as that term is more inclusive as hump operations might be “in effect” but not actually “in progress” (e.g., cars not literally being humped right at the moment that weed spraying operations begin). FRA agrees with the BMWED’s position and is proposing the initial Working Group’s consensus wording of “in effect”, but also requests further comment on this issue from all interested parties.

Proposed paragraph (c)(1) would require that each railroad adopt and comply with a procedure for on-track snow removal and weed spraying operations. Proposed paragraph (c)(1)(i) would require the procedure to ensure that all other persons conducting on-track movements in the affected area are informed of the snow removal or weed spraying operations. FRA has slightly amended the RSAC’s recommended consensus language for proposed paragraph (c)(1)(i) by adding the words “in the affected area”. This change is only intended to clarify that on-track movements in the affected area must be informed of the snow removal or weed spraying operations, as otherwise there would be no limiting descriptor as to which operations must be notified. For consistency purposes, FRA has also amended all references to “movements” throughout paragraph (c)(1) to instead refer to “on-track movements”, because the consensus text for paragraph (c)(1)(i) (and for paragraph (c) in its entirety) specifically refers only to on-track movements. Proposed paragraph (c)(1)(ii) would require that the adopted procedure ensure that all such weed spraying and snow removal operations operate at a speed not greater than restricted speed as currently defined in § 214.7, except on other than yard tracks and yard switching leads, where movements may operate at no more than 25 miles-per-hour (mph) and be prepared to stop within one-half the range of vision. In its post-Working Group comments on the consensus language recommended by the Working Group, AAR suggested minor changes to the wording of this paragraph, including removal of the reference to the existing § 214.7 definition of “restricted speed.”

Because FRA believes that the reference to the § 214.7 definition of “restricted speed” is necessary, as that term defines restricted speed for the purposes of part 214 (a railroad’s “restricted speed” for purposes of weed spraying could be more permissible than that of the existing § 214.7 definition and of that proposed in the consensus language, which for safety reasons FRA would seek to avoid). The other minor AAR-suggested changes do not alter the substance of the consensus language, but also do not seem to clearly enhance its utility or clarity. Therefore, FRA is proposing the consensus language contained in the Working Group’s recommendation in this paragraph.

Proposed paragraph (c)(1)(iii) would require that the procedure adopted by a railroad ensures there is a means of communication between on-track equipment conducting snow removal and weed spraying operations and any other on-track movements in the area (which FRA anticipates would be via radio communication). Proposed paragraph (c)(1)(iv) prohibits remotely controlled hump yard facility operations from being in effect while snow removal or weed spraying operations are in progress, and also prohibits the kicking of cars unless agreed to by the roadway worker in charge of the snow removal or weed spraying operation. This last requirement is intended to help ensure that there is no free rolling equipment in the vicinity of on-track snow removal or weed spraying operations. As discussed above, FRA has amended the consensus language to list the proposed requirement that hump operations be suspended to this paragraph (c)(1)(iv). As such, the text as recommended by the RSAC has been slightly modified for organization purposes, and is not substantive in nature.

Proposed paragraph (c)(2) would provide that roadway workers engaged in snow removal or weed spraying operations retain an absolute right to utilize the provisions of § 214.327 (inaccessible track). This proposal parallels existing § 214.337(b), which governs on-track safety procedures for lone workers, and would permit a roadway worker to establish on-track safety by making the track inaccessible in accordance with § 214.327. FRA has slightly amended this proposed paragraph as recommended by the RSAC. FRA added the words “subject to this section” to the proposed language. This amendment is only intended for clarity purposes. This amendment would make clear that if snow removal operations not subject to this section were taking place that on-track safety would obviously be required to be

established, regardless of the absolute right to make track inaccessible under this provision.

Proposed paragraph (c)(3) would provide that roadway workers engaged in snow removal or weed spraying operations subject to § 214.317, are permitted to line switches for the machine’s movement without establishing a form of on-track safety in accordance with §§ 214.319 through 214.337, but may not engage in any roadway work activity. For example, if a roadway worker needs to clean the snow from a switch with tools, or adjust a switch, a method of on-track safety compliant with §§ 214.319 through 214.337 would be required prior to conducting such activities. Notwithstanding the above, FRA notes that existing § 214.313(b) requires that roadway workers shall not foul any track unless necessary for the performance of their duties. FRA notes this proposed provision would extend to roadway workers other than the actual operator of a roadway maintenance machine, as roadway workers other than the machine operator may be assigned to throw switches in order to facilitate a machine’s movement.

Finally, proposed paragraph (c)(4) contains the consensus recommendation of the Working Group for the roadway equipment utilized under this provision. Proposed paragraph (c)(4) would require that each machine engaged in snow removal or weed spraying operations under proposed § 214.317(c) be equipped with: (1) An operative 360-degree intermittent warning light or beacon; (2) an illumination device, such as a headlight, capable of illuminating obstructions on the track ahead in the direction of travel for a distance of 300 feet under normal weather and atmospheric conditions; (3) a brake light activated by the application of the machine braking system, and designed to be visible for a distance of 300 feet under normal weather and atmospheric conditions; and, (4) a rearward viewing device, such as a rearview mirror. If a machine is utilized in snow removal or weed spraying operations conducted during the period between one-half hour after sunset and one-half hour before sunrise, or in dark areas such as tunnels, that machine would also be required to be equipped with work lights, unless equivalent lighting is otherwise provided. Equivalent lighting refers to situations where a rail facility might already be equipped with appropriate lighting or where lighting is installed in a tunnel. These proposed requirements which would apply to snow blowing or

weed spraying operations conducted pursuant to the operating rules of a railroad, would be in addition to any applicable existing requirements for such machines found in subpart D of part 214, which governs roadway maintenance machine requirements. These proposed requirements would help ensure that persons operating such machines during snow removal and weed spraying operations and relying on railroad operating rules and procedures for safety have appropriate lighting and sight distance to perform their duties, while also ensuring that such machines are clearly visible to others in the vicinity of such operations in all lighting conditions.

Section 214.319 Working Limits, Generally

Section 214.319 sets forth the requirements for establishing working limits in accordance with part 214. FRA is proposing a minor amendment to this section. The existing first sentence in the introductory paragraph of that section states, in part, that “[w]orking limits established on controlled track shall conform to the provisions of” §§ 214.321 Exclusive track occupancy, or 214.323, Foul time, or 214.325, Train coordination.” Each of these sections explain the requirements for establishing working limits through the various methods recognized by part 214. As discussed in the section-by-section analysis of proposed § 214.324 below, however, FRA is proposing to add a new section setting forth a new method of establishing working limits on controlled track (verbal protection). Thus, FRA is simply proposing to revise the introductory paragraph of § 214.319 to reference proposed § 214.324.

FRA is also proposing to replace the words “roadway worker” in existing paragraphs (a) and (b) with the words “roadway worker in charge.” As discussed above, this proposed change is to provide uniformity of reference throughout the RWP regulation to the roadway worker who establishes and controls working limits. This proposed change is also to reflect that under existing paragraph (a) of this section only a “roadway worker who is qualified in accordance with § 214.353 of this part shall establish or have control over working limits for the purpose of establishing on-track safety.” As previously discussed, FRA is proposing to refer to a roadway worker qualified in accordance with § 214.353 as a “roadway worker in charge.”

Section 214.321 Exclusive Track Occupancy

Section 214.321 generally sets forth the requirements for establishing working limits on controlled track through the use of exclusive track occupancy procedures. FRA is proposing several amendments to this section, including both Working Group consensus items and non-consensus items. First, FRA is proposing to replace the words “roadway worker” in existing paragraph (a) with “roadway worker in charge.” This proposed change is to consistently refer to the “roadway worker in charge” as appropriate throughout the RWP regulation, in order to clarify the existing variety of generic references to that position. Also, this change is appropriate because only a “roadway worker in charge” (or a lone worker who is also a roadway worker in charge) can establish working limits via § 214.321. FRA is also proposing to make this same change to the latter half of existing paragraph (b), which would be amended to specify that an authority for exclusive track occupancy must be communicated to the “roadway worker in charge,” as opposed to the existing reference to “roadway worker”.

Existing paragraph (b) states that a “data transmission” may be used to transmit an exclusive track occupancy authority to a roadway worker (*i.e.*, a roadway worker in charge). However, existing paragraph (b)(2) states only that the roadway worker in charge must maintain possession of a “written or printed authority” while the authority for working limits is in effect, and does not currently account for authorities conveyed via data transmission that may be displayed on the screen of an electronic device. Thus, FRA is proposing to amend paragraph (b)(2) to state that an authority displayed on an electronic screen may be used in place of the “written or printed” authority required by existing § 214.321(b)(2). Electronic authorities would also be required to comply with the requirements of proposed § 214.322, which is discussed in the section-by-section analysis for that section below. As electronic devices are already currently used to display authorities in the railroad industry, this proposed paragraph is intended to help clarify that such use is permissible.

Existing § 214.321(b)(3) requires that the train dispatcher or control operator in charge of track make a “written or electronic” record of all authorities issued to establish exclusive track occupancy. In post-Working Group comments on the recommended consensus items, AAR commented that

in addition to proposing consensus paragraph (b)(4) of § 214.321, FRA should also amend existing paragraph (b)(3) by removing the words “written or electronic record”, and just generically refer to “records,” in order to accommodate the display of an authority via the use of an electronic device. However, as explained above and below, FRA is proposing a new § 214.322, which would govern the use of authorities transmitted via electronic display. Accordingly, FRA believes that differentiating between written or electronic records is appropriate.

The Working Group recommended consensus language that would require that an exclusive track occupancy authority specify a unique roadway work group number, an employee name, or other unique identifier. The Working Group recommended that this language be included as a new paragraph (b)(4) to § 214.321. FRA agrees with this recommendation and has incorporated language consistent with the Working Group’s recommendation into proposed paragraph (b)(4) of this section. This requirement would simply codify what is already common practice in the railroad industry; a practice that helps ensure the ability of trains, dispatchers, and other employees to differentiate between roadway workers in charge/ roadway work groups who may be performing work at various locations along the right-of-way. The use of a unique identifier or roadway work group number should reduce the chance for potential confusion if a railroad has multiple employees with the same or similar names. This proposed paragraph would also require that a railroad’s procedures establish guidelines for communication between trains or other on-track equipment and the roadway worker in charge (or lone worker), in accordance with existing § 214.319(c). This requirement refers to effective procedures for trains or other on-track equipment to contact the roadway worker in charge to receive permission through working limits when appropriate. In post-RSAC comments, AAR requested that FRA remove the reference to lone workers in this recommended consensus section as per existing § 214.337, lone workers are traditionally only used in conjunction with individual train detection. However, lone workers who are qualified to act as roadway workers in charge may establish working limits in order to perform their work. As such, FRA has decided to retain the recommended reference to lone workers in this proposed paragraph.

For clarity purposes FRA amended the language from that contained in the

recommended consensus language for this paragraph. The second sentence of the recommend language read that “[t]he railroad’s procedures shall include precise communication to ensure trains and other on-track equipment communicate, either directly or through the dispatcher, with the roadway worker in charge or lone worker controlling the working limits in accordance with § 214.319.” FRA is proposing that the second sentence of this paragraph instead read, “[a] railroad shall adopt procedures that require precise communication between trains and other on-track equipment and the roadway worker in charge or lone worker controlling the working limits in accordance with § 214.319. The procedures may permit communications to be made directly between a train or other on-track equipment and a roadway worker in charge or lone worker, or through a train dispatcher or control operator.” This proposed change to the recommendation is not intended to be substantive in nature, but is being made because a railroad’s procedures obviously cannot contain the precise “communication” between a train and a roadway worker in charge, but instead, would include the guidance or instructions on the *requirements* of such communications. Thus, FRA is proposing this language to clarify that a railroad’s procedures under this section would have to govern the necessary communications between trains and roadway workers in charge when exclusive track occupancy working limits are in effect. FRA is also adding the words “train” and “or control operator” directly before and after reference to the “dispatcher” that was contained in the RSAC recommendation because throughout the controlled track working limits sections, the words “train dispatcher or control operator” are used interchangeably.

Existing paragraph (d) of this section requires that the movement of trains and other on-track equipment within exclusive track occupancy working limits may only be made under the direction of the “roadway worker having control over the working limits.” Although FRA is proposing no substantive revision to this paragraph, FRA is proposing to amend the paragraph to refer to the “roadway worker in charge.” As noted previously, this change is being proposed in multiple locations in this NPRM in order to replace the varying existing language that generically refers to the “roadway worker in charge” throughout the regulation text. FRA previously issued Technical Bulletin G-05-22 that

addresses existing paragraph (d). That technical bulletin recognized that there may be times, such as during an emergency, when a roadway worker in charge cannot be contacted by a train or other on-track equipment wishing to make a movement. The bulletin explained that “in extraordinary circumstances trains must be authorized to move despite lack of permission from the RWIC. The present regulation does not address this irregular situation and thus, FRA’s enforcement action under these circumstances will be determined on a case-by-case basis.” FRA is not proposing language in this NPRM which would address such extraordinary circumstances, and FRA’s enforcement action in such instances will still be determined on a case-by-case basis. However, FRA intends proposed paragraph (b)(4) to work in conjunction with the requirements of existing paragraph (d). Proposed paragraph (b)(4) would require procedures governing communications between trains and roadway workers in charge be adopted by railroads. FRA would expect that railroads would adopt procedures that would address what actions should be taken in the event a roadway worker in charge cannot be contacted by a train crew or the operator of other on-track equipment.

Also, the existing text of the beginning of the second sentence of paragraph (d) currently reads that “[s]uch movements shall be restricted speed * * * .” FRA has proposed to amend that text to instead read that “[s]uch movements shall be made at restricted speed * * * .” (emphasis added). This minor amendment is only for purposes of reading clarity and is not intended to be substantive.

FRA is also proposing to add a new paragraph (e) to this section. This paragraph would establish minimum requirements when an exclusive track occupancy authority is given to a roadway worker in charge (or lone worker) ahead of the time working limits are to be occupied, or when train(s) may be occupying the same limits. These authorities are sometimes referred to as “occupancy behind”, “conditional”, or “do not foul the limits ahead of” authorities.⁸ Occupancy behind procedures enable a train

dispatcher or control operator to issue an authority which would permit a roadway work group to occupy a track, provided such occupancy only occurred after the passage of certain trains or other on-track equipment. When occupancy behind authorities are issued, trains may still be ahead of the point to be occupied by the roadway work group, or in some cases may be past the point to be occupied but still within the working limits. Such occupancy behind authorities have long been in use in the railroad industry. Due to the volume of train operations in certain areas, and the corresponding time demands on train dispatchers, railroads have expressed to FRA that the use of such authorities is crucial to their ability to be able to efficiently conduct train operations.

For example, a track inspector (a roadway worker in charge/lone worker) in centralized traffic control territory may be called on to use a hi-rail vehicle to inspect a track. In order to more efficiently utilize time and available track, a dispatcher may issue the track inspector an exclusive track occupancy working limits authority, often referred to as “track and time”, to occupy such track while a train or trains are still within the working limits to be occupied by the track inspector. This procedure does not first require the dispatcher to wait until all trains have entirely cleared the working limits before issuing the authority to the roadway worker in charge, or require that all trains have passed the point to be occupied. This procedure also allows the roadway worker in charge/lone worker to occupy such limits behind a train movement while a train is still within the working limits (much sooner chronologically than if required to first wait for all trains to clear the entire working limits track segment). This procedure enables the hypothetical track inspector to begin his or her work sooner, and correspondingly, to relinquish such limits sooner to allow for the passage of trains again.

One of the concerns with the use of such authorities focuses on the fact that trains that are already within the same limits of an authority that is being issued to a roadway worker in charge may not have a copy of such authority or otherwise be aware of it. This situation differs from those when track maintenance activities are planned in advance, where all trains would typically have a copy of a track bulletin denoting the existence of working limits at a particular location. Another concern involves miscommunications occurring and roadway workers potentially

fouling tracks before the last affected train passes the point to be occupied.

The Working Group discussed the problems of miscommunication with the use of “occupancy behind” authorities, but did not achieve consensus on recommended regulatory text. However, FRA believes it necessary to propose minimum safety requirements regarding the use of such authorities by roadway workers in charge to establish exclusive track occupancy working limits. FRA believes this proposal largely codifies current industry best practices and would help ensure safety, and also seeks comment on the costs and benefits of this proposal.

Proposed paragraph (e)(1) states that an authority would only be considered to be in effect after the roadway worker in charge or lone worker confirmed that the affected train(s) had passed the point to be occupied or fouled by the roadway work group or lone worker. This proposed provision is necessary as the train(s) listed in the authority may still be ahead of (*i.e.*, may have not yet reached and traveled past) the point to be occupied or fouled. The proposed text would permit such confirmation to be made in three manners. Confirmation could be made by visually identifying the affected train(s), via direct radio contact with a crew member of the affected train(s), or by receiving information about the affected train(s) from the dispatcher or control operator.

Proposed paragraph (e)(2) states that when such confirmation is made by the roadway worker in charge visually identifying the affected train(s), the railroad’s operating rules must include procedures to prohibit such trains from making a reverse movement into the limits being fouled or occupied (this provision, in addition to the requirements of proposed § 214.321(e)(4) below, would provide protection for roadway worker(s) located ahead of the point to be occupied who intend to “piggyback” on a roadway worker in charge’s exclusive track occupancy authority). FRA believes this provision is necessary, as this method of making confirmation would not require the roadway worker in charge to actually talk to the crew of the affected train(s) (or for the train dispatcher to talk with the crew or verify that that train is beyond the point to be occupied), such that the crew might not be cognizant of the working limits or point to be occupied.

Proposed paragraph (e)(3) would require that after confirmation of the passage of affected train(s) is made, the roadway worker in charge shall record on the authority document (or display)

⁸FRA notes that 49 CFR 220.61 contains requirements for the issuance of “mandatory directives” via radio transmission for both trains and on-track equipment. Exclusive track occupancy authority to establish working limits granted by a train dispatcher or control operator to a roadway worker in charge are in some instances also considered “mandatory directives” under that section. The existing requirements in § 214.321 are considered to be in addition to the requirements of existing § 220.61.

both the time of passage and the engine (locomotive) numbers of the affected train(s). If passage confirmation is made via radio communication with the train crew, the time of that communication along with the engine numbers must be recorded on the authority. When confirmation of the passage of the affected train(s) is made via the train dispatcher or control operator, the time of such confirmation and the engine numbers must be recorded on the authority. If the time and engine numbers are not recorded on the authority itself, FRA would consider a separate written document used to record information regarding passing trains to be a component of the authority, and that document would be required to be maintained along with the authority while it is in effect.

Proposed paragraph (e)(4) would require that roadway workers (who are afforded on-track safety by the roadway worker in charge) who are located between the rear end of the last affected train and the roadway worker in charge, or who are still located ahead of the last affected train, may only foul track after receiving permission to do so from the roadway worker in charge and after the roadway worker in charge had fulfilled the provisions of proposed §§ 214.321(e)(1) & (e)(3). In addition, each group of roadway workers being provided on-track safety by the roadway worker in charge must be accompanied by an employee qualified to the level of a roadway worker in charge, who would also be required to have a copy of such authority and fulfill the requirements of §§ 214.321(e)(1) & (e)(3) before working limits could be occupied or fouled at that particular location. The authority information may be verbally transmitted by the roadway worker in charge to the additional person utilizing the working limits. The cumulative effect of this proposed provision is that roadway workers located between the rear end of any affected train and the roadway worker in charge would not be permitted to foul track until all of the same procedures the roadway worker in charge was initially required to comply with were also accomplished at the actual location of the roadway workers. FRA has included this proposed requirement to address situations where a roadway worker in charge permits another roadway work group or another roadway worker to foul the track between his or her occupancy point and the rear end of affected train(s). Because FRA agrees with the Working Group's concerns and recognizes that in this context, miscommunication can have serious safety consequences, FRA is

proposing to require these additional measures.

Under proposed paragraph (e)(5), each lone worker subject to this proposed paragraph would also be required to have a copy of the authority and to comply with all of the communications requirements of this section. Proposed paragraph (e)(6) would establish that train movements within working limits where roadway workers were otherwise located (not ahead of the last affected train and not between the rear end of the last affected train and the roadway worker in charge) would continue to be governed by existing § 214.321(d), or under the direction of the roadway worker in charge.

Finally, with regard to exclusive track occupancy, FRA often receives inquiries regarding multiple roadway work groups working within the limits of one authority. FRA notes that while there may be multiple roadway work groups performing work within one set of working limits, existing § 214.319 requires that only one roadway worker in charge can have control over working limits on any one segment of track, and that all roadway workers shall be notified before working limits are released for the operation of trains. Further, existing § 214.319(c) states that "[w]orking limits shall not be released until all affected roadway workers have either left the track or have been afforded on-track safety through train approach warning in accordance with § 214.329 of this subpart." FRA is not proposing any change to these existing requirements with regard to multiple roadway work groups working within the limits of one authority. FRA believes the current regulation is clear on this point, and FRA does not believe that considering permitting more than one roadway worker in charge to have control of working limits would be conducive to safety. FRA believes doing so would promote confusion among roadway workers and work groups. If further guidance on situations where multiple roadway work groups may conduct work within the limits of one authority is desired, existing FRA Technical Bulletins G-05-02 and G-05-17 address those issues.

Section 214.322 Exclusive Track Occupancy, Electronic Display

Existing § 214.321(b)(3) permits an exclusive track occupancy authority to be issued via data transmission from the train dispatcher or control operator to the roadway worker in charge. Currently, FRA is aware that some railroads utilize electronic devices to display such authorities received via data transmission. With the current

Positive Train Control system requirements and other technological developments in the railroad industry, FRA anticipates that the use of such electronic devices to display working limits authorities will continue to grow. As such, the Working Group considered this topic, and contemplated minimum requirements concerning the use of such electronic displays. The Working Group agreed in principle to basic concepts concerning the use of electronic display for working limits. However, the Working Group did not agree to overall consensus language. As such, FRA is proposing § 214.322 to address the use of such electronic displays. This proposed section incorporates those concepts agreed to in principle by the Working Group, as well as additional minimum operating and technical attributes of such electronic displays.

Proposed paragraph (a) contains the items agreed to in principle by the Working Group, and would establish that an electronically displayed authority must be readily viewable by the roadway worker in charge while such authority is in effect. Proposed paragraph (a)(1) would require that when a device malfunction or fails, or cannot otherwise display an authority in effect (e.g., batteries powering the electronic device displaying the authority lose charge), the roadway worker in charge must instruct all roadway workers to stop and occupy a place of safety until a written or printed copy of the authority can be obtained, or another form of on-track safety can be established. FRA requests comment on whether a better approach, if a device fails, is to first allow the roadway worker in charge the opportunity to immediately obtain a written copy of an authority before requiring the members of the roadway work group to stop work and occupy a place of safety (and if a written authority could not immediately be obtained, then requiring the work group to occupy a place of safety).

If a copy of the authority cannot be obtained and no other form of on-track safety can be established, proposed paragraph (a)(2) would require that the roadway worker in charge conduct an on-track job safety briefing to determine the safe course of action with the roadway work group. Proposed paragraph (a)(2) attempts to provide flexibility in situations where an electronic display fails and the roadway worker in charge cannot communicate with the train dispatcher via radio, which might occur in a deep rock cut or a tunnel, and a roadway work group may have to move within established working limits to a location where they are able to occupy a place of safety and/

or re-establish communication with the dispatcher.

Proposed paragraphs (b)-(g) would address the technical attributes of the electronic display of exclusive track occupancy authorities. FRA requests comment on this proposal, specifically regarding whether electronic display systems currently in use comply, or are capable of complying, with these proposed requirements. The proposed requirements are safety and security-related. While the contents of an exclusive track occupancy authority transmitted to a roadway worker in charge are not typically confidential in nature, the integrity of such information is vitally important to the safety of roadway workers and trains. FRA proposes these requirements to take a proactive approach with regard to the integrity of data transmissions of electronic authorities.

Proposed paragraphs (b) and (c) provide for the identification and authentication of users. A user would typically refer to the roadway worker in charge and train dispatcher or control operator, as they are the persons who are most often involved in an exclusive track occupancy authority transaction. A user could also be a process or a system that accesses or attempts to access an electronic display system to perform tasks or process an authority. Identification is the process through which a user presents an identifier that is uniquely associated with that user, in order to gain access to an electronic authority display system.

Authentication is the process through which an individual user's identity is validated. Most authentication techniques follow the "challenge-response" model by prompting the user (the challenge) to provide some private information (the response). Basic authentication factors for individual users could involve information an individual knows, something an individual possesses, or something an individual is (e.g., personal characteristics or "biometrics", such as a fingerprint or voice pattern).

Proposed paragraph (c) would require that any authentication scheme utilized ensures the confidentiality of authentication data and protects that data from unauthorized access. Such schemes would be required to utilize algorithms approved by the Federal government's National Institute of Standards and Technology (NIST), or any similarly recognized standards body. This requirement parallels a similar requirement for Positive Train Control systems found at 49 CFR

236.1033(b),⁹ and is proposed to help prevent deliberate "spoofing" or "man in the middle" attacks on exclusive track occupancy authority information communicated and displayed via electronic device. NIST is the agency responsible for defining cryptographic algorithms for non-Department of Defense entities.

Proposed paragraph (d) would address the transmission, reception, processing, and storage of exclusive track occupancy authority data, and is proposed to help ensure the integrity of such data. Data integrity is the property of data not being altered since the time data was created, transmitted, or stored, and generally refers to the validity of the data. This paragraph proposes that new electronic authority display systems placed into service after the effective date of a final rule in this rulemaking would be required to utilize message authentication codes (MAC) to ensure data integrity. Similar to the proposed requirements of paragraph (c), MAC's would be required to utilize algorithms approved by NIST or a similarly recognized standards body. Unlike cyclical redundancy codes (CRC), MAC's provide protection against malicious interference. Proposed paragraph (d) would permit the use of systems implemented prior to the date of a final rule in this rulemaking to utilize CRC's, but would require that the collision rate for the CRC checks utilized be less than or equal to 1 in 2³². This proposed collision rate would help provide reasonable protection against accidental or non-malicious errors on channels that are subject to transmission errors, and is based on a Department of Defense standard. Existing systems utilizing CRC's that do not meet this minimum standard would be required to be retired and replaced with systems that utilize MAC's not later than one year after the effective date of a final rule. Proposed paragraph (d)(2) would require that MAC or CRC checks only be used to verify the accuracy of a message, and that an authority must fail if the checks do not match.

Proposed paragraph (e) would also require that the actual electronic device used to display an authority issued via data transmission retain any authorities issued for a minimum of 72-hours after expiration of such authority. This minimum proposed requirement is primarily for investigation purposes, as it would give investigating bodies such as FRA or the NTSB an opportunity to study authority data in non-reportable accident/incident situations, and to compare it to a dispatcher or control

operator's corresponding electronic authority transmission records. This requirement could also be helpful in compliance audit situations.

Proposed paragraph (f) mirrors the language found in 49 CFR 229.135(e) of FRA's Railroad Locomotive Safety Standards. Section 229.135(e) governs the preservation of data from locomotive event recorders or other locomotive mounted recorders in the event of an accident. This proposed paragraph uses the same language as found in existing § 229.135(e), and would require that railroads preserve data from any electronic device used to display an authority for one year from the date of a reportable accident/incident under 49 CFR part 225, unless FRA or the NTSB notifies the railroad in writing that the data are desired for analysis.

Proposed paragraph (g) would require that new electronic display systems implemented after the effective date of a final rule, would provide Level 3 assurance as defined by the December 2011, version of NIST Special Publication 800-63-1, "Electronic Authentication Guideline." NIST Special Publication 800-63-1 provides technical guidelines for widely used methods of electronic authentication, and is publicly available online at <http://csrc.nist.gov/publications/nistpubs/800-63-1/SP-800-63-1.pdf>. Systems that were implemented prior to the effective date of a final rule in this rulemaking would be required to provide at least Level 2 assurance as described in NIST Special Publication 800-63-1, and systems that do not provide Level 2 assurance or higher would be required to be retired or updated to provide such assurance no later than one year after the effective date of a final rule. These assurance levels govern the elements of the authentication process. Level 2 assurance requires some identity proofing, and passwords are accepted (but not PINS). Level 3 assurance requires more stringent identity proofing and multi-factor authentication, typically a password or a biometric factor used in combination with a software or hardware token.

FRA acknowledges that if this proposed paragraph (g) were included in a final rule in this rulemaking, that FRA must first gain approval to do so from the Director of the Federal Register in accordance with 5 USC 552(a) and 1 CFR part 51. If interested parties do not have a copy of this document to be incorporated by reference, FRA can make a copy available for review upon request. FRA notes that this document is publicly available online at the web

⁹ 75 FR 2598, 2676 (Jan. 15, 2010).

site address listed in the discussion above.

FRA has limited information regarding whether existing electronic display systems in use already comply with the above requirements. FRA requests comment, to include potential cost information, on this proposal. As stated above, FRA proposes these requirements in an effort to be proactive. FRA is coordinating these proposed requirements with the U.S. Department of Homeland Security.

FRA notes that a portable device used to display an authority can be a laptop computer or hand held device. Because of continuous improvement in technology, FRA is not proposing any technical specifications for the physical attributes of a display device. Nevertheless, FRA expects railroads to take into account the environment that such devices will be subject to during use. Finally, FRA notes that railroads are always allowed to implement more restrictive security requirements provided the requirements do not conflict with Federal regulation.

Section 214.323 Foul Time

Section 214.323 generally sets forth the requirements for establishing working limits on controlled track through the use of foul time. FRA is proposing to make several amendments to existing § 214.323. FRA is proposing to adopt the Working Group's recommended consensus language, as well as certain other amendments. First, FRA is proposing to add the words "or other on track equipment" to existing paragraph (a) which currently provides that foul time may be provided only after the relevant train dispatcher or control operator has withheld authority "of all trains" to move into or within the working limits. This change is only for consistency purposes within this existing section, as existing paragraph (c) prohibits the movement of both trains and on-track equipment from moving into working limits while foul time is in effect. This proposed revision also acknowledges that the incursion of on-track equipment into or within working limits while foul time is in effect presents the same type of safety concern to roadway workers as would train movements.

Next, FRA is proposing to amend reference to "roadway worker" in existing paragraph (b) to "roadway worker in charge." This proposed change is only to reflect that a new definition for that term is being

proposed in this NPRM, and is being proposed to replace the varying generic references to that roadway worker position that are currently located throughout the existing RWP regulation. FRA also intends this change to make it clear that roadway workers in charge are the only employees who may establish working limits, which the RWP regulation has always required at § 214.319(a). FRA is also proposing to make this same change to existing § 214.323(c).

FRA is also proposing to add a new paragraph (d) to this section. Paragraph (d) would expressly state that the roadway worker in charge would be prohibited from permitting the movement of trains or other on-track equipment into or within working limits protected by foul time. As background, foul time is a more abbreviated form of establishing working limits than that of exclusive track occupancy, and has its historical roots in the Northeast United States. Foul time was typically for short-duration work activities with limited to no disturbance of the track structure. Foul time is a form of working limits under the control of a roadway worker in charge, it does not provide for the same flexibility as does exclusive track occupancy (*i.e.*, movement into or through the foul time limits under the direction of the roadway worker in charge). The original RWP regulation and accompanying section-by-section analysis did not describe what type of activities could occur under foul time procedures, or expressly state that the roadway worker in charge was not permitted to allow the movement of trains or equipment into or within working limits. As such, foul time in some locations is not being used as was originally intended. Proposed paragraph (d) is intended to address this issue, and proposed § 214.324 below would provide for added flexibility in establishing working limits within manual interlocking and controlled points.

In post-Working Group comments on a draft of the consensus items, AAR raised the issue of a railroad's rules referring to a form of on-track safety as "foul time", when in actuality the form of protection meets the requirements of § 214.321 (exclusive track occupancy). In response, FRA recognizes that some railroads may refer to a form of on-track safety as "foul time" when they are actually using exclusive track occupancy procedures. FRA notes that for enforcement purposes, the agency

looks to how a railroad's form of on-track safety protection actually functions, rather than what name is used for such protection.

Section 214.324 Verbal Protection

The Working Group recommended a new proposed § 214.324, which would enable the establishment of working limits through the use of "verbal protection." FRA is proposing this recommendation, which helps to address a discrepancy discussed during the Working Group process regarding how on-track safety is used in the Western portion of the United States. Verbal protection is similar to foul time, but would be a permitted method to establish working limits specifically within manual interlockings or controlled points. Verbal protection differs from foul time in that on-track equipment and trains would be permitted to move into and within working limits after receiving permission to do so from the roadway worker in charge and after receiving authority from the train dispatcher or control operator. Since controlled points and manual interlockings generally encompass a relatively small area, roadway workers in charge would encounter reduced instances of other employees, who might be some distance away, requesting to use the roadway worker in charge's established working limits for a separate task. Also, such locations typically provide an additional level of protection because the dispatcher or control operator would be required to apply blocking devices to govern the signals and/or switches at the limits of a manual interlocking or controlled point to prevent movement into working limits (in accordance with the requirement in proposed paragraph (a) that dispatchers and control operators would be required to withhold authority for trains to move into working limits). It is important that when verbal protection is used to establish working limits, there is a clear understanding of which track(s) are being protected. For example, if the verbal protection only applies to one track inside an interlocking containing multiple tracks, the roadway workers utilizing that verbal protection would be required to establish an alternate method of on-track safety on any other tracks they may need to foul while performing their work.

The following table provides a comparative reference between the use of foul time and verbal protection:

| Type working limits | Permissible locations | | On-track occupancy | |
|-------------------------|---|---|---|--------------------|
| | Controlled track outside manual interlockings and controlled points | Manual interlocking and controlled points | Trains | On-track equipment |
| Foul time | Yes | Yes | No | No. |
| Verbal protection | No | Yes | Yes, movement permitted with permission of roadway worker in charge and permission by dispatcher/control operator to pass stop signal at entrance to control point/manual interlocking. | Yes. |

The proposed introductory text of this new section specifically states that verbal protection may only be used within manual interlockings or controlled points (as the chart above denotes, foul time may also still be used within the limits of a manual interlocking subject to the requirements of § 214.323). Proposed paragraph (a) mimics the corresponding paragraph in the foul time provision (§ 214.323(a)), including the reference to movement of “other on-track equipment” as well as train movements. As explained above, this is to acknowledge that the unauthorized or inadvertent incursion of on-track equipment into or within working limits presents the same type of safety concern to roadway workers as do train movements.

Proposed paragraph (b) mirrors the text of § 214.323(b) regarding foul time and proposes to require each RWIC to whom verbal protection is transmitted repeat the track number, track limits and time limits of the verbal protection to the issuing employee for verification. In post-RSAC comments on the recommended consensus language for this paragraph, AAR suggested that the phrase “track number” be amended to refer instead to “track identifier.” AAR suggested such to allow for commonly used descriptions for certain tracks (such as “westward main track” or where tracks may not be numbered). FRA notes that the phrase “track number” is also used in the existing foul time section. While FRA may consider revising this term in a final rule, such revision may not be necessary. FRA believes it is understood, and has been permissible under the existing RWP regulation, that where applicable, a track identifier may be used to positively identify the track(s) on which working limits are being established.

Proposed paragraph (c) differs from its corresponding paragraph under foul time, in that it would permit movements into and within working limits if both the roadway worker in charge and train dispatcher or control operator give permission for such movements. In post-Working Group comments on the recommended consensus language, AAR

noted that the words “control operator” were omitted from the consensus language at the end of this proposed paragraph. As the words “train dispatcher” and “control operator” are used in tandem for purposes of both this section and the foul time section, FRA believes these words were inadvertently omitted. Therefore, in this proposal, FRA has included the words “or control operator” after the words “train dispatcher” in this proposed paragraph.

Like foul time, under verbal protection the roadway worker in charge would not be required to copy a written authority and maintain possession of it while working limits were in effect. The roadway worker in charge would only be required to correctly repeat back the applicable working limits information to the train dispatcher or control operator. However, because verbal protection differs from foul time in that the roadway worker in charge may permit trains or other on-track equipment to move through the working limits, FRA requests comment on whether a roadway worker in charge should be required to make and maintain a copy of the working limits information. This requirement would ensure that a roadway worker in charge could reference a written document if questions regarding the working limits arose, but FRA also recognizes such a requirement could potentially mitigate the utility of this proposed RSAC consensus recommendation.

Section 214.325 Train Coordination

FRA is proposing a minor amendment to existing § 214.325. As established by existing § 214.319, § 214.325 governs the establishment of working limits on controlled track via train coordination. However, unlike the other controlled track working limits provision (§§ 214.321, 214.323, and proposed § 214.324), the existing text of § 214.325 does not actually state that it applies to working limits established on controlled tracks. Therefore, FRA is proposing to add the words “on controlled tracks” to the first sentence of the introductory paragraph of § 214.325. This amendment is proposed simply for

consistency and clarity purposes. FRA is also proposing to add the words “in charge” after the existing words “roadway worker” in the first sentence of the introductory paragraph. This proposed change would help provide uniformity of reference to “roadway worker[s] in charge” at various locations in the RWP regulation text, and is also to reflect that under existing § 214.319, that only a roadway worker in charge may establish working limits.

Section 214.327 Inaccessible Track

FRA is proposing to add three new provisions to § 214.327, all of which are consensus items recommended by the Working Group. Existing § 214.327 governs the establishment of working limits on non-controlled track. As explained in the preamble to the final rule which promulgated the original RWP regulation, trains can operate on non-controlled track without first having to receive specific authority to do so. 61 FR 65791. Unlike in an exclusive track occupancy situation on controlled track governed by § 214.321, a dispatcher or control operator cannot withhold a train’s movement authority to enter a specified set of working limits on non-controlled track. Thus, in order to establish working limits on non-controlled track, the track must be rendered inaccessible. These three new proposed consensus provisions would expand the number of available methods to make such non-controlled track inaccessible.

First, proposed paragraph (a)(6) would permit what informally may be referred to as an “iron flagman” to render non-controlled track inaccessible. This provision would permit the use of a manned locomotive as a point of inaccessibility. This procedure mimics some of the provisions of train coordination under existing § 214.325, which is a method of establishing working limits on controlled track. However, it is critical that this provision not be confused with train coordination. When train coordination is used, on-track safety is derived through the use of a train’s occupancy authority. On non-controlled

track, no occupancy authority exists and additional trains could move into the same segment of track at any time.

Proposed paragraph (a)(6) anticipates locations where a locomotive with or without cars may be used as a physical feature at multiple points of entry into working limits. For example, if a locomotive with cars coupled to it is located on a ladder track in a yard, that train could be used to block the entrance to all the tracks connected to the switches under the train.

Proposed paragraph (a)(6) would require that to establish a locomotive as a point of inaccessibility, the roadway worker in charge would first have to communicate with the train crew in control of the such locomotive and determine that the locomotive was visible to the roadway worker in charge. Next, the locomotive would be required to be stopped, and any further movements of the locomotive would only be made as permitted by the roadway worker in charge. These requirements all parallel existing requirements in the train coordination provision at § 214.325. FRA has amended the recommended consensus language for this paragraph for purposes of clarity. The introductory text of existing paragraph (a) of this section states that “[w]orking limits on non-controlled track shall be established by rendering the track within working limits physically inaccessible to trains at each possible point of entry by one of the following features:” and then goes on to list what features may be used to render track inaccessible in existing paragraphs (a)(1)–(a)(5). The recommended consensus text of paragraph (a)(6) reads that a “[t]rain crew directly in control of a locomotive with or without cars may be considered a physical feature at one or more points of entry to working limits.” However, as the train crew is not the physical feature being used to block access to the track, but rather the locomotive that the crew is in control of is, FRA has amended the first sentence to reflect such. FRA has also replaced the words “roadway worker” with “roadway worker in charge who is responsible for establishing working limits.” This change is intended to reflect that, as discussed throughout this document, only a roadway worker in charge can establish working limits, and also for uniformity of reference throughout the regulations. FRA has also proposed this change as it wishes to emphasize that if this method of establishing working limits is utilized, that it is important that the roadway worker in charge of the working limits and the train crew assigned to the locomotive

communicate directly with one another and have a clear understanding of the procedures to be followed. FRA has also slightly amended the numbering of the requirements from that as originally recommended. The amendments to the consensus language are not intended to be substantive, but only to try to better organize the text into final regulatory format.

In addition, proposed paragraph (a)(6) of this section would require that the crew of the locomotive shall not leave the locomotive unattended or go off duty unless communication occurs with the roadway worker in charge, and an alternate means of on-track safety protection is established. The last requirement of this paragraph would address the concern of movement of any cars that may be coupled to the locomotive were those cars to be uncoupled. Cars coupled to the end of the locomotive where roadway workers are being protected (nearest to the roadway workers) would be required to be connected to the train’s air brake system, and such system would be required to be charged with compressed air in order to initiate an emergency brake application in case of unintended uncoupling. Cars coupled to the locomotive on the same track on the opposite end of the roadway workers would be required to have sufficient braking capability to control movement.

Proposed paragraph (a)(7) addresses the use of block register territory rules as a method to render track inaccessible. FRA notes that while block register territory is generally considered non-controlled track, where a train dispatcher or other employee must authorize occupancy or movement on a track in block register territory, this proposed section would not apply. FRA considers such track controlled track, and the permissible on-track safety methods for controlled track under the RWP regulation would apply.

Generally, in block register territory trains can only occupy a block of track after viewing a log book or register sheet to ensure no other trains or equipment are occupying that block. After making such verification, the train crew wishing to occupy that block would then make an entry into the log book indicating the block was occupied by their train. Upon exiting a block, the crew would make an entry noting that the block was cleared. Typically, only one train can occupy a block of track in block register territory at one time. The verifications and entries discussed above can be made in a variety of different manners, to include via radio to an employee who keeps the log book.

Under the existing RWP regulation, it is necessary to utilize one of the existing methods of making track inaccessible under § 214.327 in order to establish working limits on non-controlled track. The rules governing block register territory are not currently included. Railroads expressed concern to FRA about having to use portable derrails to render a segment of track inaccessible in block register territory under existing § 214.327, especially because track in a block register territory can be main track.

The Working Group addressed this issue and recommended consensus language, which would permit a roadway worker in charge or lone worker to utilize the procedures governing block register territory to establish working limits within such territory. Under this proposed section, working limits will have been permissibly established if a roadway worker in charge or lone worker complies with the applicable railroad procedures for occupying a block register territory and makes the required log entries to indicate the block is occupied. By doing so, no trains or other on-track equipment would be permitted to enter such block under a railroad’s operating rules. However, under this provision the lone worker or roadway worker in charge would have the absolute right to render such track in a block register territory inaccessible via the existing inaccessible track provisions at paragraphs (a)(1)–(a)(5) of this section if they chose to do so for any reason. In order to conform to regulatory text drafting practices, FRA has varied from the recommended consensus language slightly and is proposing to the words “under the provisions of paragraphs (a)(1) through (a)(6) of this section” in the last sentence of paragraph (a)(7). This language is being proposed in place of the recommended Working Group language that read “under the provisions of §§ 214.327(a)(1) through 214.327(a)(5).” This change to reference that newly proposed paragraph (a)(6), rather than existing paragraph (a)(5), would be the last paragraph in this section that could be used to physically render track inaccessible. FRA requests comment on whether newly proposed paragraph (a)(8) should also be included in that list.

FRA notes that roadway workers are already required by existing § 214.313(a) of the RWP regulation to follow all on-track safety rules and procedures of a railroad. Thus, in complying with proposed paragraph (a)(7), roadway workers would be required to comply with all applicable rules governing the

occupation of track in a block register territory. FRA also notes that it has slightly amended the recommended consensus text at the beginning of the first sentence of proposed paragraph (a)(7), to read “[a] railroad’s procedures governing block register territory.” The recommended consensus text initially contained reference to “[t]he provisions of a block register territory * * *.” FRA has made this slight change only for purposes of reading clarity. While there can be no provisions of a block register territory, there can be provisions or procedures which govern the use of such a territory. This change is not intended to be substantive in nature.

New proposed paragraph (a)(8) would address the establishment of working limits on non-controlled main tracks within yard limits via the use of a bulletin. This provision was a Working Group consensus item and would permit working limits to be established whereby trains are issued bulletins in advance of occupying such main track which would notify them of such working limits.

As background, while FRA believes the definitions of controlled track and non-controlled track to be clear, FRA has received past inquiries regarding the differences. This is partly due to a misconception that the term “main track” is synonymous with “controlled track.” In fact, a main track is often a non-controlled track, which typically is the case within yard limits or restricted limits. Restricted limits generally refer to main track where trains may only proceed at restricted speed, even if operating on a clear signal indication. In yard limits, trains or other on-track equipment can occupy the main track in most instances without obtaining authorization from a train dispatcher or control operator. Where this is the case, and trains or other on-track equipment derive their authority to occupy the main track in yard limits from the railroad’s operating rules, such track is considered non-controlled track. In some cases, a non-controlled main track through yard limits may even be equipped with a signal system as discussed in the analysis for § 214.301 above, and when trains are operating on a signal indication more favorable than “restricting” they may be permitted to move at greater than restricted speed. However, if via railroad operating rules there is a control operator or dispatcher in control of all occupancy by trains, engines, and on-track equipment within yard limits, such track would be considered controlled track. FRA notes that trains may be required by railroad rules to contact a yardmaster before entering main track in yard limits.

Where this mandatory contact is not authoritative in nature, and occupancy authority is still gained via railroad operating rules, such track would still be considered non-controlled track.

Since main track within yard limits is generally non-controlled track, the Working Group addressed this issue and came to consensus to recommend allowing working limits to be established via the use of track bulletins. Under proposed paragraph (a)(8), railroad operating rules would be required to prohibit movements on main track within yard limits unless the train or engine crew or operator of on-track equipment was first required to receive notification of any working limits in effect. Before occupying such main track where the notification denoted that working limits were in effect, the crews or operators would first be required to receive permission from the roadway worker in charge to enter the working limits. Working limits established in this manner would be issued by a railroad for planned work activities, such that bulletins or other forms of notification would be prepared ahead of the work to be performed in time to be issued to train crews or operators (unplanned work that would not allow notifications to be issued appropriately ahead of time would still require that another form of working limits or on-track safety be established).

This provision would also require, where the maximum authorized speed was restricted speed, that red flags or signs be displayed at the limits of the authority. This requirement would provide an extra measure of safety by providing train crews notice that, unless they had received permission through working limits, they must stop their movement. Where restricted speed is in effect, train crews or operators are required to stop their movement within one-half the range of vision. Therefore, crews who had not received permission into working limits from the roadway worker in charge, and who came upon such a red flag, would be required to stop their movement within one-half the distance to the flag, which would be short of working limits.

Where the maximum authorized speed is in excess of restricted speed, advance warning flags or signs must be displayed, such that a crew would have an opportunity to stop their train short of working limits if they had not received permission to enter the limits from the roadway worker in charge. The proposed language states that advance flags must be used “where physical characteristics permit.” This could refer to locations where entrances exist within the working limits (other than

main tracks connected to the main track within the working limits) and only red flags would be necessary. Otherwise, where speeds within yard limits are in excess of restricted speed, FRA would expect every reasonable effort that advance flags be placed far enough out to provide advance warning such that a train crew could stop an on-track movement short of entering working limits. Railroad operating rules in effect would govern the use of such advance flags.

FRA has slightly amended the language of this paragraph as recommended by the RSAC. The first sentence of the recommended text read “[r]ailroad operating rules that require train or engine movements to be prohibited on a main track within yard limits or restricted limits until the train or engine receives notification of any working limits in effect and do not enter working limits until permission is received by the roadway worker in charge.” For purposes of reading clarity only, FRA has instead proposed that the first sentence read “[r]ailroad operating rules that prohibit train or engine movements on a main track within yard limits or restricted limits until the train or engine receives notification of any working limits in effect and prohibit the train or engine from entering any working limits until permission is received by the roadway worker in charge.” This amendment is not intended to be substantive in nature.

FRA is proposing this paragraph (a)(8), as it was a Working Group consensus recommendation and because it has the potential to provide more flexibility for the industry in yard limits operating situations. However, requests comment on whether this provision has the potential to cause confusion over whether track is controlled track or non-controlled track, as in some respects it mixes aspects of both (train crews need a bulletin and may be required to contact a dispatcher or yardmaster to enter yard limits, but at the same time do not technically need “permission” to occupy such track).¹⁰ Further, FRA requests comment on the last sentence of the consensus text recommended by the Working Group. Paragraph (a)(8) would require advance flags to be placed out to protect working limits when speeds greater than restricted

¹⁰ As background, the Northeast Operating Rules Advisory Committee (NORAC, the operating rules adopted by many railroads in the northeast United States) has treated main track within yard limits as controlled track, while the General Code of Operating Rules (GCOR, the operating rules primarily used by many railroads in the western United States) treats such track as non-controlled track.

speed are authorized, and where physical characteristics permit such placement of flags. As mentioned above, FRA is aware it is not possible (or necessary) to always place advance flags out under this proposed provision. However, FRA is contemplating whether, if this provision was adopted in a final rule, more specific rule text is needed to govern the use of advance flags where speeds greater than restricted speed are authorized within yard limits. FRA wishes to avoid any situation where, at the discretion of a roadway worker in charge, advance flags are not placed out in situations where they necessarily should be and whereby a risk of train incursion into working limits is created.

Section 214.329 Train Approach Warning Provided by Watchmen/ Lookouts

Section 214.329 addresses the use of watchmen/lookouts to provide warning of approaching trains to roadway workers in a roadway work group who foul any track outside of working limits. FRA is proposing four amendments to this section. The first proposed amendment is to accommodate one item being proposed in the passenger station platform snow removal section, as discussed at length below. Specifically, proposed § 214.338(a)(2)(iii) provides that during snow removal operations being performed under that section, that train approach warning may be based on available sight distance, which in some geographical circumstances may provide for less warning time than prescribed by existing § 214.329(a). In order to account for that proposed provision, FRA is proposing to amend the first sentence of § 214.329 by inserting the words “[e]xcept as provided for in § 214.338(a)(2)(iii)” at the beginning of the sentence.

FRA is also proposing to amend paragraph (a) to change reference to “maximum speed authorized” to instead read “maximum authorized speed.” During the Working Group meetings, consensus was reached to define the term “maximum authorized speed” for purposes of providing clarity to existing sections §§ 214.329(a) and 214.337(c)(4), as discussed above in the section-by-section analysis for § 214.7, the definitions section. However, the Working Group recommended adding a definition for the term “maximum authorized speed” rather than adopting the wording as it currently exists in §§ 214.329 and 214.337. As the term “maximum authorized speed” is the more commonly used word order in the railroad industry, FRA is proposing to amend those two sections to reflect the

new consensus term recommended by the Working Group. FRA is proposing this for both accuracy and consistency purposes. FRA is not proposing to amend the substance of these regulations with this proposal.

FRA is also proposing to amend paragraph (a) of this section by adding a sentence to the end of the paragraph that reads “[t]he place of safety to be occupied upon the approach of a train may not be on a track, unless working limits are established on that track.” This exact language is already included in existing § 214.337(d), which governs on-track safety procedures for lone workers. This requirement is also the subject of FRA Technical Bulletin G-05-10. As explained in that Technical Bulletin, it is expected that roadway workers clear all tracks upon being given train approach warning, as by clearing onto another track where only train approach warning (or no form on-track safety) is being provided presents an extremely dangerous situation which may potentially trap workers if multiple train movements occur simultaneously. FRA has long interpreted existing § 214.329 to already largely prohibit the use of another track as a place of safety, and this proposed amendment would merely codify that interpretation.

FRA is also proposing to add a new paragraph (h) to this section. This paragraph would prohibit the use of train approach warning as an acceptable form of on-track safety for a roadway work group using equipment or material that cannot be readily removed by hand from the track to be cleared. The existing RWP regulation is silent on this point, and FRA wished to establish minimum safety standards governing this issue. The Working Group discussed this provision and agreed in concept with the prohibition, but was unable to reach a consensus recommendation concerning the mobility of equipment on the track and three variations of its removal. The three variations of removal discussed were equipment that was readily removable: (1) By hand; (2) by hand by one employee; or, (3) by hand by two employees. FRA is proposing that the new paragraph (h) indicate that train approach warning may be used when the equipment or material used by the workers fouling the track can be removed “by hand” upon the notification of the approach of a train. By stating only “by hand,” and not specifying the number of persons, the proposed amendment still allows for flexibility for railroads in various operating situations. Where only one roadway worker is performing work, and he or she is being provided train

approach warning by another roadway worker, this would necessitate that the equipment being used is of the nature that it can be removed from the track by hand by one person. Where additional roadway workers are present and in the immediate work area, this would allow for multiple roadway workers to remove a piece of equipment by hand upon being given train approach warning, so long as all roadway workers are able to remove the equipment and occupy a place of safety not less than 15 seconds before a train passes, as required by existing paragraph (a). An example of an activity that would be prohibited by proposed paragraph (h) would be the use of train approach warning as the method of on-track safety to place a crane boom into the foul of a track. However, on non-controlled track at location where it is feasible to stop a train, such as yard track, the use of a flagman via existing § 214.327(a)(1) might be appropriate. In that example, it may be practical during the on-track safety briefing to reassign a watchman/lookout to instead serve as a flagman (if so qualified and equipped) to stop trains short of any equipment fouling the track. On controlled track it would be appropriate to establish working limits.

During the Working Group discussion on this topic, a representative of a labor organization stressed that § 214.329 was promulgated in order to provide protection for roadway workers, and not for equipment. FRA agrees, but feels this requirement, if complied with appropriately, will advance railroad safety. Roadway workers who are unable to remove equipment from a track and occupy a place of safety prior to the arrival of a train place themselves at risk, amongst other things, of being struck by objects that are hit by trains. They also may obviously be at risk if they have to struggle to try to remove heavy equipment from a track on which a train is approaching and do not occupy a place of safety before the train’s arrival. Train crews and passengers and the general public are also placed at risk if equipment left on the tracks is struck and the train derailed as a result. Therefore, FRA feels it is necessary to propose an amendment expressly limiting when train approach warning may be used based on the type of equipment that is fouling a track. FRA is also proposing a similar requirement in the lone worker section, as discussed further in the section-by-section analysis for § 214.337 below. FRA requests additional comment on these proposals.

FRA wishes to address a question regarding existing § 214.329 that often arises. FRA is often asked whether the

use of a portable radio or a cell phone may be used as the sole method used to provide train approach warning to roadway workers. As explained in FRA Technical Bulletin G-05-28, portable radios and cell phones cannot be used as the sole communication to provide train approach warning. FRA believes this practice to be dangerous; especially should these devices fail in any manner as a train approaches a roadway work group. Further, these devices are not among those expressly listed in the existing watchman/lookout definition in § 214.7. While FRA has no objection to a radio or a cell phone being used to supplement the equipment issued to a watchman/lookout to provide train approach warning, FRA does not consider them to be proper equipment to provide sole auditory warning in accordance with this section.

Section 214.331 Definite Train Location

FRA is proposing to require that the use of definite train location as a form of on-track safety be discontinued one year after publication of a final rule in this rulemaking. Railroads were permitted to use this form of on-track safety if they already had such procedures in effect as of January 15, 1997, as established by existing §§ 214.331(a) & (c)(1). Class I and commuter railroads that were grandfathered in by that date were required to schedule a phase-out of the use of definite train location by a definite date, as more positive forms of on-track safety are now available. As it has been over 15 years since the scheduled phase-out requirement was promulgated, FRA is proposing to end the use of this method of providing on-track safety. The use of this method of providing on-track safety is not common, and FRA staff is currently unaware of any railroads that are using this form of on-track safety. However, FRA requests comment on this proposal.

Section 214.333 Informational Line-Ups of Trains

FRA is proposing to require that the use of informational line-ups of trains as a form of on-track safety be discontinued one year after publication of a final rule in this rulemaking. Railroads were permitted to use this form of on-track safety if they already had such procedures in effect as of March 14, 1996, as established by existing § 214.333(a). Railroads that were grandfathered in by that date were required by paragraph (c) to schedule a phase-out of the use of information line-ups of trains, as more positive forms of on-track safety are now available. As it

has been over 15 years since the scheduled phase-out requirement was promulgated, FRA is proposing to end the use of this form of on-track safety. As discussed in the preamble to the final rule which promulgated this section, the Advisory Committee involved in creating the original RWP regulation stated that the use of train line-ups was not common at that time, and recommended that such use be further reduced and discontinued. 61 FR 65971. FRA staff is currently unaware of any railroads that are using this form of on-track safety. FRA requests comment on this proposal.

Section 214.335 On-Track Safety Procedures for Roadway Work Groups, General

Section 214.335 sets forth the general on-track safety procedures for roadway work groups and, in part, requires that before a member of a roadway work group fouls a track, on-track safety must be established in accordance with part 214. This NPRM reflects that the adjacent track rulemaking slightly amended the title of this existing section by adding the word "general." FRA is proposing four amendments to this section. First, FRA is proposing to amend existing paragraph (a) of this section in order to include reference to proposed § 214.324 (verbal protection) and to § 214.336 (adjacent track protections) in the sections listed. This proposal is simply to update that list should proposed § 214.324 be adopted in a final rule in this rulemaking, and should § 214.336 of the adjacent track rulemaking go into effect as planned on July 1, 2013.

Next, similar to the proposed amendment to § 214.329(a), FRA is proposing to add the words "except as provided for in § 214.338" to the beginning of paragraph (a). This proposed amendment is intended to acknowledge the new station platform snow removal section, proposed in § 214.338 below, represents an exception from (or is a hybrid form of) the typical methods of providing on-track safety. Work performed under proposed § 214.338 would be governed by the requirements of that section.

FRA is also proposing to replace the word "and" from the existing text of paragraph (a) between reference to § 214.329 and § 214.331, and to replace it with the word "or". The word "and" has appeared in the text of this section since the RWP regulation's inception in 1996. However, FRA noticed that, as written, the word "and" could imply that all of the on-track safety/working limits sections listed would have to be provided when a roadway worker fouls

a track. This is obviously not what was intended when this section was promulgated, nor is it how this section has been applied. FRA believes the use of the word "or" is more appropriate when listing the various sections that may be utilized to provide on-track safety for roadway workers.

Finally, for consistency purposes, FRA is proposing to incorporate the new term "roadway worker in charge" into existing paragraph (b) of this section. That new proposed term would replace the existing language in paragraph (b) that generically refers to the "roadway worker responsible for the on-track safety of the roadway work group." This proposed change would help provide uniformity of reference to "roadway worker[s] in charge" at various locations in the RWP regulation text.

Section 214.337 On-Track Safety Procedures for Lone Workers

Section 214.337 governs the on-track safety procedures for lone workers. FRA is proposing two changes to this section, both of which are Working Group consensus recommendations. First, existing § 214.337 prohibits lone workers from using individual train detection (ITD) as the method of establishing on-track safety in certain locations. Specifically, existing paragraph (c)(3) prohibits the use of ITD within the limits of a manual interlocking, a controlled point, or a remotely controlled hump yard facility. In a hump yard, equipment can simultaneously move in either direction on a multitude of tracks. Similarly, within the limits of a manual interlocking or a controlled point, a particular physical layout may contain multiple switches, tracks, diamonds, or a movable bridge(s). As such, the prohibition on using ITD in those locations recognized that it would be difficult for a lone worker to perform work while safely detecting trains that could be approaching from multiple directions on multiple tracks.

The Working Group did address expanding the use of ITD in certain instances in those prohibited locations where the safety concerns discussed above are not implicated. Specifically, the Working Group came to consensus to recommend the allowance of ITD at controlled points that consist of signals only. The use of ITD at a controlled point consisting of signals only presents no more danger than using ITD for on-track safety on any track within a traffic control system. There is no additional risk to lone worker safety because if a controlled point consists of signals only, there are no switches, diamonds, or movable bridges that the lone worker

needs to monitor for purposes of train detection on multiple tracks.

Based on the above, FRA is proposing to amend existing paragraph (c)(3) to incorporate this consensus recommendation which states that ITD can only be used "outside the limits of a manual interlocking, a controlled point (except those consisting of signals only), or a remotely controlled hump yard facility." The Working Group discussed potentially recommending expansion of this exception by adding additional manual interlockings and controlled point locations where ITD could be used by lone workers.

However, no consensus recommendation on those additional locations was reached. FRA recognizes that expanding the number of locations where ITD is permitted to be used could represent a cost-savings to the railroad industry. For example, if the use of ITD were expanded to encompass more physical layouts, there would then be additional locations where lone workers would not have to establish working limits or a roadway worker would not have to utilize an additional employee in the form of a watchman/lookout to perform his or her work.

However, the nature of the work performed in interlockings and controlled points is often complicated, and the simultaneous detection of trains via ITD might not be safe. For example, signal maintainers often perform intricate work inside the limits of a manual interlocking or controlled point that requires great attention to detail. A failure to properly perform such work could result in signal or switch malfunctions, and resultant train accidents. While engaged in such intricate work at locations where the physical layout potentially permits the approach of trains from a multitude of tracks or directions, a lone worker may not be able to devote the vigilant attention necessary to detect approaching trains. Therefore, due to safety concerns, FRA is not proposing to expand the use of ITD beyond that of the Working Group consensus recommendation.

Next, FRA is proposing to add a new paragraph (g) to this section. This new paragraph would prohibit the use of ITD as an acceptable form of on-track safety for a lone worker using equipment or material that cannot be readily removed from a track by hand. This new consensus paragraph was recommended by the Working Group in part to address concerns that a lone worker might not be able to remove a piece of equipment he or she is using before the arrival of an approaching train, making a track unsafe for the passage of the train. This

proposed paragraph is also intended to help ensure a lone worker does not have to struggle to remove a piece of equipment located on a track such that the lone worker is not able to remove the equipment from the track and occupy a place of safety in the time specified by existing paragraph (c)(4) of this section. This requirement parallels a similar requirement discussed above that is being proposed in § 214.329. However, the requirement being proposed in § 214.329 permits the use of equipment that might have to be removed by hand by more than one roadway worker. Because § 214.337 is specific to lone workers, the proposal in this section obviously requires a lone worker to be able to remove such equipment by hand by his or herself, as lone workers work independently from other roadway workers.

Section 214.338 Passenger Station Platform Snow Removal and Cleaning

The proposal contained in this new section was discussed extensively by the Working Group, but no consensus recommendation was made to FRA. FRA recognizes that certain activities, such as janitorial work in a passenger station away from the edge of a passenger platform, under limited circumstances, can occur safely without on-track safety being established in accordance with part 214. However, work at the edge of a station platform, including snow removal with hand tools within the four-foot fouling zone, requires that a form of on-track safety be established in order to ensure the worker's safety. While such work may not be of the same intensity as maintenance or construction of track or structures that is typically associated with roadway worker activities, such activities are governed by the existing RWP regulation.

Regarding work such as passenger station platform snow removal, railroads have traditionally expressed concern about their inability to provide roadway workers in charge for each work group (often consisting of contractors) at a large number of locations to remove snow from passenger station platforms when snowstorms occur. It can be extremely difficult to provide on-track safety for platform snow removal due to the transitory nature of such work. Railroads' concerns on this issue are heightened because such work might not typically involve fouling a track, except for the use of hand tools in the same area where passengers typically stand to wait for, and to enter and exit, trains. Also, accident data does not point to a significant number of incidents or any pattern of problems at

passenger platforms. However, FRA recognizes that roadway workers performing snow removal duties on passenger station platforms are exposed to the risks associated with moving trains. FRA also recognizes that while roadway workers performing snow removal duties might occupy the same place on a platform as rail passengers do, they would actually be conducting work, which increases risk exposure.

In order to address this issue, FRA is proposing a new § 214.338, which would permit, under certain enumerated circumstances, a single roadway worker in charge to oversee several station platform work coordinators. Such station platform work coordinators could supervise roadway workers using hand tools to remove snow from passenger platforms or performing light duty cleaning, such as picking up trash or mopping. A station platform work coordinator would not replace, but would supplement the duties of a roadway worker in charge. Either a railroad employee or a contractor employee may be trained and qualified to hold this position. A station platform work coordinator would be required to be trained and qualified in accordance with the specific requirements of proposed § 214.352, which is discussed further below. In proposing this section, FRA has attempted to balance the necessity for railroads to timely provide a safe environment for their passengers while also providing for the safety of roadway workers who perform snow removal or cleaning work.

Proposed paragraph (a) of this section states that snow removal or cleaning activities on passenger station platforms may be performed without establishing working limits in accordance with part 214 provided that numerous conditions are met. Paragraph (a)(1) would require that the railroad designate a station platform work coordinator responsible for directing the on-track safety of the roadway worker or roadway work group performing the snow removal or cleaning. Paragraph (a)(2) would require that the railroad ensure that the fouling areas in which only non-powered hand tools may be used are clearly delineated, and are no less than four feet from the field side of the nearest rail. Such delineations could be made via a tactile strip, via temporary safety cones, or even by printed diagrams being provided to affected roadway workers. Proposed paragraph (a)(3) would require that a station platform work coordinator must also have access to either a landline or wireless communication device (cell phone, railroad radio, or other radio) that would permit him or

her to communicate with the roadway worker in charge, and, in emergencies, to communicate with the train dispatcher or control operator in charge of train and on-track equipment movements on the track(s) at the station. The railroad must provide to the work coordinator the contact information and instructions for reaching both the designated roadway worker in charge and the train dispatcher or control operator.

In accordance with proposed paragraph (a)(4), prior to beginning work, the station platform work coordinator must inform the designated roadway worker in charge of the work to be performed, and the work coordinator must also remain at the station platform the entire time the work is being performed. The station platform work coordinator must also conduct an on-track job safety briefing with the roadway worker or roadway work group performing such work in accordance with the requirements of existing § 214.315. The station platform work coordinator must also establish train approach warning that requires a watchman/lookout to warn of the approach of any train or on-track equipment. When such train approach warning is given, affected roadway workers would be required to withdraw hand-held non-powered tools from the delineated fouling area. Due to the myriad of physical layouts that may exist and the unobtrusive nature of the work being performed, FRA proposes that this warning may be based on available sight distance and may give less timely notice than that prescribed by § 214.329(a). To require the full regime of sight and clearing time under train approach warning could require advance watchmen be placed along the right-of-way during inclement weather, creating an unnecessary dangerous situation. Also, the establishment of a significant number of simultaneous working limits in inclement weather could potentially affect the safe movement of trains. The station platform work coordinator may provide the train approach warning as long as he or she is not engaged in or distracted by any other activities. As such, the station platform work coordinator must inform workers to cease work at the edge of a station platform whenever he is unable to devote full attention to his or her train approach warning task. In any case, each employee providing train approach warning services must be trained in accordance with the requirements of § 214.349.

Proposed paragraph (a)(5) would establish that roadway workers conducting snow removal or cleaning in

accordance with § 214.338 must position themselves on the station platform outside the delineated fouling area, and may only use hand-held, non-powered tools to perform such duties. FRA has not proposed rule text requiring workers to wear highly visible garments while performing work subject to this section. FRA is, however, considering adopting a provision in a final rule requiring workers performing work subject to this section to wear highly visible garments that would meet existing American National Standards Institute/International Safety Equipment Association 107–2010, American National Standard for High-Visibility Safety Apparel and Headwear. FRA requests comment on this issue, and is specifically interested in comment on whether this requirement would enhance safety by helping to clearly identify which persons on a passenger station platform were engaged in such snow removal or cleaning work. FRA also requests comment regarding whether such a requirement would be cost effective, and the basis for the content of comments on that point.

Proposed paragraph (a)(6) would only permit this section to be utilized if the maximum authorized speed on the track adjacent to the platform does not exceed 79 mph. Finally proposed paragraph (b) requires that if any of the conditions in paragraph (a) are no longer be met during the course of the work (e.g., if the provided wireless communication device or landline is no longer functioning, or if the designated roadway worker in charge is no longer accessible), all work that would require a roadway worker to encroach the delineated fouling area shall cease. Work in the delineated fouling area may resume only after all the requirements of this proposed section are met, or if a roadway worker in charge arrives at the work site to provide on-track safety consistent with the requirements of this proposed section, or consistent with other part 214 on-track safety procedures.

FRA notes that the following activities would not be governed by this proposed section, but would continue to be governed by the existing on-track safety requirements subpart C: (1) When a roadway worker actually positions him or herself within the delineated fouling space; (2) when a roadway worker places a power tool of any type (e.g., a snow blower) in the delineated fouling space; or, (3) when a roadway worker performs work of any nature in a crosswalk spanning the track(s) at station platforms.

In proposing this section, FRA recognizes that there are differences in

the work environment on high versus low-level station platforms. In addition, railroads vary with respect to their established clearance dimensions. Therefore, FRA is proposing that each railroad specifically delineate the fouling point on such platforms at which roadway workers must position themselves clear of while performing work under this section. With respect to enforcement activities associated with this section, FRA intends to use the railroad's designated delineation to identify the fouling area, provided the area delineated is at least four feet from the field side of the rail nearest the station platform.

Finally, this proposed section does not contemplate the use of ITD. As such, if a lone worker is performing work at the edge of a station platform, regardless of the nature of the work being performed, all of the requirements of § 214.337 would apply.

Section 214.339 Audible Warning From Trains

The Working Group recommended language that would replace the existing text of § 214.339. Since promulgation of the original RWP regulation, enforcement issues have arisen regarding whether an audible warning must be sounded in accordance with existing § 214.339 when roadway workers are not fouling track but are in the vicinity, and also regarding the required frequency of such warning while trains pass large roadway work groups. There are currently four FRA Technical Bulletins, G–05–08, G–05–15, G–05–26, and G–05–27, which provide guidance to the railroad industry on the requirements of § 214.339. As discussed further below, those technical bulletins would be supplanted upon adoption of any revision to the audible warning requirement in a final rule in this rulemaking. The proposed consensus text significantly modifies existing § 214.339 in order to provide more clarity, and also provides discretion for railroads to develop audible warning procedures to address various operating situations.

Proposed paragraph (a) states that each railroad shall have in effect and comply with written procedures which govern the audible warning to be given by trains or locomotives. Such procedures must require an audible warning be given when approaching roadway workers or roadway maintenance machines that are either on the track on which the movement is occurring, or are about the track if at the risk of fouling. For example, if roadway workers are engaged in work on a track adjacent to a track upon which a train

is approaching, such procedures must require that an audible warning be given. The same would apply to roadway maintenance machines that are moving or are in use on a track adjacent to an approaching locomotive. Roadway machines might obscure the locomotive engineer's view of roadway workers on the ground in the vicinity of a machine. While these two examples focus on roadway workers and roadway maintenance machines located on a track adjacent to the track occupied by an approaching train, it is not FRA's intent to limit the adoption of procedures which require an audible warning be given for workers or equipment located further than the adjacent track.

FRA has slightly amended the introductory text of proposed paragraph (a) as recommended by the RSAC. The recommended consensus text of the first sentence read that "[e]ach railroad shall have in effect and comply with written procedures that prescribe effective requirements for audible warning by horn and/or bell for trains and locomotives approaching any roadway workers or roadway maintenance machines that are either on the track on which the movement is occurring, or about the track if at risk of fouling." FRA has proposed replacing the recommended words "or about the track at risk of fouling" with the words "or about the track if the roadway workers or roadway maintenance machines are at risk of fouling the track." This proposed amendment is not substantive in nature, but is only intended for clarity.

Proposed paragraph (a) would also specifically require the procedures adopted by a railroad address both the initial horn warning to be given, and subsequent warnings. FRA notes that an audible warning consisting only of the locomotive horn being blown for one sequence by a train or locomotive upon the approach and passage of a large roadway work group, such as a tie and surfacing production crew that is spaced out over a long distance, would violate this proposed regulation. At a minimum in such situations, the governing procedures must require that the locomotive horn be sounded and bell be rung upon the approach of each unit of such a work crew. However, FRA is cognizant of the sensitivity of residents who live in close proximity to railroad tracks. As such, when maintenance equipment is obviously just being stored on siding tracks adjacent to a main track, FRA would generally not take exception to a train that does not sound its horn for equipment that is clearly not in use.

Proposed paragraph (a) would also require that the procedures adopted by a railroad address alternative warnings in areas where sounding the horn adversely affects roadway workers. Such alternative warnings may be provided for in locations such as tunnels or passenger terminals, where a train horn could create a hearing hazard for roadway workers and other people. Alternative warning procedures could also be implemented in yards, where a locomotive might frequently pass roadway workers due to the back and forth movement cycles that are common in switching and classification operations. The frequent sounding of horns in such situations can defeat the effectiveness of the warning.

If proposed paragraph (a) is adopted in a final rule in this rulemaking, FRA Technical Bulletins G-05-08, G-05-15 and G-05-27 would be supplanted. Technical Bulletins G-05-08 and G-05-15 addressed audible warnings over a large work area and duration of warnings, respectively, while G-05-27 addressed when an audible warning was required. These technical bulletins would be supplanted as this section would require that a railroad's procedures prescribe when an audible warning is required when roadway workers or roadway maintenance machines are on or about tracks, and also requires that such procedures address both initial and subsequent warnings.

Proposed paragraph (b) reiterates an existing requirement of § 214.339, and states that required audible warnings cannot substitute for on-track safety procedures prescribed in part 214. The on-track safety must be one of the forms of protection prescribed by the RWP regulation. The audible warning requirement is only intended to provide an additional measure of safety in the event that roadway workers might be fouling the track upon which a train or locomotive is approaching.

Next, FRA has received inquiries regarding audible warnings during shoving movements, and also regarding multiple-unit (MU) passenger train equipment not equipped with a bell. With regard to MU equipment not equipped with a bell, FRA Technical Bulletin G-05-26 stated that such equipment would still be in compliance with existing § 214.339 so long as the horn was sounded to provide an audible warning when necessary. The proposed amendments to § 214.339 are still consistent with the guidance in Technical Bulletin G-05-26, and if such amendments are adopted in a final rule, the technical bulletin would be supplanted. With regard to audible

warnings during shoving movements, the requirement to provide an audible warning is predicated on the locomotive engineer or train operator being able to see roadway workers ahead of his or her movement. Therefore, if a locomotive engineer does not have the capability to see roadway workers ahead of his or her movement (e.g., a significant number of cars ahead of the locomotive), and does not sound the horn, the engineer would not be considered to be in violation of this section. However, with increased remote control operations in the railroad industry, in which a large percentage of moves are considered shoving movements, FRA would encourage railroads' to address remote control operations with respect to this proposed section in their adopted procedures.

FRA notes that it encourages the use of highly visible reflective clothing and personal protective equipment to help provide clear indication to locomotive engineers and train operators that roadway workers are present in the vicinity of railroad tracks. The current RWP regulation does not require such equipment, but as discussed in the analysis of § 214.338 above, FRA is requesting comment on such a requirement for roadway workers who perform certain duties. Finally, FRA notes that railroads would be required to comply with the requirements of this section even within highway-rail grade crossing quiet zones.

§ 214.343 Training and Qualification, General

Existing § 214.343 sets forth the general training and qualification requirements for roadway workers. Specifically, paragraphs (a), (b), and (d) of this section prohibit an employer from assigning an employee the duties of a roadway worker (and prohibits an employee from accepting such an assignment), until that employee has received training in the on-track safety procedures associated with the assignment, and also require that roadway workers receive initial and recurrent training once every calendar year on the on-track safety rules and procedures they are required to follow, and requires employers of roadway workers to maintain records of each roadway worker qualification in effect.

Paragraph (c) of existing § 214.343 requires that railroad employees other than roadway workers who are associated with on-track safety procedures, and whose primary duties involve the movement and protection of trains, be trained "to perform their functions related to on-track safety through the training and qualification procedures prescribed by the operating

railroad for the primary position of the employee.

FRA is proposing one amendment to this existing section. That proposed amendment is to add the words “[e]xcept as provided for in § 214.353 * * *” to the beginning of paragraph (c). This change is to reflect that FRA is proposing to amend the existing rule text of § 214.353 to also expressly govern the training of employees other than “roadway workers” (typically transportation employees such as conductors) who act as roadway workers in charge. FRA’s explanation of this change is contained in the section-by-section analysis for § 214.353 below.

§ 214.345 Training for All Roadway Workers

Existing § 214.345 sets forth the minimum content of training provided to roadway workers in accordance with part 214. As recommended by the Working Group, FRA is proposing to amend this section by adding the words “[c]onsistent with § 214.343(b)” to the beginning of the first sentence of the existing introductory paragraph of that section. This amendment is proposed for clarity, and reinforces that the existing RWP regulation requires that each roadway worker must be trained, at a minimum, on the items listed in this section both initially and once every calendar year. FRA also notes that per existing § 214.343(b), roadway workers must also be trained once every calendar year on the on-track safety rules and procedures they are required to follow. Existing FRA Technical Bulletin G-05-16 previously provided guidance on these existing requirements.

FRA is also proposing to amend this section by adding a new paragraph (f). As discussed above in the section-by-section analysis for proposed § 214.317(b), the Working Group recommended a consensus requirement that all roadway worker training include instruction on an employer’s procedures governing the determination of whether it is safe to walk across railroad tracks. FRA removed that consensus item from § 214.317(b), and has proposed to insert it into this section with the other existing roadway worker training requirements, where it is more appropriately located. This proposed requirement is intended to help enable roadway workers safely traverse tracks they may need to cross while not directly engaged in their roadway worker duties when no formal on-track safety is in place on the tracks to be crossed (e.g., when crossing tracks to retrieve a tool or to reach a work area). Fatalities have occurred when roadway

workers walked across tracks and were struck by rolling equipment, and this proposal is intended to help prevent similar incidents from occurring in the future.

§ 214.347 Training and Qualification for Lone Workers

Section 214.347 sets forth the training and qualification requirements applicable to lone workers. FRA is proposing one change to this existing section, and is requesting further comment on whether to make additional amendments in a final rule. First, as discussed above, the Working Group’s consensus recommendation for the proposed amendments to § 214.309 contained a requirement that lone workers receive instruction on the alternative means to access the information in a railroad’s on-track safety manual when his or her duties make it impracticable to carry the manual. FRA removed that consensus recommendation from § 214.309, and has proposed to insert it here with the other existing lone worker training requirements, where FRA believes it is more appropriately located. The alternate means to access the information by a lone worker could include the use of a phone or radio for the lone worker to contact an employee who has the contents of the on-track safety manual readily accessible. This provision would require an employer to train lone workers on the alternative means of access that the employer adopts.

Next, as discussed in the preamble above, the Working Group recommended consensus amendments that would have expressly required recurrent qualification every 24 months and recurrent lone worker training every calendar year (for all of the additional roadway worker qualifications in part 214, e.g., lone worker, watchman/lookout, flagman, roadway worker in charge, and roadway maintenance machine operator). However, in the time period that has passed since the Working Group proposed consensus text for this section, RSIA 2008 mandated that FRA undertake a rulemaking to set minimum training standards for “each class and craft of safety-related railroad employee,” to include training standards for roadway workers. That rulemaking was undertaken by the RSAC, and FRA recently published an NPRM proposing such minimum training standards. 77 FR 6412. The training standards NPRM contains an extensive proposal for refresher training and qualification requirements for roadway workers. Because the consensus recommendation of the RSAC

do not parallel the proposed refresher training and qualification requirements in the statutorily mandated training standards rulemaking, FRA is not proposing specific rule text pertaining to additional roadway worker recurrent training and qualification requirements, but rather is requesting further comment on how to proceed in a final rule.

Finally, as also discussed in the preamble above, FRA is contemplating adding a requirement to a final rule in this rulemaking that lone workers be qualified on the physical characteristics at locations where the lone worker fouls track to perform work. FRA believes that such qualification on the physical characteristics at a particular location could aid in a lone worker’s ability to be able to safely detect approaching trains and make the appropriate distance determination as required by existing § 214.337(a). FRA is not, however, proposing rule text for this potential requirement, and requests further comment.

Section 214.352 Training and Qualification of Station Platform Work Coordinators

FRA is proposing a new § 214.352 that would address training requirements for station platform work coordinators. As new proposed § 214.338 would establish procedures allowing multiple station platform work coordinators to oversee snow removal or light cleaning work under the direction of one roadway worker in charge, minimum training and qualification requirements need to be established for such coordinators.

As a station platform snow removal coordinator would for practical purposes be an “assistant” roadway worker in charge, FRA is proposing training requirements that closely mirror the existing training requirements for a roadway worker in charge, with two exceptions. First, a station platform work coordinator would not be required to be trained on the application of the operating rules pertaining to the establishment of working limits, but only on their content. FRA believes that with training on the rules governing working limits, the coordinator could ensure work remained within the limited scope of that proposed in § 214.338, and be cognizant of when it may be necessary to contact the roadway worker in charge to establish working limits. As the station platform work coordinator would never actually be establishing working limits, training on how to do so would be unnecessary. Second, FRA is not proposing to require that station platform work coordinators be trained on the relevant physical characteristics

of the territory upon which work was being performed. As work could only be performed on a station platform under limited circumstances, such training would not be necessary. This training is also not necessary because if working limits or another form of on-track safety needed to be established, a roadway worker in charge who is qualified on the physical characteristics would first be required to be present. Instead, FRA is proposing that station platform work coordinators would have to receive training on the procedures to access the roadway worker in charge, or the train dispatcher or control operator in an emergency, per the requirements of proposed § 214.338.

Such training would be required to be given initially before an employee may perform work as a station platform work coordinator. Refresher training and qualification for each station platform work coordinator would be required to be evidenced by a recorded examination, at the frequency dictated by the existing additional roadway worker qualification sections. This proposed requirement is in addition to the once each calendar year roadway worker training requirements established by existing §§ 214.343 and 214.345. The approach that FRA ultimately adopts in a final rule with regard to qualification and training frequencies for additional roadway worker qualifications will also be adopted here.

FRA notes that under this proposed section, station platform work coordinators would necessarily be required to understand the procedures for, and be able to address, a good faith challenge. They would also necessarily be required to provide a safety briefing as prescribed by the roadway worker in charge and be qualified to provide train approach warning.

Section 214.353 Training and Qualification of Each Roadway Worker in Charge

Existing § 214.353 is titled “[t]raining and qualification of roadway workers who provide on-track safety for roadway work groups” and sets forth the general training and qualification requirements for roadway workers who are responsible for the on-track safety of groups of roadway workers through the establishment of working limits. FRA is proposing several changes to this existing section, including both recommended consensus items and non-consensus amendments. First, FRA is proposing to change the title of this section to “[t]raining and qualification of each roadway worker in charge.” This change is to reflect FRA’s proposal to

adopt this new term, and is in accordance with the proposals to use that new term to replace the varying generic references to that position that appear throughout the existing RWP regulation.

FRA is also proposing to add a new paragraph (a)(5) to this section. Proposed paragraph (a)(5) is a Working Group consensus recommendation that would require roadway workers in charge to be trained on procedures ensuring they remain immediately accessible to the roadway workers being protected by the on-track safety they are responsible for establishing. This new proposed paragraph would parallel the proposed requirement in § 214.315(a)(5) that the on-track safety job briefing given by a roadway worker in charge to a roadway worker include information on the accessibility of the roadway worker in charge, and on alternate procedures in the event the roadway worker in charge is no longer accessible to members of the roadway work group.

FRA is also proposing an additional amendment to existing paragraph (a) of this section. This proposed amendment to the existing rule text addresses situations where employees other than roadway workers act as roadway workers in charge. There was much discussion by the Working Group regarding conductors providing for the protection of roadway work groups, but no consensus recommendation regarding this issue was proposed for this NPRM.

As background, existing § 214.343(c) states that railroad employees other than roadway workers (often conductors or brakemen) “who are associated with on-track safety procedures, and whose primary duties are concerned with the movement and protection of trains, shall be trained to perform their functions related to on-track safety through the training and qualification procedures prescribed by the operating rules for the primary position of the employee.” This means that when a non-roadway worker employee (such as a conductor) is involved in providing for the on-track safety of a roadway work group (such as by serving as a flagmen for a roadway work group), that the non-roadway worker employee does not necessarily have to receive training to perform such task in accordance with the existing RWP regulation training section, but rather may receive the relevant training to be able to proficiently perform such function via his or her railroad’s conductor training procedures.¹¹ FRA

Technical Bulletin G–05–18 discussed § 214.343(c), and explained that the interval of such training may be permitted to occur on an alternate basis from that required for a roadway worker in the RWP regulation (according to a railroad’s training frequency procedures prescribed for a conductor in the above example, rather than for a roadway worker). Regardless of the employee’s traditional craft, it is essential that any employee associated with on-track safety have sufficient knowledge to assure that protection is properly applied.

Next, existing § 214.315(c) provides that one roadway worker in charge must be designated to provide on-track safety for a roadway work group. Sometimes, non-roadway worker employees may be called upon to act as roadway workers in charge for roadway work groups. FRA Technical Bulletin G–05–04 provides guidance regarding the use of employees other than roadway workers who act as roadway workers in charge. That bulletin explains that when transportation employees, such as conductors, are assigned to provide on-track safety for roadway workers, that those employees must have received the relevant training to assume those responsibilities. The role of a roadway worker in charge is a critical one, as a roadway worker in charge is responsible for establishing and maintaining the appropriate form of on-track safety upon which the safety of an entire roadway work group often depends. Roadway workers in charge must also be capable of conducting the on-track safety job briefings required by the RWP regulation, of handling a good faith challenge that may arise at a work site, and of locating relevant guidance in an on-track safety manual. Because the role of the roadway worker in charge is so important, it is imperative that any employee, whether considered a roadway worker or not, acting in the role of the roadway worker in charge have the required training and the capability to fulfill those functions safely. Simply, Technical Bulletin G–05–04 explained that any employee acting in the role of a roadway worker in charge must be trained as such. That technical bulletin also provided a table which, in part, helped illustrate the items that a conductor acting as a roadway worker in charge must be

as a “roadway worker” one day, while then working as a certified locomotive engineer the next day. FRA is not attempting to describe such a situation in this section, but rather is referring to situations where dedicated transportation employees do not actually perform “roadway worker” duties, but are called on to provide on-track safety for a roadway work group.

¹¹ FRA notes that employees of some smaller railroads may perform work in a variety of crafts. An employee may perform track maintenance work

trained and qualified on. Those items are the same items that a roadway

worker in charge is required to be trained and qualified on. That chart is

reproduced here, with new proposed § 214.324 included:

| Section | Description | Train and engine (T&E) service employees (1) |
|---------|---|--|
| 309 | On-track safety manual at work site | A |
| 311 | Good faith challenge and written procedures | A |
| 315 | On-track safety job briefing | A |
| 321 | Exclusive track occupancy | D |
| 323 | Foul time | A |
| 324 | Verbal protection | A |
| 325 | Train coordination | R |
| 327 | Inaccessible track | A (2) |
| 329 | Train approach warning | A |
| 335 | Adjacent track on-track safety | A |
| 339 | Train audible warning | R |
| 341 | Roadway maintenance machine procedures | A (3) |
| 351 | Flagmen | D |
| 353 | Physical characteristics | D |

D Default training received through craft training.

R On-track training received in addition to craft qualification as required by § 214.343.

A Additional qualification of employee providing on-track safety for roadway workers. Qualifications may be limited to those required for a specific situation. For example, a T&E employee providing on-track safety for a railroad contractor working on a single controlled main track with exclusive track occupancy without roadway maintenance machines. The employee in such scenario will not need to be qualified on roadway maintenance machine on-track safety procedures, train approach warning, or inaccessible track (only the elements that are utilized are applicable). Regardless of the frequency of general T&E training of such an employee, the applicable elements must comply with § 214.353. In addition, it is important to note that if trains operate while the work disturbs the track, a person qualified under § 213.7(a) must be present.

(1) A T&E employee who is qualified to obtain a track permit (exclusive track occupancy), but not otherwise qualified/trained in the necessary roadway worker protection elements, may be directed by another person so qualified. In such a case, the T&E employee is in "pilot service" for another person who must fulfill the roadway worker in charge role (and trained/qualified as appropriate under § 214.353). A common example would be where a T&E employee pilots a roadway maintenance machine over the track that the roadway worker in charge may not have the physical characteristic qualification but otherwise has the requisite qualifications.

(2) Railroad operating rule that would prohibit conductor from pulling spike in a switch used to make the track inaccessible.

(3) An employee providing on-track safety is not required to be fully qualified to operate every roadway maintenance machine but must have knowledge of the general and specific on-track safety procedures for each machine.

Per the above discussion, under the existing RWP regulation, a conductor (or other employee) acting as a roadway worker in charge is currently required to be trained on the same items as a traditional roadway worker in charge. However, existing § 213.353 only currently governs training and qualification requirements for "roadway workers" who provide for the establishment of on-track safety for roadway work groups. Conductors and other transportation employees have not been considered to be "roadway workers". While by its terms existing § 214.343(c) requires such other employees to still be trained and qualified to perform their functions related to on-track safety, FRA is proposing to expressly state such with regard to roadway worker in charge duties by amending § 214.353. FRA's proposed amendment would expressly state that roadway workers, or any other employee acting in the role of a roadway worker in charge, would have to be trained and qualified in accordance with § 213.353. While FRA does not believe this to be a substantive amendment, this proposal is to reflect that the role of a roadway worker in charge is different than that implicated by other levels of roadway worker qualification, due to both the many

responsibilities involved and safety critical role such employees play.

This proposed amendment, for example, would still permit a conductor to receive training relevant to fulfilling the requirements to act as a roadway worker in charge "through the training and qualification procedures prescribed by the operating railroad for the primary position of the employee." See § 214.343(c). The only differences between FRA's proposed amendment to paragraph (a) and existing § 214.343(c) relate to the requirement for a recorded examination for a roadway worker in charge and to the frequency of training required. By expressly proposing to include employees other than roadway workers who act as roadway workers in charge under § 214.353, a recorded examination would be required to evidence such employee's qualification. Under existing § 213.343, while many railroads may already give a recorded examination under their procedures for qualifying non-roadway workers on the functions related to on-track safety, some may not. If this proposed requirement were included in a final rule in this rulemaking, a recorded examination would be required for qualification of any employee acting in the capacity of a roadway worker in charge.

With regard to the frequency of training and qualification, FRA has chosen to proceed in the same manner as discussed above for the proposed amendments to §§ 214.347 through 214.352. FRA is requesting comment on whether to adopt the consensus recommendation of the Working Group as discussed above (qualification every 24 months and annual refresher training) or the proposals in the training standards rulemaking (refresher training and qualification to be performed every three calendar years). Existing § 214.343(c) currently controls on this point for non-roadway workers who serve as roadway workers in charge, and only specifies that training and qualification may be performed according to the frequency of training "prescribed by the operating railroad for the primary position of the employee." The proposed training standards rulemaking would also apply to these other "safety related employees," and proposed § 243.201 of that rule would already require that those employees be trained and qualified every three calendar years. If FRA adopted the training and qualification interval as proposed by the training standards rulemaking in a final rule, conductors or other employees who act as roadway workers in charge would be required to be trained and qualified at the same

interval as would a roadway worker. If FRA adopts an approach requiring a more frequent training and qualification interval for roadway workers in charge, there could be additional costs with regard to training conductors or other non-roadway worker employees who serve in such positions.

Next, FRA wishes to address what has been referred to as the bifurcation, or the splitting, of roadway worker in charge duties. FRA refers to scenarios where a roadway worker in charge may not be qualified on the physical characteristics of a territory, and a conductor who is qualified on the physical characteristics is assigned to serve as a pilot for the roadway worker in charge (analogous to a locomotive engineer being unfamiliar with the physical characteristics who is provided a pilot in accordance with § 240.231). While this situation is not currently addressed by the RWP regulation, Technical Bulletin G-05-04 notes that FRA does not currently object to the splitting of on-track safety qualification elements, and provided the example of a conductor obtaining an exclusive track occupancy work permit (authority) for a roadway work group while a roadway worker fulfilled the other duties of a roadway worker in charge, such as performing the on-track safety job briefing. However, in a final rule in this rulemaking, FRA is considering adopting a requirement that would only permit the splitting of qualifications to occur in situations where a conductor or other railroad employee serves as a pilot to a roadway worker in charge (or employee acting as a roadway worker in charge) who was not qualified on the physical characteristics of a particular territory where work was being performed. FRA is considering such, as every roadway work group is already required to have a roadway worker in charge, and if the proposed amendment to paragraph (a) is adopted in a final rule in this rulemaking, any employee acting as a roadway worker in charge would be required to be trained on the substantive requirements listed in § 214.353. FRA believes this would alleviate most instances where there would be any need for the splitting of qualifications, except with regard to qualification on the physical characteristics of a territory. FRA recognizes that when roadway work groups perform system-wide work on a large railroad, that it may not be possible for each roadway worker who is qualified as a roadway worker in charge to be qualified on the physical characteristics of each territory on

which the group performs work. Thus, as similarly recognized by FRA in parts 240 and 242 (FRA's new Conductor Certification regulation, promulgated via a final rule published on November 9, 2011 (76 FR 69802)), the use of pilots is often necessary in order to efficiently conduct railroad operations, and the use of such pilots is recognized to be an acceptably safe practice in the industry (the use of pilots in the industry predates the Federal regulations on the subject). FRA requests additional comment on this issue.

As also noted in Technical Bulletin G-05-04, FRA would not take exception to providing a "limited" qualification for a roadway worker in charge who would only perform such duties in certain situations. For example, a roadway worker in charge who was performing such duties on a railroad consisting entirely of non-controlled track would be permitted to have a limited qualification which would only involve the roadway worker in charge's being trained and qualified to establish working limits via the inaccessible track procedures (in addition to being trained on all other §§ 214.343, 214.345, and 214.353 requirements). However, FRA would take exception to a limited roadway worker in charge qualification where work was being performed on controlled track and where such limited qualification did not include the ability to use all of a railroad's controlled track working limits procedures. For example, limiting qualification to use of foul time only, when exclusive track occupancy is also an integral part of a railroad's on-track safety program, would not be permissible. FRA requests comment on this point, and whether additional forms of bifurcation of roadway worker in charge duties should continue to be permitted, such as where one employee obtains a track permit for another employee who is acting as the roadway worker in charge.

XI. Regulatory Impact and Notices

A. Executive Order 12866, Executive Order 13563 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under Executive Orders 12866 and 13563, and DOT policies and procedures. See 44 FR 11034, Feb. 26, 1979. FRA has prepared and placed a regulatory impact analysis (RIA) addressing the economic impact of this proposed rule in the Docket (No. FRA-2008-0086). Document inspection and copying facilities are available at

Room W12-140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590.

As part of the RIA, FRA has assessed quantitative measurements of the cost and benefit streams expected to result from the implementation of the proposed rule. Overall, the proposed rule would result in safety benefits and potential business benefits for the railroad industry. It would also, however, generate an additional burden on railroads mainly due to the additional requirements for job briefing under certain circumstances, as well as various training requirements.

Table 1 summarizes the quantified costs and benefits expected to accrue over a 20-year period. It presents costs associated with expanded job briefing requirements under § 214.315 Supervision and Communication, railroad policy change under § 214.339 Audible Warning from Trains, and training of various types of employees under §§ 214.345, 214.347, 214.352 and 214.353.

The RIA also presents the quantified benefits expected to accrue over a 20-year period. These benefits are primarily cost savings or business benefits. They largely accrue due to time savings because of the proposed amendments, including no longer having to submit plans to FRA for review under § 214.307, being able to more expeditiously remove snow from track and platforms under §§ 214.317 and 214.338, using inaccessible track under § 214.327, and using individual train detection under § 214.337. The largest benefit from this proposed rule is the new provision for using verbal protection under § 214.324. The use of verbal protection would provide greater flexibility and would create a time savings because the cycle of getting foul time and having to release it in between trains is very time consuming. All other proposed amendments result in no cost or benefits because they represent current industry practice and/or the adoption of current FRA Technical Bulletins.

For the 20-year period analyzed, the estimated quantified cost that would be imposed on industry totals \$5,840,921 with a present value of \$3,103,980 (PV, 7 percent) and \$4,350,537 (PV, 3 percent). FRA also estimates that for the 20-year period analyzed, the estimated quantified benefits total \$119,507,405 with a present value of \$63,310,902 (PV, 7 percent) and \$88,902,763 (PV, 3 percent). This analysis demonstrates that the benefits for this proposed rule would exceed the costs.

TABLE 1—COSTS AND BENEFITS OF THE PROPOSED RULE

| | Year 1 | 2–20 | Total 20 year | 7% PV | 3% PV |
|--|-----------|-----------|---------------|-------------|-------------|
| Costs: | | | | | |
| 214.315 Job Briefings | \$143,055 | \$143,055 | \$2,861,100 | \$1,515,527 | \$2,128,297 |
| 214.339 Audible Warning from Trains | 24,976 | 0 | 24,796 | 23,174 | 24,074 |
| 214.345 Training on Safe Crossing of Track | 72,250 | 72,250 | 1,445,000 | 765,418 | 1,074,898 |
| 214.347 Training on Access to Manual | 10,838 | 10,838 | 216,750 | 114,813 | 161,235 |
| 214.352 Training Platform Work Coordinate | 22,759 | 22,759 | 455,175 | 241,107 | 338,593 |
| 214.353 Training RWIC | 41,905 | 41,905 | 838,100 | 443,942 | 623,441 |
| Total | 315,602 | 290,806 | 5,840,921 | 3,103,980 | 4,350,537 |
| Benefits: | | | | | |
| 214.307 Plans No Longer Reviewed | \$19,553 | \$426 | \$27,653 | \$22,392 | \$24,912 |
| 214.317 Track Snow Removal | 292,613 | 292,613 | 5,852,250 | 3,099,941 | 4,353,335 |
| 214.324 Use of Verbal Protection | 5,386,021 | 5,386,021 | 107,720,415 | 57,059,581 | 80,130,388 |
| 214.327 Inaccessible Track | 204,016 | 204,016 | 4,080,319 | 2,161,348 | 3,035,242 |
| 214.337 ITD | 4,335 | 4,335 | 86,700 | 45,925 | 64,494 |
| 214.338 Platform Snow Removal | 87,003 | 87,003 | 1,740,069 | 921,716 | 1,294,392 |
| Total | 5,993,541 | 5,974,414 | 119,507,405 | 63,310,902 | 88,902,763 |
| NET BENEFITS | 5,677,938 | 5,683,608 | 113,666,484 | 60,206,922 | 84,552,226 |

*Dollars are discounted over a 20-year period.

B. Regulatory Flexibility Act and Executive Order 13272; Initial Regulatory Flexibility Assessment

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461; August 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. FRA developed the proposed rule in accordance with Executive Order 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”) and DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to ensure potential impacts of rules on small entities are properly considered.

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a threshold analysis to determine if the proposed rule will or may have a significant economic impact on a substantial number of small entities (SEISNOSE) or not. Then it must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule is not expected to have a SEISNOSE.

As discussed earlier, FRA proposes to amend its regulations on roadway workplace safety to resolve interpretative issues that have arisen since the 1996 promulgation of the original Roadway Worker Protection (RWP) regulation. Specifically, this Notice of Proposed Rulemaking (NPRM) proposes to define certain terms, establish new procedures for the removal of snow from passenger station platforms, amend certain training

requirements for roadway workers, resolve interpretative issues, and codify certain of FRA’s Technical Bulletins. FRA is also proposing to update three incorporations by reference of industry standards in existing sections of Subpart B of Part 214 that address Bridge Worker Safety Standards

The small entity segment of the railroad industry faces little in the way of intramodal competition. Small railroads generally serve as “feeders” to the larger railroads, collecting carloads in smaller numbers and at lower densities than would be economical for the larger railroads. They transport those cars over relatively short distances and then turn them over to the larger systems which transport them relatively long distances to their ultimate destination, or for handoff back to a smaller railroad for final delivery. Although the relative interests of various railroads may not always coincide, the relationship between the large and small entity segments of the railroad industry are more supportive and co-dependent than competitive.

It is also extremely rare for small railroads to compete with each other. Small railroads generally serve smaller, lower-density markets and customers. They exist, and often thrive, doing business in markets where there is not enough traffic to attract the larger carriers that are designed to handle large volumes over distance at a profit. As there is usually not enough traffic to attract service by a large carrier, there is also not enough traffic to sustain more than one smaller carrier. In combination with the huge barriers to entry in the railroad industry (*e.g.*, due to the need

to own the right-of-way, build track, purchase a fleet, etc.), small railroads rarely find themselves in competition with each other. Thus, even to the extent that the proposed rule may have an economic impact, it should have no impact on the intramodal competitive position of small railroads.

1. Description of Regulated Entities and Impacts

The “universe” of the entities under consideration includes only those small entities that can reasonably be expected to be directly affected by the provisions of this rule. For the rule there is only one type of small entity that is affected: small railroads.

“Small entity” is defined in 5 U.S.C. 601. Section 601(3) defines a “small entity” as having the same meaning as “small business concern” under § 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of “small entities” not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operations.

The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a “small entity” in the railroad industry is a for profit “line-haul railroad” that has fewer than 1,500 employees, a “short line railroad” with fewer than 500 employees, or a “commuter rail system” with annual receipts of less than seven million dollars. See “Size Eligibility Provisions

and Standards,” 13 CFR part 121 subpart A.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes “small entities” or “small businesses” as being railroads, contractors and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is \$20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. See 68 FR 24891 (May 9, 2003), codified at Appendix C to 49 CFR part 209. The \$20 million limit is based on the Surface Transportation Board’s revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR part 1201–1. The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA is proposing to use this definition for this rulemaking. Any comments received pertinent to its use will be addressed in the final rule.

Included in the entities impacted by the proposed rule are governmental jurisdictions or transit authorities—most of which are not small for purposes of this certification. There are two commuter railroads that are privately owned and would be considered small entities. However, both of these entities are owned by Class III freight railroads and therefore are already considered to be small entities for purposes of this certification.

Railroads

There are approximately 708 small railroads.¹² Class III railroads do not report to the STB, and the precise number of Class III railroads is difficult to ascertain due to conflicting definitions, conglomerates, and even seasonal operations. Potentially all small railroads (a substantial number) could be impacted by this proposed regulation. However, because of certain characteristics that these railroads typically have, there should be very little impact on most, if not all of them. A large number of these small railroads only have single-track operations. Some small railroads, such as the tourist and historic railroads, operate on the lines of

other railroads that would bear the burden or impact of the proposed rules requirements. Finally, other small railroads, if they do have more than a single track, typically have operations that are infrequent enough such that the railroads have generally always performed the pertinent trackside work with the track and right-of-way taken out of service, or conducted during hours that the track is not used.

Almost all commuter railroads do not qualify as small entities. This is likely because almost passenger/commuter railroad operations in the United States are part of larger governmental entities whose jurisdictions exceed 50,000 in population. As noted above two of these commuter railroads are privately owned and would be considered small. However, they are already considered to be small because of being owned by a Class III freight railroad. FRA is uncertain as to how many contractor companies would be involved with this issue. FRA is aware that some railroads hire contractors to conduct some of the functions of roadway workers on their properties. However, the costs for the burdens associated with the proposed requirements of this rulemaking would get passed on to the pertinent railroad. Most likely the contracts would be written to reflect that, and the contractor would bear no additional burden for the proposed requirements. Since contractors would not be the entities directly impacted by any burdens, it is not necessary to assess them in the certification.

No other small businesses (non-railroads) are expected to be impacted by this proposed rulemaking.

The process used to develop most of this proposed rule provided outreach to small entities in two ways. First, the RSAC Working Group had at least one representative from a small railroad association, the American Short Line and Regional Railroad Association (ASLRRA). Second, members of the RSAC itself include the ASLRRA and other organizations that represent small entities. Thus, it is possible to conclude that small entities had an opportunity for input as part of the process to develop a consensus-based RSAC recommendation made to the FRA Administrator.

Impacts

The impacts from this regulation are primarily a result of the proposed requirements for certain changes to the existing roadway worker protection regulations, particularly regarding job briefings and training of roadway workers.

The Regulatory Impact Analysis for this rulemaking estimates that for the 20-year period analyzed, the estimated quantified cost that would be imposed on industry totals \$5,840,921, discounted to \$3,103,980 (PV, 7 percent) and \$4,350,537 (PV, 3 percent). FRA believes nearly all of this cost will fall to railroads other than small railroads. Short line railroads, the vast majority of which are Class III railroads, represent an estimated 8 percent of the railroad industry. Since small railroads generally collect carloads in such small numbers and low densities, at low speeds, they require much less track maintenance. Furthermore, generally small railroads have single tracks that are not active around the clock. As such, road work can be done when the track is not active, greatly reducing the burden of having to provide roadway worker protection. As such, the cost of this rulemaking is very minimal to the small railroad segment of the industry. Eight percent of the total 20-year cost is \$467,274. That is an average annual cost of \$33 per small railroad.¹³ Although the rule may impact a substantial number of small entities, FRA is confident that this proposed rulemaking does not impose a significant burden.

This proposed rule would produce very large benefits (or cost savings) for railroads with the addition of Section 214.324 and the provision of verbal protection. However, most small railroads would not be impacted by these cost savings because of the size of these railroads and the nature of their operations. Most small railroads would already be able to utilize other forms of protection, such as individual train detection, which are in the current regulation.

2. Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Furthermore, FRA expects that any impact on small entities would be favorable by providing time savings. FRA invites all interested parties to submit data and information regarding this certification. FRA will consider all comments received in the public comment process when making a final determination for certification of the final rule.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule are

¹³ \$5,840,921 * .08 = \$467,274/20 years/708 small railroads = \$33 per year per small railroad.

¹² FRA data for 2010 indicates that there are 754 railroads. Thus, 754 Total Railroads—7 Class I Railroads—12 Class II Railroads (Includes Alaska RR)—27 Commuter/Amtrak (non-small) = 708 Small Railroads.

being submitted upon publication in the **Federal Register** for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new and current information collection requirements, and the estimated time to fulfill each requirement are as follows:

| CFR Section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours |
|--|---|---------------------------------------|---------------------------|---------------------------|
| Form FRA F 6180.119—Part 214 Railroad Workplace Safety Violation Report. | 350 Safety Inspectors | 150 forms | 4 hours | 600 |
| 214.301—Purpose and Scope | 60 Railroads | 60 operating rule documents. | 8 hours | 480 |
| —Written Approval by FRA of Equivalent Level of Protection in RR Operating Rules for Roadway Maintenance Machines on Non-Controlled Track (New Requirement). | | | | |
| 214.303—Railroad On-Track Safety Programs—(Current Requirement) (New Requirements). | 15 New Railroads | 15 programs | 30 minutes | 8 |
| —Provisions by RR for Lone Worker to Have Alternative Access to Information in On-Track Safety Manual. | 754 Railroads | 754 provisions | 60 minutes | 754 |
| —Publication of Bulletins by RRs Reflecting Changes in On-Track Safety Manual. | 754 Railroads | 100 bulletins | 60 minutes | 100 |
| 214.313—Good Faith Challenges to On-Track Safety Rules. | 20 Railroads | 80 challenges | 8 hours per challenge | 640 |
| 214.315/335—Supervision +communication | 50,000 Rdwy Workers | 16,350,000 brf. | 2 minutes | 545,000 |
| —Job Briefings | | | | |
| —Adjacent-Track Safety Briefings | 24,500 Rdwy Workers | 2,403,450 brf. | 30 seconds | 20,029 |
| —Information on Accessibility of Roadway Worker in Charge (RWIC) and Alternative Procedures in Event RWIC is No Longer Accessible to Work Gang (New Requirement). | 300 Roadway Work Gangs (10 Employees in Each Gang). | 59,400 briefings | 20 seconds | 3,267 |
| 214.317—On-Track Procedures (New Requirements)—For Snow Removal. | 20 Railroads | 20 operating procedures ... | 60 minutes | 20 |
| On-Track Procedures for Weed Spray Equipment. | 754 Railroads | 754 operating procedures | 60 minutes | 754 |
| 214.322—Exclusive Track Occupancy, Electronic Display (New Requirements). | 754 Railroads | 100 written Authorities | 10 minutes | 17 |
| —Written Authorities/Printed Authority Copy If Electronic Display Fails or Malfunctions. | | | | |
| On-Track Safety Briefings in Event Written Authority/Printed Authority Copy Cannot Be Obtained. | 754 Railroads | 100 briefings | 2 minutes | 3 |
| —Data File Records Relating to Electronic Display Device Involved in Part 225 Reportable Accident/Incident. | 25 Railroads | 380 data file records | 2 hours | 760 |
| 214.324—Verbal Protection (New Requirement)—Working Limits Established Through Verbal Protection Within Manual Interlockings/Controlled Points. | 150 Railroads | 2,623,500 verbal protection messages. | 5 minutes | 218,625 |
| 214.325—Train Coordination | 50,00 Roadway Workers ... | 36,500 comm. | 15 seconds | 152 |
| —Establishing Working Limits through Communication. | | | | |
| 214.327—Inaccessible Track | 10 Railroads | 9,125 talks/communications. | 10 minutes | 1,521 |
| —Working Limits Established by Locomotive With/Without Cars to Prevent Access—Communication by RWIC with Locomotive Crew Member (New Requirement). | | | | |
| —Notification to Train or Engine on Any Working Limits in Effect That Prohibit Train Movement Until RWIC Gives Permission to Enter Working Limits (New Requirement). | 10 Railroads | 1,750 notifications | 10 minutes | 292 |
| —Working Limits on Non-controlled Track: Notifications. | 754 Railroads | 50,000 notifications | 10 minutes | 8,333 |
| 214.329—Train Approach Warning Provided by Watchmen/Lookouts—Communications. | 754 Railroads | 795,000 messages/communic. | 30 seconds | 6,625 |
| —Written Designation of Watchmen/Lookouts. | 754 Railroads | 26,250 designations | 30 seconds | 219 |

| CFR Section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours |
|--|--------------------------------|------------------------------|---------------------------|---------------------------|
| 214.336— <i>Procedures for Adjacent-Track Movements Over 25 mph</i> —Notifications/Watchmen/Lookout Warnings. | 100 Railroads | 10,000 notific. | 15 seconds | 42 |
| —Roadway Worker Communication with Train Engineers or Equipment Operators. | 100 Railroads | 3,000 comm. | 1 minute | 50 |
| — <i>Procedures for Adjacent-Track Movements 25 mph or less</i> —Notifications/Watchmen/Lookout Warnings. | 100 Railroads | 3,000 notific. | 15 seconds | 13 |
| —Roadway Worker Communication with Train Engineers or Equipment Operators. | 100 Railroads | 1,500 comm | 1 minutes | 25 |
| —Exceptions to the requirements in paragraphs (a), (b), and (c) for adjacent-controlled-track on-track safety: Work activities involving certain equipment and purposes—On-Track Job Safety Briefings. | 100 Railroads | 1,030,050 briefings | 15 seconds | 4,292 |
| 214.337—On-Track Safety Procedures for Lone Workers: Statements by Lone Workers. | 754 Railroads | 2,080,000 statements | 30 seconds | 17,333 |
| —Statement of On-Track Safety Using Individual Train Detection on Track Outside Manual Interlocking, a Controlled Point, or a Remotely Controlled Hump Yard Facility (New Requirement). | 754 Railroads | 200 statements | 30 seconds | 21 |
| 214.338—Passenger Station Platform Snow Removal and Cleaning (New Requirements)—Designation of a Station Work Platform Coordinator. | 15 Railroads | 1,115 designations | 1 minute | 19 |
| —Communication of Contact Information/Instructions to Station Platform Work Coordinator for Reaching Both RWIC and Train Dispatcher or Control Operator. | 15 Railroads | 223 messages/communications. | 5 minutes | 19 |
| —Communication by Station Platform Work Coordinator to RWIC of Work to Be Performed. | 15 Railroads | 223 messages/communications. | 5 minutes | 19 |
| —Station Platform Work Coordinator Conduct of an Initial On-Track Safety Briefing. | 15 Railroads | 1,115 briefings | 2 minutes | 37 |
| —Briefing by Station Platform Work Coordinator to Establish Train Approach Warning. | 15 Railroads | 16,725 briefings | 30 minutes | 139 |
| 214.339—Audible Warning from Trains (Revised Requirement)—Written Procedures That Prescribe Effective Requirements for Audible Warning by Horn and/or Bell for Trains. | 25 Railroads | 25 written procedures | 12 hours + 2 hours | 120 |
| 214.343/345/347/349/351/353/355—Annual Training for All Roadway Workers (RWs). | 50,000 Rdwy Workers | 50,000 tr. RW | 4.5 hours | 225,000 |
| —Additional Training for All RWs Resulting from Proposed Rule (New/Revised Requirements). | 50,000 Rdwy Workers | 50,000 tr. RW | 30 minutes | 25,000 |
| —Training of Trainmen (Conductors & Brakemen) to Act as RWIC and Training of Station Platform Work Coordinators (New Requirement). | 22,150 RR Workers | 22,150 tr Workers | 5 minutes + 10 minutes. | 2,108 |
| —Additional adjacent on-track safety training for Roadway Workers. | 35,000 Rdwy Workers | 35,000 tr. RW | 5 min. | 2,917 |
| —Records of Training | 50,000 Roadway Workers | 50,000 records | 2 min. | 1,667 |
| 214.503—Good Faith Challenges; Procedures for Notification and Resolution. | 50,000 Rdwy Workers | 125 notific. | 10 minutes | 21 |
| —Notifications for Non-Compliant Roadway Maintenance Machines or Unsafe Condition. | | | | |
| —Resolution Procedures | 644 Railroads | 10 procedures | 2 hours | 20 |
| 214.505—Required Environmental Control and Protection Systems For New On-Track Roadway Maintenance Machines with Enclosed Cabs. | 644 Railroads/200 contractors. | 500 lists | 1 hour | 500 |
| —Designations/Additions to List | 644 Railroads/200 contractors. | 150 additions/designations | 5 mintues | 13 |
| 214.507—A-Built Light Weight on New Roadway Maintenance Machines. | 644 Railroads | 1,000 stickers | 5 minutes | 83 |
| 214.511—Required Audible Warning Devices For New On-Track Roadway Maintenance Machines. | 644 Railroads | 3,700 identified mechanisms. | 5 minutes | 308 |

| CFR Section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours |
|--|---------------------|-------------------------------|---------------------------|---------------------------|
| 214.513—Retrofitting of Existing On-Track Roadway Maintenance Machines—Identification of Triggering Mechanism—Horns. | 703 Railroads | 200 mechanisms | 5 minutes | 17 |
| 214.515—Overhead Covers For Existing On-Track Roadway Maintenance Machines. | 644 Railroads | 500 requests + 500 responses. | 100 minutes; 20 minutes. | 250 |
| 214.517—Retrofitting of Existing On-Track Roadway Maintenance Machines Manufactured On or After Jan. 1, 1991. | 644 Railroads | 500 stencils | 5 minutes | 42 |
| 214.518—Safe and Secure Position for riders. —Positions identified by stencilings/markings/notices. | 644 Railroads | 1,000 stencils | 5 minutes | 83 |
| 214.523—Hi-Rail Vehicles | 644 Railroads | 2,000 records | 60 minutes | 2,000 |
| —Non-Complying Conditions | 644 Railroads | 500 tags + 500 reports | 10 min.; 15 min. | 208 |
| 214.527—Inspection for Compliance; Repair Schedules. | 644 Railroads | 550 tags + 550 reports | 5 min.; 15 min. | 184 |
| 214.533—Schedule of Repairs; Subject to availability of Parts. | 644 Railroads | 250 records | 15 minutes | 63 |

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202-493-6292, or Ms. Kimberly Toone at 202-493-6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr. Brogan or Ms. Toone at the following address: Robert.Brogan@dot.gov; Kimberly.Toone@dot.gov.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days

of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of

developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This proposed rule would not have a substantial effect on the States or their political subdivisions; it would not impose any compliance costs; and it would not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this proposed rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970, repealed and recodified at 49 U.S.C. 20106. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the "essentially local safety or security hazard" exception to section 20106.

In sum, FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. As explained

above, FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws under Federal railroad safety statutes, specifically 49 U.S.C. 20106. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this proposed rule is not required.

E. Environmental Impact

FRA has evaluated this rule in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. See 64 FR 28547 (May 26, 1999).

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. The proposed rule will not result

in the expenditure, in the aggregate, of \$140,800,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this NPRM is not a "significant energy action" within the meaning of Executive Order 13211.

H. Trade Impact

The Trade Agreements Act of 1979 (Pub. L. 96-39, 19 U.S.C. 2501 *et seq.*) prohibits Federal agencies from engaging in any standards setting or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. FRA has assessed the potential effect of this NPRM on foreign commerce and believes that its requirements are consistent with the Trade Agreements Act of 1979. The requirements imposed are safety standards, which, as noted, are not considered unnecessary obstacles to trade.

I. Privacy Act

Interested parties should be aware that anyone is able to search the electronic form of all written comments received into any agency docket by the name of the individual submitting the document (or signing the document, if

submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://www.dot.gov/privacy.html>.

List of Subjects in 49 CFR Part 214

Occupational safety and health, Penalties, Railroad safety.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend Part 214 of Chapter II, Subtitle B of Title 49, Code of Federal Regulations, as follows:

PART 214—[AMENDED]

1. The authority citation for part 214 continues to read as follows:

Authority: 49 U.S.C. 20102-20103, 20107, 21301-21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

2. Amend § 214.7 by adding definitions for controlled point; interlocking, manual; maximum authorized speed; on-track safety manual; roadway worker in charge; station platform work coordinator; verbal protection; and revising the definitions for effective securing device and watchman/lookout to read as follows:

Subpart A—General

§ 214.7 Definitions.

* * * * *

Controlled point means a location where signals and/or other functions of a traffic control system are controlled from the control machine.

* * * * *

Effective securing device means a vandal and tamper resistant lock, keyed for application and removal only by the roadway worker(s) for whom the protection is provided. In the absence of a lock, it is acceptable to use a spike driven firmly into a switch tie or a switch point clamp to prevent the use of a manually operated switch. It is also acceptable to use portable derails secured with specifically designed metal wedges. Securing devices without a specially keyed lock shall be designed in such a manner that they require railroad track tools for installation and removal and the operating rules of the railroad must prohibit removal by employees other than the class, craft, or group of employees for whom the protection is being provided. Regardless of the type of securing device, the throwing handle or hasp of the switch or derail shall be uniquely tagged. If

there is no throwing handle, the securing device shall be tagged.

* * * * *

Interlocking, manual means an arrangement of signals and signal appliances operated from an interlocking machine and so interconnected by means of mechanical and/or electric locking that their movements must succeed each other in proper sequence, train movements over all routes being governed by signal indication.

* * * * *

Maximum authorized speed means the highest speed permitted for the movement of trains permanently established by timetable/special instructions, general order, or track bulletin.

* * * * *

On-track safety manual means the entire set of instructions designed to prevent roadway workers from being struck by trains or other on-track equipment. These instructions include operating rules and other procedures concerning on-track safety protection and on-track safety measures.

* * * * *

Roadway worker in charge means a roadway worker who is qualified in accordance with § 214.353 of this part for the purposes of establishing on-track safety for roadway work groups.

* * * * *

Station platform work coordinator means a roadway worker who is qualified in accordance with § 214.352 of this part for the purpose of coordinating, with a designated roadway worker in charge, the on-track safety of a roadway worker or roadway work group performing snow removal or general cleaning on a passenger station platform.

* * * * *

Verbal protection means the method of establishing working limits within an interlocking or controlled point whereby upon request by the roadway worker in charge the train dispatcher or control operator withholds authority for movements into the working limits. Operating rules shall prohibit further movements into the working limits except as permitted by the roadway worker in charge as prescribed in § 214.324 of this part.

Watchman/lookout means an employee who has been annually trained and qualified to provide warning to roadway workers of approaching trains or on-track equipment. Watchmen/lookouts shall be properly equipped to provide visual and auditory warning such as whistle, air

horn, white disk, red flag, lantern, or fusee. A watchman/lookout's sole duty is to look out for approaching trains/on-track equipment and provide at least fifteen seconds advanced warning, except as provided for in § 214.338(a)(2)(iii), to employees before arrival of trains/on-track equipment.

* * * * *

3. Amend § 214.113 by revising paragraph (b) to read as follows:

§ 214.113 Head protection.

* * * * *

(b) Helmets required by this section shall conform to the requirements of 29 CFR 1910.135(b), as established by the U.S. Department of Labor, Occupational Safety and Health Administration.

4. Amend § 214.115 by revising paragraph (b) to read as follows:

§ 214.115 Foot protection.

* * * * *

(b) Foot protection equipment required by this section shall conform to the requirements of 29 CFR 1910.136(b), as established by the U.S. Department of Labor, Occupational Safety and Health Administration.

5. Amend § 214.117 by revising paragraph (b) to read as follows:

§ 214.117 Eye and face protection.

* * * * *

(b) Eye and face protection equipment required by this section shall conform to the requirements of 29 CFR 1910.133(b), as established by the U.S. Department of Labor, Occupational Safety and Health Administration.

* * * * *

Subpart C—Roadway Worker Protection

6. Amend § 214.301 by revising paragraph (c) to read as follows:

§ 214.301 Purpose and scope.

* * * * *

(c) This subpart prescribes safety standards related to the movement of roadway maintenance machines where such movements affect the safety of roadway workers. Movements of roadway maintenance machines between work locations or to or from work locations that are conducted under the authority of a train dispatcher or a control operator are not required to be made in accordance with the on-track safety procedures described in §§ 214.319 through 214.338 of this subpart. Movements of roadway maintenance machines between work locations or to or from work locations on non-controlled track must comply with the on-track safety procedures

described in §§ 214.319 through 214.327 of this subpart, unless:

(1) All train and locomotive movements on such non-controlled track are required to be made at speeds not exceeding restricted speed; or

(2) the railroad's operating rules protect the movements of roadway maintenance machines in a manner equivalent to that provided for by limiting all train and locomotive movements to restricted speed, and such equivalent level of protection is first approved in writing by FRA's Associate Administrator for Railroad Safety/Chief Safety Officer.

§ 214.302 [Removed and reserved]

7. Remove and reserve § 214.302.

§ 214.305 [Removed and reserved]

8. Remove and reserve § 214.305.

9. Amend § 214.307 by revising to read as follows:

§ 214.307 Review of individual on-track safety programs by FRA.

(a) *Program.* Each railroad subject to this part shall maintain and have in effect an on-track safety program which complies with the requirements of this subpart. The on-track safety program shall be retained at a railroad's system headquarters and division headquarters, and shall be made available to representatives of the FRA for inspection and copying during normal business hours. Each railroad to which this part applies is authorized to retain its program by electronic recordkeeping in accordance with §§ 217.9(g) and 217.11(c) of this chapter.

(b) *Approval process.* Upon review of a railroad's on-track safety program, the FRA Associate Administrator for Railroad Safety/Chief Safety Officer may, for cause stated, disapprove the program. Notification of such disapproval shall be made in writing and specify the basis for the disapproval decision. If the Associate Administrator for Railroad Safety/Chief Safety Officer disapproves the program,

(1) The railroad has 35 days from the date of the written notification of such disapproval to:

(i) Amend its program and submit it to the Associate Administrator for Railroad Safety/Chief Safety Officer for approval; or

(ii) Provide a written response in support of its program to the Associate Administrator for Railroad Safety/Chief Safety Officer.

(2) FRA's Associate Administrator for Railroad Safety/Chief Safety Officer will subsequently issue a written decision either approving or disapproving the railroad's program.

(3) Failure to submit to FRA an amended program or provide a written response in accordance with this paragraph will be considered a failure to implement an on-track safety program under this subpart.

10. Amend § 214.309 by revising to read as follows:

§ 214.309 On-track safety manual.

(a) The applicable on track safety manual (as defined by § 214.7) shall be readily available to all roadway workers. Each roadway worker responsible for the on-track safety of others, and each lone worker, shall be provided with and shall maintain a copy of the on-track safety manual.

(b) When it is impracticable for a lone worker to carry the on-track safety manual, the employer shall establish provisions for such worker to have alternative access to the information in the manual.

(c) Changes to the on-track safety manual may be temporarily published in bulletins or notices. Such publications shall be carried along with the on-track safety manual until fully incorporated into the manual.

(11) Amend § 214.315 by revising paragraphs (a)(3), (a)(4), (b), the first sentence of paragraphs (c)-(e) and adding paragraph (a)(5) to read as follows:

§ 214.315 Supervision and communication.

(a) * * *

(3) Information about any adjacent tracks, on-track safety for such tracks, if required by this subpart or deemed necessary by the roadway worker in charge, and identification of any roadway maintenance machines that will foul such tracks;

(4) A discussion of the nature of the work to be performed and the characteristics of the work location to ensure compliance with this subpart; and

(5) Information on the accessibility of the roadway worker in charge and alternative procedures in the event the roadway worker in charge is no longer accessible to the members of the roadway work group.

(b) A job briefing for on-track safety shall be deemed complete only after the roadway worker(s) has acknowledged understanding of the on-track safety procedures and instructions presented.

(c) Every roadway work group whose duties require fouling a track shall have one roadway worker in charge designated by the employer to provide on-track safety for all members of the group. * * *

(d) Before any member of a roadway work group fouls a track, the roadway

worker in charge designated under paragraph (c) of this section shall inform each roadway worker of the on-track safety procedures to be used and followed during the performance of the work at that time and location. * * *

(e) Each lone worker shall communicate at the beginning of each duty period with a supervisor or another designated employee to receive an on-track safety job briefing and to advise of his or her planned itinerary and the procedures that he or she intends to use for on-track safety. * * *

12. Amend § 214.317 by revising it to read as follows:

§ 214.317 On-track safety procedures, generally.

(a) Each employer subject to the provisions of this part shall provide on-track safety for roadway workers by adopting a program that contains specific rules for protecting roadway workers that comply with the provisions of §§ 214.319 through 214.338 of this part.

(b) Roadway workers may walk across any track provided each roadway worker shall stop and look in all directions from which a train or other on-track equipment could approach before starting across the track to ensure that they can safely be across and clear of the track before a train or other on-track equipment would arrive at the crossing point under the following circumstances:

(1) Employers shall adopt and roadway workers shall comply with applicable railroad safety rules governing how to determine that it is safe to cross the track before starting across;

(2) Roadway workers shall move directly and promptly across the track; and

(3) On-track safety protection is in place for all roadway workers who are actually engaged in work, including inspection, construction, maintenance or repair, and extending to carrying tools or material that restricts motion, impairs sight or hearing, or prevents an employee from detecting and moving rapidly away from an approaching train or other on-track equipment.

(c) On non-controlled track, on-track roadway maintenance machines engaged in weed spraying or snow removal may proceed under the provisions of § 214.301(c), under the following conditions:

(1) Each railroad shall establish and comply with an operating procedure for on-track snow removal and weed spray equipment to ensure that:

(i) All on-track movements in the affected area are informed of such operations;

(ii) All on-track movements shall operate at restricted speed as defined in § 214.7, except on other than yard tracks and yard switching leads, where all on-track movements shall operate prepared to stop within one-half the range of vision but not exceeding 25 mph;

(iii) A means for communication between the on-track equipment and other on-track movements is provided; and

(iv) Remotely controlled hump yard facility operations are not in effect, and kicking of cars is prohibited unless agreed to by the roadway worker in charge.

(2) Roadway workers engaged in such snow removal or weed spraying operations subject to this section shall retain an absolute right to use the provisions of § 214.327 (inaccessible track).

(3) Roadway workers assigned to work with this equipment may line switches for the machine's movement but shall not engage in any roadway work activity unless protected by another form of on-track safety.

(4) Each roadway maintenance machine engaged in snow removal or weed spraying under this provision shall be equipped with and utilize:

(i) An operative 360-degree intermittent warning light or beacon;

(ii) Work lights, if the machine is operated during the period between one-half hour after sunset and one-half hour before sunrise or in dark areas such as tunnels, unless equivalent lighting is otherwise provided;

(iii) An illumination device, such as a headlight, capable of illuminating obstructions on the track ahead in the direction of travel for a distance of 300 feet under normal weather and atmospheric conditions;

(iv) A brake light activated by the application of the machine braking system, and designed to be visible for a distance of 300 feet under normal weather and atmospheric conditions; and

(v) A rearward viewing device, such as a rearview mirror.

13. Amend § 214.319 the first sentence of the introductory paragraph, and paragraphs (a) and (b) by revising to read as follows:

§ 214.319 Working limits, generally.

Working limits established on controlled track shall conform to the provisions of § 214.321 Exclusive track occupancy, or § 214.323 Foul time, or § 214.324 Verbal protection, or § 214.325 Train coordination. * * *

(a) Only a roadway worker in charge who is qualified in accordance with § 214.353 of this part shall establish or have control over working limits for the purpose of establishing on-track safety.

(b) Only one roadway worker in charge shall have control over working limits on any one segment of track.

* * * * *

14. Amend § 214.321 by revising paragraphs (a), (b), (b)(2), and (d), and adding paragraphs (b)(4) and (e), to read as follows:

§ 214.321 Exclusive track occupancy.

* * * * *

(a) The track within working limits shall be placed under the control of one roadway worker in charge by either:

* * *

(b) An authority for exclusive track occupancy given to the roadway worker in charge of the working limits shall be transmitted on a written or printed document directly, by relay through a designated employee, in a data transmission, or by oral communication, to the roadway worker in charge by the train dispatcher or control operator in charge of the track.

(1) * * *

(2) The roadway worker in charge of the working limits shall maintain possession of the written or printed authority for exclusive track occupancy while the authority for the working limits is in effect. A data transmission of an authority displayed on an electronic screen may be used as a substitute for a written or printed document required under this paragraph. Electronic displays of authority shall comply with the requirements of § 214.322.

* * * * *

(4) An authority shall specify a unique roadway work group number, an employee name, or a unique identifier. A railroad shall adopt procedures that require precise communication between trains and other on-track equipment and the roadway worker in charge or lone worker controlling the working limits in accordance with § 214.319. The procedures may permit communications to be made directly between a train or other on-track equipment and a roadway worker in charge or lone worker, or through a train dispatcher or control operator.

* * * * *

(d) Movements of trains and roadway maintenance machines within working limits established through exclusive track occupancy shall be made only under the direction of the roadway worker in charge of the working limits. Such movements shall be at restricted

speed unless a higher authorized speed has been specifically authorized by the roadway worker in charge of the working limits.

(e) Working limits established by exclusive track occupancy authority may occur behind designated trains moving through the same limits in accordance with the following provisions:

(1) The authority establishing working limits will only be considered to be in effect after it is confirmed by the roadway worker in charge or lone worker that the affected train(s) have passed the point to be occupied or fouled by:

(i) Visually identifying the affected train(s); or

(ii) Direct radio contact with a crew member of the affected train(s); or

(iii) Receiving information about the affected train from the train dispatcher or control operator.

(2) When utilizing the provisions of paragraph (e)(1)(i) of this section, a railroad's operating rules shall include procedures to prohibit the affected train(s) from making a reverse movement into the limits being fouled or occupied.

(3) After the roadway worker in charge or lone worker has confirmed that the affected train(s) have passed the point to be occupied or fouled, the roadway worker in charge shall record on the authority the time of passage and engine number(s) of the affected train(s). If the confirmation is by direct communication with the train(s), or through confirmation by the train dispatcher or control operator, the roadway worker in charge shall record the time of such confirmation and the engine number(s) of the affected trains on the authority.

(4) Roadway workers afforded on-track safety by the roadway worker in charge and located between the rear end of affected train(s) and the roadway worker in charge, or ahead of the rear end of any affected train, shall:

(i) Occupy or foul the track only after receiving permission from the roadway worker in charge to occupy the working limits after the roadway worker in charge has fulfilled the provisions of paragraph (e)(1) of this section; and

(ii) Be accompanied by an employee qualified to the level of a roadway worker in charge who shall also have a copy of the authority and who shall independently execute the required communication requirements of paragraphs (e)(1) and (e)(3) of this section.

(5) Each lone worker subject to this paragraph shall have a copy of the authority and shall comply with the

communication requirements of paragraphs (e)(1) and (e)(3) of this section.

(6) Any subsequent train or on-track equipment movements within working limits after the passage of the affected train(s) shall be governed by paragraph (d) of this section.

15. Add § 214.322 to read as follows:

§ 214.322 Exclusive track occupancy, electronic display.

(a) While it is in effect, all the contents of an authority electronically displayed shall be readily viewable by the roadway worker in charge that is using the authority to provide on-track safety for a roadway work group.

(1) If the electronic display device malfunctions, fails, or cannot display an authority while it is in effect, the roadway worker in charge shall instruct all roadway workers to stop work and occupy a place of safety until either a written or printed copy of the authority can be obtained in accordance with § 214.321(b)(1), or another form of on-track safety can be established.

(2) In the event that a written or printed copy of the authority cannot be obtained, or another form of on-track safety cannot be established after failure of an electronic display device, the roadway worker in charge shall conduct an on-track safety job briefing to determine the safe course of action with the roadway work group.

(b) All authorized users of an electronic display system shall be uniquely identified to support individual accountability. A user may be a person, a process, or some other system that accesses or attempts to access an electronic display system to perform tasks or process an authority.

(c) All authorized users of an electronic display system must be authenticated prior to being granted access to such system. The system shall ensure the confidentiality and integrity of all internally stored authentication data and protect it from access by unauthorized users. The authentication scheme shall utilize algorithms approved by the National Institute of Standards and Technology (NIST), or any similarly recognized and FRA approved standards body.

(d) The integrity of all data must be ensured during transmission/reception, processing, and storage. All new electronic display systems implemented after (EFFECTIVE DATE OF THE FINAL RULE TO BE INSERTED) shall utilize a Message Authentication Code (MAC) to ensure that all data is error free. The MAC shall utilize algorithms approved by NIST, or any similarly recognized and FRA approved standards body.

Systems implemented prior to (EFFECTIVE DATE OF THE FINAL RULE TO BE INSERTED) may utilize a Cyclical Redundancy Code (CRC) to ensure that all data is error free provided:

(1) The collision rate for the CRC check utilized shall be less than or equal to 1 in 2³². Systems implemented prior to (EFFECTIVE DATE OF THE FINAL RULE TO BE INSERTED) that do not utilize a CRC with a collision rate less than or equal to 1 in 2³² must be retired or updated to utilize a MAC no later than (A DATE ONE YEAR FROM PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER TO BE INSERTED).

(2) MAC and CRC checks shall only be used to verify the accuracy of an electronic authority data message and shall not be used in an error correction reconstruction of the data. An authority must fail if the MAC or CRC checks do not match.

(e) Authorities transmitted to each electronic display device shall be retained in the device's non-volatile memory for not less than 72 hours.

(f) If any electronic display device used to obtain an authority is involved in an accident/incident that is required to be reported to FRA under part 225 of this chapter, the railroad or employer that was using the device at the time of the accident shall, to the extent possible, and to the extent consistent with the safety of life and property, preserve the data recorded by each such device for analysis by FRA. This preservation requirement permits the railroad or employer to extract and analyze such data, provided the original downloaded data file, or an unanalyzed exact copy of it, shall be retained in secure custody and shall not be utilized for analysis or any other purpose except by direction of FRA or the National Transportation Safety Board. This preservation requirement shall expire one (1) year after the date of the accident unless FRA or the National Transportation Safety Board notifies the railroad in writing that the data are desired for analysis.

(g) New electronic display systems implemented after (EFFECTIVE DATE OF THE FINAL RULE TO BE INSERTED) shall provide Level 3 assurance as defined by NIST Special Publication 800-63-1, "Electronic Authentication Guideline." Systems implemented prior to (EFFECTIVE DATE OF THE FINAL RULE TO BE INSERTED) shall provide Level 2 assurance. Systems implemented prior to (EFFECTIVE DATE OF THE FINAL RULE TO BE INSERTED) that do not provide Level 2 or higher assurance

must be retired, or updated to provide Level 2 assurance, no later than (A DATE ONE YEAR FROM PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER TO BE INSERTED). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the National Institute of Standards and Technology, 100 Bureau Drive, Stop 2300, Gaithersburg, MD 20899-2300. Copies may be inspected at the Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue SE., Washington, DC, or at the National Archives and Records Administration (NARA). A copy is also publicly available online at: <http://csrc.nist.gov/publications/nistpubs/800-63-1/SP-800-63-1.pdf>. For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

16. Amend § 214.323 by revising to read as follows:

§ 214.323 Foul time.

Working limits established on controlled track through the use of foul time procedures shall comply with the following requirements:

(a) Foul time may be given orally or in writing by the train dispatcher or control operator only after that employee has withheld the authority of all trains or other on-track equipment to move into or within the working limits during the foul time period.

(b) Each roadway worker in charge to whom foul time is transmitted orally shall repeat the track number, track limits and time limits of the foul time to the issuing employee for verification before the foul time becomes effective.

(c) The train dispatcher or control operator shall not permit the movement of trains or other on-track equipment into working limits protected by foul time until the roadway worker in charge who obtained the foul time has reported clear of the track.

(d) The roadway worker in charge shall not permit the movement of trains or other on-track equipment into or within working limits protected by foul time.

17. Add § 214.324 to read as follows:

§ 214.324 Verbal Protection.

Working limits established through verbal protection may only occur within manual interlockings or within controlled points and shall comply with the following requirements:

(a) Verbal protection shall be communicated to the roadway worker in charge by the train dispatcher or control operator only after that employee has withheld the authority of all trains or other on-track equipment to move into or within the limits to be protected.

(b) Each roadway worker in charge to whom verbal protection is transmitted shall repeat the track number, track limits and time limits of the verbal protection to the issuing employee for verification before the verbal protection becomes effective.

(c) No train or on-track equipment may move into working limits protected by verbal protection until permission has been received from the roadway worker in charge and authority has been given by the train dispatcher or control operator.

18. Amend § 214.325 by revising the introductory sentence to read as follows:

§ 214.325 Train coordination.

Working limits established on controlled track by a roadway worker in charge through the use of train coordination shall comply with the following requirements:

* * * * *

19. Amend § 214.327 by adding paragraphs (a)(6), (a)(7), and (a)(8) to read as follows:

§ 214.327 Inaccessible track.

(a) * * *

(6) A locomotive with or without cars placed to prevent access to the working limits at one or more points of entry to the working limits, provided the following conditions are met:

(i) The roadway worker in charge who is responsible for establishing working limits communicates with a member of the crew assigned to the locomotive and determines that:

(A) The locomotive is visible to the roadway worker in charge that is establishing the working limits; and

(B) The locomotive is stopped.

(ii) Further movements of the locomotive shall be made only as permitted by the roadway worker in charge controlling the working limits;

(iii) The crew of the locomotive shall not leave the locomotive unattended or go off-duty unless communication occurs with the roadway worker in charge and an alternate means of on-track safety protection has been established by the roadway worker in charge; and

(iv) Cars coupled to the locomotive on the same end and on the same track as the roadway workers shall be connected to the train line air brake and such system shall be charged with compressed air to initiate an emergency

brake application in case of unintended uncoupling. Cars coupled to the locomotive on the same track on the opposite end of the roadway workers shall have sufficient braking capability to control their movement.

(7) A railroad's procedure governing block register territory that prevents trains and other on-track equipment from occupying the track when the territory is under the control of a lone worker or roadway worker in charge. The roadway worker in charge or lone worker shall have the absolute right to render such block register territory inaccessible under the provisions of paragraphs (a)(1) through (a)(6) of this section.

(8) Railroad operating rules that prohibit train or engine movements on a main track within yard limits or restricted limits until the train or engine receives notification of any working limits in effect and prohibit the train or engine from entering working limits until permission is received by the roadway worker in charge. Such working limits shall be delineated with stop signs (flags), and where speeds are in excess of restricted speed and physical characteristics permit, advance signs (flags).

* * * * *

20. Amend § 214.329 by revising paragraph (a), and adding paragraph (h) to read as follows:

§ 214.329 Train approach warning provided by watchmen/lookouts.

* * * * *

(a) Except as provided for in § 214.338(a)(2)(iii), train approach warning shall be given in sufficient time to enable each roadway worker to move to and occupy a previously arranged place of safety not less than 15 seconds before a train moving at the maximum authorized speed on that track can pass the location of the roadway worker. The place of safety to be occupied upon the approach of a train may not be on a track, unless working limits are established on that track.

* * * * *

(h) Train approach warning shall not be used to provide on-track safety for a roadway work group using a roadway maintenance machine, equipment, or material that cannot be readily removed by hand.

21. Amend § 214.331 by adding paragraph (e) to read as follows:

§ 214.331 Definite train location.

* * * * *

(e) Each on track safety program that provides for the use of definite train location shall discontinue such use by (A DATE 1 YEAR FROM THE DATE OF

PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER TO BE INSERTED).

22. Amend § 214.333 by revising paragraph (c) to read as follows:

§ 214.333 Informational line-ups of trains.

* * * * *

(c) Each on track safety program that provides for the use of informational line-ups shall discontinue such use by (A DATE 1 YEAR FROM THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER TO BE INSERTED).

23. Amend § 214.335 by revising to read as follows:

§ 214.335 On-track safety procedures for roadway work groups, general.

(a) Except as provided for in § 214.338 of this part, no employer subject to the provisions of this part shall require or permit a roadway worker who is a member of a roadway work group to foul a track unless on-track safety is provided by either working limits, train approach warning, or definite train location in accordance with the applicable provisions of §§ 214.319, 214.321, 213.323, 214.324, 214.325, 214.327, 214.329, 214.331 or 214.336 of this part.

(b) No roadway worker who is a member of a roadway work group shall foul a track without having been informed by the roadway worker in charge of the roadway work group that on-track safety is provided.

24. Amend § 214.337 by revising paragraph (c)(3) and adding paragraph (g) to read as follows:

§ 214.337 On-track safety procedures for lone workers.

* * * * *

(c) * * *

(3) On track outside the limits of a manual interlocking, a controlled point (except those consisting of signals only), or a remotely controlled hump yard facility.

* * * * *

(g) Individual train detection shall not be used to provide on-track safety for a lone worker using a roadway maintenance machine, equipment, or material that cannot be readily removed by hand.

25. Add § 214.338 to read as follows:

§ 214.338 Passenger station platform snow removal and cleaning.

(a) A roadway worker or roadway work group assigned to perform snow removal or cleaning on a passenger station platform, whose duties would require a roadway worker to foul a track with a hand-held, non-powered tool, may conduct such activities without

establishing working limits, provided the following conditions are met:

(1) The railroad has designated a station platform work coordinator who is responsible for directing the on-track safety of the roadway worker or roadway work group performing the snow removal or cleaning.

(2) The fouling area in which only hand-held, non-powered tools may be used has been clearly delineated and is no less than four feet from the field side of the near rail of the track. For purposes of this section, delineation may consist of permanent markings (e.g., tactile strips or signs), a temporary marking system (e.g., safety cones), or a printed diagram showing measurements from the edge of the platform that has been provided to the affected roadway workers.

(3) The station platform work coordinator has ready access to a landline or wireless communication device that would permit immediate access to the designated roadway worker in charge and, in case of an emergency, the train dispatcher or control operator controlling on-track movements. The contact information and instructions for reaching both the designated roadway worker in charge and the train dispatcher or control operator shall also be provided to the station platform work coordinator prior to the commencement of any work pursuant to this section.

(4) The station platform work coordinator must be present at the station platform at all times work is being performed pursuant to this section and take the following actions:

(i) Inform the designated roadway worker in charge of the work to be performed;

(ii) Conduct an initial on-track safety briefing with the roadway worker or roadway work group pursuant to § 214.315 of this part; and

(iii) Establish train approach warning that requires a watchman/lookout to warn of the approach of any train or on-track equipment and requires roadway worker(s) to withdraw hand-held, non-powered tools from the delineated fouling area upon receiving such warning. Such warning may be based on available sight distance and may give less timely notice than that prescribed by § 214.329(a) of this part.

(5) Each roadway worker conducting such work under train approach warning shall:

(i) Position himself or herself on the station platform with his or her body entirely outside of the delineated fouling area as described in paragraph (a)(2) of this section; and

(ii) Only use hand-held, non-powered tools to perform such duties.

(6) The maximum authorized speed of the track immediately adjacent to the platform does not exceed 79 mph.

(b) If any of the conditions in paragraphs (a)(1) through (6) of this section are no longer met during the course of the work (e.g., if the available communication device(s) is no longer functioning, or if the designated roadway worker in charge is no longer accessible), all work that would require a roadway worker to encroach the delineated fouling area with a tool shall cease. Work in the delineated fouling area may resume only after the requirements of this section are met or a roadway worker in charge arrives at the work site to provide on-track safety consistent with this part.

26. Amend § 214.339 by revising to read as follows:

§ 214.339 Audible warning from trains.

(a) Each railroad shall have in effect and comply with written procedures that prescribe effective requirements for audible warning by horn and/or bell for trains and locomotives approaching any roadway workers or roadway maintenance machines that are either on the track on which the movement is occurring, or about the track if the roadway workers or roadway maintenance machines are at risk of fouling the track. At a minimum, such written procedures shall address:

- (1) Initial horn warning;
- (2) Subsequent warning(s); and
- (3) Alternative warnings in areas

where sounding the horn adversely affects roadway workers (e.g., in tunnels and terminals).

(b) Such audible warning shall not substitute for on-track safety procedures prescribed in this part.

27. Amend § 214.343 by revising the first sentence of paragraph (c) to read as follows:

§ 214.343 Training and qualification, general.

* * * * *

(c) Except as provided for in § 214.353, railroad employees other than roadway workers, who are associated with on-track safety procedures, and whose primary duties are concerned with the movement and protection of trains, shall be trained to perform their functions related to on-track safety through the training and qualification procedures prescribed by the operating railroad for the primary position of the employee, including maintenance of records and frequency of training.

* * * * *

28. Amend § 214.345 by revising the introductory text and adding paragraph (f) to read as follows:

§ 214.345 Training for all roadway workers.

Consistent with § 214.343(b), the training of all roadway workers shall include, as a minimum, the following:

* * * * *

(f) Instruction on railroad safety rules adopted to comply with § 214.317(b) of this subpart.

29. Amend § 214.347 by adding paragraph (a)(5) to read as follows:

§ 214.347 Training and qualification for lone workers.

* * * * *

(a) * * *

(5) Alternative means to access to the information in a railroad's on-track safety manual when a lone worker's duties make it impracticable to carry the manual.

* * * * *

30. Add § 214.352 to read as follows:

§ 214.352 Training and qualification of station platform work coordinator.

(a) The training and qualification of each station platform work coordinator shall include, as a minimum:

- (1) All the on-track safety training and qualification required of the roadway workers to be supervised and protected;
- (2) The content of the operating rules of the railroad pertaining to the establishment of working limits;

(3) The content and application of the rules of the railroad pertaining to the establishment of train approach warning; and

(4) The procedures required to ensure that the station platform work coordinator has immediate access to contact the roadway worker in charge, and in case of an emergency, the procedures to contact the train dispatcher or control operator.

(b) Initial and periodic qualification of a station platform work coordinator shall be evidenced by a recorded examination.

31. Amend 214.353 by revising the section heading and paragraph (a) and adding paragraph (a)(5) to read as follows:

§ 214.353 Training and qualification of each roadway worker in charge.

(a) The training and qualification of each roadway worker in charge, or any other employee acting as a roadway worker in charge (e.g., a conductor or a brakeman), who provides for the on-track safety of roadway workers through establishment of working limits or the assignment and supervision of watchmen/lookouts or flagmen shall include, at a minimum:

* * * * *

(5) The procedures required to ensure that the roadway worker in charge of the on-track safety a group(s) of roadway workers remains immediately accessible and available to all roadway workers being protected under the working limits or other provisions of on-track safety established by the roadway worker in charge.

* * * * *

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Joseph C. Szabo,
Administrator, Federal Railroad Administration.

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